

INDEX

- Abu-Akeel, A., 110
abus de droit, 212
 Accountancy Disciplines, 180, 181,
 182, 183, 184, 199
 acquisitions and mergers,
 cross-border, 280, 300, 302
 administrative decisions in supervision
 of banks
 GATS, scope of, 219, 220
 market access, MFN, and
 national-treatment requirements,
 violating, 219
 review of, 248, 249
 Agreement on Import Licensing
 Procedures, WTO, 250, 251
 Agreement on Sanitary and
 Phytosanitary Measures (SPS
 Agreement), WTO, 186, 191, 195
 Agreement on Subsidies and
 Countervailing Measures (SCM
 Agreement), WTO, 226
 Agreement on Technical Barriers to
 Trade (TBT Agreement), WTO,
 186, 191, 195
 ‘aim and effects’ test of likeness of
 services, 139
 Allen, F., 42
 allocative efficiency, 39
 Andenas, M., 191
 Annex on Article II Exemptions,
 GATS, 61
 Annex on Financial Services, GATS,
 61, 62, 64, 65, 66, 322
 Annex on Movement of Natural
 Persons Supplying Services,
 GATS, 97, 130
 asymmetric impact analysis, 154
 Australia, on prudential exception, 208
 Austria
 more favourable treatment
 exemptions, 158
 reciprocal MFN treatment
 requirements, 158
 authorization
 information provided within
 reasonable period of time to
 applicants for, 247, 248, 253,
 254, 256
 regulation of subsidiaries of
 third-country banks in EU,
 297, 302
 Bank of Credit and Commerce
 International (BCCI), failure
 of, 78
 banking crises. *See* crises; global
 financial crisis
 banking union in EU, steps towards,
 4, 267
 bank liberalization. *See* liberalization in
 banking sector
 bank regulation. *See* regulation of
 banks
 bank supervision. *See* supervision of
 banks
 Barth, J., 30, 45
 Basel Committee on Banking
 Supervision, 3, 58, 74, 87
 banking crises, principles and
 standards as response to, 331
 Basel I (Capital Adequacy
 Framework), 81, 85
 Basel II, 278
 Basel III, 280, 281, 284, 304

- Concordat and revised Concordat, 77, 78
- Core Principles and Core Principles Methodology, 79, 80
- domestic regulation and, 195, 203
- establishment and status of, 13, 74
- G20 and, 75, 76
- GATS obligations and standards and principles of, 60, 87
- global financial crisis, response to, 83
- on large credit exposures, 274
- legal status of principles and standards, 85, 87
- membership of, 75
- minimum capital requirements, 32, 33
- Minimum Standards, 78, 344
- prudential exception and, 214
- recognition of MFN status and implementation of principles and standards, 166
- Reports on Observance of Standards and Codes, 86
- role of, 74, 77
- on supervision of banks, 16, 77, 217
- BCCI (Bank of Credit and Commerce International), failure of, 78
- Benston, G., 19
- Bernanke, Ben, 27
- Besanko, D., 39
- bilateral investment treaties (BITs), 222, 224
- Blot, C., 27
- Blum, J., 32
- Boot, A., 40
- Border Tax Adjustment criteria, 134, 136
- branches versus subsidiaries, 288
- Brown, Gordon, 76
- capital. *See also* Basel Committee on Banking Supervision
- countercyclical capital buffers, 84
- disclosure requirements, 83
- EU third-country subsidiaries, capital adequacy requirements for, 303
- leverage ratio, 84, 85
- market discipline, 83
- minimum capital requirements, 32, 33, 82, 83
- minimum liquidity standard, 84
- supervisory review process, 83
- Capital Adequacy Directive, EU, 279, 281, 283
- Capital Requirements Directive (CRD), EU, 278, 279, 280
- Capital Requirements Directive II (CRD II), EU, 281, 283
- Capital Requirements Directive III (CRD III), EU, 283
- Capital Requirements Directive IV (CRD IV), EU
- authorization to establish credit institution, 297, 301
- exercise of business of credit institutions, 302, 307
- global financial crisis and establishment of, 284, 297
- harmonized criteria, 296, 297, 346
- legislative principles of, 348
- regulation of subsidiaries of third-country banks, 288, 289, 296
- stricter requirements, ability of EU member states to adopt, 312, 313
- supervision of subsidiaries of third-country banks, 330, 333, 335, 337, 339, 342
- Caprio, G., 30, 45
- carve-out, prudential. *See* prudential exception
- CDOs. *See* collateralized debt obligations
- centralization of supervision of subsidiaries of third-country banks in EU, 284, 287, 331, 333
- Chalamish, E., 224
- charter value, 42
- cherry-picking, 46
- Claessens, S., 41
- Clarke, G., 46
- Codified Banking Directive (2000, 2006), EU, 277, 278, 279
- collateralized debt obligations (CDOs)
- EU regulation of third-country subsidiaries, 305
- securitization of loans by means of, 20, 24

- college of supervisors, EU, 282, 332
- Colombia, on notification of
 - recognition arrangements, 161
- common commercial policy, EU, 314, 316, 318
- compensation of banking executives, EU review of, 299
- competition and competition policy, 36, 43
 - efficiency associated with competition, 38, 41, 348
 - financial development and economic growth, links between, 36, 38
 - governments allowing increased competition in banking services, 36
 - internationalization and cross-border banking enhancing competition, 36
 - liberalization distinguished, 36. *See also* liberalization in banking sector
 - market power in banking and, 39, 41
 - non-bank financial intermediaries, bank competition from, 20
 - stability of regulation and efficiency of competition, balancing, 5, 42, 43, 51, 52, 53
- Consolidated Supervision Directive, EU, 277
- consolidated supervision of EU subsidiaries by third-country authorities, 333, 336, 339
- contestable markets, 41
- Council for Trade in Services, 69, 71, 73, 161, 162, 178
- countercyclical capital buffers, 84
- Court of Justice of the European Union (CJEU), 152, 265, 268, 271, 290, 314, 316
- CRD. *See* entries at Capital Requirements Directive
- cream-skimming, 46
- credence goods, 19
- credit default swaps, 21
- credit rating agencies, 22, 23
- Cremona, M., 4
- crises. *See also* global financial crisis
 - Basel Committee principles and standards as response to, 331
 - national treatment obligation and crisis support, 66
 - Principles for Cross-border Cooperation on Crisis Management (FSB), 76
 - prudential exception and crisis circumstances, 209, 214
- cross-price elasticity test of likeness of services, 136, 138, 141, 144
- Cull, R., 46
- Dalhuisen, J., 29
- de jure and de facto discrimination, 115, 146, 147, 155, 167
- de Larosière Report (2009), 283, 284, 285, 311, 331
- Decision on Financial Services, GATS, 68
- Decision on the Application of the Second Annex on Trade in Financial Services, GATS, 69
- defendants, rights of, 89
- Degryse, H., 41
- Dejmek, Paulina, 281
- Delimatsis, P., 182, 193, 198
- Demirgüç-Kunt, A., 45
- Desmedt, A., 187, 189
- Dimascio, N., 224
- disciplines, normative content of, 182, 203, 221. *See also* specific disciplines
- Disciplines on Domestic Regulation, GATS, 74
- disclosure requirements in Basel Capital Adequacy Framework, 83
- discrimination prohibition and banking regulation, 133, 171, 260. *See also* most-favoured-nation (MFN) treatment; national treatment
- asymmetric impact analysis, 154
- both services and service suppliers covered by, 135
- de jure and de facto discrimination, 115, 146, 147, 155, 167
- distinguishing discrimination from restrictions, 105

- domestic regulation and, 200, 203, 205
- EU regulation of third-country subsidiaries, 319
- freedom of establishment principle in EU and, 292, 296
- intent of measure, considering, 147, 154
- less favourable treatment, what constitutes, 134, 144, 145, 157
- likeness, concept of, 134, 145
- necessity test for exceptions to, 152, 154
- origin of banking services, adverse effects linked to, 154, 156
- overlap between measures covered by market access restriction rules and, 105, 124
- protectionism, discrimination as proxy for, 133
- prudential exception and, 213
- 'rule of reason' approach to, 152
- service suppliers, likeness of, 142, 144
- services, likeness of, 136, 142
- discrimination prohibition and
 - banking supervision, 231, 236
 - administrative decisions, discriminatory, 220
 - application of existing case law to, 231, 232
 - EU supervision of subsidiaries of third-country banks, 338, 339
 - GATS, individual supervisory assessments falling within scope of, 220, 224
 - intent of supervisory authority, 234, 235
 - less favourable treatment, 231, 232, 233, 234
 - likeness, concept of, 231, 232
 - limits on impact of prohibition, 232, 235
 - objective criteria for, 233
 - origin of banking services, adverse effects linked to, 244
- Dispute Settlement Understanding (DSU), WTO, 196, 226
- Doha Round negotiations, 70, 71, 72, 208
- domestic regulation, 172, 206, 261
 - administration, procedural obligations relating to, 173, 174
 - content, procedural and substantive obligations relating to, 174, 203
 - disciplines, normative content of, 182, 203, 221
 - Disciplines on Domestic Regulation, GATS, 74
 - discrimination prohibition and, 200, 203, 205
 - EU regulation of third-country subsidiaries, 319, 320
 - harmonization of, 199, 200
 - international standards and, 195, 198, 203, 261
 - licensing requirements, 174, 176, 177, 182
 - market access rules and, 172, 178, 181
 - national treatment and, 181, 182
 - necessity test, 182, 184, 191, 198
 - objective criteria requirement, 182, 183
 - proportionality analysis and, 187, 188, 191
 - qualification requirements and procedures, 174, 177
 - recognition principle and, 198, 199, 201
 - relevant criteria requirement, 194
 - specific commitments, applicable only to sectors with, 177, 178, 195, 198
 - technical standards, 174, 177, 194, 195
 - transparency requirement, 182, 184
 - Understanding on Commitments in Financial Services and, 203, 205
- DSU (Dispute Settlement Understanding), WTO, 196, 226
- due process, 243, 257, 340, 342
- EBA (European Banking Authority), 286, 298, 332, 341, 346
- ECB (European Central Bank), 287, 332, 333, 335, 343, 346
- economic growth and financial sector development, links between, 36, 38
- EEC (European Economic Community), establishment of, 269

- Eeckhout, Piet, 4
 efficiency
 allocative, 39
 evidence of competition as, 38, 41, 348
 of internationalization and
 cross-border banking, 43, 44, 346
 productive, 40
 stability of regulation, balancing
 efficiency of competition with, 5,
 42, 43, 51, 52, 53, 345, 348
 Ehring, L., 154
 EIOPA (European Insurance and
 Occupational Pensions
 Authority), 286
 electronic communications, use of, 253
 emergencies. *See* crises; global financial
 crisis
 ESFS (European System of Financial
 Supervisors), 284, 285, 286, 343
 ESMA (European Securities and
 Markets Authority), 286
 ESRB (European Systemic Risk Board),
 285, 286
 establishment, freedom of, in EU, 269,
 271, 289, 296
 EU (European Union)
 banking union, steps toward, 4, 267
 external dimension of internal
 market, 266
 GATS obligations, 3, 4, 345, 346,
 349, 351
 legislative principles and trade in
 banking services, 348
 liberalization of banking sector,
 European approach to, 6, 265,
 267, 345, 347. *See also* EU
 banking law on third-country
 banks; regulation of subsidiaries
 of third-country banks in EU;
 supervision of subsidiaries of
 third-country banks in EU
 mutual recognition agreement with
 Switzerland, 162
 on prudential exception, 208
 on review of administrative
 decisions in supervision of
 banks, 248
 schedules of specific commitments, 63
 WTO law, interaction of EU law
 with, 2, 5, 345, 346, 349, 351
 WTO negotiations, EU conduct of, 63
 EU banking law on third-country
 banks, 267, 268, 287, 349, 351
 before 1985, 268, 269, 271
 Capital Adequacy Directive, 279,
 281, 283
 centralization of financial
 supervision, 284, 287, 331, 333
 Codified Banking Directive (2000,
 2006), 277, 278, 279
 Consolidated Supervision Directive,
 277
 CRD, 278, 279, 280
 CRD II, 281, 283
 CRD III, 283
 CRD IV. *See* Capital Requirements
 Directive IV
 evolutionary process of, 268, 269
 Financial Services Action Plan
 (1999), 269, 275, 277
 First Banking Directive (1977), 270,
 271, 273, 274, 277, 297
 free movement and free establishment
 principles, 269, 271, 289, 296
 GATS and, 279
 global financial crisis and, 266, 269,
 281, 287, 297, 299, 305, 331
 harmonization, 265, 266, 271, 272,
 294, 295, 296, 327, 346
 home country control principle, 265,
 271, 272, 348
 Large Exposures Directive (1992),
 274, 277, 297
 liberal rule of origin in EU, 293, 329,
 330, 346, 351
 Lisbon Treaty, 4, 315, 346, 350
 mergers and acquisitions, cross-
 border, 280, 300, 302
 mutual recognition, 265, 271, 272,
 307, 348
 Own Funds Directive (1989), 274,
 277, 297
 primary law (TFEU), 268
 prudential assessment, 280, 281,
 284, 309
 recasting technique in EU law, 278

- Second Banking Directive (1987), 272, 274, 277, 297, 305
 secondary law (directives and regulations), 268
 Solvency Ratio Directive (1989), 274, 277, 297
 SSM, 287, 332, 335, 343
 TFEU, 268, 289, 296
 White Paper on Financial Services Policy 2005–2010, 269, 277, 281
 White Paper on the Completion of the Internal Market (1985), 265, 269, 271, 275
 EU common commercial policy, 314, 316, 318
 European Banking Authority (EBA), 286, 298, 332, 341, 346
 European Central Bank (ECB), 287, 332, 333, 335, 343, 346
 European Company Statute, 295
 European Court of Justice. *See* Court of Justice of the European Union (CJEU)
 European Economic Community (EEC), establishment of, 269
 European Insurance and Occupational Pensions Authority (EIOPA), 286
 European Securities and Markets Authority (ESMA), 286
 European System of Financial Supervisors (ESFS), 284, 285, 286, 343
 European Systemic Risk Board (ESRB), 285, 286
 European Systemic Risk Council, 284
 executive compensation, EU review of, 299
 experience goods, 19
 expertise and repute of directors, 298, 301
 Farber, D., 140
 fees, reasonableness of, 254, 256
 Fifth Protocol (Financial Services Agreement), GATS, 70
 financial crises. *See* crises; global financial crisis
 financial holding company in EU, need for third-country bank to set up, 337, 338
 financial links between banks, 25
 financial sector
 contagiousness of bank failures in, 24, 26
 economic growth and development of, links between, 36, 38
 GATS, what constitutes trade in financial services for purposes of, 94, 100
 homogenization through internationalization of, 47
 insurance and insurance-related services, 99
 participation by undertakings outside, 305
 Financial Sector Assessment Program, IMF and World Bank, 85
 Financial Services Action Plan (1999), EU, 269, 275, 277
 financial stability
 efficiency of competition and stability of regulation, balancing, 5, 42, 43, 51, 52, 53, 345, 348
 in EU, 346
 internationalization and cross-border banking, 44, 46, 47
 Financial Stability Board (FSB, formerly Financial Stability Forum), 76, 77, 86, 283
 Fink, C., 293
 First Banking Directive (1977), EU, 270, 271, 273, 274, 277, 297
 foreign banks, opening of market to. *See* internationalization and cross-border banking
 Franklin National Bank failure, 74
 free movement and free establishment principles of EU, 269, 271, 289, 296
 free-rider problem and intermediary role of banks, 12, 13
 FSAP. *See* Financial Sector Assessment Program; Financial Services Action Plan
 FSB (Financial Stability Board, formerly Financial Stability Forum), 76, 77, 86, 283
 Fu Lung group, 61

- G7, 76
 G10, 75
 G20
 Basel Committee on Banking
 Supervision and, 75, 76
 countries represented in, 75
 declaration of 2009, 283
 FSB set up by, 76, 77
 Toronto Summit Declaration
 (2010), 57
 Gale, D., 42
 GATS (General Agreement on Trade in
 Services), 58, 60, 61, 72, 259,
 349. *See also* prudential exception;
 entries at market access and
 discrimination prohibition
 Annex on Article II Exemptions,
 61
 Annex on Financial Services, 61, 62,
 64, 65, 66, 322
 Annex on Movement of Natural
 Persons Supplying Services,
 97, 130
 Basel principles and standards and
 obligations under, 60, 87
 chronological overview of relevant
 legal sources, 72
 Decision on the Application of the
 Second Annex on Trade in
 Financial Services, 69
 Decision on Financial Services, 68
 Disciplines on Domestic Regulation,
 74
 Doha Round negotiations, 70, 71,
 72, 208
 EU banking law and entry into force
 of, 279
 EU obligations under, 3, 4, 345, 346,
 349, 351
 Fifth Protocol (Financial Services
 Agreement), 70
 framework agreement, 61, 65
 GATS 2000, 70
 Hong Kong Ministerial Declaration,
 71
 July Package, 70
 post-Uruguay Round documents,
 68, 72
 regulation of banks. *See* GATS,
 banking regulation falling within
 scope of
 Report of April 2011, 71
 schedules of specific commitments,
 62, 63, 64, 179, 181
 Second Annex on Trade in Financial
 Services, 69
 Second Protocol, 69, 70
 supervision of banks. *See* GATS,
 individual supervisory
 assessments falling within
 scope of
 technological neutrality of, 98
 Understanding on Commitments in
 Financial Services, 63, 68, 125,
 131, 132, 167, 169
 Uruguay Round documents,
 61, 68
 GATS, banking regulation falling
 within scope of, 88, 104, 259
 affecting, what constitutes, 94
 challenging measures ‘as such’ or ‘as
 applied’, 90, 91, 92
 EU regulation of third-country
 subsidiaries, 292, 296, 318, 327
 freedom of establishment in EU and,
 292, 296
 government, measures attributable
 to, 93, 96, 101
 macroeconomic policy management,
 exclusion of, 100, 102
 mandatory versus discretionary
 measures, 92, 93
 ‘measures by members affecting
 trade in services’ covered by
 GATS, 88
 measures, what constitute, 89, 93
 normative scope of individual GATS
 obligations and, 91, 104
 prudential measures, exclusion of,
 102, 104
 trade in financial services, what
 constitutes, 94, 100
 GATS, individual supervisory
 assessments falling within scope
 of, 218, 227, 261
 administrative decisions, 219, 220

- challenging measures ‘as such’ or ‘as applied’, 219, 221
 EU supervision of third-country subsidiaries, 330, 336, 342, 343
 international investment law and international trade law relating to services, overlap between, 221, 224, 231
 measure, what constitutes, 218, 221, 231
 ‘measures by members affecting trade in services’ covered by, 218
 MFN treatment, 219, 224, 231
 national treatment, 219, 224, 231
 reasonable, objective, or impartial, what constitutes, 221
 rights of individual service suppliers and, 221, 227
 GATT (General Agreement on Tariffs and Trade), 135, 149, 150, 212, 242, 243, 246, 259, 343
 Germany, mutual recognition agreement with United States and Japan, 162
 Gertler, M., 27
 Gkoutzinis, A., 211
 global financial crisis, 1
 Basel Committee’s response to, 83
 CDOs, 305
 EU banking law and, 266, 269, 281, 287, 297, 299, 305, 331
 international approach to banking liberalization and, 75, 83
 remuneration policies, EU review of, 299
 Goldberg, L., 45
 Goldsmith, R., 37
 Goodhart, C., 34
 governance requirements, 299
 government, exclusion of measures attributable to, for purposes of GATS banking regulation, 93, 96, 101
 Greenspan, Alan, 9, 35
 Guzman, A., 39
 harmonization
 of domestic regulation, 199, 200
 in EU banking law, 265, 266, 271, 272, 294, 295, 296, 327, 346
 Harmonized Commodity Description and Coding System, 136
 health risk, as characteristic in determining likeness, 140
 Hellman, T., 32
 Hellwig, M., 32
 herding, 33
 Herstatt Bank collapse, 74
 high gearing (high debt-to-equity ratio) in banks, 15
 High-Level Group on Financial Supervision in the EU, 1
 Hoekman, B., 138
 home country control principle in EU law, 265, 271, 272, 348
 homogeneous reaction to macroeconomic events, 28, 33
 homogenization of financial markets, internationalization leading to, 47
 Hong Kong Ministerial Declaration, GATS, 71
 Horizontal Disciplines (draft)
 regulation of banks and, 181, 182, 183, 184, 185, 193, 195, 197, 199, 205
 supervision of banks and, 245, 249, 250, 253
 Howse, R., 138, 224
 Hudec, R., 140, 142
 Hughes, J., 40
 Hungary, reciprocal MFN treatment requirements in, 158
 IMF. *See* International Monetary Fund
 impartial administration requirement for supervision of banks, 221, 241, 245, 246, 262
 Import Licensing Procedures Agreement, WTO, 250, 251
 India, on notification of recognition arrangements, 162
 individual supervisory assessments. *See* supervision of banks
 inefficiency. *See* efficiency

- information and information
 - asymmetries
 - between depositors and banks, 19, 24
 - electronic communications, use of, 253
 - intermediary role of banks and, 12, 13
 - loans, securitization and trading of, 20, 24
 - reasonable period of time, provision to authorization applicants within, 247, 248, 253, 254, 256
 - in services markets, 18
- instability. *See* financial stability
- insurance and insurance-related services, 99
- intent of measure, in determining discrimination, 147, 154, 234, 235
- interchangeability of services, 136
- intermediary role of banks, 9, 11, 15, 53
 - competition from non-bank financial intermediaries, 20
 - high gearing (high debt-to-equity ratio), 15
 - market failures, as response to, 11, 12, 53
 - risk management, 14
 - as selectors and monitors of borrowers, 13
 - term transformation (of short-term deposits into long-term loans), 14
 - transaction costs of borrowing and lending, reduction of, 13, 14
- international approach to
 - liberalization in banking sector, 6, 57, 60, 259, 262. *See also* Basel Committee on Banking Supervision; GATS; regulation of banks; supervision of banks; WTO
- international investment law and international trade law relating to services, overlap between, 221, 224, 231
- International Law Commission, 202
- International Monetary Fund (IMF)
 - Financial Sector Assessment Program, 85, 87
 - reports on financial surveillance of, 86
- international standards and domestic regulation, 195, 198, 203, 261
- internationalization and cross-border
 - banking, 43, 51
 - benefits of, 43, 46
 - branches versus subsidiaries, 49, 51
 - cherry-picking or cream-skimming, dangers of, 46
 - competition, enhancement of, 36
 - concerns regarding, 46, 51
 - efficiency of, 43, 44, 346
 - financial stability issues, 44, 46, 47
 - homogenization of financial markets, leading to, 47
 - prudential supervision, difficulties of, 48, 51, 77
- Italy, favourable tax treatment for service suppliers trading with Central and Eastern European countries in, 158
- Japan
 - on disciplines in domestic regulation, 191, 192
 - mutual recognition agreement with Germany, 162
 - on prudential exception, 208
- July Package, GATS, 70
- Keeley, M., 42
- Key, S., 165
- Kono, M., 208
- Korea, South, on domestic regulation, 198
- Krajewski, M., 118, 151, 198, 239, 242, 243, 247, 316
- Laeven, L., 41
- Lamfalussy, Baron Alexandre, and Lamfalussy report, 276, 286, 310, 331
- Lamy, Pascal, 2, 57
- Large Exposures Directive (1992), EU, 274, 277, 297
- large exposures requirements for third-country subsidiaries in EU, 304
- Larosi re, Jacques de, 1

- latent consumer demand suppressed
 - by regulatory barriers, evidence of, 138
- Le Bayon, S., 27
- Lemoine, M., 27
- Leroux, E., 110
- less favourable treatment, 134, 144, 145, 157, 231, 232, 233, 234
- Levasseur, S., 27
- leverage ratio, 84, 85
- Levine, R., 30, 37, 44, 45
- liberal rule of origin in EU, 293, 329, 330, 346, 351
- liberalization in banking sector, 1, 6, 10, 36, 52, 53, 348, 351
 - competition distinguished, 36. *See also* competition and competition policy
 - defined, 43
 - European approach to, 6, 265, 267, 345, 347. *See also* EU; EU banking law on third-country banks; regulation of subsidiaries of third-country banks in EU; supervision of subsidiaries of third-country banks in EU
 - international approach to, 6, 57, 60, 259, 262. *See also* Basel Committee on Banking Supervision; GATS; WTO limitations on supervision of banks
 - internationalization and cross-border banking as means of, 43, 51. *See also* internationalization and cross-border banking
 - policy concerns, 5, 9, 10, 53, 54. *See also* intermediary role of banks; regulation of banks
 - progressive liberalization, 62
 - tension between regulation and, 1, 2
- licensing requirements
 - Agreement on Import Licensing Procedures, WTO, 250, 251
 - domestic regulations regarding, 174, 176, 177, 182
 - supervision of banks, 228, 230, 249, 255
- likeness, concept of, 134, 145, 231, 232
- Lisbon Treaty, 4, 315, 346, 350
- loans, securitization and trading of, 13, 20, 24
- McCreevy, Charlie, 278
- macroeconomic events
 - GATS banking regulation, macroeconomic policy management excluded from, 100, 102
 - homogeneous reaction to, 28, 33
- Manning, M., 38
- Marchetti, J., 163, 164
- market access and banking regulation, 104, 133
 - distinguishing discrimination from restrictions, 105
 - domestic regulations and, 172, 178, 181
 - EU regulation of third-country subsidiaries, 318, 319
 - 'indistinctly applicable' measures, 113, 117, 132
 - legal analysis of, 131, 133
 - list of explicitly prohibited restrictions, 105
 - obligation not to impede market access, 105
 - overlap between measures covered by discrimination prohibition and, 105, 124
 - possible combinations of commitments and limitations, 121
 - qualitative prohibitions, 112
 - quantitative and absolute prohibitions, 106, 113, 131
 - Understanding on Commitments in Financial Services on, 125, 131, 132, 203
- market access and banking supervision, 227, 230
 - administrative decisions violating market access requirements, 219
 - approval procedures, 228, 230
 - EU supervision of subsidiaries of third-country banks, 337, 338, 339

- market access and banking supervision (cont.)
 GATS, individual supervisory assessments falling within scope of, 219, 220, 225
 licensing requirements, 228, 230
 qualification requirements, 228, 230
 rights of individual service suppliers, 227, 228
 market discipline
 in Basel Capital Adequacy Framework, 83
 regulation based on, 30, 34, 35
 market failures, 16, 28, 53. *See also* systemic risk from market failures defined, 17
 financial sector, risks to, 24, 26
 government's ability to address, 30, 31
 information asymmetries between depositors and banks, 11, 12
 loans, securitization and trading of, 20, 24
 macroeconomic events,
 homogeneous reaction to, 28, 33
 principal-agent problem, 19, 20
 real economy, spillover to, 26, 27
 regulation of banks due to, 16, 28
 in services markets generally, 17, 18
 social costs of, 24, 27
 market power in banking, 39, 41
 Martínez Pería, M., 46
 Mason, F., 38
 Mathis, J., 160
 Mattoo, A., 158
 Mavroidis, P., 113, 114, 115, 116, 138, 160, 163, 164
 mergers and acquisitions, cross-border, 280, 300, 302
 Mester, L., 40
 MFN treatment. *See* most-favoured-nation (MFN) treatment
 Min, H., 45
 minimum capital requirements, 32, 33
 Minimum Standards for the Supervision of International Banking Groups (Basel Committee), 78, 344
 Molostova, I., 306
 monopoly rights, 125
 Moon, C., 40
 moral hazard, 12, 214
 most-favoured-nation (MFN)
 treatment, 158, 166, 260
 administrative decisions violating, 219
 both services and service suppliers covered by, 135
 de jure and de facto discrimination, 146, 167
 disguised trade restriction or means of discrimination, recognition not allowed to constitute, 165, 166
 EU banking law and, 279
 EU freedom of establishment principle and, 292, 296
 EU supervision of subsidiaries of third-country banks, 338, 339
 exemptions, 61, 69
 international investment law and international trade law relating to services, overlap between, 224
 national treatment and, 158, 166, 167
 notification of recognition arrangements, 161, 162
 open recognition, 163, 164
 principle of, 133, 158, 159
 recognition, principle of, 159, 161
 supervision of banks and, 219, 224, 231, 244
 Understanding on Commitments and, 65, 68
 Murdock, K., 32
 mutual recognition. *See* recognition principle
 national treatment, 166, 169, 260, 350, 351
 administrative decisions violating, 219
 both services and service suppliers covered by, 135
 de jure discrimination, 146
 domestic regulation and, 181, 182
 EU regulation of third-country subsidiaries, 320, 322
 EU supervision of subsidiaries of third-country banks, 338, 339

- international investment law and
 - international trade law relating to services, overlap between, 224
- MFN treatment and, 158, 166, 167
- possible combinations of
 - commitments and limitations, 121
- principle of, 133, 166, 167
- supervision of banks and, 219, 224, 231, 244
- Understanding on Commitments in Financial Services on, 63, 68, 125, 131, 132, 167, 169
- necessity tests
 - domestic regulations, 182, 184, 191, 198
 - non-discrimination obligation exceptions, 152, 154
 - prudential exception, no necessity test for, 186, 212
- net economic interest, retention of, 306
- New Zealand, on notification of
 - recognition arrangements, 162
- Nice, Treaty of, 315
- Nicolaïdis, K., 142, 180, 188
- Nielson, J., 163, 165
- non-discrimination. *See entries at*
 - discrimination prohibition
- Northcott, C., 42
- objective criteria
 - for domestic regulation, 182, 183
 - for EU supervision of subsidiaries of third-country banks, 342
 - for supervision of banks, 221, 246, 262
- Ongena, S., 41
- open recognition, 163, 164
- Ortino, P., 107, 151
- Own Funds Directive (1989), EU, 274, 277, 297
- Pareto efficiency, 17
- participation by undertakings outside financial sector, 305
- Pauwelyn, J., 109, 111, 112, 149, 155, 156, 224
- payment system, important role of banks in, 25
- Peek, J., 27
- Persaud, A., 33
- Petersen, M., 39
- policy concerns, 5, 9, 10, 53, 54. *See also*
 - intermediary role of banks;
 - liberalization in banking sector;
 - regulation of banks
- preferential trade agreements, 323, 327
- principal-agent problem, 19, 20
- Principles for Cross-border Cooperation on Crisis Management (FSB), 76
- Principles for Sound Compensation Policies (FSB), 77
- private interest (public choice)
 - approach to regulation, 31
- production process and determination of likeness, 141
- productive efficiency, 40
- programme of operations, 298
- progressive liberalization, 62
- proportionality analysis
 - domestic regulation and, 187, 188, 191
 - supervision of banks and, 246
- protectionism
 - defining, 133
 - intent of measure and, 147, 154, 234, 235
 - prudential exception and, 213, 214
- prudential assessment
 - EU regulation of third-country subsidiaries, 280, 281, 284, 309, 322, 323
 - EU supervision of third-country subsidiaries, 330, 333, 342
- prudential exception for regulation of banks, 206, 216
 - avoidance of commitments not allowed by, 211, 215
 - ‘carve-out’ terminology, 207
 - crisis circumstances and, 209, 214
 - defining concept of ‘prudential’, 207, 211
 - development of, 206, 207
 - discrimination and, 213
 - GATS, banking regulation falling within scope of, 102, 104

- prudential exception for regulation of banks (cont.)
 - international standards and, 214
 - necessity test, absence of, 186, 212
 - protectionism and, 213, 214
- prudential exception for supervision of banks, 257, 258, 262
- prudential regulation, 29, 206
- prudential supervision of international and cross-border banking, 48, 51, 77
- public choice (private interest)
 - approach to regulation, 31
- public entities, defined for purposes of GATS banking regulation, 95
- public interest approach to regulation, 30
- publication requirements for WTO members, 173
- qualification requirements and procedures
 - domestic regulations regarding, 174, 177
 - supervision of banks, 228, 230, 249, 255, 256
- Rajan, R., 37, 39
- Ram, R., 38
- rational choice theory, 33
- real economy, spillover of bank failures into, 26, 27
- reasonableness
 - defining, 188
 - of fees, 254, 256
 - information provided to
 - authorization applicants within reasonable period of time, 247, 248, 253, 254, 256
 - likeness of services, ‘reasonable consumer’ test of, 138
 - supervision of banks, reasonable administration requirement for, 221, 246, 262
 - of supervision of subsidiaries of third-country banks in EU, 342
- recasting technique in EU law, 278
- recognition principle
 - domestic regulation and, 198, 199, 201
 - EU law, mutual recognition in, 265, 271, 272, 307, 348
 - MFN treatment. *See under* most-favoured-nation (MFN) treatment
 - regulation of banks, 10, 16, 35, 53, 259, 261
 - depositors, role of, 31
 - discrimination in. *See* discrimination prohibition and banking regulation
 - EU, subsidiaries of third-country banks in. *See* regulation of subsidiaries of third-country banks in EU
 - GATS and. *See* GATS, banking regulation falling within scope of
 - government’s ability to address market failures through, 30, 31, 35
 - investors, role of, 31
 - market access and. *See* market access and banking regulation
 - market discipline, based on, 30, 34, 35
 - market failures, due to, 16, 28. *See also* market failures
 - objectives of, 29
 - private actors monitoring, 31, 33
 - private interest (public choice)
 - approach to, 31
 - private monitoring, conditions for and limits on, 33, 34
 - prudential exception for. *See* prudential exception for regulation of banks
 - prudential regulation, 29
 - public interest approach to, 30
 - reasons for, 16
 - supervision differentiated from, 28
 - supervisory and regulatory measures, distinguishing, 90
 - systemic regulation, 29
 - tension between liberalization and, 1, 2
 - WTO limitations on, 60, 88, 216
- regulation of services markets
 - generally, 17, 18

- regulation of subsidiaries of third-country banks in EU, 267, 288, 329, 346
- access to deposit-taking activities, 309
- acquisitions, cross-border, 300, 302
- additional requirements imposed by specific member states, 308
- authorization, requirements for obtaining, 297, 302
- Basel III and, 304
- branches versus subsidiaries, 288
- CDOs, 305
- changes in qualifying holdings, monitoring, 303
- common commercial policy and, 314, 316, 318
- conditions for setting up credit institution by third-country party, 288, 289
- deviations by member states regarding, 307, 318
- discrimination prohibitions, 319
- domestic regulation, WTO
 - limitations on, 320
- exercise of business of credit institutions, 302, 307
- freedom of establishment, 289, 296
- GATS and, 292, 296, 318, 327
- harmonized criteria, 294, 295, 296, 327
- large exposures requirements, 304
- market access obligations, 318, 319
- national treatment, 320, 322
- participation by undertakings outside financial sector, 305
- preferential trade agreements, 323, 327
- prudential requirements, 309, 322, 323
- resecuritizations, 307
- risk management, 299
- stricter requirements imposed by specific member states, 309, 314
- taking up and pursuing business of credit institution, 297, 307
- relationship lending, 13
- relevant criteria requirement for domestic regulation, 194
- remuneration policies, EU review of, 299
- Reports on Observance of Standards and Codes (Basel Committee), 86
- repute and expertise of directors, 298, 301
- resecuritizations, 307
- retention of net economic interest, 306
- review of administrative decisions in supervision of banks, 248, 249
- ring-fencing, 49
- risk management. *See also* systemic risk from market failures
 - European Systemic Risk Council and Board, 284, 285, 286
 - intermediary role of banks in, 14
 - regulation of subsidiaries of third-country banks in EU, 299
- Robinson, J., 36
- Rogoff, Kenneth, 9
- Rome, Treaty of (1957), 3, 269
- Rosengren, E., 27
- 'rule of reason' approach to non-discrimination obligation, 152
- runs on banks, 25
- Sanitary and Phytosanitary Measures (SPS) Agreement, WTO, 186, 191, 195
- Schumpeter, J., 36
- SCM Agreement (Agreement on Subsidies and Countervailing Measures), WTO, 226
- Scott, H., 336
- S-C-P paradigm, 38
- Second Annex on Trade in Financial Services, GATS, 69
- Second Banking Directive (1987), EU, 272, 274, 277, 297, 305
- Second Protocol, GATS, 69, 70
- securitization
 - loans, securitization and trading of, 13, 20, 24
 - resecuritizations, 307
- separate own funds, 298
- service suppliers, likeness of, 142, 144
- services, likeness of, 136, 142
- services markets, market failures in, 17, 18

- shareholder characteristics, 298
- single supervisory mechanism (SSM),
 - EU, 287, 332, 335, 343
- Slovakia and MFN exemptions, 158
- social costs of market failures, 24, 27
- Solvency Ratio Directive (1989), EU,
 - 274, 277, 297
- SPS (Sanitary and Phytosanitary Measures) Agreement, WTO, 186,
 - 191, 195
- SSM (single supervisory mechanism),
 - EU, 287, 332, 335, 343
- stability. *See* financial stability
- Stiglitz, J., 32
- subsidiaries of third-country banks in
 - EU, 39, 200, 265, 267. *See also* EU banking law on third-country banks; regulation of subsidiaries of third-country banks in EU; supervision of subsidiaries of third-country banks in EU
- Sunde, T., 239, 243, 246
- supervision of banks, 217, 258,
 - 261, 262
 - administrative decisions. *See* administrative decisions in supervision of banks
 - administrative requirements, 237, 247, 262
 - Basel principles and standards on, 16, 77, 217
 - capital adequacy, review process for, 83
 - discrimination in. *See* discrimination prohibition and banking supervision
 - EU centralization of, after global financial crisis, 284, 287, 331, 333
 - EU supervision of third-country subsidiaries. *See* supervision of subsidiaries of third-country banks in EU
 - fees, reasonableness of, 254, 256
 - GATS and. *See* GATS, individual supervisory assessments falling within scope of
 - impartial administration, 221, 241, 245, 246, 262
 - information provided within
 - reasonable period of time to authorization applicants, 247, 248, 253, 254, 256
 - licensing requirements, 228, 230, 249, 255
 - market access and. *See* market access and banking supervision
 - MFN treatment and, 219, 224, 231, 244
 - national treatment and, 219, 224, 231, 244
 - objective administration, 221, 246, 262
 - procedural requirements, 236, 257
 - proportionality test for, 246
 - prudential exception for, 257, 258, 262
 - prudential supervision of
 - international and cross-border banking, 48, 51, 77
 - qualification requirements and procedures, 228, 230, 249, 255, 256
 - reasonable administration, 221, 246, 262
 - regulation differentiated from, 28
 - regulatory and supervisory measures, distinguishing, 90
 - review of administrative decisions, 248, 249
 - uniform administration, 237, 241, 243
 - WTO limitations, 217, 258
- supervision of subsidiaries of third-country banks in EU, 267, 330, 344, 346
 - centralization of, 284, 287, 331, 333
 - close links with natural and legal persons in third countries, 333
 - consolidated supervision by third country authorities, 333, 336, 339
 - discrimination prohibitions, 338, 339
 - due process issues, 340, 342
 - financial holding company, need for third-country bank to set up, 337, 338
 - GATS and, 330, 336, 342, 343
 - market access, 337, 338, 339
 - MFN treatment, 338, 339
 - national treatment, 338, 339
 - objective criteria, 342

- prudential assessments, 330, 333, 342
- reasonableness, 342
- transparency of, 342
- uniformity and consistency, 340, 342
- supervisors, EU college of, 282, 332
- Switzerland
 - on market access restrictions, 120
 - mutual recognition agreement with EU, 162
 - supervisory guidance in, 335
- systemic regulation, 29
- systemic risk from market failures
 - in financial system as whole, 26
 - macroeconomic events,
 - homogeneous reaction to, 28, 33
 - to real economy, 26, 27
- TBT (Technical Barriers to Trade) Agreement, WTO, 186, 191, 195
- technical standards, domestic
 - regulations regarding, 174, 177, 194, 195
- technological neutrality of GATS, 98
- term transformation (of short-term deposits into long-term loans), 14
- TFEU (Treaty on the Functioning of the European Union), 268, 289, 296
- Thakor, A., 39, 40
- third-country banks in EU, 39, 200, 265, 267. *See also* EU banking law
 - on third-country banks;
 - regulation of subsidiaries of third-country banks in EU; supervision of subsidiaries of third-country banks in EU
- Tison, M., 135
- Trachtman, J., 142, 180, 188, 189, 196, 224
- transparency
 - of domestic regulation, 182, 184
 - of EU supervision of subsidiaries of third-country banks, 342
- Treaty on the Functioning of the European Union (TFEU), 268, 289, 296
- Türk, E., 138
- Turkey, customs union with EU, 323
- UN Central Product Classification System, 136
- Understanding on Commitments in Financial Services, GATS, 63, 68, 125, 131, 132, 167, 169
- uniform administration requirement
 - for EU supervision of subsidiaries of third-country banks, 340, 342
 - for supervision of banks, 237, 241, 243
- United States
 - on licensing procedures, 250
 - mutual recognition agreement with Germany, 162
 - on review of administrative decisions
 - in supervision of banks, 248
 - supervisory guidance in, 335
- universal banks, 305
- Uruguay Round documents, 61, 68
- Van Rompuy, Herman, 265
- Verhoosel, G., 137, 151
- Vienna Convention on the Law of Treaties (VCLT), 106, 202
- Viñuales, J., 336
- Von Bogdandy, A., 168
- Weatherill, S., 310
- White Paper on Financial Services Policy 2005, 2010, EU, 269, 277, 281
- White Paper on the Completion of the Internal Market (1985), EU, 265, 269, 271, 275
- Windsor, J., 168
- Wise Men, Committee of, 276
- World Bank and Financial Sector Assessment Program, 85
- World Customs Organization, 136
- Wouters, J., 135
- WTO (World Trade Organization)
 - law. *See also* GATS
 - chronological overview of relevant legal sources, 72
 - domestic regulation limitations, 172, 206, 261. *See also* domestic regulation
 - DSU, 196, 226

WTO law (cont.)	SCM Agreement, 226
EU law, interaction with, 2, 5, 345, 346, 349, 351	SPS Agreement, 186, 191, 195
GATT, 135, 149, 150, 212, 242, 243, 246, 259, 343	supervision of banks, limitations on, 217, 258. <i>See also</i> supervision of banks
Import Licensing Procedures Agreement, 250, 251	TBT Agreement, 186, 191, 195
negotiations, EU conduct of, 63	Wyplosz, C., 26
publication requirements, 173	Yokoi-Arai, M., 208
purpose of, 348	Zingales, L., 37
regulation of banks, limitations on, 60, 88, 216. <i>See also</i> regulation of banks	Zleptnig, S., 112, 191