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Financial Services Chapter

Submitted by: Peru



**Capacity Building Workshop on Negotiations of
Services Chapters Under Free Trade Agreements
with a Negative List Approach**

**Lima, Peru
19-21 August 2016**

**“CAPACITY BUILDING WORKSHOP ON NEGOTIATIONS OF SERVICES CHAPTERS
UNDER FTAS WITH A NEGATIVE LIST APPROACH”
19, 20 and 21 August 2016 – Lima, Peru**

FINANCIAL SERVICES CHAPTER

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FINANCIAL SERVICES

When Economies decide to include a Cross-Border Trade in Services Chapter, they will have to decide what to do with the Financial Services sector:

Option 1:

To exclude the financial services from the CBTS Chapter and address them in a separate chapter with specific provisions (self-contained chapter)

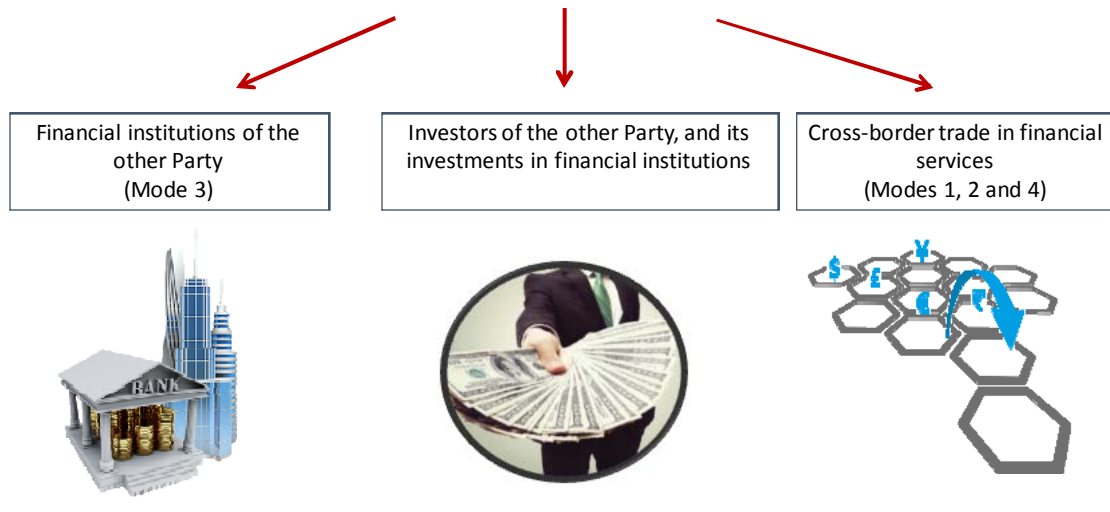
Option 2:

To not exclude the financial services from the CBTS Chapter and (maybe) to include a Financial Services Annex

Peru has followed both approaches in FTAs, but most of its FTAs follow Option 1 (FTA Peru-US, Canada, Korea, Panama, Mexico, TPP, Pacific Alliance)

SCOPE OF A FINANCIAL SERVICES CHAPTER (1)

A Financial Services Chapter normally applies to measures relating to:



SCOPE OF A FINANCIAL SERVICES CHAPTER (2)

Key detail: Definition of “Financial Institution”

*“... **financial institution** means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;”*

In consequence:

- The type of institutions covered by the FS chapter depend on the FS regulation of each Party.
- Non regulated financial institutions are covered by the Investment and Cross Border Trade in Services Chapters.

SCOPE OF A FINANCIAL SERVICES CHAPTER (2)

A Financial Services Chapter usually do not apply to:

Activities or services forming part of a public retirement plan or statutory system of social security (except when they are performed in competition)

Activities or services conducted for the account or with the guarantee or using the financial resources of the Party (except when they are performed in competition)

Government procurement of financial services (some FTAs may not have an explicit exclusion) [Depend on each negotiation]

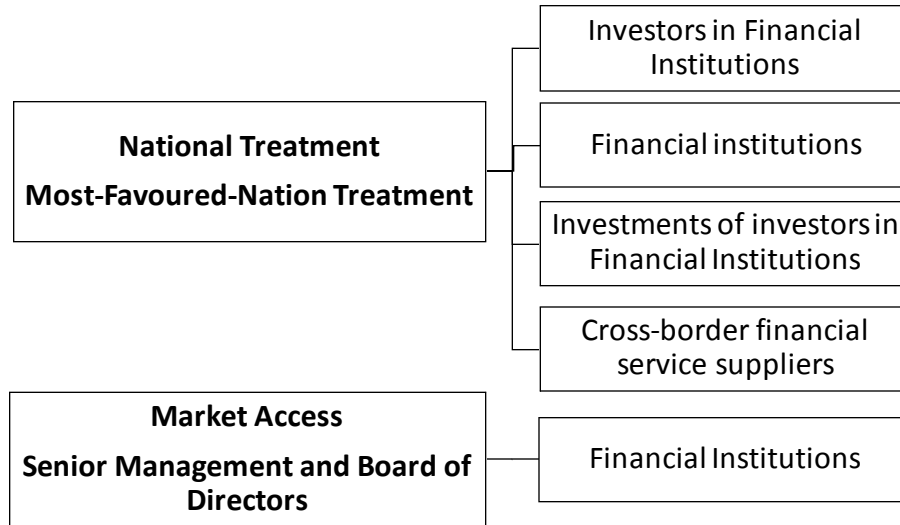
Subsidies or grants with respect to the cross-border supply of financial services ... (some FTAs may not have an explicit exclusion) [Depend on each negotiation]

MAIN PROVISIONS (1)



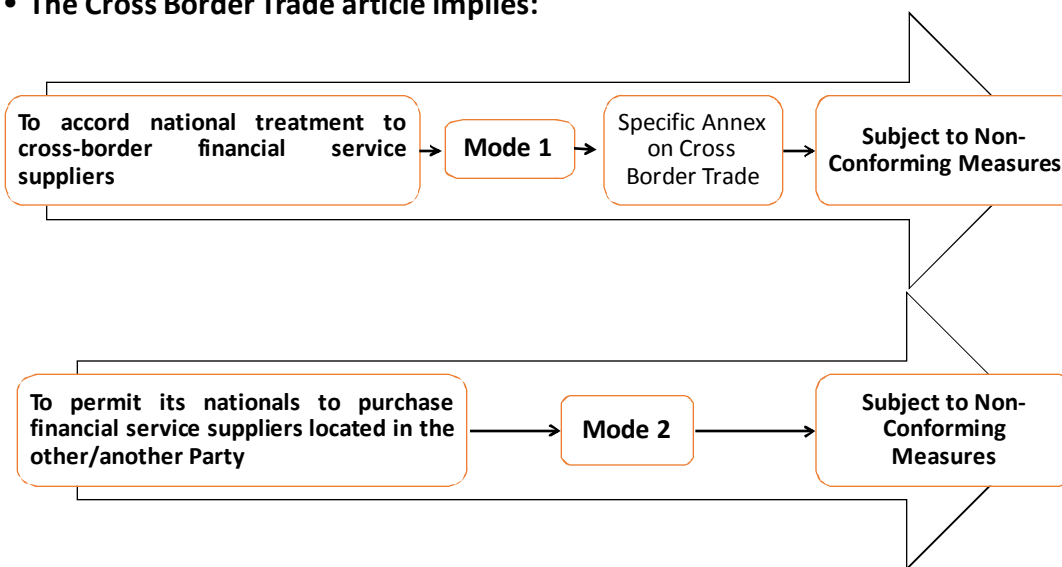
These main provisions do not have the same scope of application...

MAIN PROVISIONS (2)



MAIN PROVISIONS (3)

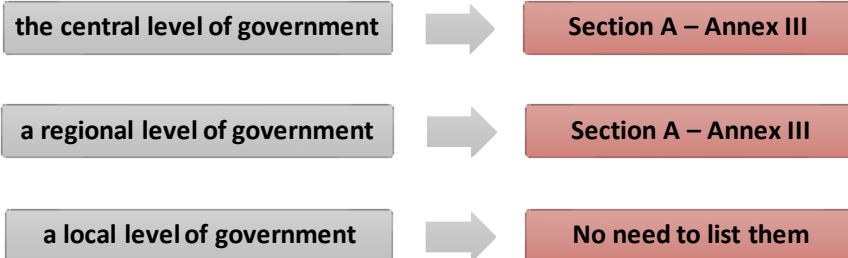
- The Cross Border Trade article implies:



NON-CONFORMING MEASURES (1)

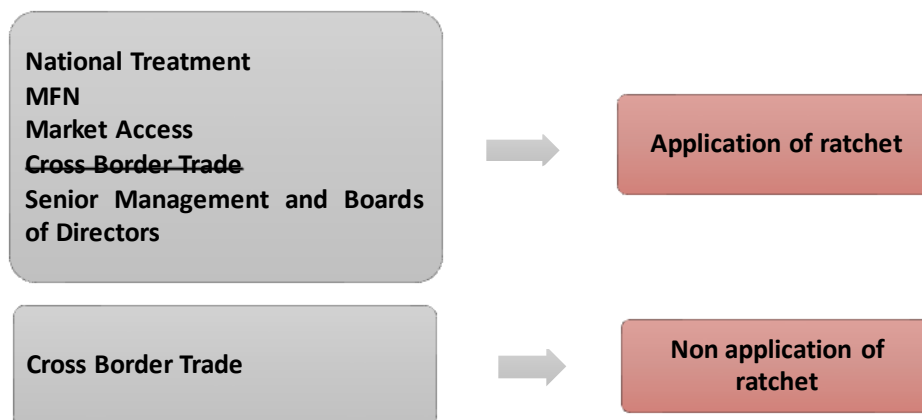
National Treatment, Most-Favoured-Nation Treatment, Market Access, Cross-Border Trade and Senior Management and Boards of Directors shall not apply to:

Any existing (**Stand still**) non-conforming measure maintained at:

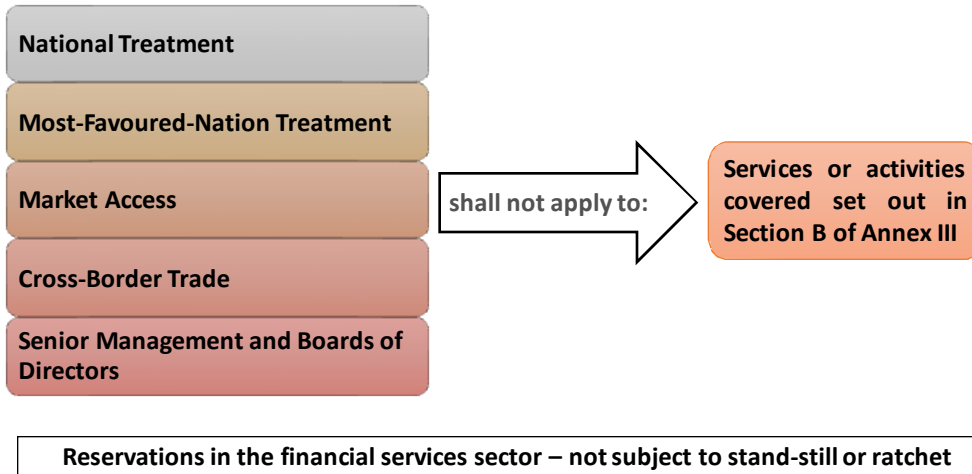


NON-CONFORMING MEASURES (2)

Measures inconsistent with :



NON-CONFORMING MEASURES (3)



RELATION WITH OTHER CHAPTERS (1)

Post-Establishment:

The Chapter incorporates Post-establishment provisions from the Investment Chapter into the Scope of the Financial Services Chapter:

- Treatment in the Case of Armed Conflict or Civil Strife
- Expropriation and Compensation
- Transfers
- Special Formalities and Information Requirements

Note: TPP incorporates also Minimum Standard of Treatment

Protection:

The Chapter also incorporates the ISDS mechanism from the Investment Chapter **ONLY** for certain provisions explicitly mentioned in the scope.

RELATION WITH OTHER CHAPTERS (2)

Non-Conforming Measures:

NCMs from Annex I or II – related to NT, MFN or SMBD



Will be treated as a Financial Services NCM related to NT, MFN or SMBD

For example:

Peru maintains a NCM Annex I related to the hiring of foreign workers. This NCM is not included in the FS NCM but it applies to the Financial Services Sector.

OTHER PROVISIONS - EXCEPTIONS

Prudential measures:

“... a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, (...) or to ensure the integrity and stability of the financial system.”

Monetary exception:

“... non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies.”

OTHER PROVISIONS – DISPUTE SETTLEMENT (2)

State-State Dispute Settlement:

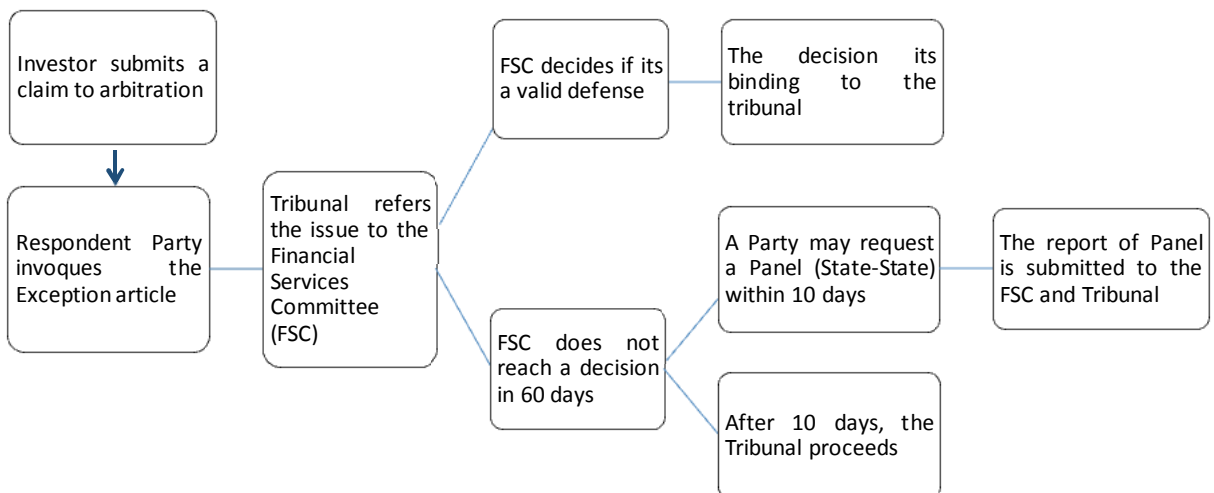
The provision seeks to ensure that any panel will be composed by financial services experts.

Investor-State Dispute Settlement:

The provision seeks to establish specific mechanisms or procedures when the Exceptions article is invoked. For example: if a Party invokes the exception for prudential reasons.

OTHER PROVISIONS - DISPUTE SETTLEMENT (2)

Example from FTA Peru-Canada – Financial Services Chapter



SPECIFIC ANNEXES (1)

A Financial Services Chapter may include specific Annexes that seek to set commitments on specific subsectors or activities.

A. Cross Border Trade Annex:

Defines the sectors committed for Mode 1

Normally includes:

Insurance:

- Relating to maritime shipping and commercial aviation and space launching and freight
- Reinsurance and retrocession
- Services auxiliary to insurance (i.e. consultancy, risk assessment)
- Insurance intermediation (i.e. brokerage)

Banking:

- Provision and transfer of financial information, and financial data processing
- Advisory and other auxiliary services

SPECIFIC COMMITMENTS (1)

B. Portfolio Management:

- Ensures the provision of:
 - (a) **Investment advice;** and
 - (b) **Portfolio management to collective investment schemes.**
- Normally, each Economy can define the term “**collective investment scheme**” according to its legislation.

C. Transfer of Information

- Ensures the transfer of information in electronic form, for data processing.

D. Other Annexes:

- Electronic Payment Services

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