

# **Specific GATS/WTO Provisions on Financial Services**

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# OVERVIEW OF PRESENTATION

- GATS
- The Annex on Financial Services
- The Understanding on Commitments in Financial Services
- The Protocols to the GATS

# The GATS

- A set of Rules and Disciplines
  - Articles of the Agreement
  - General Obligations
  - Specific Commitments
  - Annexes
- Schedules of Specific Commitments
  - Market Access
  - National Treatment

# Liberalization under the GATS

- IS NOT:
  - Deregulation
  - Privatization
- IS:
  - Market Access
  - National Treatment
  - Additional Commitments

# Typical M.A. Limitations

- ❑ On the number of service suppliers; e.g. only a fixed N° of bank licenses granted per year.
- ❑ On the value of transactions or assets; e.g. only a fixed amount of loans can be made to residents by foreign banks.
- ❑ On the number of operations or on the total quantity of service output; e.g. only a fixed N° of bank branches or a fixed total amount of bank lending in local currency allowed.
- ❑ On the total number of natural persons that may be employed; e.g. only ten foreign personnel allowed for each establishment of a bank.
- ❑ Specific types of legal entity or joint venture; e.g. only incorporated subsidiaries of banks allowed.
- ❑ Limitations on the participation of foreign capital; e.g. only 51% of foreign capital allowed in banks.

# Typical N.T. Limitations

- ❑ Requirement to invest certain amounts of assets in local currency.
- ❑ Restrictions on the acquisition of land by foreign financial institutions.
- ❑ Special subsidy or tax privilege granted to domestic institutions only.
- ❑ Special operational limits (e.g. limitations on the location of branches) applying only to branches or operations of foreign institutions.
- ❑ Nationality or residency requirements for the directors of financial institutions

# How about the concerns of financial regulators?

- GATS and macroeconomic policy management:

*“ These types of interactions [macroeconomic policy] **fall entirely outside** the ambit of the GATS” (WTO Secretariat, 1997).*

- GATS and prudential regulation in the financial service sector:

*“ As with macroeconomic policy management, GATS commitments **do not in any way curtail** the scope for prudential regulation” (WTO Secretariat, 1997).*

# The Annex on Financial Services

- ✓ **Scope and Definition**
  - services supplied in the exercise of governmental authority
- ✓ **Domestic Regulation**
- ✓ **Recognition**
- ✓ **Dispute Settlement**
- ✓ **Definitions**



# Annex on Financial Services

## Scope and Definitions

- ✎ Applies to measures affecting the supply of financial *services*...
- ✎ except “*services supplied in the exercise of governmental authority*”
  - Monetary and Exchange rate policies
  - Statutory systems of social security or public retirement plans\*
  - Activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government\*
  - \* without competition

# Annex on Financial Services

## Domestic Regulations

☺ Members are allowed to take **measures for prudential reasons** *including*

- for the protection of investors, depositors, policy holders; or
- to ensure the integrity and stability of the financial system

✋ Those measures shall not be used as a means of avoiding commitments or obligations under the GATS

- Prudential measures should not be scheduled  
(ref. Scheduling guidelines)

# Understanding on commitments in financial services

## What is it?

- Alternative approach to scheduling specific commitments, without prejudice to the right to schedule according to GATS part III
- resulting specific commitments apply on a MFN basis
- 31 WTO Members have made commitments according to it

# What minimum level of market access?

- **Cross-border Trade:**
  - **Supply by non-resident** suppliers, with NT
  - ✓ MAT insurance; reinsurance and retrocession; & services auxiliary to insurance
  - ✓ Provision and transfer of financial information and data processing
  - ✓ advisory and other auxiliary services, except intermediation, on banking and other FS
  - **Purchase by residents**
  - ✓ MAT insurance and reinsurance, and services auxiliary to insurance
  - ✓ Banking and other financial services
- **Commercial presence**
  - ✓ Right to establish, including through acquisitions, and expand a commercial presence guaranteed
  - ✓ conditions and procedures may be imposed as long as they don't circumvent right to establish
- **Temporary entry of personnel** in relation to a commercial presence
  - ✓ senior management
  - ✓ specialist in operations
  - ✓ specialist in computer and telecom services, and accounts of supplier
  - ✓ actuarial and legal specialist

# Other obligations in the Understanding

- “**Standstill**”- conditions limited to existing non-conforming measures
- To list and endeavour reduction or elimination of **monopolies** in the sector
- MFN and NT for established suppliers in **government procurement** of financial services
- Commits to allowing the supply of “**new financial services**”
- To allow transfer and processing of **financial data and information**, and transfers of equipment, necessary for business - Right to protect confidential information ensured

# The Protocols to the GATS

- The need for protocols
- Principal elements of a protocol
  - Relationship between old and new commitments
  - Timeframe for acceptance
  - Conditions for entry into force
  - Special procedures in case of non-acceptance by all Members
- Status of Members maintaining existing commitments