



Auto Safety • Congress Watch • Energy Program • Global Trade Watch • Health Research Group • Litigation Group

TO: Whom It May Concern
FR: Public Citizen's Global Trade Watch division
DT: October 21, 2009
Re: WTO Documents Reveal that "Doha Round" Would Further Financial Deregulation, In Contradiction to G-20 Call for Reregulation

Foreclosed homes. Lost jobs. Collapsing banks. The greatest government involvement in the economy in generations. While these headlines dominate the news, one of the root causes of this crisis has largely been ignored: over the last several decades, the U.S. government and corporations have used "trade" agreements and international agencies to push countries worldwide to implement extreme financial deregulation.

While many people still assume our trade pacts are about traditional matters, such as tariff cuts, in fact, the World Trade Organization (WTO) and various "free trade agreements" (FTAs) require signatory countries – including the United States – to conform their domestic policies to an expansive *non-trade* deregulatory agenda. The WTO has been a key delivery mechanism for the extreme financial service deregulation that contributed to the current crisis – locking in deregulation domestically and exporting it internationally. **The existing WTO financial service deregulation requirements must be eliminated. However, instead, the Doha Round WTO expansion negotiations include as a core element further financial service deregulation – the details of which are revealed in various Doha Round negotiating texts.**

The WTO's existing financial service deregulation requirements are contained in the WTO's General Agreement on Trade in Services (GATS), the GATS Annexes on Financial Services, several Protocols, the Understanding on Commitments in Financial Services and countries' schedules of GATS financial service commitments including those made in relation to the 1999 WTO Financial Service Agreement.) The *binding* terms of these WTO texts are the opposite of the *non-binding* terms of various international accords between banking, securities and insurance supervisors, which attempt (however imperfectly) to create a global regulatory floor. Rather, the WTO rules constitute a global regulatory ceiling. The WTO includes a dispute settlement system with foreign tribunals empowered to instruct the United States and other nations to eliminate WTO-forbidden financial service regulations, with trade sanctions authorized for failure to comply. To date, WTO tribunals have ruled against challenged domestic policies in nearly 90 percent of the cases brought before them. The financial service deregulations implemented through the WTO were pushed by the top financial institutions that stood to make short-term gains from deregulation, including AIG and Citigroup.

In a perverse twist, the Communiqués from the November 2008, April 2009 and September 2009 G-20 Summit sessions on the global crisis called for financial reregulation on the one hand and, on the other, simultaneously called for completion of the WTO Doha Round – one plank of which is further financial service deregulation.¹ When this conflict has been raised in the past, various WTO defenders have claimed that neither the current WTO nor proposed Doha Round terms

involved financial deregulation. This is simply false. Following are some of the *specific* Doha proposals included in negotiating documents that would further financial services deregulation. You will note that these deregulation proposals have been part of the WTO service sector talks since they started, and that more recent texts – including two of the relevant documents that have leaked from the talks and are attached to this memo – are on the table now in the on-going negotiations:

- **NO LIMITS ON SIZE OF FIRMS, OPERATIONS:** WTO countries are under pressure to submit additional financial sectors to the GATS market access rules as a means of providing foreign firms more access.²
- **MUST ACCEPT RISKY NEW PRODUCTS AND SERVICES FOREIGN FIRMS SEEK TO OFFER:** Another demand is for “the increased use of the Understanding by Members as a minimum standard for liberalization.”³ This refers to the Understanding on Commitments in Financial Services, which requires especially deep deregulation of sectors that are opened up to liberalization. The United States, most other developed countries, and a few developing nations voluntarily adopted these extra deregulation requirements, which went fully into effect in 1999 and apply to all financial services they committed to the WTO’s jurisdiction. Among other deregulatory strictures, the Understanding includes a requirement to allow in any new financial service.⁴ This obligation limits the ability of countries to keep out harmful types of financial firms and products, such as the credit default swaps and collateralized debt obligations that fueled the financial crisis.
- **STANDSTILL ON REREGULATING FINANCIAL SECTORS:** Another consequence of the push to get more countries to adopt the Understanding would be wider application of that text’s “Standstill on certain non-discriminatory measures.”⁵ A plethora of proposed regulations that limit risky financial service products and operations could fall afoul of this provision, which commits adopters not to put back into place policies that they have deregulated in the past, even if those regulations apply equally to domestic and foreign firms.
- **DIFFICULTY REGULATING TRANSACTIONS WITH TAX HAVENS:** One WTO member has called on countries to allow “Improved ability to sell products to locals or provide services from offshore [and] greater flexibility in the number and types of products which can be offered.”⁶ which could undermine policies aimed at keeping toxic financial products offered elsewhere out of domestic markets. It could also undermine measures aimed at countering financial transfers with tax-haven countries.
- **ELIMINATION OF DIFFERENCES IN REGULATORY STRUCTURE BETWEEN STATE, LOCAL AND FEDERAL GOVERNMENTS:** A demand is on the Doha negotiating table to eliminate differing subfederal policies.⁷ In countries where subfederal regulations are stronger than federal regulation, such downward harmonization can reduce financial stability.
- **NEW GLOBAL LIMITS ON ACCOUNTANCY REGULATIONS:** If the Doha Round were concluded, a text set to be automatically implemented is the “Disciplines on Domestic Regulation in the Accountancy Sector,” which would restrict non-discriminatory regulations in that sector. These disciplines, which the infamous Arthur Andersen firm helped formulate, will restrict accounting regulations to what WTO tribunals judge “necessary,” putting pressure on governments to deregulate as much as possible.⁸

- **NEW DISCIPLINES ON ALL SERVICE SECTOR REGULATION:** Similarly, a new agreement set to be adopted as part of the Doha Round would impose new restrictions on other non-discriminatory regulations applied to all service sectors, including financial sector regulation. The March 20, 2009 draft of these provisions, being negotiated by the Working Party on Domestic Regulation, provides over 70 separate grounds for challenging non-discriminatory domestic service sector regulations. This includes challenges on such subjective matters as whether domestic regulatory criteria are “objective” or “relevant,” or their approval procedures are “as simple as possible.” Moreover, some countries and corporations are pushing to insert a “necessity” test into *all* domestic regulations – beyond just accountancy.⁹

As the United Nations commission on the financial crisis chaired by Joseph Stiglitz, concluded, “The framework for financial market liberalization under the ... General Agreement on Trade in Services (GATS) under the WTO and, even more, similar provisions in bilateral trade agreements may restrict the ability of governments to change the regulatory structure in ways which support financial stability, economic growth, and the welfare of vulnerable consumers and investors.”¹⁰ And a letter by scores of union, consumer and other civic organizations to President Obama in advance of the G-20 Pittsburgh Summit noted: “rather than calling for completion of the current Doha Round agenda (as they did in November and April), the leaders of the G-20 countries must agree to review and repair the existing WTO limits on financial service regulation and devise a future WTO negotiating agenda that takes into consideration the harsh lessons of the crisis.” The letter was signed by Americans for Financial Reform and 50 other groups representing over eight million Americans. Similar pressure is being applied by citizens’ groups on their governments around the world.

Please find attached to this memo the specific documents requests noted above, and contact 202-454-5126 with any additional questions.

ATTACHMENTS: Leaked Doha Round documents with relevant sections highlighted –

1. **Financial Services Collective Request** (“In view of the importance of financial services liberalization for global economic growth, stability and development, the following collective request is presented to [] on behalf of Australia, Canada, the European Communities, Ecuador, Hong Kong China, Japan, the Republic of Korea, Norway, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States.”)
2. **Request from the EC and its Members States (hereinafter EC) to Brazil.** (Excerpts on horizontal commitments, financial services and accounting services).

ENDNOTES

¹ The other two planks are agricultural and manufacturing liberalization.

² Financial Services Collective Request signed by Australia, Canada, the European Communities, Ecuador, Hong Kong China, Japan, the Republic of Korea, Norway, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States, page 2. “Modes 1, 2 and 3: remove limitations such as monopolies, numerical quotas or economic needs tests and mandatory cessions.” This is a reference to committing to Market Access under GATS Art. XVI. These rules ban countries for maintaining or establishing prohibitions on the total value of services transactions or total number of service operations or assets. This is an absolute ban, which is to say such policies simply are forbidden to exist in a country that has made commitments under these rules. This type of request involves the deregulation of policies designed to limit the size of

financial firms (and thus deal with the too big to fail problem), their legal forms, or firewalls between different financial service businesses to limit risk contagion across sectors.

³ “Communication from Switzerland – GATS 2000: Financial Services,” WTO document S/CSS/W/71, May 4, 2001.

⁴ Understanding on Commitments in Financial Services B(7).

⁵ “Communication from the European Communities and their Member States: GATS 2000: Financial Services,” WTO document S/CSS/W/39, Dec. 22, 2000.

⁶ “Communication from Australia – Negotiating Proposal for Financial Services,” WTO document S/CSS/W/66, March 26, 2001.

⁷ “Different regulations applied by sub-central and local governments on types of operation, ceiling on equities sharing, or other limitations on trade in financial services act as critical barriers to establishing or expanding operations of services suppliers. Therefore, the financial services negotiations should aim at harmonizing different regulations maintained by sub-central and local governments.” See “Communication from the Republic of Korea: Negotiating Proposal for Financial Services,” WTO document S/CSS/W/86, May 11, 2001.

⁸ Anthony DePalma, “WTO Pact Would Set Global Accounting Rules,” *New York Times*, March 1, 2002.

⁹ See, for instance, “Report on the Meeting Held on 1 April 2009,” WTO Document S/WPDR/M/40, May 12, 2009.

¹⁰ Report of the Commission of Experts of the President of the UN General Assembly on Reforms of the International Monetary and Financial System, September 21, 2009, *available at* http://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf, at 82.

Financial Services Collective Request

Introduction:

1. In view of the importance of financial services liberalization for global economic growth, stability and development, the following collective request is presented to [] on behalf of Australia, Canada, the European Communities, Ecuador, Hong Kong China, Japan, the Republic of Korea, Norway, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States to identify our shared objectives for financial services liberalization. This collective request is intended to complement the ongoing bilateral request-offer negotiations, and the specificity of bilateral requests.
2. This request identifies specific objectives for the financial services sector liberalization. The aforementioned interested Members are also to be recipients of this request.
3. The Mission of Canada has the further pleasure to invite [] to participate in a plurilateral discussion of this request, which will be organized in Geneva during the Services cluster taking place from 27 March to 7 April, 2006.
4. Please note that a number of other Members have received this collective request in the financial services sector from the aforementioned group of interested Members, and have also been invited to this plurilateral meeting.
5. Any comments regarding this request, including written questions of a technical nature in advance of the plurilateral meeting, may be addressed to:

Colleen Barnes, Department of Finance, Government of Canada: 613-992-4982;
Barnes.Colleen@fin.gc.ca; or,

Dean Corno, Department of Finance, Government of Canada: 613-947-2086;
Corno.Dean@fin.gc.ca.

Collective Request:

6. The GATS provides a framework under which countries can undertake financial services liberalization while enabling regulators to protect the stability and integrity of the financial system. Improved GATS commitments should include and build upon existing financial services liberalization as appropriate.
7. The following objectives should help WTO Members consider the scheduling of meaningful GATS commitments:
 - Definitions: Use the agreed definitions in the GATS Annex on Financial Services for scheduling commitments (see attachment).

-
- Mode 1: undertake commitments for marine, aviation and transport insurance; reinsurance; insurance intermediation, insurance auxiliary services; financial advisory services and financial information and data processing services. [PC NOTE: SAME AS IN UNDERSTANDING, PLUS]
 - Mode 2: undertake commitments for marine, aviation and transport insurance; reinsurance; insurance intermediation, insurance auxiliary services; and all non-insurance financial services (subsectors v-xvi). PC NOTE: SAME AS IN UNDERSTANDING, PLUS]
 - Modes 1 and 2: there can be advantages of additional liberalization, especially where the consuming agent is sophisticated, for example, an institutional consumer of securities services.
 - Mode 3: for all financial services sectors, undertake commitments encompassing rights to establish new and acquire existing companies, in the form of wholly-owned subsidiaries, joint ventures and branches. [PC NOTE: SAME AS IN UNDERSTANDING – TOP DOWN COMMITMENTS FOR COMMERCIAL PRESENCE]
 - Modes 1, 2 and 3: remove discrimination between domestic and foreign suppliers regarding application of laws and regulations ("national treatment").
 - Modes 1, 2 and 3: remove limitations such as monopolies, numerical quotas or economic needs tests and mandatory cessions. [THIS IS A REFERENCE TO COUNTRIES TAKING ON FULL “MARKET ACCESS” GATS ART. XVI OBLIGATIONS. These rules forbid regulation based on size of an institutions even if such rules apply equally to domestic and foreign firms – undermining efforts to deal with the “too big to fail” problem.]
 - Transparency in development and application of laws and regulations, transparent and speedy licensing procedures, and other regulatory issues should be addressed in the negotiations.

Attachment: Definitions:

Insurance and insurance-related services

- (i) Direct insurance (including co-insurance):
 - (A) life
 - (B) non-life
- (ii) Reinsurance and retrocession;
- (iii) Insurance intermediation, such as brokerage and agency;
- (iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

-
- (v) Acceptance of deposits and other repayable funds from the public;
 - (vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - (vii) Financial leasing;
 - (viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 - (ix) Guarantees and commitments;
 - (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities;
 - (F) other negotiable instruments and financial assets, including bullion.
 - (xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (xii) Money broking;
 - (xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 - (xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

FINANCIAL SERVICES EC REQUEST TO BRAZIL

Brazil has committed this sector only partially. The EC requests that it be committed as follows:

GENERAL

- Brazil has not yet accepted the Fifth protocol. EC Request: Ratify.
- EC Request: Undertake commitments in accordance with the Understanding on Commitments in Financial Services.

INSURANCE

- Mode 3: MA and NT- In direct insurance (life and non-life), reinsurance and insurance intermediation, direct branching, is not allowed. EC Request: Allow direct branching.
- Modes 1 and 2: MA and NT – MAT insurance is only partly committed. EC Request: Take full commitments in accordance with the Understanding.
- Mode 3: MA- In life and non-life insurance, requirement of enactment of a Presidential decree for the establishment of a commercial presence (i.e. case-by-case authorisation by the Executive Branch). EC Request: Eliminate this requirement.
- Modes 1 and 2: MA and NT - Reinsurance and retrocession are unbound. EC Request: Take full commitments.
- Mode 3: MA and NT – State monopoly on reinsurance and retrocession services. EC Request: Open to competition and undertake full commitments for reinsurance and retrocession services.
- Modes 1 and 2: MA and NT- Unbound in insurance intermediation (agencies and brokers). EC Request: Commit intermediation of reinsurance and of MAT insurance in accordance with the Understanding.

BANKING AND OTHER FINANCIAL SERVICES

- Various activities are not covered: credit, charge and debit cards, pension fund management, and provision and transfer of financial information. EC Request: Take full commitments in modes 1,2 and 3 for provision and transfer of financial information, in modes 2 and 3 in other sub-sectors, and commit in mode 4 as referred to in the section “Horizontal commitments”.
- Mode 2: MA and NT- Unbound in all sub-sectors. EC Request: Take full commitments.
- Mode 3: MA- For all financial institutions, requirement of a case-by-case authorisation by Presidential decree (subject to unspecified criteria) for the establishment of a commercial presence. EC Request: Eliminate this restriction.
- Mode 3: MA- Existence of discriminatory limitations on the expansion of the number of branches (including ATMs). EC Request: Remove this limitation.
- Mode 3: Foreign banks’ branches and subsidiaries cannot establish as “universal banks”. EC Request: Allow establishment as universal banks.
- Modes 1 and 2: MA and NT- Unbound for advisory services. EC Request: Take full commitments.
- Mode 3: NT – Forbidden to maintain accounts denominated in foreign currencies in Brazil. EC Request: Open up this possibility.
- Mode 3: Only Brazilian financial institutions are entitled to provide asset management services for federal and State agencies and companies. EC Request: Open these asset management services to foreign companies established in Brazil.
- Mode 3: Only State-owned banks are entitled to provide commercial banking services to federal, state or municipal agencies and companies. EC Request: Open to competition these services.

PROFESSIONAL SERVICES EC REQUEST TO BRAZIL

Brazil has committed this sector only partially. The EC requests that this sector is committed as follows:

...

B. ACCOUNTING, AUDITING AND BOOKKEEPING SERVICES (CPC 862)

- Mode 1: MA and NT – This mode remains unbound. **EC Request:** Take full commitments, i.e. schedule “none”, under MA and NT for accounting and bookkeeping services

- Mode 2: MA and NT – This mode remains unbound. **EC Request:** Take full commitments, i.e. schedule “none”, under MA and NT for the entire CPC 862

- Mode 3: MA – Prohibitions concerning participation of non-residents in juridical persons and use of foreign names. **EC Request:** Remove

- Mode 3: NT – Requirements concerning registration and use of standards. **EC Request:** Remove. In accordance with the Scheduling Guidelines adopted by the Council of Trade in Services (S/L/92 of March 2001), such entry does not need to be scheduled