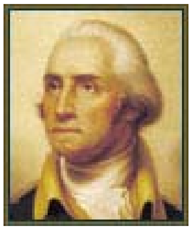

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Trade in Financial Services:
Major References in International Agreements

Final Paper

by

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DEDICATION

I dedicate this paper to my wife, Marcelle, without her support, and gentle prodding, this time life experience would not be possible. I also dedicate to my family: Eric, my son, Ester, my mother, Hellen and Heloisa, my sisters and all my family at Brazil. Thanks to all people at Ministry of Finance that made this opportunity happen. Thanks also to IBI team and Minerva friends that I made in this occasion. Finally, I am especially grateful for the Lord Almighty for His Grace upon my life.

Contents

I. Introduction:

The concept of financial services may eventually differ in national laws[1]. Nevertheless it always refers to services provided by the finance industry. The finance industry covers a broad range of organizations that deal with the management of money. Traditionally, among these organizations are banks, credit card companies, insurance companies, consumer finance companies, stock brokerages, and some government sponsored enterprises. However, each day the financial industry becomes more complex.

Starting out as reliable business that could provide safe places to guard money or other values, banks[2] became the main source of credit creation. In fact, the invention of banking preceded that of coinage. Banking originated in Ancient Mesopotamia where the royal palaces and temples provided secure places for the safe-keeping of grain and other commodities. Receipts came to be used for transfers not only to the original depositors but also to third parties. Eventually private houses in Mesopotamia also got involved in these banking operations and laws regulating them were included in the code of Hammurabi.

Nevertheless, even today, the idea of a safekeeping place remains for many. When people "lend" money to non-financial corporations, in general they are conscious they are "lending" (or

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[1] The US Financial Modernization Act of 1999, also known as the "Gramm-Leach-Bliley Act" or GLB Act, for example, does not have a definition of financial services – similar to the Annex on Financial Services of General Agreement on Trade in Services (GATS). The Act says that a "financial holding company may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the Board, in accordance with paragraph (2), determines (by regulation or order): (A) to be financial in nature or incidental to such financial activity; or (B) is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally". And it presents a list of activities that are considered financial in nature for the purposes of the Act.

[2] The word bank, according to most of the authors, is supposed to be derived from "banco", the Italian term for bench. The Lombard Jews in Italy had benches in the market-place where they exchanged money and bills. When a banker failed, his bench was broken by the people, and he was called a bankrupt. But the term traces its origins back to the Ancient Roman Empire, where moneylenders would set up their stalls in the middle of enclosed courtyards called "macella" on a long bench called a "bancu", from which the words "banco" and bank are probably derive.
For more about financial history, see Davies, Glyn. *A history of money: from ancient times to the present day*, 3rd ed. Cardiff: University of Wales Press, 2002.

"making an investment"). But when depositors "lend" money to banks, they believe that they have "money in the bank". Despite this common sense, historically, the core activity of banks is financial intermediation[3] - the ability to exchange ownership claims with minimal cost. In this sense, the main economic role of banks is to provide the world with liquidity[4].

In fact, the savings/investment process in capitalist economies is organized around financial intermediation, making them a central institution of economic growth. Financial intermediaries are firms which borrow from consumer/savers and lend to companies that need resources for investment. However, this "intermediation market" is no longer exclusive to banks. Increasingly, borrowers are turning to the financial markets and to non-savings institutions, such as credit-card companies and consumer-finance firms, when they need a loan. There is also the disintermediation process - withdrawal of funds from a financial institution in order to invest them directly, generally for the purpose of obtaining higher yields[5]. This is reducing the profitability of traditional bank lending and has led many banks to enter new areas of business,

[3] One side of the operation is to raise funds (in general, paying some interest) - usually by accepting deposits from individuals, companies, financial institutions, and governments with surplus funds (savings) or by borrowing in the money markets. Then banks use those deposits and borrowed funds (liabilities of the bank) to make loans or to purchase securities (assets of the bank), charging or receiving interests. Banks make these loans to individuals, companies, other financial institutions, and governments (that need the funds for investments or other purposes). The difference between the interest rate a bank charges a borrower and the interest rate a bank pays a depositor is called spread. Interest rates provide the price signals for borrowers, lenders, and banks.

[4] The economic roles of banks also includes:

a. "issue" of money, in the form of banknotes and current accounts subject to cheque or payment at the customer's order;

b. netting and settlement of payments;

c. credit intermediation;

d. credit quality improvement;

e. maturity transformation -- banks borrow more on demand debt and short term debt, but provide more long term loans.

[5] Nowadays, the term disintermediation is applied as the removal of the intermediary in any commercial activity. Buyers bypass traditional distribution channels (wholesalers and retailers) in order to buy directly from the manufacturer and thereby pay less. Business-to-consumer or B2C (activities of e-businesses serving end consumers with products and/or services) is part of this process. But this term was originally applied to the banking industry in about 1967: disintermediation first referred to consumers investing directly in securities (government and private bonds, and stocks) rather than leaving their money in savings accounts, then later to borrowers going to the capital markets rather than to banks. The original cause was a US government regulation (Regulation Q) which limited the interest rate paid on interest bearing accounts that were insured by FDI

such as selling insurance policies and mutual funds. Increasingly, too, traditional banks are selling off parcels of their loans in the financial markets by a sophisticated instrument called securitization[6]. What recalls the derivatives[7] market and a whole sort of new financial instruments that are created, released, packet, repacked, reformatted, customized each single business day. In other words, there is no limit for the even more complex financial services industry.

As part of this process, it can be perceived the emergence of “universal banks” - financial institutions which combine the production and distribution of commercial and investment banking within a single firm, and eventually also distribute insurance and other financial services through subsidiaries. But the highest degree of integration of production, distribution and management is represented by the so called “financial conglomerate”. These entities can be defined as groups of companies under a common control which exclusive or predominant activities consist of providing significant services in at least two different financial sectors (banking, securities, insurance). Financial conglomerates are a great challenge for financial

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[6] Securitization is a structured finance process, which involves pooling and repackaging of cash-flow producing financial assets into securities that are then sold to investors. The worldwide respected magazine “The Economist” presents a good definition: “Turning a future cash flow into tradable, BOND-like SECURITIES. Creating such ASSET-backed securities became a lucrative business for financial FIRMS during the 1990s, as they invented new securities based on cash flow ranging from future mortgage and credit-card payments to BANK loans, movie revenue and even the royalties on songs by David Bowie (so-called Bowie-bonds). Securitization has many benefits, at least in theory. Issuers gain instant access to MONEY for which they would otherwise have to wait months or years, and they can shed some of the RISK that their expected revenue will not materialize. By selling securitized loans, investment banks are able to finance their customers without tying up large amounts of CAPITAL. Investors can hold a new sort of asset, less risky than unsecured bonds, giving them the risk-reducing benefit of DIVERSIFICATION. But there are dangers. The future cash flow underlying the securities may flow earlier or later than promised, or not at all.” See:
http://www.economist.com/research/Economics/alphabetic.cfm?letter=S#securitisation

[7] According Bloomberg.com Financial Glossary:
Derivative - A financial contract whose value is based on, or "derived" from, a traditional security (such as a stock or bond), an asset (such as a commodity), or a market index.
Derivative instruments - Contracts such as options and futures whose price is derived from the price of an underlying financial asset.
Derivative markets - Markets for derivative instruments.
Derivative security - A financial security such as an option or future whose value is derived in part from the value and characteristics of another security, the underlying asset.

regulators as these companies are capable to combine businesses which are subject to different schemes of supervision and might also include financial activities which, in many countries, are not conducted in an entity which is subject to solo prudential supervision (e.g. leasing, consumer credit, certain financial derivatives).

I.1. Globalization, Liberalization and Trade:

Nevertheless, there is another component in the increasingly complexity of the financial industry: Globalization[8]. As part of this context, world trade in services is booming and, at the same time, changing in high-speed. International trade in financial services is a notable example: it has intensely augmented as a result of global integration trends and the widespread use of information technology[9]. Nowadays, it represents a progressively more significant dimension of

[8] According "The Economist" (http://www.economist.com/research/Economics/alphabetic.cfm?letter=G): Globalization is "a buzz word that refers to the trend for people, firms and governments around the world to become increasingly dependent on and integrated with each other. This can be a source of tremendous opportunity, as new markets, workers, business partners, goods and services and jobs become available, but also of competitive threat, which may undermine economic activities that were viable before globalization.

The term first surfaced during the 1980s to characterize huge changes that were taking place in the international economy, notably the growth in international trade and in flows of capital around the world. Globalization has also been used to describe growing income inequality between the world's rich and poor; the growing power of multinational companies relative to national government; and the spread of capitalism into former communist countries. Usually, the term is synonymous with international integration, the spread of free markets and policies of liberalization and free trade. The process is not the result simply of economic forces. The decisions of policymakers have also played an important part, although not all governments have embraced the change warmly.

The driving force of globalization has been multinational companies, which since the 1970s have constantly, and often successfully, lobbied governments to make it easier for them to put their skills and capital to work in previously protected national markets. Firms enjoying some national protection, and their (often unionized) workers, have been some of the main opponents of globalization, along with advocates of fair trade.

Despite all the talk of globalization during the 1990s, in some respects the world economy was more integrated in the late 19th century. The labour market was certainly more global. For example, the flow of people out of Europe, 300,000 people a year in the mid-19th century, reached 1m a year after 1900. Now governments are much fussier about immigration, and people are no longer free to migrate as they wish. As for capital markets, only in the 1990s did international capital flows, relative to the size of the world economy, recover to the levels of the few decades before the first world war.

This early globalised economy did not last for long, however. Between the two world wars, the flows of trade, capital and people collapsed to a trickle. Even before the First World War, governments started to put up the shutters against migrants and imports. Could such a backlash against globalization happen again?"

[9] Technology is an important factor to change services from non-tradable to tradable items of the economy. It can be considered that financial globalization started with the invention of the telegraph. It can be observed that rates of return in different financial markets began to move together with the advent of the telegraph. Thereafter, wherever international capital flows were permitted, within minutes, interest rates and prices in different financial centres

domestic financial system activities. Therefore, countries with strong private service industries want to have better access to international markets, while countries without a developed private service industry are not convinced that it is in their best interest to liberalize their nationally-owned service sectors.

In this context, globalization should be observed as an exogenous phenomenon that affects and, sometimes, determines the economic environment in which the policy decisions are taken at domestic level. Therefore policymakers at national level should not disregard globalization. In this sense, just to postpone measures towards an increasingly open trade in financial services cannot be considered as a policy option. Current levels of technology and sophistication of worldwide operating financial institutions enable them to break through into markets which are supposed to be protected from external competition.

In favor of open market, some studies indicate that there are considerable gains from services reform, of which liberalization is an important element. A World Bank study suggests that countries which have successfully reformed and fully liberalized their financial and telecommunications services sector grew, on average, about 1.5 percent faster than other countries (Mattoo, Aaditya, Randeep Rathindran and Arvind Subramanian, 2001). This is due to current high levels of protection in services: thus, liberalization would create spillover benefits from capital and technology inflows. Dynamic gains are also expected, as in the financial services case, for example, given the central role it plays in the transformation of savings into investment and how a greater competition contributes in reducing transactions costs.

were essentially linked. Nowadays, with high speed communications and computers, it is just a question of microseconds to move capital trough markets around the world.

Otherwise, financial services are seen by some policymakers as an important component of national economic policy. For them, national banking services constitute part of a regulatory system which prevents capital flight, minimizes fluctuations in the exchange rate, and assures the supply of capital to domestic investments. The rapid outflow of money observed in some Latin American and East Asian developing countries crises in the 1980s and 1990s proved that liberalizing financial markets is far from being a guarantee of success if there is no adequate planning and management of investment[10]. Additionally, national financial institutions, especially state-owned ones, often provide services to poorer populations, which international private banks consider unprofitable, such as high risk loans, some kinds of insurance, and pension funds.

In fact, some authors argue that financial liberalization[11] creates banking system fragility: *"Financial market liberalization increases competition; competition erodes profits; lower profits*

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[10] The recent collapse of Bear Stearns can be viewed as an example. Even though Bear is not a fully regulated institution according American legal system, the investment bank was considered too central to the complex web of USA's financial system to be allowed to fail. To avoid a systemic crash, the situation was treated with a mixed private-public solution. But it is useful to remember that private-sector solutions to banking crises, in which strong institutions buy the weak, demand well-heeled banks – in Bear Steams case, it was JPMorgan Chase. When banks are threatened with insolvency, it is often the government - with the deepest pockets of all - that has to make good their losses – in the same example, JPMorgan was backed by the US Treasury.

[11] Opening the financial market to foreign institutions is only part of the so called "financial liberalization". It also includes a whole process of deregulation such as elimination of government controls on interest rates (deposit and/or lending) and credit allocation. According Goncalves, Marilyne P. and Constantinos Stephanou (2007):

"An important conceptual distinction needs to be drawn between trade policy reform in financial services and financial liberalization. The purpose of the former is to increase financial market access and remove discriminatory and other access-impeding barriers to foreign competition. By contrast, the chief purpose of financial liberalization is to remove distortions in domestic financial systems – for example, interest rate and capital account controls, directed lending policies, restrictions on intra-sectoral activities, preferential treatment of publicly-owned banks, entry barriers for new operators – that impede competition and the allocation of capital to its most productive and profitable uses. Financial liberalization can be further divided into domestic financial reform and capital account opening, and there is a broad literature on its appropriate speed and sequencing.

In that context, the liberalization of trade in financial services is a subset of the broader financial liberalization agenda. A country may thus not directly discriminate against foreign financial service providers while still operating a repressed financial system. Conversely, a country may decide to engage in partial, pro-competitive regulatory reform in its domestic financial market, but keep it closed to foreign competition. In practice, however, there are typically strong overlaps between the two types of policy reforms described above. Trade in financial services is often linked to capital movements, notably in the context of the establishment of a commercial presence which requires inward direct investment. Certain types of cross-border financial transactions may also involve *imply lower franchise values (i.e., the capitalized value of expected future profits); and lower franchise values lower incentives for making good loans – increasing the moral hazard problem. With sufficient competition banks will find it desirable to gamble. There is thus an inconsistency of interest rate liberalization and prudential bank behavior"* (Hellmann, Thomas F., Kevin C. Murdock and Joseph E. Stiglitz, 2000). How exactly does it happen? Excessive competition creates an environment where banks *"offer inefficiently high deposit rates in an effort to steal share from their rivals. Liberalization usually has a stated goal of increasing competition in the financial sector. This will have the effect of increasing the inter-bank elasticity of deposits while having a more modest, if any, effect on the total elasticity of deposits. This increase in the inter-bank elasticity will increase market stealing incentives, and this creates the link between liberalization and financial crises"* (idem, 2000). In parallel, *"if markets are sufficiently competitive, the bank earns relatively little from prudent investment but the bank can always capture a one-period rent from gambling. Thus increased competition tends to promote gambling in the banking sector"* (ibidem, 2000) – in other words, banks will tend to increase their exposure to more risky investments trying to seek higher profitability.

Rising costs and, mostly, escalating risks prove to be both unwise and a systemic danger, as the financial market shall always experience some "storm days". This situation is an enormous test to national financial regulatory and supervision agencies. These agencies face "almost an

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capital movements and hence require some measure of capital account opening as an inherent part of the service provision6. In addition, countries often seek to promote greater policy coherence by opening up domestic financial markets to foreign competition in the context of broader financial reform efforts. Finally, it bears noting that neither the liberalization of trade in financial services nor financial liberalization imply the complete deregulation of the domestic financial system per se. Quite the contrary, experience shows that stronger regulatory and supervisory frameworks are key complements to market opening measures so as to ensure that consumers and depositors are properly protected and that the integrity of the financial system and its ability to discharge its critical economy-wide functions are properly preserved."
See also Fischer, Klaus P. and Martin Chénard, 1997.

enigma" of how to achieve an "optimal" prudential regulation[12]. That means, for instance, to avoid hazardous competition, to induce financial institutions to invest prudently etc. – targeting stability and soundness of the system – and, at the same time, to promote efficiency in financial market to provide better conditions to the "real" side of economy. In a context of complex and exotic financial instruments proliferation and multinational financial conglomerates, it is a pretty tough challenge that requires domestic and worldwide cooperation and coordination of related government agencies and international organizations. This entire context also explains why government regulators are more inclined to be conservative and restrictive about open trade.

Nonetheless, despite the highly complex environment presented above, as trade and investment are essential for development in a globalized world, or as part of an economic policy necessity, countries are facing the defying task of entering the battlefield of multilateral, regional, or bilateral trade agreements negotiations. These deals may create important opportunities, but also establish specific obligations on a range of issues. How these obligations are built is a serious question. If there is only political will involved, above all among parts with different development levels, the possibility of a disaster is great: benefits can be concentrated at

[12] One of the main purposes of prudential regulation is to protect the national financial system from banking crises. Also it tries to reduce the level of risk bank creditors are exposed to. Mains instruments or requirements established by regulators includes:

a) Capital requirement;
b) Reserve requirement;
c) Corporate Governance requirements;
d) Financial Reporting, Disclosure and Prospectus Requirements;
e) Credit Rating Requirement;
f) Large Exposures Restrictions;
g) Related Party Exposure Restrictions.

In the article "Fixing finance", published in its April 5th-11th 2008 edition, "The Economist" stated: *"Finance is a brain for matching labour to capital, for allowing savers and borrowers to defer consumption or bring it forward, for enabling people to share, and trade, risks. The smarter the system is, the better it will do that. A poorly functioning system will back wasteful schemes and shun worthy ones, trap people in the present, heap risk on them and slow economic growth. This puts finance in a dilemma. A sophisticated and innovative financial system is susceptible to destructive booms; but a simple, tightly regulated one will condemn an economy to grow slowly"*.

the expenses of the majority of society. So, developing countries must have a clear understanding of what is at stake in these negotiations

Therefore, the main purpose of this paper is to explore two reference agreements on Trade in Financial Services, as well as their main characteristics related to their provisions: GATS and NAFTA. This Paper will be structured in 4 topics: Introduction, Multilateral Context and Framework, NAFTA Framework and Conclusions. In the final part, the author will try to bring some considerations to Brazil and other developing countries.

II. Multilateral Context and Framework:

The World Trade Organization (WTO) came into being in 1995. Nevertheless its history backs the last period of II World War. In the late 1940s, the U.S. State Department began to promote the establishment of an International Trade Organization (ITO). The proposal was to create an international organism which would oversee multilateral negotiations on trade liberalization, foreign direct investment, cartels, and commodity agreements; and it would complement the International Monetary Fund (IMF)[13] and the International Bank for Reconstruction and Development (IBRD, nowadays referred as World Bank[14]). Together, the IMF, the World Bank, and the ITO would encompass a comprehensive system for the management of international economic affairs.

[13] For more information about IMF, see www.imf.org/external/np/exr/faq/faqs.htm.
[14] The term "World Bank" generally refers to the IBRD and International Development Association (IDA). “World Bank Group” is used to refer to the five institutions or agencies collectively, which includes also:

- International Finance Corporation (IFC);
- Multilateral Investment Guarantee Agency (MIGA), and;
- International Centre for Settlement of Investment Disputes (ICSID).

For more information, see www.worldbankgroup.org and go.worldbank.org/YX2261GMX0.

The experience of chaotic interwar years[15] provided most of the background for the development of the concept of economic security – the fundamental idea behind the creation of these international economic organizations. Their defenders argued that economic discrimination and trade warfare were the essential causes of the two world wars. The experience of the Treaty of Versailles[16], the Great Depression and the "beggar thy neighbor" policies of 1930s government[17] was fresh on the minds of 730 delegates from all 44 allied nations that participated at the Bretton Woods Conference in 1944. To ensure economic stability and political peace, states decided to cooperate towards the construction of an effective international monetary system and the reduction of barriers to trade and capital flows.

IMF and IBRD were founded to tackle with international financial flows. IBRD also was aimed to finance the reconstruction of Europe in the post-war period – later on as a source of financial and technical assistance to developing countries around the world. In turn, however, the proposed ITO demonstrated particularly controversial both within the United States and around the world. When President Truman finally sent the Havana Charter to Congress in 1949, after three years of negotiations, legislators there hesitated to approve it. On December 6, 1950

[15] The interwar period is understood to be the period between the end of the I World War and the beginning of the II World War.
[16] The I World War was ended by several treaties, most notably the Treaty of Versailles, signed on June 28, 1919, though the Allied powers had an armistice with Germany in place since November 11, 1918. The Treaty of Versailles had a humiliating effect over Germany. Of the many provisions in the treaty, one of the most important and controversial provisions required Germany and its allies to accept full responsibility for causing the war and, under the terms of articles 231-248, disarm, make substantial territorial concessions and pay reparations. It should also be realized that, if Germany had won the war, it intended to impose a treaty of similar severity on its enemies. Actually, the Versailles reparation impositions were partly a reply to the reparations placed upon France by Germany through the 1871 Treaty of Frankfurt signed after the Franco-Prussian War. In turn, indemnities of the Treaty of Frankfurt were calculated, on the basis of population, as the precise equivalent of the reparations imposed by Napoleon I on Prussia in 1807. Anyhow, the dominant view is that the reparations, particularly forcing Germany to accept the entire blame, were the cause of Germany's economic woes and the concomitant rise of Nazism to power.
[17] After the worldwide economic downturn started at 1928, boosted by the Wall Street Crash of 1929, governments begun to use currency devaluations to increase the competitiveness of their country's export products and rising trade barriers in order to reduce balance of payments deficits – worsening the downward spiral: decreasing world trade, falling national incomes, shrinking demand, mass unemployment and deflationary spirals.

President Truman declared that his government would no longer seek Congressional approval of the ITO Charter.

At the same time, as part of trade system designed, the negotiations on the General Agreement on Trade and Tariffs (GATT) advanced and by October 1947 its final text was accomplished. In the lack of an international organization for trade, countries turned to this only on hand multilateral international “institution” for trade. Consequently, the GATT would over the years "transform itself" into a practically “de facto” international organization. Seven rounds of negotiations occurred under GATT before the eighth round - the Uruguay Round - concluded in 1994 with the establishment of the World Trade Organization (WTO)[18].

II.1. WTO Principles:

Beyond some success on reducing tariff barriers, the major achievement of GATT was its rules and disciplines. Part of the outburst of international trade during the last 60 years can be attributed to credible, stable and effective GATT rules and disciplines associated to a dispute settlement system which established a multilateral framework based upon the non-discriminatory principle. Between its key provisions there are two considered the cornerstones of the agreement and afterwards of the WTO trade law:

a) Most-favored-nation (MFN): any concession or privilege granted by one contracting party to the agreement to a product of another contracting party will be unconditionally granted to the like product of all other contracting parties. It is so

[18] The history of the GATT can be divided into three phases: the first, from 1947 until the Torquay Round, largely focused which goods would be covered by the agreement and tariff consolidation – binding tariff ceilings. A second phase, encompassing three rounds, from 1959 to 1979, focused on reducing consolidated tariffs – through schedules. The third phase, consisting only of the Uruguay Round from 1986 to 1994, extended the agreement fully to new areas such as intellectual property, services, capital, and agriculture. Out of this round the WTO was born. See Annex 1 for the Chronology of the rounds.

important that it is the first article of the GATT[19]. Some exceptions are allowed for preferential treatment of developing countries, regional free trade areas and customs unions.

b) National Treatment: the principle of giving to a foreigner from contracting parties the same treatment as one's own nationals. GATT Article III requires that imports be treated no less favorably than the same or similar domestically-produced goods once they have passed customs[20]. This includes internal taxes and other internal charges, and laws, regulations and requirements such as technical standards and sanitary/phytosanitary measures. Some exceptions comprise government procurement and subsidies.

Other fundamental principles of this multilateral trading system are:

a) Freer trade: gradually, through negotiation. The assumption is that opening markets has net positive effects, although it also requires adjustment. GATT and, subsequently, the WTO agreements allow countries to introduce changes gradually, through "progressive liberalization" – using schedules – and through rounds of negotiations.

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[19] The first paragraph of the first article of the GATT express well the concept:
"1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.*
(…)"

[20] Again, the first paragraph indicates the concept present in the whole article III:
*"1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.**
(…)"

b) Predictability: through binding and transparency. The objective is to make the business environment stable and predictable in favor of market security to traders and investors. Besides the commitments and the dispute settlement mechanism, one significant tool to promote this objective is the Trade Policy Review Mechanism (TPRM). TPRM is a peer review exercise intended to increase the transparency of WTO Members' trade policies and practices; and to stimulate better adherence by all Members to WTO rules and disciplines. This Mechanism is not designed to enforce specific commitments, to determine trade disputes, or to compel new policy obligations to Members[21].

c) Promoting fair competition. In addition to the non-discriminatory principles of MFN and National Treatment, WTO rules and disciplines tries to avoid the employment of unfair trade practices such as dumping and "distortionary" subsidies. Promotion of fair trade[22] includes disciplines over all WTO agreements such as intellectual property and services, for example.

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[21] This subject is treated at the Annex 3 of the "Agreement Establishing the World Trade Organization":
"(…)
(i) The purpose of the Trade Policy Review Mechanism ("TPRM") is to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members. Accordingly, the review mechanism enables the regular collective appreciation and evaluation of the full range of individual Members' trade policies and practices and their impact on the functioning of the multilateral trading system. It is not, however, intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members.
(ii) The assessment carried out under the review mechanism takes place, to the extent relevant, against the background of the wider economic and developmental needs, policies and objectives of the Member concerned, as well as of its external environment. However, the function of the review mechanism is to examine the impact of a Member's trade policies and practices on the multilateral trading system.
(…)"

[22] "Fair Trade" has a different meaning for many non-governmental organizations (NGO), developing countries and social, political and labor movements. For them, fair trade is a market-based approach to lessen global poverty and to promote sustainability. Under this concept generally it is advocated the following principles and practices in trading relationships:

- creation of opportunities for economically disadvantaged producers;

As briefly referred to before, the Uruguay Round represents the most profound institutional reform of the world trading system since the GATT's establishment. Not only did it update the General Agreement on Trade and Tariffs of 1947, but it also resulted in 60 agreements, annexes, decisions and understandings (see Annex 2). These texts extended the trading system into several new areas, particularly trade in services, investment and intellectual property. It also produced some trade reform in the sensitive sectors of agriculture and textiles. Furthermore, as described previously, the Uruguay Round finally created an international organization for trade, the World Trade Organization (WTO), with revised rules for settling disputes – which has been important to the enforcement of the agreements (see WTO Structure at Annex 3).

II.2. General Agreement on Trade in Services (GATS) – dealing with the main layers of trade restrictions: market access, national treatment and domestic regulation:

As the first multilateral trade agreement to cover trade in services, the General Agreement on Trade in Services (GATS) can be considered one of the main results of the Uruguay Round[23]. The GATS framework consists of: (i) rules and obligations specified in the Articles of the Agreement; (ii) annexes on specific sectors and subjects including an annex on financial services; and (iii) national schedules of market access and national treatment commitments and lists of MFN exemptions. Essentially, GATS rules were largely inspired by the same objectives of GATT (the agreement evolving trade in goods). In fact, all the key principles of GATT are

- transparency and accountability;
- capacity building;
- payment of a fair price;
- gender equality;
- safe working conditions;
- environmental protection.

[23] In a historical perspective, it can be considered an important step since trade had being seen almost only as the sale and shipment of goods among countries – when Adam Smith, Ricardo and other traditional authors presented their respectively trade theories, they were talking about goods.

founded in GATS text: Most-favored-nation (MFN)[24], National Treatment, gradually negotiated freer trade (through future negotiations), predictability (through binding and transparency) and promotion of fair competition (part will come through future negotiations on domestic regulation[25]).

However the GATS had to go in some way beyond the GATT. Differently of goods, major restrictions on trade in services are not provided through tariffs applied at the border, but through various measures whose implementation occurs primarily within national markets. Services barriers typically take the form of non-tariff barriers that are designed to limit not only the access of foreign services, but also the access of suppliers and consumers to the domestic market through legislation expressing such as quantity-restrictive policies, price-based policies and/or regulatory requirements.

Also, during the Uruguay Round process, negotiators realized that a text on services comprising only the traditional concept of trade, i.e., supply cross borders, would not cover the different ways in which services can be produced and delivered. Thus, The GATS agreement covers four modes of supply for the delivery of services in international trade:

[24] Although MFN status guarantees equal opportunities for suppliers from all WTO Members, as can be seen ahead in this paper, in reality no degree of market openness is required.

[25] *"Domestic regulations have a profound effect on services trade. On the one hand, effective regulation is often a precondition for successful liberalization. On the other hand, regulation can sometimes itself become an impediment to trade. While regulators must have the autonomy to remedy market failures and pursue social objectives, there may be times when such autonomy leads to protection, and hence trade friction. A major challenge for the GATS is how to design rules that prevent the protectionist use of domestic regulations but do not deprive regulators of the freedom they need to pursue legitimate objectives"* (Mattoo, Aaditya, 2004). For more discussion about this subject, see also: Kox, Henk and Hildegunn Kyvik Nordås (2007). *SERVICES TRADE AND DOMESTIC REGULATION*. OECD Trade Policy Working Paper No. 49. Paris: OECD.

	Criteria	Example	Supplier Presence
Mode 1: Cross-border supply	Service delivered within the territory of one WTO member, from the territory of another member.	Architectural project transmitted via internet or mail.	Service supplier not present within the territory of the member.
Mode 2: Consumption abroad	Service supplied in the territory of one WTO member to the service consumer of any other member	Tourism or health treatment abroad.	
Mode 3: Commercial presence	Service delivered within the territory of one WTO member by the supplier of any other Member, through commercial presence in that territory.	Establishment of a foreign bank in a domestic financial system.	Service supplier present within the territory of the Member
Mode 4: Presence of a natural person	Service delivered through presence of natural persons of a Member in the territory of any other Member.	Technician from company established abroad or a independent professional (as teachers or doctors).	

In the sense of structuring national commitments in schedules, WTO members have in general used a classification system comprised of 12 core service sectors subdivided into subsectors (see WTO document MTN.GNS/W/120):

1. Business services (including professional services and computer services);

2. Communication services;

3. Construction and related engineering services;

4. Distribution services;

5. Educational services;

6. Environmental services;

7. Financial services (including insurance and banking);

8. Health-related and social services;

9. Tourism and travel-related services;

10. Recreational, cultural and sporting services;

11. Transport services;

12. Other services not included elsewhere.

As mentioned before, national schedules present commitments on market access (article XVI) and national treatment (article XVII) – besides additional commitments not dealt with under the two previous articles (articles XVIII). By making a national treatment or market access commitment in a specific sector or subsector, a country consents to adhere to the principles as defined at GATS text, subject to the limitations listed in their schedule. A commitment also means a WTO member has agreed not to become more restrictive in that particular service sector, just as tariff schedules on GATT are a commitment of not to raise tariffs above the level listed. Any trespass of a country's commitments is subject to the WTO dispute settlement mechanism and compensations can be claimed.

So a Schedule of Specific Commitments identifies the services for which the WTO member guarantees market access and national treatment and any limitations that may be attached. Such limitations may be either horizontal (cross-sectoral) or sector-specific, and are listed for each of the four modes of supply. In this sense, articles XVI and XVII apply only to sectors or subsectors that are listed and according limitations or measures inscribed.

Actually, paragraph 2 of article XVI narrow the possible limitations on market access or, in other words, the possible borders measures that can be applied:

"2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on 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;

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and

directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment."[26]

National treatment limitations[27] under article XVII must also be clearly indicated, but these are not subject to any exhaustive listing or system of classification, as is the case of Market Access (article XVI). That is any measures which result in less favorable treatment of foreign

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[26] At its page 5, document S/L/92 of WTO, "GUIDELINES FOR THE SCHEDULING OF SPECIFIC COMMITMENTS UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)", presents some examples of Market Access limitations:

" (a) Limitations on the number of service suppliers:

- *Licence for a new restaurant based on an economic needs test.*
- *Annually established quotas for foreign medical practitioners.*
- *Government or privately owned monopoly for labour exchange agency services.*
- *Nationality requirements for suppliers of services (equivalent to zero quota).*

(b) Limitations on the total value of transaction or assets:

- *Foreign bank subsidiaries limited to x percent of total domestic assets of all banks.*

(c) Limitations on the total number of service operations or quantity of service output:

- *Restrictions on broadcasting time available for foreign films.*

(d) Limitations on the total number of natural persons:

- *Foreign labour should not exceed x percent and/or wages xy percent of total.*

(e) Restrictions or requirements regarding type of legal entity or joint venture:

- *Commercial presence excludes representative offices.*
- *Foreign companies required to establish subsidiaries.*
- *In sector x, commercial presence must take the form of a partnership.*

(f) Limitations on the participation of foreign capital:

- *Foreign equity ceiling of x percent for a particular form of commercial presence."*

[27] In general, as a principle, national treatment requires that a service supplier from another member country be treated no less favorably than service suppliers from the host country. However, again, exceptions or even no commitments on specific sector or subsector can be applied as it is possible to see in article XVI:

"1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall 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 that it accords to its own like services and service suppliers.

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. 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 like services or service suppliers of any other Member."

services or service suppliers[28]. A scheduling convention specified in Article XX requires that measures inconsistent with both Article XVI and Article XVII must be inscribed in the column of the schedule reserved for market access limitations.

When the restrictions are not explicit listed, the following terms are used[29]:

a) "Unbound": when commitments regarding the mode or modes of delivery in respect of Market access or national treatment for the service activity in question are not undertaken. Some variations are used, such as "Unbound, except for" to narrow the scope of the commitment to part of the subsector or to a specific activity;

b) "Unbound*" (or in other words "not applicable"): the asterisk should refer to a footnote which states "Unbound due to lack of technical feasibility" – when the mode of delivery of the designated service is not practical, and therefore, no relevant commitment can be technically feasible. The term may not be used as an entry in the national treatment column for modes 1 and 2 when, for the same service, there is a market access commitment;

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[28] At its page 6, document S/L/92 of WTO, "GUIDELINES FOR THE SCHEDULING OF SPECIFIC COMMITMENTS UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)", presents some examples of National Treatment limitations:
"(a) Domestic suppliers of audiovisual services are given preference in the allocation of frequencies for transmission within the national territory. (Such a measure discriminates explicitly on the basis of the origin of the service supplier and thus constitutes formal or de jure denial of national treatment.)
(b) A measure stipulates that prior residency is required for the issuing of a licence to supply a service. (Although the measure does not formally distinguish service suppliers on the basis of national origin, it de facto offers less favourable treatment to foreign service suppliers because they are less likely to be able to meet a prior residency requirement than like service suppliers of national origin.)
It is useful to keep in mind that, unlike Article XVI, Article XVII does not contain an exhaustive listing of the types of measure which would constitute limitations on national treatment."

[29] See document S/L/92 of WTO, "GUIDELINES FOR THE SCHEDULING OF SPECIFIC COMMITMENTS UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)".

c) “None”: this represents “full commitment” – when no conditions, limitations or qualifications are currently applied or intended to be introduced regarding market access or national treatment in a given mode of delivery of a sector or sub-sector, but this does not mean that there are no laws or regulations governing the service activity in question. In addition, the indication "none" in a specific sector or subsector means that no conditions, limitations and/or qualifications apply other than those mentioned in the Horizontal Commitments. The entry "none" under the national treatment column means no conditions and/or limitations other than those indicated under the market access column.

GATS agreement, and also regional agreements such as the North American Free Trade Agreement (NAFTA), has thus far focused more heavily on discriminatory barriers to trade in services than on nondiscriminatory measures. However, domestic regulation, even nondiscriminatory, may also become a substantial barrier to international trade in services. Diversity in this field, just to mention an example, can also play a role of a barrier when service providers must comply with multiple regulations: what is required, or permitted and normal, in one jurisdiction may be forbidden in another[30]. As the types and level of the barriers vary in different circumstances, so do the trade costs. In this case, some level of harmonization or mutual recognition is required if “real” trade is desired. Otherwise, in circumstances of restrictive Domestic Regulation, despite no Market Access or National Treatment limitations, trade and its

[30] In other perspective, it is necessary to recognize that in many cases there are regulatory “benefits” and even “opportunities” from diversity, especially when it address the specificities of a particular market. An acute example could be the Islamic financial model which applies Shariah (prescribed in the Koran) compliance requirements to financial products. The degree to which the Islamic principles are applied and enforced in the services sector varies from country to country. In general, as all forms of interest are forbidden, the Islamic financial system works on the basis of risk sharing (customer and bank divide the risk of the investment on agreed terms, and also the results, profits or losses, between them). In addition, alcohol, betting and pornography are not allowed in these investments. For more information, see: http://www.fsa.gov.uk/pages/About/Media/notes/bn016.shtml

potential benefits – economies of scale, consumer choice, and competitive disciplines – may not even have opportunity to exist.

However, this issue can be very complex as there are multiple types and phases of regulation. Even with harmonization and mutual recognition, there are still regulatory barriers posed by the continuing fact of varying enforcers of the law engaged in licensing, qualification, procedures and supervision. At this point, it is important to differentiate the prescriptive and enforcement aspects of regulatory activity. "Enforcement" refers to regulatory control, which covers the accreditation, supervision, and all law execution responsibilities of regulatory authorities. The "prescriptive" aspect refers to the output of substantive rule – that is, the content of the regulations that are designed and enforced. Consequently, regulation is a complex process, with varying "instants" that can possible interfere with trade[31].

The GATS recognizes the right of WTO members to regulate and introduce new regulations to meet national policy objectives like quality of service, safety of consumers, code of conduct etc[32]. Paragraph 1 of article VI states that such regulations affecting trade in services, in sectors where specific commitments are undertaken, must be reasonable, objective and impartially administered[33]. In this sense, a balance is demanded between market access provided

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[31] It is possible to list many examples of issues (at different moments) related to domestic regulation: use of subjective criteria, "behavior" of regulators, hidden agenda of domestic authorities, lack of transparency, unnecessary or abusive requirements and/or procedures, rules variation during the process analysis etc. Despite the importance of this subject on trade in financial services, this paper will focus on provisions of actual international agreements – where this matter is lightly treated.

[32] GATS Preamble explicit says:

"Members,

(…)

Recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

(…)"

[33] *"1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner."*

to service suppliers and the domestic regulations. Otherwise, market access and national treatment commitments listed in schedules can become useless by excessively restrictive and burdensome regulations[34].

In reality, the GATS agreement only touches the surface of this question. Article VI provides only a light framework to try to minimize possible distortions of trade generated by domestic regulations. In fact, disciplines on Domestic Regulation can be considered one of the Uruguay Round leftovers[35] (Sauvé, 2002) – issues to be addressed in subsequent work according mandates established by WTO agreements and later Ministerial Conferences. In this sense, GATS Article VI:4 includes a mandate according to which the WTO Council for Trade in Services shall develop disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services.

II.3. GATS Specific Provisions on Financial Services:

Financial services have always been considered, since early discussions about a multilateral agreement on trade in services based on GATT concepts, as a special and controversial sector. As presented in the introduction of this paper, financial sector has strategic meaning and political sensitivity. This happens not only because the volume of transactions conducted in international trade in services or because this sector is considered the backbone of all other economic activity, but also because it is viewed as a key tool for the control of national economies. Also economic authorities from national governments were very concerned about the possibility that the financial industry could be subordinated to an international organization

[34] About possible trade effects of domestic regulation, see: Mattoo, Aaditya and Pierre Sauvé. *Domestic Regulation and Service Trade Liberalization.* World Bank and Oxford University Press, 2003. See also footnote 25.
[35] See annex 4 for the GATS Built-in Agenda and New Deadlines Arising from the Doha Ministerial Declaration.

specialized in trade – and not in finance – with no expertise to deal with a subject as delicate as liberalization of financial markets.

Opposed approaches – high aspirations of some developed countries and considerable worry of developing countries – marked the long history of the negotiations and all related outcome. At the end of 1993, with Marrakesh Ministerial Meeting in April 1994 close, most of the texts had a very advanced version[36]. However, negotiations in financial services reached an impasse. Rather than declare failure, the negotiating parties decided to extend the deadline for agreement and to keep the process. Under significant pressure from the United States, and other developed countries, an interim Protocol on Financial Services was agreed in July 1995, and a final agreement (the "Fifth Protocol to the General Agreement on Trade in Services") was concluded in December 1997 – coincidentally with the financial crisis in Asia. On March 1999, the Fifth Protocol entered into force. By the conclusion of the negotiations, 102 WTO Members had made legally binding commitments in financial services – at that moment, more than in any other sector except tourism [37].

[36] *"In November 1992, the US and EU settled most of their differences on agriculture in a deal known informally as the 'Blair House accord'. By July 1993 the 'Quad' (US, EU, Japan and Canada) announced significant progress in negotiations on tariffs and related subjects ('market access'). It took until 15 December 1993 for every issue to be finally resolved and for negotiations on market access for goods and services to be concluded (although some final touches were completed in talks on market access a few weeks later). On 15 April 1994, the deal was signed by ministers from most of the 125 participating governments at a meeting in Marrakesh, Morocco"* – http://www.wto.org/trade_resources/history/wto/urug_round.htm. See also Stewart, Terence. *The GATT Uruguay Round: A Negotiating History (1993-1994) The End Game (Part I)*. Kluwer Law International, 1999.

[37] For a more about the FSA negotiations, see Dobson, Wendy and Pierre Jacquet. *Financial Services Liberalization in the WTO*. Washington, D.C.: Institute for International Economics, 1998. 80-85.

Table 1: GATS Framework on Financial Services

GATS agreement (general provisions on services)
Modes of supply
• Cross-border supply
• Consumption abroad
• Commercial presence
• Temporary presence of natural persons
General obligations and disciplines
• Most-favored-nation (MFN) treatment
• Transparency
• Recognition of services suppliers
• Restrictions to safeguard the balance of payments
Specific commitments
• Market access
• National treatment
• Additional commitments
Consultation, dispute settlement and enforcement
Financial Services Annex (FSA)
Coverage and definition of financial services
Prudential carve-out
Financial services expertise in dispute settlement
Recognition of prudential measures
Understanding on Commitments in Financial Services (UFINS)[38]
Specific provisions on Non-discriminatory Measures and Market Access
New Financial Services
Transfers of Information and Processing of Information
Temporary Entry of Personnel

[38] The Marrakesh Agreement established the World Trade Organisation (WTO) and its related agreements as well as the Ministerial Decisions and Declarations and, as a document separated from WTO agreements and its annexes, the Understanding on Commitments in Financial Services. The adoption of the Understanding is optional for WTO members as it will be presented.

Schedules of Commitments
Hybrid list approach[39] Scheduling by sector/sub-sector and by mode of supply Market access and national treatment limitations

Source: Adapted from Goncalves, Marilyne P. and Constantinos Stephanou (2007) and Key S. (1997).

As presented at Table 1, the Multilateral Framework on Trade in Financial Services under GATS agreement provides up to four levels of commitments (with up to three levels of provisions) depending on the issues concerned: articles applicable to all services sectors; the Annex on financial services; the Understanding on Commitments in Financial Services (optional adoption[40]); and National Schedules of Commitments. This framework can be considered as a recognition of the importance this sector: that financial services play a critical role in both the national and the global economy, not only in the case of trade, but also in regard to systemic stability and monetary integrity.

II.3.a. Annex on Financial Services:

The recognition mentioned in the previous paragraph is expressed in how the Annex on Financial Services sets out key parameters for the sector related to GATS rules:

- it exempts the functions of the central bank or monetary authority, whether supplied by the Government or by a private entity acting for the Government (topic 1 – Scope and Definition)[41];

[39] Schedules of GATS commitments presents a so-called "hybrid" list approach, which combines elements of 'positive' or 'bottom up' listing (i.e. identifying the sectors and/or modes of supply concerned) and 'negative' or 'top down' listing (i.e. identifying the limitations and restrictions attached to specific commitments).

[40] This document, which forms part of the schedule of Members adopting it, provides a standardized list of liberalization commitments in financial services. See previous footnote and topic II.3.b of this Paper.

[41] *"(…)*

(b) For the purposes of subparagraph 3(b) of Article I of the Agreement, 'services supplied in the exercise of governmental authority' means the following:

- it exempts activities related to monetary and exchange rate policies, and those of any entities using government financial resources, including statutory social security and public retirement plans (topic 1 – Scope and Definition)[42];

- it assures measures taken for prudential reasons, provided that they are not undertaken to avoid commitments or obligations under the GATS (this also called "*Prudential carve-out*" – topic 2 – Domestic Regulation)[43];

- it exempts the protection from disclosure any confidential or proprietary information in the possession of public entities (topic 2 – Domestic Regulation)[44];

- it provides indications for the recognition by a member of the prudential rules of another (topic 3 – Recognition)[45];

(i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
(ii) activities forming part of a statutory system of social security or public retirement plans; and
(iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
(c) For the purposes of subparagraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, 'services' shall include such activities.
(…)"

[42] See previous footnote.

[43] *"(…)*
(a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. 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.
(…)"

[44] *"(…)*
(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.
(…)"

[45] *"3. Recognition*
(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
(b) A Member that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such

- it requires that panels for disputes on prudential issues and other financial matters shall have the necessary and relevant expertise (topic 4 – Dispute Settlement)[46].

For the purpose of the Annex, definitions of financial services suppliers and public entity are provided:

"(…)

(b) A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

(c) "Public entity" means:

(i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions."

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agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.
(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII shall not apply."

[46] *"4. Dispute Settlement*
Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute."

Finally, the Annex defines financial services and presents a non-exhaustive list of financial activities (which also it has been constituted an alternative and more common used classification to that presented at WTO document MTN.GNS/W/120):

"(…)

(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). 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 as swaps, forward rate agreements;

(E) transferable securities;

(F) 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."

II.3.b. Understanding on Commitments in Financial Services:

The Understanding on Commitments in Financial Services (the "Understanding") offers an alternative way of undertaking commitments in this area. Despite this voluntary basis, the Understanding commits those WTO members that adopted it to deeper and more detailed market liberalization than the GATS alone prescribes – and as further explored in this paper, it has some common points with the Financial Services Chapter of NAFTA. It consists of a predetermined set of commitments, from which exceptions remain possible, and has been used by around 31 Members[47], including the EC. It essentially covers the following:

- Scheduling of monopoly rights and a "best endeavours" commitment for their elimination;
- Most-favoured-nation and national treatment in public procurement of financial services;
- Cross-border provision of MAT insurance, reinsurance and retrocession as well as services auxiliary to insurance;

[47] Almost all OECD Members used the Understanding to schedule their specific commitments on financial services. See document WTO S/C/W/72.

- Transfer of financial information and financial data processing, and other auxiliary financial services, excluding intermediation;
- The right to purchase abroad a wide range of financial services (basically excluding direct insurance);
- The right of establishment and expansion of a commercial presence;
- Permission for established suppliers to offer new financial services;
- Permission for the entry of certain personnel of established suppliers subject to certain conditions, including senior managers and certain specialists; and
- Standstill on certain non-discriminatory measures.

III. NAFTA Model:

The North American Free Trade Agreement (NAFTA) established a free-trade zone in North America; it was signed in 1992 by Canada, Mexico, and the United States and took effect on January 1, 1994 – months before the agreements signed in Marrakesh creating the WTO and all new multilateral framework for trade. NAFTA immediately lifted tariffs on the majority of goods produced by the signatory nations. It also calls for the gradual elimination, over a period of 15 years, of most remaining barriers to cross-border investment and to the movement of goods and services among the three countries[48].

Chapter 12 of the NAFTA addresses the liberalization of trade in services, both commercial and professional, among the three partners. Unlike the GATS, NAFTA follows some

[48] The treaty is trilateral in nature; the terms apply equally to all countries, in all areas except agriculture, in which stipulations, tariff reduction phase-out periods, and protection of selected industries, were negotiated on a bilateral basis. Provisions regarding worker and environmental protection were added later.

different structural parameters. First, it has a separate legal text for investment[49] (under Chapter 11 of NAFTA). In the WTO, the GATS comes investments in services as one of the modes of supply, mode 3: commercial presence[50]. Investments in Production of goods are processed in the WTO Agreement on Investment Measures Related to Trade (TRIMS - Trade-Related Investment Measures). Another important difference is that NAFTA also treats two major services sectors in independent chapters: telecommunications (Chapter 13) and financial services (Chapter 14).

Besides the legal structure, another difference between the agreements lays in the procedure of consignment the commitments at the Schedule. In NAFTA, the procedure is the use of negative list approach (also applied to investment), whereby cross-border trade in services are liberalized unless otherwise specified by reservations or non-conforming measures listed in an annex to the agreement. In GATS, and also in Mercosur, the sectors are included through positive lists. Members list the sectors and sub-sectors that want to liberalize and assume, for each sector, specific commitments (in a so called hybrid approach[51]). The liberalization process can move forward as more sectors and sub-sectors are included in the list. In this case, sectors or sub-sectors excluded from the list are not subject to any obligation of liberalization.

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[49] *"Concerning the level of investment liberalisation, NAFTA-inspired agreements tend to have an advantage in terms of the number of sectors covered by non-discrimination disciplines and the degree of transparency and predictability through a "one-shot" liberalisation encompassing all sectors and a "ratchet" mechanism that locks in future reforms. GATS-inspired agreements are often favoured by countries that want to preserve a certain flexibility and progressiveness in their liberalisation, while they reform and establish new regulatory frameworks. But the differences between the two approaches should not be overstated."* The interaction between investment and services chapters in selected Regional Trade Agreements: Key findings - http://www.oecd.org/document/42/0,3343,es_2649_33783766_39180010_1_1_1_1,00.html.

[50] Services provisions on NAFTA agreements covers the equivalent to modes 1, 2 and 4 of GATS (see articles 1213 and 1416):

"(…) cross-border provision of a financial service or cross-border trade in financial services means the provision of a financial service:

(a) from the territory of a Party into the territory of another Party,
(b) in the territory of a Party by a person of that Party to a person of another Party, or
(c) by a national of a Party in the territory of another Party,

but does not include the provision of a service in the territory of a Party by an investment in that territory;
(…)"

[51] See footnote 38.

III.1. Financial Services Chapter of NAFTA: main provisions:

As addressed before, NAFTA presents a chapter for financial services that in practice operates as a separate agreement. This Chapter 14 has some of the same provisions of the chapters 11 (Investments) and 12 (Cross-Border Trade in Services). It also refers to provisions of these two chapters. However, it introduces specific definitions and principles to some extent different than those provided to other service sectors, aiming for more ambitious liberalization for the sector. The result is a practically stand-alone (independent) agreement which could be implemented separately from the rest of the NAFTA agreement.

The NAFTA chapter on financial services adds new principles of liberalization[52] to those already contained in the chapters on cross-border trade in services and on investment: right of establishment of financial institutions, new financial services and data processing. This chapter also offers a separate dispute settlement mechanism; it provides a specific schedule of reservations and commitments; and it also creates a Financial Services Committee, whose assignment is to supervise the implementation of this Chapter and its further elaboration, to participate in disputes and to deal with any financial matters addressed by the contract parties.

III.1.a. Right of Establishment of Financial Institutions:

The first innovative provision of Financial Services Chapter of NAFTA is a text specifically designed to investment through commercial presence:

"Article 1403: Establishment of Financial Institutions

[52] It is important to recall that the NAFTA chapter on financial services, as other many international agreements in trade, must be understood primarily a code of principles or parameters to be observed by its Parties, as each particular countries conditions of liberalization or, eventually, "preferential treatment" will be found in their schedules.

1. The Parties recognize the principle that an investor of another Party should be permitted to establish a financial institution in the territory of a Party in the juridical form chosen by such investor.

2. The Parties also recognize the principle that an investor of another Party should be permitted to participate widely in a Party's market through the ability of such investor to:

(a) provide in that Party's territory a range of financial services through separate financial institutions as may be required by that Party;

(b) expand geographically in that Party's territory; and

(c) own financial institutions in that Party's territory without being subject to ownership requirements specific to foreign financial institutions.

3. Subject to Annex 1403.3, at such time as the United States permits commercial banks of another Party located in its territory to expand through subsidiaries or direct branches into substantially all of the United States market, the Parties shall review and assess market access provided by each Party in relation to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investors of another Party to choose the juridical form of establishment of commercial banks.

4. Each Party shall permit an investor of another Party that does not own or control a financial institution in the Party's territory to establish a financial institution in that territory. A Party may:

(a) require an investor of another Party to incorporate under the Party's law any financial institution it establishes in the Party's territory; or

(b) impose terms and conditions on establishment that are consistent with Article 1405.

5. For purposes of this Article, "investor of another Party" means an investor of another Party engaged in the business of providing financial services in the territory of that Party."

The Understanding on Commitments in Financial Services under GATS also contains provisions to address the right of establishment of financial institutions:

"Commercial Presence

5. Each Member shall grant financial service suppliers of any other Member the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence.

6. A Member may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the Member's obligation under paragraph 5 and they are consistent with the other obligations of the Agreement."

III.1.b. New Financial Services:

The financial industry is very dynamic to develop and offer new services, new instruments or to reinvent old ones. Also, a foreign investor or supplier may probably want to profit from its expertise gained abroad and desire to introduce a new service to that market in the host country. In the financial services sector, given that it is extensively regulated, the risk of a supplier not being permitted to introduce a new service may be higher than in other sectors. However, such situation does not fit on the principles of MFN or National Treatment. Therefore, specific consideration may also be needed to deal with the rapid pace of innovation in the financial services sector. The Financial Services Chapter of NAFTA, and also the Understanding on Commitments in Financial Services under GATS, contains provisions to address this issue.

Under Article 1407 the Financial Services Chapter of NAFTA, “each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those services that the Party permits its own financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons”. The Understanding on Commitments in Financial Services of the GATS contains also a provision on New Financial Services under which “a Member shall permit financial service suppliers of any other Member established in its territory to offer in its territory any new financial service”.

III.1.c. Data Processing:

Other aspect of globalized companies is the use of globalized back offices and data processing facilities (in general operated through outsourcing). The objective is to continuously pursue lower costs, higher efficiency and more focus on core business. Both the Understanding on Commitments in Financial Services of the GATS[53] and Article 1407 of NAFTA[54] contain

[53] *“8. No Member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph restricts the right of a Member to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of the Agreement.”*

[54] *“2. Each Party shall permit a financial institution of another Party to transfer information in electronic or other form, into and out of the Party's territory, for data processing where such processing is required in the ordinary course of business of such institution.”*

separate provisions under which a financial institution of another party must be permitted to transfer information for data processing necessary to the conduct of normal business activities.

III.1.d. Other Innovations:

Another interesting innovation is the provisions about self-regulatory bodies such as stock exchanges and investment dealer associations. These self-regulatory organizations can play an important role in the regulation of the financial services sector, notably in the securities area. Accordingly, both the NAFTA[55] and the Understanding (under GATS)[56] present provisions to ensure that the Agreement (including the MFN and the National Treatment provisions) applies to such bodies.

IV. Conclusions

During the last decades, many national services suppliers became global players. This fact has created a demand for free trade agreements in services. As the multilateral framework do not fulfill the ambitions of exporters, the world has seen the proliferation of many new agreements with different levels of commitments under regional, preferential or bilateral schemes. For agreements on trade in services, all agreements are based or inspired in two reference agreements: GATS and NAFTA. The objective of this paper was to explore these agreements in areas which they directly deal with international trade in financial services – not to indicate any preference or option as the implications must be analyzed by national authorities.

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[55] Article 1402 of the Financial Services Chapter of NAFTA provides that *"where a Party requires a financial institution or a cross-border financial service provider of another Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such self-regulatory organisation"*.

[56] The Understanding on Commitments in Financial Services of the GATS has a provision which reads as follows: *"When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Member in order for financial service suppliers of any other Member to supply financial services on an equal basis with financial service suppliers of the Member, or when the Member provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Member shall ensure that such entities accord national treatment to financial service suppliers of any other Member resident in the territory of the Member."*

To introduce this subject, this paper sought to present some challenges that national authorities face in the current context. A context of global markets, global players and, also, global consumers in a permanent and many times chaotic process of innovation and changes. But this is an inherent part of Capitalism, and, in a globalized and interconnected society based on the market economy, no one has total control – there is a constant process of creation and destruction of wealth[57].

From the perspective of developing countries, such as Brazil, the situation presented displays many tough challenges and even perils, but also reveals a time for opportunities. Not only companies from developed countries are profiting in this new globalized environment. Many companies from Brazil, Russia, India, China, Korea, South Africa, Mexico and other developing countries have become global players and beating North-American, European and Japanese companies even in their own territory.

In this sense, after the stabilization process in Brazil, national financial institutions may qualify to be strong candidates to become global players. Major Brazilian banks emerged from years of economic turbulences that forced them to be adaptable, innovative and creative, to heavily invest in technology, and to deal with different regulatory frameworks and economic models. In securities, Brazil has one of the most important commodities, futures and stock exchange of the world. In addition, Brazil has produced during all these years many financial executives, specialists and other professionals that are also innovative and highly adaptable.

Not only in the case of financial sector, besides the challenges of the import side, national authorities from developing countries should balance the cost-benefits of the opportunities of the

[57] For more about this interesting debate, it is recommended to see the documentary “Commanding Heights” from PBS television.

export side when negotiating trade agreements on services. For years, service firms in developing countries have exported their services despite non-tariff barriers to trade. In some instances, working with a local partner has made this possible. These firms probably will continue to export, but the participation of Free Trade Agreements in the services trade liberalization process can help them to be more profitable and successful in their export initiatives. Many experiences have shown that a supportive policy environment, relatively to a protectionist one, can generate, in most of the cases, greater benefit to service exporters.

The idea here, as can be verified in the introduction of this paper, is not to provide a "rosy" or naive scenario, but to call the attention to other important side when analyzing cost-benefits of trade and economic integration. In this perspective, as a result of trade liberalization and/or international integration to service exporters, the literature has pointed the following possible gains:

- access to world-class services will help exporters in developing countries to capitalize on their competitive advantage;

- liberalization or integration, under competition conditions, may lead to lower prices, better quality and a broader choice for consumers. Such benefits impact the whole economic system and help improving supply conditions for many other products and services;

- demand and opportunity to faster innovation – that is a key success factor for exporters of services. Technology, skills and experiences exchange tend to widely benefit the economy;

- trade agreements will result in greater transparency, allowing firms to provide their services under more predictable and stable conditions. Companies will be able to manage their strategy for the future with better level of certainty – encouraging, then, long-term investment.

In addition, focusing again in the financial industry, it is important to briefly recover some features of the present global market that it should be taken in consideration in the equation of the domestic authorities: three important elements that have contributed to the growing volume of international financial services trade:

1. Change in market structures: competition between different types of financial institutions has increased quickly (especially disintermediation, resulting in direct competition between banks and capital markets as a source of firms' financing). Mergers and Acquisitions activity in a global scale (involving institutions from different nationalities) have been happing progressively, mostly to attend strategic positions for global operations.

2. Liberalization (which includes domestic deregulation): relaxation of restrictions on financial services (especially banking), increasingly pro-competitive attitude by regulatory authorities, and more flexibility for international capital flows.

3. New technologies: improved telecommunications, computing, and electronic commerce have begun to revolutionize the provision of services, both wholesale and retail, reducing costs and allowing access to a wider range of service consumers. These developments have particularly important implications for the liberalization of cross-border trade, as the internet reduces obstacles to firms dealing directly with consumers in foreign markets.

Finally, having in mind the entire picture portrayed here in this paper, the present and coming negotiations will reveal many new challenges for the authorities, negotiators and financial services industry. The post–Uruguay Round negotiating agenda on financial services will demand many countries, particularly developing countries, to boost the necessary reforms required to support a fast-changing, modern economy.

For economic development, in order to produce employment and wealthy, it is necessary to make the markets work. Therefore, adequate prudential regulation and supervision, enhanced transparency and corporate governance, strengthened competition policy, provision of safety payment system and proper legal and accounting systems are all preconditions for countries to be able to take advantage of trade opportunities and their potential benefits to national economies.

It also demands a continuing and increasingly international dialogue and cooperation. The efforts being made by the Bank for International Settlements (BIS)[58], the International Organization of Securities Commissions (IOSCO)[59], International Association of Insurance

[58] *"The Bank for International Settlements (BIS) is an international organisation which fosters international monetary and financial cooperation and serves as a bank for central banks.*
The BIS fulfils this mandate by acting as:
* *a forum to promote discussion and policy analysis among central banks and within the international financial community*
* *a centre for economic and monetary research*
* *a prime counterparty for central banks in their financial transactions*
* *agent or trustee in connection with international financial operations*

Established on 17 May 1930, the BIS is the world's oldest international financial organisation.
As its customers are central banks and international organisations, the BIS does not accept deposits from, or provide financial services to, private individuals or corporate entities. The BIS strongly advises caution against fraudulent schemes" (www.bis.org).

[59] IOSCO, the international cooperative organization that gathers securities regulatory agencies, was born in 1983 from the transformation of its ancestor inter-American regional association (created in 1974).
"The member agencies currently assembled together in the International Organization of Securities Commissions have resolved, through its permanent structures:
* *to cooperate together to promote high standards of regulation in order to maintain just, efficient and sound markets;*
* *to exchange information on their respective experiences in order to promote the development of domestic markets;*
* *to unite their efforts to establish standards and an effective surveillance of international securities transactions;*
* *to provide mutual assistance to promote the integrity of the markets by a rigorous application of the standards and by effective enforcement against offenses."* (www.iosco.org).

Supervisors (IAIS)[60] and other international forums are fundamental for the confidence and a minimum level of stability in the financial systems of the world, which in turn is a key requirement for keeping all trading system open. An active participation in these forums is required in order to improve learning, mutual contribution, interaction and coordination.

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[60] *"Established in 1994, the International Association of Insurance Supervisors (IAIS) represents insurance regulators and supervisors of some 190 jurisdictions in nearly 140 countries, constituting 97% of the world's insurance premiums. It also has more than 120 observers. Its objectives are to:*

** Cooperate to contribute to improved supervision of the insurance industry on a domestic as well as on an international level in order to maintain efficient, fair, safe and stable insurance markets for the benefit and protection of policyholders*

** Promote the development of well-regulated insurance markets*

** Contribute to global financial stability"* (www.iaisweb.org).

Bibliography:

- Goncalves, Marilyne P. and Constantinos Stephanou (2007). *Financial Services and Trade Agreements in Latin America and the Caribbean: An Overview*. World Bank Policy Research Working Paper 4181. Washington: World Bank.

- Hellmann, Thomas F. and Kevin C. Murdock and Joseph E. Stiglitz (2000). *Liberalization, Moral Hazard in Banking, and Prudential Regulation: Are Capital Requirements Enough?*, American Economic Review, American Economic Association, vol. 90(1), pages 147-165, March.

- Houde, Marie-France, Akshay Kolse-Patil and Sébastien Miroudot (2007). *The Interaction between Investment and Services Chapters in Selected Regional Trade Agreements*. Paris: OCDE.

- Kono, Masamichi, Patrick Low, Mukela Luanga, Aaditya Mattoo, Maika Oshikawa and Ludger Schuknecht. *Opening Markets in Financial Services and the Role of the GATS.* Geneva: WTO.

- Mauch, Cláudio N., Raúl A. F. Rossi and Aécio C. Neves (2002). *Integración del Sistema Financiero MERCOSUR: Apoyo al MERCOSUR para la armonización de los Mecanismos de Supervisión Global Consolidada.* Buenos Aires: BID.

- Mattoo, Aaditya (2001). *Financial Services and the World Trade Organization: Liberalization Commitments of the Developing and Transition Economies.* Washington: World Bank.

- Mattoo, Aaditya (2004). *Domestic Regulation and Trade in Services: Designing GATS Rules.* Mimeo presented during WTO Workshop on domestic regulation (29-30 March 2004).

- Mattoo, Aaditya and Bernard Hoekman (2008). *Services Trade and Growth.* Washington: World Bank.

- Mattoo, Aaditya, Randeep Rathindran and Arvind Subramanian (2001). *Measuring Services Trade Liberalization and its Impact on Economic Growth: An Illustration*. World Bank Policy Research Working Paper No. 2655. Washington: World Bank.

- Nielson, Julia and Daria Taglioni (2004). *Services Trade Liberalisation: Identifying Opportunities & Gains.* OECD Trade Policy Working Paper No. 1. Paris: OCDE.

- Sauvé, Pierre (2002). *Completing the GATS Framework: Addressing Uruguay Round Leftovers*. Aussenwirtschaft, 57. Jahrgang, Heft III, Zürich: Rüegger, S. 301–341.

- Organisation for Economic Co-operation and Development (2004). *Competition in Financial Services.* Paris: OCDE.

- Organisation for Economic Co-operation and Development (2006). *Competition and Regulaton in Retail Banking.* Paris: OCDE.

- United Nations Conference on Trade and Development (2007). *Report of the expert meeting on trade and development implications of financial services and commodity exchanges*. Geneva: United Nations.

- United Nations Conference on Trade and Development (2007). *Trade and Development Implications of Financial Services*. Geneva: United Nations.

- World Bank (2007). *BRAZIL: The Industry Structure of Banking Services.* Washington: World Bank.

Annex 1

Chronology: from GATT to WTO

1947: Birth of the GATT, signed by 23 countries on October 30th in Geneva. Resulted in some 45,000 tariff concessions affecting about one-fifth of total world trade.

1948: The GATT came into force. First meeting in Havana agreed on the International Trade Organization charter. ITO was never ratified and the GATT, although provisional, remained the only multilateral instrument for the next 50 years.

1949: Second round at Annecy by 29 countries. Some 5,000 tariff cuts agreed to. Primarily aimed at facilitating accession to ten new countries.

1950-51: Third round at Torquay England by 32 countries. Members exchanged 8,700 trade concessions and admitted four new countries.

1956: Fourth round at Geneva by 33 countries. A minor round, basically concerned with further tariff concessions.

1960-62: The fifth "Dillon" round by 39 countries. Major issue was tariff renegotiations resulting from the creation of the EEC. About 4,400 tariff concessions were exchanged. The last of the old-style tariff negotiating conferences.

1964-67: The sixth "Kennedy" round by 74 countries. Started process of changing the rules by revising, reinterpreting or extending the original GATT articles. Tackled some of the problems encountered in the evolving US-EEC trade relationship (e.g. "chicken war").

Average industrial tariffs by developed countries reduced by 35% (and some 30,000 tariff lines bound) but tariff dispersion remained. Agriculture still untouched but agreed on negotiation of a World Grains Arrangement. Also agreed on Anti-dumping Code (implementation of Article VI of GATT). Adopted Part IV of GATT absolving developing countries from reciprocity in trade concessions. The GSP scheme proposed by UNCTAD II in 1968 came into force in 1971.

1973-79: The seventh "Tokyo" round by 99 countries. Average tariffs on manufactured goods were cut from 7% to 4.7% and made first attempt at harmonization of tariffs. Adopted a major package of new codes/agreements including non-tariff barriers, subsidies and countervailing measures, licensing procedures, government procurement, etc. In agriculture, little progress on systemic issues, but concluded two separate agreements on meat and dairy products. Agreed on establishing a legal basis for differential treatment in favour of developing countries (the "Enabling Clause").

1986-93: The eighth "Uruguay" round by 103 countries in 1986 and 125 by the time of the signing of the Marrakesh Agreement in 1994. The Uruguay round was the most comprehensive ever. It included trade-weighed tariff cuts of 38%. Incorporated the Tokyo codes/agreements and understanding and concluded new agreements, inter alia, in agriculture, SPS, textiles and clothing, services, investment and intellectual property rights.

Created a predictable and strengthened Dispute Settlement Mechanism.

Created the WTO.

1995: The WTO came into being with powers to implement the UR agreements, provide a forum for futher trage reform and seek to resolve trade disputes.

1997: Agreements concluded on telecommunications services, information technology and financial services.

Today (until July 2007) the WTO has 151 members and 29 other countries are waiting to join.

At the Fourth Ministerial Conference in Doha, Qatar, in November 2001 WTO member governments agreed to launch new negotiations. They also agreed to work on other issues, in particular the implementation of the present agreements. The entire package is called the Doha Development Agenda (DDA).

The negotiations take place in the Trade Negotiations Committee and its subsidiaries, which are usually, either regular councils and committees meeting in "special sessions", or specially-created negotiating groups. Other work under the work programme takes place in other WTO councils and committees.

The Fifth Ministerial Conference in Cancún, Mexico, in September 2003, was intended as a stock-taking meeting where members would agree on how to complete the rest of the negotiations. But the meeting was soured by discord on agricultural issues, including cotton, and ended in deadlock on the "Singapore issues" (investment, competition policy, transparency in government procurement and trade facilitation). Real progress on the Singapore issues and agriculture was not evident until the early hours of 1 August 2004 with a set of decisions in the General Council (sometimes called the July 2004 package). The original 1 January 2005 deadline was missed. After that, members unofficially aimed to finish the negotiations by the end of 2006, again unsuccessfully. Further progress in narrowing members' differences was made at the Hong Kong Ministerial Conference in December 2005, but some gaps remained unbridgeable and Director-General Pascal Lamy suspended the negotiations in July 2006. Efforts then focused on trying to achieve a breakthrough as soon as possible.

Annex 2

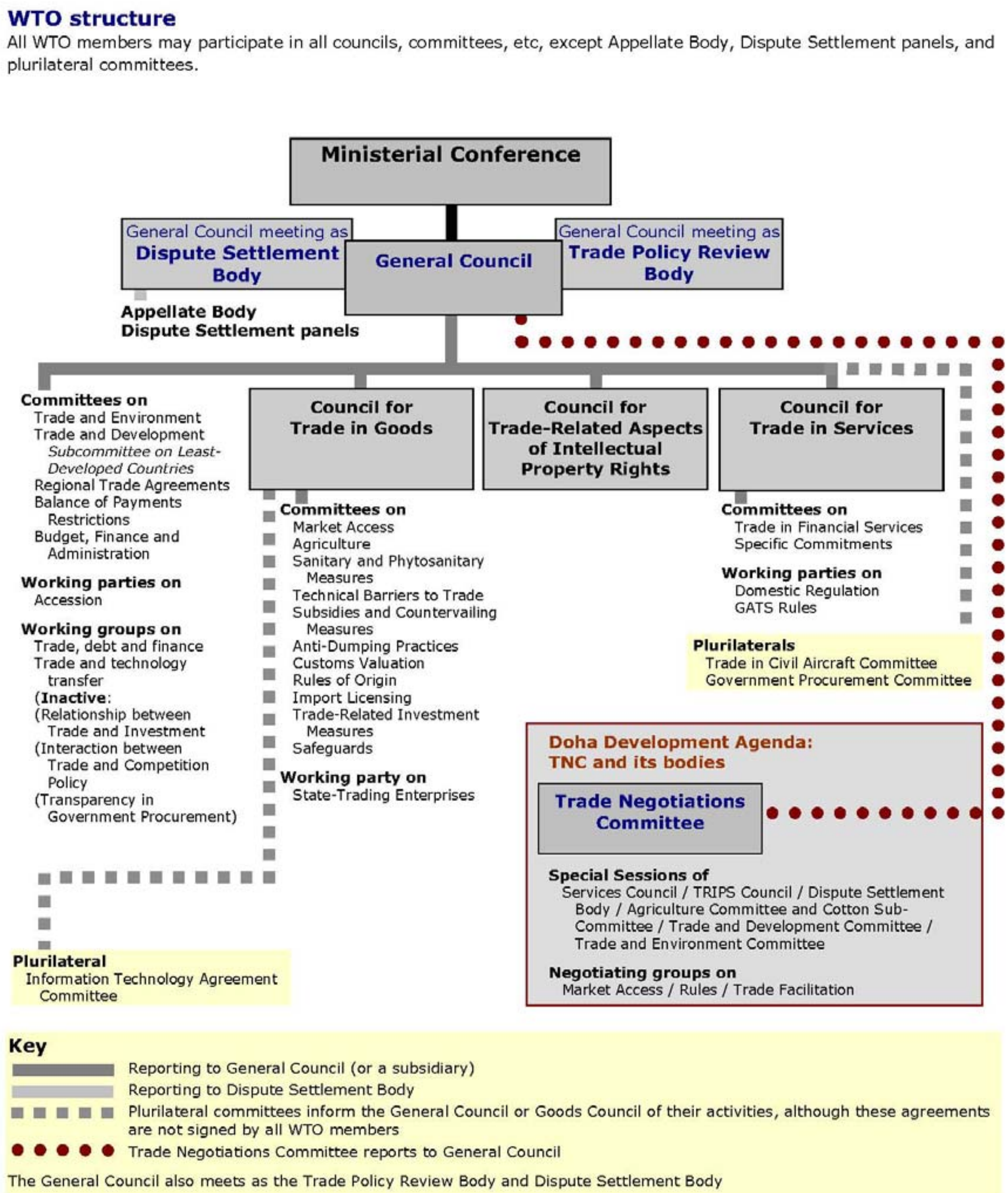
WTO: The Uruguay Round agreements

"The 'Final Act' signed in Marrakesh in 1994 is like a cover note. Everything else is attached to this. Foremost is the Agreement Establishing the WTO (or the WTO Agreement), which serves as an umbrella agreement. Annexed are the agreements on goods, services and intellectual property, dispute settlement, trade policy review mechanism and the plurilateral agreements. The schedules of commitments also form part of the Uruguay Round agreements." (http://www.wto.org/english/docs_e/legal_e/legal_e.htm)

- **Marrakesh Declaration of 15 April 1994**
- **Final Act**
- **Agreement Establishing the World Trade Organization**
- **Annex 1**
- **Annex lA: Multilateral Agreements on Trade in Goods**
- General Agreement on Tariffs and Trade 1994
- Understanding on the Interpretation of Article II:l (b) of the GATT 1994
- Understanding on the Interpretation of Article XVII of the GATT 1994
- Understanding on Balance-of-Payments Provisions of the GATT 1994
- Understanding on the Interpretation of Article XXIV of the GATT 1994
- Understanding in Respect of Waivers of Obligations under the GATT 1994
- Understanding on the Interpretation of Article XXVIII of the GATT 1994
- Marrakesh Protocol to the GATT 1994
- Agreement on Agriculture
- Agreement on the Application of Sanitary and Phytosanitary Measures

- Agreement on Textiles and Clothing
- Agreement on Technical Barriers to Trade
- Agreement on Trade-Related Investment Measures
- Agreement on Implementation of Article VI of GATT 1994
- Agreement on Implementation of Article VII of the GATT 1994
- Agreement on Preshipment Inspection
- Agreement on Rules of Origin
- Agreement on Import Licensing Procedures
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards
- **Annex lB: General Agreement on Trade in Services**
- **Annex lC: Agreement on Trade-Related Aspects of Intellectual Property Rights**
- **Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes**
- **Annex 3: Trade Policy Review Mechanism**
- **Annex 4: Plurilateral Trade Agreements**
- Agreement on Trade in Civil Aircraft
- Agreement on Government Procurement
- International Dairy Agreement
- International Bovine Meat Agreement

Annex 3


WTO structure
All WTO members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, and plurilateral committees.
Ministerial Conference
General Council meeting as Dispute Settlement Body
General Council
General Council meeting as Trade Policy Review Body
Appellate Body
Dispute Settlement panels
Committees on
Trade and Environment
Trade and Development
Subcommittee on Least-Developed Countries
Regional Trade Agreements
Balance of Payments Restrictions
Budget, Finance and Administration
Working parties on
Accession
Working groups on
Trade, debt and finance
Trade and technology transfer
(Inactive:
(Relationship between Trade and Investment
(Interaction between Trade and Competition Policy
(Transparency in Government Procurement)
Council for Trade in Goods
Council for Trade-Related Aspects of Intellectual Property Rights
Council for Trade in Services
Committees on
Market Access
Agriculture
Sanitary and Phytosanitary Measures
Technical Barriers to Trade
Subsidies and Countervailing Measures
Anti-Dumping Practices
Customs Valuation
Rules of Origin
Import Licensing
Trade-Related Investment Measures
Safeguards
Working party on
State-Trading Enterprises
Committees on
Trade in Financial Services
Specific Commitments
Working parties on
Domestic Regulation
GATS Rules
Plurilaterals
Trade in Civil Aircraft Committee
Government Procurement Committee
Doha Development Agenda: TNC and its bodies
Trade Negotiations Committee
Special Sessions of
Services Council / TRIPS Council / Dispute Settlement Body / Agriculture Committee and Cotton Sub-Committee / Trade and Development Committee / Trade and Environment Committee
Negotiating groups on
Market Access / Rules / Trade Facilitation
Plurilateral
Information Technology Agreement Committee
Key
Reporting to General Council (or a subsidiary)
Reporting to Dispute Settlement Body
Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members
Trade Negotiations Committee reports to General Council
The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

Annex 4

The GATS Built-in Agenda and New Deadlines arising from the Doha Ministerial Declaration

Note: In fact, deadlines were update at Hong Kong Ministerial Meeting. In any case, further development of the negotiations resulted in reopening the deadlines. The purpose of this table is to show the work ahead.

Subject-matter		***GATS Art.***	***Mandate***	***Deadlines***
Progressive Liberalisation	New specific GATS commitments	Art. XIX	Successive rounds of negotiation to achieve a progressively higher level of liberalisation	Negotiations must start by Jan. 2000 Doha mandate: Initial requests by 30 June 2002 Initial offers by 31 March 2003
GATS Rules	Emergency Safeguard Measures	Art. X:1	Development of GATS Agreement on Emergency Safeguard Measures based on the principle of non-discrimination	An agreement must be in force by: January 1998 (postponed) December 2000 (postponed) March 2002 (postponed) Progress report at September 2003 WTO Ministerial 15 March 2004*
	Government Procurement	Art. XIII:2	Negotiations on Government Procurement under the GATS	Negotiations must start by Jan. 1996* Progress report by GATS Council Chairman 30 June 2003
	Subsidies	Art. XV:1	Development of GATS subsidy discipline to avoid the subsidies' trade-distortive effects while addressing the appropriateness of countervailing procedures	Progress report by GATS Council Chairman 30 June 2003 Open-ended*
	Domestic Regulation	Art. VI: 4	Development of regulatory GATS disciplines	Open-ended*

* The deadlines in the table are those mandated by the GATS or its follow-up work that took place before the Doha Ministerial Meeting. The Doha Mandate of 2001 has officially integrated the GATS Negotiation Guidelines and its objectives. This guideline specifies that Members shall aim to complete negotiations underArticles VI:4, XIII and XV prior to the conclusion of negotiations on specific commitments.

Sauvé, Pierre. *Completing the GATS Framework: Addressing Uruguay Round Leftovers.* Aussenwirtschaft, 57. Jahrgang (2002), Heft III, Zürich: Rüegger, S. 301–341