Financial Services Liberalization in the World Trade Organization

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I. The Economic Impact of Financial Services

Financial services in the global economy

Efficient financial services are vital to the functioning of modern industrial economies. They provide intermediation between lenders and borrowers, allow firms to diversify and manage risk, ration capital across the economy, and provide many of the technical services necessary for both domestic and international commerce to operate. In countries with weak economies, the development of a strong financial sector is now recognized as one of the key ingredients to sustainable development.1 As international trade in goods and services assumes a more important role in the global economy, the international financial service providers are increasingly important as facilitators of transactions in the primary economy. The integration of financial institutions across borders serves to allocate capital more efficiently between national markets, stimulating real economic development.

The financial services industry constitutes a large and growing sector of both developing and developed economies. In industrialized countries, financial services account for between 2.5% and 13.3% of value-added GDP and an average of approximately 4% of the workforce. In several developing countries, financial services make up more than 5% of GDP. Moreover, because of their infrastructure role, the

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financial service sector is far more important to economic growth than its direct share in the economy implies.²

**Cross-Border Trade in Financial Services**

*Selected Countries³*

*(US$ Billion)*

<table>
<thead>
<tr>
<th></th>
<th>Receipts (Exports)</th>
<th>Expenditure (Imports)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>0.3</td>
<td>0.7</td>
</tr>
<tr>
<td>Belgium/Luxemboug</td>
<td>0.6</td>
<td>4.9</td>
</tr>
<tr>
<td>France</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>Germany</td>
<td>0.3</td>
<td>4.5</td>
</tr>
<tr>
<td>Japan</td>
<td>0.0</td>
<td>0.1</td>
</tr>
<tr>
<td>Singapore</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1.8</td>
<td>4.2</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>7.3</td>
<td>6.1</td>
</tr>
<tr>
<td>United States</td>
<td>3.0</td>
<td>5.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>13.4</strong></td>
<td><strong>25.6</strong></td>
</tr>
</tbody>
</table>

Measuring the volume of financial services trade is more difficult, but some approximations are possible. Cross-border imports of financial services by 30 of the largest industrialized and developing economies are estimated to have totaled at least $48

² Masamichi Kono, et al., *Opening Markets in Financial Services and the Role of the GATS*, WTO Special Study (Geneva: WTO, 1997). Available in hard-copy from the WTO Secretariat. The authors are particularly grateful for the assistance of Patrick Low in the collection of data for this paper, and to the staff of the WTO Economic Research and Analysis Division.

³ *Opening Markets* 13.
billion in 1995. This trade, however, is highly concentrated: roughly 75% of the total volume of imports went to only 10 importing states.\(^4\)

It should be remember, however, that cross-border transactions account for only a portion of the true value of international financial services trade, as much of the industry’s revenue is generated through the activities of firms operating directly within a foreign country. There is very little reliable information on the value of this ‘foreign affiliate’ trade – most states have not yet begun keeping accurate statistics on these transactions. For the United States, the value of imports through commercial presence is more than ten times as large as imports through cross-border trade.

**United States Financial Services Trade**\(^5\)

<table>
<thead>
<tr>
<th></th>
<th><strong>US$ Billions</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cross-Border Trade</strong></td>
<td></td>
</tr>
<tr>
<td>Exports</td>
<td>Imports</td>
</tr>
<tr>
<td>Insurance</td>
<td>1.4</td>
</tr>
<tr>
<td>Banking and Securities</td>
<td>16.1</td>
</tr>
<tr>
<td><strong>Commercial Presence</strong></td>
<td></td>
</tr>
<tr>
<td>Exports</td>
<td>Imports</td>
</tr>
<tr>
<td>Insurance</td>
<td>30.9</td>
</tr>
<tr>
<td>Banking and Securities</td>
<td>14.0</td>
</tr>
</tbody>
</table>

This trend is probably consistent across most countries, implying that liberalization of commercial presence – facilitating direct investment in another country – is probably more important financially than removing restrictions on cross-border transactions.

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\(^5\) *Opening Markets* 14. Note that because of differences in statistical methods, comparisons of values across modes of supply are not precise.
Effects of financial services liberalization

Increased trade in financial services benefits consumers and strengthens the sector as a whole. As market access is granted to foreign firms, several indicators of competitive pressure rise: banks experience shrinking net interest margins, and many show lower return on assets as their monopolistic profits are competed away. In almost all cases, the entry of foreign competition is associated with technological modernization in domestic banks, and with increased sophistication of prudential regulatory systems.

Three principal factors have contributed to the growing volume of international financial services trade:

- **Changing market structures**: Competition between different types of financial institutions has increased rapidly in recent years (especially disintermediation, putting bank lending in direct competition with capital markets as a source of firms’ financing). M&A activity has increasingly been aimed at strategically positioning firms for global operations.

- **Domestic deregulation**: Relaxation of restrictions on financial services (especially banking), increasingly pro-competitive stances by regulatory authorities, and liberalization of international capital flows have decreased the national segmentation of the financial services market.

- **New technologies**: Improved telecommunications, computing, and electronic commerce have begun to revolutionize the provision of services, both wholesale and retail, reducing costs and allowing access to a wider range of service consumers. These developments have particularly important implications for the liberalization of cross-border trade, as the internet reduces obstacles to firms dealing directly with consumers in foreign markets.

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6 It is worth noting that international liberalization often parallels domestic regulatory reform and, in some cases, privatization of the financial sector itself. While most studies attempt to disaggregate the effects of these various processes, the ultimate result may represent the influence of several factors. See, for example, Joseph Francois and Ludger Schucknecht, Trade in Financial Services: Procompetitive Effects and Growth Performance, mimeo, (Geneva: WTO, 1999).

7 In developing markets, foreign banks tend to have higher profits and higher overhead than domestic firms; the opposite is true in developed markets. Foreign banks, however, will not necessarily dominate the market in developing countries, and because of branching regulations or historical trends they may make no...
Interestingly, the benefits of competition materialize rapidly, both in industrial and developing markets: the effects of foreign entry are felt even when foreign firms do not have a large market share. Furthermore, multilateral agreements on market liberalization provide firms with a guarantee of long-term policy stability, thereby reducing the risks entailed in foreign direct investment. Foreign direct investment (the investment of a foreign firm in the controlling interest of a domestic firm, or creation of an entirely new entity) is particularly vital in developing countries, as direct competition from foreign firms is a powerful incentive for domestic incumbents to pursue ‘best practices’ technical development.

II. The WTO and Financial Services

The WTO and the multilateral agreements on trade in services

The World Trade Organization (WTO) was established in 1995 as the successor to the General Agreement on Tariffs and Trade (GATT), the first international body created explicitly to foster international trade. The core principles of the GATT were most-favored-nation treatment (MFN – the rule that all reductions in tariff barriers should be extended unconditionally to all trading partners), transparency, and progressive liberalization through successive rounds of negotiation. Between 1947 and 1995, the GATT proved very successful at lowering formal barriers to trade – tariffs and quotas – and at facilitating mutually beneficial compromises between member governments. The GATT suffered, however, from weak enforcement mechanisms and a limited agenda (dealing only with trade in goods). The Uruguay Round of trade negotiations, 1986-

1994, dramatically revised the structure of the GATT and created a new organization, the WTO, to administer a much broader mandate and more powerful regulatory tools.

The WTO is an international institution established by treaty. The organization consists of the Secretariat, based in Geneva and composed of roughly 500 professional economists, lawyers, and support staff, and the Council, made up of diplomatic representatives of the member states. All decisions in the WTO are made by the Council or its committees; the Secretariat provides only technical and analytic support to the Council's deliberations.

The WTO functions as an administrative ‘umbrella’ for a large number of international agreements regulating international trade. The major treaties incorporated into the WTO structure are the GATT, the General Agreement on Trade in Services (GATS), the Agreement on Trade Related Investment Measures (TRIMs), and the Trade Related Intellectual Property Agreement (TRIPs). In addition, the WTO oversees numerous subsidiary agreements, dealing with subjects as diverse as agriculture, textiles, and maritime transport.

Creating the GATS

The GATS was a response to policy-makers’ appreciation that trade in services, as opposed to trade in goods, had come to play an increasingly important role in the modern global economy, while being largely ignored by the existing trade-policy architecture. The structure of the GATS and the relevant provisions on financial services were established at the conclusion of the Uruguay Round in December 1993. Specific liberalization measures within the GATS framework, however, remained a contentious

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8 See Francois and Schucknecht, supra.
issue for another four years. The United States particularly, and the European Union as well, viewed financial liberalization as a vitally important aspect of a successful negotiating round. Developing countries, however, generally felt that liberalization of financial services would inevitably occur at the expense of their domestic industries. Significantly, Japan joined the developing states in resisting significant liberalizing commitments.

At the end of 1993, therefore, negotiations in financial services were deadlocked. Rather than declare failure, however, negotiators extended the deadline for agreement and continued work. Under heavy pressure from the United States,9 Japan agreed to a comprehensive package of financial services undertakings, and 47 developing countries had scheduled financial services liberalization into their GATS commitments. An interim Protocol on Financial Services was agreed in July 1995, and a final Financial Services Agreement (FSA) was concluded on 13 December 1997; the FSA entered into force on 1 March 1999. By the conclusion of the negotiations, 102 WTO Members had made legally binding commitments in financial services.10

The Structure of the GATS

The GATS essentially takes the central concepts of the old agreement GATT system on trade in goods (MFN, national treatment, and transparency) and applies them

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9 In June of 1995, the US stated that unless more sincere liberalization was achieved in the GATS context, it would exempt the entire financial services sector from MFN treatment: in essence a decision to withdraw from multilateral negotiations. Implicit in this warning was the idea of American unilateral action, particularly selective market liberalization from which some states would be excluded. This threat was influential in forcing the Japanese hand during the 1995-1997 period, and the US MFN exemption was withdrawn prior to conclusion of the 1997 FSA.

to the realm of services trade. Because of the practical differences between trade in services and trade in goods, however, some refinements and alterations to the relatively simple GATT structure were necessary.

The GATS breaks down trade in services into roughly a dozen broad sectors – distribution services, professional services, transportation services, communications services, financial services, etc. For purposes of the GATS, therefore, financial services are simply one sector of all tradable services. Under the GATS, states commit separately to liberalize each service sector.

Further, for each service sector, the GATS defines four means of delivery, or ‘modes’, by which services can be traded between states:

<table>
<thead>
<tr>
<th>Mode</th>
<th>Description</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cross-border supply (a service supplied from the territory of one state into the territory of another)</td>
<td>A firm operating only in State X obtains a loan from a bank operating only in State Y.</td>
</tr>
<tr>
<td>2</td>
<td>Foreign purchase (a service supplied in the territory of one state to a consumer who is a resident of another state)</td>
<td>A firm based in State X opens a checking account with a bank in State Y for transactions made in State Y.</td>
</tr>
<tr>
<td>3</td>
<td>Commercial presence (a service supplied within the territory of one state through a permanent place of business maintained by a resident of another state)</td>
<td>A bank based in State Y opens a branch in State X to provide loans and checking services to firms operating in State X.</td>
</tr>
<tr>
<td>4</td>
<td>Movement of natural persons (a service supplied in the territory of one state through the presence of natural persons who are residents of another state)</td>
<td>A bank based in State Y staffs its branch office in State X with managers drawn from its central offices in State Y.</td>
</tr>
</tbody>
</table>

11 Articles II and XVI of the GATS, which apply to all services sectors, establish the principle of MFN treatment for services, Article XVII deals with national treatment issues, and Article III provides for transparency in regulation of services trade. Articles XXII and XXIII establish a process for formal consultation between signatories and, in case of disputes, for binding arbitration.

12 General Agreement on Trade in Services, Article 1, paragraph 2.
The financial services sector is defined very broadly in the GATS, and is then divided into sixteen sub-categories of activities which fall under the financial services rubric. These categories are listed in the Financial Services Annex to the GATS:\(^\text{13}\)

- a) direct insurance (both life and non-life);
- b) reinsurance and retrocession;
- c) insurance intermediation, such as brokerage;
- d) ‘auxiliary’ insurance services (consultancy, actuarial services, etc.);
- e) acceptance of bank deposits;
- f) lending of all types;
- g) financial leasing;
- h) payment systems;
- i) guarantees and commitments;
- j) trading, either for one’s own account or for others;
- k) issuing of securities;
- l) money broking;
- m) asset management;
- n) settlement and clearing services;
- o) providing of financial information or data;
- p) ‘auxiliary’ financial services (research and advice, corporate consulting, etc.).

It is important to note what has been brought within this sector. The combination of both insurance and banking, and the inclusion of a wide range of activities within the designation of ‘financial services’, was partially a tactical negotiation technique – the greater the scope of the agreement, the less chance that the negotiation would be ‘captured’ by one of the industries at risk to foreign competition.\(^\text{14}\)

How states liberalize under GATS

The liberalization process under GATS is two-fold: signatories to the GATS (‘members’) deposit with the WTO a list (‘schedules’) of those services sectors they

\(^{13}\) GATS, Annex on Financial Services, Article 5, part (a). The Financial Services Annex is technically an intrinsic part of the GATS (unlike the Financial Services Understanding, discussed below). The Annex serves mainly to define terms relating to financial services with more precision than is possible in the body of the GATS itself.

\(^{14}\)
intend to liberalize – distribution services, professional services, maritime services, financial services, etc. Within each scheduled service sector, they list the limitations (‘exemptions’) on MFN and national treatment they wish to maintain.\(^\text{15}\)

States commit separately to liberalize each mode within each committed sector. Liberalization commitments can therefore be envisioned as a grid, with sectors on the vertical axis and modes of supply along the horizontal access, and liberalization commitments inside the grid:

<table>
<thead>
<tr>
<th>Sector</th>
<th>Mode 1</th>
<th>Mode 2</th>
<th>Mode 3</th>
<th>Mode 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distribution services</td>
<td>Yes</td>
<td>No</td>
<td>Yes, but subject to discretionary licensing</td>
<td>No</td>
</tr>
<tr>
<td>Transportation services</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Financial services</td>
<td>Yes</td>
<td>No</td>
<td>Yes, but subject to discretionary licensing</td>
<td>No</td>
</tr>
</tbody>
</table>

In this example, the state has committed to liberalize trade in the financial services sector, but only for Modes 1 and 3 (cross-border trade and trade through commercial presence). The state has made no commitment with regard to purchase of financial services abroad (Mode 3), nor any commitment concerning movement of natural persons (Mode 4). In addition, the commitment to commercial presence liberalization has been subject to the limitation that foreign financial service providers must receive licenses from government regulators; such discretionary licensing provisions are common and can present significant barriers to firms’ international

\(^{14}\) As with Glass-Steagall reform in the United States, liberalization of international financial regulation proved possible only in circumstances where the interests of banks and insurance firms could be balanced against one another and provide grounds for a compromise.

\(^{15}\) A limitation on MFN would entail discrimination between firms from different trading partners, and is generally associated with free-trade agreements; i.e. the United States maintains higher entry barriers to Brazilian firms than to Canadian firms due to obligations under NAFTA. A limitation on national treatment implies discrimination between domestic and foreign firms; such discrimination is normal, for instance, in government procurement markets, where the purchasing government is often expected to look first for domestic suppliers.
operations. Naturally, real commitments are far more complex and detailed than this example. Please see the appendices for the complete text of an actual GATS schedules, representing commitments and exceptions in financial services.

The approach described above is referred to as a ‘positive list’ of commitments, and the default option – if a Member does not schedule a particular sector – is that there is no liberalizing commitment with regard to that type of services. The positive list was opposed by many OECD countries, who argued for a more strenuous ‘negative list’, where liberalization is required unless a member specifically registers an exemption – essentially, with a ‘negative list’, the default option would be liberalization. The ‘negative list’ model was successfully resisted by developing countries, which generally wanted to maintain their freedom for later maneuver and feared too rapid opening of their services markets to competitors from more advanced states.

Substance of the GATS commitment

For those sectors which a state commits to liberalize, including financial services, the GATS imposes certain uniform requirements:

- **All services** within a committed sector are covered by GATS obligations, unless the state specifically exempts them at the time of signing the agreement
- **Most-favoured-nation treatment** applies: states must extend liberalizing privileges equally to all members of the WTO, and exceptions to the rule must be specifically exempted
- **National treatment** is required: states may not discriminate between the domestic and foreign suppliers, except to the extent specifically stated when joining the GATS
- **Transparency** in policy: regulations must be published and accessible
- **Regulations** have to be objective and reasonable
- **International payments** are normally unrestricted
- **Progressive liberalization**, increasing the number of liberalized sectors and reducing exemptions within sectors, is achieved through all states’ commitment to continuing negotiations
The blanket provisions of the GATS are subject to serious qualifications. Members may protect discriminatory practices by ‘scheduling’ specific exemptions at the time of ratifying the GATS. Transparency is limited to a requirement that regulations be published domestically; there is no provision for notifying the WTO of specific market-restrictive policies.

Most OECD members have gone beyond the general requirements of the GATS and adopted an auxiliary agreement known as the Financial Services Understanding (FSU). The FSU is a legal addendum to the GATS and preserves aspects of the ‘negative list’ approach. The Understanding can be ascribed to voluntarily by GATS members and commits those states to deeper and more detailed market liberalization than the GATS alone: it contains undertakings relating to competition policy, supply of new financial services, information transfer, and temporary entry of personnel. The Understanding, however, has not been adopted by any states outside the OECD, and the majority of WTO members are bound by the less stringent general requirements of the GATS.

It is important to understand that scheduled commitments are legally binding on the signatory. Discrimination against foreign firms, in ways not permitted by the GATS and not covered by scheduled exemptions, can be grounds for a dispute settlement action in the WTO. If a member is found in violation of its GATS obligations, the state harmed by the unlawful discrimination may impose trade sanctions as retaliation.

**Domestic regulation under the GATS**

The GATS provisions on domestic regulation are particularly meaningful for the financial services sector. The GATS establishes that domestic regulation shall be
‘administered in a reasonable, objective and impartial manner,’ and that states shall enter into consultation for the elimination of unnecessary regulatory barriers to trade.\textsuperscript{17} The Financial Services Annex limits that requirement, however, by allowing Members to freely undertake ‘prudential’ regulation for the protection of consumers or to insure the stability of the financial system, so long as regulation is not used as a means of avoiding scheduled commitments.\textsuperscript{18}

OECD states took a significant step forward through Article 10 of the Financial Services Understanding, committing signatories to ‘remove or limit’ market access limitations imposed by \textit{non-discriminatory} regulatory measures, such as reporting obligations or reserve requirements. This provision has substantial implications for potential regulatory harmonization.

Enforcement of GATS obligations is member-driven (injured firms cannot initiate dispute proceedings, only their governments), and a weak ‘will to enforce’ could vitiate the impact of many of these liberalizing measures. There have been as yet no dispute resolution cases dealing with the extent of the ‘regulatory carve-out’ created by the Financial Services Annex or the Understanding, and it is not clear how forcefully Member states will seek to police their trading partners’ regulatory provisions, nor how successful they will be in removing offending provisions through the WTO dispute resolution process.

\textsuperscript{16} Understanding on Commitments in Financial Services, Articles 1, 2, 7, 8, and 9.
\textsuperscript{17} GATS, Article VI.
\textsuperscript{18} Annex on Financial Services, Article 2(a).
III. Where we stand: the results of the Financial Services Agreement

A quantitative analysis of the impact of the FSA is, at the moment, impossible. In part, this difficulty stems from the nature of the positive list approach: signatories to the agreement are required to notify the WTO only of market restrictions within their scheduled sectors, and so information on non-scheduled sectors is systematically lacking. More importantly, the access restrictions listed in the schedules are generally quite broad, making it difficult for analysts to assess their real economic impact. In addition to creating statistical challenges, the lack of transparency in the GATS has real implications for global trade: the more difficult it is for suppliers to assess the barriers they face, the greater the risks and costs involved in trade.

Another problem from trade in goods has also manifested itself in the services schedules: the gap between ‘bound’ and ‘applied’ rates of protection. In goods trade, this manifests itself as ‘water’ in the tariff schedules – a legally bound rate of protection that is higher than the rate actually applied by the importing country. In services trade, the bound/applied spread occurs when states have refused to bind their commitments to the actual degree of market access they now allow. This is problematic for future negotiations: it is very difficult to determine which sectors are actually subject to the highest level of applied protection.\(^{19}\) It is also potentially disruptive of real trade in services. Service providers rely on multilateral obligations to enforce stability in a state’s regulatory structure. If, however, the state does not fully bind its existing level of market openness, then foreigners trading in that state are still subject to arbitrary changes in policy, increasing their uncertainty and the risk of doing business abroad.

\(^{19}\) Since WTO Members only notify the Secretariat of market *restrictions* beyond the level of their commitments, the WTO has no information on market *access* policies that exceed those requirements.
Analysis of commitments

Despite these quantitative difficulties, however, a number of studies have begun to categorize and evaluate some of the commitments made under the FSA, indicating the outlines of the agreement which has been reached, and pointing toward several key areas for future negotiations. The commitments are generally discussed according to three criteria: the sector involved (insurance, investment banking, stock brokerage, etc.); mode of supply; and economic status of the state making the commitment.

In terms of sectoral comparisons, most signatories to the FSA made commitments in all three of the ‘core’ areas of insurance, banking, and securities. A large majority (roughly 80%) of the limitations on commitments, however, have been made in banking and other non-insurance sectors. Insurance, and re-insurance particularly, was subjected to relatively light limitations, many of which involve regulatory measures which might, in fact, have been exempt from scheduling under the regulatory carve-out provisions. Banking services (particularly retail banking, where consumer protection concerns are paramount) were scheduled with heavy qualifications and restrictions on commitments.

In all sectors, the majority of commitments (though with many limitations on those commitments) were scheduled in Mode 3 (commercial presence). Mode 1 (cross-border transactions) and Mode 2 (consumption abroad) were frequently either bound

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20 It should be realized that the majority of these studies are ‘frequency analyses’ – they count the absolute number of scheduled limitations, regardless of that limitation’s economic importance. As an estimate of real market restriction, such studies can give only a broad impression. A comprehensive frequency analysis of all FSA commitments is currently being produced by the Trade in Services Division of the WTO Secretariat, and will hopefully be available in early 2000.

21 See WTO Secretariat, supra, 17.
completely, without limitations, or were not bound at all.\textsuperscript{22} Mode 4 (movement of natural persons) was dealt with by almost all states in ‘horizontal’ commitments effecting all GATS sectors equally; as a rule, Mode 4 liberalization was insignificant.

\begin{table}
\centering
\begin{tabular}{|l|c|c|c|}
\hline
\textbf{Sector} & \textbf{Subsector} & \textbf{Number of states scheduling commitments} & \textbf{Percent of FSA signatories scheduling commitments} \\
\hline
\textbf{Insurance} & Life & 69 & 68\% \\
& Non-life & 73 & 72\% \\
& Reinsurance & 78 & 76\% \\
& Intermediation & 57 & 56\% \\
\hline
\textbf{Banking} & Deposits & 82 & 80\% \\
& Lending & 83 & 81\% \\
& Forex trading & 62 & 61\% \\
& Derivatives trading & 44 & 43\% \\
\hline
\textbf{Securities} & Securities trading & 68 & 67\% \\
& Underwriting & 63 & 62\% \\
\hline
\textbf{Other} & Asset management & 63 & 62\% \\
& Financial information & 58 & 57\% \\
\hline
\end{tabular}
\caption{Results of the FSA: Commitments by Sector \hfill (data as of December 1998)\textsuperscript{23}}
\end{table}

In general, industrialized states scheduled more comprehensive commitments than developing ones, and had fewer limitations on those sectors that they did schedule. Developing countries seem to have placed greater emphasis than industrialized ones on licensing requirements and regulations concerning the legal structure of the firm. Many countries, both industrialized and developing, require that foreign firms supplying services in their markets maintain a local presence (either a branch or subsidiary) through which they conduct their business and by which they would be subject to domestic auditing, oversight, and control.

\textsuperscript{22} Ying Qian, “Financial services liberalization and GATS: Analysis of the commitments under the General Agreement on Trade in Services (GATS) at the World Trade Organization (WTO),” mimeo (Manilla: Asian Development Bank, 1999).

\textsuperscript{23} WTO Secretariat, “Financial Services: Background note by the Secretariat,” S/C/W/72 (Geneva: WTO, 2 December 1998) Table 10. This is one of the most recent, and possibly the most thorough, Secretariat document dealing with FSA results; a new study on types of limitations was expected before 2000.
## Results of the FSA: Market Access Commitments in Selected Countries

*(data as of February 1998)*

<table>
<thead>
<tr>
<th>Status quo plus</th>
<th>Banking</th>
<th>Insurance</th>
<th>Securities</th>
</tr>
</thead>
<tbody>
<tr>
<td>(greater market access to foreign firms after signing the GATS than previously)</td>
<td>Malaysia</td>
<td>Brazil</td>
<td>Brazil</td>
</tr>
<tr>
<td></td>
<td>Mexico</td>
<td>Indonesiia</td>
<td>Indonesia</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Japan</td>
<td>South Korea</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Philippines</td>
<td>Malaysia</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mexico</td>
<td>Philippines</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Status quo</th>
<th>Banking</th>
<th>Insurance</th>
<th>Securities</th>
</tr>
</thead>
<tbody>
<tr>
<td>(pre-GATS market access terms are guaranteed through scheduled commitments)</td>
<td>Argentina</td>
<td>Chile</td>
<td>Argentina</td>
</tr>
<tr>
<td></td>
<td>Brazil</td>
<td>India</td>
<td>Thailand</td>
</tr>
<tr>
<td></td>
<td>Chile</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>India</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Indonesia</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Japan</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>South Korea</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Thailand</td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Less than status quo</th>
<th>Banking</th>
<th>Insurance</th>
<th>Securities</th>
</tr>
</thead>
<tbody>
<tr>
<td>(binding commitments scheduled in the GATS are less liberal than those in place before the agreement)</td>
<td>Philippines</td>
<td>Malaysia</td>
<td>Chile</td>
</tr>
</tbody>
</table>

Developing countries showed a distinct bias away from Mode 3 (commercial presence) commitments. Direct foreign establishment in a host country leads to the greatest increase in competition and hence the greatest economic gains – the foreign firm has control of the management and, often, can bring in trained personnel from abroad. There is some evidence, however, that in making market-access commitments, many LDCs have chosen to allow foreigners only minority equity participation in existing firms, rather than permitting outright competition from newcomers.\(^{25}\) This system will redistribute monopoly profits from domestic shareholders to foreign shareholders, but will do little to improve efficiency. LDCs have also failed to offer many commitments on cross-border competition, possibly due to regulatory concerns and fears of unrestrained capital inflows. Nonetheless, it seems clear that developing countries

\(^{24}\) From Dobson and Jacquet, 93.
viewed the FSA as a means of injecting foreign capital into their domestic institutions rather than as a tool for actually increasing competition.

**Final considerations**

One of the major goals of the GATS was to enhance the transparency of regulations governing trade in services. The current system does not adequately fulfill this requirement. Signatories to the FSA are not required to notify anyone of the actual state of their market access restrictions. There are no policies for tracking the implementation of FSA commitments – particularly important in developing countries, where implementation might be long and technically difficult. Service providers have no assurance that the scheduled commitments represent the applied regulatory regime at the moment, or that the applied regime is legally guaranteed.

The FSA does, however, commit signatories to future negotiations, and in some cases to specific future liberalizing measures. Article XIX of the GATS requires that signatories enter into further rounds of negotiations for progressive liberalization within 5 years of the ratification of the agreement. Thus to an extent the rules provide a built-in mechanism for incremental broadening of market opening commitments. The effect of such negotiations, however, will depend entirely on the political will of the participants and the perceived benefits of earlier liberalization measures.

The WTO Seattle Ministerial in November, 1999, failed to provide any forward movement on services liberalization, though for reasons largely unrelated to the

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26 See Mattoo for examples of liberalizing commitments scheduled for dates in the future. These commitments are legally binding under WTO law.
substance of the services negotiations. To an extent, however, progress would have been remarkable no matter how well the rest of the negotiations had gone: the FSA discussions ended less than 3 years ago, and all participants are still suffering from ‘negotiation fatigue’. Future liberalization, therefore, will now be a matter of slow and cautious negotiation within the WTO Council, possibly leading to a renewed initiative in several years.

For industrialized states, with relatively open markets and low barriers to foreign competition, the priority is now regulatory harmonization. Market access negotiations are relatively unimportant so long as non-discriminatory barriers remain high and costly. Thus the next item of business for the OECD states should be the development of a process (similar to the Understanding on Telecommunications) for mutual recognition and harmonization of prudential regulation.

In the developing countries, market access restrictions are still substantial. It is important that LDCs focus on commitments for the opening of their markets to direct foreign competition, especially in banking services. Reducing obstacles to commercial presence, in particular, should be at the heart of the LDC agenda, as it this type of competition which presents the possibility of greatest benefits, both for foreign firms and the domestic economy.

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27 Disturbances by civil society groups in Seattle probably played a less significant role in the outcome of the negotiations than disagreements between industrialized- and developing-countries over treatment of agriculture and textiles.
Appendix I:

GATS Annex on Financial Services

1. **Scope and Definition**

(a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article I of the Agreement.

(b) For the purposes of subparagraph 3(b) of Article I of the Agreement, "services supplied in the exercise of governmental authority" means the following:
   (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
   (ii) activities forming part of a statutory system of social security or public retirement plans; and
   (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

(c) For the purposes of subparagraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in subparagraphs (b) (ii) or (b) (iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

(d) Subparagraph 3(c) of Article I of the Agreement shall not apply to services covered by this Annex.

2. **Domestic Regulation**

(a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement.

(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. **Recognition**

(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(b) A Member that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.

(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII shall not apply.

4. **Dispute Settlement**

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.
5. Definitions

For the purposes of this Annex:
(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

**Insurance and insurance-related services**
(i) Direct insurance (including co-insurance):
   (A) life
   (B) non-life
(ii) Reinsurance and retrocession;
(iii) Insurance intermediation, such as brokerage and agency;
(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

**Banking and other financial services (excluding insurance)**
(v) Acceptance of deposits and other repayable funds from the public;
(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
(vii) Financial leasing;
(viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
(ix) Guarantees and commitments;
(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
   (A) money market instruments (including cheques, bills, certificates of deposits);
   (B) foreign exchange;
   (C) derivative products including, but not limited to, futures and options;
   (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
   (E) transferable securities;
   (F) other negotiable instruments and financial assets, including bullion.
(xii) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
(xii) Money broking;
(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

(c) "Public entity" means:
   (i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
   (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
Appendix II:
The Financial Services Understanding

Participants in the Uruguay Round have been enabled to take on specific commitments with respect to financial services under the General Agreement on Trade in Services (hereinafter referred to as the "Agreement") on the basis of an alternative approach to that covered by the provisions of Part III of the Agreement. It was agreed that this approach could be applied subject to the following understanding:
(i) it does not conflict with the provisions of the Agreement;
(ii) it does not prejudice the right of any Member to schedule its specific commitments in accordance with the approach under Part III of the Agreement;
(iii) resulting specific commitments shall apply on a most-favoured-nation basis;
(iv) no presumption has been created as to the degree of liberalization to which a Member is committing itself under the Agreement.

Interested Members, on the basis of negotiations, and subject to conditions and qualifications where specified, have inscribed in their schedule specific commitments conforming to the approach set out below.

A. Standstill

Any conditions, limitations and qualifications to the commitments noted below shall be limited to existing non-conforming measures.

B. Market Access

Monopoly Rights

1. In addition to Article VIII of the Agreement, the following shall apply:
   Each Member shall list in its schedule pertaining to financial services existing monopoly rights and shall endeavour to eliminate them or reduce their scope. Notwithstanding subparagraph 1(b) of the Annex on Financial Services, this paragraph applies to the activities referred to in subparagraph 1(b)(iii) of the Annex.

Financial Services purchased by Public Entities

2. Notwithstanding Article XIII of the Agreement, each Member shall ensure that financial service suppliers of any other Member established in its territory are accorded most-favoured-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Member in its territory.

Cross-border Trade

3. Each Member shall permit non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, and under terms and conditions that accord national treatment, the following services:
   (a) insurance of risks relating to:
      (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
      (ii) goods in international transit;
   (b) reinsurance and retrocession and the services auxiliary to insurance as referred to in subparagraph 5(a)(iv) of the Annex;
   (c) provision and transfer of financial information and financial data processing as referred to in subparagraph 5(a)(xv) of the Annex and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph 5(a)(xvi) of the Annex.
4. Each Member shall permit its residents to purchase in the territory of any other Member the financial services indicated in:
   (a) subparagraph 3(a);
   (b) subparagraph 3(b); and
   (c) subparagraphs 5(a)(v) to (xvi) of the Annex.

Commerce Presence

5. Each Member shall grant financial service suppliers of any other Member the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence.

6. A Member may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the Member's obligation under paragraph 5 and they are consistent with the other obligations of the Agreement.

New Financial Services

7. A Member shall permit financial service suppliers of any other Member established in its territory to offer in its territory any new financial service.

Transfers of Information and Processing of Information

8. No Member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph restricts the right of a Member to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of the Agreement.

Temporary Entry of Personnel

9. (a) Each Member shall permit temporary entry into its territory of the following personnel of a financial service supplier of any other Member that is establishing or has established a commercial presence in the territory of the Member:
   (i) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and
   (ii) specialists in the operation of the financial service supplier.
(b) Each Member shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other Member:
   (i) specialists in computer services, telecommunication services and accounts of the financial service supplier; and
   (ii) actuarial and legal specialists.

Non-discriminatory Measures

10. Each Member shall endeavour to remove or to limit any significant adverse effects on financial service suppliers of any other Member of:
(a) non-discriminatory measures that prevent financial service suppliers from offering in the Member's territory, in the form determined by the Member, all the financial services permitted by the Member;
(b) non-discriminatory measures that limit the expansion of the activities of financial service suppliers into the entire territory of the Member;
(c) measures of a Member, when such a Member applies the same measures to the supply of both banking and securities services, and a financial service supplier of any other Member concentrates its activities in the provision of securities services; and
(d) other measures that, although respecting the provisions of the Agreement, affect adversely the ability of financial service suppliers of any other Member to operate, compete or enter the Member's market; provided that any action taken under this paragraph would not unfairly discriminate against financial service suppliers of the Member taking such action.

11. With respect to the non-discriminatory measures referred to in subparagraphs 10(a) and (b), a Member shall endeavour not to limit or restrict the present degree of market opportunities nor the benefits already enjoyed by financial service suppliers of all other Members as a class in the territory of the Member, provided that this commitment does not result in unfair discrimination against financial service suppliers of the Member applying such measures.

C. National Treatment

1. Under terms and conditions that accord national treatment, each Member shall grant to financial service suppliers of any other Member established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Member's lender of last resort facilities.

2. When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Member in order for financial service suppliers of any other Member to supply financial services on an equal basis with financial service suppliers of the Member, or when the Member provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Member shall ensure that such entities accord national treatment to financial service suppliers of any other Member resident in the territory of the Member.

D. Definitions

For the purposes of this approach:

1. A non-resident supplier of financial services is a financial service supplier of a Member which supplies a financial service into the territory of another Member from an establishment located in the territory of another Member, regardless of whether such a financial service supplier has or has not a commercial presence in the territory of the Member in which the financial service is supplied.

2. "Commercial presence" means an enterprise within a Member's territory for the supply of financial services and includes wholly- or partly-owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations.

3. A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular Member but which is supplied in the territory of another Member.
Appendix III:
Sample schedules of commitments and exemptions
in financial services

Appendix III(a): “How to read a GATS schedule” (from www.wto.org)

Appendix III(b): Schedule of Specific Commitments, Australia

Appendix III(c): List of Article II exemptions, United States of America

N.B.: These two schedules were selected as typical, but not overly long, examples of the commitments and exemptions in financial services under the GATS. A more complete list is available at www.wto.org/wto/services/finsched.htm.
Appendix III(a)

GUIDE TO READING THE GATS SCHEDULES OF SPECIFIC COMMITMENTS AND THE LISTS OF ARTICLE II (MFN) EXEMPTIONS

Introduction

The General Agreement on Trade in Services consists of the framework agreement - the Articles of the Agreement - and its Annexes, and the schedules of specific commitments and the lists of exemptions from MFN treatment submitted by member governments. The schedules and the exemption lists are integral parts of the Agreement. At the time of the signature of the Final Act of the Uruguay Round, on 15 April 1994, 95 schedules of specific commitments in services and 61 lists of derogations from the MFN principle had been submitted and agreed.

It is only by reference to a country’s schedule, and (where relevant) its MFN exemption list, that it can be seen to which services sectors and under what conditions the basic principles of the GATS - market access, national treatment and MFN treatment - apply within that country’s jurisdiction. The schedules are complex documents in which each country identifies the service sectors to which it will apply the market access and national treatment obligations of the GATS and any exceptions from those obligations it wishes to maintain. The commitments and limitations are in every case entered with respect to each of the four modes of supply which constitute the definition of trade in services in Article I of the GATS: these are cross-border supply; consumption abroad; commercial presence; and presence of natural persons:

- **Cross-border supply** - the possibility for non-resident service suppliers to supply services cross-border into the Member’s territory.
- **Consumption abroad** - the freedom for the Member’s residents to purchase services in the territory of another Member.
- **Commercial presence** - the opportunities for foreign service suppliers to establish, operate or expand a commercial presence in the Member’s territory, such as a branch, agency, or wholly-owned subsidiary.
- **Presence of natural persons** - the possibilities offered for the entry and temporary stay in the Member’s territory of foreign individuals in order to supply a service.

In order to determine the real level of market access represented by a given schedule it is therefore necessary to examine the range of activities covered in each service sector and the limitations on market access and national treatment pertaining to the different modes of supply. In addition, in cases where a country has also tabled a list of MFN exemptions, this must be examined in order to assess the extent to which the country gives preferential treatment to, or discriminate against, one or more of its trading partners.

The purpose of this introduction is to assist users to read and interpret the schedules and exemption lists and to assess their commercial significance.

A. Schedules of Specific Commitments

A specific commitment in a services schedule is an undertaking to provide market access and national treatment for the service activity in question on the terms and conditions specified in the schedule. When making a commitment a government therefore binds the specified level of market access and national treatment and undertakes not to impose any new measures that would restrict entry into the market or the operation of the service. Specific commitments thus have an effect similar to a tariff binding - they are a guarantee to economic operators in other countries that the conditions of entry and operation in the market will not be changed to their disadvantage. Commitments can only be withdrawn or modified after the agreement of compensatory adjustments with affected countries, and no withdrawals or modifications may be made until three years after entry into force of the Agreement. Such modifications of commitments may
not affect the application of most-favoured-nation (MFN) treatment. Commitments can however be added or improved at any time.

The national schedules all conform to a standard format which is intended to facilitate comparative analysis. For each service sector or sub-sector that is offered, the schedule must indicate, with respect to each of the four modes of supply, any limitations on market access or national treatment which are to be maintained. A commitment therefore consists of eight entries which indicate the presence or absence of market access or national treatment limitations with respect to each mode of supply. The first column in the standard format contains the sector or subsector which is the subject of the commitment; the second column contains limitations on market access; the third column contains limitations on national treatment. In the fourth column governments may enter any additional commitments which are not subject to scheduling under market access or national treatment.

In nearly all schedules, commitments are split into two sections: First, "horizontal" commitments which stipulate limitations that apply to all of the sectors included in the schedule; these often refer to a particular mode of supply, notably commercial presence and the presence of natural persons. Any evaluation of sector-specific commitments must therefore take the horizontal entries into account. In the second section of the schedule, commitments which apply to trade in services in a particular sector or subsector are listed. The terminology used in schedules has also been standardized wherever possible. What follows is a description of the information which has to be inscribed in each column of the schedules and a summary of the terminology used.

The information that is entered in the columns

- **Sector or sub-sector column**: this column contains a clear definition of the sector, subsector or activity that is the subject of the specific commitment. Members are free, subject to the results of their negotiations with other participants, to identify which sectors, subsectors or activities they will list in their schedules, and it is only to these that the commitments apply. It will be seen that committed sectors are sometimes very broad, as in "banking and other financial services" and sometimes very narrow, as in "noise abatement services".

In the great majority of schedules the order in which the sectors are listed corresponds to the GATT Secretariat classification which lists twelve broad sectors as follows: 1. Business; 2. Communication; 3. Construction and Engineering; 4. Distribution; 5. Education; 6. Environment; 7. Financial; 8. Health; 9. Tourism and Travel; 10. Recreation, Cultural, and Sporting; 11. Transport; 12. "Other". Furthermore, in most cases, the sectoral entries are accompanied by numerical references to the Central Product Classification system of the United Nations which gives a detailed explanation of the services activities covered by each listed sector or subsector, and on which the secretariat list is based. Where this was not possible, listings are to provide a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment.

- **Market access column**: When a Member undertakes a commitment in a sector or subsector it must indicate for each mode of supply what limitations, if any, it maintains on market access. Article XVI:2 of the GATS lists six categories of restriction which may not be adopted or maintained unless they are specified in the schedule. All limitations in schedules therefore fall into one of these categories. They comprise four types of quantitative restriction plus limitations on types of legal entity and on foreign equity participation.

- **National treatment column**: The national treatment obligation under Article XVII of the GATS is to accord to the services and service suppliers of any other Member treatment no less favourable than is accorded to domestic services and service suppliers. A Member wishing to maintain any limitations on national treatment - that is any measures which result in less-favourable treatment of foreign services or service suppliers - must indicate these limitations in the third column of its schedule.

- **Additional commitments column**: Entries in this column are not obligatory but a Member may decide in a given sector to make additional commitments relating to measures other than those
subject to scheduling under Articles XVI and XVII, for example qualifications, standards and licensing matters. This column is to be used to indicate positive undertakings, not the listing of additional limitations or restrictions.

**How commitments are recorded in schedules**

In essence, the entries which constitute a legally binding commitment in a Member’s schedule indicate the presence or absence of limitations on market access and national treatment in relation to each of the four modes of supply for a listed sector, sub-sector or activity. In the following cases the entries use **uniform terminology**:

- Where there are no limitations on market access or national treatment in a given sector and mode of supply, the entry reads **NONE**. However, it should be noted that when the term **NONE** is used in the second or sector-specific part of the schedule it means that there no limitations **specific to this sector**: it must be borne in mind that, as noted above, there may be relevant horizontal limitations in the first part of the schedule.
- All commitments in a schedule are bound unless otherwise specified. In such a case, where a Member wishes to remain free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment, the Member has entered in the appropriate space the term **UNBOUND**.
- In some situations a particular mode of supply - such as the cross-border supply of bridge-building services - may not be technically possible or feasible. In such cases the term **UNBOUND* has been used, usually in conjunction with an explanatory footnote stating "Unbound due to lack of technical feasibility".

In many cases it will be seen that there are textual descriptions of bound commitments which indicate limitations on market access or national treatment. Such entries, which vary in length considerably, do not use uniform terminology but are based on one of two **common approaches**:

- The entry describes in the appropriate space the nature of the limitation, indicating the elements which make it inconsistent with Articles XVI and XVII of the GATS.
- In some cases, Members have chosen to indicate a limited commitment by describing what they are offering rather than the limitations they are maintaining. Such an approach is often used to indicate the market access opportunities for the entry of certain categories of foreign natural persons who supply services.

**B. Lists of Article II (MFN) Exemptions**

Most-favoured-nation treatment is a general obligation that applies to all measures affecting trade in services. However, it has been agreed that particular measures inconsistent with the MFN obligation can be maintained - in principle for not more than ten years and subject to review after not more than five years. Such measures must have been specified in a list of MFN Exemptions submitted by the end of the Uruguay Round of Multilateral Trade Negotiations or by the conclusion of extended negotiations on certain sectors for which the delayed submission of related exceptions was expressly authorized. Subsequently, requests for exemptions from Article II (MFN) can only be granted under the waiver procedures of the Marrakesh Agreement.

In contrast to the complex nature of schedules of commitments, these lists are largely self-explanatory and are structured in a straightforward manner. In order to ensure a complete and precise listing of a country’s MFN exemptions, each country is required to provide five types of information for each exemption:

(i) Description of the sector or sectors in which the exemption applies;
(ii) Description of the measure, indicating why it is inconsistent with Article II;
(iii) The country or countries to which the measure applies;
(iv) The intended duration of the exemption;
(v) The conditions creating the need for the exemption.

It is a basic principle of the Agreement that specific commitments are applied on an MFN basis. Where commitments are entered, therefore, the effect of an MFN exemption can only be to permit more favourable treatment to be given to the country to which the exemption applies than is given to all other Members. Where there are no commitments, however, an MFN exemption may also permit less favourable
treatment to be given. It is not necessary to list measures providing for preferential liberalization of trade in services among Members of economic integration agreements, such as Free Trade Areas; such preferential treatment is permitted under Article V of the GATS and must meet the criteria laid down in that Article.
Trade in Services

AUSTRALIA

Schedule of Specific Commitments

Supplement 4

(This is authentic in English only)

This text replaces the Financial Services section contained in document GATS/SC/6/Suppl.1/Rev.1.
SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply  2) Consumption abroad  3) Commercial presence  4) Presence of natural persons

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<th>Sector or Sub-sector</th>
<th>Limitations on Market Access</th>
<th>Limitations on National Treatment</th>
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<td>7. FINANCIAL SERVICES</td>
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Australia undertakes its specific commitments on financial services in accordance with the "Understanding on Commitments in Financial Services" (hereinafter referred to as the "Understanding").

The obligations under the Understanding are addressed in this Schedule additionally to those covered by the provisions of Part III of the Agreement and the Annex on Financial Services. The market access commitments with respect to "cross-border supply" and "consumption abroad" (as described in paragraphs 2(a) and 2(b) of Article I of the Agreement) bound in this Schedule are limited to the services indicated in paragraphs B.3 and B.4 of the Understanding, respectively.

These specific commitments on financial services are subject to the general limitations contained in the "Horizontal Commitments" section of Australia's GATS Schedule.

A. Insurance and insurance-related services

3) Approval of non-resident life insurers is restricted to subsidiaries.

3) Registered foreign life insurance companies are required to have a principal officer resident in Australia.

1), 3) An authorised insurance company operating in Australia as a non-incorporated entity must appoint an Australian resident as agent of the insurer.

3) Most State and Territory Governments maintain restrictions,

3) Sub-national guarantees are provided to some State and Territory Insurance
**Modes of supply:**  
1) Cross-border supply  
2) Consumption abroad  
3) Commercial presence  
4) Presence of natural persons

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<td>Governments maintain restrictions, by way of monopolies or licensing provisions and associated controls on premiums and other terms of policies, in the following areas of insurance:</td>
<td>to some State and Territory Insurance Offices.</td>
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<td>Compulsory Third Party</td>
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<td>Motor Vehicle Accident: VIC,</td>
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<td>WA, TAS, NT (monopolies);</td>
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<td>NSW, QLD, SA, ACT (licensing, premium/ policy terms).</td>
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<td>Workers Compensation: SA,</td>
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<td>VIC, QLD (monopolies);</td>
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<td>NSW, WA, TAS (licensing, premium/ policy terms).</td>
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<td>Comcare is the monopoly provider of workers’ compensation insurance to Commonwealth Government employees.</td>
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<td>4) The temporary entry of specialists in the operation of an insurance service supplier established in Australia is permitted subject to the terms stipulated in the horizontal section.</td>
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Modes of supply: 1) Cross-border supply  2) Consumption abroad  3) Commercial presence  4) Presence of natural persons

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<th>Limitations on National Treatment</th>
<th>Additional Commitments</th>
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</table>
| B. Banking and Other Financial Services (excluding insurance) | 1) The investment at interest in Australia of official reserves by foreign central banks and foreign government monetary institutions is approved by the Reserve Bank provided that it obtains assurance from the investing authority that it will aim to be a stable holder of the Australian dollar and that it will consult with the Bank in the event of significant changes in its Australian dollar portfolio. Monetary institutions, responsible for both reserve assets and commercial investments, are permitted to invest in Australia up to a limit under the same conditions.  

1), 3) A foreign bank located overseas is able to offer its services to Australian enterprises, but is not allowed to raise deposit funds in Australia or undertake business within Australia unless it is an authorised bank (or establishes a money market corporation, subsidiary etc.). Foreign banks located overseas may, however, raise funds in Australia through the issue of debt securities provided that those securities are offered/traded in parcels of not less than $A 500,000 and the securities and any... | | |
Modes of supply: 1) Cross-border supply  2) Consumption abroad  3) Commercial presence  4) Presence of natural persons

<table>
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<td>information memoranda clearly state the issuing bank is not authorised under the Banking Act in Australia.</td>
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<td>1), 3) Dealings in foreign exchange in Australia must be carried out through a dealer authorised by the Reserve Bank. Only banks, including branches of overseas banks, and financial institutions incorporated in Australia with the required minimum capital base are eligible to seek authorization as a foreign exchange dealer.</td>
<td>3) Foreign banks satisfying prudential requirements and that are able to demonstrate their potential contribution to competition in Australia may conduct banking in Australia. Foreign banks may undertake banking operations in Australia through locally incorporated subsidiaries and/or an authorised branch. However, a branch may not accept &quot;retail&quot; deposits. A foreign bank wishing to accept &quot;retail&quot; deposits must seek authorization as a locally incorporated subsidiary for that purpose.</td>
<td>3) Commonwealth owned entities which may conduct financial operations are guaranteed by the Commonwealth Government. While the Commonwealth sold its remaining shareholding in the Commonwealth Bank of Australia (CBA) on 19 July 1996, a transitional Commonwealth guarantee has been provided to all of the liabilities of the CBA. The length of time that the guarantee applies depends on the characteristic of the liability. Transitional guarantees also apply to the former Commonwealth-owned...</td>
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Modes of supply: 1) Cross-border supply  2) Consumption abroad  3) Commercial presence  4) Presence of natural persons

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<td>purpose. Foreign bank branches may accept deposits (and other funds) in any amount from incorporated entities, non-residents and their own employees. Deposits (and other funds) may only be accepted from other sources where the initial deposit (or other funds) is greater than $A 250,000. Deposit-taking outside of this is considered to be &quot;retail&quot; banking business.</td>
<td>Australian Industry Development Corporation.</td>
<td></td>
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</tbody>
</table>
| 1), 3) | A number of State and Territory Governments operate central financing authorities through which the Government's wholly or partly-owned statutory authorities and business enterprises are obliged to borrow (and in some cases invest) their funds, or otherwise obtain certain financial services:  
   SA - South Australian Government Financing Authority, Local Government Finance Authority of South Australia  
   TAS - Tascorp  
   NSW - NSW Treasury Corporation  
   VIC - Treasury Corporation of | 1), 3) | The financial operations of some State or Territory owned entities may be guaranteed by the State or Territory Governments. A number of State and Territory Governments have also provided transitional guarantees to some of the assets and liabilities of former State-owned or controlled banks. |
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<td>Victoria</td>
<td>3) The provisions of the Trust Bank (Corporatisation) Act 1997 dealing with the Trust Bank of Tasmania may require a joint venture arrangement.</td>
<td>3) The provisions of the Act require that at least a majority of the directors of the Trust Bank be resident in Tasmania and that policy and control of the Trust Bank be exercised in Tasmania.</td>
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<td>Queensland Treasury Corporation, Queensland Investment Corporation</td>
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<td>NT - Northern Territory Treasury Corporation</td>
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<td>WA - Western Australian Treasury Corporation</td>
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<td>WA - Western Australian Treasury Corporation</td>
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<tr>
<td>3) The Australian Stock Exchange liquid capital requirements for stockbrokers may have the effect of favouring participation in the Exchange by subsidiaries rather than branches of foreign companies.</td>
<td>3) A majority of the directors of a stockbroking organisation participating in the Australian Stock Exchange must be Australian residents.</td>
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<tr>
<td>An applicant must be a body corporate in order to obtain approval to conduct a stock exchange or a futures exchange.</td>
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<td>4) The temporary entry of specialists in the operation of a financial service</td>
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Modes of supply:  1) Cross-border supply  2) Consumption abroad  3) Commercial presence  4) Presence of natural persons

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<td>supplier established in Australia is permitted subject to the terms stipulated in the horizontal section.</td>
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Trade in Services

UNITED STATES OF AMERICA

List of Article II (MFN) Exemptions

Supplement 3

(This is authentic in English only)

This text replaces the Financial Services section contained in document GATS/EL/90/Suppl.1.
**UNITED STATES OF AMERICA - LIST OF ARTICLE II (MFN) EXEMPTIONS**

<table>
<thead>
<tr>
<th>Sector or subsector</th>
<th>Description of measure indicating its inconsistency with Article II</th>
<th>Countries to which the measure applies</th>
<th>Intended duration</th>
<th>Conditions creating the need for the exemption</th>
</tr>
</thead>
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<tr>
<td>Insurance</td>
<td>Measures according differential treatment in regard to the expansion of existing operations, the establishment of a new commercial presence or the conduct of new activities, in a circumstance in which a Member adopts or applies a measure that compels, or has the effect of compelling, a person of the United States, on the basis of its nationality, to reduce its share of ownership in an insurance services provider operating in the Member's territory to a level below that prevailing on 12/12/97.</td>
<td>All countries</td>
<td>Indefinite</td>
<td>Need to protect existing US ownership of service suppliers operating in other Members.</td>
</tr>
<tr>
<td>Banking and Other Financial Services (excluding Insurance)</td>
<td>A broker-dealer registered under US law that has its principal place of business in Canada may maintain its required reserves in a bank in Canada subject to the supervision of Canada.</td>
<td>Canada</td>
<td>Indefinite</td>
<td>Maintenance of established preference.</td>
</tr>
<tr>
<td>Banking and Other Financial</td>
<td>Permission to establish state-licensed branches,</td>
<td>All</td>
<td>Indefinite</td>
<td>Need to protect existing activities of US service suppliers abroad and to ensure</td>
</tr>
<tr>
<td>Sector or subsector</td>
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<td>Services (excluding Insurance)</td>
<td>agencies, or representative offices, or to own commercial bank subsidiaries, is based on a reciprocity test in the following States: California (applies also to savings and loan associations), Connecticut (applies also to credit unions), Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, North Carolina, Pennsylvania, Washington. Among the conditions on which agency or agency and representative office licenses may be granted for the following States is that the foreign bank is one of the five largest banks in the home country: Florida, Oklahoma. Permission for a foreign-owned bank or trust company to act as fiduciary, and to use satellite substantially full market access and national treatment in international financial markets.</td>
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</tbody>
</table>
banking terminals, is based on a reciprocity test in Iowa. Iowa also subjects the activities of foreign-owned savings and loan associations to a reciprocity test.

Michigan permits corporate central credit unions to place deposits in banks chartered in Canada or the European Common Market but not in banks chartered in other foreign countries.

Authority to act as a sole trustee of an indenture for a bond offering in the United States is subject to a reciprocity test.

Designation as a primary dealer in US Government debt securities is conditioned on reciprocity.

<table>
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<tr>
<th>Area</th>
<th>Time Period</th>
<th>Reason</th>
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<tr>
<td>Canada and European Common Market</td>
<td>Indefinite</td>
<td>Maintenance of established preference.</td>
</tr>
<tr>
<td>All</td>
<td>Indefinite</td>
<td>Need to ensure US financial service suppliers are permitted to provide trustee services in foreign markets.</td>
</tr>
<tr>
<td>All</td>
<td>Indefinite</td>
<td>Need to ensure US financial service suppliers are afforded national treatment in foreign government debt markets.</td>
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