Liberalisation of Financial Services

by Stephen Woolcock,[1]

London School of Economics

Draft not for quotation

Contents

[1] The author would like to thank Rebecca Stokes for assistance in research work and preparing the text, as well as a number of practitioners who were interviewed during research for the paper. The responsibility for the content lies entirely with the author.

Executive Summary

Negotiations on a permanent agreement on financial services in the GATS are scheduled to be completed by mid December 1997. The prospects of success this year are better than in previous attempts in 1993 and 1995, but there is still much to do in a short time and still much work to be done.

The current negotiations are shaped by compromises made during the Uruguay Round negotiations in order to get both developing country and US support for the approach adopted in the GATS. These compromises mean that there is no internal, liberalising dynamic in the negotiations. For the negotiations to succeed it is therefore necessary for all the key participants, which in the case of financial services effectively means some 30 WTO Members, to show the political will needed.

The important developing and newly industrialising countries have made important steps towards liberalisation, but their offers have not yet matched the expectations of the developed economies, especially the United States. Recent turmoil in some Asian financial markets and political difficulties at home have made some developing WTO members nervous about liberalisation, although the framework General Agreement of Trade in Services (GATS) does not prevent countries from regulating capital and financial markets, it only requires them not to discriminate against foreign suppliers of financial services.

The EU is pressing for improved offers which would, for example, bring commitments in the GATS in line liberalisation measures adopted nationally, regionally or in the OECD. But the expectations of the EU are relatively modest and it is unlikely to reject an agreement which includes some improvement on offers made in the last round of negotiations in 1995. The EU is keen to conclude a binding multilateral agreement for financial services. As this requires full US participation, the EU may be tougher in seeking improvements in NIC and LDC offers than it other wise would be, because it recognises that improvements are needed to get US acceptance of the agreement.

The American private service was responsible for getting services onto the GATT/WTO agenda in the but has to date been dissatisfied with the results in terms of market liberalisation. In 1995 it was influential in persuading the US administration not to sign a binding multilateral agreement, because it believed that the US could do better through bilateral negotiations. In 1995 the EU rallied other WTO members and an interim agreement was negotiated without the US. This agreement expires at the end of the year. Bilateral contacts have taken place between representatives European and US financial services companies which has brought EU and US private sector expectations more into line. But if there are not some improvements in the offers from the developing and newly industrialising members of the WTO, the US will again have to decide whether it wants to opt out of a multilateral agreement.

Improved offers may be made if the negotiations gain momentum during October and November, but if the US again opts out of a multilateral agreement, responsibility for supporting the multilateral GATS will fall to the EU. The options for the EU in such circumstances would be to first of all propose a short extension of the negotiations, in order to keep the US committed. If the negotiations can still not be completed by next spring the EU could seek an extension of the existing interim agreement, ideally incorporating any improved offers, at least until the end of 1999. At that time a new round of multi-sector negotiations on services is due to begin, which would offer the possibility of 'trade-offs' between sectors.

Liberalisation of Financial Services

First Draft of Paper

1. Introduction

Mid December 1997 has been set as the deadline for completion of the World Trade Organisation's negotiations on specific liberalisation commitments in financial services. The immediate objective of satisfying this deadline comes as a result of the expiration of a July 1995 interim agreement on financial services. The interim agreement was put together when agreement could not be reached on the completion of the Uruguay Round negotiations in this area, because of divergent expectations on the scope of concrete liberalisation commitments. A number of Asian and south American WTO members made liberalisation offers which they saw to be in line with their status as developing countries or newly industrialising countries (NICs). These offers were considered to be inadequate by the United States, where the private sector which was responsible for getting financial services on the WTO agenda, had higher expectations. As a result the US chose to continue to retain the option of negotiating bilateral agreements rather than concluding a binding multilateral agreement.

Success or failure in the current negotiations will, however, have wider implications. Rule making in the WTO is lagging behind the internationalisation or globalisation of the world economy, especially in services. The General Agreement on Trade in Services (GATS) negotiated during the Uruguay Round was the first major step towards incorporating services into the multilateral system of rules governing commercial policy, but the framework of the GATS has to be followed up by liberalisation commitments in individual sectors. The current negotiations could thus be seen be seen as a litmus test for the response of WTO members to the pressure of globalisation in the financial services sector. The outcome is all the more important because the earlier failures to reach agreement on financial services in 1993 and 1995 raised doubts about the viability of the GATS approach. [1] For individual companies failure would mean at best a delay in
gaining access to new market opportunities. But, if as is to be expected, a large number of WTO Members opt for MFN exceptions (see below) a damaging cycle of sector reciprocity measures could jeopardise existing liberal markets.

A binding commitment to liberalisation of financial services within the WTO could on the contrary provide a considerable stimulus to trade and investment. Services account for a growing share of trade and investment, and the scale of world markets in financial services is such that even marginal efficiencies resulting from increased competition and international investment could have significant multiplier effect on growth.

The sector negotiations on financial services will also provide a litmus test for the commercial policy responses of the key participants to the pressures emanating from the internationalisation of financial markets. Developing countries have long seen the regulation of financial markets and the control of credit provision, as important instruments in their development policies. In many countries policies have become anchored in vested interests and in some cases in constitutions, so change will require a clear commitment from government. In the NICs financial markets have been tightly regulated until quite recently. The financial services industries in such countries are still relatively under-developed and therefore wish to establish international competitiveness before being exposed to international competition. Some NIC governments are also wary of the destabilising effect of to rapid a move towards multilateral liberalisation of financial markets, especially at a time of turmoil in Asian markets.

Of all the participants in the current negotiations it is perhaps the new OECD members, such as South Korea and Mexico, that face the greatest pressure for change. Having committed themselves to becoming OECD members and assuming developed country status, they now face pressure to liberalise financial markets when, in some cases, financial markets are still not very developed. Liberalisation is not even an easy task for the leading OECD countries, which have themselves only liberalised recently. In OECD countries regulatory policies are based on legislation dating back perhaps 50 years, as in the case of the US Glass Steagall Act.

The outcome of the current negotiations therefore depends on a number of questions? Will the Asian and south American NICs say liberalisation has gone far enough for the time being, especially given the recent instability in capital markets, or will they be willing to improve their offers? Will the improved offers be enough to satisfy the OECD negotiators, or more particularly the US financial services lobby? Will the expectations US financial services lobby again exceed what the US's trading partners can deliver, or will the consultations that have been under way with European financial services interests produce more balanced expectations? If the offers still do not satisfy the US demands, will the US again opt for a bilateral approach to market opening negotiations and thus confirm a trend in US commercial policy towards greater reliance on bilateral as opposed to multilateral approaches to commercial policy? If the US opts out in 1997, will the EU again step in and thus indicate a growing willingness to provide a lead in multilateral negotiations?

On one level there is a simple issue at stake. Will the liberalisation offers from a group of some 30 WTO Member countries, but especially from the ASEAN countries, Korea and a couple of south American countries, be sufficient to enable the negotiators from the OECD Members, but especially from the US to accept a binding commitment to multilateral rules? In order to understand the current negotiations, however, it is necessary to delve somewhat deeper into the issues involved. The following section of the paper therefore shows how the untidy - one might say unsatisfactory - nature of the current negotiations was determined by deals made in the Uruguay Round. Section three provides a description of the GATS and the complex negotiating procedures, so that the reader might have a better understanding of the detailed substance of the negotiations. Section four addresses the difficult and controversial issue of the costs and benefits of liberalisation of financial services markets. Given the nature of this issue and the limited space available in such a short paper it cannot, however, provide full coverage of the issues involved. Section five looks at the main barriers to market access in the key markets and finally, section six summarises the positions of the main participants in the negotiations

2. A Brief Negotiating History

At the beginning of the Uruguay Round the main pressure for inclusion of services came from the United States, which was only later supported by the European Union and other OECD countries. Developing countries, led by India and Brazil, were opposed to including services in the scope of GATT, because they argued there were more important barriers to trade in goods to be addressed first, and because they wished to be able to develop their own indigenous service industries. The compromise reached to overcome this difference was that services would be the subject of separate parallel negotiations on services. This separation enabled a GATS framework agreement to be negotiated, but the GATS - like the GATT - contains no liberalisation measures, these still have to be negotiated. As barriers to market access in services take the form of national regulations, liberalisation negotiations in services - and especially in financial services - are much more difficult than in the GATT, where measures at the border constituted the most important trade barriers, at least in the beginning.

A difficulty common the GATT and the GATS, and all multilateral agreements for that matter, is how to accommodate countries at different levels of development. There are perhaps three options for coping with this difficulty; (a) negotiate separate agreements, or as in the case of the GATT provide for a broad exemption (Part IV of the GATT) for developing countries; (b) allow for qualified MFN agreements in which the more developed countries can go further and make more extensive commitments than developing members, as in the case of the Codes on Technical Barriers to Trade and Subsidies - Countervailing Duties negotiated during the Tokyo Round; or (c) require all countries to accept the same rules, but allow for a transition period for the less developed signatories before they must conform to all obligations. A forth option would, of course, be to require all signatories to accept all rules right away. During the Uruguay Round negotiations a number of important GATT Contracting Parties argued that developing countries should graduate to accept full GATT commitments and no longer benefit from the Part IV exemption. It was also argued that the existence of different qualified MFN agreements should be replaced by one agreement. This led to an acceptance that the results of the round should be included in a Single Undertaking to be signed by all Members of the WTO. In other words there could be no separate agreements for Members at different levels of development and no qualification of MFN.

The GATS approach to accommodating different levels of development was therefore to introduce the concept of 'progressive liberalisation', according to which all WTO Members must accept the same commitments, but developing country Members would not be expected to do so immediately. The only trouble is there was no definition of what 'progressive' meant. During the GATS negotiations it also soon became apparent that there was another difficulty with the Single Undertaking. This was that some OECD countries had a limited tolerance of free riders, and were not willing to make MFN commitments when some WTO Members were using the 'progressive liberalisation' provisions of the GATS not to open their markets. This difficulty was overcome by giving WTO Members the option of exempting sectors from the coverage of the GATS. These compromises, made in order to reach agreement, on the GATS framework agreement produced a rather messy ambiguous agreement.

When in 1990 the broad outlines of a framework agreement for GATS began to emerge the United States made clear it was not ready to sign up to a binding framework agreement until there had been progress on concrete liberalisation. It was therefore decided to have negotiations on substantive liberalisation (in the form of binding market access and national treatment commitments) in specific sectors, including financial services, to complement the general GATS agreement. This decision established the basis for separate sector-by-sector negotiations. At the conclusion of the Uruguay Round in 1993 the US was unwilling to sign up to binding obligations concerning its own liberal policies until some other key WTO Members were willing to bind themselves to offer market access and national treatment. [2] To break the deadlock and allow for the completion of the Uruguay Round, it was decided to extend the negotiations on financial services, telecommunications and maritime transport.[3] Each sector negotiation was then put on a different timetable. This decision removed any linkage between financial services and other issues and thus denied negotiators the possibility of breaking deadlocks by making trade-offs between sectors. If a balanced agreement was to be reached it had to be reached within financial services itself.

When the sector negotiations began in 1995, there was therefore pressure to achieve sectoral reciprocity within financial services. After pressing for greater liberalisation commitments and in some cases gaining improved offers, the United States withdrew from the negotiations 24 hours before the June 95 deadline. The US argued that this was necessary because the other countries had failed to match the US liberalism in financial services and that the US would therefore revert to its position of 1993, which was to make use of the MFN exemption for financial services and negotiate bilaterally for better market access.[4] At this point the European Union sought to rescue what had been achieved by inviting the 29 countries (including the EU as one) that had made substantive offers, to stand by their offers. After further negotiation a Second Protocol to the GATS was agreed which provided for an interim agreement until 31 December 1997, hence the current deadline. Sixty days prior to the 31 December 1997, all countries could modify or withdraw their commitments and lists of MFN exemptions.

3. The Structure of the GATS Provisions on Financial Services

In order to understand the nature of the current negotiations it is also necessary to have some knowledge of the GATS, the Annexe(s) and Understanding on Financial Services. Broadly speaking the GATS is constituted of three elements;

- a framework agreement, which contains general provisions covering all sectors;
- scheduled commitments on market access, national treatment and other commitments. (Unlike the GATT, the GATS only binds, for example national treatment, if there is a specific commitment to do so in a schedule); and
- the sector annexes, such as those covering financial services, telecommunications etc, as well as other agreements, such as the Understanding on Financial Services, which contain provisions tailored to the sector concerned.

3.1 General framework provisions

The framework agreement is included in part II of the GATS. This requires MFN from all WTO Members (Article II(1)), but then immediately offers scope for exemptions from MFN (Art II(2)), see below under ‘The Free-rider Issue. The framework agreement includes provisions that facilitate trade in services, such as transparency (Art III), which specifies that all signatories must publish all laws or regulations that affect financial services. Article IV also sets out ‘due process’ requirements in the processing of license applications. These are devised to ensure that the granting of a license to a foreign bank is done fairly and not used as an opportunity of discrimination.

During the negotiations it was recognised that each country must have the right to regulate financial services, in order, for example, to ensure prudential security.[5] The existence of national regulatory policies means that there is always a potential that these will form barriers to market access, whether intentionally or unintentionally. The only sure way of removing all potential barriers to market access is through harmonisation of regulatory policy, which is not feasible in a multilateral agreement such as the GATS. An alternative means of reducing the potential for barriers to market access is the recognition of national regulatory policies, whether mutual or autonomous. For example, the US Federal Reserve or Office of the Comptroller of the Currency could recognise European banks as meeting acceptable regulatory requirements and the EU could recognise US prudential controls. The GATS enables such recognition without requiring it (Art VII), but more especially safeguards the interests of third parties, as such recognition agreements clearly qualify the MFN requirements of the GATS.

Public monopolies play an important role in some service sectors. This is perhaps less the case in financial services than in sectors such as telecommunications, but there remain public monopolies in some developing countries, such as insurance in India (see below) and a few services, such as reinsurance, in certain developed economies. The GATS seeks to ensure that these public monopolies are not abused, by, for example, the cross subsidisation of non-monopoly services by rents from public monopoly rights. Public monopolies are not prohibited, but the GATS more or less requires a standstill. Any new public monopoly would require a waiver from other WTO members on a ¾ majority of WTO Members. There are also, rather weak, provisions on the restrictive business practices (RBPs) of private service providers, which oblige WTO members to assist in cases where a Member believes RBPs represent a barrier to market access.

There are a number of broad exemptions and exclusions from the GATS framework agreement. For example, it is possible to restrict trade in (financial) services, subject to certain conditions, in order to safeguard balance of payments (Art XII), so that restrictions on the transfers of funds could be possible in a currency crisis. There is a general exemption to protect public morals, as well as human, animal, plant and health. The former could, for example, apply to restrictions on the sale of certain videos. The later is equivalent to the GATT Art XX exemption, which has been the focus of efforts to integrate trade and the environment. There is also a general national security exemption in Article XIV. A safeguard clause (equivalent to Art XIX of the GATT) is still to be negotiated (Art X) as are provisions on subsidies (Art XV). Government procurement of services is excluded, although there is a requirement to negotiate on government procurement of services in 1997.

Like GATT the GATS also provides an exemption from MFN obligations for regional agreements (Art V). Indeed, the GATS wording is equivalent to that of GATT Article XXVI, namely that regional agreements should cover ‘substantially all trade’ (Art V1(a)). In the GATS substantially all trade means that there should be no *a priori* exclusion of any sector or mode of supply (.i.e. cross border, establishment see below). This suggests that any regional free trade agreement which excluded financial services would be contrary to the GATS. Article V 1 (b) requires the elimination of substantially all discrimination within a region and requires that the overall level of barriers to market access for third parties outside the region should not be raised compared to the level of protection prior to the agreement. Broadly speaking Article V is so worded that all existing regional agreements will have little difficulty meeting the conditions. There is also a possibility of exemption from the MFN obligation for plurilateral agreements, such as those equivalent to the General System of Preferences (GSP) schemes (Article XIII).

In Part IV the GATS framework provides for progressive liberalisation of services. This involves a number of issues. The agreement requires that there will be successive rounds of negotiation, beginning not later than five years after the entry into force of the WTO (Art XIX(1)). Such an obligation to engage in successive negotiations, was not included in the GATT. [6] Article XIX also states that 'the process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.' Thus developing countries, can point to Article XIX in defence of modest liberalisation offers.

Finally there are the very important general provisions on dispute settlement (Art XXIII), which bring disputes in the services sector under the same, improved dispute settlement procedures as of the GATT/WTO. Under these WTO Members are unable to block panel decisions they do not like. An aggrieved party can seek compensation if a WTO Member fails to comply with a panel decision. Such compensation should, in the first instance, take the form of measures in the same sector, but there is ultimately scope for 'cross retaliation' in which benefits under the GATT can be denied in cases of non-compliance in financial services by denying the offending Member benefits under the GATT.

3.2 Specific Commitments

As noted above the GATS is not an agreement to liberalise but a set of liberal rules, which provide the framework for liberalisation. Indeed, WTO Members are only obliged to provide national treatment and other benefits if these are specifically included in schedules. There are a number of reasons why countries were cautious in their commitment to liberalisation in the GATS.

First, negotiators were not confident that GATT rules could be applied to services and believed that services would have to be handled differently. Negotiators identified four 'modes' of supply by which services could be delivered to other markets;

1. cross-border transactions, (such as for goods), in which the service is produced in the home country and consumed in the host or destination market. For example, consultants providing a report of findings by post;
2. consumers move to the producer, for example tourists travel to their destination to consume hotel or other services;
3. establishment or presence of the provider of a service in the host/ target market, such as through the creation of a permanent branch or subsidiary; and

4. supplier moves to the consumer, for example a team of software engineers is sent to resolve computer systems problems in other market.

Second, negotiators had no clear idea of the impact of regulatory policies on market access. With tariffs it is reasonably easy to quantify the impact of a tariff reduction on market access and thus negotiate reciprocal market opening. This is not the case with regulatory barriers.

Third, some national regulatory authorities were wary of regulatory policy objectives being sacrificed to the objectives of 'trade policy'. For example, the US Treasury, which has responsibility for regulating US financial services, resisted inclusion of financial services in the GATS negotiations because it was concerned that sound domestic regulation could be undermined in an effort to reach a 'trade' package. [7]

3.3 Market Access and National Treatment

Caution therefore contributed to the choice of a sector-by-sector approach negotiations in which it was easier to balance commitments and thus ensure reciprocity and the decision to 'de-link' financial services from other issues. The GATS approach set out in Part III of the agreement is based on a positive list or bottom up approach. In other words only those sectors specifically listed are covered by the liberalising provisions on market access and national treatment in articles XVI and XVII.

Article XVI prohibits national regulation which restricts the following access to markets:

- limits the number of foreign producers, such as licensing policy which limits on the number of banks or insurance companies;
- limits on the value of transactions carried out by foreign financial service companies, such as a 15% ceiling on the aggregate share of foreign owned banks;
- quotas on the proportion of foreign supplied services, such as a 50% limit on foreign origin television programmes;
- limits on foreign factors of production, such as a limit on the number of foreign doctors or accountants permitted to practice.

Article XVI also includes two provisions which are really closer to national treatment than market access. These are;

- measures that restricts the legal form of commercial presence, such as only allowing the establishment of a branch office; or
- limits on foreign shareholding.

Article XVII contains the general national treatment obligation, for those sectors listed in the schedules. Foreign suppliers must receive treatment 'no less favourable' than national suppliers. The use of the term 'no less favourable' means that the rules applied may be different provided the effect of rules is no less favourable. In some cases better than national treatment may be necessary to enable foreign suppliers market access. For example, some national regulations allow universal banking and others do not. A strict definition of national treatment would mean that a regulator in one WTO Member that prohibits universal banking could preclude branches of a bank from a WTO Member that allowed universal banking. The use of a *de facto* national treatment provision therefore enables a more liberal outcome than a strict *de jure* definition of national treatment. On the other hand, *de facto* national treatment means discretion in the hands of national regulators, which could always be used to the disadvantage of foreign suppliers. This danger is probably greater in services than in the case of trade in goods, where the GATT contains the same 'no less favourable' wording for national treatment.

In addition to Articles XVI and XVII, there is scope for Additional Commitments, such as commitments to offer mutual recognition of qualifications.

The positive list approach to coverage of the GATS is less liberal than the negative list or top down approach used in NAFTA and OECD agreements on services and investment, because with a negative list approach, all sectors are covered unless specifically excluded. A positive list also means governments must clearly identify sectors subject to liberalisation. No action means no liberalisation. A positive list approach also excludes all new services from coverage until they are listed. This is again less liberal than a negative list approach, in which new services are covered until they are specifically excluded. Given the political economy of commercial policy it is generally easier to deny market access by simply doing nothing, than take specific action to liberalise.

To complicate matters still further exceptions are still possible even after a sector has been positively identified as being covered by the liberalising provisions of the GATS. For example, even if financial services are listed as covered by the GATS provisions on market access and national treatment described above, it is still possible to exempt certain measures from these obligations. Thus negotiations take the form of balancing the obligations and exceptions from coverage in the various schedules and 'offers' are in fact lists of what will not be liberalised. [8] The GATS approach therefore involves a combination of positive inclusion of sectors along with negative exclusions. This complex scheduling is set out in article X of the GATS, Figure 1 gives the format of the offers.

Figure 1

The Format of Offers in the GATS

Mode of supply 1) Cross Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of persons

Sector or sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
i.e. banking, securities, insurance etc.	exemptions from obligations under Art XVI for each of the four modes of supply	exemptions from the requirements of Art XVII for each of the four modes of supply	exemptions from other commitments for each of the four modes of supply

3.4 The Free-rider Issue

Most favoured nation status (MFN) is one of the basic foundations of the GATT. This principle ensures non-discrimination in treatment of trading partners. For example, if as a result of a bilateral negotiation, country A offers a tariff reduction to country B, (country 'B' becomes country A's most favoured nation), country 'A' must offer the same tariff reduction to other WTO Members. The MFN principle has worked exceptionally well over the years in combating discrimination and helping to bring down tariffs, but it also assumes the presence of free-riders. For example, a country 'F' will be offered the lower tariff by country 'A' even if country 'F' makes no offer to reduce tariffs. Provided country 'F' does not discriminate between countries, it will still be within GATT rules, even though it has made no tariff reduction. Such 'free-riding' enabled developing economies to retain higher tariffs even though they benefited from the tariff reductions of the developed economies. There was also the defence of special and differential treatment granted them in Part IV of the GATT.

As noted above developed GATT Contracting Parties have become less tolerant of such 'free-riding', especially as trade deficits have grown with some NICs. This has led to pressure not to allow the NICs to repeat in services what they have done in manufactures. It is also argued, for example by the providers of financial services seeking access to the NICs markets, that if the more-or-less reciprocal market opening among the EU, US and other developed countries were extended automatically to all other WTO members, there would be no negotiating leverage left to open up NIC financial services markets.[9]
US negotiators have, in particular, signalled that they are not willing to tolerate free-riding. In order to ensure US support for the GATS it was therefore necessary to include the general MFN exemption in Art II(2) of the GATS. Many countries, not just the US, have made use of this exemption. For example, the EU made use of it for audio visual services, non-life insurance and canal transportation. The US made use of it for financial services and pipeline transportation and most OECD countries made use of it for air-transportation.

The are a number of conditions attached to the use of annex II. The MFN exemption can only be used outside the scope of specific commitments. In other words the general MFN exemption could not be used for sectors covered by liberalisation commitments. This is, of course, logical, but it had the effect of discouraging WTO members from making specific commitments, because to do so would close off the possibility of an MFN exemption. There are provisions aimed at preventing the abuse of the MFN exemption. For example, there is a 10 year limit placed on MFN exemptions and a requirement that there should be a regular review of the lists, but the wording is such that there would seem to be little problem in extending an MFN exception.

3.5 The Annexes and Understanding on Financial Services

It was clear from an early date that the GATS would have to be tailored to fit the needs of specific sectors if it was to bring about genuine liberalisation without undermining the ability of WTO Members to regulate financial services effectively. In the case of financial services there was no agreement on the scope of the annex, and as a result, the first annex was mainly limited to definitions of scope. It does, however, include a provision ensuring the rights of national regulators to discriminate against foreign suppliers if it is necessary for prudential security reasons. The second annex on financial services only deals with the mechanics of the continuing negotiations in the sector. Much of the content of what was to have been the annex therefore took the form of the Understanding on Commitments in Financial Services (The Understanding). The Understanding is seen as a model for liberalisation commitments in financial services and generally goes further than the GATS framework agreement. For example, it requires all monopoly rights to be listed in schedules and for Members of the WTO to endeavour to eliminate them or reduce their scope. Notwithstanding the exemption of public purchasing of (financial) services in the framework agreement, the Understanding also calls on each Member of the WTO to ensure that suppliers of financial services established in their territory shall have equal rights in bidding for public purchasing of financial services alongside nationally owned suppliers.

The negotiating history of the GATS has therefore left us with an agreement which is ambiguous in its commitment to liberal policies, but a high price has been paid to ensure the full participation all WTO Members in the GATS framework agreement. Coverage of the agreement is dependent on positive lists but with negative lists of exclusions from coverage and there is a general exemption from MFN to address the free-rider issue inherent in the MFN principle. If the GATS had been based on negative lists for exceptions to coverage and not included an MFN exemption, it would have been possible to argue that the agreement has in-built liberalising dynamic. But as things stand the dynamism for liberalisation depends heavily on the willingness of countries to make binding offers.

4. The Economics of Liberalisation

As discussed above the structure of the GATS agreement allows NICs to hold back from liberalisation while still potentially benefiting from their free rider position. Provided, of course, the US, EU and other OECD countries open their markets on an MFN basis. The sector specific nature of the financial services negotiations means that there is also nothing the NIC and LDC negotiators can show in return for liberalising their financial services markets. For example, in the Uruguay Round the LDCs and NICs were opposed to the introduction of agreed international standards for intellectual property rights but accepted the obligation to protect such rights in return for removal of protectionist measures in the OECD countries affecting textiles and clothing. As long as the United States holds back MFN offers one might argue that this is a negotiating lever. But this assumes that the NICs or LDCs have an active interest in exporting to the OECD markets, which they do not.

There is therefore little incentive for the NICs and LDCs to liberalise apart from the benefit they will gain from such liberalisation. Given this fact there is very little information or estimates on the potential benefits of financial market liberalisation. In what follows we draw heavily from a draft study by Dobson and Jacquet[10] Financial markets, as with other sectors, are facing considerable pressure to change as a result of globalisation and technological changes. This is leading to pressure for deregulation in all markets and especially in the NICs were banks have often been in public ownership and used as instruments of development policy by, for example, depressing interest rates and thus the cost of money in order to promote investment in preferred sectors. In order to convince LDCs and NICs of the benefits of liberalisation it is therefore necessary to illustrate that the liberalisation of financial services will bring benefits.

4.1 Efficiency Gains

Dobson and Jacquet set out to do this by assessing the benefits for consumers of a liberalisation and the macro economic benefits of deregulation. The benefits for consumers, that is households and investors, come from cost savings as a result of the introduction of more efficient banking and insurance services. The estimates given in table 1 are based on the assumption that financial services will account for some 3% of GDP by the year 2010 and that cost savings of some 20% can be achieved through deregulation and the introduction of the most efficient methods. The 20% estimate is based on a number of sector and country studies of benefits from deregulation and applies over the period to 2010. Basically, a 20% cost efficiency gain in a sector which accounts for 3% of GNP yields a benefit of 0.6% of GNP for all countries.

In addition to the cost efficiency gains Dobson and Jacquet calculate a gain from improved quality of service which varies depending upon the level of development. In other words the least developed financial markets will tend to have a higher quality improvement as a result of liberalisation. For example, as a result of being able to compare various financial services in a fashion which is currently impossible. These gains vary between a gain equivalent to that from cost efficiencies i.e. 0.6% of GNP for the least developed economies to 0.09% of GNP in the developed markets (see column 1 in the table). Based on these estimates the present value of the stream of benefits to users from a phasing in of competitive financial services by the year 2010 is calculated at $1.26 trillion. According to the regional breakdown, Japan and East Asia would account for about half the gains, compared to about a quarter for the EU. (The US presumably comes under the ROW line)?

Table 1

Benefits to users of phasing in competitive financial services by 2010

	Welfare gain from quality improvements % of GNP	Total welfare gain from liberalisation (% of GNP)	Estimated GNP in 2010 in 1994 $ billion	Total gains in 2010 in 1994 $ billion	Cumulative gains in 1997 (1994 $ billions)
Income level					
Low	0.6	1.2	3071	36	346
Middle	0.3	0.9	7398	66	377
High	0.09	0.69	16989	117	606
Region					
EU	0.09	0.69	8338	57.5	298
Latin America	0.9	0.9	2682	24	137
East Asia	1.2	1.2	4656	56	378
Japan	0.69	0.69	6793	47	243
South Asia	0.6	1.2	1158	14	94
ROW		0.6	3811	20.5	106
Total					

	27438	219	1256

Source Dobson and Jacquet

4.2 Macro economic gains

Assessing the macro economic gains from financial market liberalisation is even more controversial than assessing the efficiency gains as their is no consensus as to the link between economic growth and the growth of financial markets. The case that liberalisation leads to higher growth is based on the view that more developed financial markets will stimulate higher savings and increased access to credit. Deregulation will also eliminate artificially low interest rates so that interest rates rise to an equilibrium level. This in turn creates higher savings and ensures that only efficient investment with a high rate of return is undertaken. There are however questions as to whether this de-repression of financial markets necessarily leads to higher growth. Some empirical findings suggest that some countries have maintained high levels of economic growth with repression of financial markets.

4.3 The Political Economy of Liberalisation

There are a number of arguments made against liberalisation despite such economic arguments in its favour. First it is argued, as noted above, that financial markets play a special role in development and that government policy should therefore continue to be able to steer development through the influence of financial flows. Second, there is the argument that financial market liberalisation is often associated with instability or systemic failure in the financial system. Not only are there the cases such as Mexico and more recently South East Asian markets, at least with regard to the regulation of capital markets, were financial market instability has followed partial liberalisation, but empirical studies have shown that of 25 cases of financial market liberalisation 18 were subject to some financial instability. A third argument again liberalisation is that it will result in adjustment costs, such as job losses in the banking sector as a result of the introduction of new technologies and telephone banking. Dobson and Jacquet provide figures to counter this argument, showing that employment in financial services has grown continuously over the period 1986 to 1995 and that the share of financial services in total employment has increased over the period. The reduction in employment as a result of, for example, branch closures in banking has, however, only recently begun, even in the countries which have moved further towards the application of new technologies such as the UK. Nevertheless, even if employment is not growing in financial services, this does not mean that liberalisation will not have a beneficial effect for the economy as a whole.

In the political calculation of WTO members one must also consider a forth argument, namely the perceived benefits from liberalisation from the point of view of sectoral interest. These interests will tend to take look at the balance of trade in financial services as an indicator of their interest in liberalisation. Table 2 shows the balance of trade in financial services according to data from the World Bank Development Indicators.

Table 2

Trade in Financial Services

Country	Imports of financial services $ mill 1995	Exports of financial services $ mill 1995	Trade balance $ mill	Exp/Imp %
United Kingdom	802	8140	7337	1015
United States	6179	7508	1329	122
Chile	86	104	18	121
Germany	9409	11097	1688	118
France	16413	17403	990	106
Poland	952	879	-73	92
Brazil	1254	1012	-242	81
South Africa	490	388	-101	79
South Korea	864	656	-208	76
Mexico	1016	709	-307	70
Turkey	392	219	-173	56
China	4263	1856	-2407	44
Singapore	965	382	-583	40
Japan	2945	587	-2358	20
Thailand	959	104	-855	11

From World Bank World Development Indicators
Included are financial services and insurance provided by to non-residents by residence insurance companies and vice versa and financial intermediary and auxiliary services(except those of insurance enterprises and pension funds) exchanged between residents and non-residents.

They would seem to be a clear correlation between support for liberalisation and countries that have a trade surplus in financial services, so that countries in the upper half of the table have tended to favour liberalisation, even like the UK and the US they may differ over how to go about it, and those in the lower half have been sceptical of the benefits of liberalisation.

Although such crude figures may not be the best indicator of who will benefit, since all countries can benefit from increased trade, they may help to explain why some countries are more enthusiastic than others. It shows that the UK has a clear interest in liberalisation, although the fact that the UK financial services sector has already developed a healthy balance of trade suggests that this is possible even without major new multilateral liberalisation. The table shows that other leading EU member states such as France and Germany have an interest in liberalisation, although less than that of the UK. This is a reasonable approximation of the respective positions within the EU, where the UK is the strongest advocate of (unilateral) liberalisation, and others adopt a somewhat more cautious approach. The table also shows the US financial services sector has a clear interest in liberalisation, but perhaps the volume of imports of services into the US suggests that this would not be unconditional. Again this is a fairly good approximation of the position of the US financial services sector, which has pushed hard for inclusion of services in the GATT/WTO rules and for concrete liberalisation measures in financial services, but its not willing to accept free-riders or unilateral liberalisation.

The table suggests that the financial services industry in the dynamic economies of Asia and south America as well as Mexico, Japan and China, would all be unenthusiastic about rapid liberalisation that would open them to strong competition from the service providers in the developed OECD markets. As appears to be the case in reality, these companies would argue for a phased liberalisation that would give them an opportunity to become more competitive and thus be ready to match competition from foreign suppliers. Again this is how the industrial interests are likely to see the balance of interests. It may well be the case that liberalisation is the best means of promoting competitiveness, as indeed the British financial services industry would argue following their experience over the years. But the table helps to explain the position of the respect sector interests. The degree to which these are reflected in national negotiating positions will, of course, depend upon other domestic factors.

5. Markets and Market Access

This section considers barriers to market access in key WTO Members and assesses the current level of liberalisation. The paper first considers the dynamic ASEAN and the Latin American NICs, where much of the interest in new growth markets rests. It looks at India and Egypt, where market access is heavily regulated, but where the size of markets means that even a small degree of liberalisation would have a significant impact. It then turns to the new OECD countries which have or are about to sign up to either OECD or regional commitments. This group includes the Mexico (OECD and NAFTA) and South Korea (OECD) and the central and east European countries, which are being pressure to match the EU *acquis* in order to facilitate membership of the EU as well as meet OECD expectations. Finally the section considers the established OECD countries, where liberalisation of financial services is both recent and in some cases incomplete.

5.1 ASEAN

Economic growth and competition between centres in the ASEAN region has contributed to a liberalisation of the ASEAN banking, securities and fund management sectors. In the banking sector liberalisation has been somewhat varied between countries, and in some cases has been inconsistently implemented on a domestic basis.

Despite liberalisation measures there is still a considerable caution concerning a rapid opening of financial markets. In Malaysia policy-makers are concerned that local banks are ill-equipped to meet the demands of Malaysian companies, but equally concerned that they may not be able to survive the advent of increased foreign competition. In Indonesia, there is a commitment to remove all restrictions on banking by 2020, but how this is to be achieved is not clearly mapped out and decisions to liberalise have not yet been acted upon. For example, a 1994 decree allowing 100% foreign ownership of companies has not yet been implemented, so that new financial service access is still through joint ventures with minority stakes. In Singapore the domestic banking market is restricted by the size of the population, but off shore banking has grown to the extent that Singapore is the world's fourth largest centre for foreign exchange trading and it is an important regional market for syndicated loans. 142 commercial banks and 77 merchant banks operate in Singapore. The island has shown that an effective regulation rather than far reaching deregulation is an important component of success in attracting financial service providers.

There is no right of establishment in most ASEAN markets. Licenses are, for example, required - and not usually granted for new branches or wholly owned subsidiaries in Malaysia, Indonesia and Thailand. In Singapore, foreign offshore and restricted bank licenses may operate from one office only, while full licence foreign banks, which were in operation before 1972, are limited in opening new sub-branches or establishing off-premise ATMs. In the Philippines, foreign banks may only own 40% of the shares in an existing bank or new joint venture.

There are restrictions on the business that established foreign banks can conduct. For example, foreign banks operating in Thailand may not lend in the Thai baht, those operating in Malaysia are discriminated against as regards foreign exchange, while in Singapore there are a number of transactions which may not be performed in Singapore dollars. There are also restrictions on the use of Automated Transaction Machines (ATMs) in a number of countries. These are considered equivalent to branches in Malaysia. The same is true in Singapore and Thailand except that foreign banks have limited access to the national network. HSBC and others have recently been attempting to circumvent this restriction with the use of telephone banking.

In securities, there has been very strong regional growth accompanied by significant deregulation in markets other than the traditional fund management centres of Hong Kong and Singapore. The hub mantle still rests firmly with Hong Kong, but Singapore is fast becoming a sub-market where fund managers feed in. Increasingly, global fund managers operate out of both Singapore and Hong Kong, with the former covering ASEAN, and Hong Kong covering greater

China and North Asia. Malaysia is pitching itself as a second base to companies already established in Hong Kong, offering the advantages of a vastly bigger population. Malaysia is south-east Asia's pioneer in creating a multi-faceted financial system based on a domestic currency, and this has been central to liberalisation. In May 1997 the Securities Commission announced wide-ranging revisions aimed at liberalising guidelines on unit-trust funds. But the scope for foreign securities operations is still severely restricted and discrimination against foreign companies in the placing of initial equity offerings. Singapore restricts new market access to the stock exchange, foreign firms may become limited members but requests for membership may be denied. Foreign firms are also restricted from acquiring shares in local securities firms, from portfolio investment in domestic companies and in strategic shocks. Recent instability in capital markets in the region is likely to strengthen the hand of those arguing for a slowing in the pace of liberalisation, especially in the securities markets.

A general criticism of the ASEAN countries is that GATS commitments have fallen short of national legislation, and in some cases national liberalisation measures have fallen short of declared policy aims. For example, in Malaysia the liberalisation promised in national legislation (such as the 1995 Thai Financial System Master Plan) has not been implemented, nor was it bound in the Malaysia's 1995 offer. When commitments in GATS stop short of national provisions, countries are free to reverse the liberalisation to the bound levels.

In insurance the ASEAN markets have not been opened as much as in banking or other financial services. The markets offer considerable prospects. For example, insurance premiums in the Philippines were $955 million in 1994 $402 life and $552 non-life).[11] In the cases of the Philippines, Thailand and Indonesia recent legislation has brought about some liberalisation, but in the cases of Malaysia and Singapore it has been less far-reaching.

There are a number of restrictions on the provision of national treatment by ASEAN countries that result from national regulatory measures. For example, Indonesia requires twice the level of capital adequacy for foreign insurance companies as for national insurers. There are also limitations on foreign acquisitions of local insurance operations, ranging from 25% of equity in Thailand to 49% in Indonesia. The Philippines national legislation allows for 100% foreign ownership but its GATS offer stops short at 40%. In Malaysia foreign stakes in existing insurance companies are not Grandfathered and under a 1996 law must be reduced to 49% by 1998 and new foreign acquisitions are limited to 30%.

Licences are generally required for new insurance operations in all ASEAN countries. In all cases such licensing is at the discretion of regulatory authorities. In the case of Thailand, licenses for new insurance operations must be approved by the cabinet. As part of its recent move towards liberalisation the Philippines is allowing new licences, but there was a quota of five between 1995 and 1996. In the case of Singapore licensing of new foreign insurers is also severely restricted, but most of the Singaporian insurance sector is already foreign owned. Finally, a number of ASEAN countries, such as Thailand and Indonesia retained an MFN exemption (under the Article II annex of the GATS) for reciprocity measures until 31 December 1997 (.i.e until the end of the Interim Agreement), so that the countries concerned retain the right to restrict access to their markets for insurance providers from countries which do not offer reciprocal access.

5.2 South America

Latin American banking has, in general, seen unprecedented levels of foreign participation, following the gradual dismantling of barriers to foreign capital. In Brazil, however, the 1988 constitution limits foreign participation although there has recently been some new small scale foreign bank participation. Foreign ownership of Brazilian banks, financial institutions and brokerage firms is limited to 30 or 33% of voting rights and 50% of total capital. Even foreign banks with a presence in Brazil before 1988 can only expand through the acquisition of foreign owned branches and are prohibited from operating their own ATM system. Under the 1994 Banking Reform Law foreign bank branches may not practice universal banking, nor may foreign firms participate in the privatisation of state-owned banks. Policy statements have announced the intention to liberalise and a supplementary law is due to be introduced in the 1997 legislative period, should give some indication of how far and how fast liberalisation will come.

In Argentina, there has been strong liberalisation of the financial services sector over the last five years, particularly in banking and securities. There are limitations on currency transfers, but most of the restrictions that remain, such as capital adequacy requirements based on individual branches are not contrary to national treatment. Fierce competition has already begun between European and North American banks for stakes in the established financial institutions, for example Banco Frances del Rio de la Plata.

In Chile also there has been significant liberalisation which, together with steady economic growth, a gradual easing of monetary policy and debt restructuring, has helped Chile develop one of south America's most developed banking markets. There is generally good access and national treatment, but overbanking has led authorities to limit foreign bank establishment to acquisition of existing establishments. During 1996 the sector saw a series of dramatic mergers resulting in the consolidation of the private sector's big three, the nations dominant lenders and deposit takers. Universal banking is not permitted.

Since 1994 liberalisation has progressed in Venezuela, and this has been bolstered by successful economic stabilisation. Foreign ownership of the banking system now stands at 40%, which signals a strong vote of confidence in the industry's turnaround following the launch of the comprehensive market reform programme. Despite these improvements and sharply improved earnings there is still a lack of legal certainty which undermines legislative reforms or international commitments. In terms of market access, a broad economic needs test is applied for market entry in all sectors. One hundred percent foreign ownership is permitted, as is bank branching, but bank representative offices may not advertise their services. Central bank approval is required for new services, and some activities such as the provision of deposit accounts is restricted. At least half of a bank's board members must be resident in Venezuela.

In insurance Brazil is the most important target in south America for negotiators, both because of the potential market and the height of barriers to market access. Brazil could be classified as a developing economy given its relatively low GDP per capita, but both he US and the EU have seen Brazil as one of the most problematic countries. [12] Brazilian negotiators are, however, constrained by the 1988 constitutional restrictions which prohibit new equity and new branching in the insurance sector. There is also a state monopoly in reinsurance, although legislation to ease access to this sector of the market is expected to be introduced in 1997. Within its constitutional constraints Brazil went as far as it could in the 1995 Interim Agreement on financial services. For example, natural persons can act as insurance brokers and foreign ownership of brokerage firms can reach 50% of capital. Elsewhere in South America the insurance markets are smaller and the barriers to access less formidable. Countries such as Argentina, Chile, Columbia and Venezuela have moved towards general liberalisation. In Argentina, as in other countries, insurance has lagged behind the general liberalisation process and new establishment is only possible through the acquisition of an existing insurance business. Once commercial presence has been achieved in this fashion national treatment with other providers is guaranteed in the existing Argentinean commitments in the GATS. Some forms of establishment are also restricted in the other south American markets. For example, it is not possible gain access to Chilean or Venezuelan insurance markets via direct branching and only subsidiaries are allowed in Columbia. Most countries allow for some cross-border provision of insurance services, especially in maritime and air transportation.

5.3 The Large Developing Countries

Developing countries have typically restricted access for foreign financial service providers as part of their development strategies. Although the expectations of developing countries in terms of liberalisation are lower than for the NICs, access is of considerable interest because of the potential size of the markets.

The gradual liberalisation of the Indian banking sector began in 1992. The 1996 budget restated the commitment to uphold previous reforms and was viewed positively by foreign banks and investors. Since then the government has announced its intention to move to full capital account convertibility, and in April a new credit policy was introduced which gives greater freedom to banks in lending and boosts the debt and foreign exchange markets. However, there are serious political constraints to deregulation and little consensus on how the public sector (including the banks) should be treated. This necessity to raise funds for infra-structure projects is seen as possibly providing the domestic impetus needed to force the government into more radical reforms. Foreign banks may only establish as branches, not subsidiaries, while the acquisition of bank branch licenses are severely restricted. Foreign banks are prohibited from acquiring offshore banking licenses. Foreign share-holdings in bank subsidiaries is restricted (although up to 75% has been allowed), and foreign banks may not hold more than 15% of the total assets of the banking system. Further restrictions on the activities of foreign banks include: differential taxation; prohibition on the hedging of capital or unremitted profits from currency devaluation; restrictions on the issuing of bonds; foreign banks are implicitly precluded from doing deposit business with public sector enterprises.

In the securities industry there has been some liberalisation, but tangible benefits from this have been limited, because of the slow shift from a paper based system to computer based trading. There remain serious restrictions on foreign securities firms, which may not operate directly on the stock exchange, but only through a subsidiary or through domestic registered brokers. Foreign portfolio investors may not hold more than 30% of any company's capital, 10% by any one individual. In addition they may not hedge their currency. There is tight regulation of all asset management activities with a refusal to guarantee equal treatment. Non-banks may not participate in money and debt security markets.

India has a public monopoly for the provision of insurance and Indian negotiators have stressed the politically sensitive nature of ending this monopoly by allowing foreign or even private Indian insurance companies to compete.[13] A number of policy statements have raised expectations about a possible change of policy. For example, the 1997 budget referred to the possibility of ending the public monopoly for health insurance. These intentions are however still to be acted upon.

Egypt's 1991 Economic Reform Programme radically transformed the domestic banking sector and capital markets. The reforms deregulated local currency funding and lending operations, liberalising domestic foreign exchange markets and eliminating the fixed rate tariffs of services. The government has also pledged to sell-off 314 public enterprises, although outright sales have been slow, thus hampering further genuine structural reform. In terms of access to the market, foreign banks must still satisfy an economic needs test before they can establish through branches, subsidiaries and joint ventures. The Central Bank continues to deny licenses to all new banks, both foreign and local and conditions are imposed upon foreign banks with respect to dealing in foreign currency. In securities, foreign ownership of securities firms is limited to 49% and market access for brokers is restricted.

Egypt has introduced legislation liberalising insurance. For example, from 1 January 1998 foreign insurers will be able to access the Egyptian market via joint ventures. Limits on equity participation will be eased from this date to allow foreign control. Although providers of insurance services in developed economies see some of the Egyptian regulation as excessive, such as in capitalisation requirements for insurance companies, these are consistent with Egyptian commitments on national treatment. Investment in insurance is, however, subject to the general economic needs test which is probably contrary to the General Obligations of the GATS not to restrict competition. Having said this Egypt's offer in the 1995 Interim Agreement was judged by the EU at least to be good for a developing country.

5.4 The New OECD Members

A number of countries have recently liberalised financial services and insurance as part of their general graduation to OECD status. These include countries such as The Republic of Korea, Mexico and the central and east European countries, such as The Czech Republic, Hungary and Poland. Broadly speaking these countries have agreed to liberalise their financial services markets as part of undertakings made in gaining OECD membership, but some, especially Korea and to a lesser degree Mexico have yet to match their commitments to the OECD with their offers in the GATS financial services negotiations.

Korea has recently implemented a number reforms in financial services including, for example; the removal of the market needs test; approval for foreign banks, securities companies (from 1 December 1997) investment advisory companies and investment trust companies (from 1 December 1998) to establish subsidiaries. In January 1997 the ceiling for individual foreign shareholding in securities was removed, with the aggregate limit being removed from December 1998. Foreign purchases of non-guaranteed bonds are being freed in stages over 1997-8 and interest-rate deregulation is due for completion by the end of 1997, which will also free demand deposits and short term financial instruments. These changes build on reforms that have been undertaken in the last five years as part of Korea's entry to the OECD (for example, the 'Blueprint' and the Foreign Exchange Reform Plan), but there is now an expectation that reforms must be bound in the GATS. Concrete decisions regarding the wholesale restructuring of the banking sub-sector have yet to be taken.

In general terms there still remain various barriers. Major foreign equity in new banks or existing financial institutions are prohibited, while total foreign participation in the financial services sector is limited to 15%. The establishment of subsidiaries is restricted in many sectors, and there are limits on market access for a wide range of business, but particularly securities (undertaken to remove both of these within the context of OECD entry). Foreign exchange controls are imposed with regard to cross border trade, and there is prohibition of cross border consumption in certain services areas. Financial services institutions may not operate at the same time in different sub-sectors. In banking, there are extensive restrictions covering funding, lending, access to credit markets, size of bank, foreign exchange, swap lines, cross border capital flows, capital adequacy (which is restricted to the capital of the local branch, not the parent), refinancing and operations in local currency. With respect to securities and asset management, there is prohibition of underwriting of Korean issues abroad by foreign securities firms. Shareholders in joint venture security firms are required to meet unspecified eligibility criteria and there are non-transparent limits on management and operation of assets of foreign firms. There are limits to foreign portfolio investment for both individual and aggregate holdings in each listed company, although limits are gradually being increased. Over-the-counter trading for listed stock, and foreign investment in guaranteed blue chip corporate bonds is prohibited. Large initiation fees are payable for joining the stock exchange, and foreign investors are required to hold an ID card before buying Korean shares. Excessive capital and personnel requirements in asset management are imposed, and any foreign mutual fund management company must manage at least $18bn for a branch, and $39bn for a joint venture.

In Mexico, the primary motive of the government in privatising the banking system in 1991-2 may have been to maximise revenue, with little attention paid to the status of the new owners, but there have been changes as a result of the policy. 25% of the banking system is now under foreign control and this integration with the financial systems of industrial countries should allow for the importing of new technology and long-term capital, plus best practices in accounting, risk management an disclosure standards. Improvements are also needed in regulation and supervision if the traditional lack of trust in financial institutions is to be overcome, and a culture of savings introduced.

In addition to the need for Mexico to match its OECD commitments with its offers in the GATS, there are also NAFTA agreements which it does not extend on an MFN basis at present, except to those countries with which it has a bilateral financial services agreement. New access is restricted to the establishment of wholly owned subsidiaries, and direct branching is not permitted. Non-NAFTA foreign firms may not acquire control of domestic companies (there is also a restriction on individual holdings of 5-20%), nor may they organise pension entities.

In insurance Mexico restricts equity participation in non-life insurance companies to the acquisition of existing companies (.i.e. no new subsidiaries) and the foreign equity participation in life insurance companies is limited to 49%. With non-cross border provision of insurance possible except for aviation, these commitments are seen to be poor for an OECD member country. Mexico has had the added incentive of the NAFTA agreement in opening its insurance market and has as a result brought about a considerable liberalisation in the past ten years. But the commitments made in NAFTA have not been extended on an MFN basis. As a result there is a ceiling of 49% maximum for aggregate foreign shareholding in any Mexican insurance provider and a maximum of 7.5% for any individual shareholding in insurance. Mexicans must remain in 'effective control' of insurance providers and there are restrictions on the provision of cross border insurance services. Consequently, the pressure from non-NAFTA countries is for an extension of the NAFTA commitments made by Mexico in its GATS offer.

The central and east European countries that have recently joined the OECD have also had the added incentive of a regional agreement, in this case EU accession, to push liberalisation. In the smaller countries this has resulted in far-reaching liberalisation, so that with the exception of a number of remaining exchange controls there are no significant barriers to market access for financial services. Some countries are still in the process of introduction the national legislation required to complete liberalisation. For example, Hungary still has to introduce legislation allowing commercial presence via branching, but has clearly stated that this will be bound in its GATS offer as soon as the legislation has been adopted. Regulation may, as in Hungary, require separate capitalisation for insurance, banking and securities operations, but this was the practice in most OECD countries until recently and is consistent with national treatment because there is no discrimination between foreign and nationally owned companies. Poland is possibly a little behind the smaller central and east European transition economies and retains the right of government to approve all investments and limits the establishment of commercial presence to the acquisition of existing insurance companies.

5.6 Japan

Enhanced access to the Japanese market for financial services including insurance has a high priority in the United States and elsewhere, because of the size of the market. Access to the Japanese financial services, and a lesser extent insurance markets, has been progressively liberalised, especially during the 1980s. In April 1993 Japan introduced important legislation modifying Japanese financial market regulation. The Financial Markets Reform Act (FMRA) of April 1993 began to remove the separation of banking from securities and other financial services that Japan had introduced in the late 1940s. The position in Japan is now broadly similar to that in the United States and European Union in the sense that *de jure* national treatment is offered in most areas. Regulatory barriers remain, as they do in other OECD markets. Japan's main trading partners have, however, consistently argued that, in common with other sectors of the Japanese economy regulatory and structural (.i.e. the absence of effective competition) barriers to trade in Japan are more significant than elsewhere.[14] The United States has followed this line of argumentation with bilateral talks, starting with the Yen/Dollar agreement in 1980, aimed at opening the Japanese market. In late 1994 Japan concluded bilateral agreements with the United States on insurance and other financial services, such as measures aimed to improve access to the management of Japanese pension funds. In a move which was critical to the success of the 1995 Interim Agreement on financial services in the GATS, Japan agreed to extend these additional benefits on an MFN basis to all signatories to the agreement.

The Japanese market for insurance is the second largest in the world and annual premiums total $2000 bn. It has therefore been a major target for foreign insurance companies which currently only account for about 4% of the market. Reform has been underway in the Japanese insurance sector for some time, in no small part due to the pressure from GATS negotiations and bilateral pressure from the US. From April 1996 changes were made which allow the convergence of the life and non-life insurance sectors. Insurance brokers were also permitted. In a move which provoked the US, it was also decided to liberalise more rapidly in the so-called third sector (accident, sickness and nursing) in which the leading US international insurance company AIG happened to have established a strong presence. In late 1996 the Japanese Ministry of Finance announced further changes to the regulation of the insurance sector following more bilateral negotiations with the United States. From 1996 it became possible to conduct insurance business via direct response to advertising, thus facilitating business via the telephone. Reforms were also announced in the rigid rating system through which the major Japanese insurance firms have effectively controlled competition in the sector. In the automobile sector varying rates are now permitted depending upon risk and in other general insurance the rating system will to be eased when requisite legislation has been passed by the Diat. Transparency of the Japanese insurance market is also to be enhanced through an extension of the notification procedure to other forms of insurance. In response to the US criticism it was also agreed that the third sector would not be liberalised before general insurance. This illustrates that bilateral negotiations do not always benefit third parties, even when the benefits are extended on an MFN basis. No doubt a central demand of the EU will be to ensure that Japan binds these regulatory changes multilaterally as part of an improved offer on financial services.

5.7 The United States

As with the other leading OECD members the United States offers de jure national treatment in financial services, but regulatory barriers to market access and state competence, especially in the insurance sector, have continued to create difficulties in market access. These regulatory barriers to market access are the result of legislation, such as the Glass-Steagall Act of 1933, which separated commercial and investment banking, adopted to help ensure the systemic stability of US financial markets. State regulation has also created difficulties, especially in the insurance sector, where individual states retain their own licensing and solvency powers. Thus a European insurance company wishing to provide insurance services in a number of states would have to satisfy licensing and solvency requirements in each. This contrasts with the position in Europe, where in law if not always in practice, a supplier established in one Member State of the EU can supply insurance services in other member states. This absence of reciprocity in market access has been the source of much transatlantic debate since the introduction of EU financial services Directives in the late 1980s which included reciprocity powers for the EU to act when it felt the US (or other trading partners) were not offering equivalent competitive opportunities in the US market. In practice, however, the reciprocity measures have not been used, because of differences between the EU Member States on the advisability of such action. The potential dispute with the US was headed off by the EU effectively agreeing to exempt existing US financial service providers from the coverage of the reciprocity measures. In 1995 the US opted-out of the 1995 Interim Agreement, but in a similar fashion it agreed to continue to offer national treatment and MFN status for all existing financial service providers in the United States.[15] The MFN exemption applies to new service provision and to the use of reciprocity measures.

For many years there have been efforts to reform US financial market regulation, but legislative measures, such as a lifting of the Glass-Steagall separation of commercial and investment banking have either been watered down or blocked in Congress. In 1994 an Interstate Banking Act was passed. This added momentum to the trend which was already moving towards permitting more inter-state banking. Further legislation is currently before the US Congress although this may again be delayed because of disagreements over the scope of reform. The Treasury and much of the financial community wishes reform to be limited to ending the Glass-Steagall separation between banking, securities and insurance. But some interests wish to see non-banks have powers to control financial services companies (which is prohibited by the Banking Act?) The present climate is more favourable to reform because the insurance sector is not set against reform as it has been in previous years. But legislation may not be need. The Office of the Comptroller of the Currency has recently ruled that national banks can engage in securities and insurance business and this was followed, in December 1996, by the Federal Reserve Bank raising the ceiling for earnings from securities brokerage from 10 to 25% for banks. In these circumstances the banks feel that flexible regulation may be a better option than new legislation, but securities firms and insurance companies wish to ensure that they also gain equivalent access to the banking sector. For foreign suppliers of financial services this flexibility means ease of market access, provided the regulatory do not use any discretionary power they have to discriminate against foreign suppliers.

Some specific issues remain, however. In particular state regulation of access to the US insurance market, which is the largest in the world, continues to create barriers to access. State regulators continue to influence policy conditions and rates for insurance and many of the exemptions in the July 1997 US offer on financial services relate to state level measures in insurance, such as equity requirements for the provision of insurance services. Although the state regulatory and solvency requirements are generally in conformance with de jure national treatment, they represent de facto barriers to access. Meeting the licensing requirements of individual states can be seen as a barrier to access in itself. Foreign insurance suppliers must reserve sufficient capital to cover the individual solvency requires for each state. In some states also do not have the capabilities of licensing insurers which are not established in another US state.

5.8 European Union

As in the case of Japan and the United States access to the EU is not a major issue in the negotiations. National treatment is guaranteed and the EU has been willing to offer MFN status to all signatories of the financial services agreement. There remain a number of exemptions from the market access and national treatment obligations in individual Member States of the EU. This mainly concerns the newer member states such as Austria and Sweden, but Italy, Denmark, France and Italy also have a number of areas were national regulation is contrary to the requirements of Article XVI and XVII. In every case benefits of limited to other members of the European Economic Area or the European Union.

In only one case, concerning unit trusts does EU legislation require a local presence for the provision of a service, in this case to act as a depository for the assets of unit trusts. In insurance the EU has moved towards common regulatory provisions based on solvency provisions and thus reduced the regulatory obligations imposed by national regulators. The EU, along with other OECD countries, has also been unwilling to bind itself on the supply of services through the inward travel of a natural person. This is because of the sensitivities to this mode of supply because of immigration policy concerns.

The absence of any pressure from other WTO members is the source of some regret for the Member States with a liberal policy on financial services, such as the United Kingdom, and those seeking further deregulation in their own member states. The US position has made no reference to difficulties with the European Union and has, indeed, stated that the EU’s offer is acceptable.

6. Positions of the Main Actors

The positions of the major actors in the negotiations are influenced by a number of factors such as the existing balance of trade in financial services and the pattern of barriers to market access. A country with a strong and competitive financial services sector, a solid surplus and a liberal domestic regime, such as the United Kingdom, can be expected to support multilateral liberalisation. Countries which have not yet developed a strong financial services sector and have a deficit in transactions are likely to be more cautious. Such mercantilist assumptions only give part of the picture. Wider commercial policy factors will also play a role, such as strong support for a credible, rules-based multilateral system, which should arguable include financial services. A conviction that liberalisation of financial services markets contributes to development and economic growth, may play a role, as indeed, it appears to be the case in some of the NICs even if their views on the pace of market opening diverge from that of the demandeurs in the negotiations. Clearly opinion is also influenced by the risks of rapid market opening, and in some developing countries there remains strong support for the view that the financial services are different and should remain under government control for development policy purposes.

6.1 The United States

Perhaps the main demandeur in the financial services negotiations has been the United States. It was the United States, both administration and private sector, that pressed for the inclusion of services in the GATT back in the early 1980s. The aim of ensuring more open and orderly markets for financial services figured prominently in this effort. Throughout the Uruguay Round negotiations the US insisted on the need for concrete market opening. Given the relatively open and transparent nature of the US market, simply signing a general commitment to national treatment and MFN, was seen as equivalent to the non-reciprocal opening of the US market. This was the US position in 1990 when the US first threatened that it would not support MFN commitments. The position was bolstered by threats from Congress, in the shape of draft legislation on the Fair Trade in Financial Services (FTFSA), to use unilateral leverage if the Uruguay Round failed to deliver. This was the US position at the conclusion of the Uruguay Round in 1993 and in 1995 when the US administration, influenced by the US private sector lobbies, again rejected what it saw as inadequate offers. The US has thus had consistently higher expectations of the outcome of negotiations in financial services than other WTO Members. When these have not been met the US has been willing to see negotiations fail and hold out for something better, while continuing to negotiate bilaterally. Indeed, a belief that bilateral negotiations are more effective was a important reason for not making binding commitments on MFN.[16] In the current negotiations the US has continued to press for improved offers from the key countries, with the main target being the Asian and south American markets, rather than Europe or Japan, at least since the December 1996 bilateral. A key issue will be whether the expectations of the US lobbies will be more moderate this time around.

6.2 The European Union

Although initially less enthusiastic about including trade in services in the GATT, the EU soon became a major champion of the cause. Indeed, as a result of the liberalisation measures undertaking during the Single European Market programme in the late 1980s, the EU possibly overtook the US as offering the most liberal market for financial services, depending on how the reciprocity provisions of the EC Directives are interpreted. The EU therefore pressed for greater liberalisation in other markets, including the United States. But for the EU this results-oriented objective has been tempered by a desire to see a multilateral agreement concluded, which would, among other things help to contain the unilateral tendencies in US policy.

As early as 1993 the EU might possibly have been willing to accept the modest offers on specific commitments in order to be able to conclude a multilateral agreement in financial services in the GATS. In 1995 it was certainly ready to do so. In the current negotiations the EU's formal position is that it expects and requires improvements on the 1995 offers from the key countries discussed in section 5. The EU is, in particular, pressing to get those countries which have introduced national deregulation to bind these policies in their offers. The EU wants the new OECD countries to extend the liberalisation they have offered within the OECD to the GATS financial services negotiations and wants the liberalisation offered by Mexico in NATFA to be extended multilaterally. It also expects Japan to extend the liberalisation commitments made to the US in the 1996 to the EU and others.

There are differences of view between Member States of the EU. Some Member States wish to retain the possibility of using the reciprocity provisions in EU Directives as leverage in bilateral negotiations. In 1995 these Member States wished to limit the duration of the interim agreement so as not unduly limit the EU's options in this respect. [17] France and Italy have also made the case that the US offer is inadequate, because of, for example, state regulations on insurance and wish the EU to seek improvements. Other Member States, such as the UK, wish to avoid the use of reciprocity altogether, and argue that it is not necessary or helpful to target the US in negotiations, because the US market is already relatively open and becoming more so as a result of regulatory policy changes.

The EU has two broad objectives in the negotiations, to improve the offers and get the US to sign up. Left to itself the EU would be unlikely to reject modest offers coming from the key target countries. Although negotiators will clearly not accept this during the negotiations. The EU has always tended to see the cup as half full rather than half empty as the US has done, and EU negotiators are not under the pressure of especially high expectations from the EU financial services sector. But in order to get the US to sign up the EU has to get other WTO Members to make at least some improvements on their 1995 offers. It would also be helpful to have some moderation of the US expectations, in order to help ensure that the US administration will be able to sign up to the final package.

6.3 Moderation in Private Sector Demands?

The real demandeurs in the financial services negotiations have been the private sector interests in the OECD countries, especially the US financial services coalition. Compared to the US lobby, the European private sector is generally more distant from the negotiating process in commercial policy, and - as suggested above - has tended to have more modest expectations.

When the US withdrew from the 1995 negotiations the blame was laid at the door of the US Coalition of Service Industries (CSI), which had reportedly brought considerable pressure on the USTR to back out of the negotiations at the last moment. In 1996 a number of companies in the CSI sought to change tack in order to avoid being isolated in the future. In Europe the key players (European Commission, national governments and private sector) were aware of the deciding role the US private lobbies had played in the 1995 negotiations, and sought ways of engaging the US private sector interests in a dialogue.

Such a dialogue began in Davos in the spring of 1996, when leading US and European financial services people discussed the prospects for the replacement of the Interim Agreement in 1997. These initial discussions were followed up with meetings in the offices of British Invisibles between US representatives and the UK and other European financial services industry. The initial contacts were followed by the establishment of what became called the Financial Leaders Group (FLG). Although US and UK interests were at the core of this group, the French and Italian insurance industry soon joined and were followed by the European Banking Federation (EBF) and the European Insurance Committee (EIG). The aim of the FLG was to present a common (transatlantic) business view of the objectives in the GATS financial services negotiations, but there were also other motivations at work. From the US point of view this provided a means of avoiding the isolation of the CSI and was perhaps seen as a means of enlisting European support for the US private sectors objectives. The EU side saw the FLG as a channel through which to help moderate US expectations. The dialogue is welcomed by EU Member State governments and the European Commission, but there is also some concern that the European private sector might be used as a channel for US private sector interests. Although it is possible to envisage a number of reasons why such a transatlantic dialogue on financial services might have its draw backs (for example, the impact it might have on other parties to the negotiations), there was already a clear precedent for such a dialogue in the Transatlantic Business Dialogue (TABD), which includes common proposals on priorities in commercial policy in its agenda.

The FLG has made some progress on finding common ground on objectives. The dialogue has also widen the constituency involved in the negotiations in both the US and the EU, which should help to strengthen the EU private sector input and produce a more balanced US private sector position. But there remains the potential for differences of view and expectations, because some powerful US companies still have high expectations. The position of the European financial services industry broadly follows that of the EU negotiators and is unlikely to call for the EU to withdraw its offer. Even if the EU private sector were to express its dissatisfaction, its influence over EU commercial policy is less direct than is the case with the CSI. The European Commission and ultimately the Council of Ministers would have to reach the final decision and here there can be expected to be considerable support for concluding an agreement.

There may also be a difference of views from sector to sector. For example, the banking industry (in the US or the EU or both) may well feel that there has been sufficient movement towards liberalisation for them to be able to support a permanent agreement offering MFN, while the insurance industry does not believe this to be the case. As shown in section 5, the liberalisation of insurance markets is lagging behind that of banking and securities. In 1995 a number of US insurance companies were especially influential in opposing US acceptance of the offers. The need to moderate US private sector expectations in the insurance sector may therefore be crucial factor in gaining US support. Until recently, however, the European insurance sector has been less engaged in the negotiations than baking and other financial services. There would seem to be a need for more active involvement by the European -and especially the UK insurance sector -in the transatlantic dialogue.

If the Financial Leaders Group can agree on a common response this is likely to be enough to ensure joint EU-US support for the package of offers available. But will this be achieved through a toughening of the European position or a moderating of the US position? The indications are that the wider involvement on both sides of the Atlantic which has resulted from the discussions in the FLG has resulted in both a toughening of the EU position and a moderating of the US position. On balance therefore the transatlantic dialogue appears to have helped create a climate favourable to the conclusion of a permanent agreement around the end of 1997. But there is probably still work to be done, especially in the insurance sector.

In the non-OECD countries there is probably a broad consensus in the financial services sector on the need for progressive liberalisation. In other words although there is an acceptance of the need to deregulate and liberalise, the banks and other financial services companies themselves generally wish this to be brought about progressively, in order to ensure that it is done orderly and that they have enough time to adjust to increased competition from foreign suppliers of financial services. There is however a spectrum of views in non-OECD countries on the pace of liberalisation. Banks in Hong Kong, Singapore, Chile or Argentina see liberalisation and an opening to international competition as the best means of strengthening the competitiveness of their domestic suppliers of services. These countries are, however, still some way behind the OECD countries in terms of the acceptance of deregulation. Banks in countries such Malaysia and The Philippines see progressive liberalisation as allowing for some protection from international competition until they have strengthened their own competitiveness. In other words some are more willing to accept infant industry type of arguments in favour of slowing the pace of liberalisation.

6.4 The Non-OECD Countries

There is no common position among the non-OECD countries, but there are a number of common themes. First, it is argued that the financial sector plays an special role in development and should therefore be treated differently from other sectors of the economy. This is an argument that is more likely to be made by the developing than the NICs. The NICs, such as the ASEAN Members of the WTO, are perhaps more likely to hold the view that although they support liberalisation, it must go hand in hand with effective regulation of financial markets so as to avoid the risk of financial instability. Some NICs are also hold the view that access for new foreign financial services providers could result in overbanking, as the restructuring of the domestic banks or insurance companies has not yet occurred. These countries such as Malaysia, therefore argue that domestic adjustment and restructuring should be brought about before access is liberalised. This argument can be easily extended into an infant industry argument in favour of 'progressive' liberalisation, because this will provide the domestic financial service industry with more time to become internationally competitive.

Notwithstanding these arguments many of the 30 key developing and NICs have accepted the case for liberalisation, at least in principle, even if they may be sceptical of the arguments that development and growth will benefit from liberalisation to degree suggested by some of the work in discussed in section 4 above. The key issue is the pace of liberalisation. There is a strong domestic political backlash to liberalisation in some countries. This backlash has resulted from the instability which appears to have accompanied liberalisation and led to calls for a slowing rather than a quickening of the pace to meet foreign commercial policy expectations. As noted above some developing countries, such as Brazil, have constitutional problems to be overcome before they can improve access for foreign financial services companies. Others, such as India, where large parts of financial services are in public ownership or control, would also face considerable political problems selling any liberalisation within the GATS to domestic constituencies.

Another argument made by the developing country players in the negotiations is that the explicit provision for 'progressive liberalisation' developing countries was part of the deal negotiated in the Uruguay Round. It is therefore perfectly reasonable for them to be conservative in their specific commitments in the financial services negotiations. Furthermore, in a sector negotiations such as financial services, there is no quid pro quo. Negotiators from developing or middle income countries will have nothing to hold up at home when asked what they have got in return for agreeing to open banking or insurance markets to the OECD countries. In 1995 there was at least a sector negotiation on access for natural persons, (supply of service by mode 4), in which developing countries are interested in getting the OECD countries to make binding commitments to liberalisation, which noon-of them have on immigration policy grounds . This is preventing India, for example, providing advanced soft-ware programming services which are in short supply in some OECD countries. In 1997 there is no scope for a trade off as there are no other negotiations in parallel with the financial services negotiations.

7.0 Conclusions

This paper argues that there will be only modest improvements on the offers made by the developing and newly industrialising countries made in 1995. The survey of the key WTO members shows, however, that there is a broad trend towards liberalisation and that many WTO Members have accepted in principle that liberalisation will bring economic benefits, even if there may be some doubt about the impact on GDP. The survey also shows that providers of financial services are finding ways of gaining access to many new markets, even without the benefits of a multilateral agreement guaranteeing rights. The GATS negotiations on financial services are therefore moving with the flow of policy developments in most countries. At the same time it shows that rapid change is unlikely in many if not most cases, because of the scale changes required in regulatory policy, legislation and in some cases constitutions, to bring it about.

If the offers made in September represent only modest advances on the 1995 offers, the outcome of the negotiations will turn on whether the US financial services interests will be willing to accept what is tabled or continue to hold on to the option of bilateral negotiations. The indications are that the US is indeed more likely to accept such offers this time than in 1995, but much still remains to be done to secure an agreement. First, some further improvements will probably be required from the key countries in order to be able to 'sell' an agreement to the US. Secondly, the EU must continue to engage the US in a dialogue in order to ensure that expectations are more balanced. In both these areas the European private sector has a vital role to play. As a potential leading beneficiary and as a possible intermediary between European and US interests, the UK role of the UK private sector is especially important. The resources dedicated to this role remain, however, very limited and should probably be increased.

In terms of the EU's negotiating position it should continue to press for improvements in offers as this will help both EU financial services providers and improve the prospects of an agreement being concluded. If there is some risk of the US not accepting offers tabled by early December, the EU should seek an extension to the talks in order to retain US involvement. If the US still withdraws from the negotiations, the EU should seek again lead efforts to extend the interim agreement for a further period, for example, until the end of 1999 when a new round of multi-sector services negotiations is scheduled to begin. This would help guard against reversals in the trend towards liberalisation in financial markets and would provide leadership in defence of a rules-based multilateral order for services.

Endnotes

[1] 1997 has so far seen more progress, with the successful conclusion of negotiations on basic telecommunications.

[2] See Joel Trachmann Trade in Financial Services under the GATS, NAFTA and EC: A Regulatory Jurisdiction Analysis *Columbia Journal of Transnational Law*, Vol 34, No 1, 1995 pp37-123.

[3] Already at this time the US Coalition of Service Industries and in particular its Financial Services Group was opposed to accepting general commitments in the GATS until the US's trading partners, principally in Asia and south America, had made more commitments to liberalisation.

[4] See Jeffrey Shafer and Jeffrey Lang In Defence of a Modest Outcome Financial Times 25 July 1995.

[5] This is explicitly provided for in Article 2 of the Annex on Financial Services.

[6] See David Hartridge 'What the General Agreement on Trade in Services can do'. In British Invisibles/Clifford Chance *Opening Markets for Banking World-wide: the WTO Agreement on Trade in Services*, February 1997.

[7] This concern was, in part, responsible for provisions in the GATS that require experts in financial services to be included on any WTO Dispute Settlement Panel established to adjudicate in a dispute concerning financial services.

[8] For example, the European Union's offer to (continue to) include financial services in the coverage of the GATS also includes a number of exceptions from national treatment. Most of these exceptions in the EU apply to the provision of insurance services and generally require services to be provided through branches located in the country or within the European Union or European Economic Area. These are restrictions on the cross border supply (mode 1) of insurance services. The US offer of July 1997 also contains exceptions, such as limitations on foreign ownership of insurance companies in certain US States. These are restrictions on the supply of insurance by commercial presence (mode 3).

[9] This sentiment has found formal expression in draft US and definitive European legislation. For example the US Fair Trade in Financial Services Act (FTFSA), first drafted in 1990 and subsequently revised by the House and Senate, was based on the objective of ensuring reciprocal market opening in financial services. While this legislation has not been adopted, such discussions in Congress have both reflected and shaped US opinion on trade in financial services. In the EU legislation in the shape, for example, of the Second Banking Co-ordination Directive has been adopted which includes reciprocity provisions. In the case of the EU, the 1995 agreement on binding MFN provisions in financial services means that it cannot apply these reciprocity powers if they conflict with GATS obligations.

[10] Wendy Dobson and Pierre Jacquet *The Potential Gains from Liberalisation of Trade in Financial Services* mimeo July 1997.

[11] See Financial Leaders Group, *Barriers to Financial Services*, Case Studies June 1997 (Barclays Bank plc, London)

[12] Financial Times 2 July 1997.

[13] The main concern appears to be the response of the insurance unions, see Financial Times 27 May 1995.

[14] See *National Treatment Study*, US Department of the Treasury, Washington DC 1994.

[15] At the time both Japan and the European Union sought, and were given, reassurances from the United States that US reciprocity measures would not be used against them.

[16] The latest US bilateral agreement was with Japan in December 1996. The US position is that these agreements help maintain the momentum of liberalisation and thus help other parties because the liberalisation is then extended multilaterally.

[17] In its 1995 commitments the EU bound itself not to use the reciprocity provisions of the financial services directives for the duration of the agreement.