

**Comments on Ambassador Jeff Lang's Paper Regarding
the General Agreement on Trade in Services (GATS)**

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Charles D. Lake II

Before I make my comments, I would like to quickly talk about the company I work for, AFLAC (the American Family Life Assurance Company of Columbus). Many of you may not know that AFLAC is the largest foreign financial services company in Japan in terms of profits, and the second most profitable foreign company in any industry in Japan. Coca-Cola is the first, and IBM is the third. AFLAC now insures almost 25 percent of Japan's overall population.

Thus, I hope to bring to this meeting a perspective not only of a former USTR official involved in the GATS negotiations and a Washington lawyer, but a perspective of an in-house counsel and business executive who deals with foreign, domestic regulatory issues on a daily basis on behalf of a U.S. company operating in a market well known for being one of the toughest to crack.

I am generally in agreement with Ambassador Lang's paper. So, using the five minutes that have been allocated to me, I would like to make two points, which are related and re-enforce the views he expressed.

The first point is the importance of the development of the rule of law in services trade. The second point is the need to promote pro-competitive regulatory principles, particularly in the financial services sector.

1: Rule of Law and Transparency

With respect to the rule of law, I am in total agreement with the importance Ambassador Lang attaches to the basic provisions of Article III (transparency) and Article VI (domestic regulation). It was indeed very important, and continues to be

so, for all U.S. services providers to be regulated by transparent "measures of general application" which "are administered in a reasonable, objective and impartial manner."

In evaluating the first five years of GATS, we cannot underestimate the importance of the fact that through provisions like these, GATS for the first time established a framework of rules governing services trade.

As basic as the notion of applying measures in "a reasonable, objective and impartial manner" may sound to many of us, this is not the situation many U.S. business people traditionally have faced abroad, particularly in countries like Japan with the history of heavy reliance on informal measures such as administrative guidance.

For countries like China new to the multilateral, rules-oriented disciplines, full and meaningful implementation of these provisions will be a challenge to say the least.

Today, at least some countries like Japan, for reasons that may have little to do with the WTO rules, are moving rapidly to adopt more transparent and rule-oriented domestic regulations as a way to enhance the competitiveness of their own economies.

Nevertheless, the GATS commitments provide an important framework and basis for companies to challenge measures if they are not applied in a "reasonable, objective, and impartial manner." In fact, in order to ensure that these provisions do not become "dead letters" (in the words of Ambassador Lang), U.S. industry and government should vigorously challenge measures that are inconsistent with these provisions. In relation to this issue, I agree with Ambassador Lang that steps should be taken to address the uncertainty about the meaning of the provisions of GATS. We cannot rely solely on the current DSU to address complex issues relating to discriminatory and non-transparent regulatory measures.

2. Pro-competitive Regulatory Principles

The establishment of the rule of law in services was the necessary first step. But now we need to move forward, which is my second point today. U.S. services providers are among the most competitive in the world. Our cutting edge products, services and technologies allow us to offer customers the highest quality products in the world at competitive prices when the playing field is even and fair competition is permitted.

In achieving these objectives, the U.S. insurance industry believes that all WTO countries should now commit to "pro-competitive" or "market-oriented" regulatory principles.

An example of such "pro-competitive regulatory principles" is solvency and prudential based regulation. Regulation should focus on insuring that financial institutions meet reasonable solvency and prudential requirements as the primary means of protecting consumers.

In most cases, governments should allow the market to determine the most effective products and pricing of these products in a competitive regulatory environment that encourages innovation and product diversity.

The first step in developing this type of system should involve substantive consultations between government and the local private sector to assure that regulations are market-oriented and economically sound. A transparent process for making regulations should provide adequate opportunities for businesses to comment on proposed rules.

The second step--which is just as important as the first step--is to ensure that the regulatory agency has the capacity, in terms of resources and skills, to implement solvency and prudential- based regulation.

Japan provides an excellent example in this regard. After years of bilateral and multilateral negotiations relating to financial services, Japan now appears to be

in the process of making significant changes to its regulatory approach relating to financial services.

Japan is now moving to adopt "global standards" such as those established by the Basil Committee to establish solvency and prudential-based regulation rather than relying on its traditional "convoy approach" of regulation based on administrative guidance.

However, in order to fully achieve these policy goals, the Financial Supervisory Agency (FSA), which regulates banking, securities, and insurance, needs to dramatically increase the number of officials it has from its current 535 officials to something a lot larger, particularly in the licensing division.

We have just touched on a few issues today. A lot more work is needed to ensure that GATS will provide the necessary tools to level the playing field and to expand trade for U.S. service providers.

Thank you very much.