

Financial Services under GATS



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Importance of the sector

- Value added in FS as a share of GDP ranges from 1% (Cambodia, Nigeria, Madagascar, Libya and Mali), to 10% in economies as diverse as St. Kitts and Nevis, Kiribati, Hong Kong, China,or even 20% in Bahrain and Luxembourg.
- Employment in FS ranges from 1% in Bolivia, Azerbaijan, Indonesia, to 4% in Cyprus, US, Switzerland, to 10% in places such as Cayman Islands, Bahamas, South Africa, Luxembourg, and Jersey.

Developing Countries' share increasing

- A few years ago while no developing country figured in the list of top 10 banks in the world, today 5 banks (4 from China and one from Brazil) by market capitalization value.
- Similarly, in insurance there are three companies from developing countries (2 from China and one from Hong Kong) among the top 10 insurance companies of the world by market value.

Financial Services- Trends

- In recent years, FS trade experienced rapid growth in tandem with the deepening of financial systems.
- Several factors have contributed to this expansion: technological progress, regulatory reform (incl. the liberalization of trade in FS), the expansion of world trade in general, as well as macroeconomic stability and high growth rates during the 1997-2007 decade.

Table 3: Major Exporters of Financial Services (excluding Insurance), 2009 and 2010
(Billion dollars and percentage)

Source: International Trade Statistics, WTO, 2011, p. 168.

Economies	Value		Share in ten economies	Annual Percentage Change			
	2009	2010		2009	2005-09	2008	2009
EU	129.4	130.4	54.7	8	0	-20	1
US	55.4	58.0	23.4	9	0	-9	5
Switzerland	16.2	15.8	6.8	4	0	-16	-2
Hong Kong	11.3	12.6	4.8	16	-4	-6	12
Singapore	9.3	12.2	3.9	20	4	-7	31
Japan	4.8	3.6	2.0	-1	-12	-12	-25
India	3.7	6.0	1.5	34	27	-15	64
Canada	2.5	3.3	1.1	7	-4	-18	31
South Korea	2.3	2.8	1.0	8	-5	-40	25
Norway	1.6	1.4	0.7	21	43	9	-13

Major Exporters of Insurance Services, 2009 and 2010

(Billion dollars and percentage)

Source: International Trade Statistics, WTO, 2011, p. 166.

Economies	Value		Share in ten economies	Annual Percentage Change			
	2009	2010		2009	2005-09	2008	2009
EU	43.3	42.4	56.9	17	14	-5	-2
US	14.7	14.6	19.2	18	25	8	-1
Switzerland	5.4	4.8	7.1	13	18	-6	-10
Canada	4.0	4.4	5.2	6	10	-5	10
Singapore	2.4	2.8	3.1	17	20	31	19
China	1.6	1.7	2.1	31	53	15	8
Mexico	1.6	1.8	2.1	1	1	-21	15
India	1.5	1.8	2.0	13	4	-2	17
Japan	0.9	1.3	1.1	0	-30	-8	48
Bahrain	0.9	0.9	1.1	7	12	-7	6

Coverage, level, and type of current commitments in FS

Members' ve made more commitments in FS than in any other sector except tourism. May be attributed to several factors:

- (i) the higher negotiating momentum as compared to many other sectors as reflected in the extended negotiations held in 1995 and 1997, which allowed for significant improvements in no. of commitments;
- (ii) the accession of some 30 new Members to the WTO after 1995, who in all cases undertook extensive commitments on FS

Coverage, level, and type of current commitments in FS

- (iii) govts' self-interest in using commitments, and the associated gains in stability and transparency, to promote foreign participation in this sector for economic reasons.
- 110 schedules (counting the EU-15 as one) contain commitments in at least one FS subsector.
- Almost all Members with commitments in banking and other FS covered the "core" services of commercial banks – deposit taking and lending (98 and 97 schedules, resp).

Coverage, level, and type of current commitments in FS

- Across all subsectors proportion of full commitments is higher for trade thru mode 2 and lower for mode 4. The percentage share of full commitments for trade thru mode 1 is generally low – roughly under 27%.
- Stronger commitments made under mode 3 than under mode 1.
- High proportion of partial commitments in mode 3 not surprising taking into account that this sector has been traditionally subject to heavy regulation.

Coverage, level, and type of current commitments in FS

- Among six types of MA measures, restrictions on the type of legal entity predominate followed by limitations on the participation of foreign capital, on the no. of suppliers, and on the value of transactions or assets (such as limitations on the share of banking assets allowed to be held by foreign banks).
- Limitations on no. of service operations and on total quantity of service output (such as numerical limits on no. of ATMs allowed) are relatively few.

Financial Services: Multilateral Rules

Multilateral rules and disciplines applicable to trade in FS contained in three legal instruments:

- the GATS;
- the GATS Annex on Financial Services and
- the Understanding on Commitments in Financial Services

GATS rules and disciplines applicable to all service sectors, incl. FS. Annex and Understanding complement and/or modify certain provisions of the GATS, reflecting the need for specific rules and disciplines to cater for particular features of FS.

The Annex

- Like all other Annexes, this Annex an integral part of GATS and binding on all Members. It applies to "measures affecting the supply of financial services", and divided in five sections, dealing with the scope of the GATS wrt FS, domestic regulation, recognition, dispute settlement, and definitions.
- Annex defines FS in a broad and non-exhaustive manner, as "any service of a financial nature offered by a financial service supplier of a Member".
- Financial services include ins. and ins.-related services, and all banking and other financial services (excl. Ins.).
- "FS supplier" also broadly defined as "any natural or juridical person of wishing to supply or supplying financial services.

The Annex

- The Annex provides for a specific exception for measures taken for prudential reasons.
- "measures for prudential reasons" could include measures that are inconsistent with a Member's MFN obligations, or specific commitments on financial services.
- Any measure adopted for prudential reasons covered *a priori*.
- The "prudential reasons" mentioned - protection of investors, depositors, policyholders or persons to whom a fiduciary duty is owed by a FS supplier, and the preservation of the integrity and stability of the financial system.

The Understanding

- The Understanding a unique legal instrument in WTO, that was included in the Final Act although not an integral part of GATS.
- Understanding – “participants in the UR enabled to take on specific commitments wrt FS ... on the basis of an alternative approach to that covered by the Agreement.”
- Rules & disciplines contained in Understanding not binding on every Member, but only on those that voluntarily adhered to it.
- As schedules GATS integral part, those obligations have become binding on Members concerned.

The Understanding

- Understanding not a plurilateral agmt with benefits accruing only to Members that have adhered to it.
- Rather, "resulting specific commitments apply on an MFN basis."
- This provides in fact a sort of a formula approach to scheduling commitments under GATS Arts. XVI, XVII, and XVIII wrt FS.
- Understanding starts by imposing a standstill obligation - any conditions, limitations and qualifications to the commitments made must be limited to existing non-conforming measures at the time of making those commitments.
- In contrast, GATS silent on this matter, and allows Members to inscribe limitations and conditions in their schedules that represent less than the level of liberalization.

The Understanding

Understanding obligations organized under: MA & NT.

MA obligations further broken down into following:

1. monopoly rights;
2. FS purchased by public entities;
3. cross-border trade;
4. commercial presence;
5. new FS;
6. transfers of info & processing of info;
7. temporary entry of personnel; and
8. non-discriminatory measures.

- *Monopolies*- adds to GATS disciplines by providing that Members must include in their schedules any existing monopoly rights in FS sector and to eliminate them or reduce their scope.
- *Govt Procurement*- contains obligations wrt govt procurement: Members must ensure that when purchasing FS, public entities in their territories accord FS suppliers of any other Member MFN treatment and NT. Entails significant element of GATS-plus treatment.
- *Cross-border* - obligations apply to seemingly both modes 1 and 2, scope of mode 1 obligations narrower than those applying to mode 2

Commercial Presence- obligations wrt commercial presence still broader in scope and cover the whole spectrum of FS.

Understanding makes it mandatory for Members to "grant FS suppliers of any other Member the right to establish or expand within its territory, incl. thru the acquisition of existing enterprises, a commercial presence."

Understanding contains its own definition of "commercial presence"- "Commercial presence means an enterprise within a Member's territory for the supply of FS and includes wholly- or partly-owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations."

This definition "significantly broadens the general definition" of com. Presence in GATS.

Movement of personnel- Understanding contains specific obligations on temporary entry of personnel -Members must permit temporary entry into their territories of the following personnel of a FS supplier of any other Member that is establishing or has established a com. presence in the territory of the Member:

- i) senior managerial personnel possessing proprietary info essential to establishment, control and operation of the services of FS supplier; and
- ii) specialists in operation of FS supplier.
- iii) Additionally, Members must permit, temporary entry into their territories of the following personnel "associated with a com. presence of a FS supplier“ :
 - i) specialists in computer , telecom services and accounts of FS supplier;
 - and ii) actuarial and legal specialists.

New Financial service - A Member must permit “FS suppliers of any other Member established in its territory to offer in its territory any new financial service.” Like the obligation on govt procurement, this is a commitment only to the benefit of established foreign FS suppliers.

A new FS is not a FS that does not exist anywhere and is being introduced for the first time ever. Rather, such a new financial service may be related to existing and new products or the manner in which a product is delivered.

Understanding defines a new FS as "a service of a financial nature, incl. services related to existing and new products or the manner in which a product is delivered, that is not supplied by any FS supplier in the territory of a particular Member but which is supplied in the territory of another Member.”

Transfers of information and processing of information- a Member shall not take measures that prevent transfers of info, processing of financial info (incl. transfers of data by electronic means), or equipment, where such transfers of info, processing of financial info or transfers of equipment necessary for conduct of ordinary business of a FS supplier.

Non-discriminatory measures – MA obligations in Understanding address (other) non-discriminatory measures. Understanding contains a "best endeavour" obligation "to remove or to limit any significant adverse effects on FS suppliers of any other Member" of certain categories of measures.

Doha Round



- One of the important sectors
- Several proposals tabled
- Requests made
- Initial offers
- Revised offers
- Expected to achieve a higher level of liberalisation



THANK

YOU