

COMMUNICATION FROM SWITZERLAND

GATS 2000: Financial Services

The following communication has been received from the Delegation of Switzerland with the request that it be circulated to the members of the Council for Trade in Services.

I. INTRODUCTION

1. Because of its cross-cutting nature, the financial sector supports growth in other economic sectors. Insurance helps to reduce uncertainty and protects the players against unmanageable risks. Thanks to the deposits they collect and the subsequent loans they grant, banks contribute to the efficient allocation of resources among the different sectors and players. Investment banks enable companies to finance their growth and to adapt to the structural changes confronting them.

2. The liberalization of financial services enhances their efficiency. Thanks to liberalization, financial institutions can specialize their services on the basis of their competitive advantages, and achieve economies of scale and of scope. The mobility of the players contributes to the dissemination of new technologies and helps to glean know-how from other financial centres. In order to remain competitive in an environment open to competition, institutions are seeking to reduce their costs, and this could lead to lower prices or higher-quality services.

3. The liberalization of world trade and the transnationalization of enterprises has made the liberalization of financial services all the more essential. Since the end of the 90's the global economy has undergone considerable integration. Mergers, acquisitions and direct investment have transcended national borders. In order to carry out these complex transactions on new markets, enterprises need the expert advice of the insurance companies and banks with which they are accustomed to work.

4. The liberalization of trade in financial services must not be confused with deregulation. On the contrary, the liberalization of financial flows calls for a strict framework to protect consumers, preserve financial stability and manage systemic risks. To avoid impeding these flows and to increase the benefits of liberalization, regulation and supervision must be transparent and fair. Because trade in financial services is closely linked to capital flows, there is but a very fine line between certain monetary policy instruments and the required regulation which must be clearly defined.

II. TREATMENT OF FINANCIAL SERVICES IN THE GATS

5. The classification of financial activities is an important element in the progressive liberalization process, since it helps to establish the specific commitments of Members. At the conclusion of the Uruguay Round, Members agreed on a classification which is set out in the Annex on Financial Services (hereinafter the Annex). This classification was used by most of the Members in their schedules of specific commitments.

6. The Understanding on Commitments in Financial Services (hereinafter the Understanding) enables Members to take on specific commitments with respect to market access on the basis of minimum standards. Members who adopt this approach commit themselves to maintaining the status quo. The Understanding provides for specific commitments in certain subsectors for modes 1 (cross-border supply), 2 (consumption abroad), and 3 (commercial presence). Mode 4 (presence of natural persons) is covered as well. The Understanding also contains provisions for the supply of new financial services and for transfers and processing of information. It was accepted by some 30 countries, including Switzerland.

7. An examination of the specific commitments of Members reveals that mode 3 (establishment of a commercial presence) is often a precondition for the supply of financial services, even if these commitments are subject to numerous and significant reservations (legal form, authorized participation of foreign capital, number of suppliers, economic needs test). There are fewer specific commitments for modes 1 (cross-border supply) and 2 (consumption abroad), suggesting a lesser degree of liberalization. The current level of liberalization of financial services stems from the commitments assumed following the Uruguay Round supplemented by the commitments resulting from the negotiations completed in 1997 with the acceptance of the Fifth Protocol.

8. In the insurance sector, intermediation and auxiliary services are the subsectors in which Members have assumed the fewest commitments. Reinsurance is the most internationalized sector, often within the limits of the definition in the Understanding. In the banking sector, brokerage, asset management, settlement and clearing services, and provision and transfer of information are areas in which there are few commitments.

9. Prudential regulation is subject to a general reservation. This reservation, contained in the Annex, stipulates that measures taken for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of the financial system, prevail over all other provisions.

10. The electronic supply of financial services is addressed by the GATS only marginally. Firstly, the "technological neutrality" of commitments must be respected. Secondly, the Understanding specifies that the manner in which a product is delivered can confer upon it the value of a "new" service. It must be possible to supply all new services according to the commitments of Members. Today, electronic commerce in financial services is visibly thriving. Most financial institutions offer electronic services on different scales.

III. PROPOSALS

11. The current classification of financial activities, despite its flexibility, poses a certain number of problems that it would be wise to solve. Some Members were unable to use it because their domestic regulatory and supervisory structure is different. Certain new financial products (such as electronic merchanting systems) may be classified in any one of several categories. Finally, the clear convergence between insurance and banking activities tends to make the current distinction somewhat obsolete. We propose that the Committee on Trade in Financial Services (CTFS) discuss these problems with a view to determining the extent to which the classification will need to be reviewed.

12. We also recommend the increased use of the Understanding by Members as a minimum standard for liberalization. Doing so should enhance the clarity of the Members' commitments and thereby contribute to the coherence of the international financial system.

A. SPECIFIC COMMITMENTS

13. The restrictions on commercial presence should be relaxed. We encourage Members to reassess the restrictions relating to authorized legal form with a view to eliminating them. Restrictions relating to equity participation and the number of suppliers of financial services should be removed. These liberalization measures should enhance the participation of foreign institutions, which, by transferring part of their know-how and their staff, will help to strengthen the operation of the financial market. Depending on the situation of the Members concerned, these measures could include a transitional period.

14. In order to make the schedules more coherent and to ensure the clarity of existing and future commitments, we recommend a reassessment by Members of their commitments in modes 1 (cross-border supply) and 2 (consumption abroad). In the financial services area in particular, the distinction between these modes has become fuzzy. An examination of the Members' schedules of commitments clearly reveals the differences between the commitments made in modes 1 and 2. We strongly encourage greater homogenization. We would also like the CTFS to examine the possibility of merging these two modes in the area of financial services.

15. The insurance sector deserves particular attention in the ongoing negotiations. Since the middle of the 90s this sector has experienced numerous disruptions. It has been thoroughly restructured and consolidated. At the same time, the regulatory environment has evolved. In the coming years, insurance activities will continue to develop significantly owing to the new products associated with pension fund management and asset management in general. These changes should be incorporated into the existing commitments.

16. We encourage Members to take on further commitments in the life insurance, intermediation services and auxiliary services subsectors. At the same time, we urge them to reconsider the reservations affecting their commitments under mode 3 (commercial presence) and to foster trade under modes 1 and 2.

17. In the banking sector, we encourage Members to take on commitments in all modes of supply for the following subsectors, which are still subject to important reservations: brokerage, asset management, settlement and clearing services, and supply and transfer of information.

B. PRUDENTIAL REGULATION AND SUPERVISION

18. The liberalization of trade in financial services must be accompanied by solid prudential regulation and supervision in order to ensure confidence in the system, and hence its smooth operation. Members must be given plenty of room for manoeuvre so that they can implement the necessary measures as soon as the problems arise.

19. The internationalized financial institutions are operating on numerous and heterogeneous markets. This diversification adds to the complexity of assessing the risks involved and their interdependence, and hence complicates the task of the supervisory authorities who, in the end, sometimes choose to limit the participation of foreign institutions. From a strictly commercial point of view, we recommend the increased use of the standards developed in the relevant international forums (the Basel Committee, the International Association of Insurance Supervisors, the International Organization of Securities Commissions and the Joint Forum on Financial Conglomerates). We encourage the CTFS to keep abreast of the work of these organizations to the extent that it affects trade in financial services.

20. Because of its difficulty and complexity, prudential regulation can be implemented disproportionately depending on the problems involved. The measures involved can make the financial markets less attractive and jeopardize their operation. We would like the CTFS to begin

working on a more precise definition of the exceptions that can be invoked in relation to prudential regulation. A clearer definition would help to improve the transparency of financial markets for users and operators, and this, in its turn, would have a positive impact on their attractiveness. These discussions could be conducted on the basis of the work carried out in the appropriate forums mentioned above.

21. For all of the above reasons, it is essential that the CTFS should seek to cooperate closely with the international organizations that are actively involved in the supervision of financial services (the Basel Committee, the International Association of Insurance Supervisors, the International Organization of Securities Commissions, and the Joint Forum on Financial Conglomerates).

C. E-FINANCE

22. Financial services use and produce a considerable amount of information: to conduct market analyses, to update their client's accounts, or to transact payments or stock market orders. The opportunities offered by information technologies in the financial services area are enormous. In order to take full advantage of these innovations, financial institutions must be able to operate in a suitable commercial environment.

23. The WTO's work in the field of electronic commerce has been very limited. The GATS covers all service transactions, and the Agreement is neutral from a technological point of view, which means that the supply of services is not affected by the distribution procedure. Indeed, it would be difficult to imagine that the commitments assumed by Members could be called into question on the basis of the procedure used. In the maritime transport area, for example, this could mean that the commitments did not apply to vessels that were not double-hulled. In road transport, failing to respect technological neutrality could mean that the commitments applied only to two-axle trucks, and not to three-axle trucks. All of the Members' commitments could be called into question. Thus, the specific commitments of Members apply to the supply of services by electronic means. The degree of liberalization of electronic trade depends on the Members' specific commitments in the different sectors.

24. We encourage Members to take on commitments in modes 1 and 2, in particular when the services target sophisticated customers, in order to contribute to the growth of electronic-commerce.

25. Since electronic-commerce has significant and specific implications for financial services, we encourage the CTFS to coordinate its work with the other WTO groups that might be dealing with the subject of electronic-commerce and with the international organizations working in that area.

26. We call on the CTFS to analyse the impact of the growth of electronic trade on current commitments in financial services. In particular, electronic-commerce affects the relationship between modes of supply 1 and 2.
