

Regional Dialogue on
**Promoting Services Development and Trade
in Latin America and the Caribbean**

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**Trade in Financial Services in LAC:
Safeguarding Stability**

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Trade in Financial Services in LAC: Safeguarding Stability

Melinda St. Louis

Public Citizen's Global Trade Watch

**Regional Dialogue on “Promoting Services Development and Trade in
Latin America and the Caribbean”**

Santiago de Chile, November 13, 2013





Outline

- **Lessons for promoting a robust, well-regulated financial sector**
- **Potential contradictions with governments' past trade and investment obligations**
- **Alternative approaches**

Liberalization of the financial services sector

Potential Benefits...

- improving countries' access to international capital
- lowering prices for consumers
- helping to recapitalize failing domestic firms
- encouraging the transfer of technology and skills

But if left unregulated, can lead to dangerous instability

Financial markets are not essentially stable

According to data from Bank of International Settlements, during the 25 years preceding the most recent global financial crisis...

- 93 countries suffered a total of 117 systemic disturbances in their financial systems
- 51 less severe disturbances
- An average of six a year

Development gains can be swiftly washed away in the wake of a severe financial crisis.

Financial deregulation was a cause of the global financial crisis

- Excessive risk-taking before the crisis created a shadow banking system
- Companies took advantage of countries' commitments to liberalize trade in financial services to engage in “regulatory arbitrage”
- Unregulated capital flows leave developing countries particularly vulnerable, as capital flows tend to be procyclical

Consensus: Financial markets need rules, limits and surveillance in order to make market failures less frequent and costly

Conflicts with international trade/investment obligations

During the financial deregulatory period of the 1990s...

- **Uruguay Round of the World Trade Organization's General Agreement on Trade in Services (GATS) negotiated**
- **Bilateral and regional free trade agreements and investment treaties replicated and sometimes deepened GATS model**

Conflicts: Market access rules

Conflate liberalization and certain types of deregulation. In committed sectors...

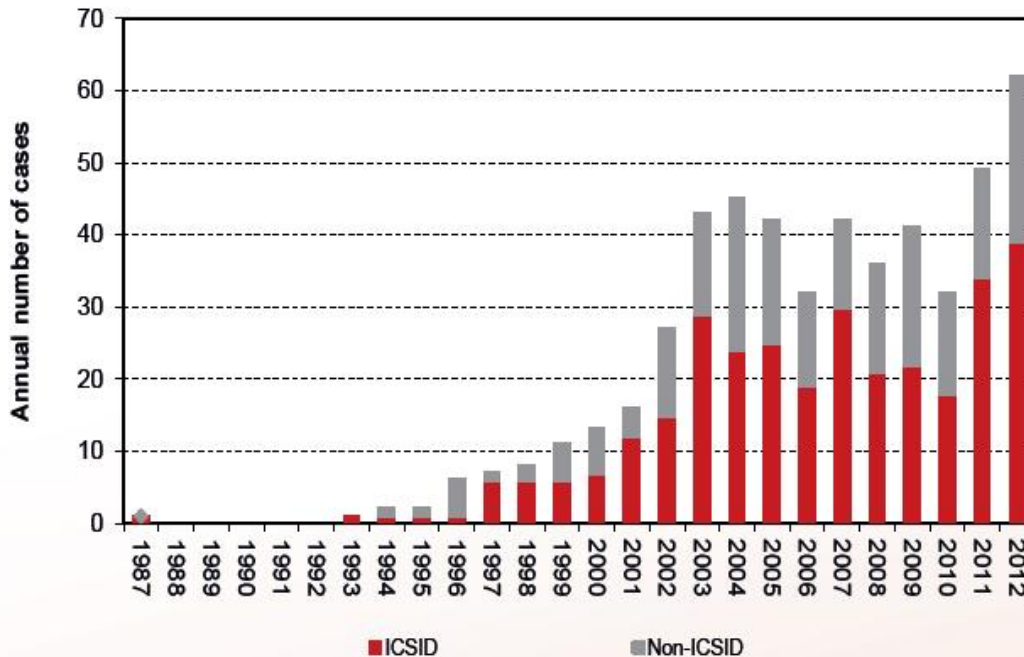
- Prohibit bans of financial services or products (e.g., bans on toxic derivatives)
- Prohibit size limits on entities (e.g. too-big-to-fail regulations)
- Prohibit requirements on legal form (e.g., firewalls between deposit and investment banking)
- Prudential measures exception is ambiguous if not self-cancelling

Conflicts: Transfers rules

- **Prohibit any restrictions on capital flows related to a service in a committed sector**
- **Implicates capital controls intended to protect stability from destabilizing “hot money” flows, asset bubbles, etc.**
- **IMF institutional view now recognizes capital controls as a legitimate policy tool in certain circumstances**
- **Exceptions in GATS are not sufficient to protect policy space**

Conflicts: Investor to state dispute settlement (ISDS)

Investor-State Cases Launched Each Year



Source: UNCTAD

Examples of ISDS implicating financial reg

- **CME v Czech Republic:** challenge too-big-to-fail regulations – *Investor awarded \$265 Million*
- **CMS Gas v Argentina :** challenge emergency stability measures – *Investor awarded \$133 Million*
- **Postova v Greece:** challenge sovereign debt restructuring measures – case pending

UN Stiglitz Commission

“The framework for financial market liberalization under the Financial Services Agreement of the General Agreement on Trade in Services (GATS) under the WTO and, even more, similar provisions in bilateral trade agreements may restrict the ability of governments to change the regulatory structure in ways which support financial stability, economic growth, and the welfare of vulnerable consumers and investors.”

-Report of Commission of Experts, 2009

UNCTAD Trade and Development Report 2011

“The General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO), many bilateral trade agreements and bilateral investment treaties (BITs) include provisions relating to payments, transfers and financial services that may severely limit not only the application of capital controls, but also other measures aimed at re-regulating or restructuring financial systems.”

-Chapter 4, p. 100-103

Current relevant negotiations

■ Trade in Services Agreement (TISA)

- Australia, Canada, **Colombia, Costa Rica**, the European Union, Hong Kong, Iceland, Israel, Japan, Mexico, New Zealand, **Chile**, Norway, Pakistan, **Paraguay, Peru**, South Korea, Switzerland, Taiwan, Turkey, and the United States
Negotiations began June 2013

■ Trans-Pacific Partnership (TPP)

- Australia, Brunei, Canada, **Chile**, Japan, Malaysia, **Mexico**, New Zealand, **Peru**, Singapore, the United States, Vietnam –
Attempt to finish by end of 2013

Alternative approaches to safeguard stability

- Ecuador-led discussion at World Trade Organization about macroprudential financial regulation
- Stronger exceptions to preserve policy space for capital controls / exempt financial services from investor to state dispute settlement in TPP
- Regional initiatives in LAC to consider alternatives to current forms of investor-state arbitration

Ultimately, clarifying / renegotiating trade and investment rules to ensure broad policy space for financial regulation may be necessary.



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