

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.TNC/W/52

4 December 1990

Special Distribution

Trade Negotiations Committee

Original: English

COMMUNICATION FROM MALAYSIA

Draft SEACEN Financial Services Annex

The following 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.

Article I: Scope

1. For the purposes of Article I of the Agreement, trade in financial services does not include the following:
 - (a) Activities carried out by central banks or monetary authorities or by any other public institution in pursuit of monetary and exchange rate policies.
 - (b) Activities conducted by central banks or monetary authorities, 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 services 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

Article III: Transparency

1. For the purposes of Article III of the Agreement, transparency shall be limited to laws, regulations and administrative guidelines of general application.

Article VI: Domestic Regulation

1. Notwithstanding any other provisions in the Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for 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 the financial system.

2. Nothing in this Agreement shall be construed to require Parties to disclose information relating to the affairs and accounts of customers and to provide confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

3. Measures by Parties on individual cases shall not be subject to any dispute settlement.

Article VIII: Monopolies

1. Monopolies shall not include stock and financial futures exchanges, clearing houses and government institutions established for the conduct of specialized financial services (e.g. national savings banks, postal savings banks, etc.).

PART IV: PROGRESSIVE LIBERALIZATION

Article XX: Schedules

1. Where a Party has set out in its schedule a level of foreign participation in the financial sector, the Party may take measures necessary to ensure that such a level is not exceeded.

PART V: INSTITUTIONAL PROVISIONS

Article XXIII: Dispute Settlement and Enforcement

1. Any measure authorized as a result of a settlement of a dispute, or taken as a compensatory adjustment, shall, be confined to the sector which is the subject of the dispute or where the benefits were denied.

Article XXV: Institutional Machinery

1. The Council shall establish a body for the effective discharge of its functions under the Agreement with respect to financial services. That body shall be called the Financial Services Body.
2. The Financial Services Body shall be composed of supervisors of financial services 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.

Definitions

The following definitions are added to those of the framework:

1. Definition of financial services

A "financial service" is any service of a financial nature offered by a financial service provider of a party. "Financial services" comprise 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 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, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (a) money market instruments (cheques, bills, certificates of deposit, 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 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, derivative products, and other negotiable instruments (in so far as the host party does not have a centralized market for securities or in so far as such services can be provided in that country by private financial services providers).
11. Advisory and other auxiliary financial services such as 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.
13. Any other banking and financial services which can be provided subject to approval by the host country.