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U.S. Trade in Financial Services: An Overview

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U.S. Trade in Financial Services: An Overview

Summary

Financial services — banking, securities, and insurance — are a key element of the U.S. economy. With international trade in services generally rising, financial services have become a critical element of new and proposed multilateral, regional, and bilateral trade agreements, as well as a source of some disputes with major trading partners. Congress not only oversees this critical industry, but it also has very substantial responsibilities with regard to U.S. trade, trade policy, and trade agreements, of which financial services are today an important part.

U.S. policy has been to extend national treatment to foreign financial firms operating within the United States and to seek national treatment for U.S. firms operating abroad. In addition, the United States has sought to improve market access by seeking the reduction of various barriers, including, for example, limits on types of products that may be sold, ceilings on the level of activity, or limitations on the right to establish a commercial presence within a country.

The World Trade Organization (WTO) provides the first multilateral framework for trade in financial services – the Financial Services Agreement (FSA) of the General Agreement on Trade in Services (GATS). The FSA went into effect on March 1, 1999, after difficult and drawn out negotiations. It's impact has largely been to bind current practices, but it is a work-in-progress. Under Article XIX of the GATS, a new set of negotiations on services, including financial services, commenced in February 2000. Financial services will also likely be part of a new round of WTO negotiations that might be launched.

Although the completed, but still pending, agreements with Vietnam and Jordan do not open up financial markets of any significant size, they may provide opportunities for some U.S. firms. The United States is negotiating free trade agreements with Chile and Singapore. The financial sectors of these two countries are largely open, but financial services issues, nevertheless, are important aspects of these negotiations. The United States is also in the midst of negotiating the proposed Free Trade Area of the Americas (FTAA) with the 34 countries of the Western Hemisphere (excluding Cuba), an area with which the United States already enjoys a healthy surplus in financial services. The FTAA is to be implemented by December 2005.

Financial services trade remains an important element of established U.S. regional and bilateral trade arrangements and relationships. The North American Free Trade Agreement (NAFTA), historically the first trade agreement to address financial services trade issues, fully opened the financial markets of our two NAFTA partners, Canada and Mexico, resulting in a financial services trade surplus for the United States. The European Union (EU) is fully open without a bilateral accord. Financial services trade with Japan is modest. It has not grown appreciably in recent years, and the United States has been pressing Japan to open up its financial services market to more trade. WTO access for China is likely to open a few opportunities for U.S. financial firms in the short-term, with opportunities likely increasing as the Chinese economy develops. This report will be updated as events warrant.

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Financial services trade is foreign or cross-border trade in banking, securities, and insurance services. Financial services include fee-based banking and securities transactions, as well as a wide variety of other financial services, such as, for example, financial advisory, management, custodial, or brokerage services. This report presents an overview of trade in financial services by the United States. It begins by delineating the framework of U.S. foreign trade in financial services, including:

- its importance to the U.S. economy;
- its role in the U.S. balance of payments;
- U.S. policy toward financial services trade and its implementation; and
- the types of barriers that U.S. financial firms confront in marketing their services abroad.

The bulk of this report, however, is devoted to a selective examination of current, pending, and proposed bilateral, regional, and multilateral agreements that affect this framework. These present the U.S. Congress with a variety of interrelated, complex, and, often, politically sensitive trade policy issues.

Two Appendices examine data, data collection and coverage of U.S. trade in financial services and the role of two intergovernmental organizations – the Organization for Economic Cooperation and Development (OECD) and the Bank for International Settlements (BIS) – in issues related to financial services trade.

Financial Services Trade and the U.S. Economy

Services play an important role in the U.S. economy. The United States, like most major economies, is a "service economy." Gross Domestic Product (GDP) in 2000 amounted to $9,963.1 billion. Of that amount, $5,254.0 billion or 52.7% was attributable to the production of services. The production of goods, by comparison, amounted to $3,793.4 billion or 38.1% of GDP.[1] Some 107.2 million individuals or 75.8% of the total civilian labor force were employed in the production of services, as of June 2001.[2]

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[1] Calculated from Table 1.3, Gross Domestic Product by Major Type of Product. U.S. Department of Commerce, *Survey of Current Business*, June 2001. The balance was attributable to the building of "structures."

[2] U.S. Department of Labor. Bureau of Labor Statistics. News. *The Employment Situation: June 2001*. Table A. Online version. This figure includes government services.

The services category of GDP is varied. It includes, for example, transportation, utilities, finance, insurance, travel services, entertainment, health care, legal services, and social services. Most of these services never enter international trade, that is, they are not cross-border transactions. Rather they involve transactions such as visiting one's local beautician/barber for a haircut or eating a meal at a local restaurant. International trade in services is, nevertheless, becoming increasingly important. According to the World Trade Organization (WTO), world exports of commercial services amounted to $1.35 trillion in 1999.[3] In the same year, the United States had service exports of $271.9 billion and a positive balance in its international trade in services of $80.6 billion.[4]

Delivery Channel One: Cross-Border Trade

Cross-border transactions are transactions between residents and foreigners. Cross-border trade includes both transactions between unaffiliated parties and transactions within multinational companies (intra-firm trade). Cross-border transactions, both exports and imports, unaffiliated and affiliated (intra-firm), are summarized quarterly in the DOC statistical presentation of U.S. International Transactions, that is, the "balance of payments." The latest data were released on March 15, 2001. Annual data for the year 2000 are preliminary.[5]

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[3] WTO. *International Trade Statistics 2000*, Chapter 4, Table IV.2. Online version. The WTO notes that trade in transportation services is significantly under-reported.

[4] U.S. Department of Commerce. Bureau of Economic Affairs. Table 1. U.S. International Transactions, as of March 15, 2001. On-line version.

[5] Data on U.S. financial services trade are presented in **Appendix Tables 1 and 2**, on p. 42-43, respectively. The Appendix also presents a discussion of data coverage and collection.

As illustrated by Figure 1, on the left below, the United States had a substantial current account deficit from 1992-2000. The current account represents net exports of goods and services to foreigners at a particular point in time, such as the end of a year. **Figure 2**, on the right below, shows the balances on merchandise trade and on

FIGURE 1. U.S. Current Account Deficit, 1992-2000

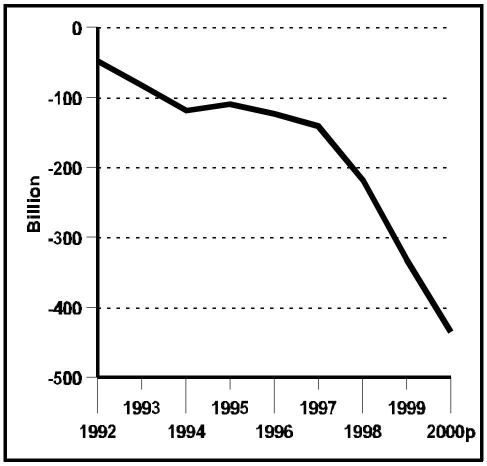
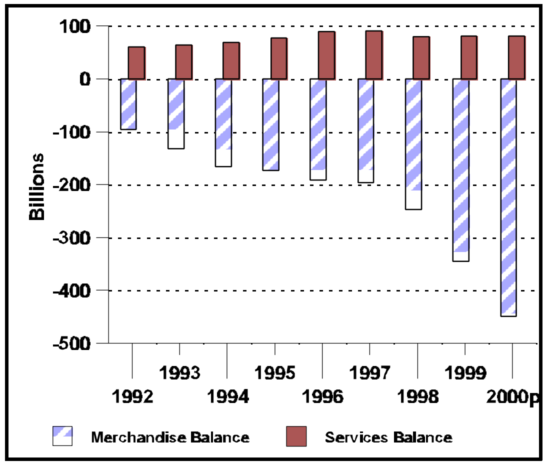


FIGURE 2. U.S. Merchandise and Services Trade Balances, 1992-2000



services trade. The driving factor in the U.S. current account deficit has been a substantial merchandise trade deficit. The U.S. balance on international trade in services, however, has been positive throughout the period, with service exports exceeding service imports. Service exports have, thus, made a positive contribution to the balance on current account. The balance on services peaked, however, in 1997 at $90.7 billion. Preliminary data for the year 2000 show a balance on services trade of $80.9 billion, a decline of 10.8% from the 1997 peak, but a slight increase from 1999.

FIGURE 3. U.S. Trade in Financial Services and Insurance (net) with Unaffiliated Foreigners, 1992-2000p

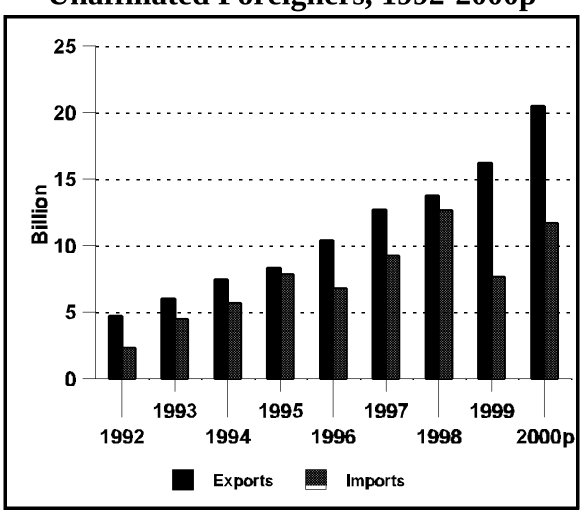
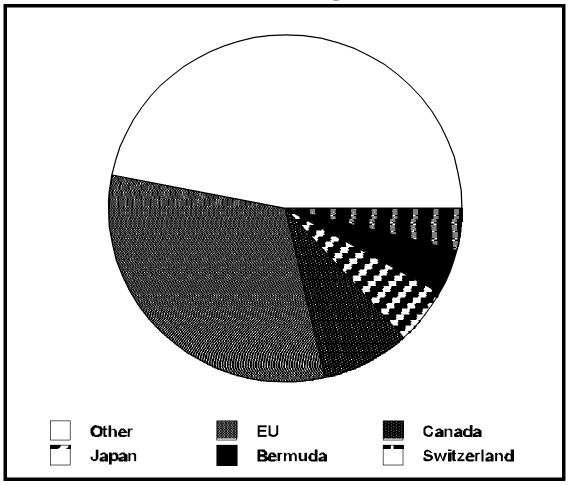


Figure 3 shows both exports and imports of financial services (banking and securities) and insurance (net) combined. Focusing on exports, preliminary data for 2000 indicate that cross-border exports of U.S. financial services and insurance (premiums net of losses) with unaffiliated foreigners together accounted for $20.5 billion, or 6.9% of total service exports of $296.2 billion. The category included $17.9 billion in banking and securities services exports and $2.7 billion in net insurance service exports. Financial service and insurance exports increased from $16.2 billion in 1999, an increase of

27%. The bulk of this increase was attributable to a substantial increase in banking and in securities-related services.

In both 1999 and 2000, the combined categories of financial services and net insurance had a substantial positive balance, $8.6 billion in 1999 and $8.8 billion in 2000, the latter figure representing a slight increase from the previous year. Similarly, the financial services and insurance categories combined accounted for 10.6% and 10.9% of the total services surplus in 1999 and 2000, respectively.

FIGURE 4. U.S. Exports in Financial Services and Insurance (net) with Unaffiliated Foreigners, 1999



As **Figure 4** suggests, the large markets for U.S. exports of financial services and insurance tend to be in developed countries and/or in countries that have active financial sectors, such as Switzerland and Bermuda. Nevertheless, the category designated "other" accounts for nearly half (45.8%) of combined U.S. financial services and insurance exports. Moreover, it includes some significant markets, such as Mexico, Argentina, and Brazil, which are not known particularly for being offshore financial centers.

Delivery Channel Two: Foreign Affiliates of Multinational Corporations

Services are also delivered through affiliates of U.S. corporations operating abroad and foreign corporations operating in the United States. Affiliates of multinational companies are regarded as residents of the countries in which they are located. Sales by foreign affiliates of U.S. companies to foreign buyers are, therefore, considered, transactions between foreign persons. Similarly, sales by the U.S. affiliates of foreign companies to U.S. persons are transactions between U.S. residents. Since sales and purchases by affiliates largely occur within the same country, neither type of sale is an international transaction. Their value is not, therefore, captured by the international transactions data that are reported quarterly by the DOC. Instead, estimates for the services transactions of affiliates are developed separately as part of larger DOC studies of direct investment.

Details on services trade of affiliates are presented annually in articles published in the DOC's *Survey of Current Business*.[6] In 1998, the latest year for which data on

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[6] The latest detailed analysis of affiliate activity and related data are presented in U.S. Department of Commerce. U.S. International Services: Cross-Border Trade in 1999 and Sales Through Affiliates in 1998. *Survey of Current Business.* October 2000, p.119-161.
(continued...)

the services transactions of affiliates are available, sales of services to foreigners by the foreign affiliates of U.S. firms amounted to $309.0 billion, while purchases by U.S. persons from the U.S. affiliates of foreign firms amounted to $255.1 billion.[7] Services delivered by U.S. affiliates operating abroad have exceeded cross-border service exports since 1996; services delivered by the affiliates of foreign companies operating in the United States have exceeded cross-border service imports since 1989.[8] Thus, the largest channel of delivery for services entering international trade is through direct investment. The DOC notes, however, that

> [f]or specific types of services . . . the relative importance of the two channels is difficult to gauge because the available data on U.S. cross-border trade are generally <u>classified by type of service</u>, whereas the data on sales of services through affiliates are <u>classified by primary industry of the affiliate</u>.[9] [Underlining added.]

Moreover, the industry classification of affiliates has been shifted from the 1987 SIC-based ("Standard Industrial Classification") system to the 1997 NAICS-based ("North American Industry Classification System") system. This has made for some discontinuity in the data series. Notably, under the SIC-based classification system, "services" did not include finance and insurance.

U.S. Policy

The United States employs a policy of national treatment for foreign financial institutions that operate in the United States. That is, the United States endeavors to provide "equality of competitive opportunity" to foreign-owned banks and securities firms operating in the United States to that afforded domestically-owned firms.[10] At the same time, the United States promotes the role of U.S. financial services firms abroad by encouraging other countries to apply national treatment to foreign firms in their markets.

The national treatment of foreign financial services firms is ensconced in U.S. law. For example, the International Banking Act of 1978 provides for national treatment of foreign banks in the United States. Subsequent changes to U.S. banking laws and regulations have taken into account national treatment of foreign banks.

In addition, under the Financial Reports Act of 1988, the Secretary of the Treasury must provide to Congress a quadrennial study of changes in laws that affect

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[6](...continued)
Also available on-line. It should be noted that the quarterly international transactions data do include data on the cross-border trade of affiliates, both the foreign affiliates of U.S. firms and the U.S. affiliates of foreign firms.

[7] Ibid., p. 119.

[8] Ibid., p. 120.

[9] Ibid.

[10] Department of the Treasury. *National Treatment Study–1998.* Washington. 1998. p. 28.

national treatment of foreign banks and securities firms in the United States. The study also provides information on the treatment of U.S. banks and securities firms in other countries indicating whether or not they are accorded national treatment. In addition to the reporting requirements, the statute states that the President, or his designee, "when advantageous," should conduct discussions with governments of major financial centers to ensure that they provide national treatment to U.S. financial services firms and that they allow U.S. firms to offer as wide a range of products as possible comparable to what they offer in the United States.

The statute provides no authority to impose sanctions or other means to enforce national treatment of banks and securities firms in other countries. Proposals to strengthen this provision have been offered in the Congress but have not been enacted. During the 103rd Congress, for example, the "Fair Trade in International Services Act of 1994" (S. 1527, H.R. 3248) was incorporated into a broader bill but dropped during conference. Among other things, the bill would have required the Secretary of the Treasury to identify and report to Congress every two years on countries which do not provide national treatment to U.S. banks and securities firms and to apply sanctions if negotiations fail to get the countries to apply national treatment.

The United States has been pressing other countries to open their markets to U.S. financial services firms in bilateral agreements, regional arrangements (such as NAFTA) and in multilateral fora, including the OECD and the WTO/GATS (General Agreement on Trade in Services). In addition, the U.S. Department of Commerce promotes exports of insurance by providing firms with information on opportunities and on foreign government regulations regarding insurance. The Treasury Department assists banks and securities firms.

Barriers to Financial Services Trade

Financial services firms confront several types of barriers. For example, some countries impose restrictions on the types of products service providers may sell. Until recently, for example, Japan heavily restricted sales of life and non-life insurance by foreign insurance companies, limiting them to sales of specialty or "third-sector" insurance, a market in which Japanese companies were not very competitive. Other countries impose ceilings on the amount of products that foreign firms may sell.[11] The Government of Brazil denies foreign marine cargo insurers the opportunity to compete for business and requires state companies doing business with insurance brokerage firms to use 100% Brazilian-owned brokerages.[12] Most Indian banks are government-owned, and entry of foreign banks remains highly regulated. Foreign bank branches and representative offices are permitted based upon reciprocity and

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[11] Feketekuty, Geza. *International Trade in Services: An Overview and Blueprint for Negotiations.* American Enterprise Institute. 1988. p. 131-132.

[12] Office of the United States Trade Representative. *National Trade Estimate Report.* 2000, p. 20.

India's estimated or perceived need for financial services. As a result, access for foreign banks has traditionally been limited.[13]

Most services require direct contact between buyer and seller. It is important, therefore, for many U.S. financial services firms to establish a physical presence in the foreign market in order to sell its services. The presence could be in the form of a wholly-owned subsidiary, a branch of a U.S.-based firm or a joint-venture with a local firm. One category of barriers faced by U.S. financial services is foreign government restrictions on foreign direct investment. Some foreign governments, for example, limit or completely restrict foreign ownership of banks and securities firms or require the employment of home-based personnel. It should be kept in mind that, these restrictions aside, the overall trend is one of worldwide liberalization of financial services markets. Many countries in Asia and Latin America, for example, have reduced capital controls, foreign investment restrictions, and other limits. Some observers have suggested that the rapidity of liberalization in East Asia in the early and mid-1990s might have contributed to the Asian financial crisis in 1997-1998.

Multilateral Agreements and Organizations: The World Trade Organization (WTO) and the GATS

The WTO provides the first and only multilateral framework of principles and rules for government policies and regulations affecting trade in financial services (banking, securities, and insurance) among more than 100 countries representing many levels of economic development. The WTO coverage of trade in financial services is contained in the General Agreement on Trade in Services (GATS), which was agreed to during the Uruguay Round. Although broad in scope, the GATS remains a work-in-progress as services, including financial services, will be part of any new round of WTO negotiations that its members may launch.[14]

Background

The seeds for multilateral negotiations in services trade were planted more than a quarter century ago. In the Trade Act of 1974, the Congress instructed the Administration to push for an agreement on trade in services under the General Agreement on Tariffs and Trade (GATT) during the Tokyo Round negotiations. While the Tokyo Round concluded in 1979 without a services agreement, the industrialized countries, led by the United States, continued to press for their inclusion in later negotiations. Developing countries, whose service sectors are less advanced than those of the industrialized countries, were reluctant to have services included.

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[13] Ibid. p. 164.

[14] A brief discussion of the Organization for Economic Cooperation and Development (OECD) and the Bank for International Settlements (BIS) is contained in Annex II.

Eventually services were included as negotiating objectives in the 1986 declaration that launched the Uruguay Round agenda.[15]

The General Agreement on Trade in Services (GATS)

The basic characteristics of goods and services are fundamentally different. Goods are tangible while services are not. Furthermore, the trade barriers that service providers face are much different than those faced by sellers of merchandise. Many of the barriers merchandise vendors confront are at the border, for example, tariffs and other customs measures. Service providers, in contrast, are faced largely with government rules and regulations that operate inside the country rather than at the border. Because of these differences, many of the rules established under the GATT for merchandise trade are not applicable to trade in services without modifications. Uruguay Round negotiators created the General Agreement on Trade in Services (GATS) as a parallel framework to the goods-oriented GATT to accommodate the differences. Negotiations and agreements on financial services trade come under the GATS. The United States and the European Union (EU) were the predominant promoters of including services trade in the Uruguay Round. Their efforts mirror the strong position of the service sector in the U.S. and EU economies and their global competitiveness.

The GATS agreement, most of which was completed by December 1993, is divided into six parts.[16] Part I (Article I) defines the scope of the GATS. It provides that the GATS applies–

- to all services, except those supplied in the routine exercise of government authority;
- to all government barriers to trade in services at all levels of government – national, regional, and local; and
- to all four modes of delivery of services: cross-border; consumption abroad, that is, consumption of a service by the resident of one country in the territory of the supplier country; temporary movement of foreign supplier to the country of the consumer; and permanent commercial presence of foreign supplier in the country of the consumer.

Part II (Articles II-XV) presents the "principles and obligations," some of which mirror those in the GATT for trade in goods while others are specific to services. These principles and obligations include:

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[15] Feketekuty, Geza. *International Trade in Services: An Overview and Blueprint for Negotiations.* American Enterprise Institute. Ballinger Publishers. 1988. p. 194

[16] This description of the GATS is based on WTO Secretariat– Trade in Services Division. *An Introduction to the GATS.* October 1999. [http://www.wto.org].

- unconditional most-favored-nation *(MFN) non-discriminatory treatment*; that is, services imported from one member country cannot be treated any less favorably than the services imported from another member country; [17]

- *transparency*, that is, governments must publish rules and regulations;

- *reasonable, impartial and objective* administration of government rules and regulations that apply to covered services;

- *monopoly suppliers* must act consistently with obligations under the GATS in covered services;

- a member incurring *balance of payments difficulties* may temporarily restrict trade in services covered by the agreement; and

- a member may circumvent GATS obligations for *national security purposes*.

Part III (Articles XVI-XVIII) of the GATS establishes market access and national treatment obligations for members. The GATS–

- binds each member to its commitments once it has made them, that is, a member country may not impose less favorable treatment than what it has committed to;

- prohibits member-country governments from placing limits on suppliers of services from other member countries regarding: the number of foreign service suppliers; the total value of service transactions or assets; the number of transactions or value of output; the type of legal entity or joint venture through which services may be supplied; and the share of foreign capital or total value of foreign direct investment;

- requires that member governments accord service suppliers from other member countries *national treatment*, that is, a foreign service or service provider may not be treated any less favorably than a domestic provider of the service; and

- allows members to negotiate further reductions in barriers to trade in services.

Importantly, unlike MFN treatment and the other principles listed in Part II, which apply to all service providers more or less unconditionally, the obligations under Part III are restricted. They apply only to those services and modes of delivery listed in each member's schedule of commitments. Thus, unless a member country has specifically committed to open up its market to service suppliers in a particular service that is provided via one of the four modes of delivery, the national treatment and market access obligations do not apply. This is often referred to as the *positive*

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[17] The GATS differs from the GATT in that it has allowed members to take temporary exemptions to MFN treatment. The exemptions are listed in a special annex to the GATS. The GATS allows only these one-time exemptions. The GATS (as is the case of the GATT) also allows MFN exemptions in the cases of regional agreements.

list approach to trade negotiations. Each member country's schedule of commitments is contained in an annex to the GATS.[18] The schedules of commitments are, in essence, the core of the GATS.

Parts IV-VI (Articles XIX-XXIX) are technical but important elements of the agreement. Among other things, they include the requirement that, no later than 2000, the GATS members start new negotiations to expand coverage of the agreement and establish the requirement that conflicts between members involving implementation of the GATS be handled in the WTO's dispute settlement mechanism. The GATS also includes eight annexes, including one on MFN exemptions. Another annex provides a "prudential carve out," that is, a recognition that governments take "prudent" actions to protect investors or otherwise maintain the integrity of the national financial system. These prudent actions are allowed even if they conflict with obligations under the GATS.

Financial Services Under the GATS

The negotiations on financial services proved to be among the most difficult of the Uruguay Round negotiations on services. In fact, by the time the Uruguay Round negotiations formally concluded at the end of 1993, critical differences remained among participants in GATS on financial services and prevented them from reaching a final agreement.[19] A final agreement was not reached until 1997.

The 1995 Interim Agreement. The United States in particular argued that many of the developing countries had not made strong enough commitments to liberalize their financial services sectors and refused to finalize an agreement. Negotiators agreed to extend the talks until July 1, 1995, but the United States and other developed countries were dissatisfied with the results. Largely at the initiative of the EU, negotiators brokered an interim agreement on July 28, 1995, which locked in the commitments made by members up to that time and committed participants to continue to negotiate through 1997. Forty-three countries (the EU-15 counted as one), signed on to the agreement, although the United States registered strong reservations. The U.S. contention was that, since the financial sectors of the United States and many of the industrialized countries were already quite open, the developing countries would be getting a "free ride" if they were not more forthcoming in making commitments.[20]

The 1997 Financial Services Agreement (FSA). As the negotiations proceeded after 1995, a crucial stumbling block pertaining to Japan impeded completion of a final agreement. Japan refused to make its earlier bilateral commitments to the United States on insurance (made in 1994) and other financial

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[18] Wilson, Arlene. *Services Trade and the Uruguay Round.* CRS Report 95-1051 (Archived). p. 17.

[19] There were also delays in completing negotiations on movements of people, maritime services, and telecommunications services.

[20] Dobson, Wendy and Pierre Jacquet. *Financial Services Liberalization in the WTO.* Institute for International Economics. Washington. 1998. p. 83.

services (made in 1995) a part of its schedule of commitments under the GATS.[21] In August 1995, Japan made these commitments in a letter to the WTO Director General, but it did not agree to make them legally binding until near the end of the negotiations that produced the Financial Services Agreement (FSA) in December 1997.[22]

The FSA went into effect March 1, 1999. The FSA is a set of commitments by 104 GATS members (the EU-15 counted as one member) to provide market access and national treatment to foreign providers in a range of financial services. According to one estimate, the FSA covers 95% of the world's financial services market – about $18 trillion in global securities, $38 trillion in international bank lendings, and $2.5 trillion in gross insurance premiums.[23]

Summarizing or evaluating the FSA is a challenge at best. To do so requires the examination of the commitment schedules for each of the members. Each schedule contains commitments on the various types of services that are included within banking, insurance, and securities services. And for each of these services there are commitments according to the four modes of distribution. There are few commonalities across commitment schedules other than obligations to subscribe to MFN, transparency and the other basic principles.

Some experts have attempted to make generalizations about the results of the FSA. A number of the experts have concluded that, in general, the members' commitments consist largely of locking-in or "binding" current practices.[24] This finding may reflect the fact that the financial sectors in the United States and the other industrialized countries, which account for the bulk of trade in financial services, had been comparatively open even before the GATS negotiations. Their current practices are already among the most liberal and cover all sectors of financial services.[25]

Concerning the non-industrialized countries, some studies concluded that there was no clear correlation between the level of a country's economic development or the development of its financial services sector, on the one hand, and the level of its commitments under the GATS on the other. Some of the least developed countries made commitments to open markets for services while some more developed countries made commitments that were at or below their current practices.[26]

Regarding commitments in specific types of sectors, one study found that member countries made the largest *number* of commitments in life and non-life direct

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[21] These bilateral agreements are discussed below in he section on U.S.-Japan trade.

[22] Ibid. p. 82.

[23] Das, Dilip K. *Trade in Financial Services and the Role of the GATS: Against the Backdrop of the Asian Financial Crisis.* Journal of World Trade. Dec. 1998. p. 82.

[24] See for example, Dobson and Jacquet, p. 90.

[25] Sorsa, Piritta. *The GATS Agreement on Financial Services– A Modest Start to Multilateral Liberalization.* IMF Working Paper. 1997. p. 14.

[26] Ibid. p. 28.

insurance and in services pertaining to bank lending and acceptances. However, in terms of the actual *level* of liberalization, more was accomplished in insurance than in banking.[27]

In its own evaluation of the FSA, the Office of the USTR concluded that 52 countries guaranteed "broad market access terms across all insurance sectors – life, non-life, reinsurance, brokerage, and auxiliary services – and 14 additional countries have made commitments to open their markets in some sectors of insurance." It also concluded that 59 countries have committed to permit 100% foreign ownership of subsidiaries or branches in banking and 44 countries have guaranteed to allow 100% foreign ownership of subsidiaries or branches in the securities sector.[28]

Evaluating the Accomplishments and Shortcomings of the FSA. The FSA is a landmark agreement in a number of respects. It is the first multilateral agreement on financial services, binding its member-governments to a set of principles and rules on their treatment of foreign financial services and financial service providers. Its signatories include a range of economies from highly industrialized countries to less developed countries.

From the perspective of the United States and the U.S. financial services sector, the GATS and the FSA can be considered to have made some important positive gains:

- They require many countries to maintain, at a minimum, established government practices that affect the treatment of providers of selected services and prohibit them from imposing more restrictive practices without facing possible challenges from the United States or other WTO members under the WTO dispute mechanism. In addition, some countries have made commitments to move beyond current practices and liberalize their markets in selected services.

- They commit GATS members to afford MFN treatment, transparency, and other disciplines in a sector that many developing countries and some developed countries have been very reluctant to expose to international rules.

- The U.S. financial services sector will likely benefit from more open foreign markets as member countries pursue negotiations on services as mandated under the GATS.

- The FSA binds Japan's commitments made under the bilateral agreements with the United States to the multilateral WTO rules and dispute settlement mechanism.

The GATS and the FSA also have shortcomings that will probably limit the benefits that U.S. financial service providers enjoy:

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[27] Das, p.113. Dobson and Jacquet, p. 90.

[28] Office of the United States Trade Representative. *1999 USTR Annual Report– March 2000*. Washington. (Online version at [http://www.ustr.gov].)

- The "positive list" approach to members' commitments makes not offering national treatment and market access the default position rather than the exception, as would be the case under a "negative list" approach. The "positive list" approach also makes negotiating and drawing up commitments to liberalize the financial services sectors a more cumbersome and arduous task.

- The separation of negotiations in financial and other services from negotiations in goods prevents negotiators from making cross-sectoral concessions which might limit the types of concessions U.S. negotiators can make in order to obtain concessions from developing countries. In so doing, the separate negotiating regimes might be retarding progress in financial services negotiations.

Current and Future WTO Negotiations

Article XIX of the GATS required WTO members to begin a new set of negotiations on services in 2000. In so doing, it guaranteed that WTO members would pursue negotiations on services even if they were not able to begin a new full round. Article XIX requires that during the negotiations, participants work to resolve some conceptual and procedural issues– how to give negotiating credit to governments that had unilaterally liberalized their services sectors since the conclusion of the first set of negotiations and whether to provide special treatment to least developed countries.

The new set of GATS negotiations began in February 2000, and during the remainder of the year, the members reviewed the status of commitments already made and developed a set of guidelines. In addition to the issues mandated by Article XIX, the guidelines stipulate, among other things, that negotiators will continue to use the service-specific, mode-specific (positive list) approach. No deadline has been set for the completion of the negotiations. The United States had proposed that they be completed by 2002.

GATS members are now forming a negotiating agenda by submitting proposals on each of the different services. To date, the United States, Canada, and Australia have submitted initial proposals for financial services negotiations. The United States has proposed that WTO members work toward removing restrictions on the establishment by foreign suppliers of a commercial presence in their markets; for example, governments should allow greater flexibility in choosing the mode of presence, e.g. branch, joint venture, or wholly-owned subsidiary. The United States also proposed working to remove restrictions on cross-border trade in financial services.

At this point it is not clear how the negotiations will proceed or how long they will take. However, if history is an indicator, they are likely to be drawn out and complicated. The tension between developed countries and developing countries over the pace and depth of financial service markets liberalization remains.

Pending and Proposed Trade Agreements

The WTO provides the fundamental multilateral framework for international trade. U.S. trade negotiators, however, are also active on a variety of other trade "fronts." As a result, there are currently a number of pending and proposed bilateral and regional trade agreements that may be brought before the Congress. This section examines how financial services trade relates to these new and upcoming agreements and negotiations.

The U.S.-Vietnam Trade Agreement

Trade between the United States and Vietnam is small. In 2000, U.S. merchandise exports to Vietnam totaled $368 million and U.S. imports totaled $822 million, making Vietnam, respectively, the 71st largest market for U.S. exports and the 66th largest source of U.S. imports. The U.S. bilateral trade deficit with Vietnam amounted to $454 million was about 1/10 of 1% of the total U.S. trade deficit for 2000. U.S. official data on services trade do not disaggregate services trade with Vietnam. However, one can assume that these trade flows are small as well. The small volume of trade reflects the size of the Vietnamese economy, which had a GDP of $29 billion in 1999, equal to about 3/10 of 1% of the $9,299 billion U.S. economy in the same year;[29] the legacy of the war between the two countries; the central-planned structure of the Vietnamese economy; and the relative mix of trade barriers that each country imposes on the other.

The purpose of the U.S.-Vietnam agreement, which was finalized on July 13, 2000, but has not yet been approved by Congress, is to establish conditional normal trade relations between the United States and Vietnam in accord with Title IV of the Trade Act of 1974, the so-called the Jackson-Vanik amendment.[30] The agreement cannot go into effect until Congress passes a joint resolution of approval. The agreement establishes conditions under which the two countries are to conduct trade. One major condition is that the two countries extend mutual "most-favored-nation" treatment (MFN, sometimes called "normal trade relations" [NTR] status), which, in practice, means applying the lowest non-preferential tariffs on each other's imports. A second condition is the application of "national treatment" to the products of the other country.

The Vietnamese government has undertaken some reforms to introduce private sector participation in the economy. But these reforms have been in fits and starts, and more than half the economy remains under state control.

Under the bilateral agreement, Vietnam has pledged to take specific measures to open its markets, including services, to U.S. trade and investment. Vietnam's commitments toward services are sector-specific and delineated in an annex to the agreement. For those sectors covered by the agreement, the agreement lays out

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[29] U.S. Department of State. *Background Note: Vietnam.* July 2001. On-line.

[30] For more details on the agreement, see CRS Report RL30416, *The Vietnam-U.S. Bilateral Agreement*, by (name redacted).

governing principles, although even for these sectors, the application of the principles may be restricted. Vietnam agrees to apply MFN and national treatment to U.S.-supplied services. In addition, the Vietnamese government is to implement regulations in a reasonable, objective, and impartial manner. Furthermore, those Vietnamese enterprises that operate as monopolies and that also provide services outside of their monopolized sector must do so in accordance with conditions of the agreement.

Vietnam has made specific commitments in opening trade and investment in financial services to U.S.-based providers. Regarding insurance, the agreement distinguishes between insurance required by law, such as motor-vehicle insurance or construction-related insurance, and insurance not mandated, such as life insurance. After the agreement has been in effect three years, Vietnam will permit U.S. firms providing non-mandatory insurance to invest in joint ventures with Vietnamese-owned firms up to a level up to 50% ownership. After the agreement has been in effect five years, U.S. insurance firms can establish 100%, wholly-owned firms in Vietnam. Regarding mandatory insurance, U.S. firms may invest in joint ventures (to unspecified level of equity) three years after the agreement enters into force and can establish 100% wholly-owned firms in Vietnam six years after the agreement enters into force.

During the first three years after the agreement has gone into effect, Vietnam will permit U.S. non-bank financial firms to establish joint ventures with Vietnamese firms (to unspecified levels of equity ownership) and to establish 100%-owned firms after three years in effect. Securities brokerage firms are limited to establishing representative offices in Vietnam.

In the area of banking services, the agreement allows U.S. banks to establish branches in Vietnam in the form of joint ventures with Vietnamese banks with 30%-49% ownership during the first nine years of the agreement's effective period and 100%-owned branches after nine years. U.S. banks may also invest in privatized Vietnamese banks to the same level as Vietnamese investors. After the agreement enters into force, U.S. banks may accept deposits in Vietnamese currency (dong) on a graduated basis until full national treatment is reached. Furthermore, after the agreement has been in effect three years, the central bank of Vietnam will provide U.S. banks with access to discounting, swap, and forward facilities on a full national treatment basis.

U.S.-Jordan Free Trade Agreement (FTA)

The United States and Jordan signed a free-trade agreement (FTA) on October 24, 2000. Jordan is the fourth country to complete an FTA with the United States, following Israel, Canada, and Mexico. Jordan is a key ally in a strategically important region. The proposed FTA, which has not been approved by Congress, thus, has significance as a part of the on-going Middle East peace process. The Jordanian FTA is also potentially significant because it is the first FTA to incorporate environmental and labor standards (Articles 5 and 6, respectively) directly within the main body of the text of an FTA.

The proposed U.S.-Jordan FTA would eliminate virtually all tariff and non-tariff barriers between the United States and Jordan within ten years. This includes all barriers to services trade. The FTA grants most-favored-nation (MFN) treatment in services. Specific commitments regarding services trade are set out in the Services Schedule to Annex 3.1 of the agreement. The Jordan FTA is also the first bilateral treaty in which the United States has incorporated provisions on e-commerce.

The FTA would not have a major impact on the U.S. economy or on U.S. exports and imports because the bilateral commercial relationship is relatively small. The Jordanian economy had a GDP of $8 billion[31] in 1999, compared to a U.S. GDP of $9,299 billion in the same year, that is to say, the measured size of the Jordanian economy equaled less than 1/10th of 1% of the U.S. economy. U.S. exports to Jordan amounted to $312 million in 2000, our 75th largest export market; imports (customs basis) amounted to $73 million, our 123rd largest source of imports. The resulting bilateral U.S. trade surplus of $239 million was negligible in terms of the U.S. external merchandise trade deficit of $434.3 billion in 2000.

Trade with the United States is also not a major factor in Jordan's external trade picture, accounting, in 1999, for 8.4% of Jordan's imports, but only 1.7% of its exports. The FTA might, nevertheless, prove to be valuable to Jordan as it attempts to modernize and energize its domestic economy by opening Jordan up to the influences of the global economy. Indeed, the FTA is part of broad effort to connect Jordan to the global economy, an effort that, for example, led Jordan to join the World Trade Organization (WTO) in April 2000.

Data on U.S. services trade with Jordan are not disaggregated from the data on U.S. services trade with other Middle Eastern countries. Given the size of the trading relationship, however, it is safe to say that Jordan is not currently a significant market for U.S. service industries, including financial and insurance services. Nevertheless, some individual U.S. companies might well benefit from a reduction in Jordan's trade barriers, a shift that might contribute to an altered perception of market potential.

The Jordanian banking system has 13 commercial banks, five investment banks, two Islamic banks, one industrial development bank and a number of specialized credit institutions.[32] Five of the commercial banks are branches of foreign banks. In practice, there are no significant differences between the operations of the commercial banks and those of the investment banks. Many of the banks are small and family-owned. Unofficial estimates place non-performing loans at about 30% of outstanding loans.[33] The opening up of Jordan's banking sector to competition from abroad, along with a proposal to raise minimum capital requirements to JD 50 million, is likely to trigger further consolidation within the banking sector. **Table 1** presents selected data on the capital and assets of Jordan's five leading banks. The

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[31] Jordan's GDP of JD5,723.5 million in 1999 converted at the rate of $1.4104 per Dinar. IMF. *International Financial Statistics.*

[32] U.S. Department of Commerce. *Jordan Country Commercial Guide FY 2001*. Available at (http://www. usatrade.gov) .

[33] Ibid.

Table 1. Top Five Jordanian Banks, Selected Data December 1999
(Million $)

Bank	Tier One Capital	Total Assets	Capital/Assets %	Profit/Capital %
Arab Bank	1,558	19,653	7.93	18.62
The Housing Bank for Trade & Finance	317	2,185	14.49	11.73
Jordan National Bank	80	1,285	6.26	-27.78
Cairo Amman Bank	55	1,219	4.48	18.96
Jordan Kuwait Bank	51	535	9.47	15.77

Source: *The Banker*, October 2000, p. 12.

Arab Bank Group is the only Jordanian bank with a worldwide presence. About one-fifth of Arab Bank Group's assets and about one-quarter of its deposits are in Jordan.[34] The Housing Bank focuses on the local market.

The Jordanian government would like to broaden and deepen the local capital market. The corporate bond market is relatively undeveloped, due to rigid interest rates and the absence of a secondary market.

Proposed U.S.-Chile FTA

Negotiations on the proposed FTA between Chile and the United States were launched on December 6-7, 2000 in Washington. Four subsequent rounds of talks have been held during 2001: in Santiago on January 8-11, in Miami on March 26-30, in Santiago on May 10-16, and in Washington on June 11-16.

Economically, a free-trade agreement with Chile could boost the trade of specific companies and sectors, but would be unlikely to affect the U.S. economy significantly. The Chilean economy had a projected GDP of about $71.7 billion in 2000, compared to a U.S. GDP of $9,963.1 billion; the measured size of the Chilean economy equals less than 1% of the U.S. economy. U.S. exports to Chile amounted to $3.5 billion in 2000, our 32nd largest export market; imports (customs basis) amounted to $3.2 billion, our 40th largest source of imports. The result of this bilateral trade was a modest U.S. trade surplus with Chile of $227.2 million in 2000. Politically, however, many experts believe that the successful conclusion of an FTA with Chile might have significance well beyond the size of the economic relationship, possibly providing a workable model for dealing with trade-related labor and environment issues and adding impetus to the Free Trade Area of the Americas (FTAA) negotiations.

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[34] Jon Marks. Bankers awaken. *The Banker*, October 1999, p. 110.

Chile is the fifth largest market for U.S. exports of financial services (banking and securities) and net insurance services in the Latin America and Caribbean area.[35] In 1999, U.S. cross-border exports to Chile in financial services amounted to $96 million; net insurance services exports amounted to $6 million. Cross-border imports from Chile amounted to $11 million in financial services and $1 million in net insurance services. Thus, the United States had a trade surplus with Chile in financial services of $85 million and in net insurance services of $5 million. Taken together, these equaled 4% of the $2.3 billion regional U.S. trade surplus in financial and net insurance services, but a mere 1% of the worldwide U.S. surplus of $8.6 billion in financial and net insurance services.

In general, Chile has a largely open international trading regime. The 2001 Foreign Trade Barriers Report notes, however, that

> Chile's relatively open services trade and investment regime stands in contrast to its relatively limited GATS [General Agreement on Trade in Services] commitments. In particular, Chile maintains a "horizontal" limitation, applying to all sectors in Chile's GATS schedule, under which authorization for foreign investment in service industries may be contingent on a number of factors, including employment generation, use of local inputs and competition. This restriction undermines the commercial value and predictability of Chile's GATS commitments.[36]

During the 1997 WTO negotiations on financial services, Chile reserved the right to apply economic needs and national interest tests when licensing foreign financial services suppliers. In practice, however, foreign banks operating in Chile are allowed to establish branches and subsidiaries. They are guaranteed nondiscriminatory treatment under a 1960 law and under Chile's foreign investment law (Decree Law 600). Foreign banks are permitted to engage in the same range of services and may establish subsidiaries for securities and insurance brokerage, leasing, and factoring. Lending limits applicable to foreign banks are based on the banks' local capitalization rather than the parent's capital.

Since the 1980s' financial crisis, Chilean authorities have not allowed new banks – domestic or foreign – to enter the banking sector except via the purchase of existing institutions.[37] This constraint has not, however, proven to be a barrier to foreign banks. According to the 1998 *National Treatment* study, at the end of 1997, 29 banks and three consumer finance companies were operating in Chile. Of this total, 17 were foreign banks. Six U.S. banks, with a total of 35 branches, accounted for 4.3% of deposits and 16.1% of assets at the end of 1997.[38] By 1999, the International

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[35] Statistically, the grouping is designated as "Latin American and Other Western Hemisphere." It includes Bermuda, but excludes Canada.

[36] USTR. *Foreign Trade Barriers.* Annual Report, 2001. On-line version, p. 40.

[37] U.S. Department of Commerce. *Chile Country Commercial Guide FY 2001*. Available at [http://www.usatrade.gov].

[38] The six U.S. banks continue to operate in Chile. They are Citibank, Bank of Boston, Republic National Bank, Chase Manhattan Bank, American Express, and Bank of America.

(continued...)

Monetary Fund (IMF) estimates that foreign banks controlled more than half (53.6%) of Chilean bank assets.[39] According to the IMF, analysts expect that the integration of banking with insurance and pension fund activities will increase foreign participation.[40]

On a historical cost basis, direct investment in Chile by U.S. banks (depository institutions) amounted to $606 million at the end of 1997; by the end of 1999, this figure had risen to $656 million, equal to 7% of total U.S. direct investment in Chile of $9.9 billion.[41] The increase in U.S. direct investment in Chile's banking sector between 1997 and 1999 amounted 8%.

The 1998 *National Treatment Study* states that "[t]here are no legal discriminations or restrictions against foreign securities firms wishing to operate in Chile's securities markets."[42] The principle of nondiscriminatory treatment is guaranteed both by Decree Law 600 and by Article 19 of Chile's constitution. Foreign brokerage firms must be established as subsidiaries. As of the end of 1997, the study notes, four U.S.-owned securities firms had nearly 38% of all stock broker assets in the Chilean market, with several other U.S. firms having partial ownership stakes or affiliations in or with other brokers.[43] U.S. firms also own a number of pension fund management companies ("Adminstradores de Fondos de Pension" (AFPs), which were created when Chile privatized its government-run pension system in 1981), mutual funds, insurance companies, and foreign investment fund management companies.

Proposed U.S.-Singapore FTA

In November 2000, the United States and Singapore agreed to begin negotiations on establishing a free trade area.[44] The negotiations began immediately and are still in progress. As with the negotiations with Chile, the negotiations with Singapore continue. A draft of a possible agreement has not been released and,

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[38](...continued)
U.S. Department of the Treasury. *National Treatment Study*, 1998. On-line version, p. 166 and p. 170.

[39] IMF. International Capital Markets: Developments, Prospects, and Key Policy Issues, by a Staff Team lead by Donald J. Matheson and Garry J. Schinus. September 2000, Table 6.1, p. 153. On-line version. This is defined as the ratio of banks where foreigners own more than 50% of total equity to total bank assets. When the threshold is set at 40%, foreigners still controlled 53.6% of total bank assets in 1999.

[40] Ibid, p. 209.

[41] U.S. Department of Commerce. BEA. *Survey of Current Business*. September 2000, Table 10.1, p. 68 and p. 70. On-line version.

[42] U.S. Department of the Treasury. *National Treatment Study*, 1998. On-line version, p. 171.

[43] Ibid., p. 174.

[44] For more details on the agreement, see CRS Report RS20755, *Singapore-U.S. Tree Trade Agreement*, by (name redacted).

therefore, it cannot be directly determined how an agreement would address financial services. However, examining how U.S. financial services are currently treated in Singapore provides some indication of what a bilateral FTA might include.[45] In 1999, U.S. exports (or payments for sales of financial services) to Singapore equaled $238 million. U.S. imports (or payments for the purchase) of financial services from Singapore equaled only about $85 million.[46]

Singapore's treatment of foreign financial service providers is quite liberal and is commensurate with Singapore's objective of being a major financial center in East Asia. In general, the Singapore government does not require notification of foreign direct investment other than to determine whether the investment might be eligible for an incentive program.

In the last two years, the Singapore government has taken measures to improve access to foreign services providers to what was already a relatively open market. In March 2000, for example, the government lifted a 49% share restriction on foreign ownership of local direct insurers to permit 100% ownership. It also has made available licenses to foreign firms to sell re-insurance in Singapore.

Singapore openly welcomes foreign banks with few restrictions. Consequently, 141 of the 153 commercial banks in Singapore are foreign-owned, and the government is liberalizing the banking sector even further.[47] In May 1999, the government removed a 40% share ceiling on foreign ownership of local banks. The Singapore government restricts the establishment of foreign-bank-owned and operated ATMs that are not located at the bank site and excludes foreign banks from participation in a cash card network system, the Network for Electronic Transactions, Singapore (NETS).

Foreign securities brokers have the same rights of establishment in Singapore as domestic brokers. By January 2002, foreign securities firms will have full access rights to the Singapore Exchange (SGX).

Proposed Free Trade Area of the Americas (FTAA)

A Free Trade Area of the Americas (FTAA) was first proposed by then President William J. Clinton at the first Summit of the Americas in Miami in December 1994. Thirty-four nations, every country in the Western Hemisphere except Cuba, participated. At the second Summit of the Americas, held in Santiago,

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[45] This description of treatment of foreign financial service providers in Singapore is taken from Office of United States Trade Representative. *2001 National Trade Estimates Report on Foreign Trade Barriers.* April 2001. p. 391-395.

[46] U.S. Department of Commerce. *Survey of Current Business.* October 2000. p. 148-149. These data undoubtedly underestimate the value of financial services as they do not include services bought and sold between U.S. parent companies and their Singapore affiliates and likewise between Singaporean parent companies and their U.S. affiliates.

[47] United States Trade Representative. *2001 National Trade Estimates Report on Foreign Trade Barriers.* Washington. p. 417.

Chile in April 1998, the 34 countries agreed to launch negotiations to establish the proposed free trade area. In June 1998, nine negotiating committees, including one for financial services, were established. Negotiations have been held in Miami since September 1998. In November 1999, FTAA trade ministers agreed to complete an initial consolidated draft, with bracketed text, of the proposed FTAA for submission to the next ministerial meeting on April 6-7, 2001. This draft text has recently been made available on-line at [http://www.ftaa-alca.org/alca_e.asp] [48]

Hemispheric leaders, meeting at the third Summit of the Americas, held in Quebec, Canada on April 20-22, 2001, agreed that the FTAA negotiations would be completed not later than January 2005 and that the agreement would enter into force not later than December 2005. Only Venezuela "reserved" its position on the deadline.

USTR has outlined its goals in the services portion of the FTAA negotiations.[49] Negotiations are to take a top-down ("negative list") approach, that is, everything is to be liberalized except those sectors or measures for which a country negotiates a reservation. This is essentially the approach that was taken during the NAFTA negotiations. The services chapter should cover measures taken by central, regional or local governments and authorities. The FTAA negotiators need to negotiate special provisions for financial services so that they are effectively covered in a combined fashion in both the services and the investment chapters of the FTAA agreement. More broadly, US negotiators are seeking:

- "Most-Favored-Nation Treatment (MFN);
- National Treatment;
- Market access, to include
  1) the removal of non-discriminatory quantitative restrictions,
  2) guaranteed access to and use to publicly-provided telecommunications networks, and
  3) prohibition of "no local presence" requirements, a goal which might require specialized provisions in the case of financial services;
- Transparency in the domestic regulation of services; and, finally,
- Denial of benefits to:
  1) "shell" companies, and
  2) companies that are directly or indirectly owned by non-FTAA countries with which the United States does not maintain diplomatic relations.

[48] Office of the United States Special Trade Representative. FTAA Negotiating Groups Meet Ministerial Challenge: USTR Releases Public Summaries of U.S. Positions. Press Release, January 6, 2001, p. 2. Available on-line.

[49] This paragraph draws from the USTR statement, *FTAA Negotiating Group on Services: Public Summary of U.S. Position*. Available on-line.

The United States might make substantial trade gains in the financial/insurance sector were the FTAA to enter into effect, notably because most of the countries in the area are emerging markets where increased growth could be expected to lead to a greater demand for increasingly sophisticated financial services and products. A major exception to that statement is Bermuda, which is an offshore financial center and a significant net exporter of (net) insurance services to the United States. Indeed, the United States had a trade deficit of $2.1 billion in the combined financial services/net insurance sector with Bermuda in 1999.[50]

Latin America is already an important market for the financial and insurance service exports of U.S. firms. As shown in **table 2** on the next page, U.S. exports in this sector to countries in the Western Hemisphere amounted to $7.3 billion, thus accounting for nearly half (45%) of all such exports worldwide. Excluding NAFTA (i.e., Canada and Mexico) and Bermuda, they still amounted to $4.9 billion or a healthy 30% of U.S. financial and insurance services exports worldwide.

[50] Calculated from U.S. DOC, BEA data as shown in tables 1 and 2.

Table 2. U.S. Financial Services and Net Insurance Exports Western Hemisphere, 1999
(Million $)

Region	Financial Services (Banking & Securities)	Net Insurance	Total
Worldwide	13,925	2,295	16,220
Western Hemisphere *Of which:*	5,463	1,833	7,296
NAFTA (Canada & Mexico)	1,455	282	1,737
Other Western Hemisphere (Excluding NAFTA) *Of which:*	4,008	1,551	5,559
Argentina	268	114	382
Brazil	332	6	338
Chile	96	6	102
Venezuela	84	-6	78
Bermuda	667	16	683

Source: CRS, from U.S. DOC. BEA. *Survey of Current Business*, October 2000. Table 5.4.

The bulk of U.S. financial and net insurance exports to Western Hemisphere countries are attributable to the export of banking and securities services. These amounted to $5.5 billion (40% of the worldwide total of banking- and securities-related service export, which totaled $13.9 billion). They also were triple the level of U.S. net insurance exports to the region of $1.8 billion. The two NAFTA partners accounted for roughly one-quarter of the regional exports in this sector.

Sectoral imports, which are shown in **table 3** on the next page, reflect a somewhat different picture. Whereas banking and securities services dominated U.S. hemispheric (and worldwide) exports, imports from the Western Hemisphere are dominated by net insurance imports. The United States imported $4.1 billion in financial and net insurance services from the Western Hemisphere in 1999. Of this amount, $3.5 billion was attributable to net insurance imports, about 5½ times the level of financial service (banking and securities service) imports, which amounted to only $631 million or 15% of the hemispheric total.

Table 3. U.S. Financial Services and Net Insurance Imports Western Hemisphere, 1999
(Million $)

Region	Financial Services (Banking & Securities)	Net Insurance	Total
Worldwide	3,574	4,078	7,652
Western Hemisphere *Of which*:	631	3,497	4,128
NAFTA (Canada & Mexico)	266	235	501
Other Western Hemisphere (Excluding NAFTA) *Of which:*	365	3,262	3,627
Argentina	28	-9	19
Brazil	61	8	69
Chile	11	1	12
Venezuela	10	*	10
Bermuda	61	2,705	2,766

* = Less than $500,000.
Source: CRS, from U.S. DOC. BEA. *Survey of Current Business*, October 2000. Table 5.4.

Bermuda accounted for the dominance of insurance in the sectoral import picture. It accounted for $2.8 billion or just over two-thirds of the sectoral imports coming from the Western Hemisphere and over one-third of sectoral imports worldwide. Only $501 million or 12% of U.S. imports from the region were due to the two NAFTA countries.

The United States maintained a healthy hemispheric surplus of $3.2 billion in financial/insurance services trade, accounting for more than one-third (37%) of the worldwide sectoral surplus of $8.6 billion. The two NAFTA partners account for $1.2 billion of the hemispheric surplus. As noted earlier, Bermuda was the only major market in which the U.S. sustained a sectoral trade deficit.

The United States has a substantial direct investment position in the Western Hemisphere. Including the NAFTA partners, U.S. direct investment in the Western Hemisphere countries amounted to $334.9 billion, about 30% of total U.S. foreign direct investment in 1999. Of this, $4.3 billion was in depository institutions (banks) and $149.2 billion was in the financial sector other than depository institutions.

Canada accounted for about one-third of U.S. foreign direct investment in the hemisphere.[51]

Direct investment in the United States by the FTAA countries amounted to $124.3 billion, of which Canada accounted for a little less than two-thirds (64.1%). Investment in depository institutions by the FTAA countries amounted to $5.7 billion in 1999; in financial services other than banks, to $13.1 billion.[52]

Asia-Pacific Economic Cooperation (APEC) Forum

The Asia-Pacific Economic Cooperation (APEC) forum is an association of 21 economies of the region.[53] APEC was originally organized to coordinate and cooperate on international trade and investment matters of mutual concern. Among other things, the goal of APEC is to encourage the free flow of all goods, capital, and *services*, including financial services, and to promote the removal of barriers to trade and investment. In 1994, in Bogor, Indonesia, APEC member-country leaders declared their intention to establish free trade and investment among the members by 2010 for fully industrialized member economies, and by 2020 for all member countries. The following year, in Osaka, Japan, the leaders agreed to an agenda to implement the Bogor initiative. Unlike other trading arrangements in which the United States participates, including NAFTA and the WTO, APEC members are not working toward the free trade and investment goals through give-and-take negotiations. Instead, APEC uses peer pressure to obtain voluntary trade liberalization actions by individual member-countries who set their commitments down in individual action plans (IAPs). The IAPs are the primary building blocks for implementing the free trade and investment objectives of APEC. The IAPs loosely conform to goals established in common action plans (CAPs) that APEC member-countries have developed. The CAPs and IAPs are not legally binding commitments, but "concerted unilateral actions" that are voluntary. However, the action plans are expected to conform to basic principles, and it is also expected that member-countries will realize the benefits from trade liberalization and will be motivated to fulfill the action plans.[54]

Financial services are not a major focus of the APEC agenda, primarily because of the broad range of other services deemed of greater importance. In the agenda developed in Osaka in 1995, the leaders highlighted trade in telecommunications, transportation, energy, and tourism services as targets for action by its members but indicated that members should also work toward trade liberalization in other service

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[51] Data from U.S. DOC. BEA. *Survey of Current Business*, July 2000, p. 66.

[52] Ibid., p. 68.

[53] Member economies of APEC are the United States, Canada, Mexico, Chile, Peru, Japan, South Korea, China, Taiwan, Hong Kong, Indonesia, Brunei, Malaysia, Singapore, Thailand, the Philippines, Vietnam, Australia, New Zealand, Papua New Guinea, and Russia. For additional information on the history and operation of APEC see CRS Report RL30688, *Asia Pacific Economic Cooperation (APEC) and the 2000 Summit in Brunei*, by (name redacted).

[54] Ibid. p. 4.

sectors. However, some countries, for example, China and Vietnam, have included actions in financial services as part of their IAPs.

Significant Trading Relationships: Regional and Bilateral

This final section examines U.S. financial services trade within the context of a number of significant on-going trade relationships. The North American Free Trade Agreement (NAFTA), effective January 1, 1994, is the first regional free-trade agreement in which the United States has participated. It is also the first trade agreement to deal comprehensively with trade in financial services. Other important relationships examined in this section are less formalized, but no less important. These include bilateral relationships with the European Union (EU), Japan, and China.

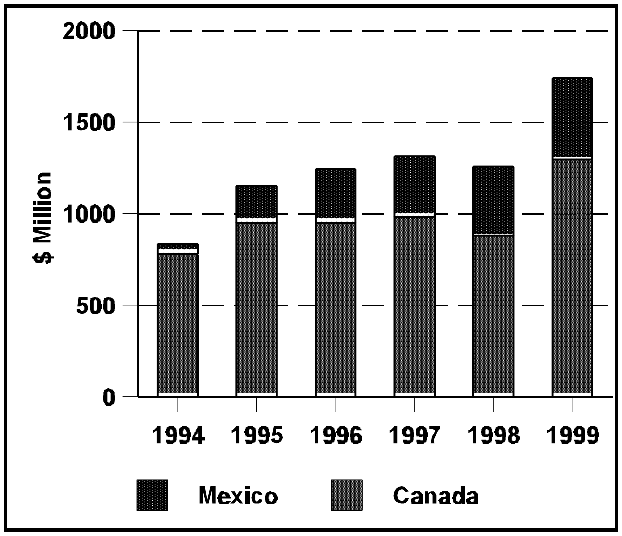
Financial Services Trade under the North American Free Trade Agreement (NAFTA)

The United States currently has free-trade agreements with three countries – Israel, and Canada and Mexico under the North American Free Trade Agreement (NAFTA). NAFTA, which entered into force on January 1, 1994, superseded the bilateral U.S.-Canada FTA that had been in force since January 1, 1989. The combined economies of Mexico, Canada, and the United States had an estimated GDP in 2000 of about $11,233.0 billion, about one-quarter more than the GDP of the European Union.[55] Thus, at the end of 2000, NAFTA was the world's largest trading bloc.

U.S. trade with its NAFTA partners is enormous. Canada is our leading trading partner worldwide, our leading export market ($178.8 billion in 2000), and our leading source of imports ($229.2 billion, customs basis). The U.S. trade deficit with Canada, at $50.4 billion, is the third largest. Mexico is the second largest market for U.S. exports ($111.7 billion) and the third largest source of U.S. imports ($136.9 billion, customs basis). The U.S. bilateral trade deficit with Mexico is the fifth largest, at $24.2 billion.

[55] U.S. GDP ($9,963.1 billion) data from BEA. GDP data for Canada ($692.4 billion at the rate of C$1.5002 per U.S. dollar) and Mexico ($567.5 billion at the rate of P9.5722 per U.S. dollar) from IMF. *International Financial Statistics*, June 2001. European Union GDP ($8,917.9 billion) from U.S. Department of State. Country Reports on Economic Policy and Trade Practices: European Union. On-line version.

FIGURE 5. U.S. Financial Service and Insurance (net) Exports to Mexico and Canada, 1994-1999



NAFTA entered into force on January 1, 1994. **Figure 5** shows U.S. financial service (banking and securities) and net insurance exports to Mexico and Canada. The six-year period for which data are available shows a substantial increase in financial sector exports. During the period total financial services/net insurance exports to our two NAFTA partners more than doubled, rising from $831 million to $1.7 billion. As a share of financial services and net insurance exports worldwide, however, exports to the two countries dropped slightly (less than 1%) as a share of the respective worldwide totals of $7.5 billion in 1994 and of $16.2 billion in 1999. Another way of stating this is that U.S. worldwide exports in this sector rose at a slightly faster pace worldwide than did exports to our two NAFTA partners. Nevertheless, during the six-year period, U.S. exports of financial and net insurance services to both countries grew substantially faster than both the increase in their real GDP[56] and the increase in U.S. merchandise exports to the two countries.[57]

Canada is a developed market economy that, in 1999, had a GDP that was about one-third larger than Mexico's still developing economy.[58] U.S. financial service and net insurance exports to both countries grew substantially from 1994-1999. U.S. financial services/net insurance exports to Canada rose from $780 million in 1994 to $1.3 billion in 1999, an increase of nearly two-thirds. Financial service/insurance exports to Mexico also increased dramatically, rising from a relatively low base of $51 million in 1994 to $440 million in 1999, an increase of 763%. Exports to Mexico rose in every year – including the years immediately following the late 1994 financial crisis – except 1998. Exports to Canada also declined slightly in just one year, 1996.

Exports to Canada grew at a pace that was both less rapid than worldwide financial services/insurance exports and, as noted above, less rapid than the sector's

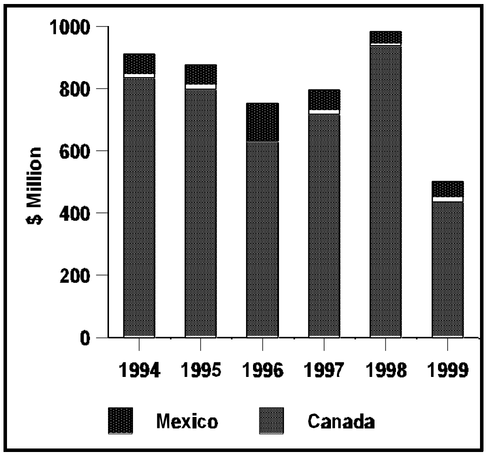
[56] Real GDP growth over the period 1994-1999 was 14.8% for Mexico and 17.6% for Canada. By comparison, in the United States it was 20.8%. Calculated from IMF. *International Financial Statistics*. March 2001.

[57] U.S. merchandise exports to Canada rose by 45.0%; to Mexico, 70.7%. Calculated from U.S. Department of Commerce. BEA. *Survey of Current Business*, April 1996 and on-line data March 2001.

[58] Using International Monetary Fund data, in 1999, the GDP of Mexico was $479.45 (P4,583.76 converted at the rate of P9.5604 per U.S. dollar). Canadian GDP was $644.75 (C$957.91 converted at the rate of C$1.4857 per U.S. dollar). IMF. *International Financial Statistics*. March 2001.

exports to Mexico. As a result, exports to Mexico increased as a share of the total U.S. financial services and insurance exports to the two NAFTA partners. In 1994, Mexico's share constituted 6.1% of the two-country total; in 1999, 25.3%.

FIGURE 6. U.S. Financial Service and Insurance (net) Imports from Mexico and Canada, 1994-1999



As shown in **Figure 6**, U.S. imports of financial services and net insurance services have fluctuated significantly during the six-year period in which NAFTA has been in effect. In the peak year of 1998, financial service and net insurance imports amounted to $984 million. The next year, however, marked a period-low for these imports, amounting to $501 million, down 49% from the 1998 peak, but also down 45% from the 1994 level of $912 million. As figure 2 also makes clear, the bulk of imports from the two NAFTA partners came from Canada, whose share of the two countries' total fluctuated between 83.8% (1996) and 95.4% (1998). Finally, the share of U.S. worldwide imports of financial services and net insurance services accounted for by the two NAFTA partners dropped steadily from 16.0% in 1994 to 6.5% in 1999.

FIGURE 7. Balance of U.S. Trade in Financial Services and Insurance (net) with Canada and Mexico, 1994-1999

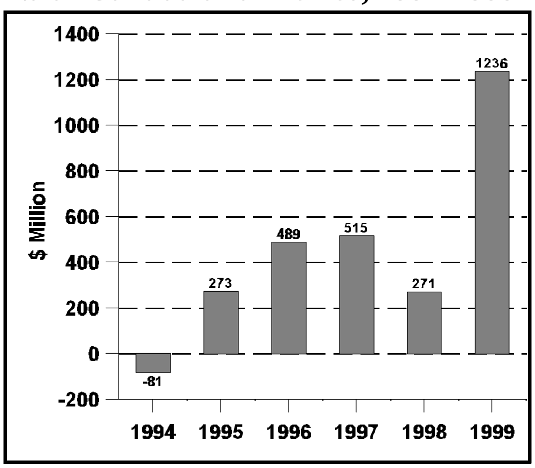


Figure 7 illustrates a significant shift in the balance of trade in financial services and net insurance services between the United States and its NAFTA partners during the years 1994-1999. During the period a significant surplus emerged, amounting to $1.2 billion in 1999. This equaled 14% of the worldwide U.S. trade surplus in financial and net insurances service of $8.6 billion. This shift is attributable more to an increase in U.S. exports (+109%) than a decrease in U.S. imports (-45%).

The U.S.-Canada FTA was the first agreement to include services trade. The bilateral phase-out of tariffs between Canada and the United States was completed on January 1, 1998. NAFTA extended the free trade agreement to Mexico. It also expanded its application to important sectors. NAFTA was the first trade agreement to deal comprehensively with trade in financial services. These are covered by Chapter 14 of the NAFTA agreement. NAFTA guaranteed the right of establishment and of national treatment. NAFTA also established the Financial Services Committee, which supervises the implementation of Chapter 14 and deals with issues that arise between the signatories. Issues that cannot be resolved by the Committee may be taken to the NAFTA dispute settlement mechanism.

In Canada, the banking industry falls under federal regulation; securities regulation is under provincial control. The Bank Act that governs the banking sector in Canada receives a mandatory review every five years. It was amended in 1992, 1997, and 1999. Insurance companies may incorporate under either federal or provincial law. Insurance companies must have a commercial presence in order to offer insurance and re-insurance services in Canada. They may branch from abroad if they maintain trustee assets equal to their liabilities. They are subject to investment review thresholds, and, in some provinces, authorization.

Prior to 1980 Canada did not allow foreign banks to operate in Canada. Subsequently, they were permitted to open separately capitalized subsidiaries, but the subsidiaries were subject to growth-limiting controls on authorized capital and market share. After the entry into force of the U.S.-Canada FTA, U.S. banks were exempted from these controls, as well as from a variety of other controls on foreign banks. In December 1996, the government established a Task Force on the Future of the Canadian Financial Services Sector chaired by Harold MacKay. In early 1997, the government announced that it would permit direct foreign-bank branching, a policy that was endorsed by the MacKay Task Force report in September 1998. To fulfill Canada's WTO commitments, the legislation permitting foreign-bank branching was enacted in June 1999.

Under current Canadian law two types of branches are permitted: full-service and lending. Full-service branches are permitted to take non-retail deposits that are larger than C$150,000 (currently somewhat less than US$100,000). Lending branches are not allowed to take any deposits and can borrow only from other financial institutions. Foreign banks may opt-out of Canadian Depository Insurance.

Canadian banks are divided into two types: Schedule I (widely-held, publicly traded) and Schedule II (closely held). As of March 31, 2000, there were eleven domestic banks, forty foreign subsidiaries, and two foreign branches. The eleven domestic banks had assets of C$1,385.7 billion (about $953.4 billion); the foreign banks, assets of C$89.8 billion (about $61.8 billion). Data were not available for the two foreign branches.[59] In reality, the Canadian banking sector is dominated by six Schedule I banks. Foreign banks are not active in the retail banking market because the market is already saturated. Instead, they tend to participate in other areas, such as investment banking. **Table 4** on the next page presents data on the top six Canadian banks.

[59] Canada. Office of the Superintendent of Financial Institutions. *Annual Report*, 1999-2000. On-line version.

Table 4. Top Six Canadian Banks, Selected Data July 31, 2000
(Million U.S. $)

Bank	Tier One Capital	Total Assets	Pre-Tax Profit
Royal Bank of Canada	8,830	186,305	1,886
Scotiabank	8,773	163,478	1,506
Canadian Imperial Bank	8,119	178,712	1,592
Bank of Montreal	7,534	158,449	1,462
Toronto Dominion Bank	6,188	183,393	748
National Bank of Canada	2,594	49,497	411

Source: *The Banker,* November 2000, p. 69. Currency Conversion by CRS at the rate of C$1.4872 per U.S. dollar.

In late 1998, Canadian Finance Minister Paul Martin vetoed Royal Bank's takeover of Bank of Montreal and a merger between Canadian Imperial Bank of Commerce and Toronto-Dominion Bank. Nevertheless, further consolidation in the Canadian banking industry would appear likely.

The smallest economy of the three NAFTA partners, Mexico has been struggling to modernize its economy, including its financial system, at least since the 1980s. All but two of Mexico's banks – the local branch of Citibank and Banco Obrero, owned by the Mexican Labor Federation – were nationalized in the wake of the August 1982 peso collapse. The banks were again privatized in 1991-1992, in some cases to investors that were ill-prepared to run them. The newly privatized, but untested and undercapitalized banks, rapidly expanded assets in a bid for market share. With an external financial crisis beginning in late 1994, followed by the worst domestic recession since the 1930s, non-performing loans climbed rapidly. Domestic credit collapsed and has still not recovered to pre-crisis levels.[60] Government costs associated with restructuring and consolidating the troubled Mexican banking sector have been estimated at 18-19% of GDP.[61]

Both NAFTA and the peso crisis have fundamentally altered the Mexican banking sector. It is not only open, but, by January 2001, 50% of bank assets were

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[60] According to *The Banker*, the ratio of credit to GDP in Mexico is about 15% now, compared to 40% before the peso crisis. Robinson, Karina. Tequila Hangover Subsides. *The Banker,* March 2001, p. 79.

[61] See Taylor, Robert. Approaching the Promised Land. *The Banker*, February 2000, p. 53, and Robinson, Karina. No More Tequila Crises. *The Banker*, July 2000, p. 60.

controlled by banks that are foreign-owned.[62] Under NAFTA, Mexico extended the principle of national treatment to U.S. and Canadian banks, thereby permitting their wholly-owned Mexican subsidiaries to undertake, with some minor restrictions, the full range of banking activities allowed to Mexican banks. Under NAFTA rules of origin, moreover, the U.S. and Canadian subsidiaries of firms from other countries could establish subsidiaries in Mexico. Like Canada, Mexico initially did not permit foreign banks to establish branches. Transitional limits based on market share and net capital were also set. A 1995 financial reform package eased limits on the acquisition of Mexican banks by NAFTA-based banks, in the process potentially opening Mexico's three largest domestic banks to acquisition by NAFTA-based banks. In January 1997, a modified version of U.S. accounting standards was implemented. In 1998, Mexico eliminated restrictions on foreign investment in Mexico's top tier banks. In 2000, new laws regarding bankruptcy and secured transactions were passed. Finally, stricter capital requirements are being phased in over a three-year period that ends in 2003.

The Mexican banking sector is, like Canada's, highly concentrated. In 2000, two Spanish banks, BBVA (Banco Bilbao Vizcaya Argentaria) and BSCH (Banco Santander Central Hispano) took over, respectively, Bancomer and Banca Serfin. It was estimated that, after the merger with BBVA, Bancomer would have a credit portfolio equal to about one-third of Mexico's entire banking sector, and a market share of bank deposits about one-third larger than its nearest competitor.[63] The BSCH acquisition of Banca Serfin made Serfin the third largest Mexican bank. **Table 5**, on the next page, provides selected data on the banking business of Mexico's six largest banks.

In May 2001, Citigroup announced that it would acquire Mexican commercial bank Grupo Financiero Banamex-Accival. This purchase will place Mexico's three largest banks, accounting for about two-thirds of deposits, under foreign ownership.

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[62] Robinson, Karin. Tequila Hangover Subsides. *The Banker*, March 2001, p. 78.

[63] Taylor, Robert. Merger Creates Dominant Force. *The Banker*, July 2000, p. 56.

Table 5. Top Six Mexican Banks, Selected Data (Banking Business Only) December 31, 2000

(Million $)

Bank	Total Assets	Tier One Capital	Capital/ Assets %	Non-Performing Loans/ Total Loans
BBVA Bancomer	40,790	1,709*	4.19	7.8
Banamex	34,902	24,303*	7.07	3.7
Banca Serfin	13,077	695	5.31	2.9
Banco Bitalb	12,694	659	5.19	8.0
Grupo Financiero Banorte	10,539	558*	5.29	5.2
Banco Santander Mexicano	10,339	NA	NA	0.9

* To 2003 rules.
Source: *The Banker*, March 2001, p. 77. Currency Conversion by CRS at the rate of P9.5722 per U.S. dollar.

Direct investment is also a major channel for the trade in services, although the resulting transactions are not cross-border transactions, that is, exports or imports. The United States and Canada have large cross-border investments. The stock of U.S. direct investment (historic cost basis) in Canada amounted to $111.7 billion in 1999. Of this, the Canadian banking industry accounted for $2.0 billion; the finance/insurance/real estate industries combined, $25.1 billion.[64] Sales of private commercial services (all sectors) by U.S. majority-owned affiliates in Canada were $26.7 million in 1998.[65] Private commercial sales of Canadian majority-owned firms operating in the United States amounted to $43.4 million.[66]

Cross-border investment between the United States and Mexico is significantly less than that between the United States and Canada. The stock of United States direct investment (historic cost basis) in Mexico was $34.3 billion, of which $1.2 billion was in depository institutions and $25.1 billion was in the combined finance/insurance/real estate sectors.[67] Mexican investment in the United States

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[64] BEA data quoted in U.S. Department of State. *Canada: 2000 Country Report on Economic Policy and Trade Practices*. March 2001. On-line version.

[65] U.S. Trade Representative. *2001 National Trade Estimate Report on Foreign Trade Barriers*, p. 30. On-line version.

[66] Ibid.

[67] U.S. Department of Commerce. BEA. *Survey of Current Business*, July 2000, p. 66. On-line version.

amounted to $3.6 billion, of which $199 million was in depository institutions.[68] Sales of services in Mexico by U.S. majority-owned affiliates (all sectors) in 1998 amounted to $3.1 billion, while sales of services by Mexican firms operating in the United States were $531 million.

U.S.-European Union (EU) Financial Services Trade[69]

In 1999, the European Union (EU) was the single largest market for cross-border trade with the United States in financial services (banking and securities) and net insurance services. U.S. cross-border exports amounted to $4.8 billion and $238 million, respectively. Cross-border imports from the EU amounted to $2.0 billion in financial services and $498 million in net insurance services. Thus, the United States had a surplus in financial service trade to the EU of $2.7 billion and a deficit in net insurance trade of -$260 million. Taken together U.S. trade in financial services and net insurance produced a surplus equal to 3% of the worldwide U.S. services surplus of $80.6 billion in 1999.

The financial markets of the EU are among the world's largest and most sophisticated. The EU move toward ever greater economic integration has brought two tectonic shifts of importance to financial markets:

- the implementation of a common currency, the "euro," on January 1, 1999, by 11 of the member states;[70] and
- the creation of an increasingly integrated, single market for financial services supported by a common legal framework.

The effect of these developments has largely been to ease the ability of U.S. financial firms to operate within the European Union.

EU rules now permit banks operating in one EU country to have branches in another country and to operate across member state borders without impediment. Banks are regulated by home-country regulators; products permitted in the home country may be marketed elsewhere in the EU. EU banking directives set community-wide minimum standards. Additionally, EU law grants foreign bank subsidiaries national treatment. This is superseded and reinforced by EU commitments to provide "most-favored-nation" treatment to both subsidiaries and branches under the General Agreement on Trade in Services (GATS) of the WTO. Thus, U.S. banks operating in Europe are more likely to have common concerns shared with their domestic European competitors than to have unique concerns by virtue of being foreign banks.

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[68] Ibid, p. 68. The value of Mexican investment in the finance/insurance/real estate sectors was suppressed to avoid disclosing data of individual companies.

[69] The 15 member states of the European Union include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

[70] As of January 1, 2001, Greece joined the "euro," bringing the number of participating countries to twelve.

The attempt to create an integrated market also applies to the securities markets (stocks and bonds), but has apparently been less successful than the consolidation of an EU-wide banking market. A recent *Economist* notes that the EU securities market remains fragmented, governed by "a colourful patchwork of regulation," with some forty different regulatory authorities.[71] This fragmentation "diminishes the depth and liquidity of the markets and makes the cost of capital in Europe persistently higher than it is in America. It also makes it more difficult for entrepreneurs to find start-up funds."[72]

The EU endorsed a Financial Services Action Plan (FSAP) at its Lisbon Summit in March 2000. The plan would accelerate the lagging efforts toward securities market integration. In addition, the EU also set up a committee (the Lamfalussey Committee) to study securities market regulation. The committee issued its final report in February 2001. A dispute between EU finance ministers and the EU Commission over the Lamfalussey report was settled at the March 23-24, 2001 EU summit held in Stockholm. This should allow the EU to move ahead toward full integration of the securities market by 2005 – if the agreement is not scuttled by the European Parliament.

While securities-market regulatory structure lags, the market itself continues moving toward greater integration. A recent study by the Bank for International Settlements (BIS) suggests that, as macroeconomic conditions are becoming more synchronized in Europe due to the introduction of the euro, the pricing of equity risk is focusing increasingly on industrial sectors viewed from a pan-European perspective rather than on country-specific factors.[73]

These trends may present challenges (and opportunities) for U.S. securities firms operating in Europe. They are not distinct, however, from those faced by European securities firms. As with the EU's commercial banking market, the 1998 *National Treatment Study* by the U.S. Department of Treasury notes that, as a result of the EU GATS commitments, there are very few strictly 'national treatment' issues for U.S. financial services firms operating in the EU.

U.S. officials are working with state insurance regulators to determine whether it might be possible to increase regulatory cooperation or develop mutual-recognition mechanisms with the EU. The insurance sectors under consideration include commercial lines, reinsurance, and agency/brokers. Pension fund management, which is federally regulated, is also under consideration.

The EU's Data Privacy Directive constitutes a significant exception to an environment that is generally conducive to the operations of U.S. financial firms. The Directive, which went into effect on October 24, 1998, prohibits the transfer of all personal data and information originating in the EU to organizations outside the EU unless their data privacy protections are deemed "adequate" by the EU. The Directive

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[71] EU Financial Regulation: A Ragbag of Reform. *The Economist*, March 3, 2001, p. 63.

[72] Ibid.

[73] BIS. *Quarterly Review*, March 2001, p. 13-14.

has the potential to interrupt the flow of information that normally lubricates business conducted between organizations in the EU and the United States. To prevent such an interruption, U.S. officials negotiated a "Safe Harbor" agreement that went into effect on November 1, 2000.[74] U.S. firms adhering to "Safe Harbor" are automatically deemed as having fulfilled the EU privacy requirements.

The financial services sector was excluded from the Safe Harbor provisions, along with the telecommunications sector, and, initially, the transportation sector. The negotiations excluded the financial sector because the negotiations coincided with congressional consideration of comprehensive reforms to the U.S. financial system, including new rules regarding the privacy of personal financial data. The proposed reforms became the Gramm-Leach-Bliley (GLB) Act (P.L. 106-102), signed into law on November 12, 1999. The EU and the United States did not, however, subsequently reach agreement on the treatment of financial institutions. GLB permits the sharing of personally identifiable information between affiliates, which is not deemed as complying with the EU privacy requirements. Additionally, U.S. enforcement of Safe Harbor commitments is by the Federal Trade Commission (FTC) and, for air carriers, by the Department of Transportation (DOT). Neither has jurisdiction over banks, savings and loans, or credit unions.

The EU has made a political commitment not to enforce the Privacy Directive against U.S. firms until July 1, 2001; since that date U.S. organizations are fully subject to the legal requirements of the Direction. To date only 88 U.S. organizations have adhered to Safe Harbor. The Bush Administration has objected strongly to a recent European Commission proposal to adopt standard clauses for contracts between U.S. and European firms that would obligate U.S. firms to operate under the stricter EU privacy rules.[75]

U.S.-Japanese Financial Services Trade

U.S.-Japan trade in financial services has been modest in terms of total U.S.-Japan trade, although it is likely to increase as technology improves the efficiency of transactions and Japan proceeds to liberalize its financial markets. In 1999, U.S. exports of financial services (banking and securities), plus (net) insurance premiums were $814 million. U.S. imports from Japan of financial services from Japan were $210 million. In comparison, U.S. exports of financial services to Canada in 1999 were $1.3 billion and imports from Canada were $35 million. The volume of U.S.-Japan trade in financial services has not changed appreciably during the last few years.

[74] For more information on the European Data Privacy Directive and "Safe Harbor," see U.S. Library of Congress. Congressional Research Service. *The EU-US "Safe Harbor" Agreement on Personal Data Privacy*, by (name redacted). February 21, 2001. 6 p. RS20823.

[75] See Simpson, Glenn R. *U.S. Officials Criticize Rules On EU Privacy*. Wall Street Journal, March 17, 2001, B7.

In 1996, for example, exports totaled $794 million while imports totaled $296 million.[76]

Savings deposits and other personnel assets in Japan are valued around $10 trillion, a huge potential market for U.S. banks and securities firms.[77] However, financial services are heavily regulated, limiting participation by U.S. and other foreign companies and restricting entry by new domestic firms. The need for reform in the financial services sector became particularly evident when the "asset bubble" of the 1980s burst in the early 1990s exposing the fragility of the banking system. Many banks held loans that were collateralized by overvalued stocks, real estate, and other assets. Weaknesses in the Japanese financial sector were further exposed as a result of the East Asian financial crisis in 1997-98.

In order to encourage reform in Japan's financial sector and to promote participation of U.S. financial firms in Japan, the United States engaged in negotiations with Japan to revise laws and government regulations and to change corporate management practices that have impeded U.S. presence in the sector. In February 1995, the countries concluded the "Measures by the Government of Japan and the Government of the United States Regarding Financial Services." Under the agreement, Japan made commitments regarding the use of "administrative guidance" in advising Japanese financial firms, including making it more transparent, and opening up the private sector-government advisory process to foreign firms. The government also relaxed barriers to financial firms participating in funds management, such as pension funds and investment trusts. Furthermore, it reduced restrictions on the introduction of new and innovative investment products and loosened barriers to financial securities cross-broader transactions. According to the Office of the United States Trade Representative (USTR), Japan fulfilled its commitments, in some cases ahead of schedule.[78]

In 1996, Prime Minister Hashimoto's government announced a "Big Bang" program of financial deregulation. The program included removing walls that had prevented some parts of the financial sector from investing in other parts, such as allowing banks and securities companies to sell insurance. [79]

The United States and Japan have continued discussions on financial services under the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy, a framework that the two countries launched in 1997. The United States has used the discussions to continue pressing Japan to undertake reforms. Among other things,

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[76] U.S. Department of Commerce. Bureau of Economic Affairs. Table 1. U.S. International Transactions, as of March 15, 2001. On-line version.

[77] CRS Report RS20335, *Japan's Landmark Financial Deregulation: What it Means for the United States,* by (name redacted). p. 1.

[78] Office of the United States Trade Representative. *2001 National Trade Estimate Report on Foreign Trade Barriers.* p. 218-219.

[79] For more information on financial sector deregulation in Japan see CRS Report RS20335, *Japan's Landmark Financial Deregulation: What it Means for the United States,* by (nam e redacted)

Japan has agreed to ease the introduction of new products and to strengthen accounting standards. Japan's banking crisis, the "Big Bang" reforms, and bilateral agreements have increased the presence of U.S. financial firms in the Japanese market. A number of U.S.-based companies now provide funds management securities brokerage services.[80]

Along with banking and securities services, barriers in Japan's insurance market have been an issue in U.S.-Japan trade. Specifically, American firms have complained that little public information is available on insurance regulations and on how those regulations are developed, thereby, making it difficult to know how to get approval for doing business in Japan. They also assert that regulations favor insurance companies that are tied to business conglomerates — the *keiretsu* — making it difficult for foreign companies to enter the market.

Japan is the second largest insurance market in the world, slightly behind the United States, with around $450 billion in direct insurance premiums in 2000. However, foreign insurers account for only a small portion of the Japanese insurance market. After years of negotiations, the United States got Japan to agree in October 1994 to take measures to open its market for life insurance and non-life insurance (fire and auto insurance). At the same time, Japan agreed to delay deregulation of the so-called third-sector insurance market, which encompasses specialty insurance coverage — such as cancer, hospitalization, nursing care, and personal accident — so as not to reduce the competitive advantages foreign firms, particularly U.S. firms, had built in this market.

At the end of 1995 and early 1996, U.S. officials and the American insurance industry were becoming concerned that Japan was reducing regulations on the third sector as well as the others contrary to the agreement. After many months, U.S. and Japanese negotiators reached a second agreement on December 15, 1996. Under this agreement, Japan would open life and non-life insurance markets to foreign competition and limit domestic company entry into the third sector until thirty months after it has made "substantial" progress in deregulating the life and non-life sectors. But the United States has protested that Japan has already allowed domestic companies to enter the third sector. Japan has argued that it has already made the "substantial progress" stipulated in the agreement. The two sides have failed to agree to even meet to work out their differences. On February 24 2000, the Japanese government Financial Supervisory Agency announced that it would allow Japanese life and non-life insurance companies to do business in the third sector beginning January 1, 2001.

China's Accession to the World Trade Organization (WTO) and Financial Services

In November 1999, the United States and China completed a bilateral agreement establishing conditions for China's accession to the World Trade Organization (WTO). China completed similar agreements with other major trading partners as

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[80] Ibid. p. 6.

part of the accession process. The bilateral agreement with the United States covers a range of sectors, including banking, securities, and insurance.

Financial services are a very small portion of total U.S.-China trade. In 1999, the United States sold $13.1 billion in goods to China and imported $81.8 billion (customs basis.) In the same year, the United States sold about $78 million in financial services (banking and securities) and $2 million in (net) insurance premiums to unaffiliated buyers in China and purchased virtually no financial services from Chinese providers.[81]

China has made significant inroads in building private sector participation in its economy. Nevertheless, the government remains a dominant force in the economy as an owner and operator of major assets, including those in the financial sector. A major purpose of the U.S.-China agreement on WTO accession is to mesh the mixed structure of the Chinese economy with the disciplines imposed by the WTO and to ensure U.S. interests are taken into account.

Under the accession agreement China is committed to broadening foreign banks' access to its banking sector. Currently, foreign bank participation is severely restricted to only certain activities and within designated regions. According to the agreement, foreign banks will be able to conduct unrestricted foreign currency transactions immediately after accession. Foreign banks will be able to conduct transactions in local currency with Chinese enterprises within two years of WTO accession and with Chinese individuals within five years of accession. The number of permitted locations of local currency activity will be increased in stages and will be geographically unrestricted after five years. Furthermore, foreign banks will be able to operate in any form five years after accession.

Foreign investment in securities operations is currently prohibited. Under the accession agreement, China has committed to permit 33% ownership participation in fund management enterprises immediately upon accession to the WTO and to raise the allowable share to 49% three years after accession. Foreign firms will be able to invest in underwriting joint ventures up to 33% of equity. These joint ventures will be allowed to underwrite domestic and foreign-currency denominated securities and will be accorded national treatment in fund management activities.

China's government permits foreign insurance firms to sell insurance but on a restricted basis. They are confined to Guangzhou and Shanghai, and the government has used its licensing authority to limit the foreign participation to 16 firms. The government has also restricted the range of products that foreign companies may provide. Under the bilateral accession agreement, foreign firms will be able to insure for "large-scale risk" throughout the country immediately upon accession and will eliminate all geographical restrictions on all types of permissible coverage three years after China's accession to the WTO. The agreement does not define "large-scale risk." In subsequent discussions, Chinese negotiators wanted to set a threshold of

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[81] U.S. Department of Commerce. Bureau of Economic Analysis. *Survey of Current Business.* October 2000. p. 148-149.

$80,000; that is, coverage below that amount would be restricted. U.S. negotiators sought $10,000. Reportedly, the two sides settled on a threshold of $25,000.[82]

The government will also broaden the range of permissible coverages over a five-year period after accession to include 85% of total premiums. (Insurance required by law will be excluded from foreign participation.)

In addition, upon accession, the government will permit life insurance companies up to 50% ownership of life insurance joint ventures with Chinese partners of their choice. Furthermore, foreign non-life insurers will be able to establish branch offices in China and to form joint ventures with up to 51% foreign ownership immediately after accession. Two years after accession, foreign non-life insurance companies will be able to establish wholly-owned subsidiaries. Finally, the bilateral accession agreement provides that foreign re-insurance companies will be able to sell re-insurance without restrictions.

[82] *Inside U.S. Trade*. March 30, 2001.

Appendix I. Data, Data Collection and Coverage

Trade in services may occur through two channels: 1) as a cross-border transaction, that is, as an export or as an import, or 2) through a purchase or sale by or to an affiliate operating abroad. The channel of delivery is often determined by the nature of the service itself.

In the United States, data on international trade in private services is collected under the International Investment and Trade in Services Act (P.L. 94-471, 90 Stat. 2059, 22 USC 3101-3108, as amended). Under this authority the Bureau of Economic Analysis (BEA) of the U.S. Department of Commerce (DOC) conducts eleven surveys on services trade. Three of these surveys specifically collect data on transactions in banking and securities (jointly surveyed and designated as "financial services") and insurance services (separately surveyed). The three surveys specifically applicable to financial service providers and to insurance companies are:

- the Benchmark Survey of Financial Services Transactions Between U.S. Service Providers and Unaffiliated Foreigners (BE-80, benchmarks surveys conducted in 1994 and 1999);

- the Annual Survey of Financial Services Transactions Between U.S. Service Providers and Unaffiliated Foreigners (BE-82, conducted annually for non-benchmark years since 1995); and

- the Annual Survey of Reinsurance and Other Insurance Transactions by Insurance Companies With Foreign Persons (BE-48, conducted annually since 1996).

In addition, BEA conducts Benchmark (BE-20) and Annual Surveys (BE-22) of selected service transactions exceeding $500,000 by all U.S. persons with unaffiliated foreigners. These two surveys mainly cover business, professional, and technical services. Financial services and primary insurance transactions by non-service providers are, however, among the covered transactions.

Banking and securities services ("financial services") covered in the benchmark (BE-80) and annual survey (BE-82) include three basic types of transactions:

- **credit-related fees**, such as: fees for establishing, maintaining, or arranging credits, letters of credit, bankers acceptances, mortgages, factoring services, financial lease contracts, and loan guarantees that are commonly provided by banking establishments;

- **fees on securities transactions**, such as: commissions and other fees for securities transactions (including derivatives transactions) or futures trading, brokerage, underwriting, and private placements; and

- **other financial services**, such as: fees for asset/liability management, debt renegotiation, credit card services, financial advisory and custody services, foreign exchange brokerage services, other financial services.

Interest payments are specifically excluded because interest is a payment for use of loan proceeds and is not a fee for the establishment, maintenance, and arrangement of credit. Real estate management services and commodity or merchandise brokerage services are also excluded because they are not considered financial services.

Insurance transactions covered in the annual insurance surveys (BE-48) include:

- premiums earned and losses incurred on reinsurance assumed from foreign insurance companies,

- premiums incurred and losses recovered on reinsurance ceded from foreign insurance companies, and

- premiums earned and losses incurred on primary insurance sold to foreign persons.

Appendix Tables 1 and 2, on the following two pages, present, respectively, export and import data for U.S. trade in cross-border trade in financial and net insurance services for the years 1991-2000.

Appendix Table 1. U.S. Financial Services and Net Insurance Exports (Receipts) 1991-2000 p

(Million $)

Year	**TOTAL**	**Financial Services Exports**	**Net Insurance Exports**	***Insurance Premiums Received***	***Insurance Losses Paid***
1991	**5,503**	5,012	491	*3,365*	*2,874*
1992	**4,716**	4,034	682	*3,852*	*3,170*
1993	**6,019**	4,999	1,020	*3,981*	*2,961*
1994	**7,439**	5,763	1,676	*4,921*	*3,245*
1995	**8,325**	7,029	1,296	*5,491*	*4,195*
1996	**10,397**	8,229	2,168	*5,929*	*3,761*
1997	**12,716**	10,243	2,473	*6,118*	*3,645*
1998	**13,462**	11,273	2,189	*7,265*	*5,076*
1999	**16,220**	13,925	2,295	*8,259*	*5,964*
2000 p	**20,511**	17,851	2,660	*8,961*	*6,302*

p = preliminary   Numbers may not add due to rounding.

Source: Prepared by CRS from U.S. Department of Commerce. Bureau of Economic Analysis. *Survey of Current Business*, October 2000, p. 130-131; for 2000 data, zip file Table 3 online at [http://www.bea.doc.gov/bea/di1.htm].

Appendix Table 2. U.S. Financial Services and Net Insurance Imports (Payments) 1991-2000 p

(Million $)

Year	TOTAL	Financial Services Imports	Net Insurance Imports	*Insurance Premiums Paid*	*Insurance Losses Received*
1991	**5,136**	2,669	2,467	*11,207*	*8,740*
1992	**2,310**	986	1,324	*11,738*	*10,414*
1993	**4,466**	1,371	3,095	*12,093*	*8,998*
1994	**5,688**	1,654	4,034	*14,075*	*10,041*
1995	**7,832**	2,472	5,360	*15,284*	*9,925*
1996	**6,792**	2,907	3,885	*14,522*	*10,637*
1997	**9,220**	3,347	5,873	*15,211*	*9,338*
1998	**12,641**	3,561	9,080	*20,290*	*11,210*
1999	**7,652**	3,574	4,078	*21,242*	*17,164*
2000 p	**11,680**	5,071	6,609	*22,076*	*15,467*

p = preliminary   Numbers may not add due to rounding.

Source: Prepared by CRS from U.S. Department of Commerce. Bureau of Economic Analysis. *Survey of Current Business*, October 2000, p. 130-131; for 2000 data, zip file Table 3 online at [http://www.bea.doc.gov/bea/di1.htm].

Appendix II. The OECD and the BIS and Financial Services

A wide variety of intergovernmental organizations play a role, generally a very technical role, in various international aspects financial services issues. Because of their significance, CRS has selected two – the Organization for Economic Cooperation and Development (OECD) and the Bank for International Settlements (BIS) – for inclusion in this report as an informational appendix.

The Organization for Economic Cooperation and Development (OECD): Liberalizing through Consensus-Building

The Organization for Economic Cooperation and Development (OECD) was founded in 1960 when twenty countries signed its founding document, the OECD Convention.[83] Since then, an additional ten countries have joined.[84] Together the thirty members today account for about two-thirds of the world's output of goods and services.[85] The OECD, thus, is well-placed to influence standards or norms of behavior in social and economic policy.

From its inception the OECD has been committed both to the expansion of international trade in goods and services and to the liberalization of capital flows. The OECD's Convention, which was signed in Paris on December 14, 1960 and entered into force on September 30, 1961, commits member states to promote policies that "contribute to the expansion of world trade on a multilateral, non-discriminatory basis."[86] Additionally, OECD members pledge, individually and jointly, to "pursue their efforts to reduce or abolish obstacles to the exchange of goods and services and current payments and maintain and extend the liberalisation of capital movements."[87]

At the political level, the work of the OECD is overseen by the Council, consisting of one representative for each member country plus one representative for the European Commission. At the operational level, OECD members meet in "Committees" made up of representatives from the national administrations and/or of individuals assigned to a member's permanent delegation to the OECD in Paris. The

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[83] The original twenty OECD members are, in alphabetical order: Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

[84] The ten countries that have joined the OECD since its founding are, in order of year of accession: Japan (1964), Finland (1969), Australia (1971), New Zealand (1973), Mexico (1994), Czech Republic (1995), Hungary (1996), Korea (1996), Poland (1996), and the Slovak Republic (2000).

[85] Statistic cited in "What is the OECD," at OECD Online (http://www.oecd.org/about/general/index.htm).

[86] OECD Convention, Article 1(c).

[87] OECD Convention, Article 2(d).

Committees are supported by the OECD Secretariat, headed by the Secretary-General, who also chairs the Council.

The OECD operates as an intergovernmental "think tank." The OECD has a number of strategies for pursuing its members' common goals, including:

- data collection and generation and publication of statistical and economic reports and analyzes;
- policy discussions to exchange information, promote understanding, increase transparency, share innovative approaches and lessons learned, promote consensus and policy convergence, and facilitate the coordination of domestic and international policies;
- the delineation of "benchmarks," guidelines, principles, and "best practices;" and
- agreement on legally binding OECD codes, such as the Code of Liberalization of Capital Movements and the Code of Liberalization of Current Invisible Operations.

The OECD's work is based on information and analysis provided by the Secretariat, much of it ultimately published and, often, made available on the OECD's website [http://www.oecd.org].

The two OECD Codes of Liberalization were adopted in 1961. The OECD Current Invisibles Code promotes the non-discriminatory liberalization of current payments and transactions;[88] similarly, the OECD Code on Capital Movements seeks to liberalize cross-border capital flows. Additions have been made to the codes on several occasions, including the addition of financial services in 1992. As previously noted, the codes are legally binding. Both codes provide a framework of notification, examination, and consultation that allows for effective monitoring. The goal of removing restrictions on invisibles and capital movements is, thus, achieved through "peer pressure" that is exercised by means of policy reviews and country examinations. The codes are reference points from which countries move toward greater liberalization at varying speeds according to their differing circumstances. Liberalization is, thus, achieved by the unilateral action of individual OECD members, rather through multilateral negotiations, such as characterize the WTO. The Codes are also reinforced by other multilateral agreements. The OECD Code on Current Invisibles, for example, is complimented by the IMF's role as promoter and protector of the freedom of current transactions. At present the OECD is working on liberalizing insurance services and professional services.

The Committee on Financial Markets (CFM) is the primary OECD body for dealing with issues relating to financial markets, including banking, securities, derivatives, and cross-border trade in financial services. In March 2000, at the

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[88] An "invisible" transaction is a transaction in which no merchandise is involved; thus, it is usually a service. A "current" transaction is generally considered to be one year or less.

direction of the CFM, the OECD published a major study of financial services trade, *Cross-Border Trade In Financial Services: Economics and Regulation*.[89] The objectives of the study were to 1) clarify the concept of cross-border trade in financial services, 2) identify and understand the concerns of financial regulators, and 3) develop an analytical framework that facilitates cross-border trade in financial services while taking full account of regulatory concerns.[90]

CFM does not have responsibility for insurance issues. These are the responsibility of the Insurance Committee. OECD countries account for about 95 per cent of the world insurance business.[91]

The Bank for International Settlements (BIS) and Regulatory Coordination

Consistent with its consensus-building, "think-tank"-like operations, the OECD takes a broad approach to policy issues. The technical details of implementation of policies are, however, often worked out in other fora. In the financial area, the Bank for International Settlement (BIS), located in Basle, Switzerland, merits special mention.

Founded in 1930 in connection with German reparations issues, the BIS is a central bank for central bankers. Forty-nine central banks have voting rights at the BIS's annual meeting, but 99 central banks were represented at the June 2000 meeting, along with sixteen international institutions. Since the formation of the Group of Ten (G-10)[92] in 1962, the BIS has provided critical support for the efforts of the major industrial countries to coordinate international monetary and financial policies and to promote international financial stability.

In the context of this discussion, the BIS' role in facilitating the setting of agreed regulatory standards – a key aid to successfully expanding trade in financial services – is important. Most notably, the BIS provides both the secretariat and the venue for the Basle Committee on Banking Supervision, set up by the governors of the G-10 countries in 1974 to deal with the collapse of Bankhaus Herstatt and Franklin National Bank. This committee, comprised of national banking regulators, is best known for the 1983 Basle Concordat on foreign bank supervision, for the 1988 Basle Capital Accord establishing minimum capital adequacy standards, and for the

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[89] Published in OECD. *Financial Market Trends*, No.75, March 2000, p.23-60. Also available online at http://www.oecd.org/daf/financial-affairs/markets/.

[90] These objective are summarized on the OECD web site and may be found at: http://www.oecd.org//daf/financial-affairs/markets/cross-border.html.

[91] Statistic cited at OECD Online (http://www.oecd.org/daf/financial-affairs/insurance/).

[92] The G-10 was established in 1962 in connection with the International Monetary Fund's (IMF) General Arrangements to Borrow (GAB). It has evolved into a pivotal forum for fostering cooperation among the major industrial countries on international monetary and financial issues. Since 1964, the G-10 has included eleven countries: Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States.

proposed update of the capital adequacy framework issued in January 2001. In 1997 the Committee also developed "Core Principles for Effective Banking Supervision," a comprehensive blueprint for an effective supervisory system. The secretariats of the Committee on Payment and Settlement Systems (CPSS), whose work focuses on the stability and efficiency of cross-border payment and settlement systems, and of the International Association of Insurance Supervisors (IAIS), founded in 1994 to improve supervision of the insurance industry, are also hosted by the BIS. Most recently, in the wake of the 1998 worldwide financial crisis, the Financial Stability Forum was established in 1999 by the BIS, in conjunction with the Basle Committee on Banking Supervision, to assist in strengthening financial systems worldwide.