

Council for Trade in Services
Special Session

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COMMUNICATION FROM THE UNITED STATES

Financial Services

The attached communication has been received from the delegation of the United States with the request that it be circulated to Members of the Council for Trade in Services.

I. INTRODUCTION

1. The United States presents this initial sectoral proposal on financial services for consideration by WTO Members. This proposal will be complemented by other negotiating approaches as were provided in the U.S. submission to the WTO Council for Trade in Services in Special Session, "Framework for Negotiation," including horizontal approaches and request-offer. The WTO financial services negotiation concluded in 1997 was a significant step towards opening global financial markets. We believe, however, that there are benefits for all economies in further liberalization of trade in financial services. We are eager to hear other countries' experiences regarding liberalization of trade in the financial services sector.

2. At a later date, we will provide further thoughts related to this initial proposal, including the possibility of more detail for specific sub-sectors, or to respond to financial services issues that may be raised in other sectoral proposals.

II. IMPORTANCE OF TRADE IN FINANCIAL SERVICES

3. Liberalization of trade in financial services, when undertaken in conjunction with transparent and strong regulatory regimes, benefits countries in many ways, some specific to the financial services sector and others related to the overall health of their economies.

4. Financial services liberalization – including for example, for *insurance, banking, securities, asset management, pension funds, financial information, financial advisory, and other financial services* - enhances and strengthens capital market efficiency, bolsters financial sector stability, stimulates innovation, and provides consumers with the broadest range of services at the lowest cost. Indeed, studies, including those carried out by the WTO Secretariat, have found that financial services liberalization, including the presence of foreign financial services institutions, can result in less distorted and less volatile capital flows and promotes economic stability. Liberalization also helps ensure that foreign and domestic savings are channelled efficiently and productively.

5. Openness to foreign participation in financial services sectors provides a diversity of choice and increases quality for consumers (both households and businesses). Such participation encourages

innovation and ensures that consumers have access to the latest technologies and products, and can enhance financial market development and stability.

- A recent study of financial crises in emerging markets in Latin America showed that during the period of crisis, foreign banks established in those countries increased their local lending relative to domestically-owned institutions.
- Liberalization of securities markets can mean lower cost financing and new investment and savings vehicles for consumers and investors.
- Access to financial advisory services can help local businesses determine the optimal way to raise capital, provide consumers with retirement planning choices, and assist investors in diversifying their portfolios.
- Regarding insurance, the business community is demanding innovative services and packages of, services to help share risk and facilitate trade, such as, for example, transport-related insurance and reinsurance. Individuals also need innovative and diverse types of insurance services - disability insurance; long-term care insurance; other supplemental services.
- Some governments also have decided that traditional social security systems should be supplemented by self-directed retirement accounts and employer-provided programs. This stimulates capital market development and creates a need for competent private pension funds management.

6. A strong and vibrant financial sector is particularly important for emerging economies to provide a basis for trade in a diverse range of goods and services.

- Ambitious commitments for financial services help attract financial service providers, which in turn makes countries more attractive destinations for investment in e-commerce networks and associated technologies.
- The tourism sector is hindered without access to strong insurance services, to help offset risk associated with new or ongoing projects. Tourism also requires access to banking services, secure loans for expansion or repair, and up-to-date credit card systems.
- Agricultural producers benefit from access to financial information services, including the latest information on global price trends, enabling them to make informed decisions about crop allocation and timing. Crop insurance helps WTO farmers protect themselves from natural disasters or weather shifts. Such producers also benefit from access to foreign banking services, to provide varied and low cost lending instruments that might not be possible through traditional sources.
- Liberalization of financial services often creates new, related opportunities for other sectors. For example, banks, insurance companies and securities firms rely very heavily upon specialized software and have high data processing needs, thus creating new markets and demand for computer-related services.

7. Liberalization of financial services also offers benefits in terms of job creation. Both underlying financial services activities and ancillary services - such as accounting, legal services, and compute-related services - are highly labor intensive and promote the development of highly skilled jobs.

8. Liberalization of financial services also promotes growth and access to new technologies. This has sped the development of on-line banking, securities trading, insurance services, and financial information services. Over time, cross-border trade in services will account for a greater share of all financial services.

9. In addition to the domestic benefits of liberalization, we see that emerging markets are playing an increasing role in exporting financial services. For example, China, Hong Kong, Singapore, Mexico, and Brazil are regional and international providers of several types of financial services.

III. PROPOSAL

10. The following are general benchmarks for financial services liberalization, recognizing that WTO Members may require certain flexibility on a sector-specific and mode-specific basis. In certain situations, these benchmarks could be achieved through phased liberalization or commitments that take effect in the event that a decision is made to open up a particular activity to the private sector. There are two complementary elements to the proposal: (1) common commitments constituting fundamental liberalization, and (2) transparency and other principles for regulation of this sector. We believe that WTO Members need to address all of the elements in these areas to ensure that their economies fully benefit from financial services. We emphasize that the benchmarks discussed in this proposal are without prejudice to provisions such as Paragraphs 2 and 3 of the Annex on Financial Services.

1. Fundamental Liberalization

11. *Provide a clear and uniform description of the financial services sector when scheduling commitments.* We believe that the definitions in the Financial Services Annex continue to provide a comprehensive and coherent basis for scheduling commitments. An examination of the 1997 commitments as well as a number of accession country schedules concluded since 1997, reveals that the Financial Services Annex has been used, in whole or in part, by a large majority of countries. Furthermore, those countries scheduling on the basis of the Financial Services Understanding accept the Financial Services Annex definitions by reference. The definitions are not inflexible and provide the means to address and provide further liberalization for certain subsectors (for example, addressing marine, aviation, and transport insurance separately from the rest of non-life insurance in order to record cross-border commitments).

12. Although financial services have continued to evolve since the time that the Annex was developed, we find that the definitions in the Annex are very broad and remain relevant. We also believe that the definitions provide plenty of flexibility for any convergence of financial services and can accommodate different regulatory approaches. These broad definitions also cover services the purchase of which is compulsory (for example, certain types of insurance).

13. *Remove restrictions on supplier's ability to establish preferred form of commercial presence,* whether as subsidiary, branch, or joint-venture; and at the level of equity participation preferred by the service supplier.

14. *Remove restrictions on supplier's ability to supply certain financial services on a cross-border basis.* We find useful the growing trend to make Mode 2 commitments for all financial services sub-sectors included in the Financial Services Annex. Regarding Mode 1, it seems feasible in the current trade and regulatory climate to ensure commitments for the following sub-sectors, recognizing that others could be elaborated: financial information and advisory services; reinsurance and retrocession; marine, aviation, and transport (MAT) insurance; insurance intermediation, such as agency/brokerage; and services auxiliary to provision of insurance, such as consultancy, actuarial,

risk assessment, and claim settlement services. We are interested in learning more about country experiences in liberalizing these and other sectors, and more generally, in allowing cross-border services to be provided to consumers in the business community.

15. *Remove quantitative limitations on the number of service suppliers, in the form of numerical quotas, monopolies or exclusive providers or economic needs tests. Remove mandatory cession requirements.*

16. *Provide appropriate commitments regarding temporary entry of natural persons.*

17. *Remove discrimination between domestic and foreign suppliers regarding application of laws, regulations, and practices.*

18. *Ensure that acquired rights for commercial presence are protected (grandfathering).*

2. Regulatory Principles

19. WTO Members already have work underway in the Working Party on Domestic Regulation (WPDR) to discuss transparency and other issues. The U.S. has provided a Communication [S/WPDR/W/4] that suggests the need for improved disciplines pertaining to development, adoption, and application/enforcement of regulations, including those related to licensing procedures. We believe that such improvements would be very pertinent to financial services, since many financial services sectors are highly regulated.

20. While the cross-sectoral work of the WPDR continues to unfold, we think that it would be useful for WTO Members to have a more focused discussion of these and other principles as they apply to the financial services sector, including country-specific experiences. This work might usefully take place in the Committee on Trade in Financial Services, in parallel with the ongoing work of the WPDR. This could provide useful cross-fertilization for the WPDR's cross-sectoral work.

21. We provide some initial views on this topic in the Attachment - "Transparency and Other Principles for Regulation of Financial Services."

IV. CONCLUSION

22. Financial services is a key sector that underpins global economic growth and plays a major role in the development of infrastructure for trade in goods and services. Liberalization of trade in financial services, when undertaken in conjunction with transparent and strong regulatory regimes, benefits countries in many ways. Building upon the results of the 1997 WTO Financial Services negotiations, this initial proposal provides general benchmarks to address key remaining obstacles to trade in insurance, banking, securities, asset management, pension funds, financial information and advisory services, and other financial services. The U.S. encourages WTO Members to adhere fully to the broad definitions in the GATS Financial Services Annex when scheduling commitments; to remove remaining national treatment and other restrictions for commercial presence and, in appropriate sectors, for cross-border supply; and to observe transparency and other principles in regulating this important sector.

Attachment

Transparency and Other Principles for Regulation¹ of Financial Services

23. With a view to enhancing the understanding, acceptance, and timely observation of regulatory standards and procedures by financial services suppliers, and thereby making regulation more effective, Members should maintain high levels of transparency and follow other principles in their domestic regulatory processes. To that end, Members should:

I. TRANSPARENCY IN DEVELOPMENT OF REGULATIONS

- (a) When proposing new regulations or amendments to existing regulations, except in emergency circumstances, make such proposals publicly available, provide the rationale for them, permit and solicit comments from the public, provide reasonable time for preparation and submission of such comments, and establish procedures for submission of such comments.
- (b) Publish new regulations or amendments to existing regulations in an appropriate governmental or other widely available publication and, in so doing, include explanations which address major concerns raised and alternatives proposed in the comments received.
- (c) Establish and maintain a mechanism to respond to inquiries from the public for information.

II. TRANSPARENCY IN APPLYING REGULATIONS

- (a) Ensure not only that all laws, regulations, procedures, and administrative or judicial decisions of general application are publicly available pursuant to GATS Article III, but also that they are publicly available at reasonable cost
- (b) Allow reasonable advance notice before requiring compliance with new or amended regulations, except in emergency circumstances.
- (c) Establish in writing the activities for which an authorization or license to supply a service is required.
- (d) Establish in writing, and make available to the public, all procedures and criteria for a service supplier to obtain, renew, retain, or relinquish an authorization or license to supply a service, and for the competent authority to suspend, revoke, or terminate an authorization or license to supply a service.
- (e) Establish, where feasible, and make available to the public, the period of time normally required to reach a decision on a complete, uncontested application for an authorization or license to supply a service.
- (f) On request, and as appropriate, provide applicants information on reasons which could justify denial of authorization or license.

¹Regulations or their equivalent for Members that do not generally have measures in the form of regulations in this sector.

- (g) Make publicly available, through statutes, regulations, or otherwise, information regarding types of conduct, practices, and activities, the violation of which could result in disciplinary actions by the competent authority.
- (h) Establish and make available to the public procedures for disciplinary actions for violations, including procedures for: (1) notification of such alleged violations, (2) responses by the party subject to such disciplinary action, and (3) explanation of decisions.
- (i) Pursuant to GATS Article VI:2(a), establish and make publicly available the procedures for any review or appeal of administrative decisions.
- (j) Make names, official addresses, and official contact information of competent authorities publicly available.

III. OTHER PRINCIPLES IN APPLYING REGULATIONS

- (a) Maintain independence of the regulator from influence by individuals and entities it regulates and create procedures to avoid conflicts of interest where there are governmental entities that also are commercial actors in the marketplace.
- (b) Promptly acknowledge receipt of an application, where acknowledgement of an application is required. If the application is incomplete, notify the applicant without undue delay. Inform the applicant of the authorization or licensing decision within a reasonable period of time after all the necessary information for a decision on the application has been received.
- (c) On request, and as appropriate, provide the applicant with the reasons for denial of an authorization or license and, where an application has been denied for technical reasons that can be remedied, permit the applicant to resubmit the application.
- (d) As a general practice, allow authorizations or licenses to enter into force without undue delay in accordance with their terms and conditions unless there is a uniform practice of delayed implementation based on public interest concerns.
- (e) Pursuant to GATS Article VI:2(a), include, where appropriate, in procedures for any review or appeal of administrative decisions, the opportunity for the affected service supplier to submit its views and supporting documents.
- (f) Where fees are charged in connection with applications for an authorization or license, set them at reasonable levels.
- (g) Where an examination for authorization or licensing is required, schedule such examinations at reasonably frequent intervals, for example, at least once per year, and open examinations to all eligible applicants, including foreign and foreign-qualified applicants.

Additional principles for the insurance sector:

- (h) For licensed suppliers, the competent authority should endeavour to avoid the application of prior product approval (form or rate) requirements for insurance products supplied to consumers in the business community.

- (i) Where prior product approval requirements exist, the competent authority should consider mechanisms to accelerate the introduction into the market and approval of insurance products.
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