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SERVICES
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GATS 2000

Request from the EC and its Member States (hereinafter the EC)

to

Malaysia

General remarks

This request covers horizontal commitments, MFN exemptions and the following service sectors:

- Professional services
- Business services (other than professional services)
- Postal and courier services
- Telecommunications services
- Construction and related engineering services
- Distribution services
- Environmental services
- Financial services (banking, insurance, securities, other)
- Tourism and travel related services
- News agency services
- Transport (air, maritime, land, other) services
- Energy

The EC proposes that Malaysia's current GATS commitments are revised in accordance with this request. The EC is both seeking improved commitments and clarification of existing commitments as set out in this Request. The EC is furthermore looking for a reduction in scheduled limitations whether these are horizontal or sector specific in nature.

The EC further requests that commitments are entered in accordance with the scheduling guidelines adopted by the Council of Trade in Services on 23

March 2001 (S/L/92). In particular, for each commitment or limitation entered the EC requests:

- that any remaining limitation on market access (hereafter “MA”) or on national treatment (hereafter “NT”) are clearly described and only be inscribed in the market access or national treatment columns if the measure is of a nature foreseen by Articles XVI-XVII GATS.

The EC remains available to provide any clarification and answer any question on this request. Questions can be addressed to the European Commission via the EC contact point, via the Delegation of the European Commission in Geneva, or at the following EC officials in Directorate-General Trade Unit D2 (Trade in services, including e-commerce) :

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Note : The EC reserves the right to revise and/or supplement this request. For each service sector, W120 classification has been followed unless expressly indicated and CPCs refer to the Provisional CPC classification. The precise scope for each sector is without prejudice to the EC's final positions on classification issues and to the EC's classification of their existing commitments.

HORIZONTAL COMMITMENTS

EC Request to Malaysia

Mode 3

- Acquisitions, mergers and take-overs require approval if more than 15% (voting rights) of a single foreign interest (30% of aggregate) or more than RM 5 million. Approval also required if result is foreign ownership or control. Finally approval needed is control of Malaysian corporations through joint-venture or other arrangement. Approval depends of interest of the State-test (MA). **EC request:** remove restrictions.
- Land property and real estate (NA). Approval required and may be denied if purpose is speculations and against state interests. **EC request:** remove restrictions.
- Incentives/Preferences. Limited to Malaysian-owned corporations. **EC request:** Clarify this discriminatory measures.

Mode 4

Intra-corporate transferees :

- Only two specialists per organisation are permitted without being subject to labour market testing. **EC request :** Eliminate any requirement for labour market testing for intra-corporate transferees.
- The EC also requests that a commitment be made to allow as intra-corporate transferees without requiring an economic needs test «persons with a university degree or equivalent technical qualification who are transferring for career development purposes or to obtain training in business techniques or methods ». The maximum prior employment requirement should be one year.

Business Visitors :

- One year minimum prior employment requirement for business visitors entering to negotiate and conclude contracts. **EC request :** Eliminate this requirement.
- No specific commitment has been made for Business Visitors who are not entering to themselves supply a service, but rather to establish a commercial presence. **EC request :** Make a specific commitment to this effect. The maximum length of stay should be at least 90 days in any 12 month period.

Additional commitments.

- Difficulties are experienced as a result of the length of time taken to process work permits. The EC wishes to discuss the possibility of taking additional commitments to address this issue.

Note : Mode 4 is covered horizontally in this part for all service sectors. The sectoral requests in the following pages only refer to mode 4 when specifically related to one particular service sector.

PROFESSIONAL SERVICES

EC Request to Malaysia

Malaysia has committed this sector only partially. The EC requests that this sector is committed as follows:

a) Legal Services (CPC 861)

- This sub-sector is not committed for practice of third country law. **EC Request:** Extend sectoral coverage of commitments to consultancy on law of jurisdiction where the service supplier or its personnel are qualified lawyers
- Mode 3: MA - Territorial restrictions (Labuan territory) for service suppliers and for recipients of services. **EC Request:** Remove in order to permit foreign lawyers to practise anywhere in Malaysia, to employ and enter into partnership with Malaysian lawyers and to enter into the employment of a Malaysian lawyer or law firm

b) Accounting, auditing and bookkeeping services (CPC 862)

- Mode 3: MA - Obligation to enter into a limited partnership (30%) with Malaysian accountants or accounting firms. **EC Request:** Remove
- Mode 4: MA - Residency requirement for registration. **EC Request:** Remove

c) Taxation Services (CPC 863)

- Modes 1 and 2: NT - Requirement of authentication by a licensed auditor in Malaysia. **EC Request:** Remove
- Mode 3: MA - Obligation to enter into a limited partnership (30%) with Malaysian accountants or accounting firms. **EC Request:** Remove
- Mode 4: MA - Residency requirement for registration. **EC Request:** Remove

d) Architectural services (CPC 8671)

- Modes 1 and 2: NT - Requirement of authentication by a registered architect in Malaysia. **EC Request:** Remove
- Mode 3: MA - Supply of services restricted to natural persons. **EC Request:** Remove
- Mode 4: MA - Limitation to projects wholly financed by foreign governments or implemented under bilateral agreements. **EC Request:** Remove

e) Engineering services (CPC 8672)

- Modes 1 and 2: NT - Requirement of authentication by a registered professional engineer in Malaysia. **EC Request:** Remove
- Mode 3: MA - Supply of services restricted to natural persons. **EC Request:** Remove

f) Integrated engineering services (CPC 8673)

- Modes 1 and 2: NT – Requirement of authentication by the relevant registered professionals in Malaysia. **EC Request:** Remove
- Mode 3: MA – Access restricted to representative office, regional office or limited joint-venture (30% foreign shareholding) with Malaysian individuals or corporations. **EC Request:** Remove

g) Urban planning and landscape architectural services (CPC 8674)

- This sub-sector is not committed for the entire CPC 8674. **EC Request:** Extend sectoral coverage of commitments to the entire CPC
- Mode 3: MA – Access restricted to limited joint-venture (30% foreign shareholding) with Malaysian individuals or corporations. **EC Request:** Remove

BUSINESS SERVICES (OTHER THAN PROFESSIONAL)

EC Request to Malaysia

B. Computer and Related Services

General

This sub-sector has only been partially committed. **EC request** Extend coverage and schedule commitments at the two-digit level as follows:
Computer and Related Services (CPC 84):

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none” under MA and NT;
- Mode 4: Commit as referred to in the horizontal section.

In view of the rapid technological advances which have taken, and continue to take place, in this sub-sector, the EC proposes to seek clarification at a multilateral level as to what services are considered to be covered under CPC Prov 84.

C. Research and Development Services :

a. R&D Services on natural sciences (CPC 851)

Malaysia has not committed this sub-Sector. The EC requests that it be committed as follows :

- Modes 1 and 3 : Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

c. Interdisciplinary R&D services. (CPC 853)

Malaysia has not committed this sub-Sector. The EC requests that it be committed as follows :

- Modes 1 and 3 : Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

D. Real Estate Services :

Malaysia has not committed this Sector. The EC requests that it be committed as follows :

a. Involving own or leased property (CPC 821)

b. On a fee or contract basis (CPC 822)

For each of the above sub-Sectors :

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

E. Rental and Leasing Services without Operators :

a. Relating to ships (CPC 83103)

- Mode 3 : MA – Form of establishment limitation. EC request : Eliminate.

c. Relating to other transport equipment (CPC 83101 + 83102 + 83105)

Malaysia has not committed this sub-Sector. The EC requests that it be committed as follows :

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

d. Relating to other machinery (CPC 83106 – 83109)

This sub-sector has only been partially committed. EC request : Extend sectoral coverage to all CPC codes listed in the header.

- Mode 3 : MA – Form of establishment limitation. EC request : Eliminate.

F. Other Business Services :

***NB:** Requests (if any) on (h) - services incidental to mining, and (j) - services incidental to energy distribution, are covered in those sections of the request dealing with Energy Services and Construction Services.*

Malaysia has not committed the following sub-Sectors. The EC requests that they be committed as follows :

d. Services related to management consulting (CPC 866)

k. Placement and supply services of personnel (CPC 872)

m. Related scientific and technical consulting services (CPC 8675)

n. Maintenance and Repair of Equipment (not including transport equipment) (CPC 633 + 8861-8866)

q. Packaging Services (CPC 876)

r. Printing and Publishing Services (CPC 88442)

For each of the above sub-Sectors :

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

l. Security Services (CPC 87302 – 87309)

Malaysia has not committed this sub-Sector. The EC requests that it be committed as follows :

- Mode 3 : MA - Commit with no form of establishment or equity limitation. Full NT commitment - i.e. schedule "none".
- Mode 4 : Commit as referred to in the section "Horizontal commitments".

a. Advertising (CPC 871)

This sub-sector has only been partially committed. **EC request** : Extend sectoral coverage to all of CPC 871.

- Mode 1 : MA – Effectively unbound. NT – Remain unbound. **EC request** : Take full commitments, i.e. schedule «none » under MA and NT.
- Mode 3 : MA – Form of establishment and foreign equity limitations. **EC request** : Eliminate.
- Mode 3 : MA – for advertisement through electronic media there is a local content requirement. **EC request** : Eliminate.
- Mode 4 : MA – Only part of the horizontal commitments applied. **EC request** : Commit all of the horizontal commitments.

b. Market research and Public Opinion Polling (CPC 864)

- Mode 3 : MA – Form of establishment limitation and minimum Bumiputera shareholding requirement. **EC request** : Eliminate.

- Mode 4 : MA – Only part of the horizontal commitments applied. **EC request** : Commit all of the horizontal commitments.

c. Management consulting services (CPC 865)

This sub-sector has only been partially committed. **EC request** : Extend sectoral coverage to all of CPC 865.

- Mode 3 : MA – Form of establishment limitation and minimum Bumiputera shareholding requirement. **EC request** : Eliminate.
- Mode 4 : MA – Only part of the horizontal commitments applied. **EC request** : Commit all of the horizontal commitments.

e. Technical testing and analysis services (CPC 8676)

This sub-sector has not been committed for « technical inspection services » (CPC 86764). **EC request** : Extend sectoral coverage to all of CPC 8676.

- Mode 3 : MA – Form of establishment limitation and minimum Bumiputera shareholding requirement. **EC request** : Eliminate.
- Mode 4 : MA – Only part of the horizontal commitments applied. **EC request** : Commit all of the horizontal commitments.

s. Convention Services (part of CPC 87909)

- Mode 3 : MA – Form of establishment limitation and minimum Bumiputera shareholding requirement. **EC request** : Eliminate.
- Mode 4 : MA – Only part of the horizontal commitments applied. **EC request** : Commit all of the horizontal commitments.

t. Other (CPC 8790)

Translation Services (CPC 87905)

- Mode 3 : MA – Provision of services limited to natural persons. **EC request** : Eliminate.
- Mode 4 : MA – Only part of the horizontal commitments applied. **EC request** : Commit all of the horizontal commitments.

MFN exemptions:

Advertising services: MFN exemption grants ASEAN countries more than the general 20% ownership limit. **EC request**: eliminate.

POSTAL AND COURIER SERVICES

EC Request to Malaysia

This request includes sub-sectors that are listed under the negotiating proposal of the EC (S/CSS/W/61). The work on the revision of classification of this sector is still underway. For this reason, the sub-sectors lack reference to CPC.

Malaysia has not undertaken commitments in postal and courier services. The EC requests Malaysia to commit this sector as follows, based on the EC proposal for the revised classification of postal and courier services:

Services relating to the handling¹ of postal items², whether for domestic or foreign destinations:

A. Handling of addressed written communications on any kind of physical medium³, including:

- Hybrid mail services

- Direct mail

B. Handling of addressed parcels and packages⁴

C. Handling of addressed press products⁵

D. Handling of items referred to in A. to C. above as registered or insured mail.

E. Express delivery services⁶ for items referred to in A. to C. above.

F. Handling of non-addressed items.

G. Document exchange.

H. Other services not elsewhere specified.

¹ The term "handling" should be taken to include clearance, sorting, transport and delivery.

² "Postal item" refers to items handled by any type of commercial operator, whether public or private.

³ E.g. letter, postcards.

⁴ Books, catalogues are included hereunder.

⁵ Journals, newspapers, periodicals.

⁶ Express delivery services may include, in addition to greater speed and reliability, value added elements such as collection from point of origin, personal delivery to addressee, tracing and tracking, possibility of changing the destination and addressee in transit, confirmation of receipt.

For sub-sectors B., C., E., F. and G. :

- Modes 1, 2 and 3 : Undertake full commitments for market access and national treatment.
- Mode 4 : Commit as referred to in the section « Horizontal commitments ».

For sub-sectors A. and D. :

- Modes 1, 2 and 3: Undertake commitments for market access and national treatment.
- Mode 4 : Commit as referred to in the section « Horizontal commitments ».

TELECOMMUNICATION SERVICES

EC Request to Malaysia

Malaysia has only partially committed this Sector. The EC requests that this Sector is committed as follows:

All modes

- Basic services can only be provided on a facilities-basis. Under the schedule of Malaysia, basic services cover 1.Voice Service (wired or wireless); 2. Packet-switched data transmission services, including frame-relay services; 3. Circuit-switched data transmission services; 4. Facsimile Service; 5. Private leased circuit service; 6. Domestic/International satellite services and satellite links/capacities (inclusive of mobile satellite); 7.Satellite earth stations; 8. International switching and other international gateway facilities; 9. Mobile services - analogue/digital cellular; 10. Paging services; 11. Trunked radio services; 12. Video transport services. **EC Request:** for all those services remove this requirement to own facilities.
- Value-added services must be provided from channels or lines obtained only from licensed network operators. **EC Request:** remove this provision.

Mode 3 – Commercial Presence

- For basic services, operation can only be done through acquisition of shares of existing licensed public telecommunications operators. . **EC Request:** remove this restriction.
- For basic services, Foreign shareholding is allowed up to 30 per cent. **EC Request:** remove this ceiling.
- For value added services (mobile and fixed data) and Telex and telegraph services companies, there is an obligation to have a joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or to acquire shares of an existing licensed VAS operator/corporation. **EC Request:** remove this obligation.
- For value added services (mobile and fixed data services) and Telex and telegraph services companies, there is a 30% cap on foreign equity. **EC Request:** remove this ceiling.
- For value added services companies, resale is prohibited. **EC Request:** remove this restriction.

Additional commitments

Malaysia has not adopted the reference paper of the Basic Telecommunications negotiations and only made a few additional commitments addressing the issues raised by this paper. **EC Request:** Commit fully to the reference paper of the Basic Telecommunications negotiations.

CONSTRUCTION AND RELATED ENGINEERING SERVICES

EC Request to Malaysia

General

Malaysia has committed this Sector only partially. The EC requests that this Sector be committed as follows:

All sub-sectors (CPC 511 to CPC 518)

- Mode 3: MA – Only through a representative office, regional office or locally incorporated joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or both. **EC Request:** Remove these restrictions.
- Mode 3: MA – Limitation to 30% of aggregate foreign shareholding in the joint-venture corporation. **EC Request:** Remove this limitation.

E. Other (CPC 511+515+518)

This sub-sector is not committed for CPC 518 (renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator).

EC Request for this CPC:

- Mode 3: Take full commitments, i.e. schedule "none" under MA and NT.
- Mode 4: Commit as referred in the section "Horizontal commitments".

Note : "MA" refers to commitments scheduled under the "Market Access" column. "NT" under the "National treatment" column.

DISTRIBUTION SERVICES

EC Request to Malaysia

Malaysia has not committed this Sector. The EC requests that this Sector is committed as follows :

A. Commission agents' services (CPC 621, 6111+6113+6121)

B. Wholesale trade services (CPC 622, 6111+6113+6121)

C. Retailing services (CPC 631+632, 6111+6113+6121+613)

D. Franchising (CPC 8929)

For each of the above sub-sectors :

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".

Note : The EC is prepared to discuss exceptions for a very limited number of extremely sensitive goods, such as arms, ammunitions and explosives.

Note : In accordance with the W120 classification, the EC Request on "Repair services of personal and household goods" (CPC 633) is included under "1. Business services / F. Other business / n. Maintenance and repair".

ENVIRONMENTAL SERVICES

EC Request to Malaysia

Malaysia has not undertaken commitments in environmental services. The EC requests Malaysia to commit the following subsectors, based on the EC proposal for the classification of environmental services:

A. Water for human use & wastewater management

- Water collection, purification and distribution services through mains, except steam and hot water
- Waste water services (CPC 9401)

B. Solid/hazardous waste management

- Refuse disposal services (CPC 94020)
- Sanitation and similar services (CPC 94030)

C. Protection of ambient air and climate

- Services to reduce exhaust gases and other emissions and improve air quality (CPC 94040)

D. Remediation and cleanup of soil & water

- Treatment, remediation of contaminated/polluted soil and water (part of CPC 94060)

E. Noise & vibration abatement

- Noise abatement services (CPC 94050)

F. Protection of biodiversity and landscape

- Nature and landscape protection services (part of CPC 94060)

G. Other environmental & ancillary services

- Other environmental protection services not classified elsewhere (CPC 94090)

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For each of the above sub-sectors :

- Modes 1 (where technically feasible), 2 and 3 : Undertake full commitments for market access and national treatment.
- Mode 4 : Refer to horizontal commitments.

FINANCIAL SERVICES

EC Request to Malaysia

General

- **EC Request:** Undertake commitments in accordance with the Understanding on Commitments in Financial Services.
- Mode 2: MA and NT - Consumption abroad in various subsectors is not committed. **EC Request:** Bind
- Mode 3: MA and NT - Foreign share in domestic financial institutions' capital is generally limited at 30%. **EC Request:** Eliminate this cap.
- Mode 3: MA and NT - New entry in all sectors is limited, with few exceptions (such as charge card firms and offshore banks), to acquiring shares of existing local companies or establishing joint ventures. No new branches are permitted. **EC Request:** Remove those restrictions.
- Mode 4: MA and NT - Restrictions on the number of foreign managers and specialists. **EC Request:** Remove those limitations.

Insurance

- Modes 1 and 2: MA and NT - MAT insurance. **EC Request:** Schedule according to Understanding.
- Modes 1 and 2: MA and NT - Reinsurance and retrocession and services auxiliary to insurance. **EC Request:** Schedule according to Understanding.
- Modes 1 and 2: MA and NT - Insurance intermediation is not allowed in practice, except for reinsurance. **EC Request:** Commit.
- Modes 1 and 2: MA and NT - Restrictions on reinsurance.
EC Request: Eliminate those restrictions.
- Modes 1 and 2: MA and NT - Control of the Bank Negara over the free flow of reinsurance placements overseas (deposit requirement if reinsurer is not established locally). **EC Request:** Eliminate the deposit requirement.
- Mode 3: MA - Unbound for new licenses. **EC Request:** Schedule none.
- Mode 3: MA - Maximum aggregate foreign shareholding 51%.
EC Request: Remove this cap.

- Mode 3: MA - New entry by foreign insurance companies in locally incorporated insurance companies is limited to 30% on an aggregate basis.

EC Request: Eliminate this limitation.

- Mode 3: MA - Criteria for acquisition by a foreign insurance company of an aggregate of more than 5% in a locally incorporated insurance company.

EC Request: Eliminate this restriction.

- Mode 3: MA - Limitation of 5% share of an insurance company in another insurance company or in an insurance broking company.

EC Request: Remove this limit.

- Mode 3: MA - Limitation of 5% of a person in an insurance company or an insurance broking company. **EC Request:** Remove this limit.

- Mode 3: MA - Economic needs test. **EC Request:** Eliminate the test.

- Mode 3: MA - Limited new insurance licences. **EC Request:** Remove this limit.

- Mode 3: MA - Restrictions on insuring property/liability risks with non-Malaysian insurers. **EC Request:** Remove those restrictions.

- Mode 3: NT - Restrictions on management/service agreements - e.g. preventing reimbursement of genuine expenses incurred by overseas parent companies. **EC Request:** Eliminate those restrictions.

- Mode 3: MA - Mandatory cessions (30% in fire, 10% in MTPL and 15% for all other branches). **EC Request:** Eliminate mandatory cessions.

- Mode 3: MA and NT - Compulsory reinsurance cessions (30% fire, 10% automobile, 15% other). **EC Request:** Eliminate compulsory cessions.

- Mode 3: MA and NT - Limitation of foreign shareholding by a single person to 20%. Maximum aggregate foreign shareholding of 51%.

EC Request: Remove those caps.

- Mode 3: MA and NT - Imposed criteria on acquisition by a foreign insurance company of more than 5% share in a local company. **EC Request:** Remove this restriction.

- Mode 3: MA and NT - Prohibition applied to foreign insurance companies on having shareholding in another foreign insurance company in the same line of business. **EC Request:** Eliminate this prohibition.

- Mode 3: MA and NT - Prohibition on a foreign insurance company from acquiring a share in an insurance broking company. **EC Request:** Eliminate this prohibition.
- Mode 3: MA and NT - Restrictions on investment vehicles and real estate investments by foreign firms. **EC Request:** Remove those restrictions.
- Mode 3: MA - Requirement that at least 80% of assets is held in “authorised assets”. **EC Request:** Eliminate this requirement.
- Mode 3: NT - Discriminatory double taxation of premiums on insured imports and exports of domestic companies. **EC Request:** Eliminate the discrimination.
- Mode 3: MA and NT - Foreign insurance brokers are not allowed to establish in the market under full national treatment, and, once established, to offer all services related to their business: risk management, claims settlement, reinsurance broking, participation in public tenders, etc. **EC Request:** Remove these restrictions.
- Mode 3: MA and NT - Restrictions on foreign equity holdings up to 51% for established operations and 30% for new operations. **EC Request:** Eliminate those restrictions.

Banking and other financial services

- Provision and transfer of financial information is not covered. **EC Request:** Take full commitments in modes 1, 2 and 3, and commit as referred in the section “Horizontal commitments” in mode 4.
- Mode 3: MA - Lengthy non-transparent approval procedures before certain activities may be undertaken. **EC Request:** Enhance approval procedures.
- Mode 3: MA - Reservation of the right to prohibit on new banking investment from countries with significant presence in Malaysia already (currently invoked under a ban on opening new banks). **EC Request:** Remove this restriction.
- Mode 3: MA - Foreign joint investment in management ventures is limited to 49% stakes; those exceeding 49% must divest in 3 years. **EC Request:** Remove this cap.
- Mode 3: MA and NT - Limitation on foreign banks to operate from only one office (with some grandfathered exceptions) and prohibition to open sub-branches. **EC Request:** Remove those limitations.

- Mode 3: MA and NT - Restrictions on operating ATMs, applied to foreign commercial banks. **EC Request:** Eliminate those restrictions.
- Mode 3: MA and NT - Exclusion of foreign banks from the nation-wide ATM system. **EC Request:** remove restrictions.
- Mode 3: MA and NT - Prohibition applied to foreign banks from underwriting equity issues. **EC Request:** Remove this prohibition.
- Mode 3: MA and NT - Prevention applied to foreign banks from having access to local currency capital market. **EC Request:** Remove this restriction.
- Mode 3: MA and NT - Restrictions on credit facilities: foreign firms can only obtain 50% of their credit needs from foreign banks unless domestic banks are unable to supply the remaining 50%. **EC Request:** Eliminate those restrictions.
- Mode 3: NT - Foreign banks' branches are not allowed to use parent's capital to meet prudential requirements. **EC Request:** Allow such a possibility.
- Mode 3: MA and NT - Restrictions applied as regards foreign exchange (to be a principal dealer, for example). **EC Request:** Remove those restrictions.
- Mode 3: MA - Restrictions of access to settlement, clearing services and asset management. **EC Request:** Eliminate those restrictions.
- Mode 3: MA - No market mechanism for interest rates. **EC Request:** Take full commitments.
- Mode 4: MA and NT - Restriction in the composition of the boards of foreign banks, as imposed by the Central Bank. **EC Request:** Eliminate this restriction.
- Mode 3: MA - Economic needs test for securities broking and other activities. **EC Request:** Eliminate the test.
- Mode 3: MA and NT - Foreign equity for financial leasing and securities broking firms is limited to 49%. **EC Request:** Suppress this cap.
- Mode 3: MA and NT - Restrictions applied to foreign portfolio investment in domestic companies. **EC Request:** Remove those restrictions.
- Mode 3: MA and NT - Severe restrictions on scope of foreign securities operations except for fully licensed institutions with foreign shareholders. **EC Request:** Eliminate those restrictions.

- Mode 3: MA and NT - Reservation of foreign dealing licences to institutions registered as branches or with local shareholding. **EC Request:** Remove this limitation.
- Mode 3: MA and NT - Restriction of initial offerings of equity to Malaysian investors. **EC Request:** Remove this restriction.
- Mode 3: MA and NT - Limitation applied to foreign brokers to operate out of representative offices (no trading permitted) or through 30% shares in local brokers. **EC Request:** Remove this limitation.
- Mode 3: MA and NT - Unfair funding advantage provided on capital markets to deposit takers (mainly local) over finance companies with foreign partners. **EC Request:** Remove this discrimination.
- Mode 3: MA and NT - Discrimination against foreign companies owning over 30% but less than 100% of a finance company because debt-equity ratio of foreign company cannot exceed 2:1. **EC Request:** Eliminate this discrimination.

TOURISM AND TRAVEL RELATED SERVICES

EC Request to Malaysia

A. Hotels and restaurants (incl. catering) (CPC 641-643)

Mode 3

Market access: Remove requirement to establish as locally incorporated joint-venture with Malaysian individuals or Malaysian controlled corporations. Remove limitation of 30% for foreign shareholding.

CPC 87909 (Other business services n.e.c.): Could Malaysia clarify which services in relation to hotels and restaurants, and tourist resorts are covered? The EC suggests to move this entry to 'Other' tourism and travel related services and specify activities. Is this commitments to be read to only cover mode 3?

B. Travel agencies and tour operators services (CPC 7471)

Mode 1:

The EC is of the view that the provision of travel agency and tour operator services can be provided under this mode of supply. The EC request Malaysia to take full commitments for mode 1.

Mode 3

Market access: Remove requirement to establish as locally incorporated joint-venture with Malaysian individuals or Malaysian controlled corporations. Remove limitation of 30% for foreign shareholding.

Remove requirement for additional office to obtain a separate licence.

C. Tourist guides services (CPC 7472)

Extend sectoral coverage to include tourist guide services, and undertake full commitments

NEWS AGENCY SERVICES

EC request to Malaysia

Malaysia has not committed this sector (CPC 962). The EC requests that this Sector be committed as follows:

EC Request (CPC 962):

- Modes 1-3: Take full commitments, i.e. schedule “none” under MA and NT.
- Mode 4: Commit as referred to in the section “Horizontal commitments”.

TRANSPORT SERVICES

EC Request to Malaysia

A. Maritime transport

Malaysia has specific commitments on maritime transport. Restrictions relate in particular to establishment (Mode 3, nationality restrictions, ownership limitations of 30 %) and to auxiliary services such as cargo-handling, customs clearance and container stations which are not committed.

EC request: Take commitments in accordance with the attached model schedule (Annex 1). In particular for the following areas:

- 1) International transport (freight and passengers) CPC 7211 and 7212
- 2) Additional commitments for access to and use of ports facilities
- 3) Maritime auxiliary services (maritime cargo handling, storage and warehouse services, customs clearance services, container station and depot services, maritime agency services)
- 4) Multimodal activities: for inland forwarding of cargoes - commit the ability to rent or lease - or to have access to and use of multimodal facilities (as specified in the note to the schedule).
- 5) Definitions – commit definitions as specified in the model schedule.

The EC also request the following additional maritime commitments from Malaysia:

- 6) Equipment. To facilitate planning of their businesses operators should be allowed to reposition their own equipment, such as empty containers, between ports of Malaysia, when it is not carried against payment. This is requested to be committed in a new footnote:
“9. Movement of own equipment. International maritime transport suppliers can move/reposition their own equipment (i.e. empty containers, flatbeds etc.) on their own vessels between ports of Malaysia.”
- 7) International cargo. Notwithstanding the general exclusion of “cabotage” in the definitions of the model schedule (see Annex 1) an international maritime transport supplier should be allowed to operate feeder services for its own international cargo between ports of Malaysia. This is requested to be committed in a new footnote:
“10. Notwithstanding the exclusion of “cabotage” in definition 1 above international maritime transport suppliers can operate vessels for the purposes of pre- and onward carriage of the international cargo between ports of Malaysia“

In this context Malaysia may wish to take the one or more of the following principles into concern:

- Size of the port. Only valid for international cargo relayed between national ports handling more than [25.000 TEU] on an annual basis.
- Binding existing ad hoc practices. To the extent exceptions are already granted for use of foreign flagged vessels such practices could be bound to explicitly cover pre- and onward carriage of international cargo.
- Geographical limitations: Transport of international cargo between ports within the same state/territory [or other relevant regional entity] remains excluded.

A final request related to maritime transport is:

8) Rental and leasing of vessels with crew (CPC 7213, 7223).

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as in horizontal commitments.

B. Internal waterways:

Malaysia has no commitments for this activity.

c) Rental and leasing of vessels with crew (CPC 7213, 7223)

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

C. Air transport

Malaysia has no specific commitments for air transport.

1) Maintenance and repair of aircraft and parts thereof.

EC request:

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

2) Selling and marketing.

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

3) Computer Reservation Systems.

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

4) Groundhandling services, as specified in the attached definitions (Annex 2).

EC request:

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

5) Airport management services, as specified in the attached definitions (Annex 2).

EC request:

- Mode 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

E. Rail transport

d) Maintenance and Repair of Rail Transport Equipment (CPC 8868).

EC request:

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

F. Road transport

b) Freight Transportation (CPC 7123).

EC request:

- Mode 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

d) Maintenance and Repair of Road Transport Equipment (CPC 6112)

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

H. Services Auxiliary to All Modes of Transport

b) Storage and Warehouse Services (CPC 742)

EC request:

- Modes 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

- c) Freight Transport Agency/Freight Forwarding Services (CPC 748) and Pre-Shipment Inspection (part of CPC 749).

Malaysia has commitments which are restricted to the context of maritime transport and with a restrictions related establishment (foreign ownership limited to 30%).

EC request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule “none”, under MA and NT
- Mode 4: Commit as referred in the section “Horizontal commitments”

Annex 1: SCHEDULE ON MARITIME TRANSPORT SERVICES

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p>TRANSPORT SERVICES</p> <p>MARITIME TRANSPORT SERVICES</p> <p>International Transport (freight and passengers) CPC 7211 and 7212 <u>less</u> cabotage transport</p>	<p>1) (a) <u>Liner Shipping</u>: none</p> <p>(b) <u>Bulk, tramp, and other international shipping, including passenger transportation</u>: none</p>	<p>1) (a) None</p> <p>(b) None</p>	<p>The following services at the port are made available to international maritime transport suppliers on reasonable and no discriminatory terms and conditions</p> <ol style="list-style-type: none"> 1. Pilotage 2. Towing and tug assistance 3. Provisioning, fuelling and watering 4. Garbage collecting and ballast waste disposal 5. Port Captain's services 6. Navigation aids 7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies 8. Emergency repair facilities 9. Anchorage, berth and berthing services <p>1) See note</p>

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
TRANSPORT SERVICES MARITIME TRANSPORT SERVICES International Transport (freight and passengers) CPC 7211 and 7212 <u>less</u> cabotage transport (cont.)	2) None 3) (a) Establishment of registered company for the purpose of operating a fleet under the national flag of the State of establishment: unbound (b) Other forms of commercial presence for the supply of international maritime transport services (as defined below – 2): none 4) (a) Ships' crews: unbound (b) Key personnel employed in relation to a commercial presence as defined under mode 3b) above: Unbound except as in horizontal section	2) None 3) (a) Unbound (b) None 4) (a) Unbound (b) Unbound except as in horizontal section	3) (b) See Notes 2, 3,

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
MARITIME AUXILIARY SERVICES			
Maritime Cargo Handling Services (as defined below – 4)	1) Unbound* except for – no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* except for no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment 2) None 3) None 4) Unbound except as in horizontal section	
Storage and warehousing Services CPC 742	1) Unbound* 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as in horizontal section	
Customs Clearance Services (as defined below – 5)	1) Unbound* 2) None 3) None** 4) Unbound except as in horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as in horizontal section	

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
MARITIME AUXILIARY SERVICES (cont.)			
Container Station and Depot Services (as defined below – 6)	1) Unbound*	1) Unbound*	
	2) None	2) None	
	3) None**	3) None	
	4) Unbound except as in horizontal section	4) Unbound except as in horizontal section	
Maritime Agency Services (as defined below – 7)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as in horizontal section	4) Unbound except as in horizontal section	
(Maritime) Freight Forwarding Services (as defined below - 8)	1) None	1) None	
	2) None	2) None	
	3) None	3) None	
	4) Unbound except as in horizontal section	4) Unbound except as in horizontal section	

* A commitment on this mode of delivery is not feasible.

** Public utility concession or licensing procedures may apply in case of occupation of the public domain.

NOTE TO THE SCHEDULE

Where road, rail, inland waterways (and) (related) (auxiliary) services are not otherwise fully covered in (this) (a Member's) schedule, a multimodal transport operator shall have the ability to rent or lease trucks, railway carriages or barges, and related equipment, for the purpose of inland forwarding of cargoes, or have access to, and use of, these forms of multimodal activities on reasonable and non-discriminatory terms and conditions for the purpose of carrying out multimodal transport operations. (« Reasonable and non-discriminatory terms and conditions » means, for the purpose of (multimodal transport operations), (this additional commitment), the ability of the multimodal transport operator to arrange for the conveyance of its merchandise on a timely basis, including priority over other merchandise which has entered the port at a later date).

DEFINITIONS

1. Without prejudice to the scope of activities which may be considered as « cabotage » under the relevant national legislation, this schedule does not include « maritime cabotage services », which are assumed to cover transportation of passengers or goods between a port located in ... (name of country or, for EEC, « a Member State ») and another port located in ... (name of the country or, for EEC, « the same Member State ») and traffic originating and terminating in ... the same port located in (name of country, or for the EEC, « a Member State ») provided that this traffic remains within ... (name of country or « this Member State »)'s territorial waters.
2. « Other forms of commercial presence for the supply of international maritime transport services » means the ability for international maritime transport service suppliers of other Members to undertake locally all activities which are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element. (This commitment shall however not be construed as limiting in any manner the commitments undertaken under the cross-border mode of delivery).

These activities include, but are not limited to:

- (a) marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, these services being those operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;
- (b) the acquisition, on their own account or on behalf of their customers (and the resale to their customers) of any transport and related services, including inland transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of the integrated services;
- (c) the preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;
- (d) the provision of business information by any means, including computerised information systems and electronic data interchange (subject to the provisions of the annex on telecommunications);
- (e) the setting up of any business arrangements (including participation in the stock of a company) and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to the horizontal commitment on movement of personnel) with any locally established shipping agency;

- (f) acting on behalf of the companies, organising the call of the ship or taking over cargoes when required.
3. « Multimodal transport operators » means the person on whose behalf the bill of lading /multimodal transport document, or any other document evidencing a contract of multimodal carriage of goods, is issued and who is responsible for the carriage of goods pursuant to the contract of carriage.
4. « Maritime cargo handling services » means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
- the loading/discharging of cargo to/from a ship;
 - the lashing/unlashing of cargo;
 - the reception/delivery and safekeeping of cargoes before shipment or after discharge.
5. « Customs clearance services » (alternatively « customs house brokers' services ») means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity.
6. « Container station and depot services » means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments.
7. « Maritime agency services » means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
- marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - acting on behalf of the companies organising the call of the ship or taking over cargoes when required.
8. « Freight forwarding services » means (the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information).

Annex 2 Facilitating air transport services

Ground-handling Services

Efficient ground-handling is essential to the proper functioning of air transport and competition between operators in this area ensures that proper use is made of air transport infrastructure. It helps reduce the operating costs of airlines and improves the quality of service for airport users.

For specialised groundhandling suppliers the following activities are requested:

- Ground Administration – supervision and administration at the airport (CPC 7461);
- Passenger Handling – assisting arriving, departing and transfer passengers (CPC 7461);
- Baggage Handling – handling baggage in the sorting area (CPC 7461);
- Freight and Mail Handling – physical handling of freight and mail, dealing with security and customs procedures (CPC 74110 (container handling services) and 74190 (other cargo handling services));
- Ramp Handling – marshalling and moving the aircraft, loading and unloading of aircraft, transport of passengers, freight, supplies (CPC 7469).
- Aircraft Services – cleaning the aircraft, heating and cooling, removal of snow and ice (CPC 7469);
- Fuel and Oil Handling – organisation and provision of fuel and oil;
- Aircraft Maintenance – covered specifically by the Annex as above;
- Flight Operations and Crew Administration – preparation of the flight, inflight and post-flight assistance, crew administration;
- Surface Transport – organisation and execution of transport within airport – except to and from aircraft;
- Catering Services – administration, storage, preparation and delivery of bar and food supplies (CPC 6423). *[Catering is listed for only for information purposes as this activity – where Malaysia has certain restrictions – is requested as part of tourism services]*

Airport management services

Airport management services constitute the core activities of airport services providers and cover: Airport operation services (excl. cargo handling), including passenger air terminal services and ground services on air fields, including runway operating services, on a fee or contract CPC 74610.

Activities are also related to “other management consulting services” (CPC 86509) and activities separately specified under “other management services not elsewhere classified”(CPC 86609). A commitment will allow services suppliers to take an equity stake in - and engage in the overall operation and management of - airports when these are open for investments from private operators. Thereby it will bind existing common practices in the sector.

ENERGY SERVICES

EC Request to Malaysia

This request includes services that are listed under the negotiating proposal of the EU (S/CSS/W/60) . The work on the classification of these services is still underway. For this reason, some activities therefore lacks reference to CPC.

The EC requests that this area is committed as follows :

A. Services related to exploration and production

- CPC 883: Services incidental to mining

This sub-sector is not committed. **EC Request:**

- Mode 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".

- CPC 8675: Related scientific and technical consulting services

This sub-sector is not committed. **EC Request:**

- Mode 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".

- CPC 511 and CPC 513: Construction and related engineering services

EC Request:

- Mode 3 : Eliminate restrictions in capital participation.

B. Services related to the construction of energy facilities

B.1 Construction of energy facilities

- CPC 513: Construction work for civil engineering
 - CPC 51340: For long distance pipelines, communication and power lines (cables)
 - CPC 51350: For local pipelines and cables; ancillary works
 - CPC 51360: For constructions for mining and manufacturing

EC Request:

- Mode 3 : Eliminate restrictions in capital participation.

B.2 Installation and assembly work

- CPC 516: Installation and assembly work

EC Request:

- Mode 3 : Eliminate restrictions in capital participation.

C. Services related to networks

C.1 Operation of transportation/transmission and distribution facilities

- CPC 887: Services incidental to energy distribution

This sub-sector is not committed. **EC Request:**

- Modes 3 : Take commitments for operation of networks not part of the integrated system.
- Mode 4 : Commit as referred in the section "Horizontal commitments".

- CPC 71310: Transportation of petroleum and natural gas

This sub-sector is not committed. **EC Request:**

- Modes 3 : Take commitments for operation of networks not part of the integrated system.
- Mode 4 : Commit as referred in the section "Horizontal commitments".

D. Storage services

- CPC 74220: Bulk storage services of liquids or gases

This sub-sector is not committed. **EC Request:**

- Mode 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".

E. Services for the supply of energy

E.1 Wholesale of energy products

- CPC 62271: Wholesale trade services of solid, liquid and gaseous fuels and related products

This sub-sector is not committed. **EC Request:**

- Mode 3 : Take full commitments for solid and liquid fuels and related products.
- Mode 4 : Commit as referred in the section "Horizontal commitments".

- Wholesale trade services of electricity

EC Request:

- Modes 3 : Take commitments.
- Mode 4 : Commit as referred in the section "Horizontal commitments".

E.2 Retail sale of energy products

- CPC 63297: Retail sale of fuel oil, bottled gas, coal and wood

This sub-sector is not committed. **EC Request:**

- Mode 3 : Take full commitments, i.e. None.
- Mode 4 : Commit as referred in the section "Horizontal commitments".

E.3 Trading of energy products

EC Request:

- Modes 1, 2, 3 : Take full commitments for non-network energy products and commitments for network-energy products.
- Mode 4 : Commit as referred in the section "Horizontal commitments".

E.4 Brokering of energy products

EC Request:

- Modes 1, 2, 3 : Take full commitments for non-network energy products and commitments for network-energy products
- Mode 4 : Commit as referred in the section "Horizontal commitments".

G. Services related to decommissioning

EC Request:

- Modes 3 : Take full commitments, i.e. schedule "none".
- Mode 4 : Commit as referred in the section "Horizontal commitments".