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Committee on Trade in Financial Services

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COMMUNICATION FROM JAPAN

Initial Offer on Financial Services

Addendum

The following communication is circulated at the request of Japan to Members of the Committee on Trade in Financial Services.

In accordance with the schedule established at the meeting of the Committee on Trade in Financial Services on 10 April 1997, Japan hereby submits its initial offer of specific commitments on financial services.

The attached initial offer, fully reflecting the recent amendments to the Foreign Exchange and Foreign Trade Control Law, the most relevant aspect of Japan's Financial System Reform for trade liberalization in financial services, and based upon the enactment of the revised Insurance Business Law, suggests to eliminate a number of important restrictions. With such comprehensive reflection of liberalization achievements and plans, this offer provides essentially full market access, by further improving the high level liberalization commitments that Japan has already made. Other WTO Members are encouraged to follow this example and submit their offers with meaningful improvements.

This offer is conditional upon other Members' commitments to the MFN principle and presentation of meaningful improvements of their schedules. It is understood that, pursuant to the adopted Decisions, Japan reserves the right to modify or withdraw all or part of its specific commitments on financial services and to list MFN exemptions, in addition to the right of making technical modifications.

JAPAN
SPECIFIC COMMITMENTS - INITIAL OFFER

| Modes of supply: | | | | |
|------------------------|--|-----------------------------------|--------------------------------|--|
| 1) Cross-border supply | 2) Consumption abroad | 3) Commercial presence | 4) Presence of natural persons | |
| Sector or Sub-sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments | |
| 7. FINANCIAL SERVICES | <p>In addition to Part III of this Agreement and the Annex on Financial Services, Japan undertakes its specific commitments with respect to Financial Services under this Agreement in accordance with the Understanding on Commitments in Financial Services (hereinafter referred to as the "Understanding", attached to this schedule, which forms an integral part of this schedule). Thus, the obligations under the Understanding are incurred in the sectors of Financial Services additionally to those covered by the provisions of Part III of this Agreement and the Annex on Financial Services.</p> <p>For prudential reasons within the context of paragraph 2(a) of the Annex on Financial Services, Japan shall not be prevented from taking measures such as non-discriminatory limitations on juridical forms of a commercial presence. For the same reasons, Japan shall not be prevented from applying non-discriminatory limitations concerning admission to the market of new financial services which shall be consistent with regulatory framework aimed at achieving such prudential objectives. In this context, securities firms are allowed to deal in securities defined in the relevant Japanese law, and banks are not allowed to deal in those securities unless allowed in accordance with the said law.</p> <p>With respect to specific commitments in the sectors of Financial Services, services supplied in the territory of a Member other than Japan to the service consumer in Japan without any active marketing from the service supplier are considered as services supplied under paragraph 2(b) of Article I of this Agreement.</p> | | | |

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

| Sector or Sub-sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments |
|---|---|-----------------------------------|------------------------|
| <p>A. <u>Insurance and Insurance - Related Services</u></p> | <p>Specific commitments in the market access column with respect to the supply of a service as prescribed in paragraphs 2(a) and (b) of Article I of this Agreement are unbound except for obligations under paragraphs 3 and 4 of the Understanding respectively which are incurred in this sector additionally to those covered by the provisions of Part III of this Agreement and the Annex on Financial Services, subject to conditions and qualifications set out below.</p> <p>(1) Commercial presence is in principle required for insurance contracts on the following items and any liability arising therefrom:</p> <p>(a) goods being transported within Japan;</p> <p>(b) ships and aircraft of Japanese registration <u>which are not used for international maritime transport.</u></p> <p>The cross-border insurance transactions for ships of Japanese registration which are used for international maritime transport and aircraft of Japanese registration will be liberalized by the end of June 1996.</p> | <p>(1) None</p> | |

| Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons | | | | |
|---|---|-----------------------------------|------------------------|--|
| Sector or Sub-sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments | |
| | <p>60 per cent of amounts of reinsurance on the compulsory automobile third party liability insurance is subject to the compulsory coverage by the Government.</p> <p>Insurance services are not allowed to be supplied through an intermediary in Japan.</p> <p>(2) Commercial presence is in principle required for insurance contracts on the following items and any liability arising therefrom:</p> <p>(a) goods being transported within Japan;</p> <p>(b) ships and aircraft of Japanese registration <u><i>which are not used for international maritime transport.</i></u></p> <p>The cross-border insurance transactions for ships of Japanese registration which are used for international maritime transport and aircraft of Japanese registration will be liberalized by the end of June 1996.</p> | | | |

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

| Sector or Sub-sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments |
|----------------------|--|--|------------------------|
| | <p>60 per cent of amounts of reinsurance on the compulsory automobile third party liability insurance is subject to the compulsory coverage by the Government.</p> <p>Insurance services are not allowed to be supplied through an intermediary in Japan.</p> <p>(3) Establishment of commercial presence as insurance brokers is not allowed until the end of June 1996.</p> <p>60 per cent of amounts of reinsurance on the compulsory automobile third party liability insurance is subject to the compulsory coverage by the Government.</p> <p>Insurance intermediation services are not allowed to be supplied for insurance contracts made by an insurance service supplier who is not licensed in Japan.</p> <p>(4) Unbound except as indicated in HORIZONTAL COMMITMENTS</p> | <p>(3) Foreign life insurance companies are required to retain in yen currency an amount corresponding to their technical and claim reserves for yen-denominated insurance policies in Japan until the end of June 1996.</p> <p><u>As None except as</u> indicated in HORIZONTAL COMMITMENTS</p> <p>(4) Unbound except as indicated in HORIZONTAL COMMITMENTS</p> | |

| Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons | | | | |
|---|---|-----------------------------------|------------------------|--|
| Sector or Sub-sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments | |
| <u>Banking and Other Financial Services</u> (excluding Insurance and Insurance-Related Services) | Specific commitments in the market access column with respect to the supply of a service as prescribed in paragraphs 2 (a) and (b) of Article I of this Agreement are unbound except for obligations under paragraphs 3 and 4 of the Understanding respectively which are incurred in this sector additionally to those covered by the provisions of Part III of this Agreement and the Annex on Financial Services subject to conditions and qualifications set out below. | | | |
| | (1) Commercial presence is required for discretionary investment management services. (2) <u>“None” after April 1998.</u> <u>Before April 1998, supply of services is subject to all the following limitations:</u> Overseas deposits and trust contracts denominated in foreign currencies, the sum of which are over 400 <u>200</u> million yen value, and those denominated in yen are subject to approval. Business corporations which satisfy the standards of in-house systems relating to legal affairs, risk management and financial | (1) None (2) None | | |

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

| Sector or Sub-sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments |
|----------------------|--|-----------------------------------|------------------------|
| | <p>management set out by the Ministry of Finance may be given an approval effective for an indefinite period of time with respect to overseas deposits denominated in foreign currencies over 100 200 million yen value for the purpose of portfolio investment subject only to ex post reporting.</p> <p>The following capital transaction services may be supplied through authorized foreign exchange banks in Japan, or otherwise are in principle subject to approval:</p> <p>(a) Trade in:</p> <ul style="list-style-type: none"> (i) payment instruments such as cheques and bills; (ii) foreign exchange; and (iii) derivative products which involve outright foreign exchange transactions such as currency spot options. | | |

| Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons | | | | |
|---|---|-----------------------------------|------------------------|--|
| Sector or Sub-sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments | |
| | <p>Business corporations are exempted from obtaining approval and may invest in all securities derivative products listed on overseas exchanges for their own account subject only to ex post reporting.</p> <p>Business corporations which satisfy the standards of in-house systems relating to legal affairs, risk management and financial management set out by the Ministry of Finance are exempted from obtaining approval and may invest in financial futures and options listed on overseas exchanges for their own account subject only to ex post reporting.</p> <p>(b) Special methods of settlement such as offsetting and any method whereby a resident either makes payment for the non-resident concerned to another resident or receives payment made by another resident for the non-resident concerned.</p> <p>(c) Swaps</p> | | | |

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

| Sector or Sub-sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments |
|----------------------|---|--|---|
| | <p>(3) Commercial presence for investment trust management services must be juridical person established in Japan.</p> <p>(4) Unbound except as indicated in HORIZONTAL COMMITMENTS</p> | <p>(3) The deposit insurance system does not cover deposits taken by branches of foreign banks.</p> <p>As indicated in HORIZONTAL COMMITMENTS</p> <p>(4) Unbound except as indicated in HORIZONTAL COMMITMENTS</p> | <p>(3) With respect to the assets of Employees' Pension Funds qualified by the Minister of Health and Welfare to be managed by discretionary investment management service suppliers, Japan no longer employs the classification of New Money* and assets other than New Money.</p> |

* New Money is an asset mainly consisting of accumulation of premiums collected by Employees' Pension Funds after the day when such Funds are qualified by the Minister of Health and Welfare as appropriate for expanding their means of asset management to include discretionary investment management services.

UNDERSTANDING ON COMMITMENTS IN FINANCIAL SERVICES

Participants in the Uruguay Round have been enabled to take on specific commitments with respect to financial services under the General Agreement on Trade in Services (hereinafter referred to as the "Agreement") on the basis of an alternative approach to that covered by the provisions of Part III of the Agreement. It was agreed that this approach could be applied subject to the following understanding:

- (i) it does not conflict with the provisions of the Agreement;
- (ii) it does not prejudice the right of any Member to schedule its specific commitments in accordance with the approach under Part III of the Agreement;
- (iii) resulting specific commitments shall apply on a most-favoured-nation basis;
- (iv) no presumption has been created as to the degree of liberalization to which a Member is committing itself under the Agreement.

Interested Members, on the basis of negotiations, and subject to conditions and qualifications where specified, have inscribed in their schedule specific commitments conforming to the approach set out below.

A. Standstill

Any conditions, limitations and qualifications to the commitments noted below shall be limited to existing non-conforming measures.

B. Market access

Monopoly rights

1. In addition to Article VIII of the Agreement, the following shall apply:

Each Member shall list in its schedule pertaining to financial services existing monopoly rights and shall endeavour to eliminate them or reduce their scope. Notwithstanding subparagraph 1(b) of the Annex on Financial Services, this paragraph applies to the activities referred to in subparagraph 1(b)(iii) of the Annex.

Financial services purchased by public entities

2. Notwithstanding Article XIII of the Agreement, each Member shall ensure that financial service suppliers of any other Member established in its territory are accorded most-favoured-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Member in its territory.

Cross-border trade

3. Each Member shall permit non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, and under terms and conditions that accord national treatment, the following services:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
 - (ii) goods in international transit;
- (b) reinsurance and retrocession and the services auxiliary to insurance as referred to in subparagraph 5(a)(iv) of the Annex;
- (c) provision and transfer of financial information and financial data processing as referred to in subparagraph 5(a)(xv) of the Annex and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph 5(a)(xvi) of the Annex.

4. Each Member shall permit its residents to purchase in the territory of any other Member the financial services indicated in:

- (a) subparagraph 3(a);
- (b) subparagraph 3(b); and
- (c) subparagraphs 5(a)(v) to (xvi) of the Annex.

Commercial presence

5. Each Member shall grant financial service suppliers of any other Member the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence.

6. A Member may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the Member's obligation under paragraph 5 and they are consistent with the other obligations of this Agreement.

New financial services

7. A Member shall permit financial service suppliers of any other Member established in its territory to offer in its territory any new financial service.

Transfers of information and processing of information

8. No Member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph restricts the right of a Member to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of the Agreement.

Temporary entry of personnel

9. (a) Each Member shall permit temporary entry into its territory of the following personnel of a financial service supplier of any other Member that is establishing or has established a commercial presence in the territory of the Member:
- (i) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and
 - (ii) specialists in the operation of the financial service supplier.
- (b) Each Member shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other Member:
- (i) specialists in computer services, telecommunication services and accounts of the financial service supplier; and
 - (ii) actuarial and legal specialists.

Non-discriminatory measures

10. Each Member shall endeavour to remove or to limit any significant adverse effects on financial service suppliers of any other Member of:

- (a) non-discriminatory measures that prevent financial service suppliers from offering in the Member's territory, in the form determined by the Member, all the financial services permitted by the Member;
- (b) non-discriminatory measures that limit the expansion of the activities of financial service suppliers into the entire territory of the Member;
- (c) measures of a Member, when such a Member applies the same measures to the supply of both banking and securities services, and a financial service supplier of any other Member concentrates its activities in the provision of securities services; and
- (d) other measures that, although respecting the provisions of this Agreement, affect adversely the ability of financial service suppliers of any other Member to operate, compete or enter the Member's market;

provided that any action taken under this paragraph would not unfairly discriminate against financial service suppliers of the Member taking such action.

11. With respect to the non-discriminatory measures referred to in subparagraphs 10(a) and (b), a Member shall endeavour not to limit or restrict the present degree of market opportunities nor the benefits already enjoyed by financial service suppliers of all other Members as a class in the territory of the Member, provided that this commitment does not result in unfair discrimination against financial service suppliers of the Member applying such measures.

C. National treatment

1. Under terms and conditions that accord national treatment, each Member shall grant to financial service suppliers of any other Member established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Member's lender of last resort facilities.

2. When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Member in order for financial service suppliers of any other Member to supply financial services on an equal basis with financial service suppliers of the Member, or when the Member provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Member shall ensure that such entities accord national treatment to financial service suppliers of any other Member resident in the territory of the Member.

D. Definitions

For the purpose of this approach:

1. A non-resident supplier of financial services is a financial service supplier of a Member which supplies a financial service into the territory of another Member from an establishment located in the territory of another Member, regardless of whether such a financial service supplier has or has not a commercial presence in the territory of the Member in which the financial service is supplied.

2. "Commercial presence" means an enterprise within a Member's territory for the supply of financial services and includes wholly- or partly-owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations.

3. A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular Member but which is supplied in the territory of another Member.