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Ulrike Dennig\*

# Global Financial Liberalisation

## GATT, EC and OECD Approaches

*In view of increasing worldwide economic integration, effective multinational agreements are urgently needed to improve the functionality, efficiency and stability of international financial operations. This article confronts theoretical characteristics of a desirable global financial concept with the actual liberalisation approaches of different organisations.*

**F**inancial services (i.e. services provided by credit institutions, stockbrokers, insurance companies and other financial establishments) are on the agenda of the current Uruguay Round of GATT negotiations. This is the first time that it has been attempted to achieve a comprehensive global liberalisation of financial transactions. Although financial liberalisation has been an objective of EC and OECD negotiations since the fifties, the successes achieved have not been global. Only about 25 of the more than 160 countries in the world have been affected by these liberalisations. A larger number of countries benefited from the liberalisation initiatives of the IMF, which began in 1945. These initiatives are, however, restricted to international payment and foreign exchange transactions.<sup>1</sup> Thus world financial services are far from being liberalised. And in view of the increasing global economic integration, multinational financial agreements are urgently needed. Only multinational agreements can guarantee the functionality, efficiency and stability of future global financial operations. Thus, GATT negotiations on financial services are, in principle, to be welcomed.

What remains to be criticised is the approach emerging from the Uruguay Round, formulated in the "General Agreement on Trade in Services (GATS)" including the "Annex on Financial Services", which defines the financial liberalisation concept. This article tries to show that this concept does not take sufficient account of the special nature and economic importance of the financial sector and that liberalisation alone is neither sufficient to tackle acute global financial problems nor to secure worldwide financial stability. Accordingly, theoretical fundamentals such as the applicability of free trade theory

to finance, special peculiarities of financial services and possible ultimate objectives and concepts are discussed first and are then compared with actual proceedings in EC, OECD and GATT. These proceedings are examined with regard to applied objectives, liberalisation processes, regulations and negotiations levels. The description of the GATT concept is based on official statements from negotiations until mid 1992. Since the Uruguay Round is still in process, the GATT concept may still be changed in some aspects.

### Theoretical Benefits of Liberalisation

Efforts to achieve international economic liberalisation have often been justified with the classical theory of free trade, developed for product markets by Adam Smith, David Ricardo and John Stuart Mill.<sup>2</sup> This free trade theory states that the opening-up of product markets increases and improves the division of labour and the exploitation and exchange of economic resources and hence also improves employment and economic welfare. The improvements stem partly from comparative economic advantages and partly from economies of scale, which generally reduce unit costs and prices and thereby stimulate demand. Growing competition as a result of expanding markets often also increases the propensity to innovate and hence improves the range and quality of the products available. But even in product markets this increase in economic welfare is contingent upon certain "classical" conditions, in particular the existence of

<sup>1</sup> See R. W. Edwards: International Monetary Collaboration, New York 1985, pp. 4 ff.; M. A. G. van Meerhaeghe: International Economic Institutions, 4th edn., 1984, pp. 23 ff.; United Nations: Trade and Development Report, 1991, p. 207.

<sup>2</sup> See P. T. Ellsworth and J. C. Leith: The International Economy, 6th edn., New York 1984.

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perfect competition. Moreover, there is no guarantee that all countries will benefit equally from the potential economic growth. Some political transfers will have to be organised. Nevertheless, past periods of prosperity have often coincided with open markets and growing international trade, thus seeming to confirm free trade theory.

But may experience with product markets be applied to financial services markets without differentiation, and is the liberalisation of financial services as beneficial as that of goods? It will be shown below that international liberalisation in finance will be very beneficial if financial peculiarities are taken into account and if appropriate objectives and concepts are chosen.

## Peculiarities of Financial Services

In general services are activities involving persons. As such, they are on the one hand intangible, invisible and incapable of being stored, while they are on the other hand generally also closely associated with particular goods or other services.<sup>3</sup> This association may imply either very strong liberalisation effects, when connected goods and services are already liberalised, or no effects at all if this is not the case. The involvement of persons also has the effect that services do not show the characteristics typical of mass goods, which means that economies of scale may be limited. Liberalisation effects are, furthermore, dependent on the opportunities for persons to travel and set up branches abroad and perform business activities there. It is therefore not sufficient to liberalise services in isolation; the associated movements of persons, goods and money and, if possible, foreign establishments and business activities must also be included.

Services are often regarded as activities of special macro-economic significance and are therefore more strictly and comprehensively regulated than goods. They are often provided by national monopolies or oligopolies. This has in many countries been thought to be economically necessary. As a result, service markets are often characterised by imperfect competition.<sup>4</sup> The international liberalisation of services is therefore more complicated than that of goods and it cannot be expected

that the opening-up of imperfect and heavily regulated national services markets will automatically lead to the emergence of efficient and stable international markets. Liberalisation measures therefore have to be accompanied by competition policies, which need national approval. The liberalisation of services thus interferes more seriously with the political sovereignty of the countries involved.

Other special characteristics of financial services derive from their close association with monetary claims, with monetary payments, credits and capital movements.<sup>5</sup> Money is not just a product that can be replaced by any other. Efficient money and financial markets are of basic importance for the efficient functioning of the national economy. Efficient national financial markets encourage national savings and maintain the value of future financial provisions. They facilitate investments for future employment and real transactions through cheap payment facilities.<sup>6</sup> The central macroeconomic significance of financial markets is their improvement of real transactions and investments. Internationalisation and liberalisation measures are only meaningful if they take these special characteristics into account and are oriented towards real transactions. Too fast and too far-reaching financial liberalisation may induce speculative capital movements and financial crises.

Moreover, financial markets are by their very nature imperfect markets. As credit operations normally extend well into the future, they entail considerable risks. An important function of national credit institutions is to limit those risks, a function that can only partly be fulfilled by international institutions. Those risks also change credit prices (interest rates) and disturb the efficient allocation of financial resources. Since credit demand is often indifferent to increases in interest rates (adverse selection), it is not the credit price which clears financial markets but the bank by means of credit rationing.<sup>7</sup> Thus, the banks, not financial demand and supply, ensure efficient financial allocation. But experience shows that in times of increased competition the banks' willingness to take risks rises, endangering the stability of the banks and the national financial system. This is one reason why credit institutions and financial markets are often more strongly regulated than goods markets. Another reason is that

<sup>3</sup> See D. I. Riddle: *Service-led Growth: the Role of the Service Sector in World Development*, New York and London 1986, pp. 12 ff.; R. M. Stern and B. M. Hoekman: *Conceptual Issues Relating to Services in the International Economy*, in: Chung H. Lee and Seiji Nays (eds.): *Trade and Investment in Services in the Asia-Pacific Region*, Seoul 1987, pp. 7 ff.; H. W. Arndt: *Measuring Trade in Financial Services*, in: Banca Nazionale del Lavoro Quarterly Review, Vol. 37, 1984, pp. 197 ff.

<sup>4</sup> See A. Sapir: *The Structure of Services in Europe: A Conceptual Framework*, DEPR Decision Paper No. 498, January 1991, pp. 3 ff. and 19 ff.; G. Feketekuty: *International Trade in Services*, Cambridge, Mass., 1988, pp. 160 ff.

<sup>5</sup> See H. W. Arndt: *Measuring Trade in Financial Services: Prospects for Liberalisation in the 1990's*, London 1987; GATT: *International Trade 1989-90*, Vol. I, pp. 27 and 47; UNCTAD: *Trade and Development Report*, 1991, pp. 207 ff.

<sup>6</sup> See G. Bröker: *Competition in Banking*, OECD, Paris 1989, p. 111; D. Gehrmann: *Die Effizienz des Euro-Kapitalmarktes*, Hamburg 1978, pp. 50 ff.; OECD (1967-1972) *General Report*, pp. 217 ff.

<sup>7</sup> See A. Sapir, op. cit., pp. 13 ff.

financial markets serve monetary and exchange-rate policy, which implies certain regulations for bank reserves and refinancing. International liberalisation measures which relax these regulations may impair stability. National deregulation measures should at least be complemented by international regulations and national monetary authorities supplemented by an international monetary authority.

Consequently, if financial liberalisation is really to improve the international financial situation, the special characteristics of financial services have to be taken into account. Liberalisation measures have to be introduced cautiously in accordance with the liberalisation of real goods and other services, and account has to be taken of side-effects as well as new risks. National deregulation measures guarding stability have to be compensated for by international regulation, and international institutions responsible for international monetary and competition policy have to be set up. It remains to be seen how these conditions can be taken account of in a liberalisation concept.

### Ultimate Objective and Concept

Before a concept of liberalisation is formulated, there should be clarity and unanimity about the ultimate objective. The term "liberalisation" may include the removal of dirigistic state interventions in financial markets and in the freedom of establishment of banks and insurance companies. The ultimate objective would then be the creation of completely deregulated domestic and international competitive markets and hence a deregulated world financial system – a utopian vision. "Liberalisation" therefore generally relates only to some services, to international "trade". In this case all that should be abolished are interventions directed against foreigners.<sup>8</sup> The notion behind this is that new, competitively oriented international markets could be set up in parallel to domestic financial markets, which could continue to be regulated and structured as before. But this does not work, since "trade" and "establishment" are closely related in finance. Liberalising financial trade alone merely has the effect of expanding national markets. If international integration is the ultimate objective, establishment must be liberalised as well. The only possible limitation which remains is to restrict liberalisation on certain market segments.

In view of these problems, it must be asked where the advantages of worldwide financial liberalisation really lie.

The main benefits are generally said to be an improvement in financial supply, the intensification of competition or financial adjustment to existing real markets.

As money and credit can be produced at virtually no cost by any state, international involvement in the supply of credit is not really essential. Nor does a domestic expansion in the money supply pose an inflationary danger, provided its productivity is truly guaranteed. The central problem of the financial sector therefore lies not in the creation of money and credit but in the way they are invested. Foreign finance is unavoidable only if the development of national export industries offers the sole opportunity for growth and if this can only be achieved by using foreign capital goods and foreign knowhow. Foreign sources of funds may also be useful if the domestic financial market lacks the capacity to handle major individual projects. But since the advantages to the underdeveloped country are obvious in this case, multilateral negotiations should hardly be necessary.

Presently many developing countries do not primarily suffer from a genuine money shortage but from poorly functioning domestic financial systems. Many of them do not have a banking system worthy of the name. Credits are often available only in large cities and savings are transferred abroad. Some banking systems are nationalised, inflexible and practically insolvent. Proper regulation and supervision is often lacking. Banks sometimes have to perform fiscal and social tasks rather than economic ones.<sup>9</sup> The authorisation of foreign banks or insurance companies may often help to speed up structural improvement. Multinational initiatives can complement national efforts. But they cannot replace national initiatives and responsibilities.

It is frequently emphasised that international financial liberalisation leads to heightened competition. From the economic point of view, greater financial competition is indeed possible and in many countries necessary in the sense of fostering the existence of more medium-sized financial institutions and preventing the development of oligopolies and cartels. But, since many governments deliberately encouraged oligopolistic structures for decades, the political will to intensify international competition does not appear to be particularly strong. In any case, strict laws to promote financial competition are required at national as well as international levels.

The liberalisation and globalisation of financial markets would undoubtedly be beneficial once national structural

<sup>8</sup> See K. W. Grewlich: Bedeutung und Funktionsweise des OECD-Kodex zur Liberalisierung des Kapitalverkehrs, in: *Recht der Internationalen Wirtschaft*, No. 5, 1977, p. 253.

<sup>9</sup> See U. Dennig: *Why Worldwide Agreements on Financial Services? – European Experiences*, Hamburg 1991, pp. 11 ff., and B. Fischer: *Financial Reform in Developing Countries – Objectives, Scope and Results*, Hamburg 1992, pp. 10 ff.

problems are solved, given the well advanced multinationalisation of merchandise trade and production. As producers operating internationally already account for around 40% of world trade, financial structures should obviously also reflect this situation. It remains, however, debatable whether it is beneficial to liberalise on a comprehensive and world-wide scale. It would be better to restrict internationalisation to large financial transactions or particular forms of export financing. It would not even be necessary to create new international markets for these transactions, since they already exist in the form of Euro-markets. Access to Euro-markets is not restricted and regulations are weak, indeed too weak. Consequently, Euro-markets offer absolutely no potential for further liberalisation. Instead, multilateral efforts to stabilise and regulate these markets are urgently needed. Euro-currency centres, which are often situated in small countries, are not in a position to assume responsibility for global stabilisation.

In short, the acute global financial problems either do not call for multilateral negotiations, as they can and should be resolved nationally or bilaterally, or they can be resolved only by regulation and stabilisation. At least, multinational negotiations on international finance should concentrate more on regulation and harmonisation than on further liberalisation.

### Objectives of EC, OECD and GATT

The ultimate objectives of financial liberalisation in the EC, the OECD and the GATT were not clear from the outset. They are neither exactly stated nor explained. Agreements remain vague in this respect. All three organisations officially strive for economic growth, full employment and higher standards of living. And all three believe that an expansion of international trade is the most important precondition to achieve this.<sup>10</sup> None of them explains what this means for the financial sector. Financial objectives can therefore only be deduced from commentaries on the treaties, from declarations of intent or from actual behaviour.

According to the EC Treaty, the liberalisation of services and capital movements is one of the so-called "four basic freedoms". But initially they were thought to be less important than merchandise trade. Article 3(c) of the Treaty calls in connection with services only for the

"removal of obstacles", and this according to Article 63 only as far as they "affect production costs" or "help to promote trade in goods". The liberalisation of bank and insurance services was expressly linked to capital movements, which were to be liberalised only in the last stage of integration.<sup>11</sup> Of course, this does not rule out more far-reaching final objectives. Even the term "Economic Community" implies a goal that is more than a customs union or a common market. In signing the "Single European Act", the EC countries unequivocally committed themselves to create a common internal financial market with harmonised financial regulations and a common competition policy by 1993.

The OECD's objectives regarding financial integration are far less ambitious. Member countries only undertake "to abolish obstacles to the exchange of goods and services" and to "maintain and extend the liberalisation of capital movements" (Article 2). There is no hint of a common market. Nevertheless, in 1990 the OECD described its objective as being that "residents of different Member countries should be as free to transact business with each other as residents of the same country".<sup>12</sup> Hence, the final objective must now be a common market which includes a common competition policy and co-ordinated economic policies. Since the negotiations on trade liberalisation among OECD countries were transferred to the GATT in 1960, and since the OECD countries have made definite commitments only in the fields of services and capital movements, a common market among OECD countries can only apply to financial and other services.

Until 1986 the declared objective of the General Agreement on Tariffs and Trade was to create a global free trade area for goods with few restrictions on payment transactions (Art. XV of GATT).<sup>13</sup> Freedom of establishment was not part of the liberalisation aims. In the present Uruguay Round these aims are to be extended to financial services. In 1986 the special "Group of Negotiations on Services" (GNS) was instructed to draft a "General Agreement on Trade in Services" (GATS). Financial services were to be treated separately in a special annex. The GATS framework in its present form documents "the desire of progressive liberalisation" and of "progressively higher levels of trade in services".<sup>14</sup> International financial services are now defined as "trade",

<sup>10</sup> See T. Läufer: EWG-Vertrag – Gründung der Europäischen Gemeinschaft, Bonn 1988 (Preamble and Art. 2); OECD: Convention on the Organisation for Economic Co-operation and Development, Paris 1960 (Preamble and Art. 1–3); P. Bratschi: Allgemeines Zoll- und Handelsabkommen (GATT), Zurich 1973 (Preamble).

<sup>11</sup> See H. von der Groeben et al.: Kommentar zum EWG-Vertrag, Baden-Baden, 3rd edn., 1983, Vol. 1, pp. 687 ff.; B. Hindley: Trade in Services within the European Community, in: H. Giersch (ed.): Free Trade in the World Economy, Tübingen 1987, pp. 468 ff.

<sup>12</sup> See OECD: Liberalisation of Capital Movements and Financial Services in the OECD Area, Paris 1990, p. 13.

<sup>13</sup> See P. Bratschi, op.cit., pp. 18 ff.; R. Senti: GATT – System der Welthandelsordnung, Zurich 1986.

<sup>14</sup> See GATT: Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, 20th December 1991, Annex II: Trade in Services.

while trade shall include establishment. But it is not certain whether the term will remain unchanged, since many countries still object to establishment by foreign firms.

The comparison of EC, OECD and GATT intentions shows that final liberalisation goals in finance have been defined solely in the EC, and this only since 1986. Here the twelve different national financial markets are to be transferred into one harmonised unified market with a common competition policy. For the OECD the final financial goal corresponds to a "common market", for GATT to a "free trade area". But what this exactly means remains unclear. Changes of objectives are not excluded. Neither common policies nor regulations, nor concentration on specific financial sectors are planned in advance. Of course, liberalisation may also be furthered without a fixed final goal, but then the finding of short-term objectives as well as the conceptional shaping has to become part of the continuing negotiation process.

### The Concepts

If long-term ultimate objectives were firmly set, liberalisation concepts would only have to plan and implement the means of achieving them, taking into account the situation prevailing at the start of the process. As this is not the case, objectives and accompanying measures must be decided at short term and all side-effects and consequences considered. The accompanying measures include in particular competition and regulatory measures. Finally, the success of liberalisation depends partly on the negotiating process itself and its institutional and organisational structure. Three problem areas and conceptual levels can therefore be distinguished: a liberalisation level, a regulation level and a negotiation level. The main characteristics of these three levels will be examined separately and compared in order to show up the differences and shortcomings of the concepts used by the EC, the OECD and the GATT.

### Liberalisation Processes

The short-term liberalisation programme itself is necessarily the focal point of any liberalisation concept. When the liberalisation programme is formulated, the special nature of financial services, their links with other activities and their economic impact must be taken into account. In addition, institutions and mechanisms must be created to ensure that the desired progress is achieved.

Common to all three organisations is that they determine the content and sequence of liberalisation measures by reference to lists of activities. The EC published such a liberalisation list for the first time in 1960 in connection with the First Directive on Capital

Movements. The OECD list has been part of the "Code of Liberalisation of Capital Movements" (the Capital Movements Code) since 1961. The relevant list in the context of the GATS is incorporated in the Annex on Financial Services.<sup>15</sup> There is now very little to distinguish between the lists, almost all of which include the usual financial services with few exceptions. The OECD list expressly includes payment transactions, which the other organisations treat separately. However, the right of establishment is not necessarily among the aspects to be liberalised. In the EC it is governed by special laws and implemented separately. It was not until 1976 that the OECD began to try to exert influence on at least the establishment of subsidiary banks. The preliminary text of the GATT Annex on financial services contains the right to "commercial presence", but there is no provision yet for this in the GATS itself.

There are certain differences in the use of the lists. The EC's overall list has been comprehensive from the outset, but consists of sub-lists A to D, containing activities that are to be liberalised unconditionally, conditionally or voluntarily. In time, all items are to be liberalised unconditionally. The OECD, on the other hand, began in 1961 with a relatively short list that was renegotiated and expanded annually, thereby gradually reaching its present status. It has not yet been finally decided whether the OECD approach will be adopted in GATS. All the lists are structured in a way that suggests gradual liberalisation. However, the structure is geared neither towards markets nor to theoretical considerations. Only the EC makes separate provision for common measures on competition and other stabilisation aspects. The GATS contains the new but weak directive "to eliminate or reduce existing monopoly rights". The OECD aims at least for economic co-operation, whereas the GATS makes no economic prescriptions.

Step-by-step liberalisation on the basis of lists could have the advantage that the same activities were liberalised simultaneously in all participating countries. However, as all the organisations expressly permit various exceptions, some of which have been invoked for decades, there is no guarantee that liberalisation will be either simultaneous or according to plan. Successes achieved by the EC stem from the fact that the scope and duration of exceptions are now circumscribed. The OECD

<sup>15</sup> See D. C. Templeman: Liberalisation of Investments in the OECD – Portfolio Investments and Securities Markets, in: *Journal of World Trade Law*, Vol. 6, 1972, No. 4, July – Aug. 1972, pp. 425 ff.; K. W. Grewlich, op. cit., pp. 252 ff.; R. Bertrand: The Liberalisation of Capital Movements – An Insight, in: *The Three Banks Review*, No. 132, Dec. 1981; OECD: Introduction to the OECD Codes of Liberalisation, Paris 1987; R. Ley: Liberating Capital Movements – A New OECD Commitment, in: *OECD Observer*, Aug. – Sept. 1989, pp. 22 ff.

requires member countries at least to disclose existing restrictions and to submit them to negotiation. However, it can only persuade, not exert pressure. Against this background, liberalisation has been very successful, even if the driving forces have probably come from the EC countries. In the GATS concept the number of safeguards and exemptions has not been restricted, but actually increased. Additional exemptions were created specially for developing countries, which are thus able to evade practically every commitment to liberalise. This may remove incentives for industrial countries to extend the liberalisation they already practise among themselves to other countries.

The liberalisation concept of the GATS is insofar extremely weak. It remains unclear which global financial markets are to be created and in what sequence, to whose benefit they are to operate and what worldwide economic repercussions they will have.

## Regulations

The regulation concepts are also very incomplete. None of the organisations is considering an "optimal" regulation of national or global financial markets, although the EC has initiated a very interesting regulatory programme that could be applied worldwide. Apart from this, the organisations are attempting to meet regulatory requirements by means of universally applicable principles.

The only clearly defined regulatory programme, that of the EC, consists of commitments to minimum harmonisation of particular regulations, the mutual recognition of other national regulations and the supervision of domestic enterprises on a consolidated basis by the home country. Minimum harmonisation means that all member countries apply a common set of safeguards that are sufficiently comprehensive to ensure the stability of the EC financial system. More far-reaching national banking and insurance regulations may continue to apply, but only to domestic enterprises. Restrictions can therefore no longer be directed against other EC countries, an adroit unbureaucratic and effective concept. Each bank will be supervised centrally and comprehensively with all its foreign branches by the home country.<sup>16</sup> Such a concept would be highly appropriate for global regulation and supervision, but does not even enter into the

considerations of the other organisations. The OECD does discuss regulatory arrangements, but no concrete agreements are reached. The GATS allows for the possibility of harmonisation but establishes no obligation to do so.

Multilateral agreements often contain principles in the form of a "most-favoured-nation clause" (MFN) or a "national treatment clause", which relate to regulations. The MFN clause requires countries to treat non-residents equally, but not on a par with residents. The national treatment clause, by contrast, requires non-residents to be given the same treatment as residents.<sup>17</sup> Only the draft GATS agreement includes both principles. The MFN principle is a fundamental GATT precept and states that "any privilege, right or advantage granted to one member country is to be granted unconditionally to all others and even to non-members". It is widely applicable and relates to all state regulations, but only becomes effective in the event of liberalisation. Equal treatment for residents and non-residents is also required, but does not mean freedom of establishment.

The EC Treaty and the OECD codes do not refer expressly to these principles. However, the entire system of EC regulations is based on the equal treatment of member states. The "principle of mutual recognition" combined with "home country control" goes even further than the "national treatment" principle. The OECD also regards this principle as valid, though without mentioning it expressly. It is stated explicitly only in the Declaration and Decisions on International Investment and Multinational Enterprises of 1991.<sup>18</sup> Principles alone achieve little if the means of enforcing them are lacking.

The GATS therefore lacks a clear regulation concept to go with the liberalisation concept. The absence of long and short-term liberalisation and regulation concepts would not be very serious if ongoing negotiations could be expected to take care of this deficiency.

## Negotiation Procedures

To enable them to achieve their political objectives, national governments have a state machine that enacts the necessary laws and ordinances, effects and monitors

<sup>16</sup> Cf. U. Dennig: Der EG-Finanzinnenmarkt, in: O. G. Mayer et al. (eds.): Der Europäische Binnenmarkt, Hamburg 1989, pp. 195 ff.; J. W. Gaddum: Harmonisierung der Bankenaufsicht in der EG, in: D. Duwendag (ed.): Europa-Banking, Baden-Baden 1988, p. 138; S. J. Key: Mutual Recognition: Integration of the Financial Sector in the European Community, in: Federal Reserve Bulletin, Sept. 1989, pp. 591 ff.

<sup>17</sup> See E.-J. Mestmäcker: Free Trade in Services: Regional and Global Perspectives, in: D. Friedmann and E.-J. Mestmäcker (eds.): Rules for Free International Trade in Services, Baden-Baden 1990, pp. 9 ff.; P. Bratschi, op.cit., pp. 20 ff.; S. F. Benz: Trade Liberalisation and the Global Service Economy, pp. 114 ff.; H. Knorr and A. Tegge: Liberalisation Strategies for Free Trade in Services, in: INTERECONOMICS, Vol. 25, No. 5 (Sept. – Oct. 1990), pp. 220 ff.

<sup>18</sup> See OECD Declaration and Decisions on International Investment and Multinational Enterprises, Review 1991, Paris 1992, pp. 25 ff.; UNCTAD: Trade and Development Report 1991, pp. 202 ff.

their execution and institutes sanctions in the event of problems. Typically, there is no corresponding apparatus to enforce compliance with international objectives; they can be achieved only by the exercise of hegemonic power or commitments undertaken in the course of negotiations. A good negotiating concept would therefore be one that reinforced countries' willingness to enter into commitments.

The EC is the only supranational organisation that resembles a state. All it lacks is its own executive. The OECD is no more than a standing international conference. The GATT is not even that; it is a trade agreement that developed into an organisation. In these circumstances, international decisions are effective only if they are taken by government representatives and gain a wide measure of support among the participating countries. Accordingly, the supreme decision-making bodies – the Council in the EC and the OECD and the Contracting Parties in the GATT – consist only of government representatives. Member countries each have one vote, although in the EC it is weighted. All organisations endeavour to reach decisions by unanimity. Majority decisions have been possible in the EC since 1987 and in the GATT from the outset. Unanimity is the norm in the OECD, but individual countries can abstain from decisions.<sup>19</sup> The implementation of multilateral decisions is therefore possible in all of the organisations if the political will is there.

Multilateral commitments have been reinforced in the EC by the fact that in most cases a multi-stage overall programme is put forward and approved by the Council. Only afterwards are the programme steps translated into individual directives, discussed, approved and then incorporated into national law within a stated time limit. The procedure is protracted and can take up to five years, but after all it does concern long-term modifications and thorough discussion improves the acceptability of the measures.

Permanent arrangements are much more difficult to implement in the OECD and the GATT. For financial

services the OECD uses separate "Codes", in which member states undertake to enact the same liberalisation measures in specific areas over a stated period of time.<sup>20</sup> However, the commitments are often very weak in order to secure wide participation. Otherwise, negotiations generally focus on easily understood aspects of the financial sector that can be resolved technically.

By contrast, GATT negotiations are organised as a bargaining process from the very start. In recent years the main bargaining has taken place outside the official framework in trilateral negotiations among the USA, Japan and the EC before the true multilateral negotiations are conducted on the basis of agreed lists of demands and offers.<sup>21</sup> Applying this procedure to financial services would mean that financial liberalisation would be negotiated partly in exchange for concessions on trade in other goods and services. The GATT differs from the EC and the OECD also in that negotiations are not conducted continuously but in rounds. A round of negotiations generally lasts for between three and five years, followed by a pause of several years. Moreover, it is very difficult to conduct efficient negotiations among the more than 150 countries and 2,000 officials now participating; too many special political factors that have nothing to do with financial services have to be taken into account.

Certainly, financial liberalisation should not become a bargaining counter in comprehensive dealing among trade policy-makers. It belongs in the hands of far-sighted stability oriented financial specialists and should also be the sole subject of specific negotiations.

## Conclusions

To summarise, the requirements for a rigorous international concept for financial liberalisation are met only by the EC approach. Even here the objective is not clearly defined and no theoretically "optimal" regulatory concept is pursued. The EC approach is nevertheless workable and can be optimised, but as it forms part of an integration programme the concept cannot easily be applied to other organisations. The GATS concept, which is based both on the GATT texts relating to goods and on the OECD capital movements code, is unconvincing in all respects. It has no central notion with regard to liberalisation or regulation of finance and is not even able to tackle the acute stabilisation problems of global markets. It would be better to exclude the highly sensitive financial sector from the GATT negotiations and to entrust it to national representatives with experience and responsibility in the monetary and foreign exchange field. The IMF would be a more appropriate global forum for this than the GATT.

<sup>19</sup> See H. von der Groeben et al.: *Kommentar zum EWG-Vertrag*, 4th edn., Baden-Baden 1991, Vol. 3; H. J. Hahn and A. Weber: *Die OECD Organisation für Wirtschaftliche Zusammenarbeit und Entwicklung*, Baden-Baden 1976, pp. 41 ff.; OECD: *Introduction to the OECD Codes of Liberalisation*, Paris 1987, pp. 9 ff.; P. Bratschi, *op.cit.*, p. 16 ff.; R. Senti, *op.cit.*, pp. 37 ff.

<sup>20</sup> See *Kodex der Liberalisierung der laufenden unsichtbaren Operationen*, Bonn 1964; *Kodex der Liberalisierung des Kapitalverkehrs*, Bonn 1964; OECD: *Liberalisation of Capital Movements and Financial Services in the OECD Area*, Paris 1990, pp. 14 ff.; OECD: *The OECD Declaration and Decisions on International Investments and Multinational Enterprises*, 1991 Review, Paris 1992, pp. 25 ff. and Annex I.

<sup>21</sup> See R. Senti, *op.cit.*, pp. 57 ff.