

Financial Services in the GATS and Financial Crises: Overview and Singapore's experience

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Financial Services in the GATS – Context

- Importance of the financial services sector to the economy of a country and the special nature of financial institutions
 - Financial sector is heavily regulated
- Specific provisions relating to financial services exist in the GATS Agreement
 - Annex on Financial Services
 - Forms part of the GATS agreement
 - Elaborates upon and modifies general GATS rules to suit the finance sector

Rules Applying to Financial Services - Overview

1. General provisions of GATS

- Apply to “measures affecting trade in services”
 - This includes financial services
- GATS key features revisited
 - General MFN principle
 - MA and NT commitments for scheduled sectors only
 - Contents of each Member’s GATS schedule is important
 - Note: There is an alternative method of making commitments based on the *Understanding on Commitments in Financial Services*

2. Annex on Financial Services

- Prudential measures

Annex: Prudential Measures Exception

- Annex on Financial Services, para 2(a)
 - “Notwithstanding any other provision of the Agreement, a Member shall not be prevented from taking measures for prudential reasons....”
- Meaning?
 - Member can take measures that would otherwise contravene their GATS obligations of MFN, MA and NT, provided these are for “prudential reasons”

Annex: Prudential Measures Exception

What are prudential reasons?

- The term “prudential” is not defined.
- List of reasons in Annex para 2(a) is non-exhaustive: “including”
 - for the protection of investors, depositors, policy holders; or
 - to ensure the integrity and stability of the financial system
- Other reasons could potentially qualify as prudential
 - vague; subject to interpretation; possibility of abuse
- Any restrictions on the use of prudential measures? Good faith? Reasonable? Necessary?
 - Annex , para 2(a): Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement.

Annex: Recognition of Prudential Measures

- Annex on Financial Services, para 3
 - “ A member may recognize prudential measures of any other country in determining how the Member’s measures relating to financial services may be applied”
 - Such recognition may be based on an agreement or accorded autonomously
 - Adequate opportunity shall be afforded to other interested Members to join such agreements

Annex: Further Issues

- The Annex, and therefore the prudential carve out, applies only to “measures affecting the supply of financial services”
 - Annex, para 5(a) defines “financial service” very widely to include all insurance and insurance-related services and all banking and other financial services. A non-exhaustive list of included activities is provided.
- Relationship with GATS general exceptions
 - If a measure affecting the supply of financial services contravenes GATS provisions, and does not fall within the prudential carve out in the Annex, it could still be permitted if it falls under the General Exceptions in GATS Art XIV.

GATS and the Recent Global Financial Crisis

Questions for reflection:

- What has been the effect of the liberalisation of trade in financial services under GATS?
- What factors contributed towards the recent global financial crisis?
- What regulatory measures could have been taken to avert the crisis, or taken to respond to it, and would these be permitted under GATS?
- What is the relationship, if any, between GATS and the recent financial crisis?

Regulation of financial services: Singapore

- Examples of typical prudential measures in relation to financial institutions
 - Capital adequacy ratios and solvency margin requirements
 - Requirements for preserving asset quality
 - Liquidity ratios
 - Control of market risk
 - Check of management controls
 - Fit and proper tests for members of the board of directors
- These regulatory measures are in place all the time, not just in times of crisis.
- There would be no need to rely on the prudential carve out in the Financial Services Annex if GATS commitments are not contravened.

Financial Services

Singapore's measures in response to the global financial crisis

- Financial institutions in Singapore remained sound during the recent crisis. The main issue was losses incurred by investors who had purchased structured products linked to Lehman Brothers.
- Some responsive measures affecting the supply of financial services
 - October 2008: The Singapore Government announced that it would *guarantee all Singapore Dollar and foreign currency deposits* of individuals and non-bank customers in banks, finance companies and merchant banks until 31 December 2010.
 - *Review and strengthening of the regulatory framework* for financial advisors by the Monetary Authority of Singapore (MAS)
 - MAS consultation papers, MAS guidelines, MAS investigation report, proposed legislative changes