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The post-Uruguay Round negotiations on financial services

Dr. Sydney J. Key
Lecturer, Graduate Program in Banking and Financial Law
Boston University School of Law

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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: