

## FINANCIAL SERVICES

Excerpts from the Background Note by the Secretariat (S/FIN/W/73, 3 February 2010)

### I. COVERAGE, LEVEL AND TYPE OF CURRENT COMMITMENTS IN FINANCIAL SERVICES

1. WTO Members have made more commitments in financial services than in any other sector except tourism. This may be attributed to the interplay of several factors: (i) the higher negotiating momentum in this as compared to many other sectors as reflected in the extended negotiations on financial services held in 1995 and 1997, which allowed for significant improvements in the number of commitments; (ii) the accession of some 25 new Members to the WTO after 1995, who in all cases undertook extensive commitments on financial services (Box 3); (iii) governments' self-interest in using commitments, and the associated gains in stability and transparency, to promote foreign participation in this sector for obvious economic reasons.<sup>1</sup> As of today, 110 schedules (counting the EU-15 as one) contain commitments in at least one financial services subsector.

2. The coverage of subsectors is variable, as can be seen in Table 15. Interestingly, almost all Members with commitments in banking and other financial services covered the "core" services of commercial banks – deposit taking and lending (98 and 97 schedules, respectively). Fewer Members made commitments in insurance services, among which, as could be expected, given its liberalized and highly international nature, reinsurance stands out (90 schedules). Far fewer Members, some 70 on average, made commitments in capital market-related services such as trading, underwriting of securities, asset management, settlement and clearing services, and advisory and other auxiliary financial services.

3. Of the 17 subsectors listed in the Annex on Financial Services<sup>2</sup>, Members on average committed about 13 (12 if recently acceded Members are not taken into account). Coverage is more comprehensive among developed countries, who made commitments in all 17 sub-sectors, compared to transition economies, developing, and least-developed countries, who made commitments in 15.8, 11.3, and 11.7 subsectors respectively.

4. Tables 16 and 17 present the levels of market access commitments for insurance and banking and other financial services for all modes of supply, based on a distinction between full (i.e. no limitations), partial (i.e. some limitation) and unbound. The percentage shares of the three levels are calculated on the basis of the sub-sector under consideration. For example, among the Members making commitments regarding non-life insurance services under mode, 12 per cent made full commitments, 58 per cent introduced limitations, and the remaining 30 per cent left the mode unbound.<sup>3</sup>

5. As could be expected, across all subsectors the proportion of full commitments is higher in general for trade through mode 2 and lower for mode 4. The percentage share of full commitments for trade through mode 1 is generally low – roughly under 27 per cent. However, there are variations

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<sup>1</sup> See Marchetti (2009 b) for an overview of results achieved in the 1995 and 1997 negotiations.

<sup>2</sup> Considering life and non-life insurance services as two separate subsectors, and trading in all sorts of securities and financial assets as one subsector.

<sup>3</sup> A focus on market access for this type of general analysis is warranted not only because of the importance of market access limitations for foreign service suppliers, but also because, as per Article XX:2 of the GATS, any measures inconsistent with both Article XVI (market access) and Article XVII (national treatment) are scheduled in the market access column. As a consequence of this scheduling convention, the entry "none" in the national treatment column may not necessarily be taken to mean a full commitment to national treatment in cases where market access limitations also constitute limitations on national treatment. This makes it more difficult to assess the degree of commitment to national treatment.

depending on the subsector. While the share of full commitments in mode 1 is extremely low for services such as life and non-life insurance, which have historically required a commercial presence or have been subject to the requirement of establishing a presence in the host country), they are much higher for sectors such as provision and transfer of financial information (which has been increasingly concentrated in specific locations, benefiting from outsourcing), and MAT insurance services and reinsurance services.<sup>4</sup> The latter services are commonly supplied on a cross-border basis from the world's major financial centres, and countries usually place few restrictions on their supply.

6. Stronger commitments have been made in general under mode 3 than under mode 1. This is due on the one hand, to supervisory concerns on the part of financial regulators that have historically preferred supply through a local establishment than on a cross-border basis for most financial services, particularly for reasons of consumer protection (i.e. direct insurance, and retail commercial banking) and, on the other hand, to concerns regarding the potential legal effect of GATS disciplines on the regulation of capital flows. Those concerns have motivated higher proportions of "unbound" in mode 1 than in mode 3. Indeed, as can be gauged by Table 16, the combined percentage share of full and partial commitments in mode 1 is much lower than in mode 3. The observed distribution of commitments therefore generally confirms the notion that governments have preferred commercial presence to cross-border supply, but the differences are not very great.

7. The high proportion of partial commitments in mode 3 is not surprising taking into account that the financial sector has been traditionally subject to heavy regulation.<sup>5</sup> Many of the market access limitations scheduled seem to be of a non-discriminatory nature (i.e. limitations on the type of legal entity that must be established to supply specific financial services, or restrictions on the concentration of bank ownership and the ability of non-financial corporations to purchase substantial stakes in financial entities, particularly banks, without regulatory approval. Another interesting feature of commitments in financial services is that they tend to be particularly "wordy". As a result, a good number of the limitations found cannot be easily allocated to one of the six categories of market access limitations contained in Article XVI:2 of the GATS. Some of them seem to be clearly of a prudential nature and, therefore, would not need to be scheduled as per the Scheduling Guidelines (e.g. minimum capital requirements), while others seem to relate to non-discriminatory authorization or licensing requirements.<sup>6</sup> Again, if these requirements are maintained for domestic regulatory purposes, they do not need to be inscribed in schedules either. Otherwise, if they serve as an implementation mechanism for quantitative restrictions, it is the latter that ought to be inscribed.

8. In general, among the six types of measures limiting market access as listed in Article XVI:2 of the GATS, restrictions on the type of legal entity (e.g. specific legal types, or restrictions on direct branching) predominate. These are followed by limitations on the participation of foreign capital, limitations on the number of suppliers, and limitations on the value of transactions or assets (such as limitations on the share of banking assets allowed to be held by foreign banks). Limitations on the number of service operations and on the total quantity of service output (such as numerical limits on the number of ATMs allowed) are relatively few. The frequency of the types of measures do not differ very much for the major sub-sectors of financial services (e.g. direct insurance and deposit-taking and lending).

9. It should be kept in mind, however, that, except for recently acceded Members, current commitments do not reflect the actual level of liberalization in most WTO Members. Recent research

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<sup>4</sup> MAT stands for marine, aviation, and transport insurance.

<sup>5</sup> For a discussion about trade policy in financial services, see Marchetti (2009 a).

<sup>6</sup> For information on the main barriers identified by Members in the current negotiations, see "Financial Services", Informal Note by the Secretariat, (JOB(05)/190, dated 19 September 2005).

comparing WTO specific commitments in banking services with current regulatory practice in the sector shows that many Members are more open in reality than they have committed to at the WTO.<sup>7</sup>

10. Additional Commitments have been made only by a small number of Members: Albania, Brazil, China, Chinese Taipei, the European Union, Japan, and the United States.<sup>8</sup> Finally, sector-specific MFN exemptions in financial services have been taken by 27 Members: Austria, Brunei Darussalam, Canada, Colombia, Côte d'Ivoire, El Salvador, the European Union, Honduras, Hungary, Indonesia, Israel, Liechtenstein, Mauritius, Nicaragua, Pakistan, Peru, Philippines, Senegal, Singapore, Slovak Republic, South Africa, Swaziland, Switzerland, Turkey, United Arab Emirates, United States, and the Bolivarian Republic of Venezuela.

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<sup>7</sup> See Barth *et al.* (2009a)). The paper compares information on 123 WTO Members' commitments on banking services (counting each EC member state individually) with World Bank data on regulatory practices in those countries ("Reported Practices" data). The latter information was compiled through questionnaires replied by each country's regulatory agency, and reflects therefore "practice" instead of specific pieces of legislation or regulation. For an overview of methods used in other papers to quantify the degree of restrictiveness of WTO specific commitments on banking and other financial services, see Barth *et al.* (2009b)).

<sup>8</sup> For a full analysis of additional commitments in financial services, see "Additional Commitments under Article XVIII of the GATS", background note by the Secretariat, WTO document S/CSC/W/34 (paragraphs 40 to 80) and Add.1.

## II. THE CLASSIFICATION OF FINANCIAL SERVICES

1. The GATS Annex on Financial Services defines financial services as "any service of a financial nature offered by a financial service supplier of a Member", including all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services is the only sector in the GATS for which two internationally recognised classifications exist: one is contained in the Annex on Financial Services and one is included in the Services Sectoral Classification List, document MTN.GNS/W/120, dated 10 July 1991 (hereinafter "the W/120").<sup>9</sup> Both classifications are deemed to cover the whole range of financial services under the GATS coverage. However, although similar in their description of financial services, both classifications present some differences.

2. The main differences in the structure and listing of financial services between the two classifications are the following:

- (a) Each sector contained in the W/120 is accompanied by a Provisional Central Product Classification (CPC) number, whose purpose is to provide a more detailed definition of each-subsector.
- (b) While the classification in the Annex distinguishes between life and non-life insurance, the W/120 distinguishes between life, accident and health insurance on the one hand, and non-life insurance on the other.
- (c) While the W/120 classifies together "services auxiliary to insurance" and "insurance intermediation services" (e.g. broking and agency), the classification in the Annex distinguishes between intermediation services, such as brokerage and agency, on the one hand, and services auxiliary to insurance, on the other. The Annex provides examples of the latter, such as consultancy, actuarial, risk assessment and claim settlement services.<sup>10</sup>
- (d) The Annex classification provides a non-exhaustive list of so-called payment and money transmission services, i.e., credit card, charge and debit cards, travellers cheques and bankers drafts services.
- (e) While subsector (k) in the W/120 refers to "[a]dvisory and other auxiliary financial services", the equivalent subsector in the Annex adds a reference to "intermediation", which does not appear to be totally clear in this context.<sup>11</sup>

3. The correspondence between the literal headings in the W/120 and the Provisional CPC numbers is not entirely straightforward. The main problems include:

- (a) While accident and health insurance are included in "life" insurance instead of "non life" insurance as in the Provisional CPC, the corresponding CPC code given in the W/120 for life, accident and health insurance services (8121) does not cover accident

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<sup>9</sup> See Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS), document S/L/92, dated 28 March 2001, paragraph 23.

<sup>10</sup> The same distinction could in principle be achieved by opening up CPC number 8140 at 5-digit level.

<sup>11</sup> As a matter of fact, the illustrative list of services mentioned in this subsector relates more to advice and auxiliary services than to intermediation services *per se*.

and health insurance (81291 under non-life insurance in the CPC), which appears to contradict the heading for this item.

- (b) While reinsurance and retrocession services have been separated out in the W/120, the Provisional CPC code used (81299\* under non-life insurance in the Provisional CPC) gives the impression that reinsurance and retrocession are only part of non-life insurance services, while in fact reinsurers provide services to both life and non-life insurers. It would have probably been better to use the Provisional CPC code 812\*, which already includes reinsurance.
- (c) Both classifications set "pension fund management services" apart from life insurance services and include those services as part of "asset management services" (under "Banking and other Financial Services"). However, the corresponding Provisional CPC code adopted in the W/120 (81212) does not take into account that pension fund management services (which in the Provisional CPC are classified together with life insurance services) are separated out and put under asset management services. In other words, the Provisional CPC code 8121 already covers both life and pension fund management services.<sup>12</sup>

4. While a majority of Members (absent 64 per cent) have adopted either the classification in the Annex or in the W/120 in whole or in part, the rest has opted for their own classification in either insurance or banking and other financial services. Some of the latter have complemented their own classifications with the use of CPC numbers. It is not uncommon to find Members using one classification for one of the subsectors (e.g. insurance), and another for other subsectors (e.g. banking and other financial services). In some cases, only a partial use of CPC numbers has been made, even within the same subsector.

5. The fact that only about half of the schedules contains CPC numbers (about 43 per cent for banking and other financial services and 51 per cent for insurance) may be an indication of the difficulties encountered by Members in identifying the different subsectors with CPC codes.<sup>13</sup> It is worth noting in that regard that a good number of Members have expressed a preference for the classification in the Annex on Financial Services, which in their view provides a flexible and comprehensive framework for scheduling commitments, and which is more disaggregated and therefore more appropriate for the purposes of scheduling than the provisional CPC codes used in the W/120 classification. According to a Member, the broad definitions in the Annex also cover services the purchase of which is compulsory (e.g. certain types of insurance).

6. A few Members raised classification issues towards the beginning of the negotiations which have not been thoroughly examined thus far. Although these Members consider that the classification of financial services (particularly the one contained in the Annex) is comprehensive and flexible in general, they express doubts whether certain services are adequately captured. Services mentioned in this context include alternative (electronic) trading systems, venture capital; electronic bill presentment; and securitisation. How to address these services in the classification remains open.

7. New definitions of marine and energy insurance have been proposed for the purposes of scheduling commitments. In the case of marine insurance, it has been proposed to broaden the definition used in the Understanding on Commitments in Financial Services in order to clearly

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<sup>12</sup> The provisional CPC group 812 is entitled "Insurance (including reinsurance) and pension fund services, except compulsory social security services", and is further subdivided in classes 8121 (life insurance and pension fund services) and 8129 (non-life insurance services).

<sup>13</sup> The analysis that follows is based on "Financial Services", Informal Note by the Secretariat (JOB(05)/190, dated 19 September 2005).

identify (non-life) insurance services with regard to (i) transportation of passengers (scheduled or non-scheduled), and (ii) larger fishing vessels. In the case of energy insurance, the new definition proposed addresses the insurance of the commercial upstream – or the so-called "offshore" – segment of the market; i.e. all insurance related to: (a) exploration; (b) development; (c) production activities; and (d) properties in the petroleum sector, both onshore and offshore.<sup>14</sup>

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<sup>14</sup> According to this proposal, the insurance products would normally cover a petroleum company's assets and liabilities during the exploration and operation phase, including vessels operating in these activities. This consists of insurance relating to drilling and producing oil and gas; transportation to terminals by pipelines or vessels; gathering, separation, storage, terminals and other processes prior to arrival at refinery; marine liabilities and pollution liability; business interruptions arising from physical damage to installations, etc.; terrorist coverage; and other associated properties or plants relating to the upstream activities, including mobile offshore units, supply boats, safety vessels and related vessels and units. Insurance related to refineries (which is considered down-stream business) could also be included. However, liability insurance in relation to occupational injury or illness is not included.

**Table 15 Financial services - specific commitments by sub-sector, January 2010**

Sub-sector	Number of schedules	Percentage share of Members with commitments on financial services (Max = 110)	Percentage share of maximum possible (Max = 139)
<b>All insurance &amp; insurance-related services</b>	<b>99</b>		
Direct insurance			
Life	86	78	62
Non-life	90	82	65
Reinsurance	94	85	68
Insurance intermediation	62	56	45
Services auxiliary to insurance	74	67	53
<b>Banking &amp; other financial services</b>	<b>101</b>		
Acceptance of deposits	98	97	71
Lending of all types	97	96	70
Financial leasing	83	82	60
Payment & money transmission services	89	88	64
Guarantees and commitments	85	84	61
<i>Trading</i>			
Money Market Instruments	76	75	55
Foreign Exchange	78	77	56
Derivative Products	62	61	45
Exchange Rate and Interest Rate Instruments	65	64	47
Transferable Securities	81	80	58
Other negotiable instruments and financial assets	65	64	47
Underwriting	78	77	56
Money broking	62	61	45
Asset management	78	77	56
Settlement & clearing for financial assets	62	61	45
Advisory & other auxiliary financial services	80	79	58
Provision & transfer of financial information	76	75	55

*Note: European Union counted as EU15*

Source: WTO

**Table 16: Level of market access commitments in banking and other financial services, by mode of supply**  
(per cent of commitments)

Sector	Mode 1			Mode 2			Mode 3			Mode 4		
	full	partial	unbound	full	partial	unbound	full	partial	unbound	full	partial	unbound
Acceptance of deposits and other repayable funds	28	29	44	41	34	26	18	79	3	8	83	9
Lending of all types	25	36	40	41	36	24	20	74	6	8	81	11
Financial Leasing	25	25	50	42	25	34	16	65	19	9	68	23
All Payment and Money Transmission Services	21	30	50	38	30	33	17	71	12	8	73	19
Guarantees and Commitments	27	28	46	41	30	30	18	65	17	8	72	20
<i>Trading</i>												
Money Market Instruments	27	33	40	49	36	15	24	75	1	11	84	5
Foreign Exchange	24	33	42	46	36	18	22	77	1	10	83	6
Derivative Products	27	35	38	57	32	12	24	74	2	12	85	3
Exchange Rate and Interest Rate Instruments	25	33	41	54	35	11	23	75	2	11	86	3
Transferable Securities	25	38	37	44	40	16	21	78	1	10	85	5
Other negotiable instruments and financial assets	27	35	38	51	37	13	22	77	2	10	84	6
Participation in Issues of all Kinds of Securities	17	27	56	33	29	39	14	62	24	6	67	27
Money Broking	17	18	64	34	18	48	14	47	40	7	50	43
Asset Management	16	29	55	35	30	35	12	64	24	7	66	27
Settlement and Clearing Services for Financial Assets	14	22	64	31	22	47	12	49	40	7	50	43
Advisory and other Auxiliary Financial Services	27	37	37	40	29	32	20	58	22	7	67	26
Provision and Transfer of Financial Information	35	34	32	41	29	31	22	51	27	9	59	32

Notes: Percentages may not add up to 100 per cent due to rounding

Basis of total is selected sub-sector

Does not take account of horizontal limitations

Source: WTO

**Table 17: Level of market access commitments in insurance services, by mode of supply**  
(per cent of commitments)

Sector	Mode 1			Mode 2			Mode 3			Mode 4		
	full	partial	unbound	full	partial	unbound	full	partial	unbound	full	partial	unbound
Life	12	33	56	27	31	42	19	80	1	5	88	7
Non-life	12	58	30	24	52	23	18	80	2	4	88	8
MAT	50	20	30	50	27	23						
Reinsurance and Retrocession	41	39	19	48	32	19	19	69	12	7	77	16
Insurance Intermediation	12	32	56	23	24	53	12	49	38	2	54	44
Services Auxiliary to Insurance	23	32	44	32	26	41	18	57	25	3	65	32

Notes: Percentages may not add up to 100 per cent due to rounding

Basis of total is selected subsector

Does not take account of horizontal limitations

Source: WTO







Country	Insurance					Banking and other Financial Services												
	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r
<b>United Arab Emirates</b>						1	1	1	1	1	1	1	1	1	1	1	1	11
<b>Uruguay</b>		1			1	1	1	1										5
<b>USA</b>	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	17
<b>Venezuela</b>	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	17
<b>Viet Nam</b>	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	17
<b>Zimbabwe</b>						1	1	1	1	1		1		1		1		8
<b>Total</b>	86	90	94	62	74	98	97	83	89	85	86	78	62	78	62	80	76	

#### Legends

- a. Life
- b. Non-life
- c. Reinsurance
- d. Intermediation
- e. Auxiliary Services
- f. Acceptance of deposits and other repayable funds
- g. Lending of all types
- h. Financial Leasing
- i. All Payment and Money Transmission Services
- j. Guarantees and Commitments
- k. Trading for own account or for account of customers
- l. Participation in Issues of all Kinds of Securities
- m. Money Broking
- n. Asset Management
- o. Settlement and Clearing Services for Financial Assets
- p. Advisory and other Auxiliary Financial Services
- q. Provision and Transfer of Financial Information
- r. Total Insurance + Banking

Source: WTO