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NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM THE DELEGATION OF MALAYSIA

The attached communication is circulated at the request of the Permanent Delegation of Malaysia on behalf of the SEACEN Countries of Indonesia, Malaysia, Thailand, Nepal, Sri Lanka, Korea, the Philippines, Singapore and Myanmar to the members of the Working Group on Financial Services including Insurance.

COMMUNICATION FROM THE DELEGATION OF MALAYSIA

This communication, which is made on behalf of the SEACEN Countries, sets out the position of all SEACEN countries on the sectoral annotations to financial services in the Multilateral Framework on Trade in Services. SEACEN, or the South East Asia Central Banks and Monetary Authorities, is a grouping of 8 central banks (Indonesia, Malaysia, Thailand, Nepal, Sri Lanka, Korea, the Philippines and Myanmar) and the Monetary Authority of Singapore. These 9 countries meet regularly to review current and prospective economic and financial developments. Major activities of this grouping include the conduct of training courses by the SEACEN Centre based in Kuala Lumpur, Malaysia. The key training course, which is conducted twice a year, is a course on bank supervision and inspection. The Centre also conducts research and organises seminars on issues of priority interest to these central banks. SEACEN is a cohesive group and members mutually assist and support each other and frequently exchange views and experiences on the conduct of monetary and financial management.

SEACEN POSITION

1. SEACEN countries, particularly those with a relatively advanced financial sector, having met and deliberated on current discussions at the Working Group on Financial Services and the submissions made to this Group, forward herewith the position of SEACEN countries. This submission serves to highlight areas of major concern to us individually and as a Group, in the light of issues raised during the two previous meetings of the Working Group and outlines the common position of SEACEN countries in these areas.
2. A number of SEACEN countries already have (or are committed to) more liberal financial sectors, with a significant foreign presence. The degree of openness of the financial sector in some countries is even greater than in some of the OECD countries. Those SEACEN countries where foreign presence is relatively small, have already adopted

their own liberalisation programmes. Most SEACEN countries are committed to liberalisation as part of an on-going process to achieve steady economic growth. However, liberalisation must be gradual and consistent with national objectives and aspirations.

3. In the circumstances, the SEACEN countries have unanimously agreed on the positions listed below with regard to an agreement on financial services. However, the countries presenting this position reserve the right to amend or supplement the positions stated in this document in the light of the course of discussions and the progress of negotiations, both in the Working Group on Financial Services (WGFS) as well as at negotiations in the Group Negotiations on Services (GNS).
4. The SEACEN position is summarised as follows:
 - (i) Financial services should be included in the coverage of the Multilateral Framework for Trade in Services (MFTS). As such, there should not be a separate agreement on financial services.
 - (ii) The sectoral annotations on financial services should form an integral legal part of the MFTS. The sectoral annotations should not impose more onerous obligations on the financial services sector to liberalise compared with the other services sectors.
 - (iii) The process of financial liberalisation must take cognizance of the over-riding importance of prudential consideration, monetary policies and national development objectives. In developing countries like SEACEN members, financial services play a pivotal role in economic development. Hence, liberalisation must ensure that developments in the financial sector do not adversely affect the effectiveness of national institutions and the overall general well-being of the

economy as well as allow flexibility to nations in the design and implementation of banking and credit policies which are normal functions of a central bank or monetary authority.

- (iv) Financial liberalisation would only be mutually meaningful and beneficial to the financial institutions of the host and foreign countries if they are equally well established. However, most of the financial institutions of SEACEN countries do not have the benefit of a long banking tradition which dates back to history. Therefore, the liberalisation of financial services in the SEACEN countries should be gradual, yet progressive, taking full cognizance of the level of development of their financial sectors vis-a-vis those of the more developed countries.
- (v) Market access should not imply automatic national treatment given the different levels of efficiency and expertise between foreign and local financial institutions. Once established, foreign financial institutions have the added advantage of an effective global network and special traditional relationships. Some flexibility in the national treatment rule is necessary to reduce such inequalities to level the competitive field for all financial institutions.
- (vi) Given the different stages of development in financial services among countries, commitments to the MFTS for financial services should be adopted on a positive list approach.

5. Subject to the above overall position and using MTN. GNS/35 as the basis for the MFTS, the major areas of concern to SEACEN countries and their positions on these areas are as follows:

(i) Scope and definition

- (a) Financial services shall cover transactions as contained in Article I of MFTS. However, countries should have the right to prohibit the provision of a financial service on prudential grounds.
- (b) Countries may choose to limit coverage of financial services which, on the effective date of the MFTS, are governed by a legal framework involving governmental regulation.

(ii) Coverage

- (a) Financial services shall be defined as listed in Attachment I to this document.
- (b) Financial services annotations shall apply to any existing financial regulation or measures of a party but shall exclude those taken by self-regulatory organisations.

(iii) Most Favoured Nation Treatment

As defined in Article III of the MFTS, but subject to:

- (a) Prudential need to limit concentration of foreign service providers from any one country; and
- (b) The MFTS and sectoral annotations on financial services should not prohibit the establishment of regional cooperation agreements to promote additional liberalisation among countries which share similar cultural and economic systems, such as the SEACEN countries.

(iv) Transparency

- (a) The need for transparency is recognised but this should be limited only to the publication of laws and regulations relevant to financial services sector. Countries should not be required to publish administrative guidelines and other decisions taken as this is an onerous requirement. In some cases, such decisions are conveyed orally to the financial institutions and the publication of such decisions would, therefore, be cumbersome and impractical.
- (b) Measures taken for prudential reasons or to effect monetary policies should be made available at the discretion of the supervisory authorities and only after the threat to stability has been overcome or the objective of the policies achieved.
- (c) The need to achieve transparency in the financial services sector should not compromise a supervisory authority's right to reject individual applicants without disclosing the reasons for the rejection.

(v) Domestic regulation (prudential regulation)

Compliance of the MFTS and sectoral annotations on financial services should not impinge on a supervisory authority's right to:

- (a) Exercise adequate and proper supervision over the foreign financial institutions operating in its country;
- (b) Implement rules and regulations to ensure that foreign financial institutions maintain sound and prudent practices and policies;

- (c) Take necessary action for the protection of depositors and investors; and
- (d) Allow flexibility to governments to impose measures for maintenance of stability in the financial system.

Measures taken for prudential reasons should not be subject to any dispute settlement procedure.

(vi) Safeguard measures

Safeguard measures, as governed by Article X and XI of the MFTS, should be qualified for financial services along the following lines:

- (a) Because of the confidential nature of measures in financial services and the need to provide for an element of surprise in order that the measures will be effective, any safeguard measure (whether temporary or of longer duration) cannot be subject to any multilateral procedures or prior consultations.
- (b) Safeguard measures should remain the exclusive right of regulatory authorities and cannot be subject to surveillance procedures.
- (c) Safeguard measures shall be allowed for the protection of balance of payments positions, as well as the maintenance of stability of the financial and banking systems.

(vii) Market access

Application of Article XVI of the MFTS for financial services should be qualified as follows:

- (a) Countries should be free to choose one or all of the modes of delivery to effect liberalisation of financial services, based on prudential, monetary policy or balance of payments considerations.

(b) Commercial presence

Granting market access through commercial presence should be subject to several criteria in order to meet the needs of developing economies. These include:

- . Right to establish "presence" cannot be automatic;
- . In admitting foreign institutions, supervisory authorities should be allowed to adopt selective admission criteria based on prudential considerations;
- . The right of supervisory authorities to determine the mode of entry i.e. via the setting up of new financial institutions or the acquisition of domestic institutions should be respected;
- . The judgement of supervisory authorities on the number of financial institutions that an economy can effectively support should be respected; and
- . Rejection of applications to establish a commercial presence by a supervisory authority on prudential grounds should not be subject to review.

(c) Cross-border

- . Market access through cross-border trade may be subject to payment restrictions as may be allowed by the International Monetary Fund; and
- . Countries should be allowed to limit the degree of liberalisation of cross-border financial services (e.g. retail banking), taking into account prudential, monetary policy or balance of payments considerations.

(viii) National treatment

Qualifications to national treatment provisions in Article XVII of the MFTS for financial services should include the following:

- (a) National treatment should be treated as a separate issue from market access. Countries which have granted foreign institutions market access should not be automatically required to accord them national treatment.
- (b) National treatment should not preempt a country's right to impose conditions on the operations of foreign institutions to take into account:
 - . The unique circumstances of individual countries, e.g. countries which have a high foreign content in their domestic banking industry;
 - . The level of development and competitiveness of the domestic institutions vis-a-vis foreign institutions. In this regard, the need for a core of strong indigenous financial institutions which pursue policies consistent with the national objectives should be recognised; and

The need to ensure the stability of the financial system.

- (c) Preference in location to local financial institutions to meet socio-economic needs.

(ix) Progressive liberalisation

The corresponding provision in the MFTS is covered under Article XIX. In the financial services sector, liberalisation should take into account the following:

- (a) The stage of economic development of the country in general, and the financial sector in particular.
- (b) The pre-conditions to liberalisation must exist, in particular a core of competitive local financial institutions.
- (c) Liberalisation in financial services must be viewed in the context of liberalisation in other services sectors.
- (d) For countries at a higher "level" of liberalisation than others, the annotations on financial services should not:
 - . Prevent efforts to secure an equitable share by local financial institutions in the total financial assets of the sector; and
 - . Impose a freeze on the "level" of foreign participation such that countries which have a high foreign content in their financial markets and which have taken liberalisation measures before the Uruguay Round Negotiations would not be disadvantaged.

(x) Reservations

In financial services, member countries should be allowed reservations, the duration of which should be negotiable based on the level of development and competitiveness of a particular service.

(xi) Temporary entry of personnel

Entry of personnel associated with commercial presence should be confined to essential personnel and under the following guidelines:

- (a) Entry is to be determined by the human resource needs of the host country.
- (b) Host country should allow entry based on the unavailability of qualified personnel and where the personnel are essential to protect corporate interests.
- (c) Entry should only be permitted for a pre-determined time period and limited to a specific number of persons.
- (d) Entry is subject to the "fit and proper person" criterion and the personnel being not a security risk.
- (e) Essential personnel shall only comprise:
 - . Senior managerial personnel with proprietary information essential to the control and operation of the service;
 - . Specialists in the operation of financial services; and
 - . Specialists in computer, telecommunication services, accounts and legal system not available in the host countries.

ATTACHMENT I

Definition of Services

Financial Service

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

(i) All insurance and insurance-related services, i.e.:

1. Direct insurance (including co-insurance)
 - i) life
 - ii) non-life
 - marine, aviation and transit;
 - fire;
 - motor; and
 - other, e.g. building and construction.
2. Reinsurance and retrocession.
3. Insurance intermediation, such as brokerage and agency.
4. Services auxiliary to insurance, such as consultancy (e.g. risk management consultancy), actuarial, risk assessment and claims settlement services.

(ii) Banking and other financial services (excluding insurance)

1. Acceptance of deposits and other repayable funds.
2. Lending of all types, including, inter alia, consumer credit, mortgage credit, factoring and financing of commercial transactions.
3. Financial leasing.
4. Payment and money transmission services.

5. Guarantees and commitments.
6. Trading in:
 - a) Money market instruments (cheques, bills, NCDs, 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, FRNs, etc.;
 - e) Transferable securities; and
 - f) Other negotiable instruments and financial assets, including bullion and instruments negotiated on a commodities exchange.
7. Participation in issues 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. Advisory services on all activities listed above, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring strategy.
11. Provision of financial information, and financial data processing and transfer.

12. Any other banking and financial services which can be provided subject to approval by the host country.

The definition of financial services excludes 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.
3. Activities forming part of a statutory system of social security.

ATTACHMENT II

General Information on the
SEACEN Centre

The SEACEN Centre was established by the Union of Myanmar Bank, Bank Indonesia, Bank Negara Malaysia, Nepal Rastra Bank, the Central Bank of the Philippines, the Monetary Authority of Singapore, the Central Bank of Sri Lanka and the Bank of Thailand. The Centre had operated on an informal basis since 1972 and became a legal entity only in early 1982. Korea joined the SEACEN Group in January 1990. Laos and Fiji have observer status at SEACEN Meetings and participates in the Centre's training programmes.

The main activities of the Centre can be divided into three areas: research, training and seminars, and meetings and workshops, in line with the Centre's objects, which are as follows:

- (a) Undertake research into the fields of financial, monetary, banking and economic development matters and such other matters as are related thereto;
- (b) Organise and conduct training courses;
- (c) Collect, publish and distribute the results of research and studies, and such other information as are related to the objects of the Centre;
- (d) Arrange and organise seminars, workshops and conferences;
- (e) Provide advisory and technical services to the South-East Asian Central Banks and Monetary Authorities;
- (f) Co-operate with other bodies to promote the objects of the Centre; and

- (g) Undertake any other activity for the furtherance of the objects of the Centre.

The Centre's Programme of Research focusses on the policy-oriented dimensions of central banking in an environment of growing financial and economic interdependence across national borders.

Its Programme of Training stresses the policy and operational aspects of central banking, and caters to all levels of the staff complements of the member central banks and monetary authorities as well as those of selected institutions.

The Centre's Programme of Seminars, Meetings and Workshops addresses financial, monetary, banking and economic development issues affecting the SEACEN region.

Its publications consists of the annual Economic Survey of the SEACEN Countries, out of which an economic report is drawn up regularly. The Centre also publishes its own series of Staff Papers and Occasional Papers, in addition to the reports on every activity in its programmes of research, training and seminars, meetings and workshops.

Historical Background

The history of The SEACEN Centre is closely tied with the annual meetings of the governors of South East Asian central banks.

In February 1966, a small group of governors of some South East Asian central banks first met in Bangkok, Thailand to exchange information, views and ideas on matters affecting their financial systems in particular and their economies in general. That meeting was attended by seven heads/representatives of the central banks and monetary authorities of Laos, Malaysia, Philippines, Singapore, Sri Lanka, Thailand and Vietnam. Since then, the governors have been meeting annually, in what is now known as the Conference of Governors of South East Asian Central Banks (SEACEN). At one time or another, a total of 11 governors

had participated in the conferences, representing the central banks and monetary authorities of the seven founding countries, and the governors of the central banks of Burma, Indonesia, Kampuchea and Nepal.

The early conferences of the governors put much emphasis on setting-up an effective South East Asian voting group that could represent their interest in the International Monetary Fund, the International Bank for Reconstruction and Development, and the Asian Development Bank. It is now a matter of record that this voting group was actually formed and still exists, although its composition is not exactly identical to the countries currently represented in the SEACEN Governors' Conference.

It was in those meetings that the idea of setting up a Centre for monetary studies and training in the region was first mooted, in particular during the Second Governors' Conference held in Baguio City, the Philippines in 1967. The subsequent annual conferences of the governors saw more active discussion on the feasibility of establishing a Centre for monetary studies in Manila, while a regional training centre could be located in Kuala Lumpur. Committees created by the governors examined all aspects of the proposals. By the time the governors had their seventh meeting in Kuala Lumpur in 1972, it was confirmed that a single centre for research and training should be set up in Kuala Lumpur.

Thus, the SEACEN Centre started to operate on an informal basis in 1972 by conducting training courses, relying on the resources of member central banks and monetary authorities, notably those of Bank Negara Malaysia's Staff Training Centre, as it did not have at that time its own staff, facilities and building. On January 15, 1977, just prior to the Twelfth Governors' Conference, the Centre's building (which was erected by Bank Negara Malaysia) was inaugurated by the Deputy Prime Minister of Malaysia.

In 1973, efforts to incorporate the Centre into a separate legal entity commenced to enable it, among others, to recruit its own staff and draw up its own programme of activities. Almost a decade later, on February 3, 1982, during their Seventeenth Conference, the governors signed an agreement establishing the Centre as a legal entity. It was registered under the Companies Act, 1965 of Malaysia as a company limited by guarantee without a share capital.