

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM CANADA, JAPAN, SWEDEN AND SWITZERLAND

The attached communication has been received from the delegations of Canada, Japan, Sweden and Switzerland.

The delegations of Canada, Japan, Sweden and Switzerland present the attached proposal for a Financial Services Annex to the Services Framework. These delegations propose that the attached text should be the basis for discussions at the Ministerial meeting in Brussels on a Financial Services Annex. Depending on the final language of the Services Framework, further provisions or additional text may be required.

Not all delegations have yet a final position on the contents of the institutional provisions (Part V) and on whether these elements should be included, either in the Financial Services Annex or in the Framework.

The language on Dispute Settlement and Enforcement reflects the concerns with regard to the effects of enforcement measures in the financial sector. The negotiations on Dispute Settlement and Enforcement provisions of the GATT should take into account these concerns, without prejudice to the solution of the issue in other sectors. Attention should also be paid to the issue of enforcement measures affecting existing established financial service providers.

The above delegations believe that these provisions on financial services (with any modifications as noted above) should be an integral part of the Services Agreement.

The delegations further present in an attachment language relating to framework provisions on Harmonization and Recognition, Payments and Transfers and Restrictions on Services to Safeguard the Balance of Payments. They believe that this language should also be considered at the Ministerial meeting in Brussels. Depending on the final language of the Services Framework on these articles, specific annotations for financial services may be required.

DRAFT SECTORAL ANNEX ON FINANCIAL SERVICES

PART I: SCOPE AND DEFINITIONS

Ad Article I: Scope

1. This Annex shall apply to measures relating to the provision of financial services.
2. For the purposes of paragraph 3(b) of Article I of the Agreement, trade in financial services excludes only the following:
 - (a) activities carried out by central banks or by any other public institution in pursuit of monetary and exchange rate policies;
 - (b) activities conducted by central banks, government agencies or departments, or public institutions, for the account or with the guarantee of the government, except when those activities are permitted to be carried out by financial service providers in competition with such public entities;
 - (c) activities forming part of a statutory system of social security or public retirement plans, except when those activities are permitted to be carried out by financial service providers in competition with public entities or private institutions.

PART II: GENERAL OBLIGATIONS AND DISCIPLINES

Ad Article VI: Domestic Regulation

1. Add to paragraph 4 of the Framework: "and concerning what may be necessary to reach a decision".

Ad Article XIV: Exceptions

1. The "measures" referred to in the first sub-paragraph of Article XIV:1 of the Agreement include, in addition to sub-paragraphs 1(a) and 1(b): "reasonable measures taken for prudential reasons, to assure the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service provider, or to ensure the integrity and stability of a party's financial system".
2. Nothing in this Agreement shall be construed to require parties to disclose confidential information in the possession of any judicial, regulatory, supervisory or other public authority, which would impede law enforcement, or confidential financial or proprietary information that would prejudice the legitimate commercial interests of particular enterprises, public or private. The PARTIES shall not be prevented from concluding procedures under Article XXIII of the Framework with respect to a party invoking this paragraph.

PART III: SPECIFIC COMMITMENTS

I. Application

1. Where a party has made a binding by inscribing in its schedule the term "financial services sector", the following provisions of Part III of this Annex shall apply unless otherwise specified in its schedule.
2. Parties shall not maintain conditions, limitations, and qualifications relating to market access, national treatment and financial services purchased by public entities unless specified in their schedules. Such conditions, limitations and qualifications shall be limited to existing non-conforming measures.

II. Monopoly Rights

Parties shall list in their schedules existing monopoly rights and shall endeavour to eliminate them or reduce their scope.

III. Financial Services Purchases by Public Entities

Notwithstanding Article XIII of the Framework, each party shall ensure that financial services providers of other parties established in its territory are accorded most-favoured-nation treatment and national treatment as regards the purchase of financial services by public entities.

IV. Market Access

A. Cross-border trade

1. Each party shall permit non-resident providers of financial services to provide the following services:
 - (i) insurance of risks relating to maritime shipping and commercial aviation covering both vehicles, goods and liability arising therefrom or either of them, and insurance of risks relating to goods in international transit;
 - (ii) reinsurance and retrocession and the services auxiliary to insurance as defined in paragraph 1.A.4 of the Definitions.

- (iii) advisory and other auxiliary services relating to banking and other financial services as referred to in paragraph 1.B.11 of the Definitions, and the provision of financial information and financial data processing and transfers as referred to in paragraph 1.B.12 of the Definitions.

2. Each party shall permit its residents to purchase in the territory of another party, to the extent that the underlying capital movements are liberalized, the financial services indicated in:

- (a) paragraph 1(i);
- (b) paragraph 1(ii); and
- (c) section 1.B of the Definitions.

3. Parties need not list in their schedules the restrictions they maintain on cross-border financial services other than those indicated in paragraphs 1 and 2 of this Article.

B. Commercial presence

4. Each party shall permit financial service providers of other parties to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence, as defined in Section 5 of the Definitions, for the provision of financial services.

5. A party shall permit financial service providers of other parties to offer in its territory any new financial services as defined in Section 6 of the Definitions.

C. Transfers of information and processing of information

6. Parties shall not take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or transfers of equipment, subject to importation rules consistent with international agreements, which are necessary for the conduct of the ordinary business of a financial service provider. Nothing in this paragraph restricts the right of parties to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Agreement.

D. Temporary entry of personnel

7. A party shall permit temporary entry into its territory of the following personnel of a financial service provider of another party, that is establishing or has established a commercial presence in the territory of the first party:

- (a) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service provider; and
- (b) specialists in the operation of the financial service provider.

Temporary entry of the following personnel associated with such financial service provider's commercial presence shall be permitted, subject to the availability of qualified personnel in the territory of the first mentioned party:

- (a) specialists in computer services, telecommunication services and accounts of the financial service provider; and
- (b) actuarial and legal specialists.

E. Non-discriminatory measures

8. Parties shall endeavour to remove or to limit any significant adverse effects on financial service providers of other parties of:

- (a) non-discriminatory measures which prevent financial service providers from offering in their territory, in the form determined by the party, all the financial services permitted by those parties;
- (b) non-discriminatory measures that limit the expansion of the activities of financial service providers into the entire territory of the party;
- (c) measures of a party, when such a party applies the same measures both to the provision of banking and securities services, and a financial service provider of another party concentrates its activities in the provision of securities services; and
- (d) other measures which, although respecting the provisions of this Agreement, affect adversely the ability of financial service providers of other parties to operate, compete or enter the market;

where any action taken under this paragraph would not unfairly discriminate against financial service providers of the parties taking such action.

9. With respect to the non-discriminatory measures referred to, paragraphs 8(a) and (b), parties shall endeavour not to limit or restrict the present degree of market opportunities nor the benefits already enjoyed by financial service providers of all other parties as a class in the territory of such parties, provided that this commitment does not result in unfair discrimination against financial service providers of the parties applying such measures.

V. National Treatment

1. Parties shall grant to financial service providers of other parties, in the application of all measures, treatment no less favourable than that accorded to its financial service providers in like circumstances.

2. A measure of a party, whether such measure accords different or identical treatment, shall be consistent with paragraph 1 if it provides to financial service providers of other parties equal competitive opportunities as are available to financial service providers of the party in like circumstances. Equal competitive opportunities shall be deemed to exist where a measure does not disadvantage financial service providers of other parties in their ability to compete as compared with domestic financial service providers in like circumstances. In assessing equal competitive opportunities a principal factor will be the effect of a party's measures. The absence of a significant market share in a party by financial service providers of another party shall not in itself constitute denial of equal competitive opportunities.

3. Terms, conditions and procedures for authorization of a commercial presence shall be no less favourable for a financial services provider of another party than for financial service providers of that party.

4. Under terms and conditions no less favourable than those applied to financial service providers of a party in like circumstances, parties shall grant to financial service providers of other parties established in a party access to payment and clearing systems operated by public entities, and to official refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the lender of last resort facilities of the party in which the financial service provider of another party is established.

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

[PART V: INSTITUTIONAL PROVISIONS]

I. Dispute Settlement and Enforcement

Any measures authorized as a result of a settlement of a dispute, or taken as a compensatory adjustment, shall [in principle] be confined to the sector which is the subject of the dispute or where the benefits were denied.

II. Institutional Machinery

1. The Council shall establish a body for the effective discharge of its functions under this Agreement with respect to financial services. That body shall be called the Financial Services Body.
2. The Financial Services Body shall be composed of finance officials as chosen by the authority of each party responsible for financial services.
3. The Financial Services Body shall exercise the responsibilities of the PARTIES with respect to all significant matters under this Agreement pertaining to the provision of financial services and all other matters as may be assigned to it.
4. The Financial Services Body will report annually to the Council regarding the implementation and operation of financial services liberalization under this Agreement. The Financial Services Body will, as appropriate, assess the scope for further liberalization.]

FINANCIAL SERVICES: DEFINITIONS

1. Financial service

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

A. All insurance and insurance-related services

1. Direct insurance (including co-insurance).
 - (i) life
 - (ii) non-life
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 transaction.

3. Financial leasing.
4. All payment and money transmission services.
5. Guarantees and commitments.
6. Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (a) money market instruments (cheques, bills, certificates of deposits, etc.);
 - (b) foreign exchange;
 - (c) derivative products including, but not limited to, futures and options;
 - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements, etc.;
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets, including bullion.
7. Participation in issues of all kinds of securities, including under-writing and placement as agent (whether publicly or privately) and provision of service 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, derivative products, and other negotiable instruments.
11. Advisory and other auxiliary financial services on all the activities listed in Article 1B of this Annex, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
12. Provision and transfer of financial information, and financial data processing and related software by providers of other financial services.

2. [A financial service provider of a party is a national of a party or a company of a party wishing to provide or providing financial services. A company of a party is one which is:

- (a) established in the territory of that party; or
- (b) established in the territory of a party which is ultimately owned or controlled by a citizen of a party or by a company of a party.

The term "financial service provider" does not include a central bank; a public entity established by a party which provides financial services for governmental purposes.]

3. A company of a party is a company legally constituted under the laws of that party including a sole proprietorship, partnership corporation, or other organization.

A company or a financial service provider is owned by nationals of a party if more than 50 per cent of the equity interest is beneficially owned by nationals or companies of a party.

A company or financial service provider is controlled by nationals or companies of a party if nationals or companies of a party have the ability to name a majority of the directors of the company or otherwise direct the actions of the company or financial service provider.

4. A non-resident provider of financial services is 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.

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

6. A new financial service is a [new] service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not provided by any financial service provider in the territory of a particular party but which is provided in the territory of another party.

7. "Public entity or institution" means an agency, department, instrumentality or other entity of a party that carries out governmental functions or activities for governmental purposes. The term public entity or institution shall not include publicly-owned or designated commercial financial service providers.

[8. "Measure" means any law, regulation, [international agreement,] judicial decision or administrative guideline, ruling, decision or practice.]

ATTACHMENT:

LANGUAGE FOR CONSIDERATION IN RELATION WITH THE FRAMEWORK AGREEMENT

Note: There is recognition that these articles would be worked on further in the framework discussion. The wording below represents one version which may be acceptable, but there is recognition that there may be others.

Ad Article VII: Harmonization and Recognition

Parties may adopt arrangements or enter into agreements that provide for recognition of measures of, harmonization of measures with, or co-operative arrangements with other parties or other countries relating to the provision of a financial service, provided they are willing to adopt comparable arrangements and agreements with other parties in like circumstances. Such arrangements and agreements shall not be formulated or applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between parties. Parties shall administer these arrangements and agreements in a reasonable, objective and impartial manner. Parties shall promptly inform the PARTIES of any such new arrangements and agreements and of any significant changes therein.

Ad Article XI: Payments and Transfers

1. Except as envisaged under Article XII:

(a) no party shall apply restrictions on the making of international payments and transfers for the cross-border provision of services to the extent that market access commitments have been made by such party under this Agreement;

(b) no party shall apply restrictions on international payments and transfers (i) from the territory of another party for the establishment or expansion in its own territory of a provider of services to the extent that market access commitments have been made by such party under this Agreement, of (ii) to the territory of another party upon termination or reduction of such services in its own territory.

2. No party shall frustrate the intent of paragraph 1 above through exchange actions.

3. Any party may adopt or maintain measures and procedures required to ensure good faith application of its laws and regulations, inter alia, in the field of taxation, or for the declaration of capital movements for purposes of collecting administrative or statistical information or for verifying the authenticity of the transactions, in so far as those measures or procedures do not prevent the payments and transfers from taking place.

4. Nothing in this Agreement shall affect the rights and obligations of members of the International Monetary Fund under the Articles of Agreement of the Fund, including (a) the right to use exchange controls, exchange restrictions and other exchange actions which are in conformity with such Articles, and (b) the obligation not to adopt or maintain exchange restrictions, or engage in other exchange actions, except in conformity with such Articles.

5. For the purposes of paragraph 3 above, the PARTIES shall accept the determination of the International Monetary Fund as to whether an exchange restriction or an exchange action is consistent or inconsistent with the Articles of Agreement of the Fund.

Ad Article XII: Restrictions on Services to Safeguard the
Balance of Payments

1. In the event of serious balance of payments and external financial difficulties, a party may, to the extent that market access commitments have been made by such party under this Agreement, temporarily apply restrictions on payments and transfers referred to in Article XI of this Annex and on the related cross-border provision of services.

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 cause the least possible hindrance for the provision of services and the least possible damage to the financial and economic interests of service providers of other parties as determined according to 3(c) below; and
- (c) shall be removed progressively when the situation specified in paragraph 1 improves, as assessed by the International Monetary Fund.

3. Any Party applying the provisions of paragraph 1 of this article shall consult promptly with the PARTIES.

4. The PARTIES shall:

- (a) establish appropriate procedures, in co-operation with the International Monetary Fund, with respect to the assessment of the balance of payments and external financial situation and shall provide for annual evaluation of that situation and the

restrictions applied under this Article. Such assessments shall include the nature and extent of the balance of payments and external financial difficulties and alternative corrective measures, which may be available;

- (b) accept the assessment of the balance of payments and external financial situation of the party in question by the International Monetary Fund;
- (c) establish appropriate procedures to assess the effects of the restrictions imposed so as to determine compliance with 2(b);
- (d) establish procedures for roll-back of restrictions imposed according to paragraph 1 in case of a negative assessment by the International Monetary Fund regarding the balance of payments and external situation.

5. The parties shall establish review and any other procedures as necessary, so that a party, that is not a member of the International Monetary Fund, may avail itself of the safeguard provisions of paragraph 1.