

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Proposal by the European Community  
Draft Financial Services Annex  
to the Agreement on Trade in Services

The attached communication is circulated at the request of the Permanent Delegation of the Commission of the European Communities. This annex should be read in conjunction with the Community's proposal for a General Agreement on Trade in Services (document MTN.GNS/W/105).

**PROPOSAL BY THE EUROPEAN COMMUNITY**

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**FINANCIAL SERVICES ANNEX TO THE AGREEMENT  
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**PREAMBLE (p.m.)**

**CHAPTER I : SCOPE**

**Article 1 : Scope**

The provisions of this Annex shall apply to all measures referred to in Article 1.1 of the Agreement related to the provision of financial services into or within the territory of another party, through any of the forms of delivery defined in that Article.

**CHAPTER II : MARKET ACCESS**

**Section 1 : Establishment**

**Article 2 : Commercial presence**

- 2.1. With respect to the provision of financial services and subject to the provisions of Article 5 of this Annex, each party shall permit financial services providers of other parties to establish or expand within its territory a commercial presence, as defined in Article 1.1(c) of the Agreement, for the provision of financial services.
- 2.2. Parties shall not invoke Article 1.3 of the Agreement so as to prevent financial service providers of other parties from acting as intermediaries in financial services activities, from operating in any segment of the market relating to those activities or from becoming members of institutions such as professional associations, securities or other financial exchanges or markets, self-regulatory bodies of securities or other financial market intermediaries(\*).

**Representative offices**

- 2.3. A party shall allow providers of banking and financial services other than those referred to in Article 17.1.1.A of other parties to establish a representative office in its territory, subject to advance notification to the competent authorities of this party. If after the expiration of a period not to exceed three months the competent authorities of such party have not objected, the financial service provider concerned shall be allowed to establish the representative office. A representative office shall be permitted to promote business on behalf of its parent enterprise.

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(\*) Cfr. Article 6 as regards access to activities which are not allowed by the host country.

## **Section 2 : Cross-border services**

### **Article 3 : Cross-border insurance services(\*)**

- 3.1. Each party shall permit non-resident providers of insurance services of other parties to provide in the territory of the first party, under terms and conditions no less favourable than those applied to financial services providers of insurance services established in its territory, the following services :
- a) insurance of risks relating to marine and aviation transport covering both vehicles, goods and liability arising therefrom or either of them, and insurance of risks relating to goods in transit;
  - b) reinsurance and retrocession;
  - c) the services referred to in Article 17.1.1.A.4.
- 3.2. Each party shall permit its residents to purchase in the territory of another party the financial services referred to in paragraph 1 of this Article, which are provided by providers of insurance services established in such a party.

### **Article 4 : Banking and other financial services(\*)**

- 4.1. Each party shall permit non-resident providers of banking and other financial services of other parties to provide in its territory, under terms and conditions no less favourable than those applied to financial services providers established in its territory, the following services :
- a) advisory and other auxiliary services on the activities indicated in Article 17.1.1.B., including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructurings and strategy;
  - b) the activities indicated in Article 17.1.1.B.12. of this Annex.
- 4.2. Each party shall permit its residents to purchase in the territory of another party the financial services indicated in letter B of Article 17.1.1. of this Annex which are provided by financial services providers established in such party.

## **Section 3 : Authorisation procedures**

### **Article 5 : Authorisation and individual decisions**

- 5.1. In the application of Article V of the Agreement, not later than six months after the submission of a complete application for authorisation to provide financial services, the competent authorities of a party shall communicate their decision to the applicant, with reasons for refusal. If the necessary information on the applicant cannot be obtained from the competent authorities

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(\*) It is understood that, according to Articles XVI and XX of the Community draft Agreement, parties may negotiate additional commitments regarding the liberalisation of operations other than those referred to in Articles 3.1 and 4.1.

of the home country within a reasonable time, the deadline for the communication of the decision may not be extended more than the period elapsed between the demand and the receipt of such information. Such delay shall be communicated to the applicant.

- 5.2. Authorisations shall not be refused for the reason that a financial service provider is partially or fully owned or controlled by public authorities.
- 5.3. In case of an individual decision affecting the rights and obligations of a financial service provider of another party, or if after the expiry of the period mentioned in paragraph 1 of this Article no decision has been communicated to the applicant, parties shall grant the affected provider the right of review foreseen in Article V.4 of the Agreement.

#### Section 4 : Other provisions

##### Article 6 : Application of host country rules

- 6.1. Each party shall allow financial services providers from other parties to offer in its territory the services and financial products indicated in Article 17.1. of this Annex which are authorised by this party, under the conditions and rules governing the provision of these services in this party.
- 6.2. In the application of Article V of the Agreement, parties may take measures including the imposition of a requirement for the localisation in its territory of assets related to the insurance activities carried out in its territory by providers of insurance services of other parties.

##### Article 7 : Access to financial activities and territorial expansion of activities

- 7.1. In the application of Article V of the Agreement :
- a) Parties shall not prevent financial services providers of other parties from offering in their territory all the financial services and products permitted by that party. A party may, in full respect of this rule, define the modalities of application of this principle subjecting access to certain activities by financial service providers established in its territory to specialisation or other requirements, such as the establishment of separate subsidiaries, branches or departments subject to different supervision, or a requirement to obtain separate authorisations.
  - b) A party shall not impose any restrictions or limits to the expansion of the activities of financial service providers either in the form of creation of new branches, agencies or points of sale, the creation of new subsidiaries or the acquisition of existing companies, into the entire territory of the party.

- 7.2. With respect to measures referred to in paragraph 1 of this Article, parties undertake not to limit or restrict the present degree of market opportunities nor the benefits already enjoyed by financial services providers of other parties in such parties.
- 7.3. The measures referred to in paragraph 1 shall be subject to the procedures of Article XXIV.3-4 of the Agreement only with respect to their compatibility with the other provisions of the Agreement and of this Annex, or with negotiated liberalisation commitments under Article XX.2(c).

#### Article 8 : Monopolies

From the entry into force of the Agreement, parties shall not designate, whether formally or in effect, any exclusive rights or privileges referred to in Article IX.1 of the Agreement for any of the activities covered by the provisions of this Annex. Parties shall list in their schedules the exclusive rights or privileges it maintains and endeavour to eliminate them or reduce their scope as soon as circumstances permit.

#### Article 9 : Access to other services and to infrastructure and transfer of data and equipment

- 9.1. Financial services providers of other parties shall have access, under terms and conditions no less favourable than those applied to financial services providers of such party, to payment and clearing systems, and to funding and refinancing facilities.
- 9.2. Subject to the provisions of the Agreement, parties shall not prevent transfers of information including electronic data<sup>(\*)</sup> nor transfers of equipment, which are necessary for the conduct of ordinary business transactions.

### CHAPTER III : NATIONAL TREATMENT

#### Article 10 : General National Treatment Obligation

- 10.1. For the purposes of the application of Article IV of the Agreement, in assessing whether a party accords national treatment to financial service providers of other parties, more particularly as regards possible de facto hindrances, it will be considered whether such party grants them the same competitive opportunities as are available to financial services providers of such party.

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(\*) The precise coverage of "transfers of information including electronic data" will be revised in the light of an adequate coverage in the Telecommunications Annex.

10.2. In cases where measures of a party, which apply in the same manner to domestic financial service providers as well as to financial service providers of other parties, have the effect of disadvantaging financial service providers of other parties in their ability to enter and compete in the market as compared to domestic ones, it will be considered that such measures are inconsistent with the obligation of national treatment when they :

- a) arbitrarily restrict the ability to compete of financial services providers of other parties in such a manner that they constitute a disguised discrimination against them; and
- b) are not directly and principally justified in terms of public policy considerations.

10.3. Parties shall not discriminate against financial services providers of other parties as to conditions for membership in any self-regulatory body, securities exchange or market, or any other organisation [or association], when membership in such bodies is required by such party to provide financial services on an equal basis with financial service providers of such party, or when such party grants members of those bodies particular privileges or advantages in providing financial services.

Article 11 : Financial services provided to public entities

Each party shall ensure that no direct or indirect discrimination by reason of nationality or ownership shall be maintained against financial services providers of other parties as regards the purchase of financial services by central authorities or by the entities referred to in Article XXVIII.4 of the Agreement.

Article 12 : Operation of branches and agencies of non-resident financial services providers

12.1. Any measures adopted by a party in order to achieve any public policy objective shall, to the fullest extent consistent with the fulfilment of those objectives, not prevent the establishment and operation of branches or agencies of non-resident providers of financial services on terms and conditions equivalent to those applying to resident financial services providers.

12.2. Each party shall ensure that, with respect to the measures covered by this Agreement, and in particular with respect to all statutory or administrative controls and the application of any financial ratios, branches or agencies of non-resident financial services providers are not subject to more burdensome requirements than those imposed on resident financial services providers. In cases where a party imposes specific additional financial requirements or guarantees to branches and agencies of non-resident financial services providers, such party shall keep those requirements to the minimum possible so as not to disadvantage those branches or agencies as compared to resident financial institutions.

- 12.3. In authorizing the establishment and operation in its territory of branches and agencies of a non-resident financial service provider, the authorities of a party competent for the supervision of such branches and agencies may take into account the supervision and the rules to which the financial service provider concerned is subject in the party in which it is incorporated, and to the extent feasible in cooperation with the competent authorities of the latter party.

#### **CHAPTER IV : DOMESTIC REGULATION**

##### **Article 13 : Domestic Regulation**

- 13.1. Notwithstanding any other provisions of the Agreement and of this Annex, in order to prevent or to solve a serious economic or financial disturbance, parties may take reasonable measures to safeguard the integrity of the financial system, provided that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against financial services providers of other parties. Measures taken in accordance with this Article shall be consistent with the party's rights and obligations under the Articles of the Agreement of the International Monetary Fund. Insofar as such measures impose restrictions on operations liberalised under this Annex, such measures shall be notified to the PARTIES.
- 13.2. Nothing in the Agreement or in this Annex shall be construed to require any party to disclose any investigative, adjudicatory or confidential information in the possession of any judicial, regulatory or supervisory authority.

#### **CHAPTER V : PAYMENTS AND TRANSFERS**

##### **Article 14 : Payments and transfers for capital account transactions**

- 14.1. Each party shall permit payments and transfers for capital account transactions other than those referred in Article XIII.1 of the Agreement, to be made to or by a financial services provider of another party, freely and without delay into and out of the territory of the first party in a freely convertible currency at the spot exchange rate on the date of the transfer with respect to spot transactions, to the extent that such payments and transfers relate to the provision of cross-border services which are not prohibited by such party.
- 14.2. Notwithstanding the provisions of paragraph 1, any party may adopt or maintain :
- a) restrictions on payments and transfers for capital account transactions that are applied pursuant to Article 15 of this Annex;



- b) measures required to prevent infringement of their laws and regulations, inter alia in the field of taxation;
- c) procedures for the declaration of capital movements for purposes of administrative or statistical information or in order to verify the authenticity of the transactions;
- d) measures to ensure the prudential supervision of financial institutions.

The measures and procedures referred to in letters b) and c) above shall not have the effect of impeding capital movements.

**Article 15 : Restrictions on payments and transfers**

15.1. In the event of severe strains on foreign exchange and capital markets and of serious disturbances in the conduct of monetary and exchange rate policies by a party, and/or in case of balance of payments difficulties, a party may adopt or maintain restrictions on payments and transfers for the capital account transactions referred to in Article 14 of this Annex within an appropriate remedial policy package established in accordance with the rules of the International Monetary Fund.

15.2. The restrictions referred to in paragraph 1 above :

- a) shall not discriminate among parties to the agreement;
- b) shall be applied in such a way as to avoid unnecessary damage to the financial or economic interests of financial services providers of other parties;
- c) shall be removed as soon as circumstances permit, according to the procedures foreseen in paragraph 3 of this Article;
- d) shall be notified to the PARTIES;
- e) must be in conformity with the party's rights and obligations under the Articles of Agreement of the International Monetary Fund and with other international obligations.

15.3. The PARTIES shall establish appropriate procedures, in cooperation with the International Monetary Fund, that set conditions on and provide for the [annual] [semi-annual] evaluation of restrictions imposed under this Article.

15.4. When a party imposes or maintains restrictions on payments and transfers for capital account transactions according to the provisions of this Article, its obligations under section 2 of Chapter II of this Annex, for those cross-border financial services the payments and transfers for which have been restricted, are suspended for the duration of these restrictions.

## **CHAPTER VI : OTHER PROVISIONS**

### **[Article 16 : Impairment of benefits, p.m.]**

### **Article 17 : Definitions**

#### **17.1. Financial service**

17.1.1. A "financial service" is any service of a financial nature offered by a financial service provider of a party. "Financial services" includes, inter alia, the following activities :

##### **A. All insurance and insurance-related services, i.e. :**

1. Direct insurance (including co-insurance)
  - i) life
  - ii) non-life
    - transport
    - other risks
2. Reinsurance and retrocession
3. Insurance intermediation, such as brokerage and agency
4. Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

##### **B. Banking and other financial services (excluding insurance)**

1. Acceptance of deposits and other repayable funds from the public.
2. Lending of all types, including, inter alia, consumer credit, mortgage credit, factoring and financing of commercial transactions.
3. Financial leasing
4. All payment and money transmission services
5. Guarantees and commitments
6. Trading for own account or for account of customers  
in :
  - a) money market instruments (cheques, bills, CDs, etc.)
  - b) foreign exchange
  - c) financial futures and options and other financial derivative products
  - d) exchange rate and interest rate instruments, including products such as swaps, FRAs, etc.
  - e) transferable securities
  - f) other negotiable instruments and financial assets, including bullion and instruments negotiated on a commodities exchange
7. 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.
8. Money broking
9. Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services.

10. Settlement and clearing services for financial assets, including securities and other negotiable instruments [insofar as the host party does not have a centralised market for securities or insofar as such services can be provided in that country by private financial services providers].
11. Advisory, agency and other auxiliary financial services on all the activities listed in letter B of Article 17.1.1 of this Annex, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructurings and strategy.
12. Provision of financial information, and financial data processing and transfer.
13. Any other banking or financial services, besides those falling under letter A of this paragraph, which can be provided in the territory of a party.

17.1.2. Are excluded from the definition of financial services the following services :

1. Activities carried out by central banks or by any other public institution in pursuit of monetary and exchange rate policies.
2. Activities, either conducted by central banks or by a government agency or department, or by a public institution, which are carried out for the account or with the guarantee of the government, excepting those activities which may be carried out by financial services providers in competition with such public institutions.
3. Insurance forming part of a statutory system of social security, with the exception of those activities which may be carried out by financial service providers in competition with other public or private institutions.

17.2. "Provision of a financial service" includes all the activities indicated in Article XXVIII.1 of the Agreement which refer to a financial service.

17.3.a) "Financial service providers of a party" are the persons or entities as defined in Article XXVIII.2(a) of the Agreement which provide financial services.

b) In the cases of market access under Article 1.1(c) of the Agreement, a financial service provider shall, for the purposes of Articles 2, 5, 6, 7, 9, 10, 11, 13, 14 and 15 of this Annex, be considered to be also a financial service provider as defined in Article XXVIII.2(b) of the Agreement.

17.4.a) For the purposes of the application of Article 12 of this Annex, "non-resident financial service provider" mean a financial service provider incorporated in the territory of a party other than the party in which it establishes a branch or agency. Conversely, "resident financial service provider" mean a financial service provider of the party in which the branch or agency is established.

- b.) For the purposes of the application of Articles 3 and 4 of this Annex, "non-resident provider of insurance services" and "non-resident provider of banking and other financial services" mean a financial service provider of a party which provides a financial service into the territory of another party from an establishment located in the territory of whatever party, regardless of whether such a financial service provider has or has not a commercial presence in the territory of the party in which the financial service is provided.
- 17.5. "Freely convertible currency" means those currencies so identified by the International Monetary Fund.