The World Trade Organization and Trade in Services

Edited by

Kern Alexander and Mads Andenas

LEIDEN • BOSTON
2008
CONTENTS

Preface .................................................................................................................. ix
List of Contributors ............................................................................................. xi

PART ONE

WORLD TRADE IN SERVICES AND THE GATS

Chapter One  Introduction ..................................................................................... 3
Kern Alexander and Mads Andenas

Chapter Two  The GATS in the Doha Round: A European Perspective ................. 9
Rafael Leal-Areas

Chapter Three  Twins, Siblings or Friends: The Conceptual Case of Goods and Services, Where Do We Stand and Where Could We Be Headed to? .............................................................. 105
Deepali Fernandes

Chapter Four  Proportionality and Balancing in WTO Law: A Comparative Perspective ................................................................................................................................. 147
Mads Andenas and Stefan Zeptning

Chapter Five  The Principle of Non-Discrimination and its Exceptions in GATS: Selected Legal Issues .............................................................. 173
Federico Ortino

PART TWO

GATS AND THE ROLE OF REGULATION IN SERVICES TRADE

Chapter Six  GATS and Domestic Regulation: Balancing the Right to Regulate and Trade Liberalization ......................................................... 207
Jan Wouters and Dominic Coppens

Chapter Seven  GATS Negotiations on Domestic Regulation: A Developing Country Perspective ................................................................. 265
Mina Mashayekhi and Elisabeth Tuerk

Chapter Eight  A Review of the WTO Regime for Telecommunications Services ......................................................................................................................... 319
Marco Bronckers and Pierre Larouche
Chapter Nine  The GATS and Internet-Based Services: Between
Market Access and Domestic Regulation  ........................................ 381
Stefan Zepltnig

Chapter Ten  Reconciling Liberalized Trade in Financial
Services and Domestic Regulation  .................................................. 411
Christine Kaufmann and Rolf H. Weber

PART THREE
GATS AND WTO DISPUTE SETTLEMENT

Chapter Eleven  Dispute Settlement Under the GATS: The
Gambling and Telecoms Cases ....................................................... 431
Brendan McGivern

Chapter Twelve  GATS Article XVI and National Regulatory
Lode van den Hende and Herbert Smith

Chapter Thirteen  Rethinking Retaliation in the WTO Dispute
Settlement System: Leveling the Playing Field for Developing
Countries in Asymmetric Disputes .................................................. 483
Klint W. Alexander

Chapter Fourteen  GATS’s Non-Violation Complaint: its Elements
and Scope Comparing to GATT 1994 ............................................ 509
Abd El-Rehim Mohamed Al-Kashif

PART FOUR
THE GATS AND FINANCIAL SERVICES

Chapter Fifteen  The GATS and Financial Services: Liberalisation
and Regulation in Global Financial Markets .................................... 561
Kern Alexander

Chapter Sixteen  The Prudential Carve-out .................................... 601
Wei Wang

Chapter Seventeen  Alternative Approaches to Financial Services
Liberalisation: The Role of Regional Trade Agreements .................... 615
John Cooke

Chapter Eighteen  How Far is Basel from Geneva? International
Regulatory Convergence and the Elimination of Barriers to
International Financial Integration .............................................. 635
Dr. Apostolos Gkoutzinis
CONTENTS

Chapter Nineteen  The GATS and the Legal Framework of the Chinese Banking Sector ................................. 713  
Wei Wang

Chapter Twenty  International Trade in Financial Services and the GATS .......................................................... 745  
Alastair Evans

Chapter Twenty One  Insurance Services and Recent Trade Negotiations ......................................................... 755  
David F. Snyder

Chapter Twenty Two  Model Schedule of WTO Commitments for Investment Banking, Trading, and Asset Management: Explanatory Memorandum ................................................................. 763

PART FIVE

GATS AND CULTURAL SERVICES

Chapter Twenty Three  The GATS and Higher Education: Challenging the Nation State’s Notion of the University ................. 775  
Michael Moosberger

Chapter Twenty Four  Cultural Diversity and International Trade—Taking Stock and Looking Ahead ............................. 823  
Rolf H. Weber

Chapter Twenty Five  The UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions ......................................................... 845  
Toshiyuki Kono

APPENDICES

Appendix A  – General Agreement on Trade in Services ....................... 905
Appendix B  – Model Schedule of WTO Commitments for Investment Banking, Trading, and Asset Management ............. 943
Appendix C  – Insurance Model Schedule and Best Practices .................. 967

Index ......................................................................................................................... 977