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**MEMORANDUM**

**FOR :** **The Directors**  
Biodiversity Management Bureau  
Environmental Management Bureau  
Forest Management Bureau  
Mines and Geoscience Bureau  
Legal Affairs Service

**FROM :** **The OIC Director**  
Policy and Planning Service

**SUBJECT :** **ENVIRONMENTAL SERVICES NEGATIVE LIST FINAL VETTING**

**DATE :** 02 AUG 2023

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This has reference to Article 8.12 (Transition) of the Regional Comprehensive Economic Partnership (RCEP) Agreements Agreement, wherein the Philippines should submit a Negative List (Schedule of Non-Conforming Measures) within a 6-year time frame upon entry into force of the RCEP.

During the Philippine Working Group on Services for the ASEAN Plus Dialogue Partners Trade in Services (PH-WGS) meeting held on 03 July 2023, the Department of Trade and Industry (DTI) discussed the overview of the Philippine strategy on the RCEP implementation. The DTI will conduct a consultation meeting with respective agencies on September 2023, to discuss the overview of the Philippine Reservations List, to which BOI, DOJ, and NEDA will serve as the resource persons. By December 2023, DTI and DOJ will consolidate all the Negative List for legal scrubbing, and the final Philippine Schedule of Commitment is targeted to be completed and finalized by the 2nd Quarter of 2024.

In this regard, we would like to request your **final vetting and/or comments** on the draft negative list for the environmental services, please be informed that this Office has already incorporated your submission following our memorandum dated 22 December 2022. You may access the latest draft as well as the guide on how to accomplish the template using this link: <https://tinyurl.com/2fp6nbw3>.

We would appreciate receiving your responses through our email addresses [psddivision@gmail.com](mailto:psddivision@gmail.com) or [policy@denr.gov.ph](mailto:policy@denr.gov.ph), on or before **12 August 2023**, so we can facilitate our submission to DTI.

For your information and appropriate action, please.

  
**CHERYL LOISE T. LEAL**

## **GUIDE ON HOW TO ACCOMPLISH THE BREAKOUT SESSION OUTPUT DOCUMENT (ENVIRONMENTAL SERVICES)**

For the Formulation of the Comprehensive Philippine Reservation List  
for Investments and Services Under a Negative List Two-Annex Approach

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### **Approaches in Scheduling Services Commitments in FTAs**

As a backgrounder, there are two (2) main approaches to scheduling “market access<sup>1</sup>” commitments in the services chapter of free trade agreements (FTAs), namely: Positive List and Negative List. RCEP is the first FTA of ASEAN with a commitment for Parties to transition to a negative list.

Under this approach, Parties commit to move to a negative list with the aim to provide market access and increased transparency, subject to existing laws, rules and regulations which will be listed to maintain policy space in respective Parties’ services schedules. The negative list also provides services exporters and investors with a tool to easily determine which are open for foreign participation or reserved to Filipino citizens.

### **Negative List Approach**

Simply, the Negative List contains the exact laws, rules and regulations for specific services. It allows a country to preserve critical or sensitive sectors inconsistent with treaty obligations. In order to draft a negative list, the Philippines must prepare a comprehensive list of non-conforming measures (NCMs) or any law, regulation, procedure, requirement or practice maintained by the Philippines that do not conform with some or all of the obligations relating to the following:

- a) **Market Access** – conditions, tariff and non-tariff measures, agreed by members for the entry of specific goods and services into their markets;
- b) **National Treatment** – obligation to extend to the services and service suppliers of any other Party treatment no less favorable that is accorded to domestic services and service suppliers;
- c) **Most Favored Nation** – obligation to treat foreign service providers from one Party are treated no worse than any other Party’s foreign service provider;
- d) **Local Presence** – obligation typically prohibiting a Party from requiring suppliers of the other Party to establish a commercial presence in its territory as a condition for the provision of service;
- e) **Prohibition of Performance Requirements** – obligation prohibiting parties from imposing a defined set of requirements in relation to the establishment or operation of an investment of another Party; and

- f) **Senior Management and Board of Directors** – obligation typically providing that no Party may require an enterprise of the other Party to appoint to senior management positions individuals of any particular nationality.

In a Positive List Approach, the general rule is that “everything is closed, unless it is open” and unless said sector is found in the Positive List. The rule for the Negative List Approach on the other hand is “entire sector is open, unless it is restricted through listing of the particular sector in the Negative List”. The Negative List is important as a way of protecting the interests of the country while at the same time showing to our trading partners that we are open for free trade.

The Negative List includes two annexes: Annex 1 contains the restrictions on the general rule that everything is open (usually found in laws, statutes, Executive Orders, Department Orders, Memorandum Circulars, and other written rule which contains the restrictions that the government implements); Annex 2 contains future policies and sectors that are kept closed to protect the interests of the Agency. Our ongoing initiative is to draft Annex 1 of the Negative List.

### **Definition and Classification of Environmental Services**

The DENR, being the main agency with the mandate over the country’s environment and natural resources, has purview on the country’s offers under the sector “Environmental Services” under RCEP.

The OECD definition of Environmental Services is “services provided to “measure, prevent, limit, minimize or correct environmental damage to water, air, soil, as well as problems related to waste, noise and eco-systems”<sup>1</sup>.

Based on the Services Sectoral Classification List (W/120) developed which is also largely based on the United Nations Provisional Central Product Classification (CPC), the environmental services sector is defined to include<sup>2</sup>:

<b>Environmental Services</b>	<b>CPC prov.</b>	<b>Description</b>
a) <b>Sewage services</b>	9401	Closely related to waste water treatment services that aim essentially to speed up the natural processes which reduce contaminants to an acceptable level for discharge into the environment.
b) <b>Refuse disposal services</b>	9402	Virtually synonymous with solid waste management which includes services to collect, transport, treat and dispose waste from homes, municipalities, commercial establishments and manufacturing plants.
c) <b>Sanitation and similar services</b>	9403	

d) <b>Other environmental services</b>	--	<p>Even though the "other" category does not explicitly refer to any CPC items, it presumably includes the remaining elements of the CPC environmental services category:</p> <p>d.1) <b>cleaning of exhaust gases</b> (CPC 9404),</p> <ul style="list-style-type: none"> <li>- closely resembles air quality control services designed to remove pollutants from a gaseous stream or to convert pollutants to a non-polluting or less polluting form prior to discharge into the atmosphere.</li> </ul> <p>d.2) <b>noise abatement services</b> (CPC 9405),</p> <p>d.3) <b>nature and landscape protection services</b> (9406), and</p> <p>d.4) <b>other environmental protection services not included elsewhere</b> (CPC 9409).</p>
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The following are the sectors with existing offers under RCEP: 1) Sewerage services (CPC 9401), 2) Refuse disposal services (CPC 94020), 3) Sanitation and similar services limited to hail-clearing services (CPC 9403), 4) Services to reduce exhaust gases and other emissions for a factory (CPC 9404), 5) Site remediation and clean-up services (CPC 9441), and 6) Sweeping and snow removal services (CPC 9451).

### How to Accomplish the Breakout Session Output Document?

The Negative List matrix is arranged into sections based on the aforementioned sector/ subsector under the Environmental Services (e.g. Sewage services, Nature and landscape protection services, etc.). The goal is to list down/ exhaust all NCMs that affect the said sectors and provide details on each measure in the Breakout Session Output Document. The matrix should be accomplished as follows:

Column	Description	Content
1	<b>Type of Obligation</b>	<p>Determine whether the measure contains any of the following types of obligations:</p> <p>Indicate "<b>MA</b>" if it is a Market Access obligation which pertains to restrictions on entry (conditions, tariff and non-tariff measures including licensing, capital and nationality requirements)</p> <p>Indicate "<b>NT</b>" if it is a National Treatment obligation which refers to requirements which are additional regulatory burden imposed on foreign businesses (Ex. Filipino First policies). You treat foreign service or service suppliers as you treat your own but if there is a measure that is inconsistent then that is something that must be reflected in our commitments. For example, residency</p>

		<p>requirement, documentary requirements that are in addition to those required of own service suppliers and other requirements that own service suppliers need not comply with such as having an understudy.</p> <p>Indicate "<b>MFN</b>" if it is a Most Favored Nation obligation - Simply put, it is giving favor to a particular country; type of obligation wherein it benefits one particular country compared to the rest of the world (Ex. Reciprocity requirements). This does not include benefits given to a particular country based on an international agreement (free-trade agreement, special bilateral agreement).</p> <p>Indicate "<b>LP</b>" if it is a Local Presence obligation which refers to - limitations/regulations on the physical presence of the goods/services (geographical limitations, buffer zones).</p> <p>Indicate "<b>PPR</b>" if it is a Prohibition of Performance Requirements which refers to regulations continuously imposed on the operations of the business (local content requirements, license renewal, etc.).</p> <p>Indicate "<b>SMBD</b>" if it is a Senior Management and Board of Directors Obligation which pertains to residency requirement, nationality requirement of the company's senior management and Board of Directors.</p> <p>A measure may have <b>one or multiple types</b> of obligation.</p>
<b>2</b>	<b>Source of Measure</b>	<p>Indicate whether the measure is from a Republic Act (RA), Executive Order (EO), Memorandum Circular (MC), Department Administrative Order (DAO), Implementing Rules and Regulation (IRR), etc.</p> <p>If possible, indicate what section, item, or article the said obligation is found.</p>
<b>3</b>	<b>Description of the Measure</b>	<p>Indicate the relevant provision/s on the said measure (verbatim). If possible, highlight in bold letters the specific provisions that contain the said obligations.</p>

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<sup>1</sup> Environmental Goods: A Comparison of the APEC and OECD List (<https://www.oecd.org/environment/envtrade/35837840.pdf>)

<sup>2</sup> Environmental Services: Background Note by the Secretariat. Council for Trade in Services World Trade Organization. ([https://www.wto.org/english/tratop\\_e/serv\\_e/w46.doc](https://www.wto.org/english/tratop_e/serv_e/w46.doc))