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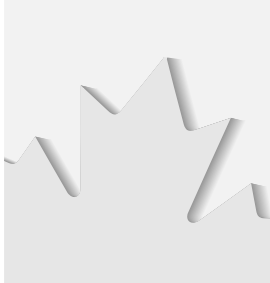
AGREEMENT ON

TRADE IN SERVICES

The Financial Services Sector

December 1995

Canada



THE GENERAL AGREEMENT ON TRADE IN SERVICES

The Financial Services Sector

Prepared by:
Financial Sector Policy Branch
December 1995



Department of Finance
Canada

Ministère des Finances
Canada

For additional copies of
this document please contact:

Distribution Centre
Department of Finance
300 Laurier Avenue West
Ottawa K1A 0G5

Telephone: (613) 995-2855
Facsimile: (613) 996-0518

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OVERVIEW

Negotiations on trade in financial services under the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO) resulted in an interim deal on July 28, 1995. The financial services sector was one of the few areas of unfinished business following the conclusion of the multilateral trade negotiations under the Uruguay Round that ended in December 1993.

As a result of the new deal, trade in financial services will be subject to “multilateral rules of the road” – consistent with the provisions of the GATS. Furthermore, individual countries have taken specific liberalization commitments with respect to their financial markets.

The agreement is a comprehensive one. It covers all financial services sectors, including banking, insurance and securities. It will be implemented as follows:

- it will officially begin in July 1996 once ratified;
- in the interim, GATS members are committed to not take measures which would be inconsistent with their new individual commitments;
- it will be in place until the end of 1997; and
- in the last 60 days of 1997, GATS members will be free to improve, maintain or withdraw their commitments.

Canada actively participated in the negotiations and welcomes the interim agreement. Canada is a mid-sized trading economy and is a significant exporter of financial services. As such, we have much to gain from a rules-based trading system for financial services and the greater access to financial markets that will result from the deal. While the July 28 agreement is by no means the end of the multilateral trade liberalization process, it is an important step forward in enhancing international trade in financial services.

About 90 countries in the WTO have undertaken commitments in financial services. These include all developed nations as well as several leading developing countries. The commitments vary from one country to the next.

Canada has committed to maintaining its open regime. It will provide access to its market to all foreign suppliers on an equal basis (i.e. Most-Favored-Nation (MFN) treatment is offered) and will treat foreign suppliers similar to domestic suppliers (i.e. national treatment is offered). This covers both federal and provincial measures. Canada's offer is similar to the offers by most other developed countries, including members of the European Community (EC). Several developing countries are also offering MFN treatment.

The United States is a notable exception with respect to the MFN principle. It has committed to maintaining its current regime with respect to foreign suppliers already in its market. However, there is no binding commitment to open its market to new entrants or for new activities on a non-discriminatory basis (i.e. MFN treatment is not offered for these two areas). The U.S. approach is very similar to the one it took at the end of the Uruguay Round negotiations

in December 1993. The U.S. position, however, does not adversely affect Canadian financial institutions given that Canada is already assured access to the U.S. market under the North American Free Trade Agreement (NAFTA).

The following provides background on the GATS negotiating process and a summary of the key provisions resulting from the financial services deal. Canada's offer and the offers of some key countries are summarized in the attached annex.

It should be noted that this document is intended to be a summary of the financial services deal. It is not all inclusive nor does it provide a legal interpretation of the provisions of the agreement.

THE NEGOTIATING PROCESS

The Uruguay Round of trade negotiations in the financial services sector began in Geneva in the late 1980s. Given the sensitive nature of this sector, negotiations were generally difficult.

A key stumbling block throughout the negotiations was the level of commitments developing countries were prepared to make relative to Organization for Economic Co-operation and Development (OECD) participants. Most OECD countries have quite liberal financial services regimes and were offering a high level of commitments. Some countries, especially in Asia and Latin America, however, were offering limited access to their markets. As a result, several developed countries were concerned about the prospect of signing an MFN-based multilateral agreement in financial services and getting little in return (i.e. the free-rider problem).

Close to the December 1993 deadline of the Uruguay Round negotiations, the United States announced that it would substantially pull back from its best offer in financial services, unless commitments by a number of key countries in Asia and Latin America were improved. In effect, it was not prepared to lock in its open market on an MFN basis; rather, it would keep open the possibility of discriminating among foreign institutions. This applied to all aspects of the financial services sector except insurance. In response, many "targeted" countries reacted by also pulling back commitments.

It became clear that no satisfactory comprehensive final agreement in the financial services sector could be reached in time for the conclusion of the Uruguay Round negotiations in December 1993. Given the importance of financial services in overall trade in services, however, most GATS members recognized the severe downside of a failure to reach an agreement in this key sector. A compromise solution was reached close to the December deadline. It was agreed that:

- an extended negotiating period be granted, to take place during the six-month period following the implementation of the WTO (i.e. from January 1 to June 30, 1995);

- during the last 60-day period (i.e. two months prior to the June 30 deadline of the negotiations), members would be free to improve, modify or withdraw all or part of the commitments on financial services as well as their MFN provisions.

At the end of December 1993, Canada kept its best offer on the table. However, Canada had concerns about the free-rider problem. Consequently, for the six-month period of extended negotiations, Canada indicated it would allow MFN treatment, but retained the flexibility to put back an MFN exemption if it was not satisfied with the outcome. Several other developed countries, including members of the EC, similarly did not pull back any commitments and provided MFN treatment. Japan, like the U.S., scaled back its commitments. However, it maintained MFN treatment.

Several rounds of extensive negotiations were held throughout the extended negotiating period. These negotiations were conducted under the auspices of the WTO Committee on Trade in Financial Services, a committee chaired by a Canadian. During these negotiations, about 45 countries improved their financial services commitments in comparison to their December 1993 offers. A number of those encompassed substantial improvements.

However, by the end of the June 1995 deadline, the U.S. remained concerned about the level of commitments of some participants. As in December 1993, the U.S. announced that it would commit only to maintaining its current regime with respect to foreign suppliers already in its market. It would not commit to opening its market to new entrants or for new activities on an MFN basis. The notable difference with the 1993 U.S. position is that this would apply to all aspects of the financial services sector, including insurance.

In an effort to avoid a failure of the negotiations, pursuant to a proposal put forward by the EC it was agreed that the June 30 deadline would be extended to July 28, 1995. This second extension to the negotiations offered time to consult on whether it would be possible to secure a deal, even if the U.S. were to keep its reduced offer on the table.

During that four-week period, extensive efforts by several countries, particularly Canada and the EC, resulted in a positive outcome. On July 28, 1995, an interim agreement was reached on financial services.

KEY ELEMENTS OF THE AGREEMENT

The agreement on financial services falls under the rubric of the GATS – the broad framework for all services negotiated during the Uruguay Round of trade negotiations. This is a multilateral trade agreement and, as such, will be particularly helpful to small and medium-sized economies like Canada in their dealings with larger partners.

Under the general GATS framework, there are i) multilateral rules of the road applicable to all services sectors covered under the agreement, ii) provisions applicable only to specific sectors, including financial services and iii) commitments undertaken by countries in specific sectors. Most importantly, the impact of the GATS depends on the level of commitments made by member governments.

Multilateral rules of the road

The GATS establishes broad-based trade principles applying across all services sectors covered under the agreement. It provides for clearer and fairer rules for international trade in services, including an appropriate process for dispute settlements.

Three key broad-based principles in the GATS are **Most-Favored-Nation (MFN)**, **Market Access** and **National Treatment**. These principles are fully applicable to the financial services sector.

The **MFN** clause (Article II) provides that each member should accord to any other member treatment no less favorable than that it accords to any other country. GATS members are permitted to take exemptions from the MFN obligation. The instrument used to take an MFN exemption is referred to as the “Annex on MFN Exemptions”.

The fact that most GATS members have agreed to take on the MFN obligation for the financial services sector is good news for Canada. It means, for example, that whatever treatment is provided in the Japanese or Korean market to an American firm must automatically be provided to Canadian firms.

The **Market Access** clause (Article XVI) is the mechanism by which members take market access commitments in specific sectors. The clause also defines measures which should not be maintained by a member i.e., measures viewed as market access barriers. These include:

- quantitative restrictions on the number of suppliers (e.g., only five licenses to foreign insurers), on the value of transactions or assets (e.g., an assets ceiling on foreign banks), on the number of operations or the quantity of output (e.g., mandatory lending to small business), and on the number of natural persons (e.g., limits on the number of foreign professionals);
- restrictions on forms of legal entity or joint venture (e.g., no subsidiary allowed); and
- restrictions on foreign equity participation (e.g., a foreign investor cannot acquire more than 50 per cent of the shares of a domestic bank).

A number of market access commitments were offered during the financial services negotiations that could be of benefit to Canada. Improved market access resulting from the negotiations includes an increase in the number of licenses available to financial institutions in foreign markets and an improved level of equity participation by financial institutions in foreign companies. For

example, Thailand is committing to grant seven new branch licenses to foreign banks by 1997. In Brazil, foreign equity participation in its market will be allowed within two years after the adoption of the necessary legislation.

The **National Treatment** clause (Article XVII) provides that, in sectors where commitments are undertaken, each member shall accord any other member treatment no less favorable than that provided to its own domestic sector i.e. a member must treat all services and services suppliers – domestic and foreign – similarly with the stated minimum standard as specified in its commitments. Importantly, this includes both de jure and de facto national treatment – that is to say, both what is specified in the law and what happens in practice.

Canada will benefit, for example, from the right to freely set up multiple branches in the Korean securities market where previously only domestic banks were allowed to do so.

The financial services deal also brings this sector under other general important disciplines of the WTO. For example, the dispute settlement and enforcement provisions (Article XXIII) of the WTO will apply. A unique feature for financial services is the assurance of the participation of financial experts in dispute settlements panels involving financial matters.

Another important general provision of the GATS is the transparency clause (Article III). This requires members to inform the WTO of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by the agreement. Members are also obliged to respond to requests by other parties for specific information on any of its measures of general application and to set up inquiry points to provide information. This increased transparency should reduce uncertainty, which in and of itself, can be an important barrier in trading relationships.

Broad measures specific to financial services

Additional measures unique to the financial services sector are covered under the **Annex on Financial Services** and the **Understanding on Commitments in Financial Services**.

A key provision of the **Annex on Financial Services** is the prudential carve-out. It preserves the right of countries to maintain or introduce measures for prudential reasons, including for the protection of investors, depositors, policyholders or persons to whom a fiduciary duty is owed by a financial service supplier. This is key to ensuring that regulatory authorities have sufficient flexibility to safeguard the integrity and soundness of the financial system.

Another important provision contained in the Annex is the definition of financial services. A financial service is defined broadly as any service of a financial nature offered by a financial service supplier. Financial services are separated in two subsectors: 1) all insurance and insurance-related services; and 2) all

banking services and other financial services (excluding insurance). The box below provides an illustrative list of activities included as financial services for the purposes of the Annex on Financial Services.

Description of financial services

In the **insurance services** subsector, financial services include the following activities:

- direct insurance, including life and non-life;
- reinsurance and retrocession;
- insurance intermediation; and
- services auxiliary to insurance.

In the **banking and other financial services** subsector, financial services include:

- acceptance of deposits and other repayable funds from the public;
- lending of all types, including consumer credit, mortgage, credit, factoring and financial of commercial transaction;
- financial leasing;
- all payment and money transmission services;
- guarantees and commitments;
- trading for own account or account of customers, whether on an exchange, in an over-the-counter market or otherwise;
- participation in issues of all kinds of securities;
- money broking;
- asset management;
- settlement and clearing services for financial assets;
- provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- advisory, intermediation and other auxiliary financial services.

For its part, the Understanding on Commitments in Financial Services is a voluntary “high” standard of commitments in the financial services sector. It encompasses broader liberalization commitments than those required under the general provisions of the GATS. The Understanding was negotiated under the Uruguay Round and it has been adopted by most developed countries (including Canada) and a small number of developing countries.

One key element of the Understanding is a standstill commitment, i.e. a freeze on the introduction of additional restrictions for all financial services. The Understanding also embodies MFN and national treatment with respect

to government procurement of financial services from suppliers established in the market. Countries signatory to the Understanding also guarantee foreign financial institutions the right to offer new financial services products as they are developed, the right to move and process data across the border, and the right to let personnel enter the country on a temporary basis.

Commitments by individual countries in specific sectors

The instrument used by a GATS member to undertake commitments in services sectors, including financial services, is referred to as a **Schedule of Commitments**. Commitments pertain to both market access and national treatment.

Each member which undertakes a commitment in a specific sector must inscribe that sector in its Schedule of Commitments. In those sectors where commitments are offered, a member is allowed to take reservations from market access and national treatment. For example, a country committing to include “insurance” in its offer may take a reservation to not allow foreign institutions to establish subsidiaries. The Schedule is therefore essentially a “negative list” of commitments in that it lists, in sectors committed, trade barriers (referred to as limitations) permitted to be maintained by a country under the GATS i.e. it contains measures that do not conform to the general obligations under market access and national treatment.

If a country introduces any barriers that are not provided for in its Schedule of Commitments in sectors where commitments are made, it may be subject to challenge by other countries under the dispute settlement mechanism and possibly be subject to compensation requirements or retaliatory actions.

Commitments undertaken in the GATS context by a member are only a floor of undertakings and may differ from the more liberal practice in that member's sector. In other words, members may operate a more open regime than they are legally committed to in the GATS context. In these circumstances, if MFN treatment is offered by the member, the member is bound to offer the same more open regime to all foreign financial institutions on a non-discriminatory basis.

Commitments in specific sectors are taken in the form of four different modes of supply (Article I) – referred to as 1) cross-border, 2) consumption abroad, 3) commercial presence and 4) presence of natural persons.

- In mode 1, cross-border, the supply of the service is from the territory of one country into the territory of another country. The service, for example, could be supplied through telecommunication or e-mail. In the financial services sector, one example would be where an insurance company from a country without a presence in another country advertises and sells a policy to a consumer in that country.
- In mode 2, consumption abroad, the supply of the service is in the territory of a country to a consumer of another country. This will often imply that a consumer (or the consumer's property) seeks the service abroad or crosses

the border to consume the service abroad. One example in the financial services sector is where a consumer contacts a foreign bank and opens a checking account in the foreign country.

- In mode 3, commercial presence, the service supplier of a country establishes a commercial presence in the territory of another country through which it intends to provide a service. Commercial presence is defined as any type of business or professional establishment including through i) the constitution, acquisition or maintenance of a juridical person (e.g., a corporation, trust, partnership, joint venture, sole proprietorship or association) or ii) the creation or maintenance of a branch or a representative office.
- In mode 4, natural persons, the supplier of a country provides a service in the territory of another country through the presence of natural persons (e.g., self-employed).

The attached Annex summarizes the commitments of those markets of key export interest to Canada in the financial sector. These include Argentina, Brazil, the European Community, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, the Philippines, Singapore and Thailand. Details on the United States and Mexico offers are not included given that trade with these countries is covered under the provisions of the NAFTA. The summary provided in the Annex essentially describes the limitations listed in Schedules of Commitments and positions on MFN as of July 28, 1995.

Financial services commitments by Canada

In exchange for the concessions of other countries in the GATS financial services negotiations, Canada agreed to eliminate the foreign ownership and market share limitations in the federal financial regime. Those liberalization commitments were made under the Uruguay Round negotiations concluded in December 1993. These restrictions had already been lifted under the NAFTA for our NAFTA partners. In particular, Canada has eliminated the following restrictions:

- the 10-per-cent individual, and 25-per-cent collective, limitations on the foreign ownership of Canadian-controlled federally regulated insurance companies and trust and loans companies;
- the 25-per-cent collective limitation on the foreign ownership of Schedule I banks; and
- the 12-per-cent asset ceiling on the size of the foreign bank sector in Canada.

To implement these, changes were made to the *Bank Act*, the *Trust and Loan Companies Act*, the *Insurance Companies Act*, the *Co-operative Credit Associations Act*, and the *Investment Companies Act* through the *World Trade Organization Agreement Implementation Act* which received Royal Assent on December 15, 1994.

Furthermore, Canada offered to bind its current open regime with respect to market access and national treatment.

In addition, Canada offered MFN treatment. This has implications for the reciprocity provisions currently in Canadian legislation with respect to the entry of foreign financial institutions in its market. Such provisions are not consistent with the MFN principle. While Canada will not introduce legislative changes i.e. there will not be any suspension or repeal of the current reciprocity provisions in its legislation, it commits not to enforce reciprocity over the period of the interim deal in financial services.

Canada's schedule of commitments and position on MFN are summarized in the attached Annex.

CONCLUSION

Canada supports the outcome of the July 28, 1995 GATS agreement in financial services. It commends the efforts of WTO partners that participated in the negotiations and contributed to the agreement. Canadian financial institutions, many of which are important exporters, will benefit from the agreement, as a result of both the broad-based trade disciplines of the GATS as well as the enhanced trade liberalization commitments in a number of financial markets. Canadian financial institutions will have greater opportunities to provide competitive financial services world-wide.

Nonetheless, the July 28 agreement is only temporary and more liberalization commitments are required in the future. The July 28 agreement is only the start of a longer-term process towards freer trade. This interim agreement will act as a building block for further liberalization in this key sector of the world economy, paving the way for a more permanent trade agreement in financial services.

Canada looks forward to re-engaging in trade negotiations in financial services by the December 1997 deadline with the view to securing a long-term agreement with improved liberalization commitments.

For further information:

Josée Nadeau
Financial Sector Division
Telephone: (613) 992-3566

For additional copies:

Distribution Centre
Department of Finance
300 Laurier Avenue West, Room P-135
Ottawa, Ontario K1A 0G5
Telephone: (613) 995-2855
Facsimile: (613) 996-0518

Annex

Illustration of GATS Offers of Some Key Countries

This Annex is intended to illustrate the main limitations inscribed in the Schedules of Commitments of a number of GATS members. It also summarizes the main positions of these countries with respect to MFN. The Annex is not all inclusive nor does it provide a legal interpretation of the GATS offers of countries.

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Canada

Below are examples of limitations maintained at the federal level.

All financial services

- Federally regulated financial institutions having capital in excess of \$750 million are required, within five years of having reached the threshold, to have 35 per cent of their voting rights widely held and listed and posted for trading on a Canadian stock exchange.
- A minimum of one half of the directors of companies incorporated in Canada must be either Canadian citizens ordinarily resident in Canada or permanent residents ordinarily resident in Canada.

Insurance services

- Under the mode of supply consumption abroad, the purchase of reinsurance services by a Canadian insurer, other than a life insurer or reinsurer, from a non-resident reinsurer is limited to no more than 25 per cent of the risks undertaken by the insurer purchasing the reinsurance.

Banking and other financial services (excluding insurance)

- Foreign banks must incorporate subsidiaries in Canada to undertake the business of banking in Canada.
- Ministerial approval is required for foreign bank subsidiaries to open more than one branch.
- No one person (Canadian or foreign) may own more than 10 per cent of any class of shares of a Schedule I bank.

Various limitations are also maintained by provincial and territorial governments. Two examples applicable to a number of provinces include:

- Foreign securities dealers and brokers need to be incorporated in Canada in order to do business in Canada; and
- A portion of boards of directors of provincially incorporated trust companies need to be Canadian residents or citizens.

MFN

- Canada is offering MFN treatment with two minor exceptions related to provincial measures: for agency services in insurance, Ontario will continue to grant preferential treatment to individual U.S. insurance agents; and for loans and investment services, Quebec will continue to offer preferential treatment for allocation of licenses to companies from the United Kingdom and Ireland.

Argentina

Insurance services

- For all insurance types, authorization for new entities is suspended.
- There are no commitments for cross-border supply, except for reinsurance and transport insurance.

Banking and other financial services (excluding insurance)

- There are no commitments for new financial services.
- The financial operations by the Government and state-owned enterprises are specifically excluded from the conditions in the schedule.
- There are no commitments for the cross-border supply of most financial services, except for financial information and advisory services.
- For stock-market transactions, it is necessary to be a member and shareholder of the Securities Exchange.

MFN

- MFN treatment is offered.

Brazil

Insurance services

- The establishment of a commercial presence through new branches and subsidiaries of foreign insurance companies, as well as an increase in the percentage of participation of foreign persons and firms in Brazilian firms is not permitted. Furthermore, reinsurance can only be offered by a government monopoly.
- Brazil is committing to the participation of foreign capital in the entire Brazilian insurance market (including reinsurance) within two years after the adoption by the National Congress of legislation permitting such participation.
- Regarding the cross-border and consumption abroad modes of supply, no commitments are undertaken.

Banking and other financial services (excluding insurance)

- The establishment of a commercial presence through new foreign bank branches, new subsidiaries, and the increase in foreign ownership is not permitted (it is limited as of October 1988). Similarly, in securities and other financial sectors, establishment is limited to levels in 1988.
- Access to the Brazilian market is permitted through the acquisition of shares of public-sector banks being privatized.
- Brazil is committing to the participation of foreign capital in the Brazilian financial market within two years after the adoption by the National Congress of legislation permitting such participation.
- Brazil has eliminated national treatment barriers, such as the denial for foreign banks to establish automated teller machines and the requirements for higher capital.
- Regarding the cross-border and consumption abroad modes of supply, there are no commitments.
- Regarding natural persons, all senior level management must be permanent residents in Brazil.

MFN

- MFN treatment is offered.

European Community

All financial services sectors

- (All member states) To the extent that a financial institution establishes a subsidiary in one of the member states, that company is free to set up branches in any of the states. (This is called the Euro-passport.)
- (All member states) Branches established directly in a member country by foreign institutions cannot benefit from the Euro-passport and therefore, are required to obtain approval from every member in which they want to establish.
- (Finland) For all sectors, citizenship and place of residence in Finland is usually required for founder, managing director, auditors and members of boards of directors and supervisory board (exception may be granted). General agent must be a resident.

Insurance services

- (Spain, Portugal) Foreigner must have five years of experience in its origin country before establishing in the country.
- (Austria) Under the cross-border and consumption abroad modes of supply, there is a higher premium tax on insurance from non-established insurers (except for reinsurance and retrocession). Exceptions may be granted.

Banking and other financial services (excluding insurance)

- (Portugal) Establishment of non EC banks may be subject to an economic needs test.
- (France) In addition to French banks, only French subsidiaries of foreign banks can be the lead for issues in French francs.
- (Austria) Issuance of mortgages and municipal bonds, investment fund management services and safe custody business are only permitted by specialized banks and authorized only for this business.
- (Finland) Acquisition of one-third voting rights of large banks or credit institutions needs confirmation and may be denied only if important national interest would be jeopardized.
- (Finland) Foreign institutions' branches cannot manage collective investment funds.
- (Italy) A separate incorporation in Italy in the form of a securities company is required for firms other than banks in order to provide services related to securities dealings.
- (Netherlands) Only companies incorporated in an EC Member State may become members of the Amsterdam Stock Exchange.
- (Greece) Financial institutions may engage in securities trading only through stock exchange firms incorporated in Greece. Similar rules are found in Denmark, Belgium and Spain.

MFN

- MFN treatment is offered.

Hong Kong

Insurance services

- All forms of entry are permitted: subsidiary, branch and representative office.
- Hong Kong is allowing the consumption abroad mode of supply but not the cross-border supply of services.

Banking and other financial services (excluding insurance)

- Foreign banks incorporated outside of Hong Kong applying for new full banking licenses can only open branches. Banks can also set up representative offices.
- Limited companies incorporated in Hong Kong which have been institutions under the Banking Ordinance for at least 10 years and are predominantly beneficially owned by Hong Kong or are otherwise closely associated and identified with Hong Kong may also apply for a new full banking license.
- Banks incorporated overseas may also apply for a license to operate a restricted license or a deposit-taking company.
- Foreign banks (under any types of licenses) may maintain offices to which customers have access for the purpose of banking business or other financial transactions in only one building (offices also include automated teller machines). Banks may also maintain two additional offices to which customers have access for other types of business provided they are in separate buildings. Such offices are a regional office and one back office.
- In the securities sector, only corporations incorporated in Hong Kong or natural persons born in Hong Kong, natural persons resident in Hong Kong for five of the preceding seven years, or partnerships composed of such persons, may become members of the Stock Exchange.
- Hong Kong is making a commitment for the free flow of cross-border supply and consumption abroad of financial information.
- For services other than financial information, Hong Kong is allowing the mode of supply consumption abroad but not the cross-border supply of services.

MFN

- MFN treatment is offered.

India

Insurance services

- The establishment of a commercial presence is not permitted.
- There are commitments for the cross-border supply of insurance of freight and of reinsurance in the non-life subsector, subject to a 10-per-cent cap of the premiums of the market being insured abroad. There are no commitments for the consumption abroad mode of supply.

Banking and other financial services (excluding insurance)

- Foreign banks can enter the market only as branches.
- There is a maximum of eight bank branch licenses to be granted per year – for new and existing banks. This ceiling does not include licenses to establish automated teller machines.
- New branch licenses could be denied if the asset share of foreign banks exceeds 15 per cent of aggregate assets of the banking sector.
- Foreign banks are subject to non-discriminatory resource allocation requirements.
- Stock broking services are permitted through the establishment of joint ventures. Foreign equity cannot exceed 49 per cent.
- Services such as participation in issues of all kinds and financial consultancy services can be offered by foreign bank branches, or through incorporation where foreign equity cannot exceed 51 per cent.
- Services such as factoring, financial leasing and venture capital can be provided through incorporation with foreign equity not exceeding 51 per cent.
- No commitments are undertaken for the cross-border and consumption abroad modes of supply.

MFN

- There is an MFN exemption. Entry and expansion over and above commitments undertaken in its schedule (e.g., eight bank licenses) will be granted on the basis of reciprocity.

Indonesia

All services

- Foreign institutions can enter Indonesia either as representative offices or through joint ventures with local partners. Foreign ownership in joint ventures cannot exceed 49 per cent.
- Any existing level of foreign ownership that exceeds the 49-per-cent ceiling is bound at prevailing laws and regulations.

All financial services except banking

- There are higher paid-up capital requirements on foreign financial institutions.
- There are commitments for establishment of reinsurance companies in the non-life insurance subsector, but not in the life subsector.
- On the cross-border supply of services, commitments are offered in reinsurance for non-life services, financial lease services, credit card business and consumers finance. On consumption abroad, commitments are offered in all subsectors.
- Indonesia is committing that all market access and national treatment limitations specified in its schedule will be eliminated in the year 2020, subject to similar commitments by other members.

Banking services

- Existing foreign banks are limited to open branches in a list of eight cities, and can open one sub-branch and one auxiliary office per city.
- Acquisition of local existing banks is allowed through the purchase of up to 49 per cent of the shares listed in the stock exchange.
- There are no commitments regarding new bank licenses.
- Indonesia reserves the right to establish regulations concerning the paid-up capital requirements for joint venture banks.
- Indonesia is committing that all market access and national treatment limitations specified in the schedule will be eliminated in the year 2020, subject to similar commitments by other members.

MFN

- MFN treatment is offered.

Japan

Insurance services

- Insurance brokerage is currently not permitted but this limitation will be eliminated at the end of June 1996.
- Foreign life insurance companies are required to retain in yen an amount corresponding to their technical and claim reserves for yen-denominated policies in Japan but only until the end of June 1996.
- There are no commitments for cross-border supply, except for marine insurance which will be liberalized in June 1996.
- All forms of establishments of a commercial presence are permitted.

Banking and other financial services (excluding insurance)

- The cross-border supply of financial services face a number of limitations: capital transactions in principle (payment instruments, foreign exchange, derivative product with foreign exchange transactions and swaps), overseas deposits and trust contracts in foreign currencies which are over 100 million yen and those denominated in yen are subject to approval. Exemptions may be granted to business corporations to allow only ex-post reporting.
- For investment trust management services, a commercial presence is required and must be a juridical person established in Japan. In other subsectors, there are no limitations on the form of establishment of a commercial presence.
- Japan also signals its intention to expand the scope of Employees' Pension Fund assets which can be managed by discretionary investment management firms.

MFN

- MFN treatment is offered.

Korea

All services

- Entry through subsidiaries is generally denied. Establishment of branches and representative offices are subject to approval.
- The acquisition of local companies by foreigners is permitted subject to the following limitations: foreigners can purchase not more than 3 per cent individually and 15 per cent in aggregate of stocks of a company listed on the Korean Exchange. These will be raised in 1996-97.
- The amount of foreign direct investment must be at least 50 million won.
- There are commitments for the purchase of outstanding bonds of existing domestic companies and of government bonds, under limited circumstances.
- Acquisition of land by foreigners is permitted subject to approval. Management of assets of a financial institution is restricted. A financial institution is denied the right to own non-business real estate as part of assets.

All financial services

- Foreign financial institutions located in Korea may only handle Korean currency with residents. Transactions with non-residents require approval.
- Assets owned by branches must be kept in Korea. The capital of the head office is not recognized as a basis for determining the extent of funding and lending activities of branches.
- Interest rates are regulated for certain loans and deposits. All deposit rates except on demand deposits will be liberalized in 1996-97.
- Some new financial products are subject to approval.

Insurance services

- For life insurance services, representative offices, branches and joint ventures are permitted. In joint ventures, there must be only one foreign shareholder and the foreign share must be in excess of 50 per cent.
- Recruitment and employment of insurance professionals are restricted.
- For non-life and reinsurance companies, only representative offices and branches are permitted.
- Foreign equity participation in non-life services is limited to existing companies.
- The establishment of commercial presence in insurance is subject to an economic needs test.

Banking and other financial services (excluding insurance)

- Foreigners will be allowed equity participation in existing domestic banks in 1996-97.

- Foreign bank branches face the following limitations in the conduct of their activities.
 - 1) Issuance of debentures is prohibited.
 - 2) Oversold position limit of spot foreign exchange is 3 per cent of previous month's average balance of foreign exchange bills bought, U.S. \$3 million or 2 per cent of capital, whichever is greatest.
 - 3) Certificates of deposit are limited to the larger of 400 per cent of capital or 35 billion won and the maturity is restricted to 60-270 days. Minimum denomination is restricted to 30 million won. Limit and maturity will be expanded in 1996-97.
 - 4) Foreign exchange loans are restricted with respect to ceilings and uses.
 - 5) Lending to small and medium sized companies is mandatory.
- Banks and securities firms are no longer required to have a representative office for a period of two years prior to establishing a branch.
- Documentation requirement in relation to foreign exchange transactions are ex-post notification or exempt.
- Real estate trust business is prohibited. For trust services, approvals are required and there is a requirement that the head office be engaged in trust business.
- Credit cards can only be provided if that is the only activity of the institution. There are also lending limits in place. Ceilings on fees and interest rates are imposed.
- Equity participation in an existing firm by foreign securities companies is permitted but it is limited to less than 10 per cent per company and less than 50 per cent in aggregate.
- In joint stock corporation, foreign equity must be: at least 40 per cent but less than 50 per cent; and if there is more than one foreign owner, at least one of them must have 20 per cent of the equity. Unspecified ceilings and operating conditions are also applied to securities and credit granting securities businesses.
- In Securities Investment Trust Business, equity participation is limited to 5 per cent per individual firm and 10 per cent aggregate.
- Only representative offices of "Investment Advisory Businesses" are allowed. Foreign equity participation in existing domestic companies is limited to 5 per cent individually and 10 per cent in aggregate.
- Establishment of a commercial presence in the securities sector is no longer subject to an economic needs test.
- There are no commitments for the cross-border supply and consumption abroad of services.

MFN

- MFN treatment is offered.

Malaysia

Insurance services

- Under a system of offshore insurance or reinsurance which is limited to the Federal Territory of Labuan, establishment is allowed through a branch or a subsidiary.
- Offshore insurance companies cannot offer insurance (life and non-life) to residents and in relation to domestic risks; only existing licensed companies can provide insurance services.
- Existing foreign branches of insurance companies must be incorporated and the aggregate ownership by the foreign parent must be reduced to 30 per cent. Malaysia also introduced measures to facilitate this transition, but it only applies to those companies that have branches now.
- Seven new licenses in the non-life reinsurance sector will be issued within 10 years ending June 30, 2005. There are no other commitments for new full insurance licenses.
- Foreign ownership in an existing local insurance company (except reinsurance) cannot exceed 30 per cent in aggregate and 20 per cent individually. Acquisition by foreign insurers of 5 per cent or more of the shares is subject to certain criteria (e.g., the foreign country has significant trade and investment interest in Malaysia but does not yet have a significant presence in that sector).
- For reinsurance, aggregate foreign ownership cannot exceed 49 per cent.
- Additional branching is only allowed for insurance companies with less than 30 per cent foreign ownership.
- There are commitments for new life insurance services, subject to approval.
- There are no commitments for the cross-border supply of life insurance services. Non-life insurance services are generally not permitted where the services are available in Malaysia. Foreign institutions must cede up to 30 per cent of each class of reinsurance to the Malaysian National Reinsurance Board.

Banking and other financial services (excluding insurance)

- Under a system of offshore banking which is limited to the Federal Territory of Labuan, establishment is allowed through a branch or a subsidiary.
- Offshore banks face activity limitations. They have to deal in foreign currency deposits and loans. Lending and leases to residents can only be undertaken jointly with banks incorporated in Malaysia. Payment and money transmission is allowed for non-residents. The following activities are not allowed: overdraft facilities; credit or debit cards; travelers cheques; and checking accounts. Most trading activities are limited to dealings in foreign currency with non-residents on instruments issued abroad.

- For commercial and merchant banks, there are no commitments for new licenses. Malaysia is committing to maintaining the existing 14 banks wholly owned by the foreign parents.
- Foreign ownership of local banks is permitted but aggregate ownership cannot exceed 30 per cent and individual ownership is limited to 20 per cent of the shares. Acquisition of 5 per cent or more of local shares by foreign banks is allowed under certain conditions (e.g. the foreign country has significant trade and investment interest in Malaysia but does not yet have a significant presence in that sector).
- Merchant banks can only accept a minimum amount (to be specified by the Central Bank from time to time) of term-deposits from non-residents.
- Non-resident controlled companies cannot borrow more than 40 per cent from foreign-controlled banks. This will be eased to 50 per cent in 2000.
- There are no commitments to permit new branches and automated teller machines for existing foreign commercial banks. For merchants banks, provided there is less than 30 per cent aggregate foreign ownership, the opening of additional branches is allowed.
- For securities, factoring and financial leasing companies, aggregate foreign ownership is allowed and it cannot exceed 30 per cent. The foreign ownership cap will be eased to 49 per cent in the case of financial leasing companies and securities broking services from July 1, 2000.
- Sale and purchase of travelers cheques by individuals require citizenship.
- Foreign exchange can only be offered by authorized dealers and brokers incorporated in Malaysia.
- Operational Headquarters for financial services (OHQ) (e.g., general management carried out domestically in relation to activities in Malaysia and offshore) have to be carried out in a wholly owned local subsidiary and only when certain conditions are met.
- There are commitments for new financial services, subject to approval.
- The cross-border supply of services must be provided jointly with Malaysian financial institutions.

MFN

- MFN treatment is offered.

The Philippines

All services

- Under the constitution, the acquisition of land is prohibited for foreigners; it is limited to companies that have 60 per cent capital held by a company or citizen from the Philippines. Foreign investors may lease only private-owned lands. Foreign financial institutions are required to dispose of land held as security immediately upon acquisition.

All financial services

- The establishment of a commercial presence or the expansion of existing operations is subject to an economic needs test.

Insurance services

- Foreign entry is allowed through the acquisition of up to 40 per cent of existing domestic companies and through investing up to 40 per cent in a new company.
- The 40-per-cent foreign ownership ceiling does not apply to companies that will be permitted entry between October 1994 and October 1996 under conditions specified by the Department of Finance.
- The four existing foreign-owned life insurance companies are exempted from the 40-per-cent foreign ownership cap.

Banking and other financial services (excluding insurance)

- The Philippines commits 10 licenses with full banking authorities for new banks for the period 1995-2000. Each bank is allowed up to a maximum of four branch locations, where two will be at locations designated by the Monetary Board. Full banking authorities for existing full licenses are also committed.
- Foreign ownership by banks in new locally incorporated commercial banks is allowed. It is capped at 49-per-cent.
- Foreign ownership by banks in existing commercial banks is limited to 40 per cent.
- Aggregate foreign ownership by entities other than banks is limited to 30 per cent, or up to 40 per cent with Presidential approval. Individual ownership is limited to 20 per cent for individuals and 30 per cent for corporations.
- At all times, 70 per cent of the assets of the banking sector must remain in the hands of domestic banks which are majority-owned by Filipinos.
- Prior authority is required for the following activities: taking deposits from the public, guarantees; commitments; trust; investment management; and other fiduciary functions.

- In factoring, financial leasing, money broking, credit cards, and investment companies, foreign ownership is allowed up to 40 per cent.
- For investment houses, foreign ownership is capped at 49 per cent.
- Securities dealers' membership at the stock exchange is limited to 200.
- The consumption abroad mode of supply is allowed. There are no commitments on the cross-border supply of services.

MFN

- There is an MFN exemption in commercial banking. Authorization for the establishment of commercial presence or expansion of existing operations, over and above commitments undertaken in its schedule, will be subject to a reciprocity test.

Singapore

Insurance services

- There are commitments for new licenses in reinsurance. There are no other licenses commitments.
- There is a requirement that existing representative offices of reinsurance companies upgrade to branches or subsidiaries, by January 1997.
- For the life and non-life subsectors, additional foreign acquisition of shares of local insurance companies and the establishment of representative offices are not allowed.
- The cross-border supply of services is permitted in the reinsurance subsector.

Banking and other financial services (excluding insurance)

- There are commitments for offshore bank and merchant bank licenses. There are no commitments for other licenses.
- The following limitations are attached to the different types of bank licenses.
 - 1) Full license: a bank is allowed to undertake most banking activity. The only limitation is it cannot offer savings accounts in foreign currency to residents. A foreign bank with a full license, however – as opposed to a domestic bank – faces additional restrictions: it cannot open new branches, freely relocate existing ones and freely operate off-premise automated teller machines.
 - 2) Restricted license: a bank cannot offer savings accounts i.e. it can only operate current accounts. In addition, it faces some restrictions when operating current accounts in local currency: it can only accept large deposits (at least S\$250,000 per deposit).
 - 3) Offshore license: a bank faces some restrictions in both accepting deposits and lending in local currency: it can only accept large deposits (at least S\$250,000 per deposit) and it can only accept such deposits from non-residents; and, there are limits on aggregate loans to residents (S\$100 million).
- Foreign ownership of local banks is allowed at levels of 5 per cent individually, and 40 per cent in aggregate.
- Foreign securities dealers that are members of the stock exchange (called international members) can deal in:
 - 1) foreign securities for non-residents;
 - 2) foreign currency-denominated securities for residents; and
 - 3) local currency-denominated securities for minimum transactions of \$5million for residents.
- There are no commitments for international membership at the stock exchange.

- Financial futures brokers can establish as branches or subsidiaries and can trade in existing financial futures products listed on SIMEX.
- Asset management companies, custodial depositories, investment advisers and trust services companies can establish as branches or subsidiaries. Investment advisers can also establish representative offices.
- Additional foreign acquisition of shares of local securities firms is not allowed.
- Provision of financial data processing services is subject to domestic laws on protection of confidentiality of information pertaining to banks customers.
- The cross-border supply of services is generally not permitted. Consumption abroad is allowed.

MFN

- MFN treatment is offered.

Thailand

Insurance services

- Foreign equity participation is allowed for the life and non-life subsectors up to 25 per cent of registered share capital; and new establishment is subject to licenses approved by the Minister with the consent of the Cabinet.
- For auxiliary services, there is a 25-per-cent ceiling on foreign ownership. In consulting, adjustment and actuarial services, the foreign ownership ceiling is set at 49 per cent.

Banking and other financial services (excluding insurance)

- Establishment of banks is allowed as follows:
 - 1) Representative offices can be set-up.
 - 2) There are commitments for existing foreign bank branches, under the current ownership structure. Automated teller machines (ATMs) can be operated either by joining the ATM pools operated by Thai banks, setting it up on its own premises or sharing facilities with Thai banks.
 - 3) By 1997, existing foreign banks which already have branches will each be permitted to open two additional branches under terms to be specified.
 - 4) Foreign investors can acquire shares of existing locally incorporated banks and of five new banks by 1997. Foreign ownership is limited to 25 per cent of paid-up registered capital, where combined shareholding of individual and related persons cannot exceed 5 per cent.
 - 5) There are commitments for all licenses for the Bangkok International Banking Facilities (BIBF) already granted and still effective in May 1994.
 - 6) There are commitments for all licenses for the Provincial International Banking Facilities (PIBF) as granted in January 1995.
 - 7) Not more than seven BIBF banks will be granted full branch licenses by 1997, under terms to be specified.
 - 8) A limited number of BIBF licenses will be granted to new foreign banks by 1997, under terms to be specified.
 - 9) Foreign banks with BIBF licenses will each be allowed to open two additional PIBF by 1997.
- For finance companies, aggregate foreign ownership is allowed up to 25 per cent and individual ownership is set at 10 per cent. There are no commitments for new licenses.
- Foreign ownership is limited to 49 per cent in financial leasing and factoring firms.

- In securities brokerage, securities dealers, investment advisory services and securities underwriting, market access is limited to the acquisition of existing firms, with a 49-per-cent foreign ownership ceiling. There are no commitments for new licenses.
- There are commitments for asset management companies, where five new licenses will be granted. For the first five years, foreign ownership is limited to 25 per cent, and then, to 49 per cent.
- For credit, charge and debit cards, the services can be provided by companies which are subject to a maximum foreign ownership of 49 per cent or are locally incorporated banks or foreign bank branches.
- There are commitments for the free flow of cross-border financial information and for financial advisory. Other services are not permitted under cross-border supply and consumption abroad.

MFN

- MFN treatment is offered.