

ANNEX II

FUTURE MEASURES

Headnotes

1. The Schedules of New Zealand and the European Union set out, under Article X.10 [Non-conforming measures] or Article X.18 [Non-conforming measures], the entries made by New Zealand and the European Union with respect to existing, or more restrictive or new measures that do not conform with obligations imposed by:
 - (a) Article X.5 [Market access] or X.14 [Market Access];
 - (b) Article X.15 [Local presence];
 - (c) Article X.6 [National treatment] or X.16 [National treatment];
 - (d) Article X.7 [Most favoured nation treatment] or X.17 [Most favoured nation treatment];
 - (e) Article X.8 [Senior management and boards of directors]; or
 - (f) Article X.9 [Performance requirements].
2. The reservations of a Party are without prejudice to the rights and obligations of the Parties under GATS.
3. Each entry sets out the following elements:
 - (a) "sector" refers to the general sector in which the entry is made;

EU-New Zealand Free Trade Agreement

Without prejudice

- (b) "sub-sector" refers to the specific sector in which the entry is made;
- (c) "industry classification" refers, where applicable, to the activity covered by the entry according to the CPC, ISIC rev 3.1, or as expressly otherwise described in that entry;
- (d) "obligations concerned" specifies the obligation referred to in paragraph 1 for which an entry is made;
- (e) "description" sets out the scope of the sector, sub-sector or activities covered by the entry; and
- (f) "existing measures" identifies, for transparency purposes, existing measures that apply to the sector, sub-sector or activities covered by the entry.

4. In the interpretation of an entry, all elements of the entry shall be considered. Where an inconsistency arises in relation to the interpretation of an entry, the "description" element of the entry shall prevail.

5. For the purposes of the Schedules of New Zealand and the European Union:

- (a) "ISIC Rev. 3.1" means the International Standard Industrial Classification of All Economic Activities as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No.4, ISIC Rev. 3.1, 2002;
- (b) "CPC" means the Provisional Central Product Classification (Statistical Papers, Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York,1991).

6. For the purposes of the Schedules of New Zealand and the European Union, an entry for a requirement to have a local presence in the territory of the European Union or New Zealand is made against article X.15 [Local presence], and not against Article X.14 [Market access] or X.16 [National treatment]. Furthermore, such a requirement is not made as a reservation against Article X.6 [National treatment].

EU-New Zealand Free Trade Agreement

Without prejudice

7. An entry made at the level of the European Union applies to a measure of the European Union, to a measure of a Member State at the central level or to a measure of a government within a Member State, unless the entry excludes a Member State. An entry for a Member State applies to a measure of a government at the central, regional or local level within that Member State. For the purposes of the entries of Belgium, the central level of government covers the federal government and the governments of the regions and the communities as each of them holds equipollent legislative powers. For the purposes of the entries of the European Union and its Member States, a regional level of government in Finland means the Åland Islands. An entry made at the level of New Zealand applies to a measure of the central government or a local government.

8. The list of entries below does not include measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures where they do not constitute a limitation within the meaning of Article X.5 [Market access], X.14 [Market access], X.6 [National treatment], X.16 [National treatment] or X.15 [Local presence]. These measures may include, in particular, the need to obtain a licence, to satisfy universal service obligations, to have recognised qualifications in regulated sectors, to pass specific examinations, including language examinations, to fulfil a membership requirement of a particular profession, such as membership in a professional organisation, to have a local agent for service, or to maintain a local address, or any other non-discriminatory requirements that certain activities may not be carried out in protected zones or areas. While not listed, such measures continue to apply.

9. For greater certainty, for the European Union, the obligation to grant national treatment does not entail the requirement to extend to natural or juridical persons of New Zealand the treatment granted in a Member State, pursuant to the Treaty on the Functioning of the European Union, or any measure adopted pursuant to that Treaty, including their implementation in the Member States, to:

- (a) natural persons or residents of another Member State; or
- (b) juridical persons constituted or organised under the law of another Member State or of the European Union and having their registered office, central administration or

principal place of business in the European Union.

10. Treatment granted to juridical persons established by investors of a Party in accordance with the law of the other Party (including, in the case of the European Union, the law of a Member State) and having their registered office, central administration or principal place of business within that other Party, is without prejudice to any condition or obligation, consistent with Section B [Investment liberalisation] of Chapter X [Investment Liberalisation and Trade in Services], which may have been imposed on such juridical person when it was established in that other Party, and which shall continue to apply.

11. The Schedules apply only to the territories of New Zealand and the European Union in accordance with Article X.8 [Territorial application] of Chapter X [Final Provisions] and are only relevant in the context of trade relations between the European Union and its Member States with New Zealand. They do not affect the rights and obligations of the Member States under European Union law.

12. For greater certainty, non-discriminatory measures do not constitute a market access limitation within the meaning of Article X.5 [Market access] or Article X.14 [Market access] for any measure:

- (a) requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation and telecommunications;
- (b) restricting the concentration of ownership to ensure fair competition;
- (c) seeking to ensure the conservation and protection of natural resources and the environment, including a limitation on the availability, number and scope of concessions granted, and the imposition of a moratorium or ban;
- (d) limiting the number of authorisations granted because of technical or physical constraints, for example telecommunications spectra and frequencies; or

EU-New Zealand Free Trade Agreement

Without prejudice

- (e) requiring that a certain percentage of the shareholders, owners, partners, or directors of an enterprise be qualified or practice a certain profession such as lawyers or accountants.

13. With respect to computer services, any of the following services shall be considered as computer and related services, regardless of whether they are delivered via a network, including the Internet:

- (a) consulting, adaptation, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance or management of or for computers or computer systems;
- (b) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), as well as consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programmes;
- (c) data processing, data storage, data hosting or database services;
- (d) maintenance and repair services for office machinery and equipment, including computers; and
- (e) training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.

For greater certainty, services enabled by computer and related services, other than those listed in (a) to (e) above, shall not be regarded as computer and related services in themselves.

14. With respect to financial services: Unlike foreign subsidiaries, branches established directly in a Member State by a non-European Union financial institution are not, with certain limited exceptions, subject to prudential regulations harmonised at European Union level which enable such subsidiaries to benefit from enhanced facilities to set up new

EU-New Zealand Free Trade Agreement

Without prejudice

establishments and to provide cross-border services throughout the European Union.

Therefore, such branches receive an authorisation to operate in the territory of a Member State under conditions equivalent to those applied to domestic financial institutions of that Member State, and may be required to satisfy a number of specific prudential requirements such as, in the case of banking and securities, separate capitalisation and other solvency requirements and reporting and publication of accounts requirements or, in the case of insurance, specific guarantee and deposit requirements, a separate capitalisation, and the localisation in the Member State concerned of the assets representing the technical reserves and at least one third of the solvency margin.

15. With respect to Article [X.5] [Market access], juridical persons supplying financial services and constituted under the laws of New Zealand or the laws of the European Union or of at least one of its Member States, are subject to non-discriminatory limitations on legal form.¹

16. The following abbreviations are used in the list of reservations below:

EU	European Union, including all its Member States
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland

1 For example, partnerships and sole proprietorships are generally not acceptable legal forms for financial institutions in New Zealand and the European Union. This headnote is not in itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

EU-New Zealand Free Trade Agreement

Without prejudice

FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	The Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovak Republic