

General Agreement on Trade in Services (GATS): Issues and Implications

**A
Presentation at
CWS/IIFT
on
26 February 2014**

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THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)



- MAIN ELEMENTS -

Services: General perception

■ NOT TRADABLE AND NOT STORABLE

- Simultaneity of production and consumption
- Role of local establishment

■ STRONG GOVERNMENT INVOLVEMENT

- Natural monopolies, public service obligations, etc.
- Infrastructural importance (transport, telecom, etc.)
- Role of non-economic objectives (social, cultural, safety)

■ INTANGIBLE

- Quality criteria for services providers rather than for products

■ NO TARIFFS

- Access conditions determined by regulation, quotas etc.

... but:

- Certain services - international transport and communication - have been traded for centuries
- Services are supplied in conjunction with goods (finance, insurance, marketing, etc.)
- Services have become tradable as a result of:
 - technical progress (e-banking, tele-medicine, distance learning)
 - government retrenchment
 - market liberalization and regulatory reform

Services in the Multilateral System: Since 1995

YEAR	ROUND	PARTICIPANTS
1947	Geneva	23
1949	Annecy	13
1951	Torquay	38
1956	Geneva	26
1960/61	Dillon Round	26
1964/67	Kennedy Round	62
1973/79	Tokyo Round	102
1986/93	Uruguay Round	123

(Creation of GATS)



GENERAL AGREEMENT ON TRADE IN SERVICES:

MAIN FEATURES

GATS: Objectives



- Expansion of services trade
- Progressive liberalization through successive rounds of negotiations as a means of promoting growth and development
- Transparency of rules and regulations
- Increasing participation of developing countries

GATS: Scope, Coverage, Definition

- MEASURES AFFECTING TRADE IN SERVICES AT ALL GOVERNMENT LEVELS

- ALL SERVICES
(except governmental services and air traffic rights)

- FOUR MODES OF SUPPLY
 - Cross-border supply
 - Consumption abroad
 - Commercial presence
 - Movement of natural persons

Relative importance of Modes wrt trade flows in services

- Cross-border supply-35%
- Consumption abroad-10-15%
- Commercial presence-50%
- Presence of natural persons-1-2%

GATS: Sectoral Coverage



- Business Services
- Communication
- Construction
- Distribution
- Education
- Environmental Services
- Health Related Services
- Financial Services
- Tourism
- Recreation, Culture, Sports
- Transport
- Other Services

GATS- The Agreement

- GATS- single most significant development since GATT (1948)
- Scope of its rules encompasses all forms of intl services trade representing a large sector of world economic activity
- Activity taking place inside national economies influences national domestic laws and regulations in a way that has been true of GATT only in recent years.

GATS- The Agreement

- Has in all 29 articles- divided into 6 parts- scope & definition, general obligations & disciplines, GATS Rules, Schedules of commitments, progressive liberalisation. Institutional and final provisions.
- Also includes various Annexes to GATS- while 2 Annexes deal with MFN & MNPs others specify rules for specific sectors- air transport, financial, telecom and maritime services

GATS- The Agreement

- Art. 1 ‘measures by members’ go beyond central govts & include regional/local govts & also N-G bodies exercising delegated govtal powers- tough to implement.
- Gen. Obligations & Disciplines- are fundamental rules & apply to all members & almost all services
- Barring a reference to sp. commitments in Art VI.1 (dom. reg.) rules universally applicable- even here difficult to discriminate committed/not committed



GENERAL AGREEMENT ON TRADE IN SERVICES:

APPLICATION TO SECTORS AND MODES

GATS: Relevance for individual sectors

Three Scenarios:

- I. Not covered: (A) Governmental services and (B) air traffic rights
- II. Application of “unconditional” disciplines: All other services
- III. Full application (“conditional” and “unconditional” disciplines): Services covered by Specific Commitments

Scenario I:

A. Air Transport Services

Excluded from coverage are measures affecting “traffic rights” and “services directly related to the exercise of traffic rights”. However, the GATS applies to:

- (a) aircraft repair and maintenance;
- (b) selling and marketing of air services;
- (c) computer reservation systems.

Scenario I:

B. Governmental Services

Excluded from coverage are “services provided in the exercise of governmental authority” which, in turn, are defined as services that are supplied “neither on a **commercial basis**, nor in **competition** with one or more service suppliers”.
(Article I:3)

What are “Governmental Services”?

Typical examples:

Police, fire protection, infrastructural services (roads, etc.), monetary policy operations, customs administration, ...

...and any other public service (health, education, etc.) meeting the relevant criteria.

Scenario II: General (unconditional) obligations apply

- Most-Favoured-Nation Treatment
- Transparency obligations

Most-Favoured-Nation (MFN) Treatment

“... each Member shall accord **immediately and unconditionally** to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country” (Article II:1)

Exemptions could have been sought at the date of entry of GATS for periods not exceeding ten years in principle.

Scenario III: Sector is subject to Specific Commitments

The GATS requires each Member to submit a Schedule of Specific Commitments that lists the sectors in which it grants **Market Access** and **National Treatment**.

General obligations (“conditional” and “unconditional”) apply in addition.

“Conditional” Obligations

- Transparency* (Art. III)
- Domestic Regulation* (Art. VI)
- Monopolies* (Art. VIII)
- Payments and Transfers (Art. XI)

*Article contains unconditional and conditional obligations

Schedules of Specific Commitments: Structure

Schedules specify the extent of liberalization a Member guarantees in designated sectors.

General layout:

Market Access and National Treatment: Main elements

- MARKET ACCESS (Article XVI)
Absence of quota-type and similar restrictions
- NATIONAL TREATMENT (Article XVII)
Non-discrimination with regard to **all** measures affecting the supply of a service

Any limitations must be inscribed in Schedules under the relevant modes(s).

How can national policy interests be protected under GATS (Scenario III)?

Market Access (MA) and National Treatment (NT) obligations are incurred only:

- in **scheduled sectors**; and
- to the extent that **no limitations** have been inscribed.

Meaning of “limitations”?

Scheduling of a sector does not imply that trade (i.e. MA and NT) must be liberalized for all modes. Rather, commitments may vary within a spectrum between:

“unbound” = no commitment

“none” = no limitation (full commitment)



**GENERAL AGREEMENT
ON TRADE IN SERVICES:**

**SCHEDULING OF
COMMITMENTS**

Preparing a schedule: Two steps

- **Select sectors and sub-sectors for inclusion**

Relevant considerations [underlying objectives]:

Attract foreign investment [employment], foster competition [efficiency], broaden product choice and improve quality [consumer welfare], etc.

- **Consider need for modal exclusions or limitations**

Relevant considerations [type of limitation]:

Promote know how transfer [joint venture requirements (mode 3)], protect domestic employment [quantitative limitations (modes 1,2,4), subsidies], prevent market disruption [phase-in commitments], etc.

How Schedules of Commitments are structured: India/Health

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
8. HEALTH RELATED AND SOCIAL SERVICES A. <u>Hospital Services</u> (CPC 9311)	1) Unbound 2) Unbound 3) Only through incorporation with a foreign equity ceiling of 51 per cent 4) Unbound except as indicated in the horizontal section	1) Unbound 2) Unbound 3) None 4) Unbound except as indicated in the horizontal section	

Role of Additional Commitments (Article XVIII)



Scheduling of measures **not** falling under
Articles XVI or XVII.

Such measures may relate to qualifications,
standards, licenses, competition disciplines, etc.

Complexity a Challenge

- GATS structurally more complex than GATT.
- Existence of 4 modes of supply and of two distinct legal parameters, MA and NT - while a GATT tariff schedule displays one tariff rate by sector, GATS commitments consist of eight inscriptions (4 each MA and NT).
- Complex structure intended to accommodate sector- or mode-specific constraints Members may encounter in scheduling and to progressively liberalize in line with their national policy objectives and levels of development.



**GENERAL AGREEMENT
ON TRADE IN SERVICES:**

‘BUILT-IN AGENDA’

Domestic Regulation (Article VI)

- In scheduled sectors: Reasonable, objective and impartial administration of measures (Art. VI:1)
- “Standstill” in committed sectors (Art. VI:5):
No new regulation that
 - (i) would be unnecessarily burdensome,
 - (ii) could not have been expected, and
 - (iii) would nullify or impair a commitment.
- Other obligations
- **Negotiations on necessary disciplines (Art. VI:4)**
- **Negotiations have to be concluded along with the Round**

Emergency Safeguard Measures

“There shall be **multilateral negotiations** on the question of emergency safeguard measures... The results of such negotiations shall enter into effect... not later than three years from the date of entry into force of the WTO Agreement.”

Services Negotiating Guidelines: ESM negotiations shall be completed along with the conclusion of the Round.

Government Procurement



MFN, Market Access and National Treatment provisions do not apply to the procurement of services for governmental purposes.

However, Art. XIII provides for **negotiations** (no deadline).

Negotiations will be concluded along with the Round.

Subsidies

Subsidies, like all other measures affecting trade in services, are subject to relevant GATS provisions such as MFN and, in scheduled sectors, National Treatment.

Article XV recognizes that subsidies may (nevertheless) have trade-distortive effects in certain circumstances and mandates **negotiations** on “necessary multilateral disciplines” (no deadline). Negotiations will be concluded along with the Round.

The New Services Round (Doha Round)

- **Article XIX of GATS - Basic Mandate:**
 - Successive rounds of negotiations, starting no later than January 2000, with a view to achieving a progressively higher level of liberalization
 - Due respect for national policy objectives and levels of development
 - Flexibility for developing countries to liberalize fewer sectors and types of transactions
- **Article IV:1:**
 - Facilitate increasing participation of developing countries in world trade
- **Annex on Article II Exemptions:**
 - Negotiation of existing MFN Exemptions

India's Requests

- India's requests to 62 members in architectural, engineering, audio-visual, computer and related, health, maritime, tourism and travel, financial, construction and related engineering and accounting and bookkeeping services India also received requests from a number of members.

India's Initial Offer

- India submitted its initial offer in January 2004. UR commitments improved in engineering, computer and related, construction and related engineering, financial, health and tourism.
- Fresh commitments in accounting and book keeping, medical and dental, services by midwives, nurses, physiotherapists and para- medical personnel, and maritime transport services.

Contd.....



Horizontally, UR commitments improved by enhancing the period of stay for business visitors and also expanding the category of professionals to include Contractual Service Suppliers, both employees of enterprises and independent professional in certain identified sectors.

Highlights of India's Revised Offer

- Building on the improvements in the initial offer, **fresh commitments** offered in architectural, integrated engineering and urban planning and landscape services; veterinary services; environmental; distribution; construction and related engineering services; tourism; education, life insurance, recreational, cultural and sporting services and air transport services.
- **Improvements** have been made in a number of sectors including engineering; computer and related services, R&D services; basic telecommunications; value based telecommunications; construction and related engineering services, banking services, asset management services and other non-banking financial services.
- India's offer is in line with its aggressive position.

Hong Kong Ministerial Declaration

- Modal objectives agreed to make new and improved commitments.
- Mode 1- commitments at existing level & removal of requirement of com. presence.
- Mode 2 – at existing level & also commitments where Mode 1 exists.
- Mode 3 – commitments on enhanced levels of foreign equity participation, removal or substantial reduction of ENTs and commitments allowing greater flexibility on the types of legal entity permitted.

Contd.

- Mode 4 - (i) new/improved commitments on categories of CSS, IPs & Others, de-linked from com. presence to reflect removal or substantial reduction of ENTs and indication of prescribed duration of stay & possibility of renewal, if any; (ii) new/improved commitments on categories of ICTs & BVs, to reflect removal or substantial reduction of ENTs and indication of prescribed duration of stay & possibility of renewal, if any.

Efforts towards completion of negotiations

- Contd informal consultations on elements required for the completion of negotiations that can be reflected in a text for adoption by members.
- Though request-offer approach is main method of negotiations, pursuant to para 7 of Annex C of HK Decln negotiations on plurilateral basis were also pursued.
- 21 collective requests submitted by co-sponsors to other members in various sectors.

Mini-Ministerial- July 2008

- A **Signaling Conference** held in July 08.
- Members gave signals to make qualitatively improved offer in services sectors/modes.
- India to improve in telecom, financial, energy, postal & courier, retail, other business services. Developed countries response not encouraging.
- In July 08, CTS Chairman came out with a report- “Elements required for the Completion of the Services Negotiations.”
- No further progress.

Some recent research on services trade



- Even if no tariffs on services, costs of trading internationally twice as high as goods.
- Some recent policy responses to economic crisis have shown the importance of WTO commitments to preventing back sliding.

Contd...

- Doha promises greater security of access to markets but not any additional liberalization. UR commitments on average 2.3 times more restrictive than current policies.
- The best offers submitted so far improve on UR commitments by about 13% but remain on average 1.9 times more restrictive than actual policies (Gootiiz and Mattoo 2009).



**THANK
YOU**

S. Kumar