

ANNEX 13-A

CROSS-BORDER TRADE IN FINANCIAL SERVICES**Schedule of Canada**

Insurance and insurance-related services

1. Article 13.7.1 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
 - (a) insurance of risks relating to:
 - (i) maritime transport, commercial aviation and space launching and freight, including satellites, with this insurance to cover: the goods being transported, the vehicle transporting the goods, or liability deriving from that transport; and
 - (ii) goods in international transit;
 - (b) reinsurance and retrocession;
 - (c) services auxiliary to insurance as described in sub-subparagraph (iv) of the definition of insurance and insurance-related services in Article 13.1; and
 - (d) insurance intermediation, such as brokerage and agency, of insurance risks related to the services listed in subparagraphs (a) and (b).

Banking and other financial services (excluding insurance)

2. Article 13.7.1 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
 - (a) the provision and transfer of financial information, and financial data processing and related software, as described in sub-subparagraph (xi) of the definition of banking and other financial services (excluding insurance) in Article 13.1; and
 - (b) advisory, and other auxiliary financial services as described in sub-subparagraph (xii) of the definition of banking and other financial services (excluding insurance) in Article 13.1, but excluding intermediation as described in that subparagraph.

Portfolio Management Services

3. Article 13.7.1 applies to the cross-border supply or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to the supply of the following services to a collective investment scheme located in its territory:
 - (a) investment advice; and
 - (b) portfolio management services, excluding:
 - (i) custodial services;
 - (ii) trustee services; or
 - (iii) execution services.
4. For the purposes of this commitment, portfolio management means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis if such portfolios include one or more financial instruments.

5. A collective investment scheme means investment funds or fund management companies regulated or registered under relevant securities laws and regulations. Notwithstanding paragraph 3, Canada may require a collective investment scheme located in Canada to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.
6. Reservations for non-conforming measures set out by Canada in its Schedule to Annex III do not apply to paragraphs 3 through 5.

Schedule of the European Union

(applicable to all Member States of the European Union unless otherwise indicated)

Insurance and insurance-related services

1. With the exception of **CY, EE, LV, LT, MT** and **PL** ⁽¹⁾, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
 - (a) insurance of risks relating to:
 - (i) maritime transport, commercial aviation and space launching and freight, including satellites, with this insurance to cover: the goods being transported, the vehicle transporting the goods, or liability deriving from that transport; and
 - (ii) goods in international transit;
 - (b) reinsurance and retrocession;
 - (c) services auxiliary to insurance as described in sub-subparagraph (iv) of the definition of insurance and insurance-related services in Article 13.1; and
 - (d) insurance intermediation, such as brokerage and agency, of insurance risks related to the services listed in subparagraphs (a) and (b).
2. For **CY**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
 - (a) direct insurance services (including co-insurance) for the insurance of risks relating to:
 - (i) maritime transport, commercial aviation and space launching and freight, including satellites, with this insurance to cover: the goods being transported, the vehicle transporting the goods, or liability deriving from that transport; and
 - (ii) goods in international transit;
 - (b) insurance intermediation;
 - (c) reinsurance and retrocession; and
 - (d) services auxiliary to insurance as described in sub-subparagraph (iv) of the definition of insurance and insurance-related services in Article 13.1.
3. For **EE**, Article 13.7.1. applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
 - (a) direct insurance (including co-insurance);
 - (b) reinsurance and retrocession;

⁽¹⁾ The abbreviations used in this Annex are defined in paragraph 8 of the Headnote to Annex I (Reservations for Existing Measures and Liberalisation Commitments).

- (c) insurance intermediation; and
 - (d) services auxiliary to insurance as described in sub-subparagraph (iv) of the definition of insurance and insurance-related services in Article 13.1.
4. For **LV** and **LT**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
- (a) insurance of risks relating to:
 - (i) maritime transport, commercial aviation and space launching and freight, including satellites, with this insurance to cover: the goods being transported, the vehicle transporting the goods, or liability deriving from that transport; and
 - (ii) goods in international transit;
 - (b) reinsurance and retrocession; and
 - (c) services auxiliary to insurance as described in sub-subparagraph (iv) of the definition of insurance and insurance-related services in Article 13.1.
5. For **MT**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
- (a) insurance of risks relating to:
 - (i) maritime transport, commercial aviation and space launching and freight, including satellites, with this insurance to cover: the goods being transported, the vehicle transporting the goods, or liability deriving from that transport; and
 - (ii) goods in international transit;
 - (b) reinsurance and retrocession; and
 - (c) services auxiliary to insurance as described in sub-subparagraph (iv) of the definition of insurance and insurance-related services in Article 13.1.
6. For **PL**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
- (a) insurance of risks relating to goods in international trade; and
 - (b) reinsurance and retrocession of risks relating to goods in international trade.

Banking and other financial services (excluding insurance and insurance-related services)

7. With the exception of **BE**, **CY**, **EE**, **LV**, **LT**, **MT**, **SI** and **RO**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
- (a) the provision and transfer of financial information, and financial data processing and related software, as described in sub-subparagraph (xi) of the definition of banking and other financial services (excluding insurance) in Article 13.1; and
 - (b) advisory and other auxiliary financial services relating to banking and other financial services, as described in sub-subparagraph (xii) of the definition of banking and other financial services (excluding insurance) in Article 13.1, but not intermediation as described in that sub-subparagraph.

8. For **BE**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
 - (a) the provision and transfer of financial information, and financial data processing and related software, as described in sub-subparagraph (xi) of the definition of banking and other financial services (excluding insurance) in Article 13.1.
9. For **CY**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
 - (a) the trading for own account or for the account of customers, whether on an exchange, in an over-the-counter market or otherwise, of transferrable securities;
 - (b) the provision and transfer of financial information, and financial data processing and related software, as described in sub-subparagraph (xi) of the definition of banking and other financial services (excluding insurance) in Article 13.1; and
 - (c) advisory and other auxiliary financial services relating to banking and other financial services, as described in sub-subparagraph (xii) of the definition of banking and other financial services (excluding insurance) in Article 13.1, but not intermediation as described in that subparagraph.
10. For **EE** and **LT**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
 - (a) acceptance of deposits;
 - (b) lending of all types;
 - (c) financial leasing;
 - (d) all payment and money transmission services;
 - (e) guarantees and commitments;
 - (f) trading for own account or for account of customers, whether on an exchange or in an over-the-counter market;
 - (g) participation in issues of all kinds of securities, including underwriting and placement as agent, whether publicly or privately, and supply of services related to such issues;
 - (h) money broking;
 - (i) asset management, such as cash or portfolio management, all forms of collective investment management, custodial, depository and trust services;
 - (j) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (k) the provision and transfer of financial information, and financial data processing and related software, as described in sub-subparagraph (xi) of the definition of banking and other financial services (excluding insurance) in Article 13.1; and
 - (l) advisory and other auxiliary financial services relating to banking and other financial services, as described in sub-subparagraph (xii) of the definition of banking and other financial services (excluding insurance) in Article 13.1, but not intermediation as described in that subparagraph.
11. For **LV**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
 - (a) participation in issues of all kinds of securities, including underwriting and placement as agent, whether publicly or privately, and supply of services related to such issues;

- (b) the provision and transfer of financial information, and financial data processing and related software, as described in sub-subparagraph (xi) of the definition of banking and other financial services (excluding insurance) in Article 13.1; and
 - (c) advisory and other auxiliary financial services relating to banking and other financial services, as described in sub-subparagraph (xii) of the definition of banking and other financial services (excluding insurance) in Article 13.1, but not intermediation as described in that subparagraph.
12. For **MT**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
- (a) the acceptance of deposits;
 - (b) lending of all types;
 - (c) the provision and transfer of financial information, and financial data processing and related software, as described in sub-subparagraph (xi) of the definition of banking and other financial services (excluding insurance) in Article 13.1; and
 - (d) advisory and other auxiliary financial services relating to banking and other financial services, as described in sub-subparagraph (xii) of the definition of banking and other financial services (excluding insurance) in Article 13.1, but not intermediation as described in that subparagraph.
13. For **RO**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
- (a) acceptance of deposits;
 - (b) lending of all types;
 - (c) guarantees and commitments;
 - (d) money broking;
 - (e) the provision and transfer of financial information, and financial data processing and related software, as described in sub-subparagraph (xi) of the definition of banking and other financial services (excluding insurance) in Article 13.1; and
 - (f) advisory, and other auxiliary financial services relating to banking and other financial services, as described in sub-subparagraph (xii) of the definition of banking and other financial services (excluding insurance) in Article 13.1, but not intermediation as described in that sub-subparagraph.
14. For **SI**, Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to:
- (a) lending of all types;
 - (b) the acceptance of guarantees and commitments from foreign credit institutions by domestic legal entities and sole proprietors;
 - (c) the provision and transfer of financial information, and financial data processing and related software, as described in sub-subparagraph (xi) of the definition of banking and other financial services (excluding insurance) in Article 13.1; and
 - (d) advisory and other auxiliary financial services relating to banking and other financial services, as described in sub-subparagraph (xii) of the definition of banking and other financial services (excluding insurance) in Article 13.1, but not intermediation as described in that sub-subparagraph.

Portfolio Management Services

15. Article 13.7.1 applies to the cross-border supply of financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 13.1, with respect to portfolio management services to a European Union professional client located in the European Union, by a Canadian financial institution organised in Canada following a transitional period of four years from the entry into force of this Agreement. For greater certainty, this commitment is subject to the European Union prudential regulatory regime including equivalence assessment ⁽¹⁾;
 16. For the purposes of this commitment:
 - (a) portfolio management means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;
 - (b) portfolio management services do not include:
 - (i) custodial services;
 - (ii) trustee services; or
 - (iii) execution services; and
 - (c) in the European Union professional clients are those defined under point 1, letter e) of Section I of Annex II of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.
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⁽¹⁾ This means that once the European Commission has adopted the equivalence decision related to portfolio management and a Canadian financial institution has satisfied other European Union prudential requirements, this financial institution may provide discretionary portfolio management services to a European Union professional client without being established in the European Union. Furthermore, measures of Member States of the European Union restricting or prohibiting cross-border portfolio management including reservations in its Schedules to Annexes I and II shall no longer apply to this commitment.

ANNEX 13-B

UNDERSTANDING ON THE APPLICATION OF ARTICLES 13.16.1 AND 13.21

The Parties recognise that prudential measures strengthen domestic financial systems, encourage sound, efficient and robust institutions, markets and infrastructure, and promote international financial stability by facilitating better-informed lending and investment decisions, improving market integrity and reducing the risks of financial distress and contagion.

As a result, the Parties have agreed to a prudential carve-out in Article 13.16.1 allowing the Parties to adopt or maintain measures for prudential reasons, and have provided a role for the Financial Services Committee, established pursuant to Article 26.2.1(f), in determining whether, and if so, to what extent the prudential carve out applies in investment disputes in financial services pursuant to Article 13.21.

Process relating to Article 13.21

1. The Financial Services Committee, in its role in investment disputes pursuant to Article 13.21, shall decide whether and, if so, to what extent the prudential carve-out is a valid defence to a claim.
2. The Parties undertake to act in good faith. Each Party shall present its position to the Financial Services Committee within 60 days of the referral to the Financial Services Committee.
3. If the non-disputing Party notifies the Financial Services Committee within the 60 day period in paragraph 2 that it has launched an internal determination process on this matter, the period of time referred to in paragraph 2 is suspended until that Party notifies the Financial Services Committee of its position. A suspension beyond six months is considered as a breach of the good faith undertaking.
4. If the respondent does not provide its position to the Financial Services Committee within the period of time referred to in paragraph 2, the suspension of the periods of time or proceedings referred to in Article 13.21.3 no longer applies and the investor may proceed with its claim.
5. If the Financial Services Committee is unable to adopt a decision on a joint determination within 60 days in relation to a specific investor-state dispute concerning a prudential measure, the Financial Services Committee shall refer the matter to the CETA Joint Committee ⁽¹⁾. This period of 60 days commences from the moment the Financial Services Committee receives the positions of the Parties pursuant to paragraph 2.
6. The joint determination of the Financial Services Committee or of the CETA Joint Committee is binding on the Tribunal only in the dispute in question. The joint determination does not constitute a binding precedent for the Parties with respect to the scope and application of the prudential carve-out or other terms of this Agreement.
7. Unless the CETA Joint Committee decides otherwise, if the CETA Joint Committee does not reach an agreement within three months of a referral of the matter by the Financial Services Committee pursuant to paragraph 5, each Party shall make its position available to the Tribunal that arbitrates the dispute in question. The Tribunal shall take into account this record in reaching a decision.

High level principles

8. The Parties agree that the application of Article 13.16.1 by the Parties and by tribunals should be guided by the following principles, which are not exhaustive:
 - (a) Party may determine its own appropriate level of prudential regulation. Specifically, a Party may establish and enforce measures that provide a higher level of prudential protection than those set out in common international prudential commitments;

⁽¹⁾ Each Party shall ensure that its representation in the CETA Joint Committee for this purpose includes financial services authorities.

- (b) relevant considerations in determining whether a measure meets the requirements of Article 13.16.1 include the extent to which a measure may be required by the urgency of the situation and the information available to the Party at the time when the measure was adopted;
- (c) given the highly specialised nature of prudential regulation, those applying these principles shall defer to the highest degree possible to regulations and practices in the Parties' respective jurisdictions and to the decisions and factual determinations, including risk assessments, made by financial regulatory authorities;
- (d) (i) except as provided in subparagraph (ii), a measure is deemed to meet the requirements of Article 13.16.1 if it:
 - (A) has a prudential objective; and
 - (B) is not so severe in light of its purpose that it is manifestly disproportionate to the attainment of its objective; and
- (ii) a measure that otherwise meets the requirements of subparagraph (i) does not meet the requirements of Article 13.16.1 if it is a disguised restriction on foreign investment or an arbitrary or unjustifiable discrimination between investors in like situations;
- (e) provided that a measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investors in like situations, or a disguised restriction on foreign investment, that measure is deemed to meet the requirements of Article 13.16.1 if it is:
 - (i) in line with international prudential commitments that are common to the Parties;
 - (ii) in pursuance of the resolution of a financial institution that is no longer viable or likely to be no longer viable;
 - (iii) in pursuance of the recovery of a financial institution or the management of a financial institution under stress; or
 - (iv) in pursuance of the preservation or the restoration of financial stability, in response to a system-wide financial crisis.

Periodic Review

9. The Financial Services Committee may, by consent of both Parties, amend this Understanding at any time. The Financial Services Committee should review this Understanding at least every two years.

In this context, the Financial Services Committee may develop a common understanding on the application of Article 13.16.1, on the basis of the dialogue and discussions held in the Committee in relation to specific disputes and mindful of international prudential commitments that are common to the Parties.

ANNEX 13-C

UNDERSTANDING ON THE DIALOGUE ON THE REGULATION OF THE FINANCIAL SERVICES SECTOR

The Parties reaffirm their commitment to strengthening financial stability. The dialogue on the regulation of the financial services sector within the Financial Services Committee shall be based on the principles and prudential standards agreed at the multilateral level. The Parties undertake to focus the discussion on issues with cross-border impact, such as cross-border trade in securities (including the possibility of taking further commitments on portfolio management), the respective frameworks for covered bonds and for collateral requirements in reinsurance, and to discuss issues related to the operation of branches.
