Working Party of the Trade Committee

ASSESSING BARRIERS TO TRADE IN SERVICES

REVISED CONSOLIDATED LIST OF CROSS-SECTORAL BARRIERS

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ASSESSING BARRIERS TO TRADE IN SERVICES

REVISED CONSOLIDATED LIST OF CROSS-SECTORAL AND SECTOR-SPECIFIC BARRIERS

Introduction

1. The Secretariat was asked to prepare a revised version of the initial Draft Consolidated List of Cross-Sectoral Measures Affecting Trade in Services (TD/TC/SE(99)2 and CORR), to develop a kind of informal “reference list” of the principal measures affecting trade in services. It was agreed that the revised list should:

   - Organise the measures therein according to three broad categories: (i) little or no effect on trade, (ii) restrictive effect on trade, (iii) prohibitive/highly restrictive effect on trade.

   - Update the cross-sectoral list in the light of further sectoral studies completed.

   - Provide an indication of additional sector-specific measures from each sector, as appropriate.

   - Provide examples of “combinations of measures” wherein two or more measures in combination have a more restrictive effect than is indicated by the categorisation of each such individual measure (e.g. where several measures from the “restrictive” category, operating in combination, might thereby exert a highly restrictive effect on trade).

2. Some other suggestions were made, for example to develop explanatory notes for the list regarding which GATS Articles apply to the measures or to indicate this alongside each measure, including Article II (MFN), Article VI (Domestic Regulation) and Article XIV (General Exceptions), along with Article XVI (Market Access), Article XVII (National Treatment); and to add an indication of the “frequency” with which each measure occurs or which countries have the measures. However, it was felt that it was not the OECD Secretariat’s role to make judgements on the applicability of GATS Articles to individual measures, and that the development of the list was intended to be a means to an end (i.e. as an input to consideration of “which barriers matter”) rather than an end in itself (i.e. as a list of “who has what barriers”). As well, the frequency with which individual measures occur in the overall sample would not in itself be a reliable guide to which measures mattered. Therefore these two elements (the applicable GATS Articles and frequency/country indicators) have not been incorporated into the revised list.

3. Accordingly this revised list updates the cross-sectoral list, and organises it according to the three categories noted above. The initial list covered cross-sectoral measures from the financial information, environmental and wholesale trade sectors. The use of the term “cross-sectoral” simply meant that the measures on the list occurred in each of these sectors; it did not necessarily mean that all the measures in the list were “horizontal” (i.e. all-sectors) measures in the GATS sense of that term. Many were included in horizontal chapters of at least some countries’ schedules, whilst other countries scheduled some of those same measures sectorally, across more than one sector. This country variation meant that, in a
consolidated list, it was not technically feasible to indicate which measures were “horizontal” and which were “cross-sectoral” but not horizontal.

4. While measures scheduled as “horizontal” automatically apply to all sectors, even sector-specific measures found in the financial information, environmental and wholesale trade sectors tended to arise for at least some countries across the three sectors. However, in updating the list to include tourism services, retail trade services and air cargo services, it became apparent that, while some measures were applicable, not all of the measures included on the list also applied to retail trade services (where a number of the barriers are sector-specific), or to tourism (which, in terms of GATS commitments, is relatively liberal overall). Air cargo services also have very specific characteristics and are specifically regulated. While there is some overlap between measures for this sector and others (for example with regard to investment limitations and residency requirements), sector-specific measures dominate in air cargo services, in particular, in relation to traffic rights, which are governed by bilateral agreements.\(^1\) *Annex 1* thus includes some examples of sector specific measures for these sectors.

5. In organising the list according to the three categories of restrictiveness, the Secretariat has not seen itself as exercising “divine judgement” but rather has sought to present a basis for further discussion on the relative effects on market openness of different types of measures. Some measures may be seen as on the borderline between categories depending on how they are applied in practice. For example, the requirement to use a monopoly provider could be judged to be restrictive or highly restrictive, depending upon the terms and conditions imposed. Equally, some measures may be seen as more restrictive for some sectors than others - for example, a requirement to form a local partnership may be viewed as not particularly onerous in architecture services, where local knowledge might be considered helpful in managing country specific elements of a project. New technology may also have implications for the degree of restrictiveness of a measure. A local registration requirement currently viewed as having little/no restrictive effect on trade may indeed be burdensome for firms supplying services worldwide via electronic commerce. In cases where a measure may thus be more or less restrictive depending on how or to which sectors it is applied in practice, the Secretariat has put the measure concerned into the less restrictive of the two categories in question. It should also be noted that no attempt has been made to order measures *within* each of the three categories. Similar caveats regarding the attribution of degrees of restrictiveness also apply to the examples of "combinations of measures" in *Annex 2*.

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1. The GATS Annex on Air Transport Services states that the GATS shall not apply to measures affecting traffic rights, however granted, or to measures affecting services directly related to the exercise of traffic rights, with the exception of three specified services to which the GATS does apply (aircraft repair and maintenance services; selling and marketing of air transport services and computer reservation system services). The WTO Council for Trade in Services sectoral paper on Air Transport Services - WTO document S/C/W/59 - notes that, as services related directly to the exercise of traffic rights, air cargo or air freight services are presently outside of the scope of the GATS. See “Assessing Barriers to Trade in Services: Air Cargo Services” TD/TC/WP(99)57/FINAL.
CONSOLIDATED LIST OF CROSS-SECTORAL MEASURES AFFECTING TRADE IN SERVICES

Cross-border supply (mode 1)

Little/no restrictive effect on trade

- Local registration required for marketing and/or supply of services.
- Requirement to appoint local agent and maintain local professional address.

Restrictive effect

- Requirement to obtain authorisation, licence or permit in order to market and supply services.
- Requirement to use monopoly or otherwise specified network access or connection provider.
- Access and/or connection to Internet or other forms of electronic network limited by specific government regulation.
- Cross-border transfer of capital, payments and/or use of credit cards for such transactions subject to authorisation.

Prohibitive/highly restrictive effect

- Requirement for full commercial presence; commercial presence required but granted only to specified "brand name" entities; or local partnership required to maintain supply advantage for permitted local providers.
- Cross-border transfer of capital, payments and/or use of credit cards for such transactions not permitted.

Consumption/purchase abroad (mode 2)

Little/no restrictive effect on trade

- Local registration of offshore provider required for marketing of services, applied on a transparent, readily accessible and non-discriminatory basis.

Restrictive effect

- Permitted only through a designated local partner, to maintain supply advantage for permitted local providers.
− Consumer required to use a monopoly or otherwise specified network access or connection provider.

− Consumer access and/or connection to Internet or other electronic networks available only through monopoly or exclusively authorised provider.

− Transfer of capital, payments and/or use of credit cards for such transactions subject to authorisation.

**Highly restrictive/prohibitive effect**

− Permitted only through firms with commercial presence in-country or specified “brand-name” entities.

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

**Physical establishment of commercial presence (mode 3)**

**Investment approval**

**Little/no restrictive effect on trade**

− No prior notification, screening, authorisation or registration of proposed foreign investment required.

− Uniform notification requirements for both foreign and domestic investors.

− Automatic approval of foreign investment after notification/reporting on investment intentions.

− Automatic screening of foreign investors for national security/ national interest policy reasons.

− Subject to approval based on policy guidelines and overall national interest considerations but without economic needs test or local participation requirements.

− Approval subject to demonstrated capacity to meet fiduciary standards.

− Automatic approval except for specific authorisation or concession requirement for foreign investment in public entities or public works, newly privatised companies or government-contracted services.

− Automatic approval below certain value thresholds, but subject to review and approval above fixed value thresholds.

**Restrictive effect**

− Scope of foreign business limited to specified activities, narrower than those permitted local firms.
− Approval of foreign investment required, based on economic needs test or “net national benefit.” This may also include general or specific, indicative or mandatory requirements on the foreign firm regarding local employment, technology transfers, ongoing investment, etc. (Note: the criteria for and application in practice of economic needs tests is the crucial determinant of whether it is moderately, quite or highly restrictive).

− Approval required for full or majority foreign ownership.

− Full foreign ownership not permitted, joint venture with local partner mandatory but foreign partner may hold 51% of equity.

**Highly restrictive/prohibitive effect**

− Case-by-case authorisation at political level with ceilings on permitted foreign investment varying by sector or within sectors; without clear, consistently applied criteria for approval.

− Majority foreign ownership not permitted, only minority share in compulsory joint venture permitted.

− Acquisition of full or part share of existing business not permitted, restrictions on establishment of new business.

− No establishment of new businesses permitted. Numerical quotas for operating licence. (This may apply only to foreign investors, or to both foreign and domestic investment). Hostile take-over of existing business not permitted.

− No establishment of new businesses permitted, only minority shares in existing businesses permitted.

− Existence of monopoly or exclusive provider such that foreign investment to establish a competing firm is not permitted.

− Reservation of some sectors or activities, state-owned enterprises to be privatised, or government-contracted services, for investment only by nationals or permanent residents.

**Legal form of foreign company**

*No/little restrictive effect on trade*

− Branching, locally incorporated subsidiary or representative office permitted.

*Restrictive effect*

− Corporations, private limited companies and subsidiaries permitted, but direct establishment of branches of foreign companies not permitted.

− Branching permitted subject to quotas on number and/or geographic location of branches.
– Only sole proprietorships or partnerships permitted (typically applies cross-sectorally in the professional services).

**Highly restrictive effect**

– Only joint venture or representative office permitted.
– Only joint venture as limited liability company permitted.
– Incorporation required with foreign equity participation ceiling and mandatory local partnership.
– Only representative office permitted, for promotional reasons and undertaking research for head office only.
– Only one legal form permitted (e.g., joint-stock company, private limited liability corporation, joint venture).

**Licencing/authorisation for provision**

**Little/no restrictive effect on trade**

– Licensing, authorisation or registration required; applied on a transparent, accessible, automatic and non-discriminatory basis.

**Restrictive effect**

– Licensing and authorisation to provide services granted only to companies permitted to establish, with licences limited numerically or subject to an economic needs test or to significant limitations on foreign equity participation, employment of specified number of local staff, etc. (Note: the criteria for and application in practice of an economic needs test is the determinant of its degree of restrictiveness).

**Nationality/residency requirements**

**Little/no restrictive effect on trade**

– Natural persons designated as local agents of foreign companies must be permanent residents.
– Requirement that foreign established companies have at least one locally resident director, one local manager and that each branch have at least two resident agents.

**Restrictive effect**

– 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 are national of host country.

**Highly restrictive/prohibitive effect**

− Requirement that all directors are resident of host country.
− Prior residency required to obtain operating licence whilst residency not permitted without licence.

**Temporary entry/stay of service providers (mode 4)**

**Restrictive effect on trade**

− Bound only for definitions of personnel permitted, with generally applicable time-limits and/or conditions not specified, such that these may then be arbitrarily or discriminatorily applied.
− Permission subject to passing local examination to be recognised as professional or specialist; access to the examination by foreigners may be restricted.
− Requirement to complete or undertake further training in the host country in order to be recognised as professional or specialist.
− Permission subject to approval and labour market tests for specific categories of personnel.
− Permission for intra-corporate transferees and specialists is 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.
− Approval for intra-corporate transferees and specialists are subject to general economic needs test.
− Requirements for local recognition of experience and/or qualifications for professionals and specialists, for which the criteria are vague, non-transparently or arbitrarily applied, or discriminatory.
− Requirement that a specified proportion of foreign staff have local understudies for training/transfer of skills.
− Authorisation of intra-corporate transferees subject to performance requirements (e.g. employment creation, transfer of technology, ongoing level of investment).
− Requirement that specified, significant proportion (e.g. >70%) of staff of foreign established company be nationals of host country, regardless of experience/qualifications.
− Numerical limitations on foreign nationals in senior positions (e.g. 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.
Highly restrictive/prohibitive effect

− Only intra-corporate transferees permitted, subject to a limit of 2 foreign transferees per operation, and mandatory training of local staff.

− Provision of services by self-employed persons not permitted.

Restrictions or limitations on provision, transfer and processing of information and data (all modes)

Little/no restrictive effect on trade

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

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

Restrictive effect

− 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.

Highly restrictive/prohibitive effect

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

− Requirement that personal or commercial information 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.
ANNEX I: SOME SECTOR SPECIFIC EXAMPLES

Tourism Services

- Opening of bars, cafes and restaurants subject to an economic needs test.
- Tax incentives limited to firms with majority national ownership.
- Tourist guides restricted to nationals, or to the national organisation of tourist guides, with licenses granted to foreigners on an ad hoc and temporary basis only.
- Foreign investment only permitted for 3-5 star hotels.
- Requirement that service providers be companies also incorporated in their home jurisdiction.
- Discriminatory capital requirements for foreign providers.

Retail Trade Services

- Economic needs tests for department stores or for any new retail outlet.
- Limitations on the sales areas of stores, or the number of stores, operated by foreigners.
- Specific retail activity prohibited by foreigners.
- Requirement to rely on supply by domestic wholesalers.
- State monopolies/ state trading enterprises in retail operations.
- Requirements imposed on foreign manufacturing investors concerning their distributorship.
- Alcohol retailers can purchase only from domestic licensed wholesalers; alcohol retail licenses not issued to agents of non-citizens; numerical limitations on the number of liquor licenses with a 5 per cent preference for residents.
- Discriminatory subsidies granted to traditional domestic retailers (SMEs).
- Restrictions on the acquisition of non-residential commercial real estate.
Air Cargo Services

Five main groups of measures affecting trade in air cargo services can be identified. The first three: licensing authorisation, investment (ownership and control) and nationality/residency requirements are similar to other service sectors; but two - traffic rights (regulated by bilateral air service agreements) and infrastructure access rules - reflect the particularities of air transport.

**Licensing/Authorisation**

- Licenses subject to specific conditions.
- Companies must meet financial and management criteria determined by the government before the license if granted and later they are subject to ad hoc monitoring.
- Licenses are given to companies that own their own aircraft or lease aircraft that are registered domestically.

**Investment (ownership-control)**

- Foreign ownership permitted up to a certain value threshold; minority foreign ownership in a carrier with dispersed ownership may be prohibited if it is deemed to imply foreign control over the company.
- No establishment of new business permitted, only minority share in existing business permitted.
- Monitoring the capital and management structure of the carrier, with the aim that the strategic control of the carrier remains local.

**Nationality/residency requirements for ownership and control of air transport companies**

- Requirement that national citizens are employed as crew.
- Requirement that CEO/all directors/majority of voting interests are owned and controlled by citizens/residents of the host country or that the company must be effectively controlled by citizens of the host country.
- Prior residency of the host country is a required to obtain a license.
- The operational location of the company must be in the host country; legal residency of the company in the host country is required.
- Cabotage reserved for national airlines.
**Infrastructure Access Rules**

- The mechanism of slot allocation in congested airports may favour certain carriers (domestic carriers/big carriers/incumbents etc). Most countries’ major international airports’ slots are allocated in inclusive, twice-yearly conferences under IATA auspices. Preference is given to incumbents’ retention of slots in use and to promoting new entry.

- Airport use is limited at off-peak hours due to the noise impact problems. Use of certain (older technology) aircraft is limited due to noise regulations.

- In some countries, tarmac ground handling and terminal services are an area of monopoly or exclusive supply by the airport authority or by national airlines is by a private provider, involving monopolistic inefficiency and pricing.

**Traffic Rights**

The GATS does not apply to traffic rights, which are regulated by bilateral and regional agreements. Bilateral air service agreements can be classified as traditional, "pre-determined" type (TP); "Bermuda" type (B); "Partially Liberalised" (PL) and "Multiple Point" Open Sky (MOS) agreements.

a. **Designation of airlines**

- Each country designates one single company to operate on the bilateral route (TP).

- Each country designates one or several airlines on each route (B).

- Multiple designation of airlines² (PL and MOS).

b. **Route access**

- Limited number of points/routes operated by designated airlines as listed in the bilateral’s annex (TP and B).

- Free access to designated routes, between specific points. Either departure or arrival points may be left open and unrestricted. (PL).

- Open route access - airlines can fly on any route between two states. (MOS).

c. **Capacity regulation**

- Capacity and frequency to be agreed ex ante, or 50:50 split. Inter-airline revenue pool for sharing total route revenue may be required by certain bilaterals. (TP).

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2. In some cases ownership restrictions have been relaxed
− There is no ex ante capacity control on each route. (Safeguard: in the form of capacity review clause, if airlines on one party are adversely affected by ex post outcomes.) (B).

− No frequency or capacity control. (PL and MOS).

d. Availability of 5th freedoms

− Few 5th freedoms granted. (TP).

− Several 5th freedoms may be granted, but total capacity must be proportional to the needs of the main bilateral route. (B).

− Extensive 5th freedom rights are granted. (PL).

− Unrestricted 5th freedoms. (MOS).

e. Tariffs and rates

− Tariffs and rates must be related to costs plus “reasonable” profit. Approval of tariffs and rates by both governments is required. Airlines are incited or encouraged to use IATA procedures before submitting tariff and rate proposals to their governments. (TP and B).

Double disapproval: filed tariffs become operative unless both governments disapprove. (PL and MOS).

3. 5th freedom is an aviation right:

1st freedom rights grant a foreign carrier the right to fly over the home country without landing.

2nd freedom rights grant a foreign carrier the right to land at specified points in the home country, for purposes of refuelling and maintenance, but not to pick up or disembark traffic (passengers, cargo or mail), while en route to another country.

3rd freedom rights allow a foreign carrier to pick up originating traffic in the home country, for transport to the foreign country in which the carrier is based.

4th freedom rights allow for traffic that was picked up by a foreign carrier outside the home country to be disembarked at specified destinations in the home country.

5th freedom rights (also called beyond rights) permit the foreign carrier to pick up or disembark traffic en route.

6th freedom rights allow the carrier to pick up and put down traffic between foreign states via home state (by combining third and fourth freedom rights).

7th freedom rights grant the right to operate stand-alone services entirely outside the territory of its home state, to carry traffic between two foreign states.

8th freedom is the right of an airline to carry traffic between two points within the territory of a foreign state (cabotage).

Air freedoms are offered on an individual route basis.
ANNEX 2: EXAMPLES OF COMBINATIONS OF MEASURES

Individual measures included here may have little or no restrictive effect on trade, or a restrictive effect; while in the combinations presented here (based on real examples drawn from sectoral inventories) they have a more or even highly restrictive effect. Each example represents multiple measures of an individual country. The symbol (H) indicates that the measure in question applies horizontally.

Example (1) Quite restrictive measures in all four modes, all sectors

Modes 1 and 2: Financing of purchases abroad with credit cards is restricted (H).

Mode 3: Approval of foreign ownership and operations are subject to a national interest test (H). A presidential decree is required for the establishment of branches and subsidiaries of a foreign company (H).

Mode 4: Entry and temporary stay of foreign technicians, professionals, managers and directors is subject to approval requirements (criteria include: justification of employment against the domestic labour market, provision of new technology, link between the service provider in the host country and its foreign headquarters, increase in productivity or minimum investment threshold); and Ministry of Labour approval required for specialised technicians and highly qualified professionals to work under temporary contracts for entities established in the host country (H).

Other measures: Foreign companies must employ two host country citizens for every three foreign employees, the former must account for two-thirds of payroll (H). Foreign suppliers are disadvantaged in public procurement by “Buy National” policies at national, state and municipal levels (H). Two-thirds of advertising film footage and all sound-tracks must be produced in the host country (H).

Example (2) Somewhat restrictive measures in modes 3 and 4, all sectors

Mode 3: Acquisition by a foreigner of a controlling interest in a domestic business with assets exceeding a certain limit (e.g. $100 million) is subject to approval, as is the establishment of a new business or acquisition of controlling interest in a business relating to the host country’s cultural heritage or national identity (H). Notice requirements apply to certain foreign investments (e.g. establishment of a new business, acquisition of controlling interest in businesses that are “culturally sensitive”) (H). Limitations may be imposed on foreign participation in service suppliers owned by the host country government (H). The majority of directors of federally incorporated companies and some sub-centrally incorporated companies are subject to citizenship and residency requirements (H).

Mode 4: Entry and temporary stay of foreign service suppliers is limited to “business visitors” (90 days); “intra-corporate transferees” (3 years); and professionals on services contracts, with approval where appropriate from the relevant domestic professional association (90 days) (H).

Other measures: Preferences in public procurement for services owned and operated by host country citizens exist in some sub-federal jurisdictions (H). There is limited access for foreign-produced television...
material to local broadcast media (H). Acquisition and use of land by foreigners is restricted by various sub-federal regulations (H).

**Example (3): Restrictive measures for several modes in the environmental sector**

**Mode 1:** Commercial presence required for cross-border supply of architectural services.

**Mode 3:** The amount of foreign investment must be over a minimum threshold (H). Foreign investors must notify the host government of their proposed investments; if the activity appears on the “negative list” or is related to areas deemed sensitive such as public health and safety, it may be rejected (H). Companies deemed as “foreign” pursuant to the Alien Law may acquire land for business purposes and subject to approval or notification; leases are subject to approval (H). Quotas exist for collection and treatment services of industrial waste-water. The provision of collection, transport and disposal of industrial refuse services, cleaning services of exhaust gases and noise abatement services, purity testing and analysis services are subject to an economic needs test. Some construction services, such as those for long distance and local pipelines, installation and assembly, are subject to limits on contract values and a compulsory sub-contracting system; new licenses are issued each year.

**Mode 4:** “Executives”, “senior managers” and “specialists” stays are limited to three years, extendible if deemed necessary; and 90 days, depending on their function; representatives of foreign suppliers not making direct sales of services to the public, stay limited to 90 days. (H)

**Other measures:** Licences are issued annually in the construction and engineering sectors; in order to qualify for public projects, foreign firms must obtain a licence for either construction, construction supervision or design. (This may be costly (US$800,000 per licence) and time-consuming, and few of the related laws or application forms have been translated into other languages). Registration is required for foreign engineering firms.

**Example (4): Slightly restrictive measures for several modes in the tourism sector**

**Mode 1:** Commercial presence required for cross-border supply of services by travel agencies or tour operators. Foreign travel agencies may not organise tours abroad.

**Mode 3:** Foreign investment for commercial presence subject to authorisation (H) and limited to certain legal forms of company (H). Required fees and guarantees higher than for domestic providers. Responsible director of agency must be a national.

**Mode 4:** Provision of tour guiding services may be restricted to nationals.

**Example (5): Residency restrictions across more than one mode for a particular sector**

**Mode 1:** Engineers supplying services in the country must be residents of the country.

**Mode 3:** Establishment of a commercial presence in the country involves residency requirements for at least one director, and a local manager requirement - with the manager being either a host country citizen, permanent resident or holder of an employment pass (H). Branches of foreign companies must have at least two locally-resident (same criteria as for the local manager) agents (H). Professional work must be supervised by a director registered and ordinarily resident in the host country.
Other measures: Directors of companies supplying architectural and engineering services must be registered with local professional bodies. At least two-thirds of shares of limited corporations supplying architectural and engineering services must be owned by registered architects or allied professionals, being directors, managers or employees. Membership of partnerships supplying architectural and engineering services is limited to registered and allied professionals.

Example (6): Restrictive measures for information and data transfer in a particular sector

Mode 1: Commercial presence is required for the cross-border supply of investment and portfolio research and advice to the public.

Mode 3: Proper controls, including allowing the responsible government agency on-site access to data and information at the place of processing, is required for branches of foreign banks established in the host country to be able to transmit data to their head office or other branches. Foreign banks and financial services companies are not permitted to operate ATMs beyond their banking premises or open additional branches. The provision of financial data processing services to banks and merchant banks is subject to domestic laws as to confidentiality of customer information.

Example (7): Varying restrictive measures for mode 3, depending on the sector

In “priority sectors” foreign equity participation is limited to 49% (H). Approval is required for foreign investment in other sectors; determined on a case-by-case basis (H) (this usually does not exceed 51%). All foreign investment in financial services must be approved by the Foreign Investment Promotion Board and the appropriate regulatory authority; the percentage of foreign ownership permitted varies depending upon the type of financial service.

Example (8): Restrictive measures for mode 3 in a particular sector

For construction and related engineering services, and for architectural and engineering services, foreign suppliers must establish partnerships with domestic partners. For joint ventures to provide architectural, engineering and urban planning services, the host country partner must hold the majority share. Registration, approval and accreditation procedures apply for foreign suppliers of architectural, engineering, construction and related engineering services. Foreign construction and related engineering service suppliers are excluded from involvement in government procurement unless local firms are unable to provide the services.

Example (9): Quite restrictive measures for mode 3 in a particular sector

All foreign investment in financial services must be approved by the Foreign Investment Promotion Board and the appropriate regulatory authority; the percentage of foreign ownership permitted varies depending upon the type of financial service. New financial services projects may only be 100 per cent foreign owned when more than $50 million is being invested; up to 75 per cent of shares may be foreign-owned where the investment is worth between $5 million and $50 million and up to 51 per cent for investment of less than $5 million. Investments by foreign bank branches licensed in other financial services companies are restricted to a maximum of either 10 per cent of owned funds or 30 per cent of the invested companies capital, whichever is lower.
Branches of foreign banks wishing to operate in the country require a license from the Reserve Bank. These are limited to 12 per year for both new and existing banks; and may be refused for foreign banks when the maximum share of assets in the host country both on and off the balance sheet of foreign banks to total assets both on and off the balance sheet of the banking system exceeds 15 per cent. Permission from the Reserve Bank is required for establishment of a representative office or opening of a new branch of a non-bank financial services firm. Authorisation from Reserve Bank, SEBI and FIPB required for 100 per cent foreign ownership of non-bank financial subsidiaries in securities and related services. Private banks are prohibited from establishing a subsidiary or mutual fund for at least 3 years after establishment.

Example (10) Restrictive measures for mode 3 in two closely related sectors

Approval requirements apply to foreign acquisitions of engineering firms over a certain limit. Incorporation and residency requirements apply in some sub-federal jurisdictions to some types of engineering and construction services. Investment/ownership for architects who are not locally licensed is restricted. Legal form for architectural services is restricted to either sole proprietorship or partnership. Partnerships between architects and engineers are restricted in some sub-federal jurisdictions.

Example (11) Restrictive measures for mode 3 in two closely related sectors

Economics needs tests apply to the supply of wholesale distribution services in markets and large stores, trade of used cars, gaseous fuels and related products, foreign trade services and wholesale trade centres. Economics needs tests apply to retailing services for used cars and gaseous fuels.