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State of Play of MFN Exemptions

Compiled from Background Notes by the Secretariat for the
Information Exchange Programme
(Japan's Initiative)

The attached paper has been received from the delegation of Japan with the request that it be circulated to Members of the Council for Trade in Services.

This paper has been produced for the sole purpose of compiling information to be shared by Member countries at the MFN Review Meetings. The content has been extracted, without modification, from papers prepared by the Secretariat for the Information Exchange Programme, and, therefore, does not reflect the position on MFN exemptions of any Members, not even Japan.

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I. PRESENCE OF NATURAL PERSONS (S/C/W/75)

45. With regard to the access criteria and conditions used in individual schedules, the following observations may be made:

- f) There is a variety of additional cases where Members found it appropriate to include limitations, although relevant GATS rules do not seem to require scheduling under Articles XVI or XVII. Thus, in twenty cases, discriminatory tax measures have been included;¹ in three cases, foreign exchange restrictions have been listed;² and several Members have scheduled limitations benefiting foreigners who are related to nationals or have resided in the country for a minimum number of years.³

5.2 MFN Exemptions

46. It is difficult to provide a reasonably comprehensive overview of the MFN exemptions affecting movements of natural persons. This is mainly for two reasons. First, MFN exemptions are not generally expressed in modal terms. Many of them, not least in the area of professional services, may affect both movements of natural persons and commercial presence (investment). Second, a variety of exemptions relate to regional agreements – notwithstanding the provisions of Article V and Vbis of the GATS – which are described in such general terms, sometimes merely by name, that is next to impossible to infer their coverage. Despite such uncertainties, however, the Secretariat has identified 38 MFN exemptions clearly dealing with such movements; their content is summarized in Table 13 (Annex).

47. Of these exemptions, 32 are of a preferential nature. In the remaining cases, the treatment covered is purely reciprocal or, in two cases, it is at the same time preferential and reciprocal. Preferences granted are not frequently mirrored by similar exemptions on the part of beneficiary countries. Among other factors, this could reflect asymmetrical treatment under relevant agreements or failure by a government to seek an exemption in time. (In turn, such failure could also result in asymmetries should the government, in view of the legal situation, have decided to extend the benefits *erga omnes*.) Due to imprecise drafting, however, such possibilities cannot be further explored. Moreover, while 11 exemptions are clearly related to bilateral agreements and seven to unilateral measures, 12 provide no clarification of the legal basis of the measure – unilateral application; bilateral, regional or plurilateral agreement. Other exemptions provide cover for various combinations of unilateral measures and bilateral, regional and plurilateral agreements.

¹ A footnote to Article XIV would seem to provide a carve out for direct taxation of non-residents under certain conditions.

² Paragraph 9 of document MTN.GNS/W/164/Add.1 states that "exchanges control restrictions are subject to the general disciplines of Articles XI and XII of the GATS. Foreign exchange control restriction which fall under Article XII are exceptions from the obligations and commitments of the GATS and therefore should not be scheduled."

³ Such measures seem to raise problems under Article II and may need to be covered by an MFN exemption. Only one Member has acted correspondingly.

48. Most of the exemptions are of unspecified sectoral coverage. Only three exemptions apply to clearly designated sectors - interpretation, distribution and maritime transport - and one exemption to sectors covered by a bilateral treaty (Annex Table 13.B). In another case, the Member involved has indicated the sectors "principally concerned" (hotel, catering, construction). The scope of two other exemptions is confined to unskilled or semi-skilled labour, and a further exemption covers only seasonal workers. Finally, three exemptions apply to what seem to be peripheral aspects from the perspective of Mode 4 trade, namely the amount of consulate duties collected (one case) and a social security agreement.

TABLE 13**Overview of MFN exemptions affecting movements of natural persons****A. EXEMPTIONS WITH COMPREHENSIVE SECTORAL COVERAGE**

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
1. Austria	Switzerland	Waiving of visa requirement and other measures	Indefinite	
2. Brunei	Traditional sources	Preferences for entry and stay	Indefinite with periodic national review	
3. Cyprus	EU Member States	Permission for limited numbers of EU nationals to be employed or to exercise professions in specific occupations in accordance with criteria to be established unilaterally or in future agreements with EU	Until the time of full EU membership	
4. Portugal	Angola, Brazil, Cape Verde, Guinea Bissau, Mozambique, Sao Tome and Principe	Waiving of the nationality requirement for the exercise of certain activities and professions	Indefinite	
5. France	Francophone African countries, Algeria, Switzerland and Romania	Facilitation of access procedures for the exercise of certain services activities	10 years	
6. United Kingdom	Members of the British Commonwealth	Waiving of the requirement of a work permit for citizens having a grandparent born in the UK	Indefinite	
7. EC and/or Member States	Switzerland	Measures with the objective of providing for the movement of all categories of natural persons supplying services	Indefinite	Reference to a progressive process
8. EC and certain Member States	San Marino, Monaco, Andorra, Vatican State city	Right of establishment for natural (and legal) persons, waiving the requirement of work permits	Indefinite	
9. EC Member States	States in Central, Eastern and South-Eastern Europe including Russia, Ukraine, Belarus and Georgia, and in the Mediterranean basin	Guarantee of work permits in limited number for temporary contract work	Indefinite or, for certain countries, until an economic integration agreement is concluded or completed	All sectors (principally construction, hotel and catering). Reference to a broader initiative
10. Italy	States in Central Eastern and South Eastern Europe and in the Mediterranean Basin	Guarantee of work permits for seasonal workers	Indefinite	

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
11. Egypt	Greece, Iraq, Jordan, Libya, Qatar, Sudan, United Arab Emirates, Yemen and possibly other countries	Full national treatment	As long as the agreements remain in force	
12. Indonesia	Malaysia, Singapore, Brunei Darussalam, Papua New Guinea, Australia	Measures concerning movement of personnel (semi-skilled workers). Limited access to low level occupations	Indefinite	
13. Jamaica	Caricom Members: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Montserrat, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago	Waiving of work permits	Indefinite	
14. Liechtenstein	Switzerland	Mutual granting of temporary stay and permanent residency	Indefinite	
15. Liechtenstein	EC and EFTA countries	Preferential treatment of persons from traditional recruiting areas with regard to permits for entry, stay and work (applies to persons other than the essential persons appearing in the schedule of commitments).	Indefinite	
16. Liechtenstein	All countries	Reciprocity concerning the "right of presence of natural persons"	Indefinite	
17. Malaysia	All countries	Differential treatment for measures affecting the movement of semi-skilled and unskilled workers on a regional, religious and cultural basis	Indefinite	
18. Malta	European Union Countries	Preferential treatment in the granting of licences and permits to provide services	Indefinite	Reference to the integration process into the EU
19. New Zealand	Kiribati	Most favourable entry conditions possible for up to 20 nationals each year	Indefinite	
20. New Zealand	Tuvalu	Most favourable entry conditions possible for up to 80 nationals each year	Indefinite	
21. Panama	Guatemala, El Salvador, Nicaragua, Costa Rica, and Honduras	Preferential treatment for suppliers of services of different kinds	Indefinite	
22. Panama	United States	Preferential treatment for suppliers of services under the Panama Canal Treaties	Indefinite	
23. Peru	All countries	Waiving the limitations of: three years as maximum duration, 20% of the total number of employees and 30% of the payroll	Indefinite	
24. Philippines	"All countries" /countries with whom a treaty on entry rights for traders and investors has been concluded	Waiving labour market test and simplifying entry procedures	Expiry or termination date of the bilateral treaties	

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
25. Sierra Leone	Mano River Union and ECOWAS countries	Full national treatment	As long as agreements remain in force or are extended	
26. Singapore	"Traditional sources"	Measures regarding unskilled, semi-skilled, and skilled persons except specialists and professionals. (Purpose: prevent overpopulation and maintain social order)	Indefinite (periodic national review)	
27. Solomon Islands	Members of the Melanesian Spearhead Group: Vanuatu, Papua New Guinea	Waivers for measures affecting the entry and temporary stay of natural persons	Indefinite	Reference to an ongoing process
28. Sweden	Switzerland	Measures with the objective of providing for the movement of all categories of natural persons supplying services	Indefinite	Reference to a progressive process
29. Switzerland	Liechtenstein	See 14.	Indefinite	
30. Switzerland	EC and EFTA countries	See 15.	Indefinite	
31. Tunisia	"All countries" (probably with whom Tunisia has or will have agreements)	Bilateral social security agreements: extension of social security and health benefits to citizens of other countries	Not specified	
32. Turkey	Libya	Restrictions on the transfer of premiums for long-term insurance schemes and on employment of foreign-workers by foreign companies is waived (not applied de facto).	Indefinite	
33. Turkey	All countries	Consulate duties: if the amount of the consulate duties collected from Turkish nationals by any country is higher than the amount written in the tariff list, the consulate duties collected from the nationals of that country will be increased reciprocally.	Indefinite	
34. USA	All countries with whom the United States has a friendship, commerce and navigation treaty, a bilateral investment treaty; or certain countries described in Section 204 of the Immigration Act of 1990	Movement of persons for trade and investment: issuance of "treaty trader or treaty investor non immigrant visas" to nationals of the countries concerned engaged in substantial trade in services or in developing an investment.	Indefinite	

B. SECTOR-SPECIFIC EXEMPTIONS

WTO MEMBER	SECTOR CONCERNED	BENEFICIARIES	TREATMENT COVERED	DURATION
1. New Zealand	Interpretation services	Japan and other countries with whom such arrangements may be desirable	Most favourable entries conditions if employment for up to two years as interpreters in tourism related industries.	Indefinite
2. Switzerland	Distribution services	EFTA members	Granting of work permits without certain limitations to employees of companies (commerce in goods) from EFTA countries	Indefinite
3. Thailand	Services mentioned in the US –Thailand Treaty of Amity and Economic Relations	USA	National treatment to U.S. citizens to provide the services mentioned in the Treaty	10 years
4. USA	Maritime transport	Countries that prohibit longshore work by crew members aboard U.S. vessels	Restrictions on performance of longshore work when making U.S. port calls by crews of foreign vessels owned or flagged in countries that similarly restrict U.S. crews on U.S. flag vessels.	Indefinite

II. LEGAL SERVICES (S/C/W/43)

56. Professional associations are also involved in the bilateral negotiation of market access for foreign lawyers⁴ and mutual recognition agreements on matters such as qualification requirements, licensing requirements and ethical standards. Bilateral agreements exist between the American Bar Association (ABA) and the Law Society of England and Wales. It is evident that any such agreement will have to comply with the MFN obligation of Article II and with the provisions of Article VII on mutual recognition.

G. Specific commitments and MFN exemption lists

58. Four Members have MFN exemptions in legal services⁵, while four other Members have exemptions in professional services.⁶ Three of the legal services sector specific exemptions cover all measures pertaining to the provision of legal services and apply to all countries on the basis of reciprocity. The fourth exemption extends full national treatment for mode three and four only to companies and citizens of countries with which preferential arrangements exist. All the professional services exemptions maintain reciprocity as a condition for authorizations to exercise professional activities, including legal services.

59. It appears that in some countries which have undertaken specific commitments the actual legal services regime is more liberal than the regime bound in the schedules and that some countries who have not scheduled specific commitments and have listed MFN exemptions maintain rather liberal legal services regimes.⁷

III. ACCOUNTANCY SERVICES (S/C/W/73)

43. Seven WTO Members have taken MFN exemptions which directly specify either accountancy services or professional services in general.⁸ These MFN exemptions all involve reciprocity provisions for the exercise of professional activities. Additionally, a number of Members have taken general MFN exemptions which may have an effect on the accountancy sector, most notably preferential access measures for natural persons.

IV. ARCHITECTURAL AND ENGINEERING SERVICES (S/C/W/44)

34. There are only a few MFN exemptions specific to the architectural and engineering sectors, or those which apply to professional services including those sectors, but a number of Members apply reciprocity in allowing foreign professionals to perform those services in their countries.⁹

⁴ It has been reported that the Law Society of England and Wales has been negotiating with the relevant bar councils in India to discuss the creation of a foreign lawyer regime for the country, ideally mirroring the rights that Indian advocates enjoy in the United Kingdom.

⁵ Brunei Darussalam, Bulgaria, Dominican Republic and Singapore.

⁶ Costa Rica, Honduras, Panama, Turkey.

⁷ US International Trade Commission, "General Agreement on Trade in Services: examination of the schedules of commitments submitted by Asia/Pacific trading partners," Investigation no. 332-374, Washington DC, August 1997.

⁸ The countries are Costa Rica, Dominican Republic, Honduras, Panama, Thailand, Turkey and Venezuela.

⁹ Some countries apply preferential treatment to nationals or firms of other countries with historical links.

V. COMPUTER AND RELATED SERVICES (S/C/W/45)

36. No WTO Members have listed MFN exemptions specific to computer and related services. However, given the importance of commercial presence and movement of natural persons, some of the horizontal MFN exemptions listed relating to these modes of supply would have an impact.

VI. POSTAL AND COURIER SERVICES (S/C/W/39)

Relation to other services/sectors. Postal and courier services are dependent on physical means of delivery, particularly air and road transport services. Road transport may be a significant means of delivery of parcels and other items within geographic regions or contiguous countries, and air transport is the predominant means of delivery among distant locations. However, air and road transport services are identified as sectors in their own right in the Services Sectoral Classification List. Moreover, that list includes freight transportation among the subsectors of these and most other transport subsectors. While the CPC explicitly excludes transport of mail by air from its definition of courier services, first, it nowhere defines the scope of "mail" and, second, it does not make clear whether the exclusion applies only to "mail" services based exclusively on air transport or to any air transport component of any courier service suppliers' operations. Notably, the UNCPC makes no similar exclusion for transport of mail by road means, even though such an item also appears in the CPC under road transport services. These definitional ambiguities can result in overlap between coverage of commitments in the different sectors or, at least, point to an important relation between the commitments. Clarity regarding such issues may be particularly important for highly integrated courier services suppliers, such as those operating their own fleet of trucks and/or airplanes. Some Members have dealt with the ambiguities by entering text in their schedules explaining the scope of the courier service commitment with respect to means of transport. Nevertheless, given the way courier services suppliers operate, it is likely that the exclusion of most air transport services by the GATS Annex on Air Transport and MFN exemptions taken for measures relating to road transport have an impact on courier services commitments undertaken.

As noted earlier, since the courier services often encompass some components of other service industries such as air and road transport, commitments undertaken on courier services may be affected by market access limitations in these other relevant service sectors and by various regulatory requirements relating to the means of transportation they may use. One example may be air transport regulations prohibiting express mail service suppliers to self-handle their own aircraft or rules requiring trans-shipments on an arriving aircraft to be formally imported and re-exported. Other practices can include surcharges on aircraft services or unclear methods of computing airport user fees. Some countries regulations limit the ability of foreign courier service suppliers to obtain the variety of licenses they may need (e.g. trucking, customs, postal, freight forwarding, brokerage, warehouse) to efficiently provide their services. Some such licenses may be restricted to nationals or extended only to monopoly concessions.

In addition, regulatory requirements relating to personnel, vehicle fleets, facilities, and communications can be relevant. Such measures that are horizontal in nature can include limitations on foreign investment, acquisition of land, access to domestic credit, and the entry and temporary stay of natural persons supplying services to that country. In this vein, MFN exemptions on horizontal measures can be as important a consideration as limitations listed in horizontal sections of schedules. Such measures may include those related to movement of natural persons (e.g. preferential work permit arrangements, or labour market tests).

VII. AUDIOVISUAL SERVICES (S/C/W/40)

V. Negotiations on Audiovisual Services and Existing Commitments under the GATS

24. These social and economic concerns, and the pressures for change exerted by new technology, underlay the discussion of audiovisual services in the Uruguay Round, in which there was a heavy focus on the cultural specificity of the film and television industries, in particular. There was no specific recognitions of these concerns in the text of the Agreement, but at the end of the Round only 13 countries made commitments in this sector. A substantially larger number took MFN exemptions. As a result of accessions, the number of Members making commitments has since risen to 19.

25. The majority of the 19 Members who have made commitments to date in audiovisual services (Table 9), have followed the sectoral classification in W/120, with some modifications or exceptions. In some cases, however, national definitions have been used.¹⁰ In one case, CPC 7524 has been included under commitments on audiovisual services, but defined as "Radio and television cable services". For the numerous MFN exemptions taken in the audiovisual services sector, national definitions have primarily been used.

31. A large number of MFN exemptions have been taken in regard to audiovisual services. Counting the European Community as a single entity, a total of 33 MFN exemptions¹¹ specifically mentioning the audiovisual sector are in place, with an additional eight MFN exemptions applying to all services sectors, potentially including audiovisual. The exemptions most commonly cover co-production arrangements for film and television productions, typically granting national treatment status in respect to eligibility for financial assistance, tax benefits and simplified entry procedures for natural persons.

32. Agreements mentioned in the MFN exemptions include those for the promotion of European, Latin American and Arab audiovisual works. Preferential treatment in regard to screen-time access is also given in many cases. The most wide-ranging MFN exemptions are those of the European Community and Venezuela. Some MFN exemptions also provide for potential retaliatory measures against unilateral measures imposed by trading partners.

VIII. CONSTRUCTION AND RELATED ENGINEERING SERVICES (S/C/W/38)

20. Subsidies and tax incentives are provided in many countries to promote construction work or to encourage growth of the construction sector. If they are granted only to local suppliers, they may be inconsistent with a Member's national treatment obligations. There can also be preferences provided to local contractors in bidding, or requirements to transfer technology. Restrictions on the ownership of land by foreigners are normally applied to all sectors, but may have a strong effect on the construction industry, since property developers will not be able to own apartments and houses

¹⁰This number includes one case where commitments were made under 2. C. (Telecommunications services), but the sub-categories concerned (CPC 75241 and 75242) are classified as Audiovisual services under W/120 and the Provisional CPC.

¹¹The 33 exemptions covering audiovisual services are by: Australia, Austria, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Canada, Chile, Columbia, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, European Community, Finland, Hungary, Iceland, India, Israel, Liechtenstein, New Zealand, Norway, Panama, Poland, Singapore, Slovak Republic, Slovenia, Sweden, Switzerland, Tunisia, United States and Venezuela. The eight general MFN exemptions potentially impacting audiovisual services are by: El Salvador, Malaysia, Peru, Philippines, Sierra Leone, Thailand, Turkey and the United Arab Emirates.

under construction until completion.¹² When preferential treatment is provided to suppliers of certain countries in the bidding process, for example, an MFN exemption is required. MFN exemptions concerning the movement of personnel, research and development subsidies, and foreign investment listed for all sectors would also affect this sector significantly.

27. There are very few MFN exemptions specific to the construction sector, but some Members provide preferential treatment to suppliers from neighbouring countries, such as preferential short-listing in international competitive bidding.

IX. DISTRIBUTION SERVICES (S/C/W/37)

MFN Exemptions

58. Only two Members (Liechtenstein and Switzerland) have listed MFN exemptions which apply specifically to distribution services. Both reserve the right to grant work permits to employees of locally established enterprises, engaged in commerce in goods, of member countries of the Convention establishing the European Free Trade Association (EFTA). The intended duration of the exemptions is indefinite and the exemptions have been justified as "flanking measures" to the provision on free trade in goods under the EFTA Agreement. It is possible that other, more general MFN exemptions also have an impact on trade in distribution services.

Possible questions:

- What are the reasons for the frequent exclusion of certain product categories from the scope of Members' commitments?
- How far have the commitments of Members captured the liberalization of trade in distribution services?
- How far do the commitments reflect the restrictions still in place?

X. EDUCATION SERVICES (S/C/W/49)

MFN Exemptions

46. MFN exemptions have been taken by 15 of the 30 Members with commitments on education services.¹³ None of these Members have listed exemptions specific to education. Most of the existing MFN exemptions are designed to provide cover for preferential treatment on the basis of bilateral agreements; three Members have included reservations allowing for reciprocity.¹⁴ The preferential treatment relates mostly to movement of natural persons supplying services, promotion and protection of investment, and right of establishment of juridical persons.

Issues for Discussion:

- How far do current commitments reflect actual access conditions?

¹² See, for example, WTO, Trade Policy Review of Switzerland, 1996.

¹³ Austria, Costa Rica, EU, Jamaica, Liechtenstein, New Zealand, Norway, Panama, Poland, Sierra Leone, Switzerland, Thailand, Trinidad and Tobago, Turkey, USA.

¹⁴ EU, Liechtenstein, Turkey.

- How far do they reflect restrictions that scholars and students may consider as particularly onerous? What is the relative importance of domestic regulation falling under Article VI?
- Article XVII of the GATSs relates to all measures that modify the "conditions of competition" to the detriment of foreign suppliers of like services. what is the status of mesures conditioning a) financial support to students, and b) recognition of diplomas/certificates on the nationality of the education service supplier?

XI. FINANCIAL SERVICES (S/C/W/72)

37. Non-prudential regulatory measures such as lending requirements to certain sectors or geographical regions, restrictions on interest rates or fees and commissions, and requirements to provide certain services may also exist. Services related to the issuance of public debt are often subject to special rules and standards. Some of those measures may be subject to scheduling under the GATS as limitations on market access, or as limitations on national treatment, particularly when they are applied in a discriminatory manner. They may also necessitate MFN exemptions, if applied in a discriminatory manner between trading partners.

45. Concerning national treatment, special authorization requirements for foreign institutions, limitations on the ownership of land, and nationality and residency requirements for members of the board are very common. Taxes and subsidies also cause national treatment concerns. Taxation is often a determining factor in the decision of the location of financial transactions and can substantially alter the conditions of competition between financial service suppliers.¹⁵ Subsidies are also not uncommon, but they may take the form of preferential loans from the central bank or governmental entities, which may be difficult to identify. Governmental assistance to the banking sector provided in the context of a financial crisis may have national treatment implications, but could constitute prudential measures if the objective is to protect depositors or to restore the stability of the financial system.¹⁶ National treatment and MFN are important issues in government procurement of financial services, especially when it relates to issuance of public debt.

61. Sectoral MFN exemptions in financial services have been taken by 39 Members.¹⁷ Although broad MFN exemptions based on reciprocity (or similar requirements) were largely eliminated as a result of the most recent negotiations, they remain in the MFN exemption lists of 13 Members.¹⁸ In relation to the question of grandfathering existing foreign ownership in local financial institutions, the United States took an MFN exemption in insurance, applicable in a circumstance of forced divestiture of U.S. ownership in insurance service providers operating in WTO Member countries.

¹⁵ The Committee on Fiscal Affairs of the OECD has been discussing issues related to the taxation of new financial instruments and the taxation of global trading of financial instruments. See <http://www.oecd.org/daf/fa>.

¹⁶ S/WPGR/W/25 of 26 January 1998 reports that, according to WTO Trade Policy Reviews, at least ten Members have assisted their offshore banking sectors or rescued ailing domestic banks in recent years.

¹⁷ Including Côte d'Ivoire which does not yet have commitments in financial services, but has entered an MFN Exemption List on 12 December 1997 (S/L/48).

¹⁸ Brunei Darussalam, Colombia, Honduras, Hungary, Indonesia, Israel, Mauritius, Peru, Philippines, Turkey, United Arab Emirates and Venezuela. As a result of the most recent negotiations, Mauritius has limited the scope of its MFN exemption based on reciprocity to services not listed in its Schedule of Specific Commitments. Hungary has limited the applicability of its exemption by removing a discretionary licensing requirement. The Philippines has reduced the scope of its exemption in commercial banking by excluding the expansion of existing operations from the scope, leaving only the establishment of new commercial presence. Venezuela has reduced the scope of its exemption by removing capital market services from the coverage.

XII. HEALTH AND SOCIAL SERVICES (S/C/W/50)

40. In addition, there may be various types of direct private/public-sector cooperation, for example with private companies operating public health facilities. Under so-called Build-Operate-Transfer (BOT) arrangements, governments may invite private investors to build hospitals through offering them certain exclusivity rights on a temporary basis. The legal status of such arrangements under the GATS may vary, depending on the rights and obligations conferred in individual cases. BOT arrangements, for example, may be viewed as some form of government-regulated commercial activity or as government procurement of the services involved. In the former case, for example, the authorities would be required to extend MFN treatment under Article II and – in scheduled sectors – to ensure that the relevant access criteria are "objective and transparent" (Article VI:4).¹⁹ In the latter case, Article XIII of the GATS would provide legal cover against infringements of MFN, Market Access and National Treatment obligations.

MFN Exemptions

63. Among the MFN exemptions listed by WTO members in the context of the Uruguay Round or recent accessions, eight cases relate to professional services in general – thus extending to the four categories covered by this Note – or to individual health and social services. The exemptions have been listed by Bulgaria, Costa Rica, Cyprus, Dominican Republic, Honduras; Panama, Turkey and Venezuela. In a clear majority of cases, the intended purpose is to provide legal cover for some type of reciprocity requirement governing market access for professionals (Table 5). In one case (Cyprus), it is not possible to identify the precise nature of the MFN problem expected to be covered. In another case (Bulgaria), the description of the measure seems to indicate that consumers rather than suppliers of health and medical services are subject to an element of discrimination.

¹⁹Other relevant provisions may include Article VIII:2 of the GATS which obliges Members to ensure that monopoly positions are not abused in areas outside the scope of the monopoly; the supplier concerned must be prevented from acting in a manner inconsistent with the Member's specific commitments. (BOT arrangements may be considered to confer temporary monopoly rights, at least on a regional basis, on individual suppliers.)

Country and sector	Measure	Countries covered
BULGARIA Medical and dental services	Benefits under public medical insurance, subsidization and compensation schemes covering medical and dental services are extended to foreigners staying in Bulgaria on the basis of reciprocity.	Current and future signatories to bilateral agreements
COSTA RICA Professional services	Foreign professionals may become members of professional colleges only if a reciprocal agreement with the home country exists and/or in certain cases if Costa Ricans may exercise the profession in similar circumstances in the country concerned.	All countries
CYPRUS Human health services and social security	Human health services: Measures governing the provision to Cypriots of medical treatment not otherwise available in Cyprus. Public social security: Measures covered by bilateral agreements on social security.	All countries with whom medical co-operation might be desirable (agreements currently exist with medical centres in Greece, United Kingdom and Israel). Austria, Canada (Quebec) and any country with whom an agreement may be concluded in future.
DOMINICAN REPUBLIC Dental, physiotherapy, medical, paramedical and nursing services	Dentists, physiotherapists, doctors, paramedical personnel and nurses may exercise their profession only on the basis of reciprocity.	All countries
HONDURAS Professional services	Authorization to exercise a profession is granted on the basis of reciprocity.	All countries
PANAMA Professional services	Authorization to exercise a profession is granted on the basis of reciprocity.	All countries
TURKEY Professional services	Possibility of prohibiting the supply of services in Turkey if the supplier's home country maintains legal and administrative conditions adversely affecting Turkish citizens who supply similar services.	All countries
VENEZUELA Professional services	Laws governing the supply of professional services by foreigners (including physicians and veterinary surgeons) may specify as a condition that Venezuelans must receive the same treatment in the applicant's home country.	All countries

Source: WTO Secretariat based on documents GATS/EL/122, 22, 25, 28, 38, 124, 88 and 92.

XIII. TOURISM SERVICES (S/C/W/51)

37. An MFN exemption affecting Tourism has been taken by Mexico in regard to tax deductions for individuals attending business conventions. Under the Aviation category in the Transport sector, Members have taken a significant number (16) of MFN exemptions for CRS; exemptions are also in place for a number of other aviation-related measures. In addition, a substantial number of Members have taken general MFN exemptions which may have an effect on the Tourism sector, most notably preferential access measures for natural persons.

XIV. MARITIME TRANSPORT SERVICES (S/C/W/62)

3. The results of the Uruguay Round, while incorporating in the services schedules the maritime transport commitments made, also contain an annex to the GATS on negotiations in maritime transport services and a ministerial decision on maritime transport services whose effect was to prolong maritime transport negotiations until 30 June 1996 and create to that effect a Negotiating Group on Maritime Transport Services (NGMTS). This group held 17 meetings between May 1994 and June 1996. As a result of its work, the Council for Trade in Services adopted on 28 June 1996 a Decision on Maritime Transport Services (S/L/24 dated 3 July), which again incorporates the maritime commitments and the MFN exemptions related to those commitments in the schedules, suspends the negotiations until the commencement of the next comprehensive negotiations on services, and suspends the MFN obligation until the end of the negotiations. The text of this decision is in Annex 1.

ANNEX 1

DECISION ON MARITIME TRANSPORT SERVICES

Adopted by the Council for Trade in Services on 28 June 1996

The Council for Trade in Services,

Having regard to the Annex on negotiations on Maritime Transport Services,

Having regard to the Decision on Negotiations on Maritime Transport Services, adopted at Marrakesh on 15 April 1994,

Noting the Report of the Negotiating Group on Maritime Transport Services and the commitments scheduled by Members in this sector,

Desiring to further the liberalization of international trade in maritime transport services within the framework of the General Agreement on Trade in Services (GATS),

Decides as follows:

1. To suspend the negotiations on Maritime Transport Services and to resume them with the commencement of comprehensive negotiations on Services, in accordance with Article XIX of the GATS, and to conclude them no later than at the end of this first round of progressive liberalization. At an appropriate time decisions pursuant to paragraph 3 of Article XIX of the GATS will be taken on procedures for the conduct of such negotiations. It is agreed that negotiations will be resumed on the basis of existing or improved offers.
2. Members wishing to exercise their rights under paragraph 3 of the Annex on Negotiations on Maritime Transport Services may do so during a period of 30 days from the date of this Decision.
3. Any commitments resulting from these negotiations will be inscribed in Schedules of Specific Commitments annexed to the GATS.
4. Article II of the GATS and the Annex on Article II Exemptions, including the requirement to list in the Annex any measures inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for international shipping, auxiliary services and access to and use of port facilities at the same time as the conclusion of the negotiations referred to in paragraph 1. During the course of negotiations the effects of the continued suspension of Article II will be kept under review by the Council for Trade in Services.
5. Paragraph 4 of this Decision shall not apply to any specific commitment on maritime transport services which is inscribed in a Member's Schedule.
6. Notwithstanding Article XXI, a Member may improve, modify or withdraw all or part of its specific commitments in this sector, during a period of sixty days the end of which shall coincide with the conclusion of the negotiations referred to in paragraph 1. During the same period, Members shall finalize their positions relating to MFN Exemptions in this sector.
7. Commencing immediately and continuing until the conclusion of the negotiations referred to in paragraph 1, it is understood that Members shall not apply any measures affecting trade in maritime transport services except in response to measures applied by other countries and with a view to maintaining or improving the freedom of provision of maritime transport services, nor in such a manner as would improve their negotiating position and leverage.

39. As far as MFN exemptions are concerned, 26 Members have MFN exemption lists in maritime transport services. However, according to paragraph 4 of the Decision on Maritime Transport Services of 3 July 1996 (S/L/24), Article II of the GATS and the Annex on Article II Exemptions are suspended for international shipping, auxiliary services and access to and use of port facilities until the conclusion of the next round of services negotiations. Paragraph 4 of the Decision, however, does not apply to any specific commitment on maritime transport services which is inscribed in a Member's schedule. The only MFN exemption lists which are not suspended are those taken by Members who have maintained specific commitments in the sector. There are therefore only 14 Members who have MFN exemption lists actually in force.

40. Four MFN exemptions among those whose effects are not suspended cover measures taken by Members under the UN Convention on a Code of Conduct on Liner Conferences. These exemptions are of a preferential nature in so far as they favour countries who are signatories to the Code. However, treatment under the Code is partially²⁰ based on reciprocity and has a partial exclusionary effect on third parties (which are limited to 20 per cent of the cargoes carried by the conference). Four other exemptions are specific to cabotage, three to tax treatment and four are of a broad and generic nature covering a bundle of existing and future measures in the maritime sector. The vast majority of exemptions (15) do not specify the intended duration and have entries such as "indefinite, unlimited or indeterminate"; three exemptions link the duration of the exemptions to the expiry date or termination of existing bilateral agreements. Finally six exemptions are both of a preferential and reciprocal nature, nine are only reciprocal and four are only preferential.

41. This table only lists the MFN exemptions of those Members who have commitments in maritime transport services as, according to paragraph 5 of the Decision on Maritime Transport Services of 3 July 1996 (S/L/24), the continued suspension of Article II and of the Annex on Article II exemptions does not apply to Members' specific commitments on maritime transport inscribed in the schedules and to the relevant MFN exemptions.

42. This table does not take account of MFN exemptions applicable to all sectors, it only lists MFN exemptions specific to the maritime sector.

²⁰ For instance EC regulation 954//79 known as the "Brussels package" disapplies between EC shipping companies the strict bilateral cargo sharing (40-40) foreseen by the code.

MFN EXEMPTIONS IN MARITIME TRANSPORT SERVICES

Member	Sector affected	Countries to which the measure applies	Intended duration	Nature of exemption
Benin	Coastal shipping (cabotage) and liner trade	Not specified	10 years renewable	Preferential/reciprocal
	Maritime transport: UN Convention on a Code of Conduct on Liner Conferences	Not specified	Unlimited	Preferential/reciprocal
Canada	Maritime transport: tax exemption	All	Indeterminate	Reciprocal
Cuba	Freight transportation	All countries with which bilateral agreements have been concluded	Until end of notice of termination by one of the parties	Preferential
European Community	Rental/leasing services without operators, relating to ships; rental of vessels with crew (Chartering of foreign ships to consumers resident in Germany)	All	Indefinite	Reciprocal
Finland	Cabotage	All	Indefinite	Reciprocal
Jamaica	Cargo reservations under the UN Code of Conduct on Liner Conferences	Signatories to the UN Convention on a Code of Conduct on Liner Conferences	Indefinite	Preferential/reciprocal
New Zealand	Maritime (passenger and freight): supply of services by officers on New Zealand ships – qualification requirements	Eire, Hong Kong, United Kingdom, India, Malaysia, Singapore, Pakistan, South Africa	Indefinite	Preferential
Peru	Transport: land and sea	Andean Group countries	Indefinite	Preferential
Philippines	Cabotage	All	Expiry date or termination of bilateral agreements on Amity, Commerce and Navigation	Reciprocal
Senegal	Coastal shipping (cabotage) trade	25 countries	Near future, while the objective pursued takes root	Reciprocal
	Maritime transport: UN Convention on a Code of Conduct on Liner Conferences	Not specified	Unlimited	Preferential/reciprocal
	Maritime transport	Not specified	Unlimited	Preferential/reciprocal
Thailand	Selling and marketing of maritime transport services: value added tax collection	All	Indefinite	Reciprocal
Trinidad and Tobago	Cargo reservations under the UN Code of Conduct on Liner Conferences	Signatories to the Code	Unlimited	Preferential/reciprocal
Turkey	Transportation services: income and corporate tax rates. Value added tax exemption.	All	Indefinite	Reciprocal
	Treatment of transportation vehicles	All	Indefinite	Reciprocal
Venezuela	Maritime freight transport services	Not specified	Indefinite	Reciprocal
	Maritime freight transport services: cargo sharing	United States	Indefinite	Preferential

XV. AIR TRANSPORT SERVICES (S/C/W/59)

16. In the same way Mode 3 conditions the establishment of foreign maintenance facilities in third markets. Table 1 in the Annex compares the number of WTO Members having MFN obligations on air maintenance (all save one) the size of their commercial fleet in 1995 and 1998 and the number of maintenance and repair facilities on their territory in those same years. Countries with market access and/or national treatment commitments on maintenance services are highlighted. The table reveals a general increase in the number of new facilities established. This is more likely to result from market growth than from the effects of the GATS, but it may be noted that six of the 13 cases of newly created facilities have been in countries with GATS commitments in this sector.

Table 1: WTO Members - with MFN obligations for Repair and Maintenance Services
(Bold areas are symbolising countries with commitments)

	1995		1998		
	Number of aircraft	Number of repair and maintenance facilities	Number of aircraft	Number of repair and maintenance facilities	New facilities established
Member					
Angola	24		25		
Antigua & Barbuda	12		9		
Argentina	71		80	1	+1
Australia	207	2	231	2	
Austria	68	1	74	1	
Bahrain	1		2		
Bangladesh	7		8		
Barbados	1		0		
Belgium	111	1	132	2	+1
Belize	0		0		
Benin	0		0		
Bolivia	21		18		
Botswana	1		1		
Brazil	194	3	219	4	+1
Brunei Darassalam	14		20		
Bulgaria	88		47		
Burkina Faso	2		2		
Burundi	0		0		
Cameroon	6		6		
Central African Rep.	0		0		
Chad	1		1		
Chile	42		53		
Colombia	94		92	1	+1

	1995		1998		
	Number of aircraft	Number of repair and maintenance facilities	Number of aircraft	Number of repair and maintenance facilities	New facilities established
Congo	5		5		
Congo, Dem. Rep.	32		30		
Costa Rica	12	1	11	1	
Cote d'Ivoire	17	1	18	1	
Cuba	94		42		
Cyprus	19		19		
Czech Republic	35	1	43	1	
Denmark	66	1	67	1	
Djibouti	4		2		
Dominica	0		0		
Dominican Rep.	4		0		
Ecuador	24		24		
Egypt	58		64		
El Salvador	15		20		
Fiji	5		7		
Finland	45		51		
France	483	7	443	11	+4
Gabon	4		8		
Gambia	1		11		
Germany	474	5	575	9	+4
Ghana	12		14		
Greece	53	1	42	1	
Grenada	0		0		
Guatemala	8		8		
Guinea Bissau	1		0		
Guinea, Rep.	2		1		
Guyana	1		1		
Haiti	1		0		
Honduras	5		1		
Hong Kong	100	1	0	2	+1
Hungary	35	1	31	1	
Iceland	18	1	22	1	
India	128		134		
Indonesia	223		196		
Ireland	52	6	74	6	
Israel	36	2	40	2	
Italy	245	2	202	2	

	1995		1998		
	Number of aircraft	Number of repair and maintenance facilities	Number of aircraft	Number of repair and maintenance facilities	New facilities established
Jamaica	10		14		
Japan	485		476		
Kenya	14		10		
Korea	190		226		
Lesotho	1				
Liechtenstein	0		132		
Luxembourg	16	1	17	1	
Macau	0		74		
Madagascar	8		6		
Malawi	2		3		
Malaysia	124	1	131	1	
Maldives	1		1		
Mali	0		1		
Malta	16		13		
Mauritania	2		1		
Mauritius	10		8		
Mexico	217	2	203	2	
Morocco	42	1	34	1	
Mongolia	20		3		
Mozambique	7		5		
Myanmar	8		5		
Namibia	2		2		
Netherlands	154	5	145	5	
New Zealand	60	1	55	2	+1
Nicaragua	1		1		
Niger	1		1		
Nigeria	103		100		
Norway	40		40		
Pakistan	51		49		
Panama	10		15		
Papua New Guinea	10		10		
Paraguay	6		6		
Peru	49		46		
Philippines	60		104		
Poland	56		41		
Portugal	46	1	75	1	

	1995		1998		
	Number of aircraft	Number of repair and maintenance facilities	Number of aircraft	Number of repair and maintenance facilities	New facilities established
Qatar	4		11		
Romania	48		45	1	+1
Rwanda	1		0		
St Kitts & Nevis	0		0		
Saint Lucia	0		0		
St. Vincent & Grn.	0		0		
Senegal	2		1		
Sierra Leone	1		1		
Singapore	101	5	149	7	+2
Slovak Republic	4		15		
Slovenia	11		7		
Solomon Islands	1		2		
South Africa	59	1	135	2	+1
Spain	249	1	269	1	
Sri Lanka	16		9		
Suriname	0		1		
Swaziland	5		5		
Sweden	230	2	207	2	
Switzerland	124	3	96	3	
Tanzania	10		4		
Togo	2		5		
Trinidad & Tobago	13		13		
Tunisia	25		28		
Turkey	107		138		
Uganda	6		9		
United Arab Emirates	33	1	45	1	
United Kingdom	610	11	758	14	+3
United States	5576	66	6090	75	+8
Uruguay	77		4		
Venezuela	75		75		
Zambia	8		5		
Zimbabwe	12		8		

26. The development of the regulatory regime has been determined to a large extent by the property rights of the airline companies. The CRS companies were founded by airline companies which, though they were obliged to include the flights of competitors in their databases in order to offer the complete range of flights available, quite logically used their subsidiaries to promote in the first instance their own flights. To do this the "screens" showing flights between two given cities (City Pairs) were set up so that the flights of the parent company showed up first, before those of competitors. As public authorities became aware of this problem and began to take measures to suppress it, other more subtle programmes were designed. This explains the appearance in the early 1980s of "Codes of Good Conduct" under which a CRS supplier was authorized to operate only if it undertook an obligation to give non-discriminatory treatment to all airlines such as EU regulation n° 2299/89²¹ and n° 3089/93²² or the corresponding US legislation.²³ These regulations, which imply reciprocity-based treatment, have been the subject of MFN exemptions. Nonetheless, as appears from the following table compiled by ICAO, this reciprocity regime has not prevented the establishment of the major suppliers, which tends to confirm the general view in the economic literature and in the profession to the effect that these problems of "collusion" have largely evaporated for the "classical" CRS suppliers. They recur however on the websites operated by the airline companies.

²¹ OJ n° L/220, 29 July 1989, page 1.

²² OJ n° L/278, 11 November 1993, page 1 (under revision).

²³ 57 FR 43834, 22 September 1992.

Table 2: WTO Members with MFN exemptions on CRS services

(Members with commitments are shown in bold type)

Members	1995	1998	Evolution
	Number of Vendors	Number of Vendors	
State			
Austria	4	4	
Belgium	5	4	-1
Bulgaria	3	1	
Denmark	4	4	
Finland	4	4	
France	5	4	-1
Korea	2	4	+2
Kuwait	0	2	+2
Germany	5	4	-1
Greece	4	4	
Iceland	2	2	
Ireland	3	4	+1
Italy	5	4	-1
Liechtenstein	0	0	
Luxembourg	5	4	-1
Netherlands	4	4	
Norway	4	4	
Poland	5	3	-2
Portugal	4	4	
Romania	1	3	+2
Singapore	5	4	-1
Slovenia	1	1	
Spain	4	4	
Sweden	4	4	
Switzerland	4	4	
Thailand	2	4	+2
United Kingdom	6	4	-2
United States	5	4	-1

30. Annex Table 2, compiled by ICAO, illustrates the presence of major CRS suppliers in the territory of WTO Members which have MFN obligations on these services. (For the situation of Members which have taken MFN exemptions on CRS services see Table 2 above). There seems to be no correlation between the development of the number of suppliers and the existence of commitments: of the Members which have MFN obligations 30 (seven having commitments) show a fall in the number of suppliers, 27 (four with commitments) show an increase and 45 (six with commitments) show no change. There also appears to be no correlation for those Members who have MFN exemptions on CRS services: nine Members (six with commitments) show a fall, five (three with commitments) show an increase and 13 (eleven with commitments) show no change. This does not imply that commitments make no difference: other factors help to explain both reductions in the number of suppliers (concentration among operators) and their increase (growth in the market). It will be necessary to await completion of the concentration process before the long-term effects of commitments on the investment strategies of CRS suppliers can be assessed.

Table 2: CRS Vendors in WTO Members with MFN obligations for Computer Reservations Systems
(Bold areas are symbolising countries with commitments)

Members	1995 Number of Vendors	1998 Number of Vendors	Evolution
Angola	2	1	-1
Antigua & Barbuda	1	2	+1
Argentina	4	3	-1
Australia	5	5	
Bahrain	2	2	
Bangladesh	1	2	+1
Barbados	1	2	+1
Belize	2	2	
Benin	1	1	
Bolivia	2	1	
Botswana	1	1	
Brazil	4	3	-1
Brunei Darassalam	1	2	+1
Burkina Faso	1	1	
Burundi	0	0	
Cameroon	1	1	
Canada	6	4	-2
Central African Rep.	0	1	+1
Chad	0	1	+1
Chile	5	3	-2
Colombia	3	2	-1
Congo	1	2	+1
Congo, Dem. Rep.	3	0	-3
Costa Rica	4	2	-2
Côte d'Ivoire	1	1	
Cuba	1	0	-1
Cyprus	2	4	+2
Czech Republic	3	4	+1
Djibouti	0	0	
Dominica	0	1	+1
Dominican Rep.	2	2	
Ecuador	4	2	-2
Egypt	4	4	

Members	1995 Number of Vendors	1998 Number of Vendors	Evolution
El Salvador	3	2	-1
Fiji	1	1	
Gabon	1	1	
Gambia	0	0	
Ghana	1	0	-1
Grenada	1	2	+1
Guatemala	4	3	-1
Guinea Bissau	0	1	+1
Guinea, Rep.	1	1	
Guyana	2	2	
Haiti	2	2	
Honduras	2	2	
Hong Kong	4	3	-1
Hungary	4	4	
India	5	4	-1
Indonesia	2	3	+1
Israel	4	3	-1
Jamaica	2	2	
Japan	3	3	
Kenya	1	1	
Lesotho	1	1	
Macau	0	0	
Madagascar	0	1	+1
Malawi	1	1	
Malaysia	5	3	-2
Maldives	0	0	
Mali	1	1	
Malta	1	2	+1
Mauritania	0	1	+1
Mauritius	1	1	
Mexico	5	4	-1
Morocco	2	2	
Mongolia	0	0	
Mozambique	1	0	-1
Myanmar	0	0	
Namibia	0	1	+1
New Zealand	3	4	+1
Nicaragua	3	2	-1
Niger	0	1	+1

Members	1995 Number of Vendors	1998 Number of Vendors	Evolution
Nigeria	3	1	-2
Pakistan	1	4	+3
Panama	4	2	-2
Papua New Guinea	1	1	
Paraguay	2	2	
Peru	3	2	-1
Philippines	3	4	+1
Qatar	3	2	-1
Rwanda	0	0	
St Kitts & Nevis	0	1	+1
Saint Lucia	1	1	
St. Vincent & Grn.	1	2	+1
Senegal	1	1	
Sierra Leone	0	0	
Slovak Republic	2	3	+1
Solomon Islands	0	0	
South Africa	4	4	
Sri Lanka	1	2	+1
Suriname	2	0	-2
Swaziland	1	1	
Tanzania	1	1	
Togo	1	1	
Trinidad & Tobago	1	2	+1
Tunisia	0	1	+1
Turkey	4	3	-1
Uganda	1	0	-1
United Arab Emirates	2	2	
Uruguay	4	2	-2
Venezuela	4	3	-1
Zambia	1	0	-1
Zimbabwe	0	0	

2. Aircraft repair and maintenance

43. Commitments under Mode 2 (consumption abroad) appear very liberal, since 42 Members have offered it with no limitations and only three have made no commitment for this mode. (One of

these three Members also maintains an MFN exemption under which preferential treatment is accorded to certain suppliers of maintenance services outside its territory.) Under Mode 3, 34 Members have offered the sector without limitations and eight have done so with limitations (on investment screening, obligation to establish a registered office, licencing or authorization requirements, residence requirements and foreign equity limitations). In Mode 4, 43 of the 44 schedules follow the classic formula – no commitment except as indicated in the horizontal section. The remaining Member has made no commitment, horizontal or otherwise, under this mode.

44. National treatment limitations either reflect those in the market access column or are more liberal, but for two exceptions (one reference to the horizontal section under Mode 3 and one case where there is no national treatment commitment although a commitment is made in market access).

45. Apart from the case mentioned above, only two Members have taken MFN exemptions: these Members also have no commitments for this sector. One of these exemptions is formulated in very general terms, referring to all of the services covered by the Annex and to all regulatory regimes, whether bilateral, multilateral, unilateral, *de jure* or *de facto*. The other exemption covers a typical reciprocity regime.

3. Selling and marketing of air transport services

47. Two Members have defined this activity in a *sui generis* manner and one, which has not made commitments, has used a *sui generis* definition for its MFN exemption. These definitions appear in the footnotes to Tables 4 and 7 in the Annex. Three Members have referred to the CPC – either to CPC 7469 (other services related to air transport) or to CPC 74710-74720 (travel agency and tourist organization services/tourist guide services). Three Members have included in the definition the selling and marketing of computer reservation systems. Six have made an explicit reference to the definition in the Annex. Finally, two Members have limited the scope of their commitments, one by excluding the selling and marketing of air transport services for a series of raw and processed agricultural products, the other by limiting its commitments to advertising and the creation of regional offices.

49. As regards national treatment, the commitments either match in essence the entries in the national treatment column or are more liberal. In 18 cases (counting EU Member States individually), limitations relate to use of computer reservation systems and to MFN exemptions intended to cover reciprocity requirements in that matter. These limitations concern Modes 1 and 3 and are all drafted in the same terms: "for distribution through CRS of air transport services provided by CRS parent carrier: unbound". In three cases, national treatment limitations differ from those in the market access column (one reference to the horizontal section, one case in which national treatment is unbound and one providing for exemption from VAT on a reciprocal basis).

50. MFN exemptions for this activity are of two kinds. The most common (24 cases counting EU Member States individually) covers both selling and marketing and CRS services: these are designed to obtain equivalent treatment on the basis of reciprocity. They cover all countries where there is a CRS supplier or an aviation company using CRS, are of indefinite duration and are justified by reference to the inadequacy of multilaterally agreed rules for CRS services. Twelve cases concern European Members and in these reference is sometimes made to Community regulation. Their transatlantic counterpart is largely similar but defines selling and marketing more broadly, and establishes a link with the Chicago Convention and with bilateral agreements. The other kind of exemption (three cases) covers selling and marketing only. One is formulated in very general terms, while the others relate to provisions under bilateral agreements which may involve reciprocal restrictions, or preferential treatment, for selling and marketing activities.

4. Computer Reservation Systems Services

54. National treatment commitments essentially reflect those under market access, though some are more liberal. In seven cases, limitations relate to the use of CRS and to the MFN exemptions covering reciprocity legislation in this connection. In one other case, reference is made to the horizontal section; this does not appear in the market access column.

55. MFN exemptions on CRS services are of three kinds. One of these covers all sectors including CRS and all types of air transport regimes. The second consists of exemptions covering both CRS and selling and marketing, (in one case CRS alone) and is intended to secure reciprocal treatment (see paragraph 26 above). Thirdly there are two exemptions designed to accord preferential treatment to a particular CRS system or to air carriers using it. One of these permits only companies in partnership with a major CRS supplier to establish their own system. The other permits access to national tourist agencies via the dedicated SITA network only to CRS providers designated by the carriers of the country benefitting from the exemption. The texts of these exemptions can be found in the footnotes, Table 7 in the Annex.

Other MFN exemptions

59. Seven exemptions taken by five Members fall into two categories – fiscal exemptions and exemptions related to transport activities. Four Members have between them taken five exemptions providing for reciprocal exemption from various taxes, relating to all countries and of indefinite duration. Two Members have taken reciprocity-based exemptions covering the treatment given specifically to suppliers of air transport services. The texts of these exemptions can be found in the footnote to Table 7 in the Annex.

Table 7: MFN Exemptions in Air Transport Services

Members	Maintenance	Selling/ Marketing	CRS	Others
Austria		X	x	
Bulgaria		X	x	
Canada	x	X		x
European Community ²⁴		X	x	
Finland		X	x	
Iceland		X	x	
Korea			x ²⁵	
Kuwait	x	X	x	
Liechtenstein		X	x	
Norway		X	x	
Poland		Xx	x	x ²⁶
Romania		X		
Singapore			x	
Slovenia		X	x	
Sweden		X	x	
Switzerland		X	x	
Thailand		X	x ²⁷	x
Turkey				xxx ²⁸
USA		x ²⁹	x	x
TOTAL	2	17	16	7

²⁴ Counting EC as one.

²⁵ "Access to foreign CRS through the SITA network is allowed only for domestic travel agencies which want to access CRS designated by carriers of the country indicated in the next column/USA/indefinite/access to foreign CRS through the SITA network could be limited or otherwise affected by negotiations on granting and receiving traffic rights".

²⁶ "All passenger and freight transport services excluding maritime transport/reciprocity requirement concerning supply of transport services by suppliers of countries concerned – in, into and across the territory of such countries/all countries/indefinite/system of reciprocal agreements – existing and future – on transport cooperation (or of similar character) and promotion and protection of foreign investments, implementing, among others – transportation quotas resulting from bilaterally agreed system of permits".

²⁷ "Only airlines/CRS partners which are in Amadeus system can bring in and install their own systems in Thailand/countries whose CRS operators are in Amadeus system and intend to bring in and install the systems to any travel agencies in Thailand/indefinite/to ensure that local operators are able to make complete access to the Amadeus system within a certain period of time".

²⁸ "To apply, on the basis of reciprocity, restrictions, prohibitions, different treatment and different tariffs to the goods and transportation vehicles of the countries which apply restrictions, prohibitions and different treatment to the Turkish road air and maritime transportation vehicles/all countries/indefinite/desire to secure the smooth functioning of mutual transportation services".

²⁹ *Sui generis* definition of selling and marketing: "including sales, other than by airlines, of passenger charters and forwarding of air freight other than by airlines".

XVI. LAND TRANSPORT SERVICES PART II – RAIL TRANSPORT SERVICES (S/C/W/61)

48. As far as MFN exemptions are concerned and setting aside the "all sectors derogations" it appears that two types of exemption affect the supply of rail transport services: those concerning land transport in general and those concerning rail transport in particular. In seven cases out of ten, the general land transportation exemptions concern regional agreements in South and Central America. The three other cases concern reciprocity requirements, among which one case of tax reciprocity (VAT). There are five proper rail transportation exemptions: three of them have been made in identical terms by Central European countries to cover existing or future agreements regulating traffic rights and operating conditions, one concerns preferential treatment for leasing charges for railway wagons for specified neighbouring countries, and one a reciprocal deduction of tax on earnings from the use of rolling stock. These MFN exemptions have a noticeable effect on the commitments as seven Members out of the 15 that have made exemptions have made commitments (two out of the ten have made general land transportation exemptions, all of the five have made proper rail transport exemptions).

XVII. LAND TRANSPORT SERVICES PART I – GENERALITIES AND ROAD TRANSPORT (S/C/W/60)

50. As regards cross-border supply, mode 1, the international regulations have also begun to be liberalized mainly, in view of the "intra-continental" nature of this mode of transport, through regional agreements. Thus, outside the single road transport market of the European Community, the European Conference of Transport Ministers (ECTM), an organization linked to the OECD but which has for many years included the countries of Central and Eastern Europe, administers a multilateral licence quota³⁰, which even includes "green" and "greener and safe" categories, and as a first step towards complete multilateralization has undertaken to standardize the bilateral agreements on a recommended model.³¹ Moreover, road transport is included in NAFTA where it is the subject only of limited reservations concerning mainly cabotage traffic. Finally, several regional agreements in Central America and South America concern road transport and have been the subject of MFN exemptions.

73. Overall, the level of commitments for passenger transportation seems low: between 12.8 and 18.9 per cent of Members depending on the subsector. However, it is even lower when the impact of MFN exemptions is taken into account. Leaving aside the "all sectors" exemptions and the general "land transport" exemptions, 34 exemptions out of 37 include passenger transportation. Out of the 25 Members undertaking passenger transportation commitments, 12 have taken MFN exemptions granting various partners preferential treatment on rights concerning passengers/cargoes to, from, across and into their territory and on operating conditions, either on the basis of bilateral agreements, existing or future, or on the basis of reciprocity. As in maritime transport, the cargo-sharing nature of this preferential treatment implies an exclusionary element for third parties. This factor must be taken into account when assessing the extent of commitments in this sector.

77. As in passenger transport, the MFN exemptions have an important bearing on the extent of the commitments undertaken. Out of the 25 countries having given commitments on freight transportation, ten also have one or more MFN exemptions regarding cargoes.

78. As, in the vast majority of cases the MFN exemptions regarding road transport cover both freight and passengers, it is possible to try to draw a general typology of these MFN exemptions. In a significant number of cases (five counting the E.U. as one) Members have felt it necessary to lodge

³⁰ See document CEMT/CM(98)7/final.

³¹ See documents CEMT/CM(97)21 and CM(97)21/Add.1.

separate exemptions for preferential fiscal treatment on VAT, vehicle tax and income tax. Some of these derogations are subject to reciprocity, others are granted only to specifically designated Members, and all are indefinite in duration. In other instances this preferential tax treatment has been combined with cargo-sharing provisions in a single derogation, either by mentioning the preferential tax treatment specifically or by referring more generally to the operating conditions.

79. As far as the cargo-sharing provisions of the MFN derogations are concerned, a relatively clear pattern seems to emerge. They are mainly bilateral (19 cases), although there are cases where they are regional (five cases including the "all land transport" derogations) or both bilateral and regional (four cases). In six cases (including the "all land transport" derogations) they are unilateral and in five of those cases based on reciprocity. In nearly all cases they cover all countries and existing and future agreements, although sometimes accompanied by a detailed list of beneficiaries. They are also nearly all indefinite or non-specific as far as their duration is concerned. Geographically speaking, they can be found in developed as well as in developing countries and in Europe, America and Africa. As far as Asia is concerned, only one Member has taken such an exemption. This pattern shows clearly that there is an unaddressed problem as far the liberalization of road transport is concerned. These derogations seem to have been meant by their drafters to last forever and will fall foul of the limitation to ten years, in principle on the MFN exemptions. They also remove a significant proportion of the traffic from the application of MFN and more generally from liberalization. Certain regional attempts have been made to liberalize the road transport sector, such as the single European transport market, the NAFTA provisions or the multilateral quota administered under the aegis of the ECMT, but no targeted thinking seems to have been devoted as yet to the multilateral liberalization of the sector. It should be kept in mind, however, that these MFN derogations only cover modes 1 and 2, while mode 3, which is essential, remains unaffected.
