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MEMORANDUM

FOR : The Directors
Biodiversity Management Bureau
Environmental Management Bureau
Ecosystems Research and Development Bureau
Forest Management Bureau
Mines and Geosciences Bureau

FROM : The OIC Director
Policy and Planning Service

SUBJECT : **ASEAN-CANADA FREE TRADE AGREEMENT (ACAFTA)
TEXTS ON TRADE IN SERVICES (TIS) AND TEMPORARY
MOVEMENT OF NATURAL PERSONS (TMNP)**

DATE : **17 FEB 2023**

This refers to the electronic mail dated 13 February 2023 from the Bureau of International Trade Relations (BITR) of the Department of Trade and Industry (DTI), requesting for comments/inputs to the ASEAN Member States' (AMS) position on Canada's counterproposal and response relative to ASEAN-Canada Free Trade Agreement Text on Trade in Services (TIS) and Temporary Movement of Natural Persons (TMNP).

In view of DTI's request and the conduct of the 3rd ACAFTA – WGTIS Caucus on 03 March 2023 in Bangkok, Thailand, we would like to request for your comments on the attached AMS' position on Canada's counterproposal texts on TIS and TMNP and consolidated ASEAN's response to Canada's Question, especially on the aspect of "professional service".

We would appreciate receiving your feedback/comments by **20 February 2023**, in order to facilitate timely submission to DTI.

For your information and appropriate action, please.


CHERYL LOISE T. LEAL

ACAFTA – WGTIS, AMS Position on Canada’s Counterproposal for TIS text

	Canada’s Proposal	AMS Position	ASEAN Common Position	Notes
	X.1 (Definitions)			
1.	To remove the following definitions: (a) aircraft repair and maintenance services (b) commercial presence (d) juridical person (e) juridical person of a Party (f) For Thailand and Viet Nam, a juridical person (g) measures by a Party affecting trade in services (h) monopoly supplier of a service (i) natural person of a Party (j) sector of a service (k) selling and marketing of air transport services (l) services (m) service consumer (n) service of another Party (q) supply of a service (s) traffic rights	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
2.	To add the following definitions: ^{ca} enterprise means an enterprise as defined in Article X.X (General Definitions), or a branch of an enterprise; ^{ca} enterprise of a Party means an enterprise constituted or organised under the domestic law of a Party, or a branch of an enterprise located in the territory of a Party and carrying out business activities there; ^{ca} professional service means a service, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include a service provided by a tradesperson, or a vessel or aircraft crew member;] ^{ca} specialty air services means a specialized commercial operation using an aircraft whose primary purpose is not the	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	

<p>transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.</p> <p>3. To replace the definition of service supplier:</p> <p>^{ASEAN} (p) service supplier means a person that supplies a service;^{1,2}</p> <p>Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.</p> <p>² The Parties confirm their shared understanding that “service supplier” in this Chapter has the same meaning that it has under subparagraph (g) of Article XXVIII of GATS.</p> <p>^{CA} service supplier of a Party means a person of a Party that seeks to supply or supplies a service;</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
<p>4. To replace the definition of TIS with CBTS:</p> <p>^{ASEAN} (r) trade in services means the supply of a service:</p> <ul style="list-style-type: none"> (i) from the territory of one Party into the territory of any other Party; (ii) in the territory of one Party to the service consumer of any other Party; (iii) by a service supplier of one Party, through commercial presence in the territory of any other Party; (iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party; 	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		

<p>^{CA} cross-border trade in services or cross-border supply of services means the supply of a service:</p> <p>(a) from the territory of a Party into the territory of the other Party;</p> <p>(b) in the territory of a Party to a person of the other Party; or</p> <p>(c) by a national of a Party in the territory of the other Party, but does not include the supply of a service in the territory of a Party by a covered investment;</p>			
X.2 (Scope)			
<p>5. To replace paragraph 1 with CA's text:</p> <p>^{ASEAN:} 1. This Chapter shall apply to measures by a Party affecting trade in services.</p> <p>^{CA:} 1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by a service supplier of the other Party, including a measure relating to:</p> <p>(a) the production, distribution, marketing, sale or delivery of a service, including by electronic means;</p> <p>(b) the purchase or use of, or payment for, a service, including by electronic means;</p> <p>(c) the access to or use of distribution, transport, or telecommunications networks or services in connection with the supply of a service; or</p> <p>(d) the presence in the Party's territory of a service supplier of the other Party for the supply of a service.</p>	<p>BN:</p> <p>KH:</p> <p>ID:</p> <p>LA:</p> <p>MY:</p>	<p>MM:</p> <p>PH:</p> <p>SG:</p> <p>TH:</p> <p>VN:</p>	
<p>6. To remove paragraph 2</p>	<p>BN:</p> <p>KH:</p> <p>ID:</p> <p>LA:</p> <p>MY:</p>	<p>MM:</p> <p>PH:</p> <p>SG:</p> <p>TH:</p> <p>VN:</p>	
<p>7. <u>Para 3:</u> To carve out financial services from this Chapter</p>	<p>BN:</p> <p>KH:</p> <p>ID:</p> <p>LA:</p> <p>MY:</p>	<p>MM:</p> <p>PH:</p> <p>SG:</p> <p>TH:</p> <p>VN:</p>	

<p>To replace sub-paragraph 3(b) with CA's text:</p> <p>^{ASEAN} (b) subsidies or grants, including government-supported loans, guarantees, and insurance, provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers, or service suppliers;</p> <p>^{CA} (b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance.</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
<p>9. To remove the carve-out of maritime cabotage (para 3d)</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
<p>10 To have the carving-out of air transport services as a separate paragraph (instead of subparagraph 3(e))</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
<p>11 To have additional phrase for subparagraph 3(e)(i) and abbreviation of "computer reservation system (CRS)"</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
<p>12 Not to carve back in "ground handling services" and "airport operation services" (i.e. remove paragraph 3(e)(v) and (vi)).</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
<p>13 To add new paragraphs 4-6:</p> <p>^{CA}: 4. In the event of any inconsistency between this Agreement and a bilateral, plurilateral or multilateral air services agreement to which two or more Parties are party, the air</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		

	<p>services agreement shall prevail in determining the rights and obligations of those Parties that are party to that air services agreement.</p> <p>5. If two or more Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, those Parties may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.</p> <p>6. If the Annex on Air Transport Services of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.</p>				
14	<p>To replace paragraph 4 with CA's text (para 7):</p> <p>^{ASEAN}: 4. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, citizenship, residence or employment on a permanent basis.</p> <p>^{CA}: 7. This Chapter does not impose an obligation on a Party with respect to a national of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
	X.3 (Scheduling of Commitments)				
15	To remove this Article	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
	X.4 (National Treatment)				
16	To remove paragraphs 1 and 2 (scheduling format + and -)	<p>BN: KH: ID:</p>	<p>MM: PH: SG:</p>		

		LA: MY:	TH: VN:		
17	To replace paragraph 3 with CA's text para 1: ASEAN: 3. A Party may meet the requirement under paragraph 1 or 2 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers. CA: 1. Each Party shall accord to a service or service supplier of the other Party treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers.	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
18	To remove paragraph 4	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
19	To add new paragraphs 2 and 3: CA: 2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment accorded, in like circumstances, by that government to services or service suppliers of the Party of which it forms a part. CA: 3. For greater certainty, whether treatment referred to in paragraph 1 is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or services suppliers on the basis of legitimate policy objectives.	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
	X.5 (Market Access)				
20	To remove paragraph 1	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		

21	<p>To replace chapeau of paragraph 2 with CA's text:</p> <p>^{ASEAN} 2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article X.7 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article X.8 (Schedules of Non-Confirming Measures), are defined as:</p> <p>^{CA} 1. No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, a measure that imposes a limitation on:</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
22	<p>To remove subparagraph 2(f)</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
23	<p>Propose editorial changes in subparagraphs 2(a) – 2(e), including footnote for 2(c).</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
X.6 (Most-Favoured Nation Treatment)					
24	<p>To replace 5 paragraphs proposed by ASEAN with CA's 3 paragraphs:</p> <p>^{CA} 1. Each Party shall accord to a service or service supplier of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service suppliers of a non-Party.</p> <p>2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		

	<p>central level, treatment accorded, in like circumstances, by that government in its territory to services or service suppliers of a non-Party.</p> <p>3. For greater certainty, whether treatment referred to in paragraph 1 is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or services suppliers on the basis of legitimate policy objectives.</p>			
	X.7 (Schedules of Specific Commitments)			
25	To remove this Article	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
	X.8 (Schedules of Non-Conforming Measures)/^{ca} (Reservations)			
26	<p><u>Paragraph 1:</u></p> <p>To replace the chapeau with CA’s text (no LP):</p> <p>^{ASEAN}: 1. For a Party making commitments in accordance with this Article, Article X.4 (National Treatment), Article X.5 (Market Access), Article X.6 (Most-Favoured-Nation Treatment), and Article X.10 (Local Presence) shall not apply to:</p> <p>^{ca}: 1. Article XX.3 (National Treatment), Article XX.4 (Most-Favored-Nation Treatment), and Article XX.5 (Market Access) do not apply to:</p>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
27	To remove the reference to Local Presence Article in this Article	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
28	<p><u>Subparagraph 1(a)(i) and (ii)</u></p> <p>To replace “List A of its Schedule in Annex II (Schedules of Non-</p>	BN: KH: ID:	MM: PH: SG:	

	<i>Conforming Measures</i> with “in its Schedule to Annex I”.	LA: MY:	TH: VN:		
29	<u>Subparagraph 1(a)(iii)</u> To replace “local” level of government with level of government “other than at the central and regional level”.	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
30	<u>Paragraph 2</u> : to use of different terms for List B NCM/Annex II. Article X.4 (National Treatment), Article X.5 (Market Access), [CA; and] Article X.6 (Most-Favoured-Nation Treatment) [ASEAN; and Article X.10 (Local Presence)] shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities set out [ASEAN: in List B of its Schedule in Annex II (Schedules of Non-Conforming Measures)] [CA: by that Party in its Schedule to Annex II].	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
	X.9-X.14				
31	To remove the following Articles: X.9: Additional Commitments X.10: Local Presence X.11: Transition X.12: Modification of Schedules X.13: Transparency X.14: Domestic Regulation	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
	CA X.X Development and Administration of Measures				
32	To add new article containing the following 3 paragraphs: CA: 1. Parties recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet their legitimate policy objectives. 2. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		

	3. Further development and administration of measures commitments are set out in Annex XX.B (Development and Administration of Measures).				
	X.15 (Recognition)				
33	<u>Paragraph 1</u> (editorial): To replace “of its” with “of a Party’s”	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
34	<u>Paragraph 2</u> (editorial): To replace: - “upon request” with “if the other Party is interested” - “it” with “these other Parties” - “Where” with “If”	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
35	<u>Paragraph 3</u> : to add new first sentence and some editorial changes: 3. [CA: If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in the territory of a non-Party,] Nothing in Article X.6 (Most-Favoured-Nation Treatment) shall be construed to require [ASEAN: any] [CA: the] Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in [ASEAN: another] [CA: in the territory of the other] Party.	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
36	To remove paragraphs 5 (mutually agreed criteria) and 6 (annex on professional services)	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
37	To add new paragraph 5: CA: 5. The Parties should seek to ensure that recognition does not require citizenship or any form of residency, or education,	BN: KH: ID:	MM: PH: SG:		

	experience, or training in the territory of the host jurisdiction	LA: MY:	TH: VN:		
	X.16 (Payments and Transfers)				
38	<p>To replace paragraph 1 with CA's text (no reference to Article on Measures/Restriction to Safeguard the Balance of Payments):</p> <p>^{ASEAN}: 1. Except under the circumstances envisaged in Article X.X (Measures/Restriction to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its commitments.</p> <p>^{CA}: 1. Each Party shall permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of its territory.</p>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
39	To remove paragraph 2	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
40	<p>To add new paragraph 2, 3 and 4:</p> <p>CA: 2. Each Party shall permit transfers and payments that relate to the cross-border supply of services to be made in a freely convertible currency at the market rate of exchange that prevails at the time of transfer.]</p> <p>CA: 3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory, and good faith application of its laws that relate to:</p> <ul style="list-style-type: none"> (a) bankruptcy, insolvency, or the protection of the rights of creditors; (b) issuing, trading, or dealing in securities and derivatives; (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; 	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		

	<p>(d) criminal or penal offenses; or (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.]</p> <p>CA: 4. For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's laws relating to its social security, public retirement, or compulsory savings programs.</p>				
	X.17- X.28				
41	<p>To remove the following Articles:</p> <p>X.17: Monopolies and Exclusive Suppliers X.18: Business Practices X.19: Subsidies X.20: Safeguard Measures X.21: Cooperation X.22: Micro, Small and Medium Enterprises (MSMEs) X.23: Technical Assistance X.24: Increasing the Participation of Newer ASEAN Member States X.25: Private Sector Engagement X.26: Institutional Mechanism/Sub-Committee on TIS X.27: Review of Commitments X.28: Annexes and Future Legal Instruments</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
	X.29 (Denial of Benefits)				
42	<p>To replace ASEAN text with CA's text for paragraph 1:</p> <p>A Party may deny the benefits of this Chapter ^{[CA:} to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by a person of a non-Party or by a person of the denying Party that has no substantial business activities in the territory of the other Party.]</p> <p>[ASEAN:</p> <p>(a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party; (b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Party; (c) in the case of the supply of a maritime transport service, if it</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		

	<p>establishes that the service is supplied:</p> <p>(i) by a vessel registered under the laws and regulations of a non-Party; and</p> <p>(ii) by a person of a non-Party which operates or uses the vessel in whole or in part.]</p>				
43	<p>Paragraph 2: To replace “juridical person” with “enterprise”</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
	ca X.X Least Developed Countries				
44	<p>To add 1 new article on LDC, containing 1 paragraph and 1 annex: <i>For a measure of a Party that is a least developed country, this Chapter applies as set out in Annex XX.A: Least Developed Country.</i></p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
	ca Annex XX.A Least Developed Countries				
45	<p>To add new Annex XX.A containing:</p> <ul style="list-style-type: none"> - GATS and Improvements - Transition - Technical Assistance - Sub-Committee on Trade in Services 	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
	ca Annex XX.B Development and Administration of Measures				
46	<p>To add new Annex XX.B containing:</p> <ul style="list-style-type: none"> - Definitions of authorization, competent authority, licensing procedures & requirements, qualification procedures & requirements - Development of licensing and qualification requirements & procedures - Administration of licensing and qualification requirements & procedures - Fees - Review of administrative decisions - Transparency 	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		

ACAFTA – WGTIS, AMS Position on Canada’s Counterproposal for TMNP text

	Canada’s Proposal	AMS Position	ASEAN Common Position	Notes
	X.1 (Definitions)			
1.	(a) <u>immigration formality</u> To have separate definitions for ASEAN & CA	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
2.	(b) <u>natural person of a Party</u> To remove this definition (reference to TIS definition of NP)	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
3.	(c) <u>temporary entry</u> To replace “ <i>natural person</i> ” with “ <i>business person</i> ” and include “ <i>into territory of a Party</i> ”.	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
4.	(d) <u>business person</u> To include definition of business person: <i>means a natural person who is a citizen or permanent resident of a Party who is engaged in trade of goods, the supply of services or the conduct of investment activities.</i>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
	X.2 (Scope)			
5.	<u>Para 1</u> To replace ASEAN text with: <i>This Chapter applies to measures affecting the temporary entry of business persons of a Party into the territory of the other Party under the categories set out in Annex X-01</i>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
6.	<u>Para 2 and 3 (editorial)</u> To replace “ <i>shall</i> ” with “ <i>does</i> ”, “ <i>a</i> ” with “ <i>the other</i> ”, and “ <i>shall prevent</i> ” with “ <i>prevents</i> ”.	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:	
7.	<u>Para 4</u>	BN:	MM:	

	To remove this paragraph (immigration formality)	KH: ID: LA: MY:	PH: SG: TH: VN:		
	X.3 (Grant of Temporary Entry)				
8.	<p><u>Para 1</u> (SOC and requirements) To replace ASEAN text with these 2 paragraphs:</p> <ol style="list-style-type: none"> 1. <i>“Each Party shall set out in Annex X-01 commitments it makes with regard to temporary entry of business persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of business person specified by that Party”</i> 2. <i>“Each Party shall grant temporary entry to a business person of the other Party, who is otherwise qualified for entry under its immigration measures, including measures relating to public health and safety and national security, in accordance with this Chapter.”</i> 	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
9.	<p><u>Para 2</u> To remove this paragraph (reasonable fees)</p>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
10	<p><u>Para 3</u> (denial of entry) To replace ASEAN text with these 3 paragraphs:</p> <ol style="list-style-type: none"> 3. <i>“A Party may refuse to grant temporary entry or issue a work authorization to a business person of the other Party where the temporary entry of that business person might adversely affect: <ol style="list-style-type: none"> a. <i>the settlement of any labour dispute that is in progress at the intended place of employment; or</i> b. <i>the employment of any natural person who is involved in such dispute.”</i> </i> 4. <i>“If a Party refuses to grant temporary entry or issue a work authorisation pursuant to paragraph 2, it shall provide written notice to the business person of the reasons for the refusal.”</i> 	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		

	5. "A Party may require a business person seeking temporary entry under this Chapter to obtain an entry visa or an equivalent requirement prior to entry in accordance with its immigration laws and regulations. The sole fact that a Party requires business persons of the other Party to obtain a visa or an equivalent requirement prior to entry shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter"				
11	<p><u>Para 4</u></p> <ul style="list-style-type: none"> To replace "natural person" with "business person" To replace "shall not be construed" with "does not" 	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
12	<p><u>To include additional Para 7:</u></p> <p>"The Parties may, as required, refer to the local labour market in order to establish that a business person and the work they are to perform fall within a category covered by this Chapter under which they have applied for temporary entry."</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
X.4 (Processing of Applications) / (CA: Application Procedures)					
13	To change the article title	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
14	<p><u>Para 1</u></p> <p>To replace ASEAN's text with: "Each Party shall, as expeditiously as possible following receipt of a complete application for a work authorization, issue its decision to the business person. If approved, the decision shall specify the period of stay and other conditions."</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		
15	<p><u>Para 2</u></p> <p>To replace ASEAN's text with: "At the request of an applicant, the Party that has received a complete application for a work authorization shall endeavour to promptly provide information concerning the status of the application."</p>	<p>BN: KH: ID: LA: MY:</p>	<p>MM: PH: SG: TH: VN:</p>		

	<u>Para 3</u> To remove Paragraph 3 (requirement to notify the applicants of its status)	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
17	<u>Para 4</u> To replace ASEAN's text with: <i>"Each Party shall endeavour to accept and process applications in electronic format."</i>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
18	<u>To insert new Paragraph 4</u> (related to ASEAN's article X.3 para 2, which CA propose to delete): <i>"Each Party shall limit its respective fees for processing applications for temporary entry of a business person to the approximate cost of services rendered."</i> <u>ASEAN proposal for Article X.3 para 2:</u> <i>In accordance with its laws and regulations, any fees imposed by a Party in respect of the processing of an immigration formality shall be reasonable in that they do not, in themselves, represent an unjustifiable impediment to the movement of natural persons of another Party under this Chapter</i>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
19	<u>Para 5</u> To remove Paragraph 5 (acceptance of authenticated copies)	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
20	<u>To add new paragraph 5:</u> <i>"Nothing in this Chapter impairs the ability of a business person to apply for temporary entry through the domestic regime of a Party."</i>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
	X.5 (Schedules of Specific Commitments TMNP)				
21	To remove this article.	BN: KH: ID: LA:	MM: PH: SG: TH:		

	X.6 (Transparency)/ ^(ca) X.5.Provision of Information)	MY:	VN:		
22	To change the article title	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
23	<u>Para 1</u> To replace ASEAN's text with: <i>"Further to Article X.X (Transparency – Section A. Publication, Notification and Administration of Laws), each Party shall, no later than six months after the date of entry into force of this Agreement:</i> <i>(a) make publicly available in electronic format online, explanatory material on its measures relating to this Chapter.</i> <i>(b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter."</i>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
24	<u>Para 2</u> To replace ASEAN's text with: <i>"Each Party shall, subject to its domestic laws regarding protection of private or personal information:</i> <i>(a) collect and maintain statistical data respecting the granting of temporary entry to [to be negotiated - categories of business persons] of the other Party, as well as any other category of business persons as may be identified by the Contact Points; and</i> <i>(b) on request of the other Party, make available the information referred to in subparagraph (a)."</i>	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
	^(ca) X.6 (Contact Points)				
25	To include new Article, designating contact points to meet and exchange info as describe in Article Transparency/Provision of Information above.	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
	X.7 (Cooperation)				

	To remove this article.	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
	X.8 (Dispute Settlement)				
27	<u>Para 1</u> To remove this paragraph (try to settle through consultations)	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
28	<u>Para 2:</u> <ul style="list-style-type: none"> To replace “no Party shall have recourse to DS” with “a Party may not initiate proceedings” To include “to business persons under this Chapter” To replace “natural persons affected have” with “business person who has been refused temporary entry has” To replace “available” with “all applicable” (admin remedies) To remove “regarding the particular matter” To add point (c): “the Contact Points have been unable to resolve the issue.” 	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
29	<u>Para 3:</u> <ul style="list-style-type: none"> To replace “For the purposes of subparagraph 2(b), the administrative remedies” with “The remedies referred to in subparagraph (1) (b)” To replace “the other Party within a reasonable period of time after the date of institution of the proceedings for the remedy, including any proceedings for review or appeal” with “the competent authority within one year of the institution of an administrative proceeding” To replace “natural persons concerned” with “business persons” 	BN: KH: ID: LA: MY:	MM: PH: SG: TH: VN:		
	^{CA:} X.8 (Relation to Other Chapters)				
30	To include additional chapter consisting of 2 paragraphs: 1. This Agreement does not impose an obligation on a Party regarding its immigration measures, except as specifically provided in this Chapter or Chapter X (Transparency).	BN: KH: ID: LA:	MM: PH: SG: TH:		

<p>2. <i>Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.</i></p> <p><u>AANZFTA-MNP text:</u></p> <p>1. <i>Nothing in this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, except for this Chapter [AANZ, Chapter X (Establishment of a Free Trade Area, Objectives, and General Definitions), Chapter X (Institutional Provisions), Chapter X (Consultations and Dispute Settlement), and Chapter X (Final Provisions)].</i></p> <p>2. <i>Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.</i></p>	<p>MY:</p>	<p>VN:</p>		
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ASEAN's Responses to Canada's Questions

Questions from Canada	ASEAN Response
29 Sep 2022	17 Oct 2022
1. Is the intent that the Parties' commitment would be GATS plus? If so, Canada suggests to replace "build on" by "improve".	Yes, the intent is for Parties' commitments to be GATS plus. ASEAN agrees to replace "build on" with "improve".
2. Could ASEAN explain what it means by "mechanisms to promote progressive liberalisation of trade in services"?	Since ASEAN FTAs mostly involve positive list commitments, we usually include a provision for progressive liberalisation, which represent our aspiration for further liberalisation of our services sectors. The mechanism could be through articles like Review of Commitments or Work Programme, or other mechanism to be agreed by Parties.
3. Could ASEAN provide additional information on "other classifications"?	Not all AMS use provisional Central Product Classification (CPC) 1991. Some AMS use Central Product Classification Version 1.1 or national specific classification. National classifications will be accompanied by the corresponding UN-CPC code or W/120 classification.
4. Could ASEAN provide additional information on the "request-and-offer" approach?	Request-and-offer is a common approach used by ASEAN for market access negotiations. This approach requires each Party to submit: <ul style="list-style-type: none"> - "request" listing subsectors and level of commitments that they expect the other Parties to offer. - "offer" which is the Party's draft commitment, listing subsectors and level of commitments that they would like to commit. Parties' requests or offers will be exchanged through ASEAN Secretariat. Individual AMS will have separate offers to Canada (apply to all) while Canada will have one offer that will apply to all ten AMS.
5. Could ASEAN confirm that the two Parties in this context are ASEAN and Canada?	No, the two Parties mean individual ASEAN Member States and Canada. So, Canada will have 10 bilateral negotiation sessions, one for each AMS.
19 Dec 2022	31 Jan 2022
1. Can ASEAN please provide its rationale, including the perceived benefits of	All ASEAN's agreements use "natural person" to refer to an individual human being, differentiating

<p>naming the Chapter “Temporary Movement of Natural Persons” (i.e., as opposed to “Temporary Entry of Business Persons)?</p>	<p>it from “legal person” which can also mean a company. This is inline with the WTO practice. Using “business persons” may create confusion among ASEAN business people who are used to the term “natural persons”.</p> <p>As for the term “Movement” vis-à-vis “Entry”, [OP1: ASEAN can be flexible to use the term “Entry”] [OP2: ASEAN is of the view that “movement” is a broader term that include any shift of location across and within a Party’s borders, while entry is limited to a one-way movement into a Party’s territory”.]</p>
<p>2. Under definitions, ASEAN defines <i>immigration formality</i> as a “visa, permit, pass, or other document, or electronic authority, granting temporary entry”. Can <u>each ASEAN Member State</u> please confirm if it takes its TMNP/TE commitments for its <u>visa, its work authorization, or both</u>?</p>	<p>[Each AMS to provide response]</p>
<p>3. Can ASEAN please provide its rationale, including the perceived benefits of using <i>natural person</i> throughout the text (i.e., as opposed to <i>business person</i>)?</p>	<p>See our response for No. 1 above.</p>
<p>4. Under definitions, ASEAN does not define <i>natural person</i>. Can each ASEAN Member State please confirm if it could take its TMNP/TE commitments for its <u>permanent residents</u> and its <u>citizens</u> (i.e., does it afford the same treatment to the two under its domestic regime)?</p>	<p>To avoid duplication, we refer to the definition of “natural persons” under the Trade in Services (TIS) Chapter. This has been the practice of all ASEAN agreements that have both TIS and MNP chapters.</p>
<p>5. Under Article X.2.4, ASEAN proposes “The sole fact that a Party requires natural persons of another Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to any Party under this Chapter.” Can ASEAN please provide its rationale for including this language here, rather than under the Grant of TE Article?</p>	<p>ASEAN views this paragraph as closely related to the paragraph 3 before it (under Scope article), which allows a Party to apply measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, as long as they don’t nullify or impair the benefit of this Chapter.</p> <p>[ASEAN is flexible to place this paragraph under Scope or GTE].</p>
<p>6. Under Article X.3.2, ASEAN proposes language on fees. What is ASEAN’s rationale for including this language here, rather than under Application Procedures, as is done in the CPTPP?</p>	<p>[ASEAN is flexible to place this paragraph under GTE or Processing of Applications].</p>
<p>7. Under Article X.3.2, ASEAN limits fees to be “reasonable in that they do not, in</p>	<p>[Each AMS to provide response]</p>

<p>themselves, represent an unjustifiable impediment to the movement of natural persons of another Party under this Chapter.” <u>Can each ASEAN Member States</u> please identify how its current domestic regulations govern fees related to TE, if any are in place?</p>	
<p>8. Referring to Article X.3.2, how would ASEAN determine what constitutes an “unjustifiable impediment”?</p>	<p>If the fees are purposefully imposed to impede the entry of the person.</p>
<p>9. Under Article X.4.1, ASEAN proposes “Where an application for an immigration formality is required by a Party, that Party shall process, as expeditiously as possible, complete applications for immigration formalities or extensions thereof received from natural persons of another Party covered by Article X.2 (Scope).” In ASEAN’s view, what constitutes processing an application?</p>	<p>It includes among others: verifying the information provided in the application, requesting further information or clarifications (if needed), coordination with relevant agencies required for approving the application. [Need further inputs from AMS]</p>
<p>10. Under Article X.4.4, ASEAN proposes “to the extent permissible under its laws and regulations, each Party shall endeavour to accept applications for immigration formalities in electronic format under the equivalent conditions of authenticity as paper submissions.”</p>	<p>?</p>
<p>What barriers currently exist that inhibit “the extent permissible” under ASEAN’s domestic laws and regulations?</p>	
<p>11. Under Article X.4.5, ASEAN proposes “Where appropriate, each Party shall accept copies of documents authenticated in accordance with its laws and regulations in place of original documents, to the extent its laws and regulations permit.” Do ASEAN Member States currently have domestic laws and regulations that prevent the relevant agencies from accepting authenticated copies of documents in the place of original documents?</p>	<p>[Need inputs from AMS]</p>
<p>12. Under Article X.5, ASEAN proposes “<i>Each Party shall set out in its Schedule in Annex III (Schedules of Specific Commitments on Temporary Movement of Natural Persons) its commitments for the temporary entry into and temporary</i></p>	<p>This is the common practice in ASEAN agreement, and it mimics the TIS Chapter, where a separate article explain how the commitments should be scheduled. [ASEAN is flexible to place this paragraph under Scope article].</p>

<p><i>stay in its territory of natural persons of another Party covered by Article X.2 (Scope). These Schedules shall specify the conditions and limitations governing those commitments, including the length of stay, for each category of natural persons included therein.”</i></p>	
<p>We usually refer to this language under the scope article. Why is it useful to have this language as a separate article?</p>	
<p>13. Referring to Article X.5, does ASEAN foresee each Party having its own Schedule of commitments, and would this include individual definitions for each Party?</p>	<p>Yes. Each of the 10 AMS will have 1 schedule (with their respective definition) that applies to Canada and the other 9 AMS.</p>
<p>14. Referring to Article X.6: Transparency, [CA: Article 5: Provision of Information], Under Canada’s domestic regime, Canada already does most of these from (a)-(d). We would like to streamline these commitments under our approach. What benefit does ASEAN foresee by including both (a) and (b)?</p>	<p>Point (a) and (b) are to ensure all Parties publish the necessary information to operationalise this Chapter. Canada’s proposed streamlined version [point (a)] limits the format into electronic/online and broaden the scope to any measures relating to this Chapter.</p>
<p>15. Referring to Article X.6 (d) Similar language is also used in the CPTPP, however the obligation is to establish and maintain. Do such mechanisms exist already in ASEAN’s domestic regime?</p>	<p>ASEAN prefers to use the existing mechanism and not to oblige any Party to establish specific mechanism for any agreement.</p>
<p>16. Referring to Article X.7: We think it’s not the most effective mechanism for engaging on the Chapter. The Contact Point route provides for a less formal, less-burdensome, way of discussing the items of a working group or committee would traditionally cover. However, it also gives much more certainty than a Cooperation article, by setting out who is doing the cooperating. Why does ASEAN prefer “cooperation?”</p>	<p>In ASEAN FTAs practice, this article is used as the basis for technical cooperation/assistance/project proposed after the agreement enters into force. Some other Chapters in ASEAN FTAs will have similar articles, in addition to the Cooperation Chapter that applies to the whole agreement.</p>
<p>17. Referring to Article X.8: Why does ASEAN foresee engaging in these consultations? Is it a representative of the Member, or of ASEAN? From which department? In which forum?</p>	<p>Representatives from the concerned Parties (complainant and complainee). Each Party will decide who will represent them and the process is bilateral consultations between the concerned Parties.</p>
<p>18. Referring to Article X.8: Dispute Settlement, Article 2, Canada has a three staged test. Stage 1 and 2 are identical to your approach, with the third stage</p>	<p>[Need discussions among AMS]</p>

<p>being that the Contact Points have been unable to resolve the issue. Would ASEAN have any flexibility to consider this three staged test approach?</p>	
<p>19. Referring to Article X.8: Dispute Settlement, Article 3, What does ASEAN foresee as a reasonable period of time?</p>	<p>[Need discussions among AMS]</p>
<p>20. Referring to Article X.8: Dispute Settlement, Article 3, Who in the Party is responsible for this determination?. Would ASEAN have any flexibility on these two items?</p>	<p>[Need information and discussions among AMS]</p>