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# LDC Services: Geneva Practitioners Seminar Series: “Making Sense of GATS and Applying Good Practices in Services Negotiations”

## Seminar 2: “Key Sectoral Issues and Domestic Regulation”

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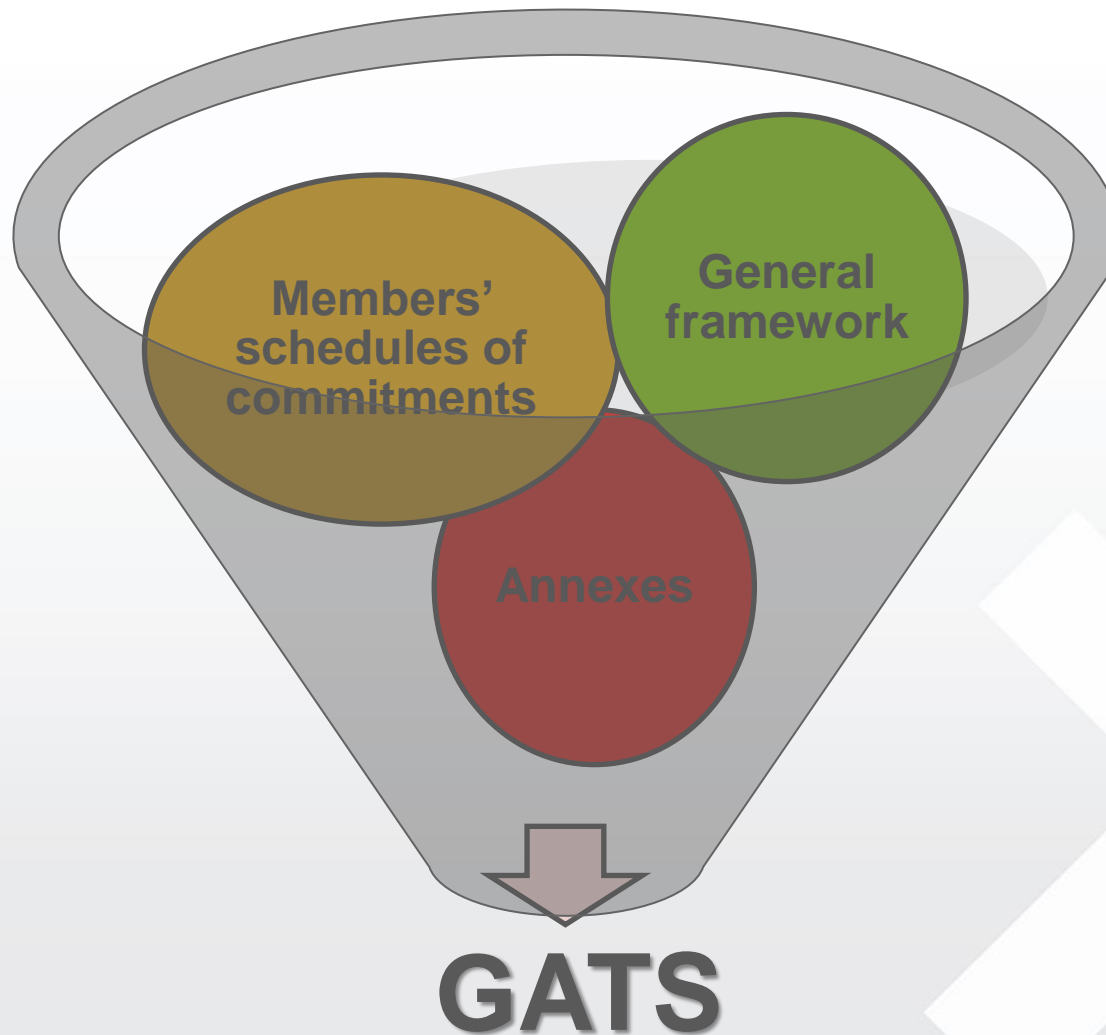


# Outline

- GATS 101
- The GATS and Financial Services
- Financial Services Negotiations in the DDA

# GATS 101

# GATS 101: Components



# GATS 101: Scope and coverage

- ❑ Services cover a wide range of activities.
- ❑ Under the GATS, the term “services” include any service in any sector except services supplied in the exercise of governmental authority.
  - *All Financial Services are included in its scope*
- ❑ **Trade in services** is defined in terms of 4 modes of supply:
  - (1) cross-border (Mode 1)
  - (2) consumption abroad (Mode 2)
  - (3) commercial presence (Mode 3)
  - (4) [temporary] presence of natural persons (Mode 4)

# GATS 101: How does it work?

- ❑ So-called **'unconditional' general obligations** apply to measures affecting trade in every sector (e.g. MFN, domestic regulation)
  
- ❑ **Specific commitments** are the result of negotiations
  - Countries make commitments in sectors where they wish to "liberalize" trade
  - Countries specify in their schedules...
    - ...which sectors are open to trade (under which mode), and
    - ...any limitations on MA & NT that apply
  
- ❑ In sectors where specific commitments have been made, other so-called **'conditional' general obligations** apply (e.g. on payments and transfers, domestic regulation)

# GATS 101:

## Liberalization “the GATS way” ...

### Elimination of 6 types of market access limitations

- ✓ Limits on N° of suppliers
- ✓ Limits on total value of transactions/assets
- ✓ Limits on total N° service operations (e.g. branch expansion)
- ✓ Limits on total N° of natural persons employed
- ✓ Restrictions on types of legal entity
- ✓ Foreign equity limitations

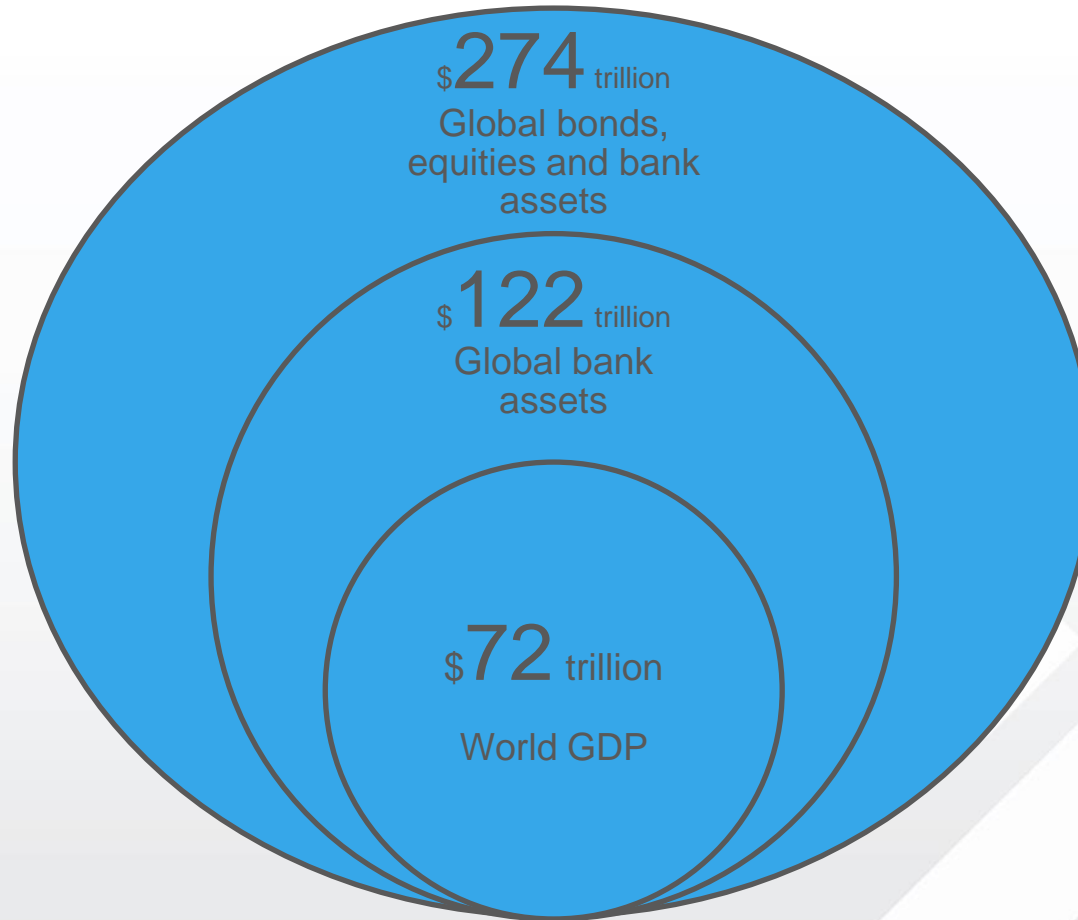
### Elimination of discriminatory measures (national treatment)

- ✓ Discriminatory licensing
- ✓ Discriminatory taxation
- ✓ Discriminatory regulation
- ✓ Others?

# GATS & FINANCIAL SERVICES



# The largest industry in the world...



Source: data from Global Financial Stability Report 2014 (IMF)

# FS: Specific legal instruments

GATS  
(main text)

- Common to all Members

Annex on  
Financial  
Services

- Integral part of the GATS
- Thus, common to all Members

Understanding  
on  
Commitments in  
FS

- Alternative way of making specific commitments
- Optional
- Resulting commitments apply on MFN basis

# Annex on Financial Services: main elements

Scope and definition	<ul style="list-style-type: none"> <li>• <b>Exclusions from the scope of GATS:</b> <ul style="list-style-type: none"> <li>• Monetary and exchange rate policies</li> <li>• Mandatory social security and retirement plans *</li> <li>• Activities of public entities (e.g. Central Banks) *</li> </ul> </li> </ul>
Prudential carve-out	<ul style="list-style-type: none"> <li>• Members allowed to take <b>'measures for prudential reasons'</b></li> <li>• Such measures should be used to avoid commitments or obligations under the Agreement</li> </ul>
Recognition of prudential measures	<ul style="list-style-type: none"> <li>• Can be granted unilaterally or through agreements</li> <li>• Must be extended to others "under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation"</li> </ul>
Definitions	<ul style="list-style-type: none"> <li>• Financial services</li> <li>• Financial service supplier</li> <li>• Public entity</li> </ul>

\* If no competition with a financial service supplier or a public entity

# Understanding on Commitments in FS: main elements

## Standstill

- Any conditions, limitations and qualifications to the commitments must be limited to existing non-conforming measures

## Market Access

- Cross-border: positive list of sectors
- Commercial presence: right of establishment and expansion
- Eliminate or reduce monopoly rights
- Purchase of FS by public entities subject to MFN & NT
- Allow “new financial services”
- Allow [cross-border] transfers and processing of information
- Allow temporary entry of [specific categories of] personnel

## Non-discriminatory measures

- Remove or limit any significant adverse effects on financial service suppliers of any other Member of various measures

## National treatment

- Access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities
- Access to self-regulatory bodies, securities or futures exchanges or markets, clearing agencies, etc.

# Financial services negotiations in the DDA

# Negotiating objectives \*

Mode 1	<ul style="list-style-type: none"> <li>• commitments for MAT insurance; reinsurance; insurance intermediation; insurance auxiliary services; financial advisory services; and financial information and data processing services</li> </ul>
Mode 2	<ul style="list-style-type: none"> <li>• Same as for mode 1, plus commitments on all the other non-insurance financial services (subsectors v-xvi)</li> </ul>
Modes 1 & 2	<ul style="list-style-type: none"> <li>• Additional liberalization, especially where the consuming agent is sophisticated, e.g., institutional consumer of securities services</li> </ul>
Mode 3	<ul style="list-style-type: none"> <li>• For all financial services, guarantee rights to establish new and acquire existing companies, in the form of wholly-owned subsidiaries, joint ventures and branches.</li> </ul>
Modes 1, 2 & 3	<ul style="list-style-type: none"> <li>• Full national treatment</li> <li>• Remove monopolies, numerical quotas or ENTs and mandatory cessions</li> </ul>
Transparency	<ul style="list-style-type: none"> <li>• Transparency in development and application of laws and regulations, transparent and speedy licensing procedures, and other regulatory issues should be addressed in the negotiations</li> </ul>

\* As per the “collective request” on financial services

# Thank you!