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**Working Party of the Trade Committee**

**ASSESSING BARRIERS TO TRADE IN SERVICES**

**FINANCIAL INFORMATION AND ADVISORY SERVICES**

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## SUMMARY OF MAIN POINTS

1. This paper on financial information and advisory services (FIAS) represents the first “sectoral product” in the present phase of the Trade Committee’s project to assess barriers to trade in services. The other sectors are environmental services, distribution services, and air-cargo services. The project covers all OECD countries and a number of non-OECD members; and forms part of the Trade Committee’s work programme on market access barriers after the Uruguay Round (which also covers tariffs and non-tariff barriers to trade in goods).

2. The basic objective of the services project is to gain a more detailed understanding of the type, extent and relative incidence of “horizontal” and sector-specific barriers to services trade; as an input to further multilateral liberalisation. In this regard, one intended feature of the project is to examine the feasibility of developing “reference lists” of such barriers according to their trade-restrictive effect; which could assist the development of minimum commitments for particular types of barriers.

3. Hence in its initial phase the project covers four quite distinct services sectors, so as to ascertain the extent to which each is subject of horizontal or sector-specific barriers to trade. FIAS was selected for inclusion because (i) as a sub-sector, it provides an opportunity to study the incidence and effect of three levels of barriers (horizontal, sectoral and sub-sectoral); (ii) as a set of information-based services it provides significant scope for analysis of cross-border as well as physical provision; and (iii) as part of the financial services sector, WTO bindings are recent and fairly comprehensive, thus permitting the project’s proposed methodology to be tested.

4. The bulk of the paper comprises the application to FIAS of the methodological approach agreed by the Working Party in its discussion of TD/TC/WP(98)35. That is, the paper covers steps 1 and 2 of the proposed methodology (construction of inventories, categorised according to “type” of measure, and an initial list of such barriers at horizontal and sectoral level).<sup>1</sup> However, step 3 (ranking of measures according to their trade-restrictiveness) is to be undertaken in WP discussions that would involve services experts.

5. As agreed by the WP, the country inventories use the information contained in GATS schedules as the starting-point, supplemented by material from other generally available sources on trade and investment barriers (see the Annex for details on those sources). Country inventories have been constructed for each OECD member and the following non-members: Argentina, Brazil, Chile, Hong Kong China, India, Indonesia, Malaysia, the Philippines, Singapore, Slovak Republic, Thailand.

6. The paper covers those FIAS provided as part of “Banking and Other Financial Services” (ie., excluding insurance and re-insurance).<sup>2</sup> These FIAS are supplied commercially by both information-only

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1 The country flow-charts that were included in the initial version of the paper have been dropped from this revision; as the WP felt this aspect did not clarify the situation relative to the time involved to construct them.

2 Information and advisory services are also provided in the Insurance sector, and a similar range of horizontal and sectoral barriers to provision appear to arise. However, the insurance sector is typically regulated distinctly from Banking and Other Financial Services (and scheduled separately in GATS schedules), so it has not been included in this study. If Delegations regarded

providers and by providers of “executable” financial services (eg., retail and investment banking, financial market trading and brokerage, etc). Although the GATS classification guidelines<sup>3</sup> treat information and advisory services distinctly from “executable” financial services, this paper examines the barriers to international provision of FIAS *per se*; that is, regardless of whether they are provided in the form of “information-only”, or as part of “executable” financial services.

7. The paper examines barriers to FIAS across all four GATS modes of supply; that is cross-border supply, consumption abroad, establishment (and associated issues of legal form, residency, and authorisation and licencing to provide), and movement of the supplier. It also examines domestic regulatory issues relevant to market access and operation, such as transfer of information and data, monopolies, government procurement, subsidies, and intellectual property rights protection for proprietary information.

8. Some of the general conclusions that may be drawn from the paper are:

i) That some of the regulatory limitations on physical establishment are also relevant for cross-border supply (eg., those arising from prudential and consumer protection policies), but that certain direct market access restrictions on foreign physical establishment (eg., numerical and equity participation restrictions) will not translate to cross-border supply;

ii) That information-only FIAS are generally less subject of barriers to cross-border supply and physical establishment than FIAS provided as part of an executable financial service;

iii) That OECD members typically apply any market access limitations on establishment at sectoral level, and on movement of the supplier at horizontal level, whereas several of the non-OECD members covered by the study apply both horizontal and sectoral limitations for both modes of supply;

iv) That a few OECD members and a number of non-OECD members place some restrictions on information provision and transfer; and

v) That there are but a few instances of sectoral monopoly or exclusive provision and government procurement of relevant services.

9. In reviewing the revised paper, the WP at its meeting on 22-23 March 1999 may wish to focus on the following issues:

- The reformatting of the country inventories contained in the revised annex, in terms of improved user-friendliness;
- The addition of the analytical section (section 3) in this paper, in terms of providing a clearer picture of the main types and relative incidence of barriers to FIAS; which are horizontal and which sectoral; and an indicative list of such barriers and underlying policy issues;

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it as a priority, the analysis developed here for FIAS could be applied to the insurance sub-sector at a later stage of the project.

3 MTN.GNS.W/120 “Services Sectoral Classification”, note by the GATT Secretariat, 1991.

- Whether the approach taken should serve as the basis for revisions to/ finalisation of the other sectoral papers; or there are additional elements that could be included.
- How to progress with analysis of the “multiple barrier” effect created by the incidence of several barriers in combination within a category, or barriers of varying degrees of restrictiveness across categories.
- The principal policy-related issues arising from this paper that should be put to the June 1999 Services Experts Meeting for further discussion.

## I. INTRODUCTION

10. This paper on financial information and advisory services (*hereinafter* “FIAS”) represents the first “sectoral product” in the present phase of the Trade Committee’s project to assess barriers to trade in services. The other sectors are environmental services, distribution services, and air-cargo services. The services barriers project forms part of the Trade Committee’s work programme on market access barriers after the Uruguay Round, which also covers tariffs and non-tariff barriers to trade in goods.

11. The general aim of the project may be described as seeking to identify the type and extent of barriers to trade in each of the sectors being examined, which are “horizontal” and which sector-specific in application, and the implications for negotiating further multilateral liberalisation. A particular goal is to examine the feasibility of developing generic “reference lists” of barriers according to their trade-restrictiveness, as a possible basis for improving the scheduling of commitments and elaboration of GATS rules.

12. When the WP discussed the Secretariat’s proposed approach to the sectoral studies [TD/TC/WP(98)35] in June 1998, it was agreed that the Secretariat would develop the sectoral papers according to the first two steps outlined therein; that is, construction of inventories of measures affecting trade in the sector, organised according to the “type” of measure, with an initial analysis of the picture so revealed. The WP asked that the inventories take GATS bindings as the starting point, supplemented where possible with information from other sources on applied measures; and that the project cover OECD member countries and a number of non-OECD countries.<sup>4</sup> However, it was agreed that ranking of measures according to their trade-restrictive effects would be taken up in WP discussions that would involve services experts.

13. FIAS has been taken up as the first sector for examination because (i) as a sub-sector, it provides an opportunity to study the incidence and effect of three levels of barriers (horizontal, sectoral and sub-sectoral); (ii) as a set of information-based services it provides significant scope for analysis of cross-border as well as physical provision; and (iii) as part of the financial services sector, WTO bindings are recent and fairly comprehensive, thus permitting the project’s proposed methodology to be tested.

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4 The non-OECD members are Argentina, Brazil, Chile, Hong Kong China, India, Indonesia, Malaysia, Singapore and Thailand. Data and resource constraints precluded inclusion of non-WTO members such as China and Russia in this paper. (A proposal for a separate study on Russia’s services trade barriers has been developed for the WP’s consideration; whereas the Secretariat will endeavour to include China in the papers on the other sectors covered by the services project, eg., the Environmental Services study).

14. The paper is structured as follows --

- **Section 1** provides a summary overview of FIAS, and how its international provision has evolved. This includes a description of the emerging role of the Internet in cross-border trade.
- **Section 2** discusses GATS classification and scheduling issues for FIAS, including as these pertain to the coverage of the country inventories (contained in a separate Annex).
- **Section 3** provides a preliminary analysis of the principal barriers to the international provision FIAS, based on the country inventories. This includes assessment of barriers to information-only provision, compared to FIAS which form part of “executable” financial services; an assessment of the relative importance of horizontally- and sectorally-applied barriers; and an illustrative list of the types of barriers occurring in the main categories.
- **Section 4** suggests some issues for reflection, in terms of the analysis of barriers and policy issues identified in this paper, and the broader services project and its objectives; and how these issues should be synthesised for presentation to the June 1999 Services Experts Meeting.
- **The Annex** (circulated separately) provides the reformatted country inventories (incorporating revisions to the inventories for Mexico, Switzerland, Turkey and Hong Kong-China, as submitted by those Delegations), together with an explanation of the sources and methodology used to construct the inventories.

## SECTION 1. OVERVIEW OF FINANCIAL INFORMATION AND ADVISORY SERVICES (FIAS)<sup>5</sup>

15. This paper focuses on FIAS arising from the non-insurance segment of the financial services sector; that is, from banking, financial market trading and brokerage, securities, and asset management. Whilst there is also an auxiliary information and consultancy component to insurance and reinsurance services, there is rarely overlap with non-insurance FIAS; essentially because “insurance-related FIAS” are provided mostly on an “in-house” and/or proprietary basis, and are nowhere near as tradeable in volume or value terms as non-insurance FIAS.

16. Non-insurance FIAS are supplied commercially by both information-only providers and by providers of “executable” financial services, such as retail, commercial and investment banks, brokers, etc. Whilst recognising that the GATS scheduling and classification guidelines<sup>6</sup> distinguish information and advisory services from the direct financial transactions (“executable” financial services) they relate to, in practice this boundary is harder to define; particularly with the emergence of the Internet and associated public networks as a vehicle for marketing and executing many financial transactions.

17. Accordingly, this paper examines the barriers to international provision of FIAS *per se*; that is, regardless of whether they are provided in the form of “information-only”, or in the context of specific transaction-based financial services. In these terms, the main types of commercially-provided FIAS are:

- financial market information services;
- information pertaining to the availability of the range of (non-insurance) financial services activities;
- financial analysis, research and advisory services on the same range of financial services; and
- the services employed to generate and transfer such information by providers of financial services, including financial data processing and related software services.

18. The globalisation of financial markets and the financial sector, driven by liberalisation and technological advances, accords a premium to these services and makes them tradeable. At the same time, financial information plays an important role in the management of market and credit risk, and thus in the transparency and relative stability of financial markets and the international financial system.<sup>7</sup> In this

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5 The industry analysis in this section draws on the annual reports and websites of a number of leading FIAS providers from Europe, North America and the Asia-Pacific region; and a range of articles from the web-archives of the Financial Times and Wall St Journal.

6 MTN.GNS.W/120, *op.cit.*

7 Whilst there are clearly limits to both the generation of “perfect information” and its utilisation in financial transactions, the role of information in the efficient functioning of financial markets has long been recognised in the economic literature. This focuses in particular on the problem of asymmetric information (where one party to a transaction has much less information than the other party) in creating adverse selection and moral hazard, and on the evolution of regulatory mechanisms to encourage information production as a policy response. A useful overview of the

regard, domestic regulatory and supervisory frameworks for the financial sector play a major role in shaping both the demand for and the supply of quality information, through requirements on the management of financial risk and on corporate and financial information disclosure. However, these requirements differ both within the financial sector (eg., between bank and non-bank institutions) and between countries.<sup>8</sup>

19. As the 1997/98 financial crises in several emerging market economies demonstrate, weak financial supervision, poor assessment and management of financial sector risk, and lack of transparency in corporate and fiscal accounting and provision of financial and economic data persist in a number of economies. These factors are clearly more important to the demand for/supply of quality information than market access barriers to FIAS provision, per se. Indeed, in such situations FIAS providers are, in effect, brokering *available* information.

20. Even so, trade in FIAS can be adversely affected by barriers to commercial presence, movement of services personnel and cross-border supply, particularly as applied to the various financial services sub-sectors that generate and add further value to FIAS. Additionally, by their very nature FIAS may be affected by restrictions on information and data flows, by Internet access restrictions or policies with restrictive effect, and by restrictions on trade in the computer software and telecommunications products and services which support FIAS production and supply.

21. International services trade statistics do not provide disaggregated estimates of the volume or value of FIAS trade. However, the Financial Times recently reported that the global market for real-time data used in financial trading is estimated as worth presently about US\$11 billion, growing to US\$15 billion by 2002, with demand for historical and analytical data used by fund managers to make investment decisions worth perhaps ten times that much, and growing even more rapidly.<sup>9</sup> Furthermore, the research

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“information approach” to analysis of financial markets is found in Frederic S. Mishkin, *“The Causes and Propagation of Financial Instability: Lessons for Policymakers”*, presented to the August 1997 Jackson Hole Symposium of the Federal Reserve Bank of Kansas City ([www.kc.frb.org/publicat/sympos/1997](http://www.kc.frb.org/publicat/sympos/1997)).

8 For example, risk management is a core aspect of banking regulation and supervision, whereas securities regulation tends to focus on investor protection and capital formation, and for a number of other financial instruments the main focus is price discovery. International cooperation efforts to establish convergence around minimum standards is most advanced in the banking sector, through the Group of Thirty, and the reports and guidelines of the BIS’ Basle Committee on Banking Supervision. Other international government and/or industry efforts include the Organisation of Securities Commissions; and the IMF’s Data Dissemination Standards for government economic and financial data. The “Joint Forum” brings the Basle Committee of banking supervisors together with international securities and insurance regulators, to discuss improved consistency in supervisory approaches. In February 1999, G7 Finance Ministers agreed to establish a Financial Stability Forum, serviced by the BIS Secretariat, to pool information on capital reserves and market activity, act as an early warning system for shocks, and fill a gap in surveillance. The initial members of the Forum are the G7 countries and representatives of the Secretariats of IMF, World Bank, BIS and OECD.

9 *What price information?* Financial Times, 20 July 1998 (estimates for the size of the market for financial market data were presented in the FT in sterling; converted here using US\$1.6 exchange rate).

and advisory functions in which this data is utilised clearly form a significant proportion of the value-added provided by many financial services firms.

22. The FIAS industry is already global but is undergoing further “globalisation” arising from increased competition and consolidation among leading providers, and from the uptake of network technologies. The latter is felt in ever-increasing cross-border tradeability and some convergence between financial information and other classes of “information services”.

23. In this regard, some providers of *financial information* in fact see themselves more as “business information services” providers, or indeed simply as “information services” providers. For example, in the “financial market information” segment, some providers specialise in proprietary information, news and analytics (eg., Dow Jones, Reuters, Bloomberg, Bridge/Telerate, FTSE Ltd), others provide specific data generated by market-trading subsidiaries or partners (eg. United News and Media’s Money and Bonds web-site), and some others provide raw data from the exchanges at a 20 minute delay (eg. Quote.com, Microsoft Investor). However it bears noting that, for example, both Microsoft and Reuters provide their FIS as part of much broader “information services”; with Reuters also providing political, economic, health and sports news, a business briefing database, and a digital image/Web TV library, and Microsoft providing a very broad range of entertainment, travel, education and other “information services”.

24. On the other hand, providers of *financial analysis and advice* may provide both financial information and specialist analysis (eg., credit rating agencies), or they may provide information, analysis and advisory services as part of their other financial services activities (eg., investment banks, securities houses, brokers); and see themselves first and foremost as financial institutions.

25. It is also worth noting that a number of online “business information services” incorporate financial and corporate information extracted from business and syndicated databases with research, analysis and advice about specific markets, companies, products and customers; eg., synopses of business operations of individual companies, company statistics, business news, market research reports, patent and trademark filings, brokerage research and market price information. However, whilst a lot of the information so gathered, analysed and distributed is financial and/or corporate in nature, these services also have broader business applications, such as product development, customer service, marketing, etc; and are likely to be classified in the GATS under Business Services, rather than as Financial Services.

26. Against this background, the following are generalised descriptions of the main FIAS covered by this paper.

### ***Financial market information services***

27. These services involve the provision of real-time and historical data, information, reporting and analysis arising from the operation of financial markets (ie., exchanges and over-the counter markets for money market instruments, foreign exchange, derivative products such as futures and options, exchange rate and interest rate instruments such as swaps and forward rate agreements, transferable securities and other negotiable financial instruments). The service can also include higher value-added forms of information, such as analysis, research, forecasting tools and standardised advice.

28. Traditionally these services have been provided on a proprietary basis by the exchanges themselves (organised and searchable data), by financial newspapers in partnership with individual financial services firms (data, analysis and standardised advice), and by proprietary screen-based systems

(data, research, standardised and customised analysis and forecasting). Teletext and cable television are also significant means of provision of basic data and analysis. Most leading providers have also recently begun providing some access to their proprietary information systems via the Internet.

29. New entrants to this segment of the FIAS marketplace tend to be Internet start-ups, often leveraging the free market information now made available by most stock and other exchanges in near real-time, company fundamentals from public disclosure, and other financial news. Many Internet-based FIAS are pitched at the personal investor and may also be offered in conjunction with another commercial activity (eg., online brokerage services, or as part of the subscription to an Internet Service Provider, most of which now offer several categories of content to subscribers, including basic financial information).

#### ***Financial analysis, research and advisory services***

30. As noted above, some financial market information providers also provide *research and analysis*; including on a customised basis. However the *advisory* component is typically provided on either a specific purpose basis, eg., by credit ratings and risk analysis agencies; or for specific clients, eg., by financial services providers such as banks, investment houses, brokerages, etc. *Analytical services* essentially involve organisation and interpretation of data, eg., of country and company credit ratings, performance of specific companies and industries, price and earnings outlooks, interest rates, currencies, political and other developments that affect economic conditions. *Advisory services* usually employ research and analysis on a customer-specific basis, eg., on the structuring and management of company and portfolio investment, corporate and personal financing, and so on. Delivery of such FIAS may be by company publications, electronic networks, meetings with clients, telephone and fax.

#### ***Information generated in the provision of other financial services***

31. This segment is largely information-only, and involves the provision of information on financial services products, eg., on bank deposit rates and lending terms, payment and money transmission services, availability of public issues of tradable instruments, investment opportunities, etc. Information on recommended financial advisers and authorised dealers may also be provided. The main providers are individual financial services firms and alliances thereof (eg., by brochures, websites), and Internet Services Providers as part of their subscriber services. The latter are mostly pitched at the personal financial services market and allow consumers to compare hundreds of products and terms.

#### ***Services to generate and transfer financial information***

32. As already noted, the generation, management and distribution of FIAS relies heavily on information technology applications and services. This is particularly the case with financial market information and analysis services, where part of the “premium” that can be charged for access to proprietary systems arises directly from specialist IT applications, eg., to provide customised presentation of information “feeds” from several sources to a single networked screen, sophisticated information management and analysis tools, access to historical data-bases, and other value-added services.

33. In turn, FIAS providers who themselves incorporate such information in their own analytical and advisory services employ IT and network services to improve the management of information, eg., via customised “sifting” technology, and integration of information from multiple sources, such as external services and databases and their internal research. The use of the Internet for dissemination of all types of

FIAS is also increasing rapidly; and some providers of proprietary FIAS have consequently established Internet sites that interface at least partially with their proprietary systems.

***The increasing role of the Internet in cross-border trade in FIAS***

34. Traditionally the principal vehicles of cross-border supply and consumption/purchase abroad of FIAS, as with other financial services, have tended to be mail delivery, telephone, fax transmission, and proprietary electronic networks (eg., the desk-top terminal systems of firms such as Reuters, Dow Jones/Telerate, Bloomberg, and individual stock exchanges; as well as the internal data networks of individual banks and other providers). The “dematerialised” nature of most financial services means that most aspects can be supplied electronically, subject to a range of user trust and protection safeguards, including security, prudential and liability issues. With the commercialisation of the Internet in the mid-1990s, its public “network of networks” is already being widely used in the financial field:

- to supply information about financial markets (interest rates, stock prices, company analysis, currency rates, etc) and financial products;
- to deliver basic financial services (eg., management of personal accounts and investment portfolios) that entail transactions (eg., payments; provision of credit; purchase and sale of securities; dealing in financial markets); and
- to facilitate communication with clients, streamline back office functions and reduce transaction settlement costs.<sup>10</sup>

35. At present, Internet sites of financial services providers tend to fall into one of the following categories:

- Marketing sites, which disseminate information about various services. Such sites may offer links to related pages, or provide an email address for enquiries. They mostly “give” information rather than receiving it as well, although they may enable users to ask for specific information to be sent, thereby requiring entry of the user’s personal email or postal address.
- Interactive sites, which ask for specific feedback from the user or offer follow-up services. To achieve interaction, some form of basic transaction (eg., involving access to the user’s bank account or investment portfolio) is required. Generally access to these services is free or part of a wider agreement between the user and the service provider.
- Service sites, which provide a specific service via the Internet, such as online bill payments, online searching and downloading of proprietary market information and research online financial advice, online banking and trading. Through the Internet, the firm provides the user with a more cost-and-time efficient service than may otherwise be available.
- Advanced service sites, which offer services not otherwise available. Usually the providing firm is offering the service in partnership with other providers of financial and auxiliary

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10 “*The Internet and Financial Services*”, Centre for the Study of Financial Innovation (CSFI), 1997.

services, eg., a personalised online finance system that enables the user to manage his bank account and investments, make payments and trade online, etc.<sup>11</sup>

36. Furthermore, online provision of these services may be from a firm's own website; a "host site" established by another firm, or the portal site of an Internet Service Provider; a "multi-user" site established by an alliance of firms within the financial sector or across several sectors, such as an online "mall"; or from an intranet or proprietary network accessible from the Internet with a password.

37. Online provision of FIAS covers this spectrum, with established vendors more heavily concentrated in the marketing and basic services categories. Interactive sites are popular with small investors who use them to create a personalised information and portfolio monitoring service for trades they conduct via offline brokerages. With the rapid take-up of online share-trading in the past two years, some established vendors have converted some or most of their business to the Internet. Some provide a "no-frills" service, essentially leveraging low transaction commissions; but a growing number also provide online financial information, research, and customised advice at a level approaching that of full-service brokerage.

38. To take but one example, the Internet brokerage site of Charles Schwab Corp (www.schwab.com) provides industry research from Standard & Poors, insider-trading reports from Vickers, live interviews with CEOs from Briefing.com, stock research from Credit Suisse First Boston and Hambrecht & Quist, and a proprietary screening service that can pinpoint equities that meet an investor's customised criteria. Many of the FIAS features are free, though clients with less than US\$100,000 in assets pay fees for research and some other services. The company is planning to offer more advice, research and analytics; and "hand-holding" of customers who request it, through its physical branch offices and online links to financial advisers.<sup>12</sup>

### *Implications of the Internet for the relative importance of various modes of supply*

39. Internet providers of FIAS may thus be established financial services firms, or Internet start-up providers who are supplying wholly on-line via email and web-site/data-base access regardless of the location of the service consumer. Nevertheless, establishment trade through commercial presence and temporary presence of personnel is also important, particularly for the large traditional vendors of financial information—for example the providers of dedicated screen-based information systems, and in-country research and advisory services where proximity is valued by clients, eg., for information-gathering and reporting, or when financial information services is one of a broader range of financial services being provided.

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11 *ibid.*

12 "Making a Profit on the Net: Schwab pulls it off", International Herald Tribune, 11 February 1999.

**Table 1. The financial services spectrum**

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	high	Amenability to supply via Internet	low	
Information	Commodity products	Execution only dealing	Mortgages	Longer-term savings schemes & endowments
Terms, quotes and rates on markets and products	Bank and portfolio a/c details, basic transactions	Information, analysis and transactions		Pensions
				Portfolio management
	loss/low	Profitability		high

<----->

40. In this regard, most analysts seem to agree that while the Internet will continue to impact increasingly on the FIAS market and basic “executable” financial transactions for retail banking and brokerage, certain types of financial services require an initial and ongoing high degree of personal involvement by the supplier, and interaction between the supplier and client. To illustrate this, Table 1 above shows the scale of amenability to Internet provision of various financial products (all of which contain information, analysis and advisory components to varying degrees).<sup>13</sup>

41. Thus private electronic networks and physical presence will likely endure in order to service corporate and individual clients requiring highly customised information, research, analysis and advice, and the transfer of large payments. As well, for big corporations and traders, concerns about security and congestion override the Internet’s low-cost advantages, and private networks already exist. Therefore, the Internet is not likely to replace other forms of electronic supply, nor is cross-border supply likely to supplant other modes of delivery; but rather, all will interact in new and closer ways.

42. This judgement tends to be borne out by the pattern of establishment of regional head-quarters and/or acquisition of foreign affiliates by major FIAS providers and the large IT firms which provide technological support services for FIAS networks. Establishment trade is also relevant to provision via newspapers, radio and television (although cross-border transmission of syndicated content is also common). Consequently both supply in-country through establishment (commercial presence and operation, temporary presence of personnel, etc) and across borders without establishment appear likely to continue to be relevant for trade in FIAS; and to the assessment of barriers to such trade.

43. Nevertheless, the expanding reach of the Internet as a vehicle for providing financial information and analysis and varying degrees of financial advice, and its capacity to provide such services in conjunction with various “executable” services such as banking and brokerage, raises a number of issues relevant to trade policy analysis:

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13 Adapted from CSFI, op. cit. page 58.

- On the one hand are a range of legitimate regulatory objectives, such as provider liability and standard of regulatory compliance, and the jurisdiction in which these are to be addressed and enforced.
- On the other hand arise various implications for scheduling of GATS commitments for modes 1 and 2 in this sector and in several others. These include the appropriate ways to schedule prudential and consumer protection-based authorisation requirements for modes 1 and 2; and, in respect of some developing countries, the use of classification systems based on heavily compartmentalised domestic financial services regulation, with the result that FIAS provision is limited by the (often heavily restricted) regime for physical establishment of financial services *per se*; together with a tendency to link mode 3 restrictions for physical establishment to cross-border provision under mode 1. These issues are illustrated in further detail in Sections 2 and 3.

## SECTION 2. GATS CLASSIFICATIONS FOR (NON-INSURANCE RELATED) FIAS

44. This Section discusses the GATS classifications for FIAS arising from the non-insurance segment of the financial services sector; that is, from banking, financial market trading and brokerage, securities, and asset management. (The classification tables presented here also show the corresponding classification for insurance services, in which information and advisory services are covered implicitly as an auxiliary service).

45. For Financial Services, there are two separate but similar classification options for use in the scheduling of commitments. These are (i) the GATS informal scheduling guidelines<sup>14</sup> (*hereinafter* “W/120”) which covers all services sectors; and (ii) the Annex on Financial Services, Article 5 of which provides a definition of a financial service and a detailed listing of such services. WTO Members may choose to use either of these classification lists, or to use their own descriptions.

### *The W/120 classification*

46. In W/120, Financial Services is classed as 7A. All insurance and insurance-related services and 7B. Banking and other financial services (excluding insurance). The non-insurance FIAS described in Section 1 of this paper (financial market information services; financial analysis, research and advisory services; information pertaining to other financial services; and the services employed to generate and transfer such information, including financial data processing and related software services) are covered by two sub-items of 7B, as follows:

- 7.B(k) Advisory and other auxiliary financial services on all the activities listed in Article 1B of MTN.TNC/W/50, incl. credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy; and
- 7.B(l) Provision and transfer of financial information, and financial data processing and related software by providers of other financial services.

47. The W/120 descriptions and those of the corresponding Provisional CPC classifications shown therein are set out in **Box I** below. (Note that “all the activities listed in Article 1B of MTN.TNC/W/50” is the same as the activities listed in Article 5(a)(v)-(xv) of the Annex on Financial Services).

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14 “Services Sectoral Classification List” from the Uruguay Round (MTN.GNS/W/120 of 10 July 1991)

**Box 1. FIS classifications in the GATS informal scheduling guidelines**

GNS/W/120 descriptions	Corresponding CPC listed in W/120
7.B.(k).  Advisory and other auxiliary financial services on all the activities listed in Article 1B of MTN.TNC/W/50*, incl. credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	8131 Services related to the administration of financial markets; or  8133 Other services auxiliary to financial intermediation, incl. financial consultancy services (eg., financial advisory services provided by financial advisers, etc, to customers on financial matters)
7.B.(l)  Provision and transfer of financial information, and financial data processing and related software by providers of other financial services**	8131 (as above)

\* This list is the same as that in Article 5(a)(v)-(xv) of the Annex on Financial Services.

\*\* Correlates to the activities listed in Article 5(a)(xvi) of that Annex (see Box 2).

**The Annex on Financial Services classification**

48. The GATS Annex on Financial Services provides an alternative scheduling approach to W/120, specifically for the financial services sector. This classification also covers the FIAS described in Section 1 of this paper via two sub-paragraphs of the Article 5 definition of financial services, as follows:

- (Article) 5(a) (xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (Article) 5(a)(xvi) Advisory, intermediation and other financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

49. The definition and listing of financial services contained in Article 5 of the GATS Annex on Financial Services is set out in **Box 2** hereafter.

**Box 2. Article 5(a) of the GATS Annex on Financial Services**

Article 5. Definitions

For the purposes of this Annex:

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

Insurance and insurance-related services

(i) Direct insurance (including co-insurance)

(A) life

(B) non-life

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(v) Acceptance of deposits and other repayable funds from the public;

(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) Financial leasing;

(viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) Guarantees and commitments;

(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);

(B) foreign exchange;

(C) derivative products including, but not limited to, futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(E) transferable securities;

(F) other negotiable instruments and financial assets, including bullion.

(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) Money broking;

(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) Advisory, intermediation and other financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

50. Both these classifications carry over an assumption from the Provisional CPC system on which they are based, that financial information and advisory services are distinct from the “executable”

financial services covered by other sub-items of the classifications. Whilst this is true enough for providers such as Reuters and Bloomberg, it is not so for the majority of providers, for whom information and advice is integral to the provision of “executable” services; particularly brokers, securities firms and investment banks. Where comprehensive commitments on market access and national treatment for both FIAS and the range of Banking and Other Financial Services (BOFS) have been made (as by most OECD countries), this probably does not matter. However where limited commitments have been made for “information-only” provision together with restrictive commitments for “executable” services, as by a number of developing countries, FIAS provision is thereby limited doubly.

51. Most OECD countries have used the W/120 classification for Financial Services, thereby including 7.B.(k) and (l); with a few describing (k) by reference to “information and advisory services covering the activities listed in Article 5(a) of the GATS Annex” (ie. as set out in Box 2); eg. Canada, Hong Kong China. However, some other (mostly developing) countries have employed their own definitions, which in some cases contain limited coverage of FIAS, compared to the W/120 and GATS Annex classifications. A chart showing the FIAS classifications used by the countries examined in this paper is included at the front of the Annex containing the country inventories of barriers.

52. The way that Financial Services activities, including FIAS, have been classified in a schedule also bears on the extent to which FIAS may be provided by the full range of financial services entities covered by 7B of W/120 or Article 5(a)(v)-(xvi) of the GATS Annex. For example, where a country (eg. Argentina, Australia, Canada, the EC, Japan New Zealand, the US) has scheduled commitments for all of “Banking and Other FS”, the presumption arises that FIAS may be provided by the range of permitted “Banking and Other FS” entities. However, where a country (eg., Chile, India, Korea, Malaysia) has scheduled its commitments using its own, segmented sub-item classifications, including specific segmented FIAS categories, only those FIAS may be provided, and only by specified entities (eg., credit rating agencies providing credit rating services, securities businesses providing securities-related FIAS, etc).

53. Therefore to provide a clearer and more consistent picture of the barriers to FIAS, the inventories for countries which have used their own classifications show the restrictions for both their specific FIAS categories, and for the main Banking and Other FS activities that generally include a FIAS component. This has been necessary to reflect the fact that FIAS are both distinct services and yet also an integral element of the financial services sector.

54. The scope and quality of a country’s bindings for financial services, including FIAS, is also affected by whether or not it has made its commitments on the basis of accepting the “Understanding on Commitments In Financial Services”. Doing so means that, among other things, Members have undertaken a number of additional market access commitments that pertain directly or indirectly to FIAS and this paper’s survey of trade and investment barriers to them. These provisions are summarised in general terms in Box 3 below, with the full text of the Understanding provided for ease of reference at the end of the *Annex* containing the country inventories. Each country inventory also notes whether or not the country concerned has indicated adoption of the Understanding in the most recent financial services sections of their GATS schedule (those which have so indicated are Australia, Canada, Czech Republic, European Communities, Japan, Hungary, Iceland, New Zealand, Norway, Switzerland, Turkey, United States of America).

**Box 3. Market access and operation issues covered by the Understanding on Commitments in Financial Services**

- Scheduling of existing monopoly rights;
- MFN and national treatment in procurement by public entities of financial services;
- Permission of cross-border *provision and transfer of financial information and financial data processing* as referred to in subparagraph 5(a)(xv) of the Annex; and of *advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services* as referred to in subparagraph 5(a)(xvi) of the Annex;
- Permission of purchase abroad by residents of the financial services indicated in subparagraphs 5(a)(v) to (xvi) of the Annex (ie., for all banking and other financial services activities as listed there);
- A right of establishment or expansion of commercial presence;
- Permission for already established financial services suppliers to offer “new” financial services;
- Commitments on transfers of information and the processing of financial information, including transfers of data by electronic means, and the transfer of equipment necessary for the conduct of ordinary business of a financial services supplier (with exemption for data protection measures taken on privacy and confidentiality grounds);
- Permitting temporary entry of certain personnel of established financial services suppliers;
- Certain additional MFN and national treatment requirements.

### SECTION 3. BARRIERS TO INTERNATIONAL TRADE IN (NON-INSURANCE RELATED) FIAS

55. This Section provides a preliminary analysis of the type and incidence of barriers to international trade in financial information and advisory services, based on the detailed information provided in the country inventories. The analysis seeks to establish where the main barriers are concentrated and what they are; whether they arise from horizontal or sectoral/sub-sectoral regulation; and a clearer picture of the “multiple barrier” effect, whereby the existence of several barriers in one category or the existence of barriers across several categories significantly restricts the market.

56. The analysis is presented as a combination of text accompanied by charts, as follows:

- Summarising, for each country covered by the study, the existence or absence of measures affecting market access/operation for FIAS providers. This includes, where relevant, the differences in the treatment of “information-only” FIAS, FIAS provided in conjunction with “executable” financial services, and whether there are restrictions on the provision, transfer and processing of financial information and data (*Table 2*);
- An “overview” picture of the various categories of measures and whether, for each country, these are unbound, bound as no restrictions, subject to some restriction or limitation, or subject of significant restriction or multiple restrictions. This chart also enables a generalised picture of where multiple barriers exist within and across several categories. (*Table 3*);
- Where barriers in each category arise from “horizontal” or sectoral/sub-sectoral levels of regulation (*Table 4*); and
- A preliminary indicative list of measures affecting market access/operation for FIAS.

57. Some general conclusions that may be drawn include:

- i) That some of the regulatory limitations on physical establishment are also relevant for cross-border supply (eg., those arising from prudential and consumer protection policies), but that certain direct market access restrictions on foreign physical establishment (eg., numerical or equity participation limitations) will not readily translate to the cross-border supply context;
- ii) That information-only FIAS are generally subject to less barriers to cross-border supply and physical establishment than FIAS provided as part of an executable financial service;
- iii) That OECD members typically apply any market access limitations on establishment at sectoral level, and on movement of the supplier at horizontal level, whereas several of the non-OECD members covered by this study have both horizontal and sectoral limitations for both modes of supply;
- iv) That a few OECD members and a number of non-OECD members place some restrictions on information provision and transfer; and
- v) That there are but a few instances of sectoral monopoly or exclusive provision and “reserved” government procurement of relevant services.

*Differences in market access regulation for “information-only” FIAS and “executable” FIAS*

58. From the foregoing Table 2, it can be seen that there are some differences in the market regulation afforded those FIAS provided as “information-only” and those FIAS provided as part of “executable” financial services:

*Open market for all FIAS*

59. Most OECD members and two non-OECD members have open markets for all “executable” banking and other financial services; and afford the same treatment to “financial information and advisory services” whether provided as part of an executable service or on an information/advisory basis only (Australia, Canada, EC, Hungary, Iceland, Japan, New Zealand, Norway, Poland, Switzerland, US, Argentina, Hong Kong China).

60. Regarding the provision and transfer of financial information and data, financial data processing, etc, all but one of these countries have specific bindings of “no restrictions” (New Zealand, bound to the extent required by the Understanding on Commitments in Financial Services). However, three have not adopted the Understanding on Commitments in Financial Services (Poland, Argentina and Hong Kong China), and two have specified limitations or requirements pertaining to financial data flows (Hungary -- the transfer of information containing personal data, bank secret, securities secret and/or business secret is not allowed; and Iceland -- domestic financial institutions shall inform the Central Bank of the balances of service providers’ accounts held by non-residents).

*Restricted market for FIAS*

61. Two OECD members and several non-OECD members have restricted markets for banking and other financial services, wherein the same type and level of restrictions apply to “financial information and advisory services”, including those provided on an information/advisory-only basis, as apply to executable banking and other financial services (Korea, Mexico, Brazil, Chile, India, Indonesia, Malaysia, Thailand).<sup>15</sup>

62. Regarding the provision and transfer of financial information and data, financial data processing, etc, none of these countries have specific bindings of “no restrictions”, apart from Thailand which has partially bound “financial data processing” via modes 1 and 2 as subject of no restrictions; and none of these countries has adopted the Understanding on Commitments in Financial Services).

*Open market for “information-only” FIAS*

63. A small group of OECD and non-OECD members afford open treatment to “financial information and advisory services” provided on an information-only basis, but apply some restrictions to FIAS provided in conjunction with “executable” banking and other financial services (Czech Republic, Turkey, Philippines, Singapore, Slovak Republic).

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15 The WTO Bindings of Korea and Thailand do not fully reflect liberalisation undertaken in the context of responding to their 1997-98 financial crises.

64. Regarding the provision and transfer of financial information and data, financial data processing, etc, the Czech Republic, Turkey and the Slovak Republic each have specific bindings of “no restrictions”, and have adopted the Understanding on Commitments in Financial Services. The Philippines has no specific bindings for the provision and transfer of financial information and data, financial data processing, etc, and has not adopted the Understanding; while Singapore is unbound “except for providers such as Reuters and Bloomberg”, and has not adopted the Understanding. Type and incidence of barriers to trade in FIAS

### *Type and incidence of barriers to trade in FIAS*

65. Together, Tables 2 and 3 show that most OECD members, and a number of the non-OECD members covered by this study, maintain few significant barriers to international provision of FIAS; whereas in some other non-OECD members the situation is quite restrictive.

#### *OECD members*

66. All but two OECD members permit FIAS on the full range of Banking and Other Financial Services according to the classifications of W/120 or the GATS Annex on Financial Services. Of the exceptions, one permits “financial consultancy” on credit, investment and M&A activities; the other permits “investment advisory service”, “credit rating service” and “credit information service” as distinct activities.

67. Most OECD members have no restrictions on cross-border supply and consumption abroad of “information-only” FIAS; whilst two OECD members are unbound. All OECD members except those two have also adopted the Understanding on Commitments in Financial Services. Where FIAS are supplied cross-border as part of “executable” financial services, most OECD members also have no restrictions, whilst some require commercial presence or local registration. In most of these cases this appears to be for prudential and/or consumer protection reasons, because there are no numerical or equity restrictions on foreign establishment; so whilst certain licencing or authorisation requirements apply to either/both cross-border supply and establishment, they do not serve to limit market access *per se*. Of the three OECD members which do restrict physical establishment of some or all “executable” services, two are unbound for cross-border supply and the other places limitations on it.

68. Regarding establishment, most OECD members have no restrictions, whilst two have some restrictions (approval requirements in one, foreign equity limits in the other). Another OECD member has recently liberalised its establishment restrictions, but this is not yet bound in the WTO.

69. Most OECD members have requirements on the legal form for establishment; and whilst some permit a range of forms, several specify or otherwise limit the particular legal form.

70. All OECD members regulate entry and temporary stay of service providers at horizontal level only. Some specify the time-limits permitted; while one applies a general labour market test, one grants permits under an overall quota system, and two apply labour market tests to specialists.

71. Most OECD members apply a residency requirement for a proportion of Directors of foreign companies; whilst three apply a citizenship/nationality requirement. One is unbound.

72. Where licencing and/or authorisation to provide FIAS is required, as noted above this appears to arise largely from prudential and consumer protection regulation; however in two OECD members it appears to also form part of the market access regime's limitations on establishment.

73. Two OECD members have scheduled restrictions or requirements on provision and transfer of financial information and data flows; while two others are unbound. All but three have adopted the Understanding on Commitments in Financial Services, which contains additional commitments in this regard. Several OECD members are also party to a regional regulatory regime on protection and privacy of personal data.

74. Two OECD members have scheduled the existence of monopoly or exclusive providers relevant to FIAS, one for registration of securities services providers, the other a requirement to use the public telephony monopoly in electronic provision and transfer of financial information.

**Table 2. Country Summary of Measures affecting Cross-border supply and Establishment for FIAS provision**

Country	Provision of financial information, advisory and other auxiliary services (FIAS) on all activities related to “Banking and Other Financial Services” (BOFS)	Provision and transfer of financial information, financial data processing and related software by suppliers of other financial services
Argentina	No restrictions modes 1, 2, 3 all BOFS, apart from Central Bank registration/ licence required for “executable” services. No restrictions on legal form.	No restrictions modes 1, 2, 3; however: * Understanding on Commitments in FS not applied.
Australia	No restrictions modes 1, 2, 3 for information-only FIAS or as part of executable BOFS, except authorisation/licencing for banks and forex dealing. No restrictions on legal form.	No restrictions modes 1, 2, 3. Understanding on Commitments in FS is applied.
Brazil	Unbound for modes 1, 2 all BOFS. Mode 3 case-by-case approval and national interest test for financial institutions; legal form restrictions for non-financial institutions.	Unbound modes 1, 2, 3; and * Understanding on Commitments in FS not applied.
Canada	No restrictions mode 1 except commercial presence required for some advisory and “executable” activities. No restrictions mode 2 except local registration required for some advisory and “executable” activities. No restrictions mode 3 for “information-only providers”; some restrictions for providers of “executable” BOFS.	No restrictions modes 1, 2, 3; and Understanding on Commitments in FS is applied.
Chile	Unbound modes 1, 2 all BOFS, including FIAS. Mode 3 requires economic needs test and approval in compartmentalised sector, wherein information/advisory services must relate to core BOFS business.	Unbound modes 1, 2, 3; and * Understanding on Commitments in FS not applied.
Czech Republic	No restrictions modes 1, 2 for information-only; some restrictions for providers of “executable” BOFS. No restrictions mode 3 for information-only; some restrictions for providers of “executable” BOFS.	No restrictions modes 1, 2, 3; and Understanding on Commitments in FS is applied.
EC	No restrictions modes 1, 2 except commercial presence some activities in 2 member states. No restrictions mode 3, apart from legal form requirements.	No restrictions modes 1, 2, 3; and Understanding on Commitments in FS is applied.
Hong Kong China	Mode 1 commercial presence required for investment advisory services; Unbound most “executable” BOFS. No restrictions mode 2. No restrictions mode 3.	No market access restrictions modes 1, 2, 3. National treatment modes 1, 2 is unbound. * Understanding on Commitments in FS not applied.
Hungary	No restrictions modes 1, 2 all BOFS. No restrictions mode 3 all BOFS.	No restrictions modes 1, 2,3; and Understanding on Commitments in FS is applied.

Table 2. Contd.

Country	Provision of financial information, advisory and other auxiliary services on all activities related to "Banking and Other Financial Services"	Provision and transfer of financial information, financial data processing and related software by suppliers of other financial services
Iceland	No restrictions modes 1, 2 all BOFS. Mode 3 authorisation required for foreign equity >25%	No restrictions modes 1, 2; Mode 3 authorisation required for foreign equity >25%; and Understanding on Commitments in FS is applied.
India	Unbound modes 1, 2 all BOFS. Mode 3 "financial consultancy" has 51% foreign equity limit (permitted foreign banks exempted) and equity limits on providers of "executable" BOFS.	Unbound modes 1, 2, 3; and * Understanding on Commitments in FS not applied.
Indonesia	Unbound mode 1 all BOFS. No restrictions mode 2 all BOFS (including investment advisory, securities, portfolio and investment management businesses). Mode 3 joint ventures only.	Unbound modes 1, 2, 3; and * Understanding on Commitments in FS not applied.
Japan	No restrictions mode 1 all BOFS, except commercial presence required for "discretionary investment services". No restrictions mode 2 FIAS; authorisation required some "executable" BOFS. No restrictions mode 3 all BOFS except legal form requirements.	No restrictions modes 1, 2, 3; and Understanding on Commitments in FS is applied.
Korea	Unbound modes 1, 2 market access all BOFS; "standstill" on national treatment all BOFS. Mode 3 foreign equity limits for "investment advisory service, credit rating service, credit information service, securities business"; and other BOFS. Subsequent liberalisation unbound.	Unbound modes 1, 2, 3; and * Understanding on Commitments in FS not applied.
Malaysia	Mode 1 commercial presence required for financial advisory, intermediation and broking services, and other BOFS. Mode 2 partnership with local provider or commercial presence required. Mode 3 only joint ventures with foreign equity limitations all BOFS.	Unbound modes 1, 2, 3; and * Understanding on Commitments in FS not applied.
Mexico	Unbound modes 1, 2 all BOFS. Mode 3 up to 49% foreign equity permitted for credit reporting and investment consultancy; foreign equity and operational limits for "executable" BOFS.	Unbound modes 1, 2, 3; and * Understanding on Commitments in FS not applied.
New Zealand	Modes 1, 2 all BOFS bound to the extent required by paragraphs B3 and B4 of the Understanding on Commitments in FS. No restrictions mode 3 all BOFS.	Modes 1, 2 bound to the extent required by paragraphs B3 and B4 of the Understanding on Commitments in FS; No restrictions mode 3; and Understanding on Commitments in FS is applied.
Norway	No restrictions modes 1 and 2 all BOFS. No restrictions mode 3 except residency and legal form requirements.	No restrictions modes 1, 2, 3; and Understanding on Commitments in FS is applied.

Table 2. Contd.

Country	Provision of financial information, advisory and other auxiliary services on all activities related to "Banking and Other Financial Services"	Provision and transfer of financial information, financial data processing and related software by suppliers of other financial services
Philippines	No restrictions mode 1 for "financial advisory services" (ie., information-only). Commercial presence required for "executable" BOFS. No restrictions mode 2. Mode 3 foreign equity limits, limitations on legal form and operations.	Unbound modes 1, 2, 3; and * Understanding on Commitments in FS not applied.
Poland	Unbound modes 1 and 2 for all BOFS. Mode 3 authorisation/ licence and specific legal forms required, for all BOFS.	No restrictions modes 1, 2, 3; except requirement to use public telephony monopoly; however: * Understanding on Commitments in FS not applied.
Singapore	Unbound mode 1 most BOFS; no restrictions for portfolio and investment research and advice to the public except commercial presence requirement Mode 2 no restrictions most BOFS. Mode 3 no restrictions for information-only activities except legal form requirements. Authorisation and legal form requirements for "executable" activities. No new banks permitted.	Unbound modes 1, 2, 3 market access "except for providers such as Reuters and Bloomberg". No restrictions modes 1, 2, 3 national treatment; and * Understanding on Commitments in FS not applied.
Slovak Republic	No restrictions modes 1 and 2 for information and advisory services; some restrictions for "executable" BOFS. No restrictions mode 3 for information and advisory services; authorisation required for investment and securities-related services, and banking.	No restrictions modes 1, 2, 3; and Understanding on Commitments in FS is applied.
Switzerland	No restrictions modes 1 and 2 all BOFS, except commercial presence required for marketing/distribution of foreign investment funds. No restrictions mode 3, except licencing for prudential reasons for "executable" BOFS.	No restrictions modes 1, 2, 3; and Understanding on Commitments in FS is applied.
Thailand	No restrictions modes 1 and 2 for "financial advisory, intermediation and auxiliary services". Unbound for other BOFS. Mode 3 foreign investment limited to existing companies, with equity limits, for investment advisory, securities and asset management services. Foreign equity limits temporarily lifted for banks.	No restrictions modes 1, 2 for "financial data processing"; Unbound for mode 3; and * Understanding on Commitments in FS not applied.
Turkey	No restrictions modes 1 and 2 for "financial advisory, intermediation and auxiliary services"; unbound mode 1 other BOFS, no restrictions mode 2. No restrictions mode 3 for information and advisory services; approval and authorisation required for banks and securities companies.	No restrictions modes 1, 2, 3; and Understanding on Commitments in FS is applied.
United States	No restrictions modes 1 and 2 all BOFS. No restrictions mode 3 for most BOFS, including information and advisory services, brokerage services, investment banking services, except legal form and prudential requirements.	No restrictions modes 1, 2, 3; and Understanding on Commitments in FS is applied.

**Table 3. Overview of Measures affecting Trade in FIAS, by country and category of measure**

<b>OECD Members</b>	X-border	Inv/Est.	Legal form	Licencing	Entry/stay	Nat/Resid.	Data flows	Monopoly	Govt Proc.	Other
Australia					H/T,C	S/Res.				
Canada					H/T	S/Res.				
Czech R.					H					
EC					H					
Hungary					H	S/Cit, Res.				
Iceland					H	S/Res.				
Japan					H/T					
Korea					H/T	S/Res, Cit.	UB			
Mexico	UB				H	UB modes 1,2,4	UB			IPR
New Zealand					H/T,C					
Norway					H/T	S/Res.				
Poland	UB				H/C	S/Nat.	partial UB			
Switzerland					H/T,C	S/Res.				
Turkey					H/T	S/Nat/Res.				
USA			H		H/T					

Table 3. Contd. Measures-by-category

OECD observers	X-border	Inv/Est.	Legal form	Licencing	Entry/stay	Nat/Resid.	Data flows	Monopoly	Govt Proc.	Other
Argentina			(UB)		H	UB	UB			
Brazil	UB				H/C	UB	UB	UB	UB	IPR
Chile	UB				H/T, C	Res.	UB		UB	IPR
Hong Kong					UB	None				
Singapore					H/T	Cit/Res.	UB, and conditions			
Slovak R.					H	Res.				
Other countries	X-border	Inv/Est.	Legal form	Licencing	Entry/stay	Nat/Resid.	Data flows	Monopoly	Govt Proc.	Other
India	UB				H/T	UB?	UB		H	IPR
Indonesia	UB				H, S/ T,C	UB?	UB			IPR
Malaysia					H, S/ T,C	UB?	UB		H	IPR
Philippines					H/C	Cit/Res.	UB			IPR
Thailand	partial UB				H, S/ T,C	Nat, Res.	partial UB			IPR

Key to the table (in respect of both FIAS provided either as “information-only” and as part of “executable” service)

<b>UB</b>	<b>Unbound</b>	<b>H</b>	<b>Horizontal requirement</b>
<b>(UB)</b>	<b>No restrictions, but not bound.</b>	<b>S</b>	<b>Sectoral requirement</b>
	<b>No restrictions (bound)</b>	<b>H/T or H/T, C</b>	<b>Horizontal requirement specifying time-limits (T) and/or conditions (C)</b>
	<b>Restriction or other requirement for foreign provision</b>	<b>H,S/T, C</b>	<b>Horizontal and sectoral, time-limits (T) and/or conditions (C)</b>
	<b>Significant barrier or multiple barriers</b>	<b>Res.</b>	<b>Residency requirement</b>
	<b>Unbound liberalisation</b>	<b>Nat.</b>	<b>Nationality requirement</b>
<b>IPR</b>	<b>Intellectual property rights enforcement problems</b>	<b>Cit.</b>	<b>Citizenship requirement</b>

75. In terms of the “multiple barrier” effect, Table 2 shows that few OECD members apply more than one restriction *per category*; and Table 3 shows that *across the categories*, most OECD members apply no restrictions apart from sectoral requirements on legal form of establishment, sectoral licencing/authorisation requirements for prudential and/or consumer protection reasons, and horizontal requirements on entry of suppliers and residency of Directors. However, three OECD members either have no bindings, or various restrictions in each of these categories; together with no bindings or restrictions for cross-border supply and restrictions on establishment.

*Non-OECD members covered by the study*

76. Five of the non-OECD members permit FIAS to be provided on the range of Banking and Other Financial Services; but only one has no restrictions on cross-border supply and consumption abroad for that same range of FIAS.

77. Several of the non-OECD members have compartmentalised financial services sectors, such that provision of FIAS is segmented on the same basis as “executable” services, and thus subject to the same restrictions on foreign provision. Examples of such segmentation or limited definitions include:

- “Advisory services for the banking sub-sector”, “advisory services for securities sub-sector”, and “securities risk-rating” (Chile);
- “Financial consultancy services (being) advice on financial services, investment research and advice and advice on acquisitions and corporate restructuring and strategy” (India);
- “Investment advisory services limited only to investment advisory in capital markets” (Indonesia);
- Separation of “securities-related analysis, research and advice” from other financial information and advisory services (Malaysia);
- Distinction between “investment house consultancy, advisor or broker”, “financial advice on credit reference and portfolio research and advice”, and “promotion and provision of information about services and products offered by a foreign bank” (Philippines).

78. For cross-border supply of “information-only” FIAS, two non-OECD members have no restrictions, several require commercial presence for some or all such FIAS, four are unbound and one is partially unbound. For consumption abroad of “information-only” FIAS, five of the non-OECD members have no restrictions, one requires commercial presence or local partnership, one is bound only for physically established or specified types of “brand-name” providers; while three are unbound and one is partially unbound.

79. For cross-border supply and consumption abroad of FIAS tied to “executable” services, one non-OECD member has no restrictions, several have some authorisation requirements and/or restrictions on funds transfers/payments abroad; while several others are unbound.

80. Regarding establishment, two non-OECD members have no restrictions for all banking and other financial services, including FIAS; whilst two have no restrictions for “information-only” FIAS and authorisation requirements for FIAS involving “executable” services. Of the non-OECD members with compartmentalised financial sectors, one has approval requirements based on economic needs test with FIAS provision limited to the permitted foreign firm’s core business; while the other non-OECD members have the same restrictions for information-only FIAS as for “executable” services: one has case-by-case approval subject to national interest test, three limit foreign equity participation, whilst two require joint ventures with local partners.

81. Two non-OECD members have no restrictive requirements on legal form. The others require joint stock company/ joint venture or otherwise limit the legal form of establishment (where permitted).

82. Seven of the non-OECD members regulate entry and temporary stay of service providers at horizontal level only. Of those, two specify the time-limits permitted, one specifies time-limits and conditions (labour market test and minimum number of local employees), and two others specify conditions (both labour market test, one the minimum number of local employees).

83. Three of the non-OECD members regulate entry and temporary stay of service providers at *sectoral* as well as horizontal level. Each specifies the time-limits permitted, and conditions applying (one has a horizontal economic needs test, and sectoral requirements on minimum number of local employees; one has a horizontal labour market test and requirements for employment and/or training of local employees, with sectoral labour market tests and limits on foreign nationals in senior positions; and one has a horizontal labour market test and sectoral requirements that foreign specialists have local understudies).

84. Regarding nationality/ residency requirements for a proportion of Directors of foreign companies, one non-OECD member has no requirements; whilst five do not specify requirements in their schedules; and three have citizenship and residency requirements.

85. All of the non-OECD members have licencing and/or authorisation requirements for FIAS provision. In four of the non-members this appears to arise from prudential regulation, as there are no numerical or foreign equity participation restrictions on physical establishment. In the other non-members, the licencing/authorisation requirements arise from the restricted market access regime as well.

86. Two non-OECD members have no restrictions on provision and transfer of financial information and data flows, while five are unbound, four are partially unbound with two of those specifying conditions or restrictions. Only one of the non-members has adopted the Understanding on Commitments in Financial Services, which contains additional commitments in this regard.

87. None of the non-OECD members have scheduled the existence of monopoly or exclusive providers relevant to FIAS, although one has a monopoly for financial settlement and clearance services. Five reserve government procurement of all services and/ or financial services as exempt from their commitments.

88. In terms of the “multiple barrier” effect, Table 2 shows two of the non-OECD members are broadly comparable to most OECD members, in not having more than one type of restriction

*per category*; whilst a few other non-members, like a few OECD members, have more than one restriction per category.

89. Table 3 shows that *across the categories*, two non-members are broadly comparable with most OECD members in applying no restrictions apart from sectoral requirements on legal form of establishment, sectoral licencing/authorisation requirements for prudential and/or consumer protection reasons, and horizontal requirements on entry of suppliers and residency of Directors. A few other non-members are comparable to a few OECD members in placing no or few restrictions on “information-only” FIAS but some restrictions on “executable” FIAS.

90. However several of the non-OECD members are either unbound for, or directly restrict or place restrictive conditions on, *all of* cross-border supply, establishment and legal form, entry and temporary stay of providers, and provision and transfer of financial information and data flows.

**Table 4. Horizontal and sectoral barriers to FIAS**

<b>Restriction</b>	<b>Horizontal</b>	<b>Sectoral or sub-sectoral</b>
Cross-border supply	Unbound or not listed, except Canada, Mexico, Switzerland, Turkey (bound as no restrictions for market access); and Slovak Republic (authorisation required for capital transfers and payments).	<u>Commercial presence or authorisation</u> required for some activities (Canada, EC, Japan) <u>Other restriction</u> (Philippines, Singapore, Slovak Republic, Malaysia) <u>Unbound</u> (Korea, Mexico, Poland, Brazil, Chile, Indonesia, India, Thailand (partial))
Consumption/purchase abroad	Unbound or not listed, except Canada, Mexico, Switzerland, Turkey (bound as no restrictions for market access).	<u>Registration</u> required (Canada) <u>Licence/authorisation for payments</u> (Korea, Slovak Republic) <u>Local partnership</u> required (Malaysia) <u>Unbound</u> (Korea, Mexico, Brazil, Chile, India) <u>Partially Unbound</u> (Poland, Indonesia, Malaysia, Thailand)
Investment/establishment	<u>Screening (automatic)</u> (Australia, Canada, EC (3 members), Iceland, Turkey, US) <u>Economic needs or national interest test</u> (Canada, Chile, Malaysia, Philippines) <u>Authorisation</u> (Poland) <u>Case-by-case approval</u> (Brazil, Indonesia) <u>Limits on foreign equity participation</u> (Indonesia, Malaysia, <u>Joint venture only</u> (Indonesia)	<u>Authorisation</u> for “executable” services (Poland, Slovak Republic) <u>Equity limits and/or limits on scope of operations</u> (Mexico, Brazil, Chile, India, Indonesia, Malaysia, Philippines, Singapore, Thailand) <u>Unbound liberalisation</u> (Korea, Thailand)
Restrictions on legal form of establishment	<u>Only joint stock company or joint venture as private limited liability company</u> (Brazil, Indonesia, Thailand) <u>or representative office</u> (Indonesia).	<u>Legal form specified</u> for relevant activities (Canada, Czech R., EC, Hungary, Iceland, Japan, Mexico, Poland, Turkey, Hong Kong, Brazil, Chile, India, Indonesia, Malaysia, Philippines, Singapore, Slovak Republic, Thailand) <u>Unbound liberalisation</u> (Korea); <u>Unbound</u> (Argentina)

Table 4. Contd.

Restriction	Horizontal	Sectoral or sub-sectoral
Licensing or authorisation required for establishment (a) prudential/consumer protection reasons (also for cross-border supply) (b) to limit number or equity share of foreign suppliers		(a) Czech R., EC, Iceland, Poland, Turkey, US, Argentina, Chile, Slovak Republic (b) Brazil, India, Indonesia, Malaysia, Philippines, Thailand
Requirements for nationality (N), citizenship (C) or residency (R) of proportion of Company Directors	Australia (R), Canada (R), EC (R), Hungary (C/R), Iceland (R), Korea (C/R), Norway (R), Poland (C), Switzerland (R), Chile (C/R), Philippines (C/R), Singapore (N/R), Slovak Republic (R), Thailand (N/R) <u>Unbound</u> (Mexico, Argentina, Indonesia, India, Malaysia) <u>Unbound but no restrictions</u> (Hong Kong China)	Brazil (R), Thailand (N/R)
Temporary entry and stay of services suppliers	All countries in the study have horizontal requirements; except Hong Kong China (unbound)	<u>Labour market testing, minimum local employees and training thereof</u> (Indonesia, Malaysia, Thailand)
Limitations on data flows (a) consumer protection reasons (b) other limitations in schedule (c) non-application of Understanding on Commitments in Financial Services and/or unbound for financial information and data provision/transfer	(a) EC	(b) <u>Limitations specified</u> (Hungary, Iceland, Malaysia, Singapore) (c) <u>Unbound</u> (Korea, Mexico, Poland, Brazil, Chile, India, Indonesia, Philippines, Thailand)
Monopoly or exclusive supplier relevant to FIAS providers		Poland (public telephony) Norway (securities registration) Brazil (settlements and clearances)
Subsidies	Most countries in the study have various horizontal commitments/ limitations; some are unbound.	
Government procurement exemptions	India, Malaysia	Argentina, Brazil, Chile (designated entities for government financial services)
IPR enforcement issues	Several developing countries	
Other (land purchase, tax, etc)	Several countries have horizontal measures/limitations	National treatment limitations on taxation.

*Draft indicative list of measures affecting international trade in FIAS.*

*Cross-border supply*

Non-adoption of Understanding on Commitments in Financial Services.

Commercial presence in-country or local authorisation required for marketing of services, or provision of FIAS tied to “executable services”; derived from prudential and/or consumer protection regulatory measures applied on a transparent, accessible and non-discriminatory basis.

Commercial presence in-country in the form of local partnership required, to maintain supply advantage for permitted local providers.

Commercial presence in-country required or authorised supply limited to specified “brand-name” entities.

Cross-border transfer of capital, payments and/or use of credit cards for such transactions subject to authorisation or not permitted.

Requirement to use specified network access or connection provider.

Access and/or connection to Internet or other forms of electronic network limited.

Unbound.

*Consumption/purchase abroad*

Non-adoption of Understanding on Commitments in Financial Services.

Local registration of off-shore provider required for marketing of services, or provision of FIAS tied to “executable services”; derived from prudential and/or consumer protection regulatory measures applied on a transparent, accessible and non-discriminatory basis.

Permitted only through a designated local partner, to maintain supply advantage for permitted local providers.

Consumer access restricted only to firms with commercial presence in-country or to specified “brand-name” entities.

Transfer of capital, payments and/or use of credit cards for such transactions subject to authorisation or not permitted.

Consumer required to use specified network access or connection provider.

Consumer access and/or connection to Internet or other electronic networks is limited by regulatory-based monopoly or exclusive authorisation system.

Unbound.

*Physical establishment*

Automatic screening for national security/ national interest policy reasons.

Approval subject to demonstrated capacity to meet prudential standards.

Non-adoption of Understanding on Commitments in Financial Services or non-recognition of a right of establishment.

Approval required, based on economic needs test.

Limitation on scope of foreign business to specified activities.

Limitations on foreign entry:

- Limitations on permitted foreign equity participation in an existing or new business
- Foreign participation only permitted in existing business; no new businesses.
- Joint-venture with majority local partner only.
- Limited number of licences for core business.
- Case-by-case consideration without consistent, clear criteria for approval.

*Legal form of foreign company*

Branching, locally incorporated subsidiary or representative office permitted.

Branching not permitted or quotas on number and/or geographic location of branches.

Only representative office permitted, for promotional reasons and undertaking research for head office, which is not to be made available in-country.

Only one legal form permitted (eg, joint-stock company, private limited liability corporation, joint-venture).

*Licensing/authorisation for provision*

Licensing, authorisation or registration required for prudential and/or consumer protection regulatory reasons applied on a transparent, accessible and non-discriminatory basis.

Licensing and authorisation to provide granted only to companies permitted to establish, with licences limited numerically or subject to significant limitations on foreign equity participation, employment of specified number of local staff, etc.

*Nationality/residency requirements for foreign service providers*

Requirement that providers established in one part of a country have a minimum number of resident providers or agents therefor for provision in another part of a country.

Requirement that CEO be national or citizen of host country.

Requirement that more than 50% of directors be national of host country.

Requirement that all directors be resident of host country.

*Temporary entry/stay of service providers*

Bound only for definitions of personnel permitted, with generally applicable time-limits and/or conditions not specified, such that these may be then be arbitrarily or discriminatorily applied.

Permission subject to general economic needs test.

Permission subject to general or specific labour market testing and non-availability of local staff, with the latter decided by host authorities without input from the foreign company concerned.

Requirements for local recognition of experience and/or qualifications for professionals and specialists, for which the criteria is vague, non-transparently or arbitrarily applied, or discriminatory.

Permission subject to passing local examination to be recognised as professional or specialist.

Requirement that specified, significant proportion of staff be nationals of host country, regardless of experience/qualifications, and that a specified proportion of foreign staff have local understudies for training/ transfer of skills.

Numerical limitations on foreign nationals in senior positions (eg., company managers, executives, senior professionals and specialists) and/or requirements of a specified number of host-country nationals relative to foreign nationals in each such category.

*Restrictions or limitations on provision, transfer and processing of information and data*

Non-adoption of Understanding on Commitments in Financial Services.

Transfer of information and data by foreign affiliates established in a country to their head office and sister branches in other countries subject to existence of controls to safeguard the integrity and confidentiality of the information, according to clear criteria for such.

Requirement that domestic firms inform a designated central entity of the balances of service providers' accounts held by non-residents.

Requirement that provision and transfer of all or specified types of information take place on designated or monopoly networks.

Prohibition on representative offices established to provide research for foreign parent from publishing or circulating their work in the host-country.

Prohibition on foreign affiliates established in a country transferring specified types of financial information to their parent company.

Requirement that personal or commercial data is not to be transferred out of the country in which it was generated, without specifying the policy reasons for the restriction or permitting transfer subject to adherence to reasonable standards.

General prohibition on transfer of specified types of data (personal, financial institutional, commercial) without specifying the policy reasons for the prohibition or permitting transfer subject to adherence to reasonable standards.

Unbound.

#### *Monopolies or exclusive providers*

In view of the diverse nature of FIAS, and the global and largely private-sector nature of the financial services sector, monopolies are not a significant feature. Three examples of monopoly/exclusive provision were located in this study:

- Requirement to use the monopoly public telephony system for provision and transfer of financial information and data;
- Monopoly for securities registration;
- Monopoly for financial settlements and clearances.

#### *Subsidies*

There appear to be no specific instances of subsidy to the industry; however, several non-OECD members have left modes 1 and 2, cross-border supply and consumption abroad unbound specifically in relation to subsidies. This could enable various forms of subsidies to be provided for such provision in the future, eg., to local firms in the form of start-up funding, technology or telephony subsidy, etc.

#### *Government procurement exemptions*

This category is of minor relevance to FIAS, except to the extent that a government is active in financial market trading. In this regard, several non-OECD members reserve government procurement of financial services to designated local entities.

*IPR protection and enforcement*

This category is relevant to FIAS in terms of the sophisticated copyright-protected computer software and systems used to generate FIAS, and proprietary traded information and analysis. In this regard, one of the national trade barriers reports used as a source for this study cites gaps in IPR protection regimes, and deficiencies in enforcement, for software as existing in a number of non-OECD countries.

**SECTION 4. ISSUES FOR REFLECTION**

91. The Working Party at its meeting on 22-23 March 1999, has as its principal item of business the agenda for the June 1999 Services Experts meeting. In this context, the Working Party may wish to structure its consideration of this paper along the following lines:

- The reformatting of the country inventories in terms of improved user-friendliness;
- The addition of the analytical section (section 3) in terms of providing a clearer picture of the main types and relative incidence of barriers; which are horizontal and which sectoral; and a draft “reference list” of such barriers and underlying policy issues;
- Whether the approach taken in Section 3 provides an effective basis for revisions to/ finalisation of the other sectoral papers; and whether there are additional elements/approaches that could be included.
- How to undertake further analysis of the “multiple barrier” effect created by the incidence of several barriers in combination within a category, or barriers of varying degrees of restrictiveness across categories.
- The principal policy-related issues arising from this paper that should be put to the June 1999 Services Experts Meeting for further discussion. Some options in this regard are set out below.

*Scheduling*

- Possible ways to improve the “user-friendliness” of GATS schedules, through for example considering various “minimum/standard” definitions or descriptions that should be included.
- Appropriate scheduling approaches for cross-border supply and purchase abroad in the age of the Internet; including whether certain of the market access restrictions presently scheduled by some countries (ie., non-prudential based measures) may not be rendered obsolete by the growing role of open public networks such as the Internet.

*Classification*

- How to ensure appropriate classification of, and scheduling of commitments for, services that bundle information across several sub-sectors (or indeed several sectors), and services that bundle information and transactions.

*Liberalisation*

- Ways to achieve further liberalisation and/or clearer and more commercially meaningful scheduling of commitments in various categories of sector-specific and horizontal measures. In this regard, the Secretariat proposes to provide a paper for the Experts meeting that consolidates from the three sectoral papers a list of horizontal measures, together with the individual lists of sector-specific measures.