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The post-Uruguay Round negotiations on financial services

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Topics

1. Introduction: Prudential regulation and the GATS
2. Fifth Protocol to the GATS
3. Lessons learned

1. Prudential regulation and the GATS

- Regulators’ concerns about including financial services in the GATS
- Trade liberalization and prudential regulation

Financial regulators insisted on two provisions

- Carve-out to ensure agreement would not interfere with ability of national authorities to carry out responsibilities for prudential regulation and supervision
- Service-specific expertise in dispute settlement

Significant aspects of prudential carve-out

- ‘Prudential’ used broadly
  - Encompasses financial stability and consumer protection
- Flexibility
  - Financial regulators have resisted suggestions that carve-out be more clearly delineated
- Absence of ‘necessity’ test
  - In contrast to other domestic policy exceptions in the GATS
- Anti-abuse provision
  - May not be used ‘as a means of avoiding’ GATS obligations or commitments

Maximizing benefits and minimizing risks of trade liberalization requires

- Ensuring adequate national prudential regulation and supervision
- Increased international cooperation and coordination in regulation and supervision of global financial firms

International work on strengthening financial systems

- Overall agenda now being set by G-20
- Larger role for expanded Financial Stability Forum
- IMF and other international financial institutions
- Specialized bodies such as Basel Committee on Banking Supervision

2. Fifth Protocol to the GATS

- Negotiations leading to December 1997 agreement on financial services commitments
- Overview of results
- Financial services commitments and international capital movements

Post-Uruguay Round financial services negotiations

- U.S. and EU approaches to ‘free rider’ issue
- 1995 ‘interim agreement’ on financial services commitments
- Impact of the Asian financial crisis on final phase of negotiations

Fifth Protocol financial services commitments

- Improved or first-time commitments made by about 70 WTO members
- For foreign direct investment (mode 3), most participants ‘bound’ levels of liberalization existing in late 1997
- Cross-border commitments in mode 1 (cross-border supply) were, even for OECD countries, relatively limited
- Strength and scope of commitments varies substantially among countries

Other financial services commitments in the GATS

- Pre-1997 commitments
  - Maintained by about 30 members, mainly small developing countries with minimal commitments
- WTO accession commitments
  - Generally strong financial services commitments, including new liberalization

GATS obligation to allow certain international capital movements

- For commercial presence (mode 3)
  - WTO member must allow inward capital transfers ‘related’ to supply of service for which a trade liberalization commitment was made
- For cross-border supply (mode 1)
  - WTO member must allow cross-border movement of capital if ‘essential’ part of service for which a trade liberalization commitment was made

3. Lessons learned

- Significance of WTO and GATS for financial services sector
- Challenges in financial services negotiations
- Relation to progress in areas outside the GATS
- Prudential carve-out

Significance of WTO and GATS for financial services sector

- Role of WTO as forum for financial services liberalization
- Legally binding commitments subject to WTO dispute settlement
- MFN obligation
- Potential impact on domestic policymaking process

Challenges in financial services negotiations

- Regulatory barriers
- Lack of negotiating ‘leverage’ within financial services sector

Relation to progress in areas outside GATS negotiations

- Domestic financial sector reform
- International work on strengthening financial systems

Prudential carve-out

- Flexibility of carve-out important
- Provides scope for measures to deal with current financial crisis that might be considered GATS-inconsistent
- But also important to avoid abusing substantive exception provided by prudential carve-out

Presentation based on:

- Key, S.J., *Financial Services in the Uruguay Round and the WTO*, Occasional Paper 54, Group of Thirty, Washington, D.C., 1997.
- Key, S.J., *The Doha Round and Financial Services Negotiations*, AEI Press, 2003. Available at www.aei.org/book456.
- Key, S.J., 'Financial Services,' in *The World Trade Organization: Legal, Economic and Political Analysis,* Patrick F. J. Macrory, Arthur E. Appleton, and Michael G. Plummer, eds., Springer, 2005.
- Key, S.J., *The Prudential Carve-Out: A Blank Check for GATS-Inconsistent Regulation of Financial Services?* (in progress).