

บรรณานุกรม

ภาษาไทย

การค้าระหว่างประเทศ การพัฒนากลยุทธ์ทางการค้าของประเทศไทย  
(เล่ม 1). งานวิจัยเพื่อประกอบการจัดทำแผนพัฒนาอุตสาหกรรม  
และการค้าในแผนพัฒนาเศรษฐกิจและสังคมแห่งชาติ ฉบับที่ 7  
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ภาคผนวก

REVIEW OF INDIVIDUAL TEXTS IN  
THE DRAFT FINAL ACT

Informal Note by the Secretariat

At an informal meeting held in May 1992 the Legal Drafting Group discussed rectifications to the text of the General Agreement on Trade in Services. The attached text reflects the rectifications agreed in those meetings, including suggestions by the Secretariat contained in document 625 and other suggestions made in the course of the discussion of the text.

The text of Articles XIV(d) and (e), XXI and XXXIV, and the Annexes on Air Transport and Telecommunications, may require adjustment in the light of technical discussions now in progress. Adjustments to XXXIV could have a bearing on Articles I, III, V:6(a) and XXXI.

Articles XXII and XXIII will need to be reviewed in the light of the Group's discussion on Appendix 2 of the Dispute Settlement Understanding on special or additional dispute settlement rules, procedures and provisions.

A number of Final Provisions have been placed in square brackets to indicate that a decision on their status can be taken when it is clearer how the matters they deal with will be treated in the context of the MTO. Similarly, the treatment of the review procedures for m.f.n. exemptions in the Annex on Article II Exemptions will need to be considered in the light of decisions on the joint action provisions in the MTO.

No decision has been made regarding the placement of the model Schedule of Specific Commitments, which at present is retained in the attached text (page 32). One suggestion was that it did not belong in the Agreement. Another suggestion was that, if used in some form, it should be placed in the document on Scheduling of Initial Commitments in Trade in Services: Explanatory Note of 12 February 1992.

The Attachment to the Annex on Article II Exemptions (page 34) and the Substantive Guidelines for the Negotiation of Initial Commitments during the Uruguay Round (page 57) will have no operational value after the completion of the Uruguay Round, so will not be part of the Final Act.

As requested, the secretariat has put the Decision concerning Article XIV(b) into the format of a ministerial decision for further consideration as a possible alternative to the format adopted in MTN.TNC/W/FA.

The status of the Understanding on Commitments in Financial Services remains unresolved.

The rectifications have been marked by overstriking the words to be deleted; new text is in bold and underlined.







Part III SPECIFIC COMMITMENTS

- Article XVI Market Access
- Article XVII National Treatment
- Article XVIII Additional Commitments

Part IV PROGRESSIVE LIBERALIZATION

- Article XIX Negotiation of Specific Commitments
- Article XX Schedules of Specific Commitments
- Article XXI Modification of Schedules

Part V INSTITUTIONAL PROVISIONS

- Article XXII Consultation
- Article XXIII Dispute Settlement and Enforcement
- [Article XXIV Joint Action]
- Article XXV Council for Trade in Services
- Article XXVI Technical Cooperation
- Article XXVII Relationship with Other International Organizations

Part VI FINAL PROVISIONS

- Article XXVIII Acceptance and Accession
- ~~Article XXIX Entry into Force~~
- [Article XXX Non-Application]
- Article XXXI Denial of Benefits
- [Article XXXII Amendments]
- ~~Article XXXIII Withdrawal~~
- Article XXXIV Definitions
- Article XXXV Annexes

Schedule of Specific Commitments

Annex on Article II Exemptions

Attachment to Annex on Article II Exemptions (not to be included in the Final Act)

Annex on Movement of Natural Persons providing supplying Services under the Agreement

Annex on Financial Services

Annex on Telecommunications

Annex on Air Transport Services

DECISIONS UNDERSTANDINGS AND OTHER TEXTS

Ministerial Decision on Institutional Arrangements

Ministerial Decision on Certain Dispute Settlement Procedures

Decision concerning Article XIV(b)

Understanding on Commitments in Financial Services

Substantive Guidelines for the Negotiation of Initial Commitments during the Uruguay Round (not to be included in the Final Act)

PREAMBLE

The-Parties-to-this-Agreement Members,

Recognizing the growing importance of trade in services for the growth and development of the world economy;

Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;

Desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

Recognizing the right of Parties Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives, and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

Desiring to facilitate the increasing participation of developing countries in international trade in services and the expansion of their service exports including, inter alia, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby agree as follows:

PART I

SCOPE AND DEFINITION

Article I

Scope and Definition

1. This Agreement applies to measures by Parties Members affecting trade in services.

2. For the purposes of this Agreement, trade in services is defined as the supply of a service:

- (a) from the territory of one Party Member into the territory of any other Party Member;
- (b) in the territory of one Party Member to the service consumer of any other Party Member;
- (c) through the presence of service providing supplying entities of one Party Member in the territory of any other Party Member;
- (d) by natural persons of one Party Member in the territory of any other Party Member.

3. For the purposes of this Agreement:

(a) "measures by Parties Members" means measures taken by:

- (i) central, regional or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Party Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

(b) "services" includes any service in any sector except services supplied in the exercise of governmental functions.\*

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\*The terms of the exclusion of services supplied in the exercise of governmental functions will be reviewed in the context of the work on Article XXXIV.

PART II

GENERAL OBLIGATIONS AND DISCIPLINES

Article II<sup>\*</sup>

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Party Member shall accord immediately and unconditionally to services and service providers suppliers of any other Party Member, treatment no less favourable than that it accords to like services and service providers suppliers of any other country.\*

2. A Party Member may maintain a measure inconsistent with paragraph 1 provided that it such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

3. The provisions of this Agreement shall not be so construed as to prevent any Party Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article III

Transparency

1. Each Party Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant laws, regulations, administrative guidelines and all other decisions, rulings, or measures of general application, whether made effective by national or sub-national government bodies or by a non-governmental regulatory entity, which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party to this Agreement Member is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Party Member shall promptly and at least annually inform the PARTIES Council for Trade in Services at least annually of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

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\* The provisions of this Article do not apply to measures taken under international agreements on juridical and/or administrative assistance.

4. Each Party Member shall respond promptly to all requests for specific information, by any other Parties Member, on any of its laws, regulations, administrative guidelines or any other decisions, rulings, measures of general application or international agreements within the meaning of paragraph 1. Each Party Member shall also establish one or more enquiry points to provide specific information to other Parties Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the entry into force of [~~the~~ this Agreement] [~~the~~ Agreement Establishing the MTO]. Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing countries. Enquiry points need not be depositories of laws and regulations.

5. Any Party Member may notify to the PARTIES Council for Trade in Services any measure, taken by any another Party Member, which it considers affects the operation of this Agreement.

#### Article III bis

##### Disclosure of Confidential Information

Nothing in this Agreement shall require any Party Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

#### Article IV

##### Increasing Participation of Developing Countries

1. The increasing participation of developing countries in world trade shall be facilitated through negotiated specific commitments, by different Parties Members pursuant to Parts III and IV of this Agreement, relating to:

- (a) the strengthening of their domestic services capacity and its efficiency and competitiveness inter alia through access to technology on a commercial basis;
- (b) the improvement of their access to distribution channels and information networks; and
- (c) the liberalization of market access in sectors and modes of supply of export interest to them.



2. Developed Parties country Members, and to the extent possible other Parties Members, shall establish contact points within two years from the entry into force of [this Agreement] [the Agreement Establishing the MTO] to facilitate the access of developing countries' service providers suppliers to information, related to their respective markets, concerning:

- (a) commercial and technical aspects of the supply of services;
- (b) registration, recognition and obtaining of professional qualifications; and
- (c) the availability of services technology.

3. Special priority shall be given to the least developed countries in the implementation of paragraphs 1 and 2 above. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

#### Article V

##### Economic Integration

1. ~~The provisions of~~ This Agreement shall not prevent any of its Parties Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

- (a) has substantial sectoral coverage\*, and
- (b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors ~~or sub-sectors~~ covered under sub-paragraph 1(a), through:
  - (i) elimination of existing discriminatory measures, and/or
  - (ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, and XIV and XIV bis.

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\*This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the a priori exclusion of any mode of supply.



2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.
3. Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, in particular sub-paragraph (b), in accordance with the level of development of the countries concerned, both overall and in individual sectors and sub-sectors.
4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Party Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or sub-sectors compared to the level applicable prior to such an agreement.
5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Party Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2-4 of Article XXI+2-4 shall apply.
6. (a) A service supplier of any other Party Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.  
(b) The Party A Member that is a party to such an agreement may refuse to grant the treatment referred to in sub-paragraph 1(a) above, if:
  - (i) the service supplier was not established in the territory of a party to such agreement prior to signature of the agreement; and
  - (ii) the parties to such agreement do not provide common treatment to third countries with respect to the sector or ~~sub-secter~~ concerned.
7. (a) ~~Parties-to-this-Agreement~~ Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification thereto to the PARTIES Council for Trade in Services. They shall also make available to the PARTIES Council such relevant information as may be requested by ~~the-PARTIES~~ it. The Council may establish a working party to examine

such an agreement or enlargement or modification thereto and to report to the PARTIES Council on its consistency with this Article.

- (b) ~~Parties-to-this-Agreement~~ Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the PARTIES Council for Trade in Services on its implementation. The PARTIES Council may establish a working party to examine such reports if they it deems it necessary.
  - (c) Based on the reports of the working parties referred to in paragraphs 7 (a) and 7 (b), the PARTIES Council may make recommendations to the parties as they it deems appropriate.
8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Party Member from such agreement.

#### Article VI

##### Domestic Regulation

1. In sectors ~~or sub-sectors~~ where specific commitments are undertaken, each Party Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. (a) Each Party Member shall maintain or institute as soon as practicable judicial, ~~arbitrable~~ arbitral or administrative tribunals or procedures which provide, at the request of an affected service provider supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions ~~relating-to-the-supply-of-services~~ affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party Member shall ensure that they do in fact provide for an objective and impartial review.  
  
(b) The provisions of sub-paragraph (a) shall not be construed to require a Party Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
3. Where authorization is required for the ~~provision~~ supply of a service on which a specific commitment has been made, the competent authorities of a Party Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of

the Party Member shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the PARTIES Council for Trade in Services shall, through appropriate bodies they it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:

- (a) based on objective and transparent criteria, such as competence and the ability to provide supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. (a) In sectors ~~or sub-sectors~~ in which a Party Member has undertaken specific commitments ~~in accordance with Articles XVI and XVII of this Agreement~~, pending the entry into force of disciplines developed in these sectors ~~or sub-sectors~~ pursuant to paragraph 4, the Party Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(i) does not comply with the criteria outlined in sub-paragraphs 4(a), (b) or (c); and

(ii) could not reasonably have been expected of that Party Member at the time the specific commitments in those sectors ~~or sub-sectors~~ were made.

(b) In determining whether a Party Member is in conformity with the obligation under paragraph 5(a) above, account shall be taken of international standards of relevant international organizations\* applied by that Party Member.

6. In sectors ~~or sub-sectors~~ where specific commitments regarding professional services are undertaken, each Party Member shall provide for adequate procedures to verify the competence of professionals of any other Parties Member.

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\*The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties ~~to this Agreement~~ Members of the MTO.



Article VII.

Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services ~~providers~~ suppliers, and subject to the requirements of paragraph 3 below, a Party Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. A Party Member that is a party to such an agreement or arrangement referred to in paragraph 1, whether existing or future or ~~existing~~, shall afford adequate opportunity for other interested Parties Members to negotiate their accession to such an agreements or arrangements or to negotiate comparable ones with it. Where a Party Member accords recognition autonomously, it shall afford adequate opportunity for any other Parties Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in their territories should be recognized.
3. A Party Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services ~~providers~~ suppliers, or a disguised restriction on trade in services.
4. Each Party Member shall:
  - (a) within 12 months from the ~~entry-into-force-of~~ date on which [this Agreement] the Agreement Establishing the MTO takes effect for it, ~~or its accession thereto~~, inform the PARTIES Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;
  - (b) promptly inform the PARTIES Council for Trade in Services as far in advance as possible of the opening of negotiations on such an agreements or arrangements referred to in paragraph 1 in order to provide adequate opportunity to any other Parties Member to indicate their interest in participating in the negotiations before they enter a substantive phase;
  - (c) promptly inform the PARTIES Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on such an agreements or arrangements referred to in paragraph 1.



5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties Members shall work in co-operation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article VIII

Monopolies and Exclusive Service Providers Suppliers\*

1. Each Party Member shall ensure that any monopoly provider supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's Member's obligations under Article II and specific commitments ~~under Part III of this Agreement.~~

2. Where a Party's Member's monopoly provider supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's Member's specific commitments ~~under this Agreement~~, the Party Member shall ensure that such a provider supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The PARTIES Council for Trade in Services may, at the request of a Party Member which has a reason to believe that a monopoly provider supplier of a service of any another Party Member is acting in a manner inconsistent with paragraph 1 or 2 above, request the Party Member establishing, maintaining or authorizing such entity supplier to provide specific information concerning the relevant operations.

4. If, after the entry into force of this Agreement, a Party Member grants monopoly rights regarding the provisions supply of a service covered by its specific commitments ~~under this Agreement~~, that Party Member shall make such notification to the PARTIES Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.

5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party Member, formally or in effect, (a) authorizes or establishes a small number of service providers suppliers and (b) substantially prevents competition among those providers suppliers in its territory.

\*Nothing in this Agreement condemns or condones the creation or maintenance of monopoly service providers suppliers.

Article IX

Business Practices

1. Parties Members recognize that certain business practices of service providers suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.
2. Each Party Member shall, at the request of any another Party Member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party Member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party Member addressed shall also provide other information available to the Party requesting Member, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting party Member.

Article X

Emergency Safeguards Measures

1. ---~~Within three years from the entry into force of [the Agreement], multilateral negotiations on the question of emergency safeguard measures, based on the principle of non-discrimination, shall be completed and their results enter into force.~~
2. ---~~Meanwhile, the three-year delay in the ability of a Party to invoke Article XXI is changed to a one-year delay in a case where the Party invoking this provision can show cause to the PARTIES for not waiting the full three years. The other provisions of Article XXI would apply.~~
3. ---~~This provision shall end within the three years referred to in paragraph 1.~~

1. There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the entry into force of [this Agreement] [the Agreement Establishing the MTO].

2. In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force; provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-year period provided for in paragraph 1 of Article XXI.

3. The provisions of paragraph 2 shall cease to apply three years after the entry into force of [this Agreement] [the Agreement Establishing the MTO].

#### Article XI

##### Payments and Transfers

1. Except under the circumstances envisaged in Article XII, a Party Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments ~~under the Agreement.~~
2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments ~~under this Agreement~~ regarding such transactions, except under Article XII or at the request of the Fund.

#### Article XII

##### Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Party Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1 above:
  - (a) shall not discriminate among ~~Parties to the Agreement~~ Members;
  - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
  - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other ~~Parties~~ Member;
  - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;



(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Parties Members may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be taken adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the PARTIES General Council.

5. (a) Parties Members applying the provisions of this Article shall consult promptly with the PARTIES Committee on Balance-of-Payments Restrictions on restrictions maintained adopted under this Article.

(b) The PARTIES Ministerial Conference shall establish procedures\* for periodic consultations with the objective of enabling such recommendations to be made to the Party Member concerned as they it may deem appropriate.

(c) Such consultations shall assess the balance-of-payment situation of the party Member concerned and the restrictions applied adopted or maintained under this Article, taking into account, inter alia, such factors as:

(i) the nature and extent of the balance-of-payments and the external financial difficulties;

(ii) the external economic and trading environment of the consulting party Member;

(iii) alternative corrective measures which may be available.

(d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phase out of restrictions in accordance with paragraph 2(v) (e).

(e) In such consultations, ~~the PARTIES shall accept~~ all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and ~~shall base their~~ conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the Party consulting Member.

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\*It is understood that the procedures under paragraph 5 ~~will draw on~~ shall be the same as the GATT 1993 procedures ~~as they emerge from the~~ Uruguay Round.

6. If a Party Member which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the PARTIES Ministerial Conference will shall establish review and any other procedures necessary.

Article XIII

Government Procurement

1. ~~The provisions of~~ Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the entry into force of [~~the this~~ Agreement] [the Agreement establishing the MTO].

Article XIV

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on international trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party Member of measures:

- (a) necessary to protect public morals or to maintain public order;\*
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

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\*Action under a public order exception is possible where genuine and sufficiently serious threats are posed to one of the fundamental interests of society.

- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety;
- (d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of taxes on income of service suppliers of other Parties Members that, under the Party's Member's relevant tax measures, are not deemed to reside in the Party's Member's territory;
- (e) inconsistent with Article II, provided that the difference in treatment is the result of an international agreement relating to the avoidance of double taxation to which the Party Member is a signatory.

Article XIV bis

Security Exceptions

1. Nothing in this Agreement shall be construed:

- (a) to require any Party Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Party Member from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to the ~~provision~~ supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
  - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
  - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The PARTIES Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article XV

Subsidies

1. Parties Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Parties Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade distortive effects.\* The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Parties Members, particularly developing countries country Members, for flexibility in this area. For the purpose of such negotiations, Parties Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service providers suppliers.

2. Any Party Member which considers that it is adversely affected by a subsidy of another Party Member may request consultations with that Party Member on such matters. Such requests shall be accorded sympathetic consideration.

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\*A future work programme shall determine how and in what time-frame negotiations on the multilateral disciplines will be conducted.

PART III

SPECIFIC COMMITMENTS

Article XVI

Market Access



1. With respect to market access through the modes of supply identified in Article I, each Party Member shall accord services and service providers suppliers of any other Parties Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule.\*

2. In sectors or sub-sectors where market access commitments are undertaken, the measures which a Party Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its schedule, are defined as:\*\*

- (a) limitations on the number of service providers suppliers whether in the form of numerical quotas, monopolies, exclusive service providers suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;\*\*\*

\*If a Party Member undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in paragraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Party Member is thereby committed to allow such movement of capital.

If a Party Member undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in paragraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

\*\*It is understood that all discriminatory measures can be challenged as a violation of Article XVII.

\*\*\*Sub-paragraph 2(c) does not cover measures of a Party Member which limit inputs for the supply of services.



- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service provider supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may provide a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

#### Article XVII

##### National Treatment

1. In the sectors or sub-sectors inscribed in its schedule of Commitments, and subject to any conditions and qualifications set out therein, each Party Member shall accord to services and service providers suppliers of any other Party Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service providers suppliers.\*
2. A Party Member may meet the requirement of paragraph 1 by according to services and service providers suppliers of any other Parties Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service providers suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service providers suppliers of the Party Member compared to like services or service providers suppliers of any another Party Member.

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\* Specific Commitments assumed under this Article shall not be construed to require any Party Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service providers suppliers.

Article XVIII

Additional Commitments

Parties Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Member's schedule.

PART IV

PROGRESSIVE LIBERALIZATION

Article XIX

Negotiation of Specific Commitments

1. In pursuance of the objectives of this Agreement, Parties Members shall enter into successive rounds of negotiations, beginning not later than (---) five years from the date of entry into force of [this Agreement] [the Agreement Establishing the MTO] and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.
2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Parties Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing countries for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service providers suppliers, attaching to it conditions aimed at achieving the objectives referred to in Article IV.
3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the PARTIES Council for Trade in Services shall carry out an assessment of international trade in services in overall terms and on a sectoral basis with reference to the objectives of the Agreement, including those set out in paragraph 1 of Article IV+1. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Parties Members since previous negotiations, as well as for the special treatment of the least-developed countries under the provisions of paragraph 3 of Article IV+3.



4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Parties Members under this Agreement.

#### Article XX

##### Schedules of Specific Commitments

1. Each Party Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors and sub-sectors where such commitments are undertaken, each schedule shall specify:

- (a) commitments on market access;
- (b) commitments on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate the time-frame for implementation of commitments; and
- (e) date of entry into force of commitments.

2. Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI (Market-Access).<sup>\*</sup>

3. Schedules of specific commitments shall be annexed to this Agreement and form an integral part thereof.

#### Article XXI

##### Modification of Schedules\*\*

1. Any Party Member may, after a period of three years from the date a commitment enters into force, notify the PARTIES Council for Trade in Services of its intention to modify or withdraw such a commitment included in its schedule. Such a Party Member shall make such notification to the PARTIES Council for Trade in Services no later than three months before the intended implementation of the modification or withdrawal.

2. (a) At the request of any Party Member whose interests under this Agreement may be affected (hereafter "an affected Party Member")

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\*In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.

<sup>\*\*</sup> It is agreed that a number of points for giving effect to this Article need to be elaborated.

- by a proposed modification or withdrawal notified under paragraph 1 the Party Member proposing to modify or withdraw the commitment (hereafter, the "modifying Party Member") shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment.
- (b) Compensation shall be on an m.f.n. basis.
3. (a) In the event an agreement cannot be reached at the end of the period provided for negotiations, any affected Party Member may refer the matter to arbitration. Any affected Party Member that wishes to enforce a right that it may have to compensation must participate in the arbitration.
- (b) If no Party Member requests arbitration the modifying Party Member shall be free to implement the proposed modification.
4. (a) The modifying Party Member may not modify or withdraw its commitment until it makes compensatory adjustments in conformity with the arbitration panel's findings.
- (b) If the modifying Party Member does not comply with sub-paragraph (a), an affected Party Member that participated in the arbitration may withdraw equivalent benefits in conformity with the arbitration panel's findings.

#### PART V

#### INSTITUTIONAL PROVISIONS

#### Article XXII

#### Consultation

1. Each Party Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any another Party Member with respect to any matter affecting the operation of this Agreement.
2. The PARTIES Dispute Settlement Body (DSB) may, at the request of a Party Member, consult with any Party Member or Parties Members in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.
3. A Party Member may not invoke Article XVII either under this Article or Article XXIII with respect to a measure of another Party Member that is subject to an international agreement relating to the avoidance of double taxation between the Parties Members containing a non-discrimination provision unless the Party Member has had recourse to the dispute settlement provisions of the ~~convention~~ such agreement and no satisfactory resolution of the dispute has been reached within a reasonable period of time.

Article XXIII

Dispute Settlement and Enforcement\*

1. If any Party Member should consider that any another Party Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party Member or Parties Members which it considers to be concerned. Such action shall be promptly notified to the PARTIES DSB. Any Party Member thus approached shall give sympathetic consideration to the representations or proposals made to it.
2. If no satisfactory solution is effected between the Parties Members concerned within a reasonable period of time, the matter may be referred to the PARTIES DSB. The PARTIES DSB shall promptly investigate any such matter referred to them it and shall make appropriate recommendations to the Parties Members which they it considers to be concerned, or give rulings on the matter, as appropriate. The PARTIES DSB may consult with other Parties Members as well as any relevant inter-governmental organization in cases where they it considers such consultations necessary.
3. If the PARTIES DSB considers that the circumstances are serious enough to justify such action, they it may authorize a Party Member or Parties Members to suspend the application to any other Party Member or Parties Members of such obligations and specific commitments under this Agreement as they it determines to be appropriate in the circumstances.
4. If any Party Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of any another Party Member under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may resort to the procedures of Article XXII and paragraphs 1 and 2 of Article XXIII, ~~paragraphs 1 and 2~~. If the measure is determined by the PARTIES DSB to have nullified or impaired such a benefit, the Party Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, ~~paragraph 2~~, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Parties Members concerned, paragraph 3 of Article XXIII, ~~paragraph 3~~ shall apply.

\*Procedures to be used for disputes under this Article may need to be co-ordinated with, and modified in the light of, procedures for dispute settlement in the GATS GATT 1993 as elaborated and applied by the MTO Understanding on Rules and Procedures Governing the Settlement of Disputes, and for modification of schedules of specific commitments.

[Article XXIV

Joint Action

1. Representatives of the Parties shall meet as necessary for the purpose of giving effect to those provisions of the Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the Parties acting jointly, they are designated as the PARTIES.
2. Each Party shall be entitled to have one vote at all meetings of the PARTIES.
3. Except as otherwise provided for in this Agreement, decisions of the PARTIES shall be taken by a majority of the votes cast.
4. In exceptional circumstances not elsewhere provided for in this Agreement, the PARTIES may waive an obligation imposed upon a Party by this Agreement; provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the Parties.
5. (a) A decision by the PARTIES granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate.  
  
(b) Any waiver granted for a period of more than one year shall be reviewed by the PARTIES not later than one year after it was granted, and thereafter annually until the waiver terminates. In each review, the PARTIES shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The PARTIES, on the basis of the annual review, may extend, modify or terminate the waiver.]

Article XXV

Council for Trade in Services

1. The PARTIES ~~shall establish a~~ Council for Trade in Services which ~~will perform~~ shall carry out such functions as may be assigned ~~by them to it~~ to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.
2. The Council and, unless the Council decides otherwise, its subsidiary bodies shall be open to participation by representatives of all Parties Members to this Agreement.

3. The Chairman of the Council shall be elected by the PARTIES Members. The Council shall establish its own rules of procedure.

Article [XXVI]

Technical Cooperation

1. Service providers suppliers of Parties Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.
2. Technical assistance to developing countries shall be provided at the multilateral level by the competent MTO Secretariat and shall be decided upon by the PARTIES Council for Trade in Services.

Article [XXVII]

Relationship with Other International Organizations

The PARTIES [General Council] [Council for Trade in Services] shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services.

PART VI

FINAL PROVISIONS

[Article XXVIII]

Acceptance and Accession

1. This Agreement shall be open for acceptance until (...) by the governments, and the European Communities, whose schedules are contained in Annex (...).
2. Any government which does not accept this Agreement pursuant to paragraph 1 may accede to it on terms to be agreed with the PARTIES. Decisions of the PARTIES under this paragraph shall be taken by a two-thirds majority.
3. For the purposes of paragraph 2 and Article XXIX, any territory which possesses autonomy in the conduct of its external commercial relations and of the other matters provided for in the Agreement shall be deemed to be a government.]



Article XXIX

Entry into Force

1. --- This Agreement, done in a single copy, in English, French and Spanish languages, each text being authentic, shall be deposited with the (---) who shall furnish to each Party Member a certified copy.

2. --- This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

3. --- This Agreement shall enter into force on the (---) day after (---) Parties have accepted it pursuant to paragraph 1 of Article XXVIII. For each other government it shall enter into force on the thirtieth day following the date of its accession.

[Article XXX

Non-Application

1. This Agreement shall not apply as between any two Parties if either of them, at the time either becomes a Party, does not consent to such application. The non-consenting Party shall provide written notification to the PARTIES, including a statement of its reasons for not consenting.

2. At the request of any Party, the PARTIES shall establish a working party to examine the application of paragraph 1 in particular cases regarding, inter alia, appropriateness of the reason for which a Party invokes the provision of paragraph 1. -W- with a view to enabling them it to make recommendations to the Parties concerned and/or to the PARTIES.]

Article [XXXI]

Denial of Benefits

1. A Party Member may deny the benefits of this Agreement:

- (a) to the supply of a service, if it establishes that the service originates in the territory of a country that is not a Party to this Agreement Member, or in the territory of a Party Member to which the denying Party Member does not apply this Agreement; and
- (b) to a service supplier that is a juridical person, if it establishes that ultimate ownership or control of such person is held by persons of a country that is not a Party to this Agreement Member, or of a Party Member to which the denying Party Member does not apply this Agreement.

[Article [XXXII]

Amendments

1. Amendments to Parts I, II and III of this Agreement and any Annex provisions related thereto shall become effective in respect of those Parties which accept them, upon acceptance by two-thirds of the Parties Members and thereafter for each other Party Member upon acceptance by it.
2. Amendments to Parts IV, V and VI of this Agreement and any Annex provisions related thereto shall become effective for all Parties Members upon acceptance by two-thirds of the Parties Members.
3. Any Party Member accepting an amendment to this Agreement shall deposit an instrument of acceptance with the Chief Executive Officer according to such procedures and within such a period as the PARTIES Ministerial Conference may specify.]

Article-XXXIII

Withdrawal

~~Any Party-Member may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall take effect upon the expiration of ( ) months from the day on which written notice thereof is received by the Chief Executive Officer who shall promptly inform the PARTIES. Any Party-Member may request an immediate meeting of the Council to examine the matter.~~

Article [XXXIV]

Definitions

For the purpose of this Agreement:

- (a) "measure" means any measure by a Party Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (c) "measures by Parties Members affecting trade in services" include measures in respect of
  - (i) the purchase, payment or use of a service,



- (ii) the access to and use of, in connection with the supply of a service,
  - 1. distribution and transportation systems, and
  - 2. public telecommunications transport networks and services, and
- (iii) the presence, including commercial presence, of persons of a Party Member supplying a service in the territory of another Party Member;
- (d) "commercial presence" means any type of business or professional establishment, including through
  - (i) the constitution, acquisition or maintenance of a juridical person, or
  - (ii) the creation or maintenance of a branch or a representative office,within the territory of a Party Member for the purpose of supplying a service.
- (e) "service supplier" of another Party Member means any person of that Party Member that supplies a service;
- (f) "service consumer" of a Party Member means any person of that Party Member that receives or uses a service;
- (g) "person" of a Party Member is either a natural or a juridical person of that Party Member
- (h) "natural person" of a Party Member means
  - (i) a natural person who is a national of the Party Member under the law of that Party Member, or

(ii) in the case of a Party Member which does not have nationals, a natural person who has the right of permanent residence under the law of that Party Member,

and who resides in the territory of that Party Member or any other Party Member.

(i) "juridical person" of another Party Member means any corporation, partnership, joint venture, sole proprietorship or association, whether constituted for profit or otherwise, and whether privately-owned or governmentally-owned, which is

(i) constituted under the law of that Party Member, and is engaged in substantive business operations in the territory of that Party Member or any other Party Member; or

(ii) owned or controlled by

1. natural persons of that Party Member, or

2. juridical persons of that Party Member as defined under paragraph (i).

(j) A juridical person is

(i) "owned" by persons of a Party Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party Member;

(ii) "controlled" by persons of a Party Member if such persons have the power to name a majority of its directors or to otherwise legally direct its actions;

(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person.

#### Article [XXXV]

##### Annexes

The Annexes to this Agreement are an integral part of this Agreement.

SCHEDULE OF SPECIFIC COMMITMENTS OF COUNTRY X

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	(1)	(1)	(1)
	(2)	(2)	(2)
	(3)	(3)	(3)
	(4)	(4)	(4)
	(1)	(1)	(1)
	(2)	(2)	(2)
	(3)	(3)	(3)
	(4)	(4)	(4)

Key: (1) Cross-border supply  
 (2) Consumption abroad

(3) Presence of juridical persons  
 (4) Presence of natural persons

NOTE: The schedule shall also specify where appropriate the time-frame for implementation of specific commitments and their date of entry into force.

ANNEX ON ARTICLE II EXEMPTIONS

Scope

1. This Annex specifies the conditions under which a Party Member, at the entry into force of the Agreement, is exempted from its obligations under paragraph 1 of Article II.1.
2. Any new exemptions applied for after the entry into force of the [this Agreement] [the Agreement Establishing the MTO] shall be dealt with under paragraph 4 of Article XXV.4XXIV.

Review

3. The PARTIES Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of [the this Agreement] [the Agreement Establishing the MTO].
4. The PARTIES Council for Trade in Services in a review shall:
  - (a) examine whether the conditions which created the need for the exemption still prevail; and
  - (b) determine the date of any further review.

Termination

5. The exemption of a Party Member from its obligations under paragraph 1 of Article II.1 of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.
6. In principle, such exemptions should not exceed the period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.
7. A Party Member shall notify the PARTIES Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II.1 of the Agreement.

ANNEX ON ARTICLE II EXEMPTIONS

Scope

1. This Annex specifies the conditions under which a Party Member, at the entry into force of the Agreement, is exempted from its obligations under paragraph 1 of Article II+1.
2. Any new exemptions applied for after the entry into force of the [this Agreement] [the Agreement Establishing the MTO] shall be dealt with under paragraph 4 of Article XXV+4XXIV.

Review

3. The PARTIES Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of [the this Agreement] [the Agreement Establishing the MTO].
4. The PARTIES Council for Trade in Services in a review shall:
  - (a) examine whether the conditions which created the need for the exemption still prevail; and
  - (b) determine the date of any further review.

Termination

5. The exemption of a Party Member from its obligations under paragraph 1 of Article II+1 of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.
6. In principle, such exemptions should not exceed the period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.
7. A Party Member shall notify the PARTIES Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II+1 of the Agreement.



Attachment to Annex on Article II Exemptions

PROCEDURES

1. This procedure applies prior to the adoption of the text of the GATS for specific exemptions from the obligations of paragraph 1 of Article II.1.
2. With respect to individual exemptions, a Party participant shall provide the following information: description of the measure, the treatment inconsistent with paragraph 1 of Article II.1 of the Agreement, the intended duration of the exemption, and the conditions which create the need for the exemption.
3. Exemptions shall form part of the draft GATS text and shall be listed in the Annex on Article II Exemptions.

ANNEX ON MOVEMENT OF NATURAL PERSONS  
PROVIDING SUPPLYING SERVICES UNDER THE AGREEMENT

1. The Annex applies to measures affecting natural persons who are service providers suppliers of a Party Member, and to natural persons of a Party Member who are employed by a service provider supplier of a Party Member, in respect of the supply of a service for which specific commitments relating to entry and temporary stay of such natural persons have been undertaken.
2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Party Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. In accordance with Parts III and IV of the Agreement, Parties Members may negotiate specific commitments applying to the movement of all categories of natural persons providing supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to provide supply the service in accordance with the terms of that commitment.
4. The Agreement shall not prevent a Party Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party Member under the terms of a specific commitment.\*

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\*Interpretative Note: The sole fact of requiring a visa for natural persons of certain Parties Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

ANNEX ON FINANCIAL SERVICES

1. Scope and Definition

1.1 This annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in the Annex shall mean the supply of a service as defined in paragraph 2 of Article I+2 of the Agreement.

1.2 For the purposes of paragraph 3(b) of Article I+3(b) of the Agreement, "services supplied in the exercise of governmental functions" means the following:

- 1.2.1 activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- 1.2.2 activities forming part of a statutory system of social security or public retirement plans; and
- 1.2.3 other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

1.3 For the purposes of paragraph 3(b) Article I+3(b) of the Agreement, if a Party Member allows any of the activities referred to in paragraph 1.2.2 or 1.2.3 to be conducted by its financial service providers suppliers in competition with a public entity or a financial service provider supplier, "services" shall include such activities.

2. Domestic Regulation

2.1 Notwithstanding any other provisions of the Agreement, a Party Member 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 supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's Member's commitments or obligations under the Agreement.

2.2 Nothing in the Agreement shall be construed to require a Party Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. Recognition

3.1 A Party Member may recognize prudential measures of any other country in determining how the Party's Member's measures relating to financial

services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

3.2 A Party Member that is a party to such an agreement or arrangement referred to in paragraph 3.1, whether future or existing, shall afford adequate opportunity for other interested Parties Members to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party Member accords recognition autonomously, it shall afford adequate opportunity for any other Parties Member to demonstrate that such circumstances exist.

3.3 Where a Party Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII+4(b) of the Agreement shall not apply.

#### 4. Dispute Settlement

4.1 Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

#### 5. Definitions

For the purposes of this Annex:

5.1 A financial service is any service of a financial nature offered by a financial service provider supplier of a Party Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

##### Insurance and insurance-related services

- (a) Direct insurance (including co-insurance):
  - (i) life
  - (ii) non-life
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency;
- (d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

- (e) Acceptance of deposits and other repayable funds from the public;
- (f) Lending of all types, including consumer credit, mortgage, credit, factoring and financing of commercial transaction;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (i) Guarantees and commitments;
- (j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (i) money market instruments (including cheques, bills, certificates of deposits, etc.);
  - (ii) foreign exchange;
  - (iii) derivative products including, but not limited to, futures and options;
  - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements, etc.
  - (v) transferable securities;
  - (vi) other negotiable instruments and financial assets, including bullion. ✓
- (k) 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;
- (l) Money broking;
- (m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) Provision and transfer of financial information, and financial data processing and related software by providers suppliers of other financial services;



- (p) Advisory, intermediation and other auxiliary financial services on all the activities listed in sub-paragraphs (e) to (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

5.2 A financial service provider supplier means any natural or juridical person of a Party Member wishing to provide supply or providing supplying financial services but the term "financial service provider supplier" does not include a public entity.

5.3 "Public entity" means:

5.3.1 a government, a central bank or a monetary authority, of a Party Member, or an entity owned or controlled by a Party Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

5.3.2 a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

5.4 "Agreement" means the Articles of the General Agreement on Trade in Services, this Sectoral Annex on Financial Services and the schedule of each Party with respect to financial services.

ANNEX ON TELECOMMUNICATIONS

1. Objectives

1.1 Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Parties Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement.

2. Scope

2.1 This Annex shall apply to all measures of a Party Member that affect access to and use of public telecommunications transport networks and services.\*

2.2 This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

2.3 Nothing in this Annex shall be construed:

2.3.1 to require a Party Member to authorize a service supplier of any another Party Member to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its schedule; or

2.3.2 to require a Party Member (or to require a Party Member to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

3. Definitions

For the purposes of this Annex:

3.1 Telecommunications means the transmission and reception of signals by any electromagnetic means.

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\*Interpretative notes relating to provisions marked with asterisks are provided following the text of this annex.

3.2 Public telecommunications transport service means any telecommunications transport service required, explicitly or in effect, by a Party Member to be offered to the public generally. Such services may include, inter alia, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

3.3 Public telecommunications transport network means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

3.4 Intra-corporate communications means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party's Member's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Party Member. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.

3.5 Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

#### 4. Transparency

4.1 In the application of Article III of the Agreement, each Party Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

#### 5. Access to and use of Public Telecommunications Transport Networks and Services

5.1 Each Party Member shall ensure that any service supplier of any another Party Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its schedule. This obligation shall be applied, inter alia, through paragraphs 5.2 through 5.7 below.\*

5.2 Each Party Member shall endeavour to ensure that pricing of public telecommunications transport networks and services is cost-oriented.

5.3 Each Party Member shall ensure that service suppliers of any other Parties Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Party Member, including private leased circuits, and to this end shall ensure, subject to paragraphs 5.6 and 5.7, that such suppliers are permitted:

- 5.3.1 to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
- 5.3.2 to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and
- 5.3.3 to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

5.4 Each Party Member shall ensure that service suppliers of any other Parties Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party Member. Any new or amended measures of a Party Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

5.5 Notwithstanding the preceding paragraph, a Party Member may take such measures as are necessary to ensure the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade in services.

5.6 Each Party Member shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

- 5.6.1 to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- 5.6.2 to protect the technical integrity of public telecommunications transport networks or services; or
- 5.6.3 to ensure that service suppliers of any other Parties Member do not supply services unless permitted pursuant to commitments in a Party's Member's schedule.

5.7 Provided that they satisfy the criteria set out in paragraph 5.6, conditions for access to and use of public telecommunications transport networks and services may include:

- 5.7.1 restrictions on resale or shared use of such services;
- 5.7.2 a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;
- 5.7.3 requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 7.1;
- 5.7.4 type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- 5.7.5 restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service provider supplier; or
- 5.7.6 notification, registration and licensing.

5.8 Notwithstanding the preceding paragraphs of this section, a developing country-Party Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Party's Member's schedule.

## 6. Technical Co-operation

6.1 Parties Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Parties Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.

6.2 Parties Members shall encourage and support telecommunications co-operation among developing countries at the international, regional and sub-regional levels.



6.3 In co-operation with relevant international organizations, Parties Members shall make available, where practicable, to developing countries information with respect to international telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

6.4 Parties Members shall give special consideration to opportunities for the least developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

#### 7. Relation to International Organizations and Agreements

7.1 Parties Members recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

7.2 Parties Members recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. Parties Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

INTERPRETATIVE NOTES

Note to paragraph 2.1

This paragraph is understood to mean that each Party Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.

Note to paragraph 5.1

The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

ANNEX ON AIR TRANSPORT SERVICES

1. This Annex applies to measures affecting trade in air transportation services, whether scheduled or unscheduled, and ancillary services.

2. Except as set out in paragraph 3, no provision of the Agreement shall apply to measures affecting:

- (a) traffic rights covered by the Chicago Convention, including the five freedoms of the air, and by bilateral air services agreements;
- (b) directly related activities which would limit or affect the ability of parties Members to negotiate, to grant or to receive traffic rights, or which would have the effect of limiting their exercise.

3. Notwithstanding the provisions of paragraph 2, the Agreement shall apply to measures affecting:

- aircraft repair and maintenance services;
- the selling or marketing of air transport services;
- computer reservation services.

\* 4. Each Party Member shall ensure that access to and use of publicly available services offered within or from its territory is accorded to air services providers suppliers of any other Parties Member on reasonable and non-discriminatory terms and conditions where commitments for such air services have been made and unless otherwise specified in its schedule.\*

5. Dispute settlement procedures provided for in bilateral air service agreements or under the Chicago Convention shall apply with respect to traffic rights and directly related activities as covered by paragraph 2 above. The dispute settlement facilities of the Agreement may be invoked only where obligations or commitments have been assumed by the concerned Parties Members and where dispute settlement procedures provided for in bilateral air service agreements or under the Chicago Convention have been exhausted.

6. Air transport services and the operation of this Annex shall be reviewed periodically or at least every five years.

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\*The content of this paragraph will depend on the outcome of the work relating to legal clarification of the definitions contained in Article XXXIV.

7. Definitions:

- (a) aircraft repair and maintenance: activities required at a regular or ad hoc basis in order to guarantee the operational airworthiness of aircraft.
- (b) selling and marketing: opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution.
- (c) computerized reservation system: services ~~provided~~ supplied by computerized systems that contain information about air carriers schedules, seat availability, fares and fare rules, through which reservations can be made.

MINISTERIAL DECISION ON INSTITUTIONAL ARRANGEMENTS  
FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES

Ministers recommend that the Council ~~for of the General Agreement on~~ Trade in Services at its first meeting shall adopt the decision on subsidiary bodies set out below.

INSTITUTIONAL ARRANGEMENTS FOR  
THE GENERAL AGREEMENT ON TRADE IN SERVICES

The Council ~~for of the General Agreement on~~ Trade in Services, acting pursuant to Article XXV with a view to facilitating the operation and furthering the objectives of that the General Agreement on Trade in Services.

Decides as follows:

1. Any subsidiary bodies, that the Council may establish shall report to the Council annually or more often as necessary. Each such body shall determine establish its own rules of procedure, and may set up its own subsidiary bodies as appropriate.
2. Any sectoral committee shall carry out responsibilities as assigned to it by the Council, and shall afford Parties Members the opportunity to consult on any matters relating to trade in services in the sector concerned and the operation of the sectoral annex to which it may pertain. Such responsibilities shall include:
  - (a) to keep under continuous review and surveillance the application of the Agreement with respect to the sector concerned;
  - (b) to formulate proposals or recommendations for consideration by the Council in connection with any matter relating to trade in the sector concerned;
  - (c) if there is an annex pertaining to the sector, to consider proposals for amendment of that sectoral annex, and to make appropriate recommendations to the Council;
  - (d) to provide a forum for technical discussions, to conduct studies on measures by ~~parties~~ of Members and to conduct examinations of any other technical matters affecting trade in services in the sector concerned;
  - (e) to provide technical assistance to developing country parties Members and developing countries negotiating accession to the [this Agreement] [the Agreement Establishing the MTO] in respect of the application of obligations or other matters affecting trade in services in the sector concerned; and



- (f) to cooperate with any other subsidiary bodies established under this Agreement or any international organizations active in any sector concerned.

3. There is hereby established a Committee on Trade in Financial Services which will have the responsibilities listed in paragraph 2 above.

MINISTERIAL DECISION ON CERTAIN DISPUTE SETTLEMENT  
PROCEDURES FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES

Ministers recommend that the Council ~~for of the General Agreement on Trade in Services~~ at its first meeting shall adopt the decision set out below.

DISPUTE SETTLEMENT PANELS

The Council ~~for of the General Agreement on Trade in Services~~,

Taking into account the specific nature of the obligations and specific commitments of the Agreement and of trade in services with respect to dispute settlement under Articles XXII and XXIII,

Decides as follows:

1. A roster of panelists shall be established to assist in the selection of panelists.
2. To this end, Parties Members may suggest names of individuals possessing the qualifications referred to in paragraph 3 below for inclusion on the roster, and shall provide a curriculum vitae of their qualifications including, if applicable, indication of sector-specific expertise.
3. Panels shall be composed of well-qualified governmental and/or non-governmental individuals who have experience in issues related to the General Agreement on Trade in Services and/or international trade in services, including associated regulatory matters. Panelists shall serve in their individual capacities and not as representatives of any government or organisation.
4. Panels for disputes regarding sectoral matters shall have the necessary expertise relevant to the specific services sectors which the dispute concerns.
5. The MTO Secretariat shall maintain the roster and shall develop procedures for its administration in consultation with the Chairman of the Council.

DECISION CONCERNING ARTICLE XIV(b)

Parties acknowledge that measures necessary to protect the environment may conflict with the provisions of the Agreement. Since these measures typically have as their objective the protection of human, animal or plant life or health, it is not clear that there is a need to provide for more than is contained in Article XIV(b).

However, in order to determine whether any modification of Article XIV of the GATS is required to take account of such measures, a Working Party shall examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Working Party shall also examine the relevance of inter-governmental agreements on the environment and their relationship to the GATS.

The Working Party shall report the results of its work within three years of the entry into force of the Agreement.

(Possible Alternative:)

MINISTERIAL DECISION CONCERNING PARAGRAPH (b) OF ARTICLE XIV

Ministers recommend that the Council for Trade in Services at its first meeting shall adopt the decision set out below.

WORKING PARTY ON TRADE IN SERVICES AND THE ENVIRONMENT

The Council for Trade in Services,

Acknowledging that measures necessary to protect the environment may conflict with the provisions of the Agreement, and

Noting that since measures necessary to protect the environment typically have as their objective the protection of human, animal or plant life or health, it is not clear that there is a need to provide for more than is contained in paragraph (b) of Article XIV.

Decide as follows:

1. In order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures, a Working Party shall be established and shall examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Working Party shall also examine the relevance of inter-governmental agreements on the environment and their relationship to the Agreement.

2. The Working Party shall report the results of its work within three years of the entry into force of [this Agreement] [the Agreement Establishing the MTO.]

UNDERSTANDING ON COMMITMENTS IN FINANCIAL SERVICES

Participants in the Uruguay Round have been enabled to take on specific commitments with respect to Financial Services under the General Agreement on Trade in Services on the basis of an alternative approach to that covered by the provisions of Part III of the Agreement. It was agreed that this approach could be applied subject to the following understanding:

- it does not conflict with the provisions of the Agreement;
- it does not prejudice the right of any Party Member to schedule its specific commitments in accordance with the approach under Part III of the Agreement;
- resulting specific commitments shall apply on a most-favoured-nation basis;
- no presumption has been created as to the degree of liberalization to which a Party Member is committing itself under the Agreement.

Interested Parties Members, on the basis of negotiations, and subject to conditions and qualifications where specified, have inscribed in their schedule specific commitments conforming to the approach set out below.

STANDSTILL

Any conditions, limitations and qualifications to the commitments noted below shall be limited to existing non-conforming measures.

MARKET ACCESS

Monopoly Rights

1. In addition to Article VIII of the Framework Agreement, the following shall apply:

Each Party Member shall list in its schedule pertaining to financial services existing monopoly rights and shall endeavour to eliminate them or reduce their scope. Notwithstanding paragraph 1.2 of the Annex on Financial Services, this paragraph applies to the activities referred to in sub-paragraph 1.2.3 of the Annex.

Financial Services purchased by Public Entities

2. Notwithstanding Article XIII of the Framework Agreement, each Party Member shall ensure that financial service providers suppliers of any other Party Member established in its territory are accorded most-favoured-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Party Member in its territory.

Cross-border Trade

3. Each Party Member shall permit non-resident providers suppliers of financial services to provide supply, as a principal, as a principal through an intermediary or as an intermediary, and under terms and conditions that accord national treatment, the following services:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession and the services auxiliary to insurance as referred to in sub-paragraph 5.1(d) of the Annex;
- (c) provision and transfer of financial information and financial data processing as referred to in sub-paragraph 5.1(o) of the Annex and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in sub-paragraph 5.1(p) of the Annex.

4. Each Party Member shall permit its residents to purchase in the territory of any another Party Member the financial services indicated in:

- (a) sub-paragraph 3(a);
- (b) sub-paragraph 3(b); and
- (c) sub-paragraphs 5.1(e) to (p) of the Annex.

Commercial Presence

5. Each Party Member shall grant financial service providers suppliers of any other Party Member the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence.

6. A Party Member may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the Party's Member's obligation under paragraph 5 and they are consistent with the other obligations of this Agreement.



New Financial Services

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7. A Party Member shall permit financial service providers suppliers of any other Party Member established in its territory to offer in its territory any new financial service.

Transfers of Information and Processing of Information

8. No Party Member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service provider supplier. Nothing in this paragraph restricts the right of a Party Member 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 the Agreement.

Temporary Entry of Personnel

9. (a) Each Party Member shall permit temporary entry into its territory of the following personnel of a financial service provider supplier of any other Party Member that is establishing or has established a commercial presence in the territory of the Party Member:

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

(b) Each Party Member shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service provider supplier of any other Party Member:

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

Non-discriminatory Measures

10. Each Party Member shall endeavour to remove or to limit any significant adverse effects on financial service providers suppliers of any other Party Member of:

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

provided that any action taken under this paragraph would not unfairly discriminate against financial service providers suppliers of the Party Member taking such action.

11. With respect to the non-discriminatory measures referred to in sub-paragraphs 10(a) and (b), a Party Member shall endeavour not to limit or restrict the present degree of market opportunities nor the benefits already enjoyed by financial service providers suppliers of all other Parties Members as a class in the territory of the Party Member, provided that this commitment does not result in unfair discrimination against financial service providers suppliers of the Party Member applying such measures.

#### NATIONAL TREATMENT

1. Under terms and conditions that accord national treatment, each Party Member shall grant to financial service providers suppliers of any other Party Member established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's Member's lender of last resort facilities.

2. 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 Member in order for financial service providers suppliers of any other Party Member to provide supply financial services on an equal basis with financial service providers suppliers of the Party Member, or when the Party Member provides directly or indirectly such entities, privileges or advantages in providing supplying financial services, the Party Member shall ensure that such entities accord national treatment to financial service providers suppliers of any other Party Member resident in the territory of the Party Member.

ATTACHMENT

SUBSTANTIVE GUIDELINES FOR THE NEGOTIATION OF INITIAL COMMITMENTS  
DURING THE URUGUAY ROUND

1. In order to secure an overall balance of rights and obligations under the Agreement, Parties participants shall negotiate specific commitments, under the provisions of the Agreement, to enter into force at the same time as the Agreement. Such negotiations among Parties participants shall take place, having regard to the level of development of each participant and the situation of countries in economic transition, with a view to achieving a balance of interests in terms of Articles IV and XVIII in the Agreement.
2. Negotiations shall proceed according to the following guidelines:
  - (a) negotiations shall take place on the basis of an indicative list of sectors as contained in MTN.GNS/W/120;
  - (b) specific commitments shall be established at the appropriate level of disaggregation, in relation to categories of sectors, sectors, sub-sectors or transactions;
  - (c) appropriate flexibility shall be negotiated for Parties participants, consistent with the balance of interests envisaged in paragraph 1, to phase in on the basis of agreed time-frames the implementation of negotiated specific commitments.
3. For the duration of the negotiations, each participant agrees not to take any measures in such a manner as to improve its negotiating position and leverage.
4. Special consideration shall be given to the difficulties of least-developed countries in accepting specific liberalization commitments.

## ประวัติผู้เขียน

นายวรวิทย์ ลีลาเวทพงษ์ อายุ 36 ปี จบการศึกษานิติศาสตร์บัณฑิต จาก มหาวิทยาลัยรามคำแหง ในปีการศึกษา 2529 เข้าศึกษาในภาควิชา นิติศาสตร์ บัณฑิตศึกษา จุฬาลงกรณ์มหาวิทยาลัย ในปีการศึกษา 2531 ปัจจุบัน เป็นผู้ช่วยผู้จัดการแผนกการตลาด บริษัท นิวแฮมพ์เชอร์ อินชัวร์นส์

