

WORLD TRADE ORGANIZATION

GATS/SC/46/Suppl.3

26 February 1998

(98-0654)

Trade in Services

JAPAN

Schedule of Specific Commitments

Supplement 3

(This is authentic in English only)

This text replaces the Financial Services section contained in document
GATS/SC/46/Suppl.1/Rev.1.

JAPAN
SCHEDULE OF SPECIFIC COMMITMENTS

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>		
A. <u>Insurance and Insurance-Related Services</u>	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.		Japan undertakes the ADDITIONAL COMMITMENTS attached hereto.

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>(1) Commercial presence is in principle required for insurance contracts on the following items and any liability arising therefrom:</p> <ul style="list-style-type: none"> (a) goods being transported within Japan; (b) ships of Japanese registration which are not used for international maritime transport. <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> <ul style="list-style-type: none"> (a) goods being transported within Japan; (b) ships of Japanese registration which are not used for international maritime transport. 	<p>(1) None</p> <p>(2) 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>(3) 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) None except as 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
<p>B. <u>Banking and Other Financial Services</u> (excluding Insurance and Insurance-Related Services)</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 required for discretionary investment management services.</p> <p>(2) “None” after April 1998. Before April 1998, supply of services is subject to all the following limitations:</p> <p>Overseas deposits and trust contracts denominated in foreign currencies, the sum of which are over 200 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 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 200 million yen value for the purpose of portfolio investment subject only to <i>ex post</i> reporting.</p>	<p>(1) None</p> <p>(2) None</p>	<p>Japan undertakes the ADDITIONAL COMMITMENTS attached hereto.</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>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> <p>(i) payment instruments such as cheques and bills;</p> <p>(ii) foreign exchange; and</p> <p>(iii) derivative products which involve outright foreign exchange transactions such as currency spot options.</p> <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 <i>ex post</i> 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 <i>ex post</i> reporting.</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>(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> <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.

JAPAN: ADDITIONAL COMMITMENTS

A. Insurance and Insurance-Related Services

Whenever specific commitments in the additional commitments column state that appropriate authorities will approve an application or will not reject a notification, the application or notification must meet the applicable legal criteria. The appropriate authorities will apply the legal criteria in a fair and transparent manner, and will interpret them with a view toward allowing insurance service suppliers to differentiate, on the basis of the risk insured, the rates, forms and distribution of products.

1. Appropriate authorities will approve applications for a direct response system for automobile insurance, and will approve payment of premiums through the use of credit cards with the policy effective from the date when the insurance service supplier accepts credit card payment.

A direct response system ("Tsushin-Hanbai") for automobile insurance is defined as a distribution method whereby insurance service suppliers offer their products to consumers through advertising media, such as newspapers and magazines, and through direct mail or telephone calls; accept applications of consumers delivered via mail or telephone calls; and enter into contracts with consumers through an exchange via mail or telephone calls, without meeting the consumers.

2. Effective 1 April 1998, appropriate authorities will expand the scope of the advisory rate system for loading rates of commercial fire insurance, by lowering the minimum amount per contract to seven billion yen.

3. Appropriate authorities include the following sixteen products on the list of products to which the notification system applies with respect to the rates and riders for such products and will allow, within the standard processing period of ninety days, marketing of the products notified to the appropriate authorities (i.e., will not reject the notifications): medical malpractice liability insurance ("Ishi Baisho Sekinin Hoken"), advanced loss of machinery profit insurance ("Sogyo Kaishi Chien Hoken"), delayed start of construction insurance ("Kaigo Chien Hoken"), civil engineering completed risks insurance ("Doboku Kozobutsu Hoken"), nuclear energy insurance ("Genshiryoku Hoken"), umbrella liability insurance ("Kigyo Hokatsu Baisho Sekinin Hoken"), environment liability insurance ("Kankyo Osen Baisho Sekinin Hoken"), erection insurance ("Kumitate Hoken"), moveable comprehensive insurance ("Dosan Sogo Hoken"), computer comprehensive insurance ("Kompyuta Sogo Hoken"), boiler and turbo-set insurance ("Boiler Turbo-set Hoken"), transit insurance ("Unsoh Hoken"), credit card theft insurance ("Credit Card Tonan Hoken"), general liability insurance ("Baisho Sekinin Hoken"), construction all-risk insurance ("Kensetsu Koji Hoken"), and surety bonds ("Hosho Shoken").

4. (a) By no later than 1 July 1998, appropriate authorities will eliminate obligations for members of a rating organization to use rates calculated by the rating organization for the provision of insurance services while allowing members of a rating organization to use, for the purpose of calculating rates, the statistical data collected by the rating organization.

(b) When the necessary legislative changes are made and their accompanying administrative measures come into effect to implement subparagraph (a) above, the appropriate authorities will approve, within the standard processing period of ninety days after submission, applications allowing all insurance service suppliers to differentiate, on the basis of the risk insured, the rates, forms and distribution of products, without regard to whether such applications use statistical rates calculated by the rating organization.

(c) In the interim before the necessary legislative changes are made and their accompanying administrative measures come into effect, the appropriate authorities will approve, within the

standard processing period of ninety days after submission, applications for products in major product categories in the life and non-life insurance sectors which provide for the flexibility to differentiate, on the basis of the risk insured, the rates, forms and distribution of products.

(d) Appropriate authorities will approve applications for voluntary automobile insurance with the flexibility to differentiate, on the basis of the risk insured, the rates, forms and distribution of products, including a direct response system for automobile insurance with differentiated rates (collectively referred to as "differentiated auto insurance") effective 1 September 1997. Differentiation on the basis of risk insured includes differentiation of rates outside the banded rates based on the following risk factors: age, sex, driving history, usage (e.g., commercial, personal) and pattern of use (e.g., mileage per year), geography (by region, i.e. Hokkaido, Shikoku, Kyushu, and Honshu, which will be divided into Tohoku, Kanto-Koshinetsu, Hokuriku-Tokai, and Kinki-Chugoku), vehicle type, vehicle safety features, and multi-car ownership.

5. (a) Appropriate authorities will not permit non-life insurance subsidiaries of life insurance service suppliers to sell the following personal accident insurance:

- (i) personal accident insurance based on a single policy written for and/or endorsed¹ by non-profit inter-industry associations or foundations for managers of corporations²;
- (ii) domestic and overseas travel accident insurance through travel agents;
- (iii) personal accident insurance for students marketed through or endorsed¹ by schools (including all levels of schools, and including public and private schools), or scholastic, student or parent organizations or associations (i.e., "Gakusei-Dantai", "Dosokai" and PTA);
- (iv) personal accident insurance through direct response methods ("Tsushin-Hanbai");
- (v) group personal accident insurance except when the insurance subsidiaries are acting as lead managers among co-insurers or solo underwriter, and when the insurance is sold to a group that has not held in the preceding six months a policy for the same or a substitutable group personal accident insurance product by small to medium and/or foreign insurance service suppliers; and
- (vi) maturity refund personal accident insurance.

(b) Appropriate authorities will not permit life insurance subsidiaries of non-life insurance service suppliers to sell stand-alone cancer insurance and stand-alone medical insurance, and the appropriate authorities will maintain the limit regarding the ratio of rider benefits to base policy benefits that had existed before the new Insurance Business Law came into force on 1 April 1996.

¹"Endorse" means to recommend ("suisho") and/or back-up ("koen").

²"Non-profit inter-industry associations or foundations for managers of corporations" means the "Zenkoku Hojinkai Sorengo", "Kyokuren Hojinkai", "Kenhojinkai Rengokai", "Tan-i Hojinkai", "Nozeikyokai Rengokai", "Burokku-kai" and "Nozeikyokai".

(c) Appropriate authorities will terminate the measures³ to avoid radical change in the third sector as described in subparagraphs (a) and (b) two and one-half years after the date when the necessary legislative changes are made and their accompanying administrative measures come into effect as described in paragraph 4, on condition that all the following measures will have been implemented by that date. Isolated instances of minor divergence with respect to the standard processing period of the measures set out in subparagraphs (i), (iii)(B), or (v) below do not constitute a failure to implement these measures for the purpose of this paragraph.

- (i) the appropriate authorities approve, within the standard processing period of ninety days, applications for differentiated auto insurance as described in subparagraph 4(d);
- (ii) the appropriate authorities have lowered the minimum insured amount per contract required for application of the advisory rate system for commercial fire insurance as described in paragraph 2;
- (iii) with respect to the notification system, the appropriate authorities;
 - (A) have put into effect the notification system with respect to the last six products set out in paragraph 3; and
 - (B) allow, within the standard period of ninety days, marketing of the sixteen products set out in paragraph 3 notified to the appropriate authorities (i.e., will not reject the notifications);
- (iv) the necessary legislative changes are made and their accompanying administrative measures come into effect to eliminate obligations for members of a rating organization to use rates calculated by the rating organization as described in paragraph 4; and
- (v) with respect to applications for differentiated products or rates, the appropriate authorities approve, within the standard period of ninety days, applications submitted.

In the event that no applications or notifications have been submitted by ninety days before the above-mentioned date, the measures in subparagraphs (iii)(B) and (v) will be considered to have been implemented.

6. If an insurance service supplier has submitted documents to appropriate authorities related to insurance products or rates, which the insurance service supplier considers to be an application, the insurance service supplier may make a request to the appropriate authorities to determine its status. The appropriate authorities will respond without undue delay to such a request and indicate whether they consider the documents to constitute a formal application.

B. Banking and Other Financial Services
(excluding Insurance and Insurance-Related Services)

1. With respect to the assets of Employees' Pension Funds (hereinafter referred to as "Funds") qualified by appropriate authorities to be managed by discretionary investment management service

³The "measures" do not apply to group long-term disability insurance ("Dantai Choki Shogai Shotoku Hosho Hoken") and income indemnity insurance ("Shotoku Hosho Hoken"), including individual long term disability insurance ("Choki Shogai Tokuyaku").

suppliers, the eight-year qualification requirement with respect to the required duration of the Funds following their establishment is reduced to three years.

2. There is a ceiling of 1/2 of total assets with respect to the assets of Funds which can be managed by discretionary investment management service suppliers. The ceiling will be eliminated by March 1999.

3. No asset allocation guidelines are applied to individual pension fund management service suppliers with respect to the management of fund assets of the Pension Welfare Service Public Corporation (excluding the commingled fund management of insurance companies) or of the assets of Funds (excluding the commingled fund management of insurance companies) which can be managed by discretionary investment management service suppliers.

4. Investment trust management services and discretionary investment management services may be supplied by one entity if that entity satisfies the relevant prudential provisions of Japanese Laws and the prudential standards set out by appropriate authorities.

5. Appropriate authorities permit the Pension Welfare Service Public Corporation to allow investment advisory companies to participate in the management of its fund assets through a variation on the "Shiteitan" framework. At the time of the next comprehensive review of the Japanese pension system in 1999, this scheme would be reviewed.

"Shiteitan" is a designated money trust for separate investment management provided by trust banks. Under "Shiteitan", beneficial owners do not specify individual objects of stocks, bonds or other financial instruments to be purchased. Trust banks are permitted to guarantee the principal of "Shiteitan" under domestic laws and regulations.

6. Appropriate authorities will fully utilize the existing mechanisms available to them to respond expeditiously to accommodate innovations in securities products, while ensuring the most appropriate supervision of markets from prudential viewpoints.

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 the 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 the 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 purposes 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.
