

# Overview of Services and GATS

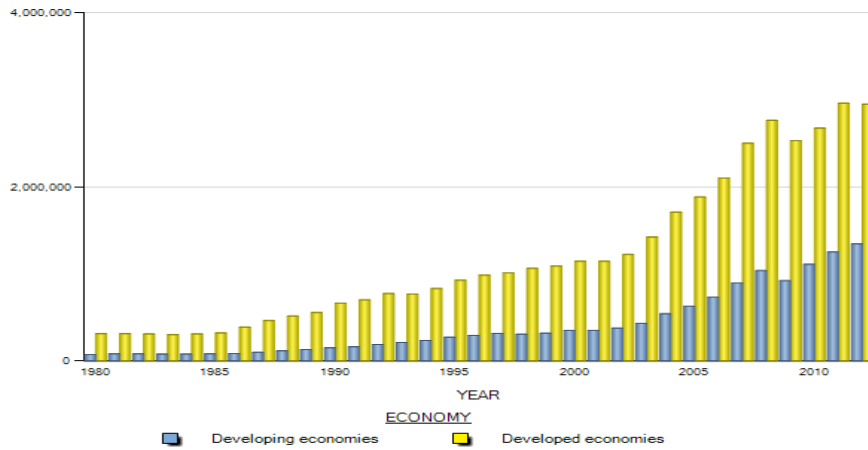
**Dr. Pralok Gupta**  
Asst. Professor  
Centre for WTO Studies  
Indian Institute of Foreign Trade  
New Delhi

“It is high time that we put services at  
the heart of our trade opening  
agenda”

Pascal Lamy (Ex DG-WTO)  
28May 2012

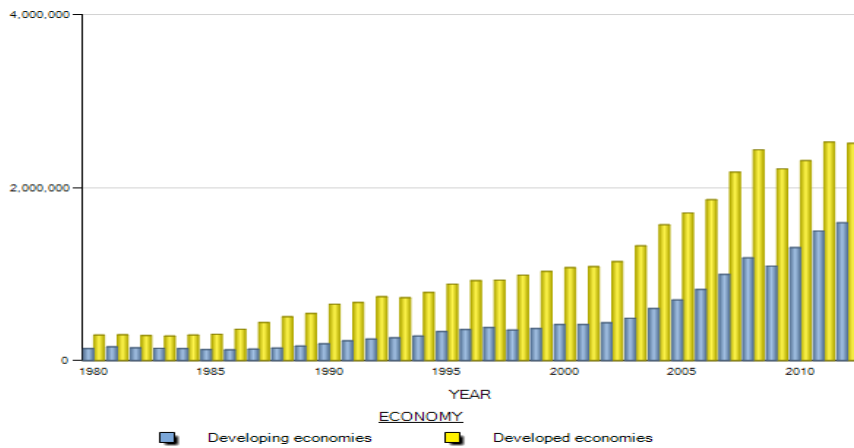
# Trends in Services Trade

## Total Services Exports (In USD Millions)

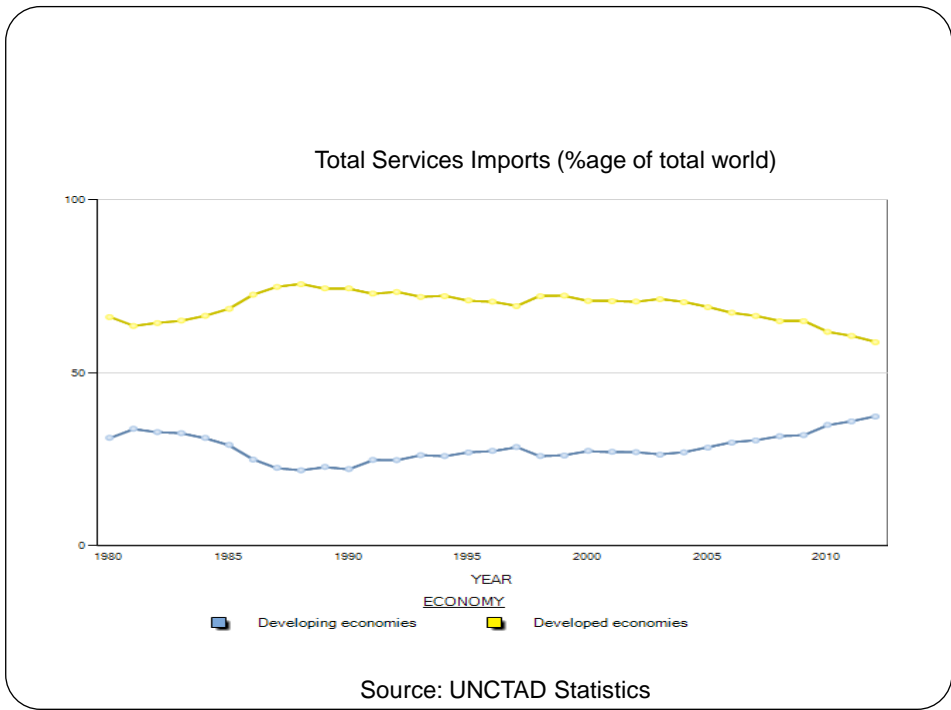
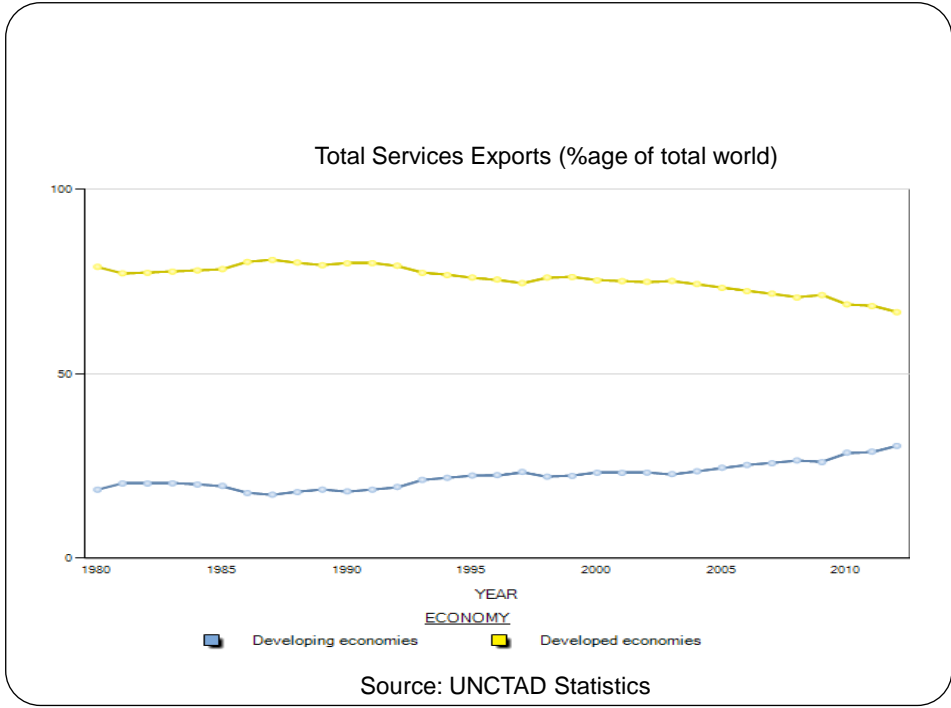


Source: UNCTAD Statistics

## Total Services Imports (In USD Millions)



Source: UNCTAD Statistics



## Services Trade: Conceptual Issues

- Characteristics of services-
  - Intangible
  - Simultaneity
  - Instantaneity
- Government involvement in the form of -
  - Natural monopolies, public service obligations, etc.
  - Infrastructural importance (transport, telecom, etc.)
  - Role of non-economic objectives (social, cultural, safety)
- Barriers in the form of regulations unlike tariffs in case of goods

- Evolving nature of regulations, regulations are either not present, out dated or not clearly written in the legislation
- Lack of transparency
- Technology driven changes in many services
- Difficulty in measuring services data
- Four-pronged definition of services trade depending on the territorial presence of the supplier and the consumer at the time of the transaction

## Evolution of Services Trade

- Traditional belief that services can not be traded due to various characteristics, such as Intangibility; Simultaneity; Instantaneity
- These beliefs are not correct as shown by trade data
- Certain services - international transport and communication - have been traded for centuries, Some services are supplied in conjunction with goods (finance, insurance, marketing, etc.)

## Increasing Services Trade: Why?

- Services have become more tradable as a result of:
  - Technical progress (e-commerce, tele-medicine, etc.)
  - Downsizing of government
  - Domestic regulatory reforms
  - Market liberalization and opening -up

## General agreement on trade in services (GATS)

- GATS is the first ever international discipline on trade in services
- Entered into force in January 1995 as a result of the Uruguay Round negotiations to provide for the extension of the multilateral trading system to services
- In the Uruguay Round negotiations, many developing countries resisted negotiations on trade in services
- GATS negotiations were conducted “outside” the Uruguay Round negotiations until the end of the process when the countries reached consensus on a

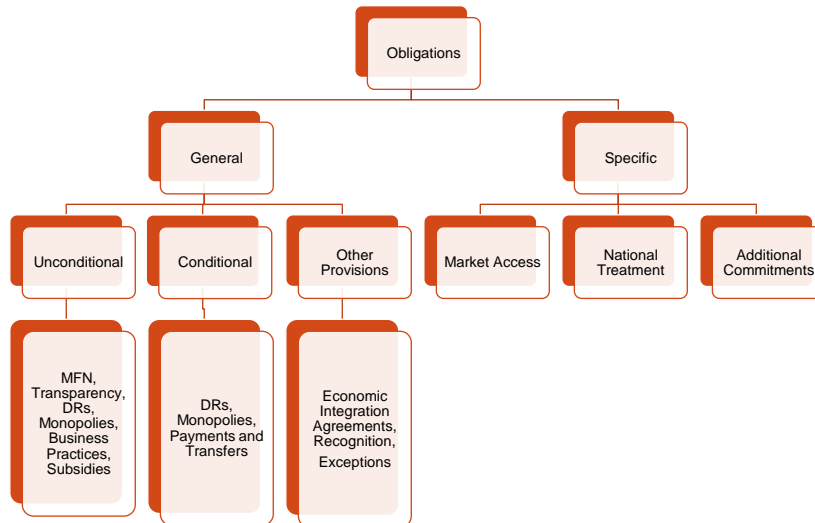
- Why so late an international agreement on trade in services?
  - Different from goods trade
  - Peculiar characteristics of services such as non tangibility etc.
  - Importance of domestic regulations as opposed to trade-specific legislations
  - Public policy objectives such as health and safety regulations
  - Sovereignty issues and related regulations such as investment regulations, immigration

## Understanding the GATS

- All Members of WTO are signatories to the GATS and have to assume the resulting obligations
  - Regardless of their countries' policy stances, trade officials need to be familiar with this Agreement and its implications for trade and development
- GATS applies to measures by Members affecting trade in services- these measures may be taken by central, regional or local governments or authorities
- Two main pillars of GATS:
  - (a) ensuring increased transparency and predictability of relevant rules and regulations, and
  - (b) promoting progressive liberalization through successive rounds of negotiations

- It aims at improving market access and extending national treatment to foreign services and service suppliers across an increasing range of sectors
- It does not, however, entail deregulation
- Rather, the Agreement explicitly recognizes governments' right to regulate, and introduce new regulations, to meet national policy objectives

## Structure of the GATS



- GATS covers all internationally traded services except-
  - Services provided to the public in the exercise of governmental authority that are supplied “neither on a commercial basis, nor in competition with one or more service suppliers”
  - Air Traffic rights and all services directly related to exercise of air traffic rights (but includes aircraft maintenance and repair; selling and marketing of air transport services; computer reservation services)



### **GOVERNMENTAL SERVICES- SOME EXAMPLES....**

Police, fire protection, infrastructural services (roads, etc.)

Monetary policy operations, customs administration,

Other public services (health, education, etc.) meeting the relevant criteria

## **GATS: SECTORAL COVERAGE**

### **12 Sectors and 161 Sub-Sectors**

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

## Modes of Services Trade under GATS

Trade in services is defined as the supply of a service through 4 modes:

**Mode 1: Cross-border supply**

**Mode 2: Consumption abroad**

**Mode 3: Commercial presence**

**Mode 4: Presence or movement of natural persons**

### Mode 1

- **Mode 1: Cross border supply**, i.e., supply of a service from the territory of one Member into the territory of another Member
  - e. g – International Telecommunication, IT-enabled services, online courses, BPOs.

## Mode 2

- **Mode 2: Consumption abroad**, i.e., supply of a service in the territory of one Member to the service consumer of any other Member-implies services consumed abroad by national of another country.
  - e.g. - Tourism - when an Indian tourist stays in a UK hotel, she consumes hospitality services 'abroad' from the UK hotelier; Health – Indian Hospital providing hospitalisation for foreign patients; a British ship undergoing repairs in US

## Mode 3

- **Mode 3: Commercial Presence**, i.e., supply of a service by a service supplier of one Member, through the commercial presence in the territory of any other Member- implies services provided by an operator based abroad to consumers of that country through a business or professional establishment by establishing a juridical person or maintaining a branch or a representative office.
  - e.g. – A Branch of State Bank of India based in UK providing banking services to UK consumers, Vodafone providing telecom services in India.

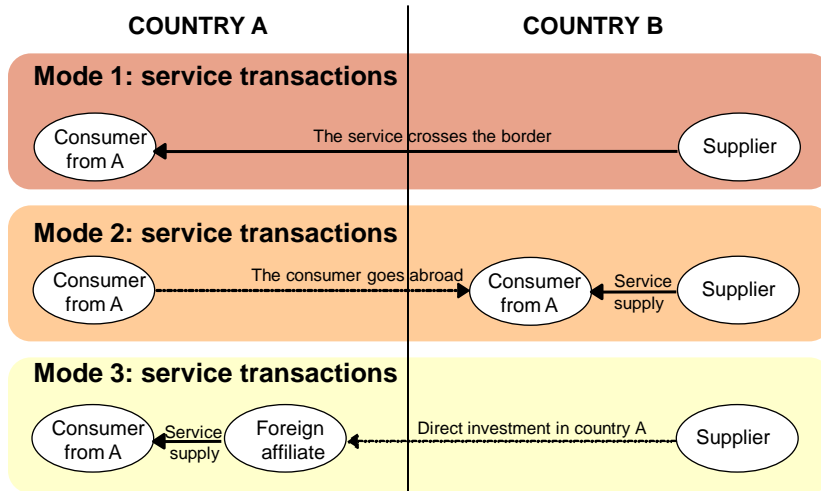
## Mode 4

- **Mode 4:** Supply of a service by a service supplier of one Member through presence of natural persons of a Member in the territory of any other Member- implies Movement of Natural Persons (MNP) or Movement of skilled personnel, of one country to another to work there on a temporary basis.
- Supply of service can be by a natural person or a juridical person of one Member through the presence of natural persons of Member in the territory of any other Member

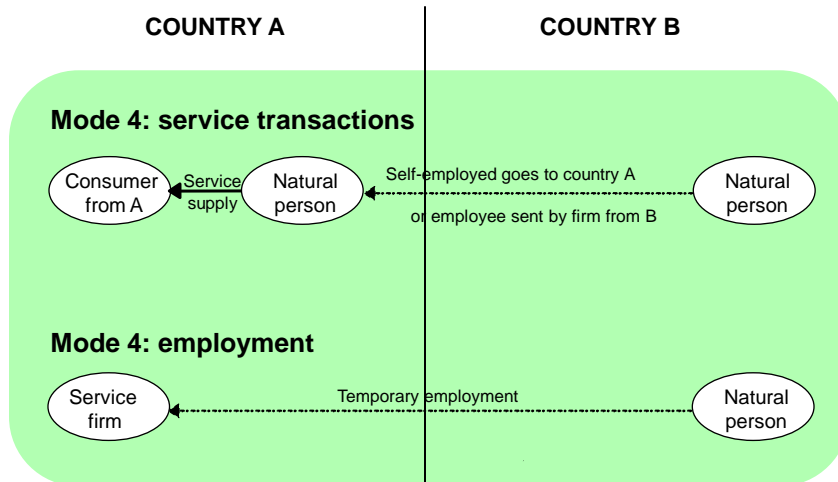
## Mode 4 (contd.)

- Examples of Mode 4 suppliers:
- A self-employed Indian doctor working in a US hospital on a contract basis (Independent Professional)
- A software engineer of Infosys, India , travelling to US for developing a software for Citibank, US pursuant to a contract between Infosys and Citibank when Infosys has no commercial presence in US (contractual service supplier)
- A software engineer of Infosys, India , travelling to US to work in US Branch Office of Infosys to develop a software for Citibank, US pursuant to a contract between Infosys and Citibank(Intra corporate transferee)
- A Senior Manager of Infosys, India visiting US to negotiate sale of software service to Citibank (Business Visitors)

## 4 Modes of Supply under GATS (1/2)



## 4 Modes of Supply under GATS (2/2)



## Scheduling Commitments

- Each Member is required to assume specific commitments relating to market access and national treatment in designated sectors
- Market Access and National Treatment commit Members to giving no less favourable treatment to foreign services and service suppliers than provided for in the relevant columns of their Schedule
- Commitments thus guarantee minimum levels of treatment, but do not prevent Members from being more open (or less discriminatory) in practice

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
<b>I. HORIZONTAL COMMITMENTS</b>			
SECTORS INCLUDED IN THIS SCHEDULE			
<b>II. SECTOR-SPECIFIC COMMITMENTS</b> <i>[Insert specific commitments in the relevant service sector(s)/sub-sector(s) as appropriate]</i>			
	1) Unbound 2) Unbound 3) None 4)	1) 2) 3) 4)	
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## LIMITATIONS ON MARKET ACCESS (MA)

- Giving access to home market by a member country to services and service suppliers of other Member countries
  
- GATS cover six types of MA limitations
  1. Limitations on the number of service suppliers;
  2. On the total value of service transactions or assets;
  3. Number of operations or quantity of output;
  4. Number of natural persons supplying a service;
  5. Type of legal entity or joint venture through which a service is provided;
  6. Any foreign capital limitations relating to maximum levels of foreign participation

## LIMITATIONS ON NATIONAL TREATMENT (NT)

- The NT standard does not require formally identical treatment of domestic and foreign suppliers
  - Formally different measures can result in effective equality of treatment; conversely, formally identical measures can in some cases result in less favourable treatment of foreign suppliers (*de facto* discrimination)
  
- Limitations on national treatment cover cases of both *de facto* and *de jure* discrimination
  
- Unlike MA limitations, NT limitations do not contain an exhaustive listing of the types of measure

## Most Favored Nation (Article II)

- Under this if a WTO member country grants favourable treatment to another country, even a non-WTO member, regarding the import of a service, it must grant all other WTO signatories the same treatment
- If a country allows any foreign competition in a service sector, it must allow service providers from all WTO member countries to compete to supply that service
- BUT - one-off opportunity to claim MFN exemptions. Unique to the GATS – can only do so upon accession, in principle exemption for 10 years
- Other possible departures from MFN - Article V (Economic Integration); Article VII (Recognition)

## Economic Integration Agreements

### Article V

- Recognizes that economic integration agreements enhance the cause of liberalisation of trade
- Allows members to enter into such agreements where the liberalisation of trade on bilateral or plurilateral basis is greater than WTO commitments, **without MFN obligations**
- **Provided-**
  - such an agreement has “substantial sectoral coverage” and removes substantially all discrimination between participants
  - overall trade barriers are not raised for non-participants



## Mutual Recognition Agreements

### Article VII

- Allows scope for recognition of education or other qualifications obtained by an individual supplier in other member states, **without MFN obligations**
- Such recognition can be granted through agreement or on autonomous basis
- **Provided-**
- such recognition is not on exclusive basis, i.e. members are given opportunity:
  - to negotiate their accession to such agreements; or
  - to demonstrate that their requirements be recognised as well;
  - overall trade barriers are not raised for non-participants

## Domestic Regulations (DRs)

- GATS makes a clear distinction between domestic regulation and measures subject to trade liberalization
- Explicitly recognizes the continued right (and, possibly, the need) of Members to enforce domestic policy objectives through regulation
- Public policy objectives that might require regulatory support:
  - Equitable access, regardless of income or location, to a given service
  - Consumer protection (including through information and control)
  - Job creation in disadvantaged regions
  - Labor market integration of disadvantaged persons
  - Reduction of environmental impacts and other externalities

- Governments remain free under the GATS to pursue such policy objectives even in sectors where they have undertaken full commitments on market access and national treatment
- However, the domestic regulations should be
  - based on objective and transparent criteria, such as competence and the ability to supply the service;
  - not more burdensome than necessary to ensure the quality of the service;
  - in the case of licensing procedures, not in themselves a restriction on the supply of the service

## **Other provisions**

## Exceptions

### **Restrictions to Safeguard the Balance of Payments (Article XII)**

- Trade restrictions in the event of serious balance-of-payments and external financial difficulties
  - non-discriminatory, IMF-consistent, no unnecessary damage to other Members, limited to the difficulties encountered, temporary nature, progressive phasing out, no protective purpose

## Exceptions

### **General and Security Exceptions (Articles XIV and XIV *bis*)**

- Protection of public morals; life and health; etc.
  - no arbitrary or unjustifiable discrimination between countries where like conditions prevail, no disguised restriction on trade
- Protection of essential security interests

## Annexes to the Agreement

- Article II (MFN Exemptions)
- Movement of Natural Persons
- Air Transport
- Financial Services
- Telecommunications

**Thank You!**

Contact: [pralok@iift.ac.in](mailto:pralok@iift.ac.in)