

ANNEX 2

The Treatment of Foreign Commercial Banks in North America

- Canada

The Bank Act restricts foreign banks from carrying on business in Canada except through a representative office or a Canadian chartered bank subsidiary.¹²⁷ Foreign banks are prohibited from establishing and operating branches. Setting up a representative office or subsidiary is subject to reciprocal treatment of Canadian banks in the foreign bank's home country.

Under the FTA, U.S. banks were exempted from limitations on the right of subsidiary establishment, restrictions on the ability of a U.S. bank's Canadian subsidiary to establish additional branches were lifted and restrictions were eased on the transfer of capital from U.S. parent banks to their Canadian subsidiaries. U.S. banks are still not allowed to open directly a branch in Canada.

The NAFTA did not modify any previous restrictions placed on U.S. banks, but based market access of all financial institutions in the three member countries on a set of general rules enshrining national treatment, MFN treatment, the right of consumers to purchase cross-border financial services and the right to market access through the establishment of a commercial presence.

- United States

The International Banking Act of 1978 covers the activities of foreign banks in the United States. The Act provides the following: restrictions on inter-state deposit taking; applications of Federal Reserve requirements; requirement of deposit insurance for branches engaged in retail business; application of the non-bank restrictions of the Bank Holding Company Act; and availability of the Federal Reserve discount window. According to Symons, the Act generally provides foreign banks national treatment with respect to their U.S. operations.¹²⁸ There are no federal prohibitions on foreign

¹²⁷ See H. Moudi, *op. cit.*, pp. 287-9.

¹²⁸ See E.L. Symons, *op. cit.*, p. 14.