Specific GATS/WTO Provisions on Financial Services

Hamid Mamdouh
WTO

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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
  - Privitization

- 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
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