PANTEION UNIVERSITY OF SOCIAL AND POLITICAL SCIENCES
DEPARTMENT OF INTERNATIONAL, EUROPEAN & AREA STUDIES

The liberalization of financial services within GATS

The period 2000-2014

Filippos Defteraios

November 2015

Supervisor/first reviewer: Univ. Prof. Christos Vl. Gortsos

Contents

1. Introduction ... 3

2. Financial services and economy ... 4

2.1 Functions of financial services for economy ... 4

2.2. Recent developments in the financial sector ... 7

3. GATS and financial services ... 11

3.1 Definitions ... 11

3.2 Structure of GATS ... 13

4. Overview of some particularly important regulations in GATS proper, relating to financial services ... 16

4.1 Market Access ... 16

4.1.1 General remarks ... 16

4.1.2 GATS Article XVI:1 ... 16

4.1.3 GATS Art. XVI:2 ... 17

4.1.4 The Relationship between Art. XVI:1 and Art. XVI:2 ... 20

4.2 Non-discrimination obligation ... 21

4.2.1 MFN treatment obligation ... 22

4.2.2 National Treatment Obligation ... 26

4.2.3 Subsidies and non-discrimination ... 27

4.3 Transparency ... 28

4.4 Minimum standards for domestic legal orders ... 32

5. Selective overview of some aspects of specific commitments ... 33

5.1 Motives for participation in negotiations ... 33

5.2 Reasons for differentiations in market access commitments ... 36

5.3 The Understanding on Commitments in Financial Services ... 38

5.4 Discrepancies between commitments and practice ... 40

6. Concluding remarks ... 43

ANNEX: Key stages in the services negotiations ... 45

Bibliography ... 51

1. Introduction

A. This study mainly intends to provide an analysis of the General Agreement on Trade in Services (GATS) provisions and how they are applied with regard to financial services.

B. The study is structured in six sections.

(1) In **Section 2**, it is analyzed which is the relation between financial services and the real economy. At this point, the analysis is twofold: the functions of financial services for economy and the recent developments in the sector.

(2) **Section 3** raises the issue of how financial services are enshrined in the WTO framework and especially the GATS. For that reason, some important definitions are given and the structure of the GATS is explained.

(3) **Section 4** examines some particularly important regulations in the GATS, relating to financial services. Due to the fact that the Agreement consists of six parts and twenty-nine articles, only a fraction of them could be analyzed. Specifically, Art. XVI deals with the obligation of ensuring market access to foreign service suppliers. The next issue raised is the principle of non-discrimination against foreign services or service suppliers. This principle consists of two obligations: the most-favored nation obligation and the national treatment obligation. At this point, there is a subchapter raising the issue of subsidies and how it is connected with the non-discrimination principle. It became an issue of major importance during the global financial crisis, as the reaction of many governments across the world (especially in the European Union) was to support their financial institutions in an attempt to ensure the integrity of the financial system. Furthermore, the importance of the transparency obligation is explained, as well as the balance that has to be achieved between it and prudential regulation. The last issue raised in this chapter is that of minimum standards in domestic legal orders.

(4) **Section 5** focuses on the specific commitments that GATS signatories have undertaken. Specifically, after explaining the motives that a state has in order to participate in the negotiations, there is an analysis of the reasons for differentiations in the market access commitments made by the WTO Members. Moreover, after analyzing the Understanding on Commitments in Financial Services, there is an evaluation of the discrepancies between the commitments and the actual practice of the GATS signatories.

(5) Finally, **Section 6** contains the concluding remarks of the study and some assessments regarding the future of GATS framework on financial services and its negotiating challenges.

C. All primary sources are mentioned, as appropriate, in the main text, and are then listed in more detail at the end of the study. The study also contains an extensive list of secondary sources which are mentioned in footnotes. Books and articles received or issued in 2015 could obviously not be reviewed appropriately. Where applicable (in case of books), reference is made to previous editions.

2. Financial services and economy

2.1 Functions of financial services for economy

In the era of globalization, it is widely accepted that the development of the financial services sector is a significant part of the economic growth and development process. The bundle of institutions that make up an economy's financial system can be characterized as "the brain of the economy" meeting an economy's need for various functions.

The first function is that of **transforming risk (i.e. liquidity and idiosyncratic risk).**[1] The basic concept is that while depositors tend to be risk averse, high-return projects are riskier. This divergence between those who can offer the necessary capital and the ones who need it has to be bridged. The desirable risk diversification can be achieved through the financial markets shifting portfolio from safe low-yield capital to riskier high-yield capital.[2]

In this regard, liquidity risk is the effect of the uncertainties associated with converting assets into a medium of exchange.[3] These uncertainties can be intensified by potential transaction costs and informational asymmetries. One of the impediments is that of maturity. Specifically, some high-return projects require highly illiquid capital investments. Nonetheless, savers are hesitant to contribute to this commitment of capital, since they do not want to relinquish control of their savings for long periods.[4]

Additionally, the other side of the coin indicates that the aforementioned risk attracts exactly the opposite kind of investments, i.e. the liquid, low-return projects. According to the model of Douglas and Dybvig , some of the depositors will receive shocks after choosing one of the two kinds of investment.[5] It is also assumed that it is prohibitively costly to confirm whether another depositor has received a shock or not. A way to overcome this information cost is to create financial markets and institutions. Shareholders trade in stock exchanges impersonally, without verifying if others received shocks. At the same time, firms ensure permanent access to the capital, which is invested by the equity holders. The most important outcome of this process is that the highly illiquid capital investments can finally take place.

Another factor that could possibly reduce liquidity risk is that of financial intermediaries, especially banks. One of the three-pronged transformations carried out by banks is that of the size. Size transformation refers to joining several small deposits by different units to issue loans of large amounts to deficit units. Since banks insure depositors against liquidity, while facilitating long-term investments in high-return projects, economic growth can be achieved.[6]

Finally, the last noteworthy issue is the interconnectedness of that intended risk diversification with technological advancements. In particular, agents are constantly trying to invent new ways to reduce risk. A result of this endeavor is the acceleration of technological innovation too, which leads to the amelioration of the financial systems as a whole.

The second function is that of **allocating capital funds.** A major problem is that usually individuals are not capable or lack time for collecting the necessary information in order to

---

[1] For an in-depth analysis of idiosyncratic risk, see **Goyal and Santa-Clara (2003)**

[2] **Obstfeld** (**1994**), p. 1310

[3] For an analysis of liquidity risk, see **Bank for International Settlements** (**2008**), cited in **Gortsos** (**2011**), p. 77

[4] According to Hicks, who underscored the importance of the financial sector, the financial revolution constituted a sine qua non for the industrial revolution. It is a fact that the majority of technical innovations and products associated with industrial revolution had been made a few years earlier. Nonetheless, they were not fully implemented at that moment. Hicks argued that this happened because their adoption in economic terms required large injections of relatively illiquid capital for long periods. **Hicks** (**1969**), pp. 143-145, cited in **Levine** (**1997**), p. 692

[5] **Douglas and Dybvig** (**1983**), pp.402-403

[6] **Bencivenga and Smith** (**1991**), p. 207

evaluate firms and market conditions. This situation can lead to two side-effects: firstly, the individuals may tend to invest in projects based on less trustworthy information, and secondly, from a macroeconomic perspective, there may be not going to be taken full advantage of the available capital.

The challenge of acquiring and evaluating information lies to the financial intermediary. According to Diamond, a financial intermediary 'is a risk neutral agent, who receives funds from depositors to lend to entrepreneurs and is delegated the task of monitoring the outcomes of entrepreneurs' projects on behalf of depositors'.[7] The acquisition of information about the most secure and profitable investments, combined with its evaluation does not take place by the savers individually. As a result, capital funds are more easily and quickly allocated.

However, the significance of stock markets in promoting the dissemination of information about firms is doubtful. For example, Stiglitz supports that, since stock markets distribute information almost immediately through published prices, private incentives for acquiring information will diminish. This is the case especially in a large, widely held firm, where there are a few shareholders possessing the majority of shares: these are playing a critical role in the policy making of the firm while the small shareholders will just 'free ride' on the efforts of the larger shareholders.[8]

The third function is the **monitoring of managers.** Assuming again that it is prohibitively costly for outsider investors to confirm the returns from a project, it is quite possible once more that financial development may be hampered. Insiders have the motive to provide outsiders with false, inflated project returns, while the outsiders do not provide the capacity to monitor their statements. According to Gale and Hellwig, the optimal investment level between insiders and outsiders is the debt contract.[9] According to this contract, when the firm is solvent, a fixed payment is required; when the fixed payment cannot be met, the firm must be declared bankrupt and it is at the discretion of the creditor to recoup as much of the debt as possible from the firm's assets. Here, the interest rate must be chosen so that the lender's zero-profit constraint is satisfied, but the borrower ignores this relationship when choosing the 'optimal' level of investment.[10] In this way, it is feasible to reconcile the friction between the efficiency of continuation finance and that of project choice.[11]

Apart from this type of contracts, information costs can be further reduced with the contribution of financial intermediaries, who acquire funds from many outsiders – their savings – which are mobilized and lent to project owners.

The abovementioned monitoring process should be complemented by some effective corporate control. According to Merton and Bodie, 'a well-developed, smooth-functioning capital market also makes possible the efficient separation of ownership from management of the firm. This in turn makes feasible efficient specialization in production, according to the principle of comparative advantage'.

Corporate control is promoted not only through banks and debt contracts, but also through stock markets, which, consequently, affect the stock price. According to Abdullah and Page, the market assumes that firms' governance strategies incorporate the principles of governance and as a consequence thereof equity values already reflect any gain.[12] The market for corporate control disciplines the managers of corporations with publicly traded stock to act in the best interests of shareholders, who act as disciplinarians.[13] Connecting stock performance

---

[7] **Diamond** (**1984**), p. 399
[8] **Stiglitz** (**1985**), p. 144
[9] **Gale and Hellwig** (**1985**), p. 648
[10] **Ibid**, p. 659
[11] **von Thadden** (**1995**), p. 569
[12] **Abdullah and Page** (**2009**), p. 75
[13] **Macey** (**2008**)

with manager compensations results in the alignment of the interests of managers and shareholders.

Nonetheless, a debate has risen on the efficiency of corporate control through stock markets, mainly due to the endogenous information asymmetry between insiders and outsiders. A characteristic example is that of takeover mechanisms. According to Stiglitz, if a firm raises its expenditures in order to obtain information for a potential takeover, other market participants will probably observe this move. Acting as 'free riders', since their access to information is relatively costless, their reaction will be to bid for shares of that firm and consequently, the share price will rise. Contrary to the secondary bidders, the discovery firm is paying a higher price for obtaining information. As a result, its incentives for acquiring information and making effective bids decrease. Furthermore, if the takeover is successful and the price of the share rises, those already having shares of the firm are automatically granted a free ride: they make profit without expending their resources. Accordingly, there is a motive for existing shareholders to keep their shares, only if they estimate that the takeover will be successful and will bring about a rise in the value of the share. Finally, a third issue is that of deterring takeovers. Such decisions can be made by the current managers of a firm, since a typical effect of a takeover is the change in management. In that way, the personal interests of the managers are protected, but from a wider perspective the efficiency of resource allocation is doubtful.

The fourth function is that of **mobilizing savings.** Mobilization – in other words, pooling – is an integral part of the financial system making it hard to imagine a world without it. One of its main characteristics is the accumulation of capital from various savers for investment. Unless there was pooling in the world, many production processes would be limited to economically inefficient scales. [14] In this way, the allocation of resources would not ameliorate.

Nevertheless, the mobilization of resources entails a couple of transaction costs: firstly, the informational asymmetries associated with the reassurance of savers upon handing over control of their savings, convincing them at the same time about the feasibility of investments and, secondly, the transaction costs related to the collection of many diverse savers.

As mentioned above, the existence of a number of financial arrangements may help with the mitigation and alleviation of pooling, especially when it involves multiple bilateral agreements among productive units leading to an increase of available capital for highly illiquid long-term investments. As long as the abovementioned mobilization of savings is achieved, a positive spillover effect will take place within the field of technological innovation boosting the potential economic growth and development.

Last but not least, there is the **facilitation of transactions** (i.e. exchange of goods and services). Provided that the transaction costs decrease, specialization can be encouraged promoting further economic growth. The correlation between these factors is as old as economics as a discipline. For example, A. Smith supports that 'men are much more likely to discover easier and readier methods of attaining any object, when the whole attention of their minds is directed towards that single object, than when it is dissipated among a great variety of things'.[15] As a consequence, it is expected that they would soon find more effective and innovative methods of performing their own particular work. Recent models have been made on that issue too. For example, P. M. Romer tries to model increasing returns that arise because of specialization.[16] More specialization leads to more transactions. Since transactions are costly, the presence of financial intermediaries will contribute to the reduction of

---

[14] **Sirri and Tufano** (**1995**), p. 87
[15] **Smith** (**2007**), p. 6
[16] **Romer** (**1987**)

transaction costs and, consequently, higher levels of specialization will be achieved in a shorter period.

2.2. Recent developments in the financial sector

One of the main developments in the financial sector during the last decades is its **radical reform**, mainly due to the need for elimination of 'financial repression'. Until late 1980s, many economists supported this repression for various reasons.[17] For example, it was believed that a strict regulatory framework for the banking system would give the advantage to the monetary authorities of controlling effectively the money supply. Additionally, it was argued that governments were better informed about the optimal allocation of savings and which investments were socially the most advantageous. However, such arguments and explanations are weak enough and outdated, especially after the publishing of articles proving that financial repression might affect negatively an economy's growth rate.[18]

It is commonly accepted that one of the main goals of financial repression – even if such policy would lead to a slowdown of the rate of economic growth – is to achieve easy inflationary revenue for the public budget. By keeping nominal interest rates lower than the inflation rate (i.e. achieving negative real interest rates), there is a reduction of government's interest expenses. In other words, 'the source of public income stemming from this intervention is modeled through inflation tax'.[19] Nonetheless, according to Roubini and Sala-i-Martin, financial repression has negative effects on the rate of long-term economic growth.[20] Despite some ambiguities and implications of theory, their empirical evidence is supportive of these findings.[21]

A second factor that led to a tremendous reform in the financial landscape is that of **technological innovation**. This reform is still taking place at breathtaking speed, thanks to talented entrepreneurs. A few decades ago, who envisioned the growth of internet banking or the participation of telecommunications providers in the financial services sector? As a result, the traditional financial services providers came up with a new challenge: to meet the higher demands of customers for new digital services, such as peer-to-peer lending, bitcoin, robo-advisers, crowdfunding are just some examples.[22]

This modification in the organization of global financial activity entails both opportunities and threats. On the one hand, a major way in which technology is transforming finance positively is the automation of manual processes that are currently resource intensive and reserved for the elite customers. This transition enables the providing of such services to new customers, at a fraction of the initial cost.[23] At the same time, the impediment of 'confuseopoly' can be significantly reduced.[24] Furthermore, marketplace companies, which connect sellers and buyers, are developed, giving customers access to previously restricted assets. Here, the 'invisible hand' enables borrowers (looking to get a better rate) meet with

---

[17] See indicatively **Shaw** (**1973**), **McKinnon** (**1974**) and **Fry** (**1989**)

[18] Such articles are the following: **Kirkegaard and Reinhart** (**2012**), **Reinhart and Rogoff** (**2010**) and **Reinhart** (**2011**)

[19] **Roubini and Sala-i-Martin** (**1991**), p. 14

[20] **Ibid**, p. 28

[21] See **De Gregorio** (**1993**). It has to be underscored though, that examples of financial repression have taken place around the world since the financial crisis of 2007. In many advanced economies, the real interest rates are increasingly negative, while in numerous emerging markets, measures were taken in order to control the flow of foreign capital (e. g. Indonesia, Korea, Peru, Philippines etc.).

[22] **The Economist** (**2015**), pp. 3-4

[23] **McWaters (2015)**

[24] This term, used by Clay Shirky,refers to the problem when incumbent institutions overload consumers with information that sometimes are hard for them to be understood, thus not helping the customer make a balanced decision.

lenders who are willing to invest their money. It has to be underscored, that incumbents should not concentrate only on current trends; they should consider the long-term picture. For that reason, they could cooperate more closely with these innovators. Understanding their patents could lead to a better understanding of their strategic advantages and externalization of them. The ultimate beneficiary from this collaboration is going to be the consumer. On the other hand, threats to data security and fraud cannot be omitted. If the regulatory authorities ignore this issue, all the benefits from the technological revolution in financial services could be nullified. Additionally, a threat may be posed to the regulatory frameworks, since this revolution may facilitate the regulatory arbitrage.[25] Finally, the traditional financial services providers should take into serious consideration the threat of losing customer ownership, since, nowadays, customers can shop around, looking for the most competitive products all over the world.[26]

All in all, the entrance of innovators and technology in the financial services industry is not necessarily a terminal threat. On the contrary, as long as innovators and incumbents adapt to the new landscape, this could lead to a mutually beneficial situation, satisfying, in the end, the customers' needs. In any case, it is a common belief that the pace of transformation is such that any service provider standing still risks being swept away by the changing tides of customer preferences.[27]

A third feature of the financial sector that cannot be ignored is **outsourcing**. This use of third-party service providers is a business strategy that is being considered usually by financial institutions as a response to an increasingly competitive marketplace. Outsourcing arrangements aim at the 'transfer of direct managerial responsibility, but not accountability, to an unaffiliated, third-party service provider who performs services previously delivered by internal staff and management'.[28]

Some of the main activities which are outsourced are information technology, administration, logistics and finance. In all cases, the motives for outsourcing resemble. Among these are:

- reduction and control of operating costs,
- improvement of company focus,
- exploitation of resources for other projects,
- access to world class capabilities,
- acceleration of reengineering benefits,
- share of risks and
- taking advantage of offshore capabilities[29]

However, it has to be underscored that a wide array of potential risks arise from the use of such service providers.[30] One of the most important is operational risk: the danger of monetary losses as a result of inadequate internal systems and processes or external events. Furthermore, the potential violations of confidentiality, either due to security issues during the transfer, or due to a provider's imperfect control environment. Besides, financial services

[25] **World Economic Forum** (**2015b**), p. 22

[26] For an in-depth analysis, see **Hauswald and Marquez** (**2003**)

[27] **World Economic Forum** (**2015a**)

[28] **Federal Reserve Bank of New York** (**1999**), p. 1. For a more analytical definition of the term, see **Bank for International Settlements** (**2005**), p. 4 and **International Organization of Securities Commissions** (**2005**), p. 1

[29] **Bank for International Settlements** (**2005**), p. 12

[30] **Federal Reserve System** (**2013**), p. 1. According to the Bank for International Settlements, the key risks of outsourcing entail these categories: strategic, reputational, compliance, operational, exit strategy, counterparty, country, contractual, access and systemic. For an in-depth analysis, see **Bank for International Settlements (2005).** As far as switching costs are concerned, see **Jennings, D. (1996)**, p. 396

firms might not get away with it, without any collateral damage to their reputation, despite the fact any legal breach of such violation may be closely related with the service provider. Finally, several factors may provoke cost and loss of income due to legal uncertainty caused by binding contractual relationships, which define the majority of outsourcing arrangements. Besides the aforementioned concerns, specific contractual details, such as the potential long duration of an outsourcing contract, which did not actually foresee any upcoming changes during its implementation – especially concerning the needs and the ambiance of the firm's business – may bear to the same legal risk.

Furthermore, it has to be ascertained that the financial services have become increasingly **internationalized** over the last two decades. A characteristic example is the growth in presence of foreign financial services providers in national markets. Indicatively, market shares of majority foreign-owned credit institutions increased dramatically in Latin America, Easter Europe and East Asia.[31] This phenomenon is perceived as an inevitable step towards economic development, similar to the earlier reductions in barriers to international trade in goods and services. A main factor driving this internationalization is the explosion in cross-border flow of information. With the contribution of technology, individuals can access analytical data on prices and valuations. As a result, their analysis, storage and distribution become much quicker and cheaper, while individual physical location becomes an issue of minor importance: consequently, investment decisions are increasingly made on a global rather than a national basis.

Another aspect of the internationalization of financial services' is the creation of common international standards and codes. Their adoption by national authorities and their implementation, not only the cost of acquiring data is decreased, but also the stability of the financial system is enhanced. In this effort, the main contributors are standard setting institutions, such as the Financial Stability Board, the Bank for International Settlements and the International Accounting Standards Board. A third aspect (or challenge) of this internationalization process is the cross-border linkage of infrastructures. As M. D. Knight supports, 'owing to agency costs, differing institutions, and the diversity of national legal systems, individual countries continue to be relevant building blocks of our globalised financial system'.[32]

While there is little systematic evidence to support widely-cited claims that financial internationalization leads by itself to deeper growth crises in developing countries, according to some studies, the impact of this internationalization is rather limited.[33] For example, Obstfeld and Taylor argue that 'capital transactions seem to be mostly a rich-rich affair'.[34] A differentiated opinion is shared by K. Rogoff et al., according to whom 'developing countries can benefit from financial globalization, but with many nuances'.[35] All in all, instead of rejecting financial globalization, there should be given more space for improving the environment for economic growth by developing policies that promote financial globalization. Of course, analyzing necessary policies to reach that goal are beyond the scope of this paper.

Finally, a fifth key trend of the financial services sector is its **consolidation** at an accelerating pace, both within and across various industrial countries. While there is an array of motives for this trend, the prevalent one is that of securing economies of scale and scope in a steadily

[31] **WTO** (**2014**), p. 48
[32] **Knight** (**2006**)
[33] **Stulz** (**2005**), p. 45
[34] **Obstfeld and Taylor** (**2003**), pp. 175-176
[35] **Kose et al.** (**2006**), p. 1. Specifically, it is argued that the main benefits to successful financial globalization are probably catalytic and indirect, rather than simply enhanced access to financing for domestic investment.

less fragmented environment.[36] This is reflected in the rise of concentration levels and the modification in the ownership structure of domestic financial institutions.

As far as the concentration levels are concerned, there is not a universal upward trend: it has increased in some markets and fallen in others. The main trend is that markets have become less fragmented and more interdependent.[37] Besides, a relevant issue of major importance is the correlation of bank concentration with banking system fragility. On the one side, it is argued that higher concentration means less competition and consequently higher profits for the banks, which can be used as buffers against potential crises.[38] In other words, higher concentration may lead to enhanced financial stability.[39] Moreover, the supervision of a highly concentrated national banking system is facilitated, thus enhancing the prevention or effective treatment of a crisis. On the other hand, researchers argue that lower competition (due to high concentration levels) may lead to the reduction of access to financial services, thus having a destabilizing effect for the banking system overall. The cause is that larger banks usually have the privilege of being protected by 'too-big-to-fail' policies, thus having an incentive to assume excessive risks and subsequently augmenting moral hazard.[40] Furthermore, researchers share exactly the opposite view with regard to monitoring: assuming that bank size is positively associated with complexity, large banks will not be so easily monitored.

With regard to ownership structure, Claessens argues that since the crisis, developing countries and emerging markets expanded their foreign presence. On the contrary, banks from OECD member states, hit by a systemic crisis, reduced their presence abroad. In any case, it is argued that 'global banking is not becoming more fragmented, but rather is going through some important structural transformations with a greater variety of players and a more regional focus'.[41]

[36] For a comprehensive analysis of the motives for consolidation, see **Group of Ten (2001)**
[37] **Cetorelli et al**. (**2007**), p. 48
[38] **Beck, Demirgüç-Kunt and Levine (2007),** p. 194
[39] **Allan and Gale** (**2004**), p. 466
[40] Specifically, at that moment, depositors have little incentive to monitor the bank and withdraw their funds if the bank takes on too much risk.
[41] **Claessens and van Horen** (**2014**), p. 22

3. GATS and financial services

3.1 Definitions

Entering into force in January 1995, the GATS is the first non-regional multilateral agreement dealing with trade and investment of financial services providers. It is one of the main pillars of the agreements signed at the conclusion of the Uruguay Round.[42] Particularly, the World Trade Organization was established, as an umbrella, covering a series of trade agreements.[43] The most commonly cited are the General Agreement on Tariffs and Trade (GATT), the GATS and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement).

As far as GATS is concerned, it consists of the framework containing general rules and disciplines applicable to all services, and the national schedules listing individual WTO members' specific commitments on access to their domestic markets by foreign suppliers. Its main objective is the progressive facilitation of higher levels of liberalization of trade in services, including financial services, between WTO member states. This objective is addressed through member's participation in periodic rounds of multilateral negotiations aiming at the elimination of trade barriers among members.[44]

Trade in services is usually defined by reference to modes of supply. In the GATS, there is a distinction between four modes of supply, which are supposed to capture the different ways in which foreign service providers can reach consumers.

Article 1, paragraph 2 of the GATS stipulates four different modes of supply of a service:

a) from the territory of one Member into the territory of any other Member;
b) in the territory of one Member to the service consumer of any other Member;
c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member

In other words, trade in services is made through *four modes of supply*:
Mode 1: Cross-border supply – the services are delivered across the country border, while the service provider resides abroad and the consumer remains in the home country. This process is analogous to trade in goods. (e.g. consultants offering a report of findings by post;
Mode 2: Consumption Abroad – the consumer travels to the country where the services are delivered by the foreign services supplier (e.g. a student traveling to its destination to consume educational services);
Mode 3: Commercial Presence – a service supplier of one country supplies a service in another country by establishing commercial presence in that country, through foreign investment (e.g. a financial institution creates a permanent branch or subsidiary);
Mode 4: Presence of Natural Persons – the supplier moves temporarily to the consumer. Contrary to the previous mode, here the supplier is a natural – not legal – person (e.g. a software engineer is sent to resolve computer systems problems in another market)

[42] **Gortsos and Stephanou** (**2006**), p. 39
[43] **Marrakesh Declaration of 15 April 1994**, para. 2 and Ag**reement Establishing the World Trade Organization**, art. 1
[44] **Barth et al. (2010)**, p. 432

Broadly defined, the first two modes comprise the supply of services across borders while mode 3 relates to foreign direct investment. As far as mode 4 trade flows are concerned, they are the most difficult to be estimated and quantified.[45] Regarding financial services, the vast majority of commitments has been made within mode 3, i.e. the establishment of foreign financial institutions in host jurisdictions.[46] While the GATS does not provide with any clear definition of services, the term 'financial services' is defined thoroughly in the Annex on Financial Services, including both insurance and insurance-related services, and all banking services.

According to **article 5, paragraph a of the First Annex on Financial Services**, financial services include the following activities:

Insurance and insurance-related services

i. Direct insurance (including co-insurance):
   (A) life
   (B) non-life
ii. Reinsurance and retrocession;
iii. Insurance intermediation, such as brokerage and agency;
iv. Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

v. Acceptance of deposits and other repayable funds from the public;
vi. Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
vii. Financial leasing;
viii. All payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers drafts;
ix. Guarantees and commitments;
x. Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
   a) money market instruments (including cheques, bills, certificates of deposits);
   b) foreign exchange;
   c) derivative products including, but not limited to, futures and options;
   d) exchange rate and interest rate instruments, including products such
   e) as swaps, forward rate agreements;
   f) transferable securities;
   g) other negotiable instruments and financial assets, including bullion.
xi. Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
xii. Money broking;
xiii. Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
xiv. Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
xv. Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
xvi. Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

---

[45] For a statistical conceptualization of Mode 4, see **Maurer and Magdeleine (2008)**

[46] **IMF (2006)**, para. 10

The next definition given is that of ‘financial service supplier’. It seems to be quite broad, since it includes not only natural or juridical persons that are already providing financial services, but also those wishing to do so. Public entities are excluded.[47] As a result, not only those already engaged in supply of a specific kind of financial service are going to benefit from the relevant WTO rules.[48]

3.2 Structure of GATS

At the time that negotiations on services were taking place, it was thought to be more economically beneficial to focus on services liberalization than additional tariff reductions in merchandise trade.[49] Firstly, access to services markets has remained more restricted than access to goods markets where eight GATT rounds had already taken place since 1947, contributing to significant reduction of barriers. Secondly, the majority of restrictions applied are economically more dubious, usually consisting of non-revenue generating quotas, than tariff-based protection in merchandise trade. Finally, given the role of various services as generally used inputs, barriers to access and use may stifle efficiency and growth throughout the economic system.[50]

However, services negotiations entail more impediments than the older treaty dealing only with goods. Although drafters of the GATS were inspired by the pre-existing GATT, they could not transfer automatically its elements to the agreement for the international trade in services, as a consequence of numerous sectoral peculiarities, which were reflected in the structure of the GATS. Indicatively, it can be said that while the GATT covers only one mode of supply (cross-border trade) and one negotiable type of restriction (tariffs), the GATS covers three more modes, while it allows a series of restrictions.

The Structure of the GATS Provisions on Financial Services

The GATS is composed by three elements:

- a **framework agreement**, which contains general provisions covering all sectors (i.e. all categories of services)
- the **sector annexes**, such as those covering financial services, and other agreements, such as the *Understanding on Financial Services*, which contain provisions tailored to the financial services sector. Specifically, it deals with issues as sectoral definitions, services supplied in the exercise of governmental authority and prudential measures
- **scheduled commitments** on market access, national treatment and other commitments. Some WTO members have made commitments in accordance with the *Understanding on Commitments in Financial Services*. It does not constitute part of the GATS, but it was appended to the Final Act of the Uruguay Round.

Furthermore, while there are obligations that bind the WTO members automatically (as it happens with the GATT), some exceptions apply, and some others are only applicable by the WTO members that have accepted them *specifically*. This has to do with Part III of the GATS, which deals with market access (article XVI), national treatment (article XVII) and additional commitments (article XVIII). In other words, the approach in Part III of the GATS

[47] **GATS Annex on Financial Services**, para. 5(b)
[48] **Hahn** (**2006**), p. 181
[49] **Hoekman**, **Mattoo and Sapir** (**2007**), p. 371
[50] **Adlung and Roy** (**2005**), p. 3

is based on a positive list: liberalization obligations apply only to the sectors listed, which are subject to limitations or conditions inscribed.[51]

Contrary to this approach, implementing the negative list approach means that all sectors are liberalized, unless otherwise indicated through lists of reservations or exclusions. A positive list means that WTO members must clearly identify sectors subject to liberalization. No action means no liberalization. Moreover, all new services are excluded from coverage until they are listed. In practice, it is easier to deny market access by doing nothing (negative approach), than taking specific action to liberalize (positive approach).

The situation becomes even more complex after a sector has been positively identified as being covered by the GATS, since further exceptions are available. Assuming that financial services are covered by the GATS provisions on market access and national treatment, it is possible to exempt certain measures from these obligations. To sum up, the GATS approach entails a combination of positive inclusions and negative exclusions.

GATT vs GATS: Main features[52]

GATT	GATS
Coverage: Cross-border trade in products (goods).	Three additional modes of supply: consumption abroad, commercial presence, and presence of natural persons. (+) Related extension of core disciplines to treatment of suppliers (+) and, by implication, to behind-the-border measures. (~)
Tariffs are the only negotiable instruments of protection.*	All conceivable types of trade and investment barriers are negotiable. (<>) Absence of a commonly agreed measure of protection. (~)
Relatively strict compliance with most favorable nation (MFN) obligation, subject to one major exemption (Preferential Trade Agreements).	Additional scope for MFN departures, including in the form of 'Article II Exemptions' and recognition measures concerning foreign standards, certificates, etc. (<>)
Automatic extension of national treatment to imports.	All types of departures from national treatment are permissible. (<>)
International product standards are widely available as templates for domestic regulation; Members are held to use such standards.	International service standards are relatively scarce; there are no particular incentives in GATS to encourage their use. (<>) (~)
Core disciplines (concerning use of quotas, subsidies, etc.) extend to exports as well.*	No constraints on export-generating or -restricting policies. **(<>)**
General exceptions for overriding policy reasons (protection of life and health, public morals, public safety, etc.)	Additional exceptions for prudential measures (financial services) and visa and labor-market policies; blanket exclusion of 'governmental services'. (<>)
Possibility of contingent protection in the event of subsidized or dumped imports or in 'safeguards situations' (sudden import surges that would cause serious injury).	No similar instruments. The 'question of emergency safeguards measures' and the appropriateness of countervailing measures' are covered by negotiating mandates under Articles X:1 and XV:1, respectively. (> <)
Legend:	

[51] **Roy, Marchetti and Lim (2006)**, p. 9
[52] **Adlung (2009)**, p. 5

(+) = Wider coverage than GATT;
(<>) / (> <) = More / less flexibility;
(~) = Less transparency
* Subject to exceptions for natural resource-based products.

Main Bodies dealing with financial services negotiations and liberalization[53]

There are five bodies focusing on the services negotiations. First of all, the **Council for Trade in Services** operates under the supervision of the General Council and is responsible for facilitating the operation of the GATS and for advancing its objectives. It is open to all WTO members and can create subsidiary bodies, if necessary. Currently, it oversees the work of four subsidiary bodies:

- the Committee on Trade in Financial Services
- the Committee on Specific Commitments
- the Working Party on Domestic Regulation
- the Working Party on GATS Rules of the LDC services waiver.

Currently, its work is mainly focused on electronic commerce. Another issue that figures prominently in its agenda is the operationalization of the LDC services waiver. Furthermore, the Council discusses developments in services trade and regulation that are raised by WTO members. It also addresses transparency-related issues, including by taking note of members' notifications pursuant to relevant GATS provisions.

The second body is the **Committee on Financial Services**, which carries out discussions on issues relating to trade in financial services and formulates recommendations or proposals for consideration by the Council. One of its main responsibilities is to review continuously the application of the GATS with respect to this sector. Apart from that, it serves as a forum for technical discussions and examination of regulatory issues that affect trade in financial services.

A third body is the **Committee on Specific Commitments.** Its main duty is the classification of services sectors, among which are the financial services too. Its most significant dates, are within the years 2000 and 2001. Specifically, on 11 April 2000, the Committee concluded its work on the procedures on the certification of improvements or rectifications to schedules of specific commitments and the Council for Trade in Services adopted these procedures two days later (13 April 2000).[54] Another important date is 22 March 2001. On that day, the Committee concluded the revision to the guidelines for the scheduling of specific commitments under GATS, which were later adopted by the Council (on 23 March 2001).[55]

A subsidiary body for the Council is the **Working Party on Domestic Regulation.** Its main duty is the drafting of disciplines relating to technical standards, licensing and qualification requirements for all services sectors, financial services included. At first, this body was called *Working Party on Professional Services,* but it ceased to exist, on 26 April 1999, with a decision of the Services Council to make the change.[56]

Finally, one more subsidiary body for the Council is the **Working Party on GATS Rules,** which focuses its work on subsidies, government procurement and safeguards.

---

[53] The main source of information for this subsection is the official webpage of the WTO. For an outlook, see https://www.wto.org/english/tratop_e/serv_e/s_coun_e.htm
[54] **WTO (2000a)**
[55] **WTO (2001a)**
[56] **WTO (1999)**, para. 1

4. Overview of some particularly important regulations in GATS proper, relating to financial services

4.1 Market Access

4.1.1 General remarks

As it has already been stated, the main purpose of the GATS is the progressive liberalization of trade in services. The main tools for that are enshrined in Art. XVI on market access and Art. XVII on national treatment, both constituting Part III of the Agreement, which is entitled 'Specific Commitments'.

Both national treatment and market access obligations apply under conditions. In particular, they apply only to service sectors that are included in a WTO Member's Schedules of specific commitments. However, a difference between them is that the market access obligation is not a general concept under the GATS. The measures covered by Art. XVI are well-defined quantitative restrictions that may pose impediments to the expansion or even the performance of the business in a state's market.

It could be said that GATS Art. XVI is similar to GATT Art. XI, since they both deal with quantitative restrictions on trade. GATT Art. XI is more comprehensive, because it entails a prohibition for the use of quotas or other measures that restrict the imports or exports of a product. On the contrary, GATS Art. XVI could be considered as a requirement to schedule market access limitations. For this reason, it is closer to the aforementioned GATT provision of schedules of tariff concessions. The point that makes it overcome the GATT provision is that GATS Art. XVI has a broader scope, as it covers both discriminatory and origin-neutral quantitative limitations.

4.1.2 GATS Article XVI:1

As far as GATS Art. XVI:1 is concerned, it prohibits a WTO member to offer to foreign services and service suppliers less favorable treatment than that provided in its Schedule. While guaranteeing the minimum level of treatment, this paragraph does not deal with the subsequent maximum level. In other words, if a state wishes to adopt measures that entail a higher degree of liberalization than the one inscribed in the Schedule, they it can to it unilaterally. This means that the guarantees provided in the Schedules do not necessarily reveal the actual levels of protection, thereby reducing their significance.

The purpose of footnote 8 to Art. XVI:1 is the protection of capital movements resulting from the supply of services in a cross-border manner (mode 1) or through commercial presence (mode 3), as long as the WTO Member has made a commitment on market access regarding these two modes of supply.[57] A member is obliged to allow the capital movement if the latter is considered to be an 'essential' part of the service itself. Furthermore, the term 'cross-border movement of capital' should be perceived as covering both outward and inward movements of capital.

[57] **Siegel (2002)**, p. 598

4.1.3 GATS Art. XVI:2

4.1.3.1 Introduction

The second paragraph of Art. XVI consists of a list of six types of market access limitations. Specifically, the restrictions may limit:

a) the number of service suppliers
b) the total value of service transactions or assets
c) the total number of service operations or the total quantity of service output
d) the total number of natural persons that may be employed in a particular service sector
e) the forms of legal entity or joint venture through which a service can be applied
f) the participation of foreign capital

Except for subparagraph e, the aforementioned limitations are of quantitative nature and regulate the maximum limitations. They exhaust the types of market access restrictions prohibited by GATS Art. XVI:1 and can be adopted only if a Member includes them in its Schedules.[58] Irrespective of whether they are discriminatory or not, all market access limitations shall be stated in the market access column. Since Art. XVI:2 clarifies that the per se prohibition of market access limitations applies only to scheduled sectors, it is evident that the market access obligation is conditional.

Rationae temporis, this article applies not only to measures that were adopted after the entry into force of the GATS, but also to those adopted earlier and are still in force after its entry into force. Lastly, the prohibition deals with measures adopted by all levels of government. This clause in Art. XVI seems to be a repetition of Art. I:3(a), which clarifies that the GATS covers not only measures taken by the central authorities. Nevertheless, a WTO Member has the right to specify otherwise in its Schedule, thus narrowing the territorial applicability of Art. XVI.[59] For example, a GATS signatory could commit itself to granting market access to a limited number of financial institutions established in a region.

4.1.3.2 The six limitations of Art. XVI:2

Art. XVI:2(a)

In Art. XVI:2(a), there are two elements that need to be examined. Firstly whether a measure limits the number of service suppliers and, secondly, if this measure takes one of the forms that are described in this sub-paragraph. As far as the first question is concerned, it has already been mentioned that a service supplier is defined broadly and covers any person – natural or juridical – that supplies a service.[60] An interpretative note of GATS Art. XXVIII:g clarified that if a service is provided through forms of commercial presence different from those mentioned in Art. XXVIII:1, even these entities should be treated as service suppliers pursuant to the GATS within the territory where the service is supplied through commercial presence.[61]

In *US – Gambling*, the WTO Panel analyzed the question if a total prohibition on the cross-border supply of a service, for which a full market access commitment was made, should be treated as a market access limitation, pursuant to GATS Art. XVI:2(a) and (c), even if this prohibition is not expressed in numbers. Both the Panel and the Appellate Body stated that it is the numerical or quantitative nature of a measure that the WTO judiciary focuses on in

[58] **WTO (1993)**, para. 4
[59] This is what the Panel argued in *Mexico – Telecoms.* For more information, see **WTO (2004a)**, paras. 7.361-7.362
[60] **GATS**, Art. XXVIII:g
[61] **Ibid**, footnote 12

order to classify this measure under Art. XVI:2(a).[62] As a result, both bodies found that a measure that totally bans the supply of certain services limits to zero the number of service suppliers. Following this approach, a total prohibition can be quantified to a zero per cent market access, thus taking the form of a numerical quota. On the other hand, the interpretation that the US gave to this clause was narrower. Specifically, they focused on the phrase 'in the form of' and argued that only measures formally expressed in numbers would be covered by the prohibition quotas.[63]

To sum up, both judiciary bodies – the Panel and the Appellate Body – supported the view that a measure that is not expressed in the form of a numerical quota or economic needs test may still fall within the scope of GATS Art. XVI:2(a).

Art. XVI:2(b)

Art. XVI:2(b) prohibits the setting of maximum limits to the total value of service transactions or assets. While prohibiting restriction on the value of services transactions is not a measure used often, it may be more relevant in some sectors, such as the financial services. In that framework, if, for example, there is a measure that limits numerically the total value of lending operations that foreign banks may undertake, this would constitute a violation of Art. XVI:2(a), unless otherwise scheduled, and as long as they are not justified as prudential measures. Furthermore, this provision forbids restrictions on the total value of assets of service suppliers. An example given by the Scheduling Guidelines is a measure that would limit the subsidiaries of a foreign bank to a specific percentage of the total domestic assets of all banks.[64]

Art. XVI:2(c)

Art. XVI:2(c) prohibits 'limitations on the total number of service operations or the total quantity of service output, expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test'.[65] The term 'total' is of quantitative nature and means the ceiling imposed on services operations and service output.[66] With regard to the term 'service operations', the Panel argued that it means the activities comprised in the production of a service.[67] Additionally, as 'service output' was defined the result of the production of the service.[68] As it can be deducted from these two definitions, there is an overlap between the limitations on the total quantity of service output and the total number of service operations. It has to be mentioned that it does exist a case that the Panel did not make a decision on whether the measures limited the number of service operations or the quantity of service output. Apart from the fact that such a distinction is practically difficult, it is also unnecessary. The underlying purpose of this ambiguity is to ensure that specific types of

[62]**WTO (2004b)**, para. 215
[63] **Ibid**, para. 222
[64] **WTO (2001a)**, para. 12
[65] An economic needs test is a mechanism under the control of a WTO Member that allows it to decide if the entry into its market of a new service supplier is necessary on economic grounds. Due to the fact that they do not have a solid format, their flexibility and discretionary nature is the reason for much criticism. The term should not be confounded with necessity as the one mentioned in GATS Art. VI:4. Economic needs tests are quantitative and are based on criteria the fulfillment of which is beyond the control of the service supplier affected. For an in-depth analysis, see **S/CSS/W/118.**
[66] **WTO (2004b)** para. 6.345
[67] **Ibid**, para. 246
[68] **Ibid**, para. 349

quantitative market-access limitations would fall within the scope of this provision.[69] The respondent's view was that only limitations that include express reference to numbered units are subject to Art. XVI:2. However, both the Panel and the Appellate Body found that domestic regulations prohibiting totally the cross-border supply of a services sector for which the state has undertaken commitments, can be quantified to zero. Consequently, the maintenance or adoption of measures by a State establishing prohibitions in services sectors where full market access commitments were made, are in conflict with GATS Art. XVI. On the other side of the coin, while it is prohibited to limit the number of service operations or the quantity of service output, GATS signatories can freely adopt or maintain measures that limit the inputs for the supply of a service. It is the author's view that this separation was made in order to discern between the main service and the services that are inputs to it. For instance accounting services and financial services: if a state has undertaken a specific commitment for the financial services liberalization, it would not be obliged to extend this commitment to the accountancy sector. It should be underscored though, that the existence of a national treatment and market access commitment does not mean that the supplier of the committed service is allowed to supply uncommitted services that are inputs to the committed service. All in all, footnote 9 aims at the protection against unwanted services liberalization.

Art. XVI:2(d)

Art. XVI:2(d) prohibits limitations on the total number of natural persons. Although it applies in principle to all four modes of supply, practically, it regulates the services provided through modes 3 and 4. Like the other subparagraphs of Art. XVI:2, it applies only to maximum limitations. In that sense, if a measure required that a commercial presence employs at least a specific number of nationals, this does not come in conflict with Art. XVI:2(d), since it would not limit the total number of natural persons. Like the aforementioned restrictions, Art. XVI:2(d) applies to restrictions taking the form of numerical quotas or establish an economic needs test. In this subparagraph, it is clarified that the prohibition affects its restrictions on the total number of employed persons in a service sector or by a service supplier.

Nevertheless, the scope of the prohibition is confined to the measures that limit the number of natural persons that are 'necessary for, or directly related to, the supply of a service'. Pursuant to the wording of this provision, a restriction on the number of natural persons that does not directly relate to Art. XVI:2(d) would not be covered by it. However, this relationship has to be assessed on an ad hoc basis.

Art. XVI:2(e)

This provision prohibits 'measures which restrict or require specific types of legal entity' for the establishment of the service supplier. The main difference of this provision from the others is that it does not deal with quantitative measures. Limitations on the type of legal entity are of qualitative nature. GATS Art. XVI:2(e) contains two distinct prohibitions that apply in different cases. Firstly, the prohibition of measures that limit specific types of legal entity applies to supply modes 1, 2 and 3, covering all measures, both discriminatory and non-discriminatory. Secondly, the prohibition on the requirement of establishing joint ventures as a means to provide services applies solely to discriminatory measures having an impact on commercial presence.

i) Limitations on the Types of Legal Entity

[69] **Ibid**, paras. 6.355 and 6.376

When a GATS signatory undertakes commitments with regard to this subparagraph, it shall not require that the service be supplied by only specific types of legal entities. All forms of establishment shall be allowed, regardless of their liability, limited or not. The prohibition on legal entity requirements affects both domestic and foreign service suppliers in a non-discriminatory manner. Furthermore, the prohibition on limitations on the type of legal entity includes also measures that limit the means of establishment of foreign service providers, when they wish to provide services through supply mode 3 (commercial presence). The Scheduling Guidelines mention some examples of measures that are banned pursuant to Art. XVI:2(e) and are related only to foreign services. Specifically:

a) commercial presence excludes representative offices
b) foreign companies required to establish subsidiaries
c) in sector x, commercial presence must take the form of a partnership[70]

ii) Prohibition on Requiring Joint Ventures

The GATS Art XVI:2(e) also prohibits measures that require the formation of joint ventures as a prerequisite for providing services. Since joint venture requirements are a limitation regarding the establishment of foreign companies, this provision applies only to measures of a discriminatory nature. Additionally, this clause affects solely measures for services supplied through mode 3. A significant element of joint ventures is that they help the investor benefit from the experience of the domestic partner in the local market. What is more, such legal entities may be preferred by governments in order to transfer the technology into their borders. Nevertheless, joint ventures can be used as a means for involving foreign service suppliers into alliances with economically inefficient domestic companies. As a result, due to the prohibition of Art. XVI:2(e), it is ensured that foreign investors in services face no restrictions in their choice of entry mode for the supply of services.

GATS Art. XVI:2(f)

GATS Art. XVI:2(f) prohibits 'limitations on the participation of foreign capital'. Like the restriction on joint venture requirements, subparagraph f applies only to discriminatory measures that are supplied through commercial presence. The measures covered are these imposing 'maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment'. In other words, this provision prohibits: i) measures that set a percentage ceiling of equity participation on each foreign shareholder, and, ii) measures that set a ceiling on foreign participation, for example the maximum amount of money that may be invested.

Pursuant to Art. XXVIII:n, a juridical person is 'owned' by persons of a Member if more than 50 per cent of the equity interest is owned by persons of that Member and is 'controlled' by persons of a Member if such persons have the power to name a majority of its directors or otherwise legally direct its actions. In other words, if a Member adopts measures that restrict foreign participation to less than 50 per cent or do not allow foreign control, then they are not affected by the Art. XVI:2(f). Consequently, such measures can be maintained.

4.1.4 The Relationship between Art. XVI:1 and Art. XVI:2

The relationship between the two paragraphs is supplementary, since the second exhausts the types of market access restrictions that the first paragraph outlaws. Their connection is not simple. Their complexity is the result of textual differences between them.[71] Indicatively,

[70] **WTO (2001a)**, para. 12
[71] **Delimatsis and Molinuevo** (**2008**), p. 384

while the first paragraph deals only with measure of discriminatory nature, the second one deals with non-discriminatory quantitative restrictions. Along with the differences of these two provisions, the principle of effectiveness should not be omitted either. According to it, it is required that the WTO judiciary gives meaning and effect to all the terms of the GATS in a harmonious manner.

It could be argued that the scope of this article is broad enough. If a GATS signatory undertakes a full commitment under market access, it is obliged to eliminate all Art. XVI restrictions, at least concerning foreign service suppliers. Restrictions that would be applied solely to foreign suppliers or to both foreigners and nationals would be in conflict with the full commitment. In addition to that, maintaining discriminatory measures that pose limits solely on nationals would be in conformity with this provision and the GATS in general.

To sum up, it is evident that 'the seemingly broad scope of GATS Art. XVI:2, when read together with Art. XVI:1, is narrowed in such a manner that quantitative restrictions that do not affect foreign service fall outside the scope of the market access obligation'.[72]

4.2 Non-discrimination obligation

The negotiating history of WTO proves that some members believed that GATT rules on non-discrimination 'had been set up for products, not for producers or activities, and it was therefore difficult to see how it could be applied to services, the imports of which were not covered by customs duties at the border as was the case with trade in goods'.[73] In spite of these concerns, the principle of non-discrimination was included in the GATS framework, in two ways: as MFN and as national treatment, combined with the innovation to apply not only to the service, but also to its supplier.[74] As it has already been mentioned, certain GATS obligations apply across-the-board, while others depend on the specific commitments that WTO members have made.

Non-discrimination is a core principle in WTO law and policy. It consists of two components (i.e. main principles): the most-favored-nation (MFN) treatment obligation and the national treatment obligation. The difference is that in the first case, a member state is prohibited from discriminating *between* other states, while in the second one, a member state is prohibited from discriminating *against* other states. The purpose of this section is to examine the most significant aspects of these two principles.

It is worth mentioning that the significance of eliminating discrimination is underlined already in the preamble of the WTO Agreement. Additionally, the principle of non-discrimination is embodied in various legal texts of the WTO Agreement, such as the GATT[75], the GATS[76] and the TRIPS.[77] As far as the notion of non-discrimination is concerned, it can be characterized as complex, mainly because its content is very flexible and depends on its context. As it was commented by a WTO panel: 'Discrimination' is a term to be avoided whenever more precise standards are available, and when employed, it is a term to

[72] **Ibid**, p. 385
[73] **WTO (1987)**, para. 12
[74] **Diebold (2010)**, p. 177
[75] In GATT, major MFN clauses appear in Articles I:1, II:1, V:5, IX:1 and XIII:1. The national treatment clause appears in Articles III:2 and 4
[76] The MFN clause is mentioned in GATS Article II, while the national treatment obligation is in Article III:4
[77] The MFN and national treatment clauses are set out in TRIPS Articles III and IV respectively.

be interpreted with caution, and with care to add no more precision than the concept contains'.[78]

In spite of these difficulties, the key provisions on non-discrimination in the GATS are:

- Article II, on the MFN treatment obligation; and
- Article XVII, on the national treatment obligation.

4.2.1 MFN treatment obligation

One of the most significant general obligations is the MFN principle[79], which aims at preventing member states from discriminating among their trading partners. The MFN clause is included in both GATT Article I and GATS Article II. The underlying purpose of this provision is similar in both agreements. In political terms, it prevents tensions in international relations, while, from an economic point of view, it contributes to an efficient allocation of resources in the supply of services thus accelerating the liberalization of trade in services.[80]

Nonetheless, there is a variety of technical issues that differentiate the aforementioned provisions. First of all, as it was mentioned above, the scope of GATS MFN treatment extends to service suppliers, while GATT Article I applies only to products.[81] Furthermore, while GATT Article I applies to all goods, GATS Article II:2 allows members to schedule horizontal exemptions for certain services at the time of acceptance of the Agreement, without exceeding the duration of ten years. Another difference deals with the scope of measures. Specifically, while the MFN treatment in GATT differentiates between numerous kinds of measures and incorporates internal taxes and regulations only by reference to the GATT national treatment provision, GATS Article II applies broadly to any measure that affects trade in services. As a result, the GATS Article II does not have to refer to the GATS national treatment provision so as to extend its scope to internal taxes and regulations.[82]

As mentioned above, the MFN treatment obligation is one of the most significant provisions of the GATS. In this section, three issues are examined:

a) the nature of the MFN treatment obligation, pursuant to article II:1 of the GATS;
b) the test of consistency with Article II:1; and,
c) the exemptions from the MFN treatment obligation.

4.2.1.1 Nature of the MFN treatment obligation, pursuant to article II:1 of the GATS

The primary purpose of this obligation is to ensure equality of opportunity, for services and service suppliers from all WTO members. According to the ruling of the Appellate Body in *EC-Bananas III,* it applies both to de jure and de facto discrimination.[83]

4.2.1.2 Test of consistency with Article II:1 of the GATS

Article II:1 of the GATS specifies a three-tier test of consistency. There are three questions that have to be answered to determine whether a measure violates the MFN treatment obligation or not. In particular, it is asked whether:

i. the measure is covered by the GATS
ii. the services or service suppliers concerned are 'like services or service suppliers'

---

[78] **WTO (2000)**, para. 7.94. For more information, see **Biadleng, E. T. (2008)**, pp. 118-120
[79] **GATS**, Article II
[80] **Diebold (2010)**, p. 136
[81] For an in-depth analysis of the differences between Articles 1 GATT and II GATS, see **Diebold (2010)**, pp. 135-136
[82] Diebold (2010), pp. 135-136
[83] **WTO (2008a)**, para. 233. For an analysis of the case, see **Ortino (2008)** pp. 177-181

iii. less favorable treatment is accorded to the services or service suppliers of a WTO member

i. Measure covered by the GATS

A measure is covered by the GATS as long as it is:

- a measure by a WTO member; and
- a measure affecting trade in services.

Regarding the first element of the test, the term 'measure by a Member' is very broadly defined. It is not limited to measures taken by the central government or central government authorities. They are also measures included taken by regional or local governments and authorities. Furthermore, measures taken by non-governmental bodies constitute a 'measure by a member' when they are taken in the exercise of powers delegated by governments or authorities. In other words, the definition of the GATS covers virtually all levels of government activity.[84]

With respect to the second precondition, a statement by the Appellate Body in Canada – Autos clarified the notion. Specifically, it stated that in order to determine if a measure is one 'measure affecting trade in services', two issues need to be examined:

- if there is 'trade in services' in the sense of Article I:2; and
- if the measure issued 'affects' such trade in services within the meaning of Article I:1

Regarding the first question, it has to be mentioned that the GATS does not define what a service is. Nonetheless, Article I:3(b) states what the term includes, while Article I:2 defines 'trade in services' as the supply of a services, within one of the four modes of supply. The combination of these two characteristics leads us to the conclusion that the concept of 'trade in services; is very broad.

As far as the second issue is concerned, the contribution of the Appellate Body in EC – Bananas III was determining. In particular, it attempted to clarify the term 'affecting' as follows:

In our view, the use of the term "affecting" reflects the intent of the drafters to give a broad reach to the GATS. The ordinary meaning of the word "affecting" implies a measure that has "an effect on", which indicates a broad scope of application. This interpretation is further reinforced by the conclusions of previous panels that the term "affecting" in the context of Article III of the GATT is wider in scope than such terms as "regulating" or "governing'.[85]

Additionally, it stated that regulating the supply of services is not critical for deciding whether this measure is covered by the GATS; the determining factor is if it affects trade in services, even though the measure may regulate other matters.[86] Article XVIII of the GATS cites some examples of 'measures by Members affecting trade in services'. This non-exhaustive list includes:

- the purchase, payment or use of a service;
- the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally; and,

[84] It follows that measures of private persons, companies or organizations, which do not exercise any delegated governmental powers, will not be considered to be a ' measure by a member'. See **WTO (2003)**, p. 7

[85] **WTO (2008a)**, para. 220

[86] **Ibid**, para. 7.285

- the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member.[87]

As a result, the scope of measures to which the MFN treatment obligation applies. is similarly broad.

ii. 'Like services or service suppliers'

The second pillar of the three-tier consistency test regarding Article II:1 deals with the definition of likeness. Regarding the term that defines the beneficiaries of MFN clause ('like services and service suppliers'), it has not received as much attention as the respective GATT provision by panels and mainly the Appellate Body.[88] According to Cossy, only in five disputes within the GATS framework the concept of likeness has been raised. In two of them, the panels and the Appellate Body made findings regarding national treatment, but likeness was addressed in a very vague way. For instance, the statement of the Appellate Body, both in *EC – Bananas III* and *Canada – Autos* was that 'to the extent that entities provide like services, they are like service suppliers'.[89]

Despite the fact that there is poor jurisprudence on the meaning of the aforementioned terms, it is argued that, for its determination, the following factors should be taken into account:

- service's end-uses in a given market
- the characteristics of the service or the service supplier;
- the classification and description of the service in the United Nations Central Product Classification system (the 'CPC'); and,
- consumer habits and preferences regarding the service or the service supplier.[90]

Furthermore, in WTO bodies dealing with services, member states have shown limited interest for the aforementioned issue, preferring to leave to case-law to determine likeness in the same way as in the GATT: on a case-by-case basis.[91] A criterion focusing on the 'physical' characteristics of products, as used in the GATT context, would be a *contradictio in terminis* for non-storable and intangible services transactions.[92] In other words, the GATT approach to determine likeness of goods is impossible to be mechanically transposed under the GATS.[93] The reason is that 'the concept of likeness of products is more elusive in services than in goods'.[94]

iii. No less favorable treatment

The third pillar of the consistency test deals with the treatment accorded to 'like services' or 'like service suppliers' of other states. Although Article II of the GATS does not clarify the meaning of that term, GATS Article XVII on the national treatment obligation, provides for guidance on the meaning of the term:

---

[87] **GATS**, Article XXVIII, para. c

[88] **Grote and Marauhn (2006)**, p. 186. For an insight of the most illustrative cases on the issue of 'likeness' in Article I GATT, see **Diebold (2010)**, pp. 128-135

[89] **Cossy** (**2006**), p. 6 and **WTO (2008a)**, para. 7.322 and **WTO (2000a),** para. 10.248

[90] **Ortino** (**2006**), p. 24

[91] **Cossy (2006)**, p. 3

[92] **Ibid**, p. 19

[93] **Ibid**, p. 46

[94] **WTO (2003a)**, 6 March 1996

‘Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to the like services or service suppliers of any other Member’.[95]

In this context, a measure constitutes less favorable treatment as long as it modifies the conditions of competition. In EC – Bananas III, the Appellate Body stated that upon interpretation of this concept ‘it should not be assumed that the guidance of Article XVII equally applies to Article II. However, as noted above, the Appellate Body has already concluded that the concept of ‘treatment no less favourable’ in Article II:1 and Article XVII of the GATS should both be interpreted in a way to include de facto, as well as de jure, discrimination although only Article XVII states so explicitly’.[96]

4.2.1.3 Exemptions from MFN treatment

Within GATS, more implications arise than in the ‘traditional’ exceptions of the GATT and there are numerous reasons for that. For example, the GATS provides a wider scope than the GATT for discretionary recognition of foreign certificates, standards and licenses, which could be attributed to the broad modal and sectoral coverage of services. [97] Pursuant to GATS Article II:2.

‘A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions’.

In Annex II of the GATS, there is a series of conditions for the use of the MFN exemption. In particular, it can only be used outside the scope of specific commitments: it cannot be used for sectors already covered by liberalization commitments. Moreover, the exemptions granted for a period of more than five years are reviewed after five years by the Council for Trade in Services. The Council firstly examines if the conditions which created the need for the exemption still prevail and secondly determines the date of any further review. Additionally, the exemption terminates on the date provided for the exemption. [98] It is also worth mentioning that the exemption list does not identify member states that would not benefit from the MFN treatment, but only those that would benefit from more market access than other members.

These exemptions could be taken only at the time the negotiations were concluded, i.e. until 1 January 1995. Almost two thirds of the member states listed MFN exemptions, a large part of which concerned the financial services. Pursuant to Article II:2, exemptions were subject to a ten-year expiration period since the entry into force of the GATS.

From a historical point of view, during the Uruguay Round, the question of absolute sectoral exclusions from the GATS as a plan to avoid the MFN rule came into light because of specific sectoral sensitivities. Thus, member states concluded to the permission of restricted and short-time exemption to the MFN principle within GATS. When it came down to the financial services, upon the conclusion of negotiations in mid-1995, some of the MFN exemptions kept on while some of them retained the right to apply reciprocity for authorizing market access. . A characteristic example was the MFN exemption of the USA in respect of all financial services and all countries which reserved the right to discriminate between trading partners with respect to new entry or the expansion of existing activities. In this regard, the USA argued that the aforementioned reservation was essential in order ‘to protect existing activities of United States service suppliers abroad and to ensure substantially full

[95] **GATS,** Article XVII:3
[96] **WTO (2008a)**, para. 234
[97] **Adlung (2004)**, p. 18
[98] **Annex on Article II Exemptions**, paras. 3-5

market access and national treatment in international financial markets'.[99] Among the main goals of the extended negotiations on financial services were both the elimination of such privileges and the achievement of thorough MFN-based result.[100]

Apart from the above mentioned exemptions to MFN treatment, GATS Article V on 'Economic Integration' enables the departure from it. In particular, this provision allows the WTO members to participate into an agreement liberalizing trade in services, among the parties to such an agreement. Article V sets out two requirements for allowing such an economic integration exception. The economic integration agreement:

- shall have substantial sectoral coverage, and
- provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a) through:
- elimination of existing discriminatory measures, and/or
- prohibition of new or more discriminatory measures, either at entry into force of that agreement or on the basis of a reasonable time frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

4.2.2 National Treatment Obligation

GATS Article XVII entails the second type of non-discrimination norm: the national treatment principle. It requires 'each Member to accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than what it accords to its own like services and service suppliers'. This section firstly focuses on the nature of this obligation and secondly analyzes the test of consistency with this obligation.

First of all, the national treatment obligation of the GATS Article XVII differs from the one of GATT Article III. Regarding trade in goods, this obligation applies generally to all trade services. Furthermore, the national treatment obligation within GATS differs from GATS Article II MFN obligation, since it has general application to all measures affecting trade in services. In contrast with these two provisions, the national treatment obligation of GATS Article XVII applies only to the extent that WTO Members have explicitly committed themselves to grant 'national treatment' in respect of specific service sectors.[101] For determining the actual level of national treatment commitments of a state, it is needed to examine its 'Schedule of Specific Commitments'. This schedule depicts the range of activities covered in each service sector and mode of supply, as well as the limitations on national treatment entered by WTO members. Typically, such limitations deal with:

- nationality or residence requirements for executives;
- requirements to invest a certain amount of assets in local currency;
- restrictions on the purchase of land by foreign service suppliers;
- special subsidy or tax privileges granted to domestic suppliers; and
- differential capital requirements and special operational limits applying only to operations of foreign supplier

Subject to each member state's specific commitments, a three-tier test of consistency has to take place, in the same way as in the MFN treatment obligation.

[99] **Arup (2008)**, p. 216
[100] **Mattoo (1998)**, p. 6
[101] **WTO (1991)**

4.2.3 Subsidies and non-discrimination

An issue of major importance that has to be mentioned is that of subsidies. The reasons why it is analyzed in a different chapter are two: firstly it is interrelated with the obligation of non-discrimination in general and not only with either the national treatment obligation or the most-favored nation principle; secondly it became a significant topic especially after the eruption of the global financial crisis in 2007 in the subprime mortgage market in the US, enveloping through 2008 all sectors of the financial market across countries around the world.

As it is known, subsidies directed to increased exports may lead to a misallocation of resources between domestic and foreign markets, consequently giving a comparative advantage to domestic producers that participate in international markets. From a trade law standpoint, many rescue measures could constitute subsidization and have a distortive effect on the competition in international financial markets, especially when 'cheap' capital in the form of capital injection improves the capital base of a financial institution.[102]

The WTO has a powerful mechanism for disciplining subsidies, especially those depending on export performance. Nevertheless, it lacks a comprehensive framework to regulate subsidies in services.[103] As a result, at least in principle, more than 80% of the US$ 12 trillion of US federal crisis relief escapes the WTO's purview. It is evident that as the crisis evolved and the recession grew, protecting policies reemerged, while various WTO members introduced or increased export subsidies.

Even before the financial crisis, the banking sector was one of the most heavily subsidized services sectors (along with tourism and transport). Among the measures adopted as part of the rescue schemes during the financial crisis are the following: capital injections or liquidity provision to overcome short-term shortages, direct money transfers to certain financial institutions, guarantees on bank liabilities. The reason why these measures can be characterized as subsidies is that they offer a benefit to the subsidized undertakings, distorting the terms of competition with private entities that were not equally subsidized by their governments. As a consequence, an artificial but still unfair competitive advantage is given to some entities at the expense of all the others.

Governments and national banks have turned into major shareholders of distressed financial institutions. These institutions could determine the exact level of financial interrelation and globalization. For example, when national shareholders become sellers in the future, domestic banks may become less internationalized if shares tend to accumulate in the hands of domestic investors. Consequently, important distortionary effects on the allocation of capital may take place, both within and across borders. Furthermore, the interlace of the state with the financial sector can have an impact on their lending strategy. For example, support to financial institutions could be connected with the granting of loans to domestic undertakings and natural persons in order to revitalize the national economy. All in all, any intervention in a financial institution's lending or business strategy can distort competition, trade and investments, since market will not be the driving force for the decisions.[104]

In spite of all these implications and dangers for the integrity of the global financial system and the terms of international competition, distortions of competition in financial services are shielded for the most part. The underlying reason is that the GATS does not contain any specific provision for subsidies, except for a mandate for its signatories to negotiate the necessary multilateral disciplines with a view to avoiding trade-distortive subsidies in the area of services. Moreover, GATS Article XV:2 requires that sympathetic consideration be given to the request for consultations by a WTO Member that considers itself adversely affected by a subsidy granted by another Member. According to Adlung, negotiations on subsidies within

[102] **Delimatsis** (**2012**), p. 13
[103] **Horlick and Clarke** (**2010**), p. 860, as cited in **Delimatsis** (**2012**), p. 14
[104] **de Meester** (**2010**), p. 27, as cited in **Delimatsis** (**2012**), p. 17

the Working Party on GATS Rules have not made any significant progress until today.[105] It is the author's opinion that this lack of progress may be attributed to a series of factors, such as the four-mode nature of trade in services and its impact on defining services subsidies. Delimatsis and Sauve argue that this delay proves a policy preference for regulatory inaction by the WTO Members with the deepest pockets.[106]

The absence of disciplines concerning subsidies is an important gap in the multilateral framework of trade in services. Consequently, subsidy practices like those in the financial crisis period can proceed with almost full impunity. Apparently, this does not mean that the GATS does not apply to subsidies at all, since they constitute 'measures affecting trade in services', within the scope of GATS Articles I:1 and XXVIII (a). Subsidies should comply with the non-discrimination principle, which is twofold, i.e. MFN obligation and national treatment obligation. As far as the first is concerned, when applied on subsidies, it means that they should be included in the member's list of MFN exemptions, in order to escape the scope of GATS Article II. Regarding the second obligation, pursuant to GATS Article XVII, subsidies cannot be discriminatory unless they are scheduled. Thus, if a state fails to schedule the right to grant subsidies at a domestic level, it is obliged to grant the same subsidies to both domestic and foreign service suppliers, especially when the absence of likeness is difficult to prove.[107] At this point, it should be underscored that the absence of a definition of subsidy does not play an important role, since the GATS has flexibility thanks to a broad scope *ratione materiae*, covering *any* measure *affecting* trade in services.

4.3 Transparency

Despite the fact that the WTO has not played a significant role in creating the international financial regulatory standards, its transparency obligations are interrelated with the regulators' objectives. 'In order to protect the GATS' particular combination of extended coverage and greater flexibility from being exploited by vested interests, transparency matters even more than under the GATT'.[108] A major issue is the level to which regulators should adhere to the GATS transparency obligations. According to the Doha Ministerial Declaration, 'transparency' is a sine qua non for the clarification, enlightening and predictability of the rules and procedures of international trade agreements. Higher levels of transparency would lead to greater institutional independence and accountability of regulators, while market participants – having access to more information – would be aware of their rights and obligations, thus making more rational decisions.[109] In the post-Doha era, member states should clarify the notion of transparency aiming at the promotion of financial development and regulatory autonomy. Nevertheless, focusing exclusively on transparency would have some side-effects. In particular, it could undermine the objectives of regulatory policies, among which is the stability of the financial system.[110] Consequently, the broader goal of achieving efficiency in financial markets could be achieved only through equilibrium between the contradictory aims of transparency and prudential regulation.

According to jurisprudence, transparency cannot be defined stricto sensu. The level of transparency (or the degree of vagueness) can vary depending on policy objectives and the

---

[105] **Adlung** (**2007**), p. 236
[106] **Delimatsis and Sauvé** (**2010**), p. 856
[107] It has to be mentioned that this obligation would only apply to foreign service suppliers that are present in the territory of the Member that grants subsidies.
[108] **Adlung (2009**), p. 4
[109] **Dobson and Jacquet (1998)**, p. 28 and **Amtenbrink** (**2006**), pp. 5-6 in **Alexander (2007)**, p. 112
[110] **Alexander** (**2007**), p. 112

subject regulated.[111] In other words, transparency is defined by its purpose, and it has three dimensions: a political, a procedural and a substantive. The first dimension deals with the decision-making process. Political transparency means that there is a certain level of access to this process, thus enhancing the credibility and legitimacy of an institution like GATS or a government that participates in the negotiations. The second aspect of transparency deals with the rules of procedure that are implemented within an organization like WTO. These have to be clearly defined and publicly accessible. In that way, awareness is raised regarding the exact way in which regulators act and decide. Finally, the third pillar has to do with substantive rules. The availability of information on the regulations and standards used is necessary for avoiding arbitrary judicial or administrative decisions. However, it has to be underscored that legislative provisions might contain inherently ambiguous terms reflecting the complexity of an issue.

The aforementioned pillars of transparency have proved to be influential on the evolution of regulatory governance not only with regard to state action. For example, in the field of corporate governance, (lack of) transparency is attributed to be one of the main causes of various corporate scandals that have taken place during the last decades.[112] A serious problem was that firms did not equalize the marginal benefits of internal and external governance through their degree of transparency.

As far as public governance is concerned, procedural transparency means the existence of rules dealing with a state's obligation to publish its policymaking decisions, allowing in that manner its effective oversight. According to Alexander, transparency is associated with governmental-decision making in two ways. The first one is process-oriented: the review of authority takes place through specific rules, such as the requirement to publish and notify regular procedures for the exercise of state authority. The second one entails substantive rules, through which it is checked if the exercise of authority is in conformity with principles like fairness and equity. For example, the question is raised if the rules of procedure for public disclosure of information enable citizens to monitor state authority in an effective manner.[113]

From the beginning of the deregulation era (late 1970s), a rising number of financial and banking crises took place across the world, along with a series of major sovereign debt crises. All of them raised the issue higher transparency levels in domestic financial regulation.[114] The reaction of financial institutions was to adopt higher standards of transparency, a move that can be explained by various factors. For instance, a modern tendency is the growing independence of central banks in the instruments used for keeping inflation rates low, or the technological advances, which facilitated access to information.[115]

Within the WTO framework, transparency means the adequate update of its member states in a way that promotes efficient markets combined with democratic governance. As a result, the transparency obligation is a core element of the WTO Agreements.[116] Specifically, there can be discerned four different levels of transparency:

- publication of laws and regulations,
- notification of new measures to trading partners,

---

[111] **Ibid**, p. 114. Specifically, Alexander supports this view recalling decisions from US courts. Furthermore, for an analysis of the balance between transparency and constructive ambiguity, see **Chiu (2003)**

[112] For an analysis of the significance of transparency in corporate governance, see **Muraina et al. (2010)**, p. 473 and **Hermanlin and Weisbach (2007)**, p. 19

[113] **Alexander (2007**), p. 116

[114] For a general overview of the relevant crises, see **Gortsos (2011)**, pp. 126-141

[115] For an analysis of the various developments in the financial sector see **Chapter 2**

[116] See indicatively **GATT**, Article X, **TBT Agreement**, Articles 2, paras. 9-11, **SPS Agreement**, Article 7, **TRIPS**, Article 63

- enquiry points for trading partners, and
- independent administration and adjudication.[117]

As in corporate governance, where the aim of transparency is to achieve clarity both internally and externally (within the company and towards non-members of its administrative bodies), in the same vein, the institutional framework of WTO is constructed with the purpose to achieve clarity both within a country and between member states.[118]

The GATS acknowledges the right of national governments to enforce new regulations in order to meet their national policy objectives.[119] The equilibrium to this provision is GATS Article III, which helps traders meet their need for legal certainty to properly evaluate the costs of market entry. The obligation of transparency is general, covering all services sectors of all members, regardless of whether they are subject to specific commitments. The aforementioned article requires that member states publish promptly all relevant measures that could possibly affect the operation of the GATS, without omitting international agreements that a member has signed and might affect trade in services.[120] Additionally, it is required that they inform periodically the Council for Trade in Services of the introduction of any new or the amendment of pre-existing relevant laws and regulations.[121] Moreover, a significant practical facilitation for traders is the establishment of one or more inquiry points in each member state's bureaucracies in order to reply promptly to trade-related questions posed by service suppliers from other member countries.[122]

Transparency issues in financial services regulation include indicatively the following aspects: deadlines for processing applications, responding to inquiries on regulations by service suppliers, appeal and review mechanisms, and national treatment in procedures. In a similar vein, the Working Party states that the relation of transparency with regulatory practices includes some criteria, such as: public availability of information, specification of reasonable time periods for responding to applications and justification of the reasons why an application was declined.[123]

However, the benefits of transparency are not absolute: there has to be achieved equilibrium between the transparency obligations and prudential regulation. The last one contributes to the measurement and management of financial institutions' exposure to financial risk.[124]In that way, the domestic financial systems are supposed to be reinforced. As it was described by Eichengreen, this process contributes to maximizing the benefits of liberalization, while minimizing its risks.[125] As far as transparency is concerned, it could lead to volatility that potentially could undermine the financial stability. For that reason, the optimal level of transparency is attained when there is equilibrium between the application of strict prudential requirements and the need to disclose any violations thereof.[126]

Another issue, relevant to regulatory governance is the balance between openness and accountability. Specifically in central banking, the regulator has to provide information legitimately, without disclosing information that could undermine the statutory objectives of the bank.

---

[117] **Alexander (2007)**, p. 117
[118] **Wolfe (2003)**, p. 158-159
[119] **GATS**, Preambles
[120] **GATS**, Article III, para. 1
[121] **Ibid**, para. 3
[122] **Ibid**, para. 4
[123] **WTO (2006)**, p. 14
[124] At this point, it should be mentioned that the supervision of a highly regulated financial system does not resemble the one of a system which is open to (domestic and foreign) competition.
[125] **Eichengreen (1999)**, pp.42
[126] The efficient operation of financial markets depends to a large extent on the quality of prudential regulation, which also depends on the quality of publicized information

Typically, the GATS does not prevent any state from undertaking measures for prudential reasons. However, the Annex does not define the term 'measures for prudential reasons'; it simply gives some examples, among which is the protection of depositors and ultimately the integrity and stability of the financial system.[127] This is expressed in paragraph 2(a) of the Annex on Financial Services, under the condition that such measures are not used to avoid commitments or obligations under the GATS. In other words, it is implied that not all measures are considered to be legal. Consequently, neither the exact scope of 'prudential carve-out' is clear, nor to what conditions are imposed upon prudential measures that do not comply with the GATS obligations. The author's opinion is that this ambiguity was intended by the treaty negotiators. While the significance of the financial sector and its sensitivity to crises required such emergency exceptions, it was realized by member states that there should be flexibility in defining the scope of 'prudential carve-out'.

For that reason, WTO members have taken a variety of views regarding its definition. Indicatively, during the Uruguay Round negotiations, Colombia expressed the opinion that the prudential carve-out should allow members to take both prudential and non-prudential measures to ensure the integrity and stability of the financial system.[128] Contrary to that, Malaysia took the view that it should be interpreted strictly according to its language.[129] Furthermore, Australia's suggestion a few years later to clarify the meaning of that term received mixed responses. For instance, the EC agreed that it was useful to discuss the subject but it was too ambitious to develop a definition[130], while Japan stated that 'Members should be cautious in embarking on a discussion that might limit the right of each Member to take regulatory measures for prudential reasons in an appropriate and timely manner'.[131] In any case, if a member state challenges a measure of another member state as not being prudential, but a way to avoid some obligations, a panel must decide on that.[132]

Similar disagreements exist in the academic field too. For instance, Dobson and Jacquet argue that the prudential carve-out should be interpreted broadly, in order to allow a series of regulatory measures that address the various types of social costs posed by risk-taking to different economies.[133] A different approach is made by Kaufmann and Weber, who believe that the carve-out clause has to be defined with regards to international standards of prudential regulation.[134]

If there is an inconsistency between prudential regulation and GATS commitments of a state, a solution could be the use of IMF Code of Good Practices on Transparency in Monetary and Financial Policies.[135] Additionally, another solution is the resort to the Core Principles for Effective Banking Supervision by the Basel Committee. In both texts it is reflected that disclosure should not be considered as a goal in itself, rather as an instrument of supervision to achieve broader regulatory objectives.[136] If there was ambiguity in a case regarding whether a prudential measure was in compliance with international standards, a necessity test or alternatively a proportionality test could be applied.[137]

Finally, an aspect of transparency that should not be omitted is implementation difficulties that states may come up with. In particular, transparency usually requires high levels of

[127] **Annex on Financial Services**, para. 2(a)
[128] **WTO** (**2001b**), 9 July
[129] **WTO** (**2002**), p. 60, para. 275
[130] **WTO** (**2000b**), paras. 21-34, focusing on para. 28
[131] **WTO** (**2002**), p. 57, para. 267
[132] **Stichele** (**2003**), p. 1
[133] **Dobson and Jacquet** (**1998**), p. 76
[134] **Kaufman and Weber** (**2007**)
[135] This Code provides for legally non-binding international benchmark principles for transparency in financial regulatory policies.
[136] **Alexander** (**2007**), p. 128
[137] **Andenas and Zleptnig** (**2007**), p. 72 and **Delimatsis (2008)**, pp. 387-392

technical capacity and sound infrastructure, posing in that way a serious impediment especially for the developing countries. In other words, it is extremely difficult for them to comply with the regulatory norms of transparency.[138] The question arising is where is the balance between pursuing more transparency and avoiding the imposition of burdensome obligations. Another issue is what kind of technical assistance is needed for them in order to comply with information and notification requirements. [139]

4.4 Minimum standards for domestic legal orders

Despite the fact that technical standards and licensing requirements are not unlawful trade barriers, it is possible that they may be used by WTO members as an instrument in order to pose obstacles to market access, raising excessively the compliance costs and finally nullifying the benefits deriving from the liberalization commitments of a member state. Such barriers can have substantial effects, especially in the financial services sector, given the fact that the regulation of banking, insurance and capital markets depends to a large extent on technical standards.

For those reasons, GATS Articles VI and VII set minimum standards for the legal orders of the WTO members. There can be found as substantive obligations, obligations to ensure a fair and impartial administrative procedure, as well as an obligation to make certain institutional arrangements.[140]

First of all, Article VI:1 states that 'in sectors where specific commitments are undertaken, each WTO member shall ensure that all measures of general application, affecting trade in services are administered in a reasonable, objective and impartial manner'.[141] Additionally, article VI:5 prohibits its signatories that have undertaken specific liberalization commitments from maintain licensing and qualification requirements and technical standards that nullify or impair such commitments. Furthermore, pursuant to Article VI:4 (a)-(c), member states shall negotiate and approve rules to ensure that the requirements are not more burdensome than necessary to ensure the quality of the service.

On the contrary, Article VI:2 applies to all services sectors, regardless of whether commitments have been made. It is required that WTO members guarantee the prompt review of administrative decisions relating to applications by foreign suppliers for the supply of services for all sectors, regardless of whether specific liberalization commitments have been made for those sectors.[142] In other words, GATS signatories shall establish all the necessary institutions that could facilitate all service suppliers of WTO members to seek various forms of administrative redress for unsuccessful applications. Indicatively, some of them could be administrative, judicial or arbitral tribunals or procedures. Upon request of an affected supplier, these institutions should offer the 'prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services'.[143] To ensure

[138] There are cases where some developing countries had critical stance towards the behavior of large and more powerful states which confront international problems adopting 'unfair and coercive practices in plurilateral organizations [...] compelling other countries to implement measures which they alone had devised'. For more information, see **WTO (2003)**, Committee on Trade in Financial Services, Report of the Meeting Held on 6 October 2003, Note by the Secretariat, S/FIN/M/42, 12 November, p. 8, paras. 50-52

[139] **WTO** (**2002b**), para. 56(d)

[140] **Grote and Marauhn** (**2007**), p. 188

[141] **GATS**, Article VI:1

[142] **Alexander** (**2007**), p. 121

[143] **GATS**, Article VI:2(a)

regulatory promptness, Article VI:3 requires that where a services provider has applied for authorization from a domestic authority to provide services, the competent authorities shall answer to the application in a reasonable period of time after its final submission. Despite the fact that this provision concerns only the services where specific commitments have been made, this obligation reduces the ability of regulators to use dilatory tactics in reviewing applications as protectionist 'vehicles' to keep out foreign services suppliers.

Probably, the most extensive provision of this article is Article VI:4(b), which sets a broad mandate for GATS signatories: to participate in negotiations aiming at the creation of disciplines through which it is to be ensured that regulatory measures (regarding licensing requirements, technical standards, as well as qualification requirements and procedures) do not constitute unnecessary barriers to trade in services. Such disciplines should be based on objective and transparent criteria and on the principle that regulatory requirements are not more burdensome than necessary to ensure the quality of the service. Nevertheless, in order these disciplines to become effective, their content should be modified through negotiations. The GATS Committee on Domestic Regulation deals with such issues, but, according to Alexander, little progress has been made.[144] In any case, Article VI:5 prohibits its signatories from adopting regulatory measures that nullify or at least impair already undertaken commitments. Apart from that, it is required that the measure in question be based on transparent and objective criteria.

All in all, the provisions of GATS Article VI raise significant issues concerning the nature and scope of domestic regulation. Potentially they could be set as a point of convergence for the development of international financial regulatory standards. As it has been mentioned above, the compliance costs are not the same for all WTO members. Developed countries have the resources and the experience to deal with complex regulatory regimes, thus complying with Article VI disciplines much more conveniently than developing states would.

Other provisions that could be deemed to be significant for the financial services sector, may only be mentioned due to the restraints imposed on this paper. First of all, GATS Article VII deals with the recognition of experience or education obtained, requirements met and licenses or certifications granted in a specific country. Furthermore, Article VIII obliges its signatories to prevent oligopolies and monopolies from impairing the states' general obligations under the GATS and under specific commitments entered into. Finally, Article XI prohibits the WTO countries from imposing 'restrictions on international transfers and payments for current transactions relating to [their] specific commitments';[145] this provision is particularly important for the effective protection of direct investments. Specific exceptions are permitted in the case of 'serious balance of payments and external financial difficulties'.

5. Selective overview of some aspects of specific commitments

5.1 Motives for participation in negotiations

Why do states take part in multilateral negotiations for the liberalization of global trade accepting legally binding commitments concerning their policy regimes? Which is the rationale underlying the negotiations? Due to the complexity of the question, only some of its aspects can be addressed in this paper.

First of all, it is argued by economists that liberalization is a goal set by the governments primarily based on the domestic gains that potentially will accrue. Simultaneously, there are

---

[144] **Alexander** (**2007**), p. 122
[145] **GATS**, Article XI:1

going to be income gains from the liberalization process.[146] For that reason, it is suggested that governments not deal with reciprocity issues questioning themselves whether other states implement a similar policy. Of course, countries would benefit even more if their trading partners were supporting their liberalization too. In other words, 'it would make sense to defer the benefits of unilateral liberalization up to the point where the benefits foregone would outweigh the extra benefits accruing from reciprocal action by trading partners induced through negotiation'.[147] From a political point of view, national governments might achieve higher degree of perceived popularity and domestic support for further liberalization, if other governments were moving towards the same direction with them.[148]

Furthermore, a reason for the eagerness of governments to consolidate and promote liberalization is that the WTO as an institution gives them the opportunity to clarify their relevant plans and bind themselves in a legal sense. As known, commitments under the WTO generally have value because they are legally binding and subject to dispute settlement and enforcement. Although this multilateral institution does not have direct enforcement powers, recommendations of Panels and the Appellate Body cannot be undermined, since reprisal measures can be authorized if a member state does not comply with the recommendations. This aspect is of major importance especially for the developing countries, which have the chance to prove their commitment to the liberalization process and consequently attract strategic partners and foreign investors. However, it would be inaccurate to connect the WTO only with domestic political and economic considerations. As Viner says, 'the great political virtue of multilateralism, far exceeding in importance its economic virtues, is that it makes it economically possible for most countries, even if small, poor and weak, to live in freedom and with chances of prosperity without having to come to special terms with some Great Power'.[149]

Governments could adopt three different – not mutually exclusive – approaches to the negotiations of financial services. The first one is to make binding commitments *below the status quo*. In that case, the commitments' value is reduced by the possibilities that a government gives for the deterioration of the existing conditions of market access without violating a GATS commitment. As far as developing countries are concerned, it seems dubious that they could benefit by withholding commitments in the hope of extracting additional liberalization measures from other WTO members, benefiting from the MFN principle.[150] Another reason for restraining could be that there needs to be a decrease in the actual levels of liberalization because they are unsustainable for the national market. Nevertheless, even this kind of binding (i.e. below the status quo) constitutes a measurable indicator of security of market access.[151]

The second possible approach for the governments would be to *bind the status quo*. This could be characterized as the most convenient solution, because a signal is given to international community that they are committed to the trading system and thus have a positive intent for their future steps. While there is some criticism on this approach – because it is perceived as an evidence of failure of the GATS to achieve significant liberalization levels – it has to be underlined that the status quo was regularly reached after recent liberalization; either unilateral, or within the WTO framework.

[146] This argument is empirically justified since the early stages of the trade negotiations. For an in-depth analysis, see **Blackhurst, Enders and François (1995)**
[147] **Mattoo** (**1998**), p. 20
[148] For an analysis of the relation between trade liberalization and government policies see **Bagwell and Staiger (1996)**
[149] **Viner** (**1947**), p. 612
[150] The MFN principle would apply to any liberalization that might be induced in this way
[151] An explanation of this argument can be found in **Francois and Martin (1995)**

Finally, a third approach could be *promising future liberalization*. Government's reluctance to immediate liberalization can stem from the need for protecting the national suppliers from immediate competition, either because they constitute an infant industry, or because 'orderly exit' has to be accomplished. This argument is of major importance especially for the financial sector, where the vulnerability of domestic suppliers might affect the stability of the financial system as a whole. In other words, if ineffective credit institutions were exposed to international competition and failed, this could bring about a domino effect, harming other financial institutions too.[152]

According to Krugman, 'if economists ruled the world, there would be no need for a World Trade Organization'.[153] Particularly, he remarks that 'the implicit mercantilist theory that underlies trade negotiations does not make sense on any level, but it nonetheless governs actual policy'.[154] In other words, although he acknowledges the political motive of large countries to manipulate trade flows in the hope of improving their terms of trade, against the mutual interest, he believes that such incentives are actually of minor political importance. Indicatively, the perambulatory clauses of the GATS refer to the desire of WTO members to achieve 'progressively higher levels of liberalization through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a *mutually advantageous basis'*. From this vantage point, WTO members are supposed to relinquish their protectionist interests. [155]

Another motive for the participation in the negotiations that needs to be mentioned is the so-called 'Ulysses effect'.[156] According to Horn, a state's commitments could be characterized as 'the triumph of reason over impulse'.[157] The aim of the concessions is to gain more predictability, stability and transparency. But these can be achieved only in the long run; not directly after the concessions are made. The Annex on Financial Services stresses the need to ensure the stability of the financial system, while the GATS devotes its third article to the issue of transparency, which is also mentioned in its preamble.

Krugman also recognizes the importance of policy bindings, stating that 'the purpose of international negotiations is arguably not to protect us from unfair foreign competition, but to protect us from ourselves'.[158] Nonetheless, a prerequisite for fruitful negotiations is to keep concessions stable over time, combining the negotiated bindings with real and effective liberalization.

As far as the financial services are concerned, according to Valckx, there is an array of important factors that seem to correlate with the level of WTO members' commitments.[159] Indicatively, he mentions macroeconomic growth, balance of payments' evolution and openness, population growth, banking variables, policy restrictiveness indicators and the liability position relative to the IMF quota.

---

[152] For example, this is what happened in Argentina in 1995-1996. Specifically, during these two years, almost one quarter of the country's 200 banks were liquidated.
[153] **Krugman** (**1997**), p. 113
[154] **Ibid**, p. 114
[155] There are similar expressions both in the preambles of the GATT and the Marrakesh Declaration. Specifically, article 2 of the Declaration refers to the 'widespread desire to operate in a fairer and more open multilateral trading system for the benefit and welfare of their peoples'.
[156] Returning to Ithaca, Ulysses faced the sirens. In order to withstand their songs, he ordered his crew to plug their ears with beeswax and to tie him firmly to the ship's mast.
[157] **Horn** (**1998**), p. 18
[158] **Krugman** (**1997**), p. 118
[159] **Valckx** (**2002**), p. 10

5.2 Reasons for differentiations in market access commitments

According to Roy, there are four factors that affect the commitments a WTO makes through the negotiations: democracy, relative power, relative endowments and negotiating process.[160] Based on these factors, he makes some assumptions that are then empirically tested and finally verified.

A first assumption he makes is that *countries better endowed with human capital will take more services commitments.* [161] According to the Stolper-Samuelson theorem, trade restrictions will increase returns to the scarce factor. For that reason, countries well endowed with capital would impose greater barriers to trade than those well endowed with labor.[162] Furthermore, the Hecksher-Ohlin theorem argues that a country has comparative advantage in the production of goods that use the inputs that are relatively abundant in that country.[163] Roy believes that the principle of comparative advantage can apply to services trade, consequently in the financial services too. From a political economy aspect, it is considered that countries relatively abundant in human capital or in capital would support services negotiations. Practically, services firms would lobby governments to expand in foreign markets abroad or ask for more transparency in the existing trading conditions abroad. From a politician's point of view, the governments – since they are interested in maintaining their political support – would seek to maximize social welfare as well, focusing on the wishes of interest groups, especially of those that may be more directly affected by trade policies. The other side of the picture is that countries relatively scarce in capital are supposed to be less willing on making commitments in services trade, mainly for two reasons. Firstly because they do not have such a comparative advantage and secondly because governments would possibly face pressure by import-competing firms that are in favor of protection, consequently limited commitments. For that reason, Roy argues that countries richest in capital will be more interested in services agreements and prone to taking on more commitments.

Another assumption is that *the greater a country's share of power in the system, the greater the commitments that are going to be undertaken.*[164] According to the neorealist paradigm, inter-state cooperation depends on the characteristics of the international political system. States' main concern is relative gains. If they estimate that cooperation would harm them, the solution is to refrain from that. The logical reasoning behind such an action is that economic gains can translate into power. From a realist's point of view, the creation of an international regime, like GATS, could be interpreted as the outcome of the efforts of the most powerful states.[165] As far as the breadth of commitments is concerned, there can be various vantage points. For example, some realists would argue that larger states take advantage of their power to extract greater market access commitments by smaller negotiating partners. Another possible view is that international regimes have to reflect the underlying power relationships, while their sustainability depends on the active contribution of the major powers. In other words, the responsibilities of each state in the global political system are analogous to their relative capacities. Consequently, since larger and more powerful states contribute more than smaller ones in the construction and maintenance of a regime like WTO, they also have an additional motive to preserve the aforementioned regime more effectively against free riding. Each member's inherent tendency would be to take as few commitments as possible, while letting others take more commitments. The main impediment is the reaction of other members, and this happens with larger players too, who want to ensure that their rivals

---

[160] **Roy** (**2009**), p. 3
[161] **Ibid**, p. 9
[162] For an introductory analysis of the theorem, see **Abrego and Edwards (2002)**
[163] **Leamer** (**1995**), p. 1
[164] **Roy** (**2009**), p. 11
[165] As far as GATS is concerned, this is confirmed during the Uruguay Round, where the United States was a key demandeur for the conclusion of an agreement, while other significant economically strong negotiators were the European Communities and Japan. For more information, see Annex.

contribute their share. Moreover, unless they contribute fairly, there can be a reaction by other less powerful states. Consequently, the greater the relative power of a state in the global system is, the less the ability to free ride. In the long run, the negotiation process will lead to an outcome where levels of commitments across states will reflect the relative power in the system.

A third assumption made by Roy is that *the more democratic a country is, the greater the commitments that are undertaken.*[166] In the search of an answer to the question if democracies have an inclination to freer trade policies, Roy quotes a series of relevant studies. Among those is that of Mansfield, Milner and Rosendorf (2000) and that of Milner and Kubota (2005). Both studies found that more democracy is associated with lower levels of trade barriers. Specifically, in the first study, there was a focus on the role of domestic legislatures. In democracies, the executive authority needs the approval by the majority of the legislative authority for passing a law. The problem is that the legislative authority can be more easily captured by special interests, thus leading to more protectionist political stance. As far as the second study is concerned, the democratization is perceived as the expansion of those who vote for the political leaders. Based on that ascertainment, they argue that democratization of the political system reduces governments' ability to use trade barriers as a means for building political support.

Apart from these indicative studies, Roy indicates three ways through which democracy can have a positive impact on states' tendency to take services commitments. The first is that legal commitments limit the scope for discretion and future rent-seeking policies. If a government binds a specific level of treatment, it means that some protectionist policy options disappear and the flexibility on relevant policy options is narrowed. Secondly, it is argued that a significant feature of trade agreements like GATS is the consolidation of undertaken trade reforms. Thus, ensuring that neither liberal reforms will be withdrawn, nor the relevant policy decisions will be reversed n the future, an incentive is given to the states for taking more commitments. Finally, it is argued that commitments within the WTO framework should not be underestimated because they are legally binding and subject to dispute settlement, according to the WTO dispute resolution mechanism. Democratic regimes are more likely to participate in such multilateral mechanisms than autocracies, raising the possibilities for a cooperative dispute resolution.

The next hypothesis made by Roy implies that the impact of democracy on services commitments would depend on relative endowments or levels of development. Specifically, *it will be associated with more GATS commitments in countries with low capital-labour ratios, but with less commitments in countries with high capital-labour ratios (i.e., relatively abundant in capital).*[167] Democratization means the transfer of power to the median voter. Consequently, it is expected that democracy would lead to greater support for trade liberalization in states that are more labor-abundant. This support will lead to thorough negotiations, while governments will be motivated to contribute to them by undertaking more GATS commitments.

Finally, one more assumption has to do with the negotiating process is the following: *having gone through the WTO accessions process is associated with greater GATS commitments.*[168] This is based on the fact that countries that became members of the WTO after the Uruguay Round tended on average to undertake more commitments than existing members. The reason is that a candidate member will take advantage of commitments undertaken by all WTO members in previous negotiations. In order to achieve equilibrium, candidate countries should pay a higher price for 'joining the club'.

[166] **Roy** (**2009**). p. 14
[167] **Ibid**, p. 15
[168] **Ibid**, p. 16

All in all, the aforementioned factors have proved that influence the states' commitments undertaken within GATS. As far as democracy is concerned, democratic states tend to undertake more commitments because they are more aware of the legal implications and the locking-in effect when undertaking international commitments, while the narrowing of the scope for discretion is perceived as a means for achieving stability. With regard to relative power, it was proved that more powerful states undertook more commitments. The main concern of all states – and especially the most powerful ones – is to ensure that everyone contributes its 'share' and does not free ride. The third determining factor was relative endowments. States that are relatively more abundant in capital tend to make more commitments within GATS. Having a comparative advantage in services will cause the pressure of relevant firms towards governments to ensure the status quo and probably improve the market access conditions even more. Finally, the fourth factor – negotiating process – proved that candidate WTO members had to undertake more commitments than an older member, since the negotiations for its entry take place on a non-reciprocal basis.

5.3 The Understanding on Commitments in Financial Services

The Understanding on Commitments in Financial Services is an agreement between some GATS signatories that were in favor of moving further than the majority of its members, thus taking an alternative approach to that covered by the provisions of Part III of the GATS. By consensus of all GATS signatories, the concept behind the Understanding is in conformity with the GATS, as long as:

- it does not conflict with the provisions of the Agreement;
- it does not prejudice the right of any Member to schedule its specific commitments in accordance with the approach under Part III of the Agreement;
- resulting specific commitments shall apply on a most-favored-nation basis;
- no presumption has been created as to the degree of liberalization to which a Member is committing itself under the Agreement.

As in GATS, the members of the Understanding commit themselves to refrain from any additional conditions, limitations and qualifications to existing legislation. This is the so called 'stand-still clause', according to which, the status quo is the basis for future changes: existing legislation may only be amended in favor of further liberalization. This approach differs significantly from the one that various emerging and developing countries have taken. For instance, Malaysia and Turkey have chosen to undertake commitments below their actual internal legislation, preserving in that way their right to modify their domestic laws and regulations.

The purpose of the Understanding is to facilitate market access for foreign service providers. Monopoly rights shall be transparent and the parties of the Understanding 'shall endeavour to eliminate them or reduce their scope'.[169] While it is easily perceived by the phrasing that the 'best-effort-clause' is non-binding, there is a clear commitment to reduce non-discriminatory barriers to international trade in financial services, smoothening the process of future harmonization. As far as public entities offering financial services are concerned, it has to be ensured that they are established according to the MFN and non-discrimination standards concerning their purchase or acquisition.[170]

With regard to mode 1 services, it is restated in the Understanding what major trading states permitted before the conclusion of the Uruguay Round on the basis of bilateral treaties and autonomous legislation: only very specialized financial services, offered by a specific group

[169] **Understanding on Commitments in Financial Services**, para. 1
[170] **Ibid**, para. 2

of service providers, are granted full market access. A characteristic example is insurance for 'maritime shipping and commercial aviation and space launching and freight'. It could be deduced that even rich countries with strong supervisory and prudential regimes were hesitant. A basic reason might be a concern that the appearance of many foreign competitors would destabilize domestic markets and providers, causing unpleasant economic turbulence.

Contrary to the first mode, the Understanding is much more generous on trade in financial services under mode 2. Specifically, each member shall permit its residents to purchase in the territory of any other member the financial services for which the signatories of the Understanding have entered commitments with regard to Mode 1 supply, plus all banking services and other financial services, excluding insurance though. This comes at little cost for developed states, which tend to be western-type liberal democracies. In their legal systems, it is a matter of course for citizen to be allowed to leave their home country whenever they wish to. Under these conditions, a prohibition to buy financial services abroad tends to be an exercise in futility.

As far as mode 3 supply of services is concerned, the signatories of the Understanding establish that, unless they enter specific reservations and qualifications in their specific commitments, they are going essentially to grant foreign service providers the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence.[171] Furthermore, the parties to the Understanding commit themselves to allow foreign service suppliers to offer new products, thus prohibiting the reduction of competition below the status quo, by posing legal impediments.[172] Another provision related to the aforementioned is the obligation to allow temporary entry of certain key personnel. In particular, this commitment refers only to foreign service suppliers that are establishing or have established a commercial presence in the territory of the member.[173] Moreover, the Understanding raises the issue of discriminatory measures, which have to be prevented and eliminated. The signatories of GATS shall try not to limit the present degree of market opportunities nor the benefits already enjoyed by suppliers of all other signatories, provided that this commitment does not result in unfair discrimination against suppliers of the signatory applying such measures.

It seems quite evident that the direct investment of foreign service suppliers (Mode 3), is the field where the GATS and the Understanding depart most significantly from the status quo ante.[174] This comes as little surprise. Due to political and economic reasons, it is expected that GATS will not primarily be a door-opener for foreign financial services stricto sensu into host markets. To a certain extent, it is probable that the role of GATS will focus on facilitating and guaranteeing direct investments in the services sectors of the host countries. Existing commitments and the state of negotiations seem to support this evaluation.

Finally, Part C of the Understanding deals with issues relating to national treatment obligation. Specifically, foreign financial service suppliers shall be granted access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. Nonetheless, access to the host state's lender of last resort is not conferred. Additionally, to the extent that membership or participation in self-regulatory bodies or organizations of any kind, it is required by the host state as a prerequisite for doing business, the host state shall ensure that those entities conform with national treatment to *all* financial service providers of any other state resident in the territory of the Member, irrespective of the owners' nationality.

---

[171] **Ibid**, para. 5
[172] **Ibid**, para. 6
[173] For a definition of the kind of personnel allowed, see **ibid**, para. 9
[174] **Roy, Marchetti and Lim (2006)**, p. 31

5.4 Discrepancies between commitments and practice

As it was already mentioned in this paper, there are three distinctions regarding the states' level of commitments. A member may take 'full commitments', guaranteeing in that way that it is going to comply fully with the national treatment and market access obligations, without exceptions.[175] At the other end of the spectrum, a GATS signatory might refrain from taking any commitments under a mode of supply for a specific sector, consequently preserving its ability to impose any type of measure incompatible with the market access or the national treatment obligations.[176] Finally, WTO members might prefer the intermediate case of 'limited bindings', which deal with those entries that include some kind of limitation. Specifically, this could be on coverage (i.e. modal, sectoral or geographical), or in the form of a restrictive measure (i.e. one of the six types of restrictions listed in GATS Article XVI). In any case, the limitations that a member wishes to reserve the right to use are specified in its schedule.[177]

However, it has to be underlined that the commitments scheduled under the GATS do not necessarily reflect the applied level of market openness.[178] Not making a commitment to openness does not necessarily equate to embracing restrictive policies. Lack of commitments does not mean that the sector is in effect closed to foreign services and service suppliers; it simply means that there is no legal guarantee of a minimum level of treatment under the auspices of the WTO. Additionally, this is the situation in case of 'partial commitments': the limitations schedules are not necessarily applied in practice. The significance and value of commitments rests in the fact that they provide a legal guarantee of a minimum level of access, solidifying the status quo and deterring its reversal in the future.

As it is argued by Barth et al. (2006), 'knowing the facts about the level of foreign banking participation does not reveal, per se, a country's policy tilt. In particular, it is possible that, on the one hand, a country may in principle commit to a very open policy stance with respect to foreign banking but have, in practice, very little of it. On the other hand, a country may strike a seemingly restrictive policy stance toward foreign bank entry and operations but nevertheless enjoy a substantial foreign banking presence'.[179]

All the above mentioned issues are interrelated with the GATS provision for 'progressive liberalization'. At this point, it is worth mentioning that, in some countries, there is a strong domestic political negative response to the process, affecting in that way the pace of liberalization. This political backlash is absolutely reasonable: their tendency to be conservative in undertaking specific commitments in financial services could be attributed to the fact that there is no quid pro quo. If the developing states undertake many commitments, they will not have anything to hold up domestically when they would be asked what they got no return for their concessions.

According to Adlung, a significant imbalance of commitments can be discerned between the old and the new members (transition economies in Eastern Europe and Central Asia).[180] In particular, the new members seem to have scheduled as many, and sometimes even more, sectors than old, developed members. Furthermore, the share of 'full commitments' is higher than in any other group. This discrepancy can be attributed to a series of factors. Firstly, the accession process is perceived by new members as an opportunity to establish their reputation

[175] **Mattoo** (**1998**), p. 11
[176] **Roy** (**2009**), p. 5
[177] **Barth et al.** (**2006**), p. 9
[178] A case study that attempted to compare WTO commitments to open the domestic banking sector to foreign banks with actual regulatory practice in a systematic manner is that of **Dobson and Jacquet** (**1998**). For a comparison of commitments with practice in a comprehensive way on a cross-country basis, see **Barth et al. (2006)**
[179] **Barth et al**. (**2006**), p. 441
[180] **Adlung** (**2004**), p. 7

as reliable trading partners and safe locations for foreign direct investment (in the context of mode 3). Secondly, new members are usually confronted with high expectations from the old ones. This might prove to be quite challenging, since the old members have more time to pursue their claims within this context, than in normal trade rounds. Thirdly, states with transition economies meant that they faced significant institutional and structural reforms, thus overcoming the challenge of internal coordination that is needed in states with long-established bureaucratic mechanisms. Finally, the economic and political stakes are higher for these states. Considering that there is no 'safety net' in accession negotiations, failure to become a member of the WTO seems more embarrassing than a failure of a collective negotiations round, where states could be hidden behind their collective responsibility.[181]

Apart from the discrepancy of commitments between new and old members, another issue of major importance has to do with the degree of openness to foreign banking services among states, both developing and developed ones.[182]In their research, Barth et al. (2006) argue that the World Bank data for both categories of countries reveal more similarities than differences in outcomes. Indicatively, the majority of both categories apply similar minimum-capital entry requirements for foreign and domestic banks.[183] Additionally, the developing countries allow a wide range of non-commercial banking activities for banks, thus being liberal and resembling the developed countries.

The adverse side is found in the issue of government ownership and foreign ownership of banking system assets, where presents some interesting differences between developed and developing countries. Firstly, 42,9% of developed countries report government ownership of banking system assets, whereas 65,1% of developing countries have government-owned banks operating in their markets. Nonetheless, the median proportion of government ownership of banking is similar in both categories of countries. Consequently, in spite of a larger percent of developing countries having government-owned banks compared to developed countries, on average, the share of the banking market in the hands of the government is lower in developing countries, compared to developed countries with government-owned banks.

Furthermore, Barth et al. (2006) created a country-by-country market openness index for the countries which they examined, in order to ascertain the degree to which WTO commitments about the country's openness to foreign banks is reflected in practice. Having data for sixty-five countries (both WTO commitments and reported practices), sixteen of them were developed and forty-nine were developing. The mean values and standard deviations of reported practices indicated that, on average, both groups of states are similarly open/restrictive. However, the image is quite different when focusing on the mean values for the commitment variant. Specifically, the group of developing states has an average commitment-market openness index value more than double that for developed countries, indicating much less open markets on average for developing countries. For completing the comparison, the 'degree of discrepancy' is necessary. Although developed countries are more open, they are in practice somewhat more restrictive compared to their WTO commitments.

[181] **Ibid**, pp. 7-8

[182] At this point, it has to be clarified that WTO does not offer any definition of 'developed' or 'developing' country. Actually, WTO members announce for themselves in which of the two categories they belong. In the analysis of Barth et al., 'developing countries' are those which the World Bank categorizes as 'low-income' and 'lower-middle-income', while 'developed countries' include those which the World Bank includes in its 'upper-middle-income' and 'high-income' categories. See **Barth et al. (2006)**, p. 435.

[183] Specifically, 73,4% of the developed countries and 62,1% of the developing countries. For more information, see **Barth et al. (2006)**, p. 440

On the contrary, even though developing countries are more restrictive relative to developed countries, they are as a group significantly less restrictive in practice.[184]

Another issue that has to be taken into account is the degree of discrimination between foreign and domestic banks, i.e. the difference between overall market openness index and the abbreviated domestic banks index. According to Barth et al. (2006), there are significant differences between developed and developing countries. A first deduction is that developed countries have committed to much less unequal treatment, regulations-wise, of foreign banks relative to domestic banks than have developing countries. Additionally, it is deducted that while developing countries commit under the WTO to greater discrimination against foreign banks operating within their borders compared to domestic banks, practically, they discriminate less than their commitments suggest, and less than developed countries do.[185]

In conclusion, the financial global financial crisis that erupted in 2007 affected all sectors of financial services, ignoring the aforementioned discrepancies and differences, thus making the cross-border banking supervision and regulation an issue of utmost importance. This challenge has to be managed not only by the WTO, but also (and mostly) by international fora. Nonetheless, a key precondition to any reform of the international banking regulation is to have a clear picture of the landscape in which policy changes will take place.

[184] **Barth et al.** (**2006**), p. 451
[185] **Ibid**, pp. 455-456

6. Concluding remarks

As it can be deducted from the analysis, no multilateral process can be expected to be an easy ride, especially when it involves various states, negotiating about trade in financial services that have many more impediments than the traditional trade in goods and which cannot be easily discerned.

A major characteristic is the slowdown in the pace of concessions and services negotiations in general. Nevertheless, it would be misleading to blame the current status of services negotiations on one factor only. It rather comes down to a combination of factors. First of all, there is lack of political momentum. Although the WTO is depicted as a supranational institution, it does not have the necessary mechanisms to force its member states to align their commitments with their actual practice. In other words 'Geneva is distinctly different from Brussels'. The recent and numerous new members of the institution further complicate the whole nexus and the negotiating process. Practically all WTO Members have their own particularities and sensitivities. Consequently, pushing them too hard in areas of special interest for them poses the risk of asking for more counter-requests, blocking – or at least toughening up – in that way the negotiating procedure.

Another factor is the segmentation of policy competencies across ministries, agencies and government levels. As it has been analyzed in the paper, the centralized negotiating structure of the WTO in Geneva is in contrast with the segmentation of political responsibilities at a domestic level. What is more, the power of lobbies in promoting their own specific interests seems to rise, affecting negatively the negotiating procedure, as the flexibility of the states' positions is decreased. The participation of various specialized agencies and ministries in the negotiations gives more space for lobbying and the intensification of the aforementioned problem.

Furthermore, a reason for the slowdown in the pace of financial services negotiations is the definitional difficulties associated with the diversity of the modes and measures that are covered by services agreements. It is commonly accepted that the classification of services is more difficult than that of goods. Specifically in the financial services sector, new problems may arise due to the rapid institutional and technological developments. Additionally, the absence of a uniform indicator of protection across measures, modes and sectors obstructs limits the scope of negotiations.

One more impediment is the cost of reform, both in terms of time and resources. Reforms in financial services (and services in general) usually require longer implementation periods. At the same time, governments have to invest important political capital in order for relevant projects to succeed. Nonetheless, the democratic majorities, especially in developing countries – but also in some developed ones after the global financial crisis of 2007 – have become more fragile, thus adding more instability to the whole effort.

Finally, in some countries, there might be only little public support for market-oriented reforms. The potential benefits that a state may have from the liberalization of some services sectors, such as the financial services, are not easily perceived by its citizens/voters. A misperception of these reforms could lead to a 'fatigue' of the voters with the government initiatives.

The current challenge for the WTO and especially the GATS is to revive technical discussions. This lack of interest can be attributed to a series of factors as well. Firstly, most members are having their fifth or sixth generation of delegates. It has been a long time since the foundation of the WTO and the initial enthusiasm has faded out, making the mandate of this institution no longer as evident as it during the Uruguay Round. Furthermore, it is the author's opinion that not so much attention is paid to the transparency obligations.

Transparency is important not only for achieving an effective surveillance, but also as a reference point for the collective exploration of new issues and challenges.

While the Negotiating Guidelines and Procedures of 2001 were clarifying that the main method of negotiation shall be the offer-request approach, Annex C of the Hong Kong Ministerial Declaration (December 2005) included a change in the method. The reason for that was the frustration of WTO Members about the time-consuming and resource intensive implications of bilateral discussions.

The development of common templates for the scheduling of commitments could contribute to the reduction of the risk perception that many WTO members might have. Practically, in order to make it real, a group of states has to provide the initial impetus. At this point, developing states, which constitute a significant part of the total number of participating states, are mainly focusing on organizing themselves and formulating common policy positions within the GATS.

One more proposal for the more effective function of the WTO and especially the GATS is the promotion of institutional innovation. This could be achieved if the GATS bodies could assist countries in the translation of their policy intentions into scheduling terminology. However, there would be probably gaps. For instance, on the one hand, the WTO bodies dealing with the financial services liberalization do not have the resources for that goal. On the other hand, external advisers could be close to donors, thus raising issues of independence.

For that reason, it has to be accepted that the WTO as an international organization and the GATS cannot attain their goals, absolutely on their own. The collaboration of with international organizations and fora that are specialized in financial services, e.g. Basel Committee on Banking Supervision, is a sine qua non for the success of the GATS.

In conclusion, it is the author's view that the economic benefit of trade liberalization, while disputed by activists, is a given. As far as services are concerned, in particular the financial services, the level of regulation across the world is quite high, without precluding gaps or ineffective implementation of the rules. As long as the liberalization of trade in financial services is supposed to continue, it will do so at a relatively slow pace, allowing members to adapt themselves to the new international obligations. The peril the escape of some financial institutions from the supervision has been recognized in this paper. The question though is if there is enough space for improvement of the inter-state collaboration. As it is stated by Hahn,

'The WTO's rules on financial services might indeed represent a victory of big powerful financial institutions allowing them to prepare global diversification, read: expansion. However, this does not seem to be a victory over some legitimate interest: protected markets for banking and insurance do not serve the poor or the middle classes of the world. They serve the owners of those financial institutions, be they the local billionaire or the government. The WTO approach seems to be well-balanced, reconciling the option for liberalization (and its economic advantages) with legitimate interests of states and their peoples to have the prudential regime in place they select'.[186]

[186] **Hahn (2006)**, p. 205

ANNEX: Key stages in the services negotiations

1. Adoption of Guidelines and Procedures for the Negotiations on Trade in Services

As on all service sectors, the negotiations on financial services entailed different stages. Conforming to the GATS mandate (article XIX), services negotiations began in 2000 with the negotiation procedures to be taking place on a solely multilateral basis. Numerous proposals, which were submitted by WTO members, focused on the negotiations' objectives, sharing their main concerns at the same time.

Developing countries started playing an active and successful role as agenda-setters in the GATS. For example, members were asked to formulate collectively a set of guidelines and procedures for the subsequent negotiations by 2001.[187] On this account, in 1999, a coalition of twenty-four developing countries, which successfully shaped the *Guidelines and the Procedures for the Negotiations on Trade in Services*, was formed.[188]

In that document, the three dimensions of the services negotiations are analyzed: firstly, their objectives and principles; secondly, the scope and thirdly, the procedures. As far as the principles are concerned, it becomes clear that the negotiations would be conducted on the basis of progressive liberalization.[189] The primary goal is the economic growth of all trading partners and the enhancement of developing countries by promoting the interests of all participants on a mutually advantageous basis, while achieving at the same time an overall balance of rights and obligations. It is also mentioned that, through the negotiations, the participation of developing countries should be increased. Due consideration should be given to the needs of their small and medium-sized service suppliers. Least-developed country (LDC) Members should be prioritized, especially when taking into account their difficulty in accepting negotiated specific commitments due to their special economic situation, their trade, development and financial needs.[190] For that reason, it was underscored that there should be appropriate flexibility for individual developing country Members.[191] This could be achieved through the liberalization of fewer types of transactions and the progressive extension to market access in line with their development situation.

Regarding to the scope of the negotiations, it was decided that there should be no *a priori* exclusion of any service sector or mode of supply, while paying special attention to export interests of developing countries (both in terms of sectors and modes of supply).[192] Moreover, negotiations would from now on include discussions about eliminating existing exemptions from the MFN treatment[193], without prejudice according to paragraph 6 of the Annex on Article II Exemptions. Additionally, the Agreement's rule-making agenda concerning disciplines on domestic regulation (Article VI:4), emergency safeguards measures (Article X), government procurement (Article XIII) and subsidies (Article XV) was incorporated into the wider context of the services negotiations.[194]

Furthermore, in the matter of modalities and procedures, it was concluded that this moment would be set as the starting point for the negotiation of specific commitments. As mentioned above, the request-offer approach was adopted as the main method of negotiation, via

---

[187] **Narlikar (2005)**, p. 80

[188] Specifically, they were adopted by the Special Session of the Council for Trade in Services on 28 March 2001

[189] **Guidelines and the Procedures for the Negotiations on Trade in Services**, para. 1

[190] **Ibid**, para. 2, and **GATS** Art. IV:3

[191] **GATS** Art. XIX:2

[192] **Guidelines and the Procedures for the Negotiations on Trade in Services**, para. 5

[193] **Ibid**, para. 6

[194] **Ibid**, para. 7

bilateral, plurilateral or multilateral discussions.[195] It was also agreed that the negotiation of credit for autonomous liberalization undertaken by WTO Members since previous negotiations should be based on common criteria. In any case, there should be an ongoing assessment of the liberalization process services by the Council for Trade in Services.[196] Finally, other issues raised in the Guidelines were the transparency of the negotiations[197], the consideration of the needs of smaller delegations[198] and the encouragement of the responsible for the monitoring of liberalization bodies to be utilized to their maximum capacity, avoiding in that way their proliferation.[199]

2. The false start to a new round: Seattle Ministerial Conference (1999)

Prior to the Doha Ministerial Conference, there was another Conference taking place in Seattle in 1999. Its failure could be interpreted as the basis for the adoption of the Doha Development Agenda (DDA). One of the most memorable facts from that year was the public outrage, which definitely took the negotiators by surprise; the reason behind such indignation was the perceived democratic deficit of the WTO negotiations: their content was not publicly available. Certain stakeholders argued that the failure of the 1999 Ministerial Conference was a direct result of the power of the nongovernmental organizations.[200] In any case, it is extremely doubtful whether a new round could have been launched if no popular dissatisfaction. In fact, among the greatest supporters of a new round were mainly developed countries that believed that new gains could be made by expanding the agenda of the WTO beyond the existing mandate.[201] On the contrary, the position of the developing countries was that a new round could be launched only if the so-called 'implementation issues' were addressed.[202] As a result, developing countries refused the vast majority of the developed countries' proposals. Each party adhered firmly to its position at the Seattle Ministerial and refused to collaborate for a compromise, thus leading to the failure of the Conference.

3. Doha Ministerial Conference (2001) and the Doha Development Agenda

The first round of multilateral negotiations within the WTO framework began in Doha in 2001. The services negotiations were incorporated in the so called 'Doha Development Agenda' (DDA). As it is indicated by its appellation, it was an effort to rectify the problems that developing countries were facing, thus expanding the coverage of the agreements an avoiding their marginalization for one more time. The consensus that states failed to reach two years earlier was achieved in 2001, mainly due to three factors.[203] First of all, it was perceived as a reaction to the 9/11 attack. States realized that international cooperation was more necessary than ever. Secondly, in the aftermath of Seattle, there was an attempt to ameliorate some of the decision-making processes. Thirdly, many of the coalitions of developing countries broke ranks in the endgame at Doha, because their members were bought off through numerous bilateral deals.[204]

---

[195] **Ibid**, paras. 10-11
[196] **Ibid**, paras. 13-14
[197] **Ibid**, para. 9
[198] **Ibid**, para. 17
[199] **Ibid**, para. 16
[200] Various opinions are expressed in the article of **Verhonek (1999)**
[201] For a recital of the requests of the most powerful negotiating players, see **Narlikar (2008)**, p. 101
[202] The implementation issues include the undelivered promises of the Uruguay Round and the unanticipated costs of implementing the commitments that they had assumed as part of the agreement.
[203] **Narlikar (2008)**, pp. 102-103
[204] For an in-depth analysis of the negotiating strategy of a specific coalition, the Like-Minded Group, see **Odell and Narlikar (2006)**

In November 2001, the services negotiations were incorporated into the Doha Development Agenda, which gave more emphasis to bilateral – request and offer – negotiations. On the first established timetable, clear dates were set for the submission of bilateral requests (30 June 2002) and initial offers (31 March 2003).[205] Additionally, interested members were debating in so-called 'friends groups', including the 'Friends of Financial Services'. The goal was that the matching of the requests and offers be concluded not later than 1 January 2005.[206]

Nonetheless, the Cancun Ministerial Meeting in September 2003 failed to make any progress. The concluding statement reaffirmed the Doha Declarations and Decisions and recommitted members 'to working to implement them fully and faithfully'.[207] Due to lack of political impetus, the request-and-offer process in services negotiations virtually halted in the wake of Cancun Ministerial Meeting.

4. 'July 2004 Package' in the aftermath of Cancun

It was not until mid-2004, when the Doha Work Programme, called 'July 2004 Package' injected new momentum in the negotiations.[208] As far as services are concerned, the 'July Package' set May 2005 as the deadline for the submission of revised offers and adopted numerous recommendations that had been earlier agreed by the Council for Trade in Services (Special Session). [209] These included but were not limited to:

- the submission of initial offers from members that have not done yet so the assurance a high quality offers, in particular in sectors and modes of export interest to developing countries, with special attention being given to least-developed countries (LDCs);
- systematic efforts to conclude the rule-making negotiations under Articles VI.4, X, XIII and XV in accordance with their mandates and deadlines;
- provisions about "targeted" technical assistance to developing countries with a view to enabling them to participate effectively in the negotiations.

5. Annex C and the Hong Kong Ministerial Declaration

The next Ministerial Conference took place in Hong Kong (December 2005). Its Ministerial Declaration reaffirmed the core principles and objectives of the services negotiations, while it called on WTO members to intensify the negotiations process in compliance with Annex C to the Declaration (which includes the objectives, approaches and timelines).[210] Apart from that, special attention was given to export interests of developing countries, while it was well established that LDCs were not expected to undertake new commitments in that Round.[211]

With regard to Annex C of the Declaration, this contained the most detailed and ambitious set of negotiating objectives than ever before. While providing the necessary flexibility for developing countries, it established a framework for:

- offering new or improved commitments under each mode of supply;
- treating most-favored nation (MFN) exemptions;

---

[205] **Doha WTO Ministerial Declaration**, para. 15
[206] **Ibid**, para. 45
[207] **Ministerial Statement**, adopted on 14 September 2003, para. 6
[208] **Decision Adopted by the General Council** on 1 August 2004
[209] Recommendations of the Special Session of the Council for Trade in Services, Annex C of the Decision adopted by the General Council on 1 August 2004
[210] **Ministerial Declaration**, adopted on 18 December 2005, para. 10
[211] **Ibid**, para. 26

- scheduling and classifying commitments.[212]

Moreover, WTO members identified the key negotiating objectives for financial services in the run-up to the Hong Kong Ministerial Conference. As described in the Report by the Chairman to the Trade Negotiations Committee (November 2005)[213], the objectives were the following:

Scope of commitments (sectoral or modal)
- commitments on commercial presence (mode 3) for all financial services
- commitments on modes 1 and 2 in appropriate sub-sectors (e.g. financial services addressed to sophisticated customers, like reinsurance, asset management, and securities; marine and energy insurance services; provision and transfer of financial information and financial data processing)

Limitations for reduction or elimination
- limitations on the right to establish new and to acquire existing companies
- limitations on legal form
- limitations on foreign ownership (i.e. freedom to establish in the form of wholly-owned subsidiaries, joint ventures or branches)
- non-discriminatory limitations such as monopolies, numerical quotas or ENTs and mandatory cessions
- discrimination in the application of laws and regulations

Regulatory issues and additional commitments for negotiation
- transparency in the development and application of laws and regulations, transparent and speedy licensing procedures

Scheduling issues to be addressed
- use of the definitions in the GATS Annex on Financial Services
- clarification of the distinction between modes 1 and 2

Indeed, Annex C urged members to intensify their efforts towards the conclusion of rule-making negotiations, the development of a text for adoption on disciplines on domestic regulation and the division of methods for the full and effective implementation of the Modalities for the Special Treatment of Least-Developed Country Members.[214] In this regard, this Annex envisaged that the request-offer negotiations also be pursued on a plurilateral basis, while it provides guidelines for the procedure of these negotiations.[215]

6. Plurilateral negotiations

Within the purview of plurilateral negotiations, a group of WTO members with common interests make a joint request to individual members to improve specific commitments in a particular sector or mode of supply. Subsequently, they hold collective meetings with the countries that have received this request. It is up to each member to respond individually to the collective request.

[212] **Ibid**, Annex C on Services, para. 1, a-f
[213] **Report by the Chairman to the Trade Negotiations Committee**, Special Session of the Council for Trade in Services, 28 November 2005, p. 18
[214] **Ministerial Declaration**, adopted on 18 December 2005, Annex C on Services, paras. 3-4
[215] **Ibid**, paras. 6-7

Until mid-2006, two rounds of plurilateral negotiations took place based on 21 collective requests that were formulated mostly along sector lines. The feedback from the informal negotiating groups dealing with these requests was positive. Each group was composed by more than ten members with common negotiating interests. These groups invited other members to discuss their interests, which were proposed in the form of a common request.

The outcome of plurilateral negotiations along with new bilateral meetings was supposed to be reflected in a second round of revised offers. Despite the fact that Annex C set a deadline of 31 July 2006 for the submission of these offers, all negotiations under the DDA were suspended a week earlier, mainly as a consequence of the stalemate over agricultural and non-agricultural market access (NAMA).[216]

Nonetheless, negotiations got back to regular track in February 2007.[217] As before, meetings in services were organized mainly in the form of clusters. The main purpose was to provide experts from capitals with an opportunity every three or four months not only to attend relevant Council and Committee meetings but also to organize bilateral and plurilateral encounters in order to explore the scope for and content of improved offers. After several such clusters, there was a prevailing sentiment that the 'plurilaterals' had served their purpose for the time being.

7. Signalling Conference and elements for the conclusion of the negotiations

While continuing with bilateral meetings, members were also conferring the elements leading to completion of the services negotiations within the overall context of the Doha Development Agenda. In this connection, on 26 May 2008 the Chair of the services negotiations (Council for Trade in Services in Special Session) issued a report with a text about draft services that WTO members could adopt after further discussion.[218] The draft, which was based on consultations conducted by the Chair, addressed issues such as the level of participants' ambition, their willingness to bind existing and improved levels of market access with national treatment, as well as specific reference to Modes 1 and 4 with respect to the treatment of sectors and modes of supply of export interest to developing countries.

Concurrently, at the request of WTO members, the Chair of the Trade Negotiations Committee (TNC) convened a 'signaling conference' for interested ministers as part of the 'July 2008 Package'. In that conference, ministers indicated how their governments' current services offers could be improved, in response to the requests they had received. The signals were not decisive for the final outcome of the services negotiations but enabled members to evaluate the progress made in the request-offer negotiations while preparing, at the same time, new draft schedules for submission. Consequently, the TNC Chair reported on the conference.[219]

8. March 2010 stocktaking exercise

Following the aforementioned failure concerning the conclusion of agriculture and non-agricultural market access (NAMA) modalities in the 'July 2008 Package', progress was rather limited. The remaining gaps were reflected in the stocktaking report by the Chairman

---

[216] **Informal TNC meeting at the level of Head of Delegation**, Chairman's Introductory Remarks, available at: https://www.wto.org/english/news_e/news06_e/tnc_dg_stat_24july06_e.htm
[217] **Informal TNC Meeting at the level of Head of Delegation**, Chairman's Remarks, 31 January 2007
[218] Elements Required for the Completion of the Services Negotiations, Report by the Chairman, 26 May 2008
[219] **Services Signalling Conference**, Report by the Chairman of the TNC, 30 July 2008

of the Council for Trade in Services in Special Session to the Trade Negotiations Committee.[220]

9. Intensification of negotiations in 2011

At the beginning of 2011, the services negotiations along with other areas under the Doha Development Agenda were definitely intensified. In April, the Chairman of the Council for Trade in Services submitted a report to the Trade Negotiations Committee about the achievements and remaining gaps in all four areas of the services negotiations: market access; domestic regulation; GATS rules; and the implementation of LDC modalities.[221]

10. Adoption of an LDC waiver by the 2011 Ministerial Conference

In December 2011, the WTO Ministerial Conference adopted a waiver that allows WTO members to deviate from their most-favored nation obligation of non-discrimination in order to provide preferential treatment to services and service suppliers from least-developed countries.[222]

[220] **Negotiations on Trade in Services**, Report by the Chairman, Ambassador Fernando de Mateo, to the Trade Negotiations Committee for the Purpose of the TNC stocktaking exercise, Council for Trade in Services, Special Session, TN/S/35, 22 March 2010

[221] **Negotiations on Trade in Services**, Report by the Chairman, Ambassador Fernando de Mateo, to the Trade Negotiations Committee, Council for Trade in Services, Special Session, TN/S/36, 21 April 2011

[222] **WTO Ministers Adopt Waiver to Permit Preferential Treatment of LDC Service Suppliers**, WTO Official website, available at: https://www.wto.org/english/news_e/news11_e/serv_17dec11_e.htm

Bibliography

Primary Sources

WTO Documents

WTO (2014): International Trade Statistics 2014, available at:
https://www.wto.org/english/res_e/statis_e/its2014_e/its2014_e.pdf

WTO (2011): WTO Ministers Adopt Waiver to Permit Preferential Treatment of LDC Service Suppliers, available at:
https://www.wto.org/english/news_e/news11_e/serv_17dec11_e.htm

WTO (2011): Council for Trade in Services, Report by the Chairman, TN/S/36, 21 April

WTO (2010): Council for Trade in Services, Report by the Chairman, TN/S/35, 22 March

WTO (2008b): Services Signalling Conference, Report by the Chairman, JOB(08)/93, 30 July

WTO (2008a): European Communities - European Communities – Regime For The Importation, Sale And Distribution Of Bananas, WT/DS27/AB/RW2/ECU and WT/DS27/AB/RW/USA, 26 November

WTO (2006): DG Lamy: Time out Needed to Review Options and Positions, available at: https://www.wto.org/english/news_e/news06_e/tnc_dg_stat_24july06_e.htm

WTO (2005a): United States – Measures Affecting the Cross-border Supply of Gambling and Betting Services, WT/DS285/AB/R, 7 April

WTO (2005b): Council for Trade in Services, Report by the Chairman, TN/S/23, 28 November

WTO (2005c): Ministerial Declaration**, WT/MIN(05)/DEC, 22 December**

WTO (2004a): Mexico – Measures Affecting Telecommunications Services, Report of the Panel, WT/DS204/R, 2 April

WTO (2004b): United States – Measures Affecting the Cross-border Supply of Gambling and Betting Services, WT/DS285/R, 10 November

WTO (2003a): Negotiations on Emergency Safeguard Measures, Report by the Chairperson of the Working Party on GATS Rules, S/WPGR/9, 14 March

WTO (2003b): Ministerial Conference, Ministerial Statement, WT/MIN(03)/20, 23 September

WTO (2003c): Committee on Trade in Financial Services, Note by the Secretariat, S/FIN/M/42, 12 November

WTO (2002a): Council for Trade in Services, Note by the Secretariat, S/CSS/M/13, 26 February

WTO (2002b): Working Group on the Relationship between Trade and Investment, Transparency, Note by the Secretariat, WT/WGTI/W/109, 27 March

WTO (2001a): Guidelines for the Scheduling of Specific Commitments Under the General Agreement on Trade in Services (GATS): Adopted by the Council for Trade in Services, S/L/92, 28 March

WTO (2001b): Council for Trade in Services, Communication from Colombia, S/CSS/W/96, 9 July

WTO (2001c): Economic Needs Tests, Note by the Secretariat, S/CSS/W/118, 30 November

WTO (2000a): Report of the Panel, Canada – Patent Protection of Pharmaceutical Products, WT/DS114/R, 17 March

WTO (2000b): Committee on Trade in Financial Services, Note by the Secretariat, S/FIN/M/26, 29 June

WTO (1994): Marrakesh Declaration of 15 April 1994

WTO (1993): Scheduling of Initial Commitments in Trade in Services: Explanatory Note, MTN.GNS/W/164, 3 September

WTO (1991): Services Sectoral Classification List, Note by the Secretariat, MTN.GNG/W/120, 10 July

WTO (1987): Negotiating Group on Services, Note on the Meeting of 15-17 September 1987, MTN.GNS/10, 15 October

Other documents

Bank for International Settlements (2005): *Outsourcing in Financial Services*, February

Bank for International Settlements (2008): Principles for Sound Liquidity Risk Management and Supervision, September

Federal Reserve Bank of New York (1999): *Outsourcing Financial Services Activities: Industry Practices to Mitigate Risks*, October

Federal Reserve System (2013): *Guidance on Managing Outsourcing Risk*, Division of Banking Supervision and Regulation, Division of Consumer and Community Affairs, 5 December

Group of Ten (2001): *Report on Consolidation in the Financial Sector*, pp.65-124

IMF (2010): *Reference Note on Trade in Financial Services*, Strategy, Policy and Review and Legal Departments, 3 September

World Economic Forum (2015a): *More than Simply David versus Goliath*, available at: http://reports.weforum.org/future-of-financial-services-2015/executive-summary/

World Economic Forum (2015b): *The Future of Financial Services: How Disruptive Innovations are Reshaping the Way Financial Services are Structured, Provisioned and Consumed,* Financial Services Community, Final Report, June

Secondary Sources

Articles and Journals

A

Abdullah, A. and M. Page (2009): *Corporate Governance and Corporate Performance:UK FTSE 350 Companies*, The institute of Chartered Accountants of Scotland

Abrego, L. and T. H. Edwards (2002): The relevance of the Stolper-Samuelson theorem to the trade and wages debate, CSGR Working Paper No. 96/02, May

Adlung, R. (2009): *Services Liberalization from a WTO/GATS Perspective: In Search of Volunteers*, World Trade Organization Economic Research and Statistics Division, Staff Working Paper ERSD-2009-05, 16 February

Adlung R. (**2007**): Negotiations on Safeguards and Subsidies in Services: A Never-Ending Story?, *Journal of International Economic Law*, pp. 235-265

Adlung, R. (2004): The GATS Turns Ten: A Preliminary Stocktaking, World Trade Organization Economic Research and Statistics Division, Staff Working Paper ERSD-2004-05, August

Adlung, R. and M. Roy (2005): *Turning Hill Into Mountains? Current Commitments under the GATS and Prospects for Change*, World Trade Organization Economic Research and Statistics Division, Staff Working Paper ERSD-2005-01, 23 March

Alexander, K. (2007): The GATS and Financial Services: the Role of Regulatory Transparency, *Cambridge Review of International Affairs*, Volume 20, Number 1, March, pp.111-132

Allen, F. and D. Gale (2004): Competition and Financial Stability, *Journal of Money, Credit and Banking*, Volume 36, Issue 3, pp. 453-480

Amtenbrink, F. (2006): The three pillars of central bank governance: towards a model central bank law or a code of good governance?, 28 May, submitted to the European Conference on Financial Regulation and Supervision 'Designing financial supervision institutions: independence, accountability and governance', Centre for Monetary and Financial Economics, Bocconi University

Andenas, M. and S. Zleptnig (2007): Proportionality and Balancing in WTO Law: a Comparative Perspective, Cambridge Review of International Affairs, Volume 20, Issue 1, pp. 71-92

B

Bagwell, K. and R. W. Staiger (1996): *Reciprocal Trade Liberalization*, NBER Working Paper No. 5488, Cambridge, MA, March

Barth, J., Marchetti, J. A., Nolle, D. E. and W. Sawangngoenyuang (2006): World Trade Organization Commitments vs. Reported Practices on Foreign Bank Entry and Regulation, in *The Oxford Handbook of Banking*, ed. Berger, A., Molyneux, P and J. Wilson, Oxford University Press, Oxford

Beck, T., Demirgüç-Kunt, A. and R. Levine (2007): Bank Concentration and Fragility, in *The Risks of Financial Institutions*, January, pp. 193-234

Bencivenga, V. R. and B. D. Smith (1991): Financial Intermediation and Endogenous Growth, *The Review of Economic Studies*, Vol. 58, No. 2, April, pp. 195-209

Biadleng, E. T. (2008): The Development-balance of the TRIPS Agreement and Enforcement of Intellectual Property Rights, in *Interpreting and Implementing the TRIPS Agreemnt*, ed. Malbon, J. and C. Lawson, Edward Elgar Publishing, Inc., Massachusetts, pp. 97-130

Blackhurst, R., Enders, A. and J. François (1995): *The Uruguay Round and Market Access: Opportunities and Challenges for Developing Countries*, Paper presented at "The Uruguay Round and Developing Economies", World Bank Conference, 26-27 January 1995

C

Cetorelli, N., Hirtle, B., Peristiani, S. and J. Santos (2007): Trends in the Financial Market Concentration and Their Implications for Market Stability, *FRBNY Economic Policy Review*, March, pp. 33-51

Chiu, P. (2003): Transparency versus Constructive Ambiguity in Foreign Exchange Intervention, BIS Working Papers, No. 144, October

Claessens, S. and N. van Horen (2014): *The Impact of the Global Financial Crisis on Banking and Globalization*, IMF Working Paper WP/14/197, October

Cossy, M. (2006): Determining 'Likeness under the GATS: Squaring the Circle?, World Trade Organization Economic Research and Statistics Division, Staff Working Paper ERSD-2006-08, September

D

De Gregorio, J. (1993): Inflation, taxation and long-run growth, *Journal of Monetary Economics*, Volume 31, Issue 3, June, pp. 271-298

Delimatsis, P. (2012): *Of Bailouts and Rescue Measures: Subsidies in Financial Services*, NCCR Trade Regulation Working Paper No. 2012/24, April

Delimatsis, P. (2008): Determining the Necessity of Domestic Regulations in Services, The European Journal of International Law, Volume 19, Issue 2, pp. 365-408

Delimatsis, P. and M. Molunuevo (2008): Article XVI GATS: Market Access, *Max Planck Commentaries on World Trade Law*, Volume 6, Leiden/Boston: Martinus Nijhoff Publishers, pp. 367-426

Delimatsis, P. and P. Sauvé (2010): Financial Services Trade After the Crisis, *Journal of International Economic Law,* Volume 13, Issue 3, pp. 837-857

de Meester, B. (2010): The Global Financial Crisis and Government Support for Banks: What Role for the GATS?, *Journal of International Economic Law*, Volume 13, Issue1, pp. 27-63

Diamond, D. W. (1984): Financial Intermediation and Delegated Monitoring, *The Review of Economic Studies*, Vol. 51, No. 3, July, pp. 393-414

Diamond, D. W. and P. H. Dybvig (1983): Bank Runs, Deposit Insurance, and Liquidity, *The Journal of Political Economy*, Vol. 91, No. 3, June, pp. 401-419

Dobson, W. and P. Jacquet (1998): *Financial Services Liberalization in the WTO*, Institute for International Economics, Washington

E

Eichengreen, B. (1999): *Toward a New International Financial Architecture*, Institute for International Economics, Washington D. C.

F

Francois, J. F. and W. Martin (1995): *Multilateral Trade Rules and the Expected Cost of Protection*, CEPR Discussion Paper No. 1214, July

Fry, M. J. (1989): Money, Interest and Banking in Economic Development, *The Journal of Developing Areas*, Vol. 23, No. 2, January, pp. 305-307

G

Gale, D. and M. Hellwig (1985): Incentive-Compatible Debt Contracts: The One-Period Problem, *The Review of Economic Studies,* Vol. 52, No. 4, October, pp. 647-663

Goyal, A. and P. Santa-Clara (2003): Idiosyncratic Risk Matters!, *Journal of Finance,* Vol. 58, No. 3, June, pp. 975-1007

H

Hahn, M. J. (2006): WTO Rules on Trade in Financial Services: a Victory of Greed over Reason?, in *The Regulation of International Financial Markets*, ed. Grote R. and T. Marauhn

Hauswald, R. and R. Marquez (2003): Information Technology and Financial Services Competition, *The Review of Financial Studies*, No. 19, Vol. 3, pp. 967-1000

Hermalin, B and M. Weisbach (2007): *Transparency and Corporate Governance*, NBER Working Paper No. 12875, January, available at: http://www.nber.org/papers/w12875

Hicks, J. (1969): *A Theory of Economic History*, Oxford, Clarendon Press

Hoekman, B., Mattoo, A. and A. Sapir (2007): The Political Economy of Services Trade Liberalization: a Case for International Regulatory Cooperation?, *Oxford Review of Economic Policy*, Volume 23, Issue 3, pp. 367-391

Horlick, G. and O. Clarke (2010): WTO Subsidy Disciplines During and After the Crisis, *Journal of International Economic Law*, Volume 13, Issue 3, pp. 859-874

Horn, K. (1998): *Odysseus und die verführerischen Sirenen,* Frankfurter Allgemeine Zeitung, 6 April, p. 18

I

International Organization of Securities Commissions (2005): *Principles on Outsourcing of Financial Services for Market Intermediaries*, Technical Committee of IOSCO, February

J

Jennings, D. (1996): *Outsourcing Opportunities for Financial Services*, Long Range Planning, Vol. 29, No. 3

K

Kaufman, C. and R. Weber (2007): Resolving Conflicts between Prudential Regulation and Liberalisation in Financial Services, in M. Andenas and K. Alexander (eds.), *The World Trade Organisation and Trade in Serivces*, Martinus Njihoff/Brill, Leiden

Kirkegaard, J. F. and C. M. Reinhart (2012): *The Return of Financial Repression in the Aftermath of the Great Recession*, Banque de France, Financial Stability Review, No. 16, April

Knight, M. D. (2006): *Globalisation and Financial Markets*, speech at the 34th Economic Conference of the Austrian National Bank, Vienna, 22 May, available at: http://www.bis.org/speeches/sp060522.htm

Kose, M. A., Prasad, E., Rogoff, K. and S. Wei (2006): *Financial Globalization: A Reappraisal*, NBER Working Paper 12484, August, available at: http://www.nber.org/papers/w12484

Krugman, P. (1997): What Should Trade Negotiators Negotiate About?, *Journal of Economic Literature*, Vol. XXXV, pp. 113-120, March

L

Leamer, E. E. (1995): *The Hecksher-Ohlin Model in Theory and Practice*, Princeton Studies in International Finance, No. 77, February

Levine, R. (1997), Financial Development and Economic Growth: Views and Agenda, *Journal of Economic Literature*, Volume 35, June, pp. 688-726

M

Macey, J. R. (2008): Market for Corporate Control, *Library of Economics and Liberty*, available at: http://www.econlib.org/library/Enc/MarketforCorporateControl.html#

Magdeleine, J. and A. Maurer (2008): *Measuring GATS Mode 4 Trade Flows*, World Trade Organization Economic Research and Statistics Division, Staff Working Paper ERSD-2008-05, 8 October

Mansfield, E., Milner, H. and B. P. Rosendorf (2000): Free to Trade: Democracies, Autocracies and International Trade, *American Political Science Review, Volume* 94, Issue 2, pp. 305-322

Mattoo, A. (1998): *Financial Services and the WTO: Liberalization in the Developing and Transition Economies*, World Trade Organization Trade in Services Division, Staff Working Paper No. TISD-98-03, 16 March

McKinnon, I. (1974): Money and Capital in Economic Development, *International Journal,* Vol. 29, No. 4, Autumn, pp. 649-651

McWaters, J. (2015): Five Ways Technology is Transforming Finance, *World Economic Forum*, 30 June, available at: https://agenda.weforum.org/2015/06/5-ways-technology-transforming-finance/

Milner, H. and K. Kubota (2005): Why the Move to Free Trade? Democracy and Trade Policy in Developing Countries, *International Organization*, Volume 59, Issue 1, pp. 157-193

Muraina, A., Okpara, E. and S. Ahunanya (2010): *Transparency in Corporate Governance: A Comparative Study of Enron, USA and Cadbury PLC, Nigeria*, *The Social Sciences*, Volume 5, Issue 6, pp. 471-46

O

Obstfeld, M. (1994): Risk-Taking, Global Diversification, and Growth, *The American Economic Review*, Vol. 84, No. 5, December, pp. 1310-1329

Obstfeld, M. and A. M. Taylor (2003): Globalization and Capital Markets, in *Globalization in Historical Perspective*, University of Chicago Press, pp. 121-187, available at http://www.nber.org/chapters/c9587

Odell, J. S. and A. Narlikar (2006): The Strict Distributive Strategy for a Bargaining Coalition: The Like Minded Group in the World Trade Organization, in J. Odell (ed.) *Negotiating Trade: Developing Countries in the WTO and NAFTA,* Cambridge, Cambridge University Press

Ortino, F. (2006): The Principle of Non-Discrimination and its Exceptions in GATS: Selected Legal Issues, King's College London, Working Paper, September, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=979481

R

Reinhart, C. M. (2011): *The Liquidation of Government Debt*, NBER Working Paper No. 16893, March, available at: http://www.nber.org/papers/w16893

Reinhart, C. M. and K. S. Rogoff (2010): *From Financial Crash to Debt Crisis*, NBER Working Paper No. 15795, March, available at: http://www.nber.org/papers/w15795

Romer, P. M. (1987): Growth Based on Increasing Returns Due to Specialization, The American Economic Review, Volume 77, Issue 2, *Papers and Proceedings of the Ninety-Ninth Annual Meeting of the American Economic Association*, May, pp. 56-62

Roubini, N. and X. Sala-i-Martin (1991): *Financial Repression and Economic Growth*, NBER Working Paper No. 3876, October, p. 14, available at: http://www.nber.org/papers/w3876

Roy, M., Marchetti J. and H. Lim (2006): *Services Liberalization in the New Generation of Preferential Trade Agreements (PTAs): How Much Further than the GATS?*, World Trade Organization Economic Research and Statistics Division, Staff Working Paper ERSD-2006-07, September

Roy, M. (2009): *Endowments, Power and Democracy: Political Economy of Multilateral Commitments on Trade in Services*, World Trade Organization Economic Research and Statistics Division, Staff Working Paper ERSD-2009-07, September

S

Shaw, E. S. (1973): Financial Deepening in Economic Development, *The Journal of Finance,* Vol. 29, No. 4, September, pp. 1345-1348

Siegel, D. E. (**2002**): Legal Aspects of the IMF/WTO Relationship: The Fund's Articles of Agreement and the WTO Agreements, *American Journal of International Law*, Volume 96, pp.561-599

Sirri, E. R. and P. Tufano (1995): The Economics of Pooling, in *The Global Financial System: A Functional Perspective*, Harvard Busniess School Press, Boston, Massachusetts, January, pp. 81-128

Smith, A. (2007): *An Inquiry into the Nature and Causes of the Wealth of Nations*, Harriman House, Hampshire

Stichele, V. M. (2003): Potential Risks of Liberalisation of Financial Services, SOMO, Amsterdam

Stiglitz, J. (1985): Credit Markets and the Control of Capital, *Journal of Money, Credit and Banking*, vol. 17, issue 2, pp. 133-152

Stulz, R. M (2005): *The Limits of Financial Globalization*, NBER Working Paper 11070, p. 45, available at: http://www.nber.org/papers/w11070

T

The Economist (2015): *Signs and Arrows*, Special Report for International Banking, 9 May, available at: http://www.economist.com/sites/default/files/20150509_intl_banking.pdf

V

Valckx, N. (**2002**): *WTO Financial Services Commitments: Determinants and Impact on Financial Stability*, IMF Working Paper, WP/02/214, International Monetary Fund

Verhonek, S. H. (1999): *For Seattle, Triumph and Protest*, The New York Times, 13 October, available at: http://www.nytimes.com/1999/10/13/us/for-seattle-triumph-and-protest.html?pagewanted=all

Viner, J. (1947): Conflicts of Principle in Drafting a Trade Charter, *Foreign Affairs*, Volume 25, Issue 4, pp. 612-628

von Thadden, E. (1995): Long-Term Contracts, Short-Term Investment and Monitoring, *Review of Economic Studies,* Volume 62, Issue 4, October, pp.557-575

W

Wolfe, R. (2003): Regulatory Transparency, Developing Countries and the WTO, *World Trade Review*, Volume 2, Issue 2, pp. 157-182

Books

Arup, C. (2008): *The World Trade Organization Knowledge Agreements*, Cambridge University Press, Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paolo

Gortsos, Ch. (2011): *Fundamentals on International Banking Law*, Nomiki Vivliothiki, Athens

Gortsos, Ch. and K. Stephanou (2006): *International Economic Law*, Nomiki Vivliothiki, Athens

Diebold, N. F. (2010): *Non-Discrimination in International Trade in Services: 'Likeness' in WTO/GATS*, Cambridge University Press, Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paolo

Grote, R. and T. Marauhn (eds.) (2006): *The Regulation of International Financial Markets*, Cambridge University Press, Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paolo

Narlikar, A. (2005): *The World Trade Organization: A Very Short Introduction*, Oxford University Press, Oxford