WTO AGREEMENTS

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

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What is a service?

1. Business
2. Communication
3. Construction and Engineering
4. Distribution
5. Education
6. Environment
7. Financial
8. Health
9. Tourism and Travel
10. Recreational, Cultural and Sporting
11. Transport
12. Other
Size of the services sector

- World exports of commercial services
  1997 US$1.3 trillion (1998 est US$1.4 trillion)

- Australia’s services sector
  - creates more than 8 out of every 10 jobs
  - accounts for more than two-thirds of our GDP
  - contributes almost a quarter of Australia’s exports
General Agreement on Trade in Services - key facts

- First ever set of multilateral, legally enforceable rules covering international trade in services.

- Important outcome of the Uruguay Round of multilateral trade negotiations.

- With other agreements such as the General Agreement of Tariffs and Trade (GATT), the GATS is an integral part of the WTO.

- Entered into force on 1 January 1995.

- Mandated review after 5 years, that is, no later than 1 January 2000.
Basic principles of the GATS

- All services are covered by the GATS
- Most-favoured-nation treatment applies to all services, except for one-off temporary exemptions
- National treatment applies in the areas where commitments are made
- Transparency in regulations, inquiry points
- Regulations have to be objective and reasonable
- International payments normally unrestricted
- Individual countries' commitments negotiated and bound
Flexibility for Developing Economies

Developing economies are given flexibility, especially for

- Opening fewer sectors
- Liberalising fewer types of transactions
- Progressively extending market access in line with their development situation
GATS - three main components:

- The overall framework of 29 articles which sets out principles and rules
- A schedule for each country listing its "specific commitments" and any exemptions to the MFN principle
- Special rules for some sectors contained in eight annexes (including telecommunications, air services)
One general obligation

- **Most-favoured-nation treatment obligation (Article II)** - treating one's trading partners equally

- Under GATS, if a country allows foreign competition in a sector, equal opportunities should be given to service providers from all other WTO members
Two negotiated commitments

1. National treatment (Article XVII) - equal treatment for foreigners and one's own nationals

   • For goods (GATT) and Intellectual Property (TRIPS), it is a general principle

   • But in the GATS, it only applies where a country has made a specific commitment. Exemptions are allowed
2. Market access (Article XVI)

- If a government commits itself to allow foreign banks to operate in its domestic market, that is a market access commitment.

- If a government limits the number of licences for foreign banks it will issue, then that is a market access limitation.
Schedules of commitment

- The **schedules of commitment** contain the negotiated and guaranteed conditions for trade in services.

- Each country lists specific commitments on services sectors and on activities within those sectors.
  - They guarantee access in the listed sectors.
  - They list market access/national treatment restrictions.
  - They are **bound** - they can only be modified or withdrawn after negotiations with affected countries.
  - They are **standstill** - incorporating existing legislation.
Each schedule has three sections

1. **Horizontal commitments** - any restrictions on market access or national treatment across all sectors - eg in Australian schedule,

- foreign investment policy guidelines - FIRB activities
- restrictions on the movement of natural persons - immigration policy
2. **Sector-specific commitments** - eg in Australian schedule,

- in the majority of sectors, there are no limitations on market access or national treatment, other than those indicated in the horizontal section

- the sectors where Australia has limited coverage include health services, education services, transport services and communications services

- Australia has made no commitments in the audiovisual sector
3. List of most-favoured-nation exemptions - eg in Australian schedule

- film coproduction agreements with Italy, UK, Canada and France

- measures to protect Australia from any unreasonable unilateral actions from other Members in audiovisual services
<table>
<thead>
<tr>
<th>Mode</th>
<th>Presence of supplier</th>
<th>Form of delivery</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cross border supply</td>
<td>No</td>
<td>From abroad into the territory of the Member</td>
<td>Telecommunications, mail, services incorporated in goods</td>
</tr>
<tr>
<td>Consumption abroad</td>
<td>No</td>
<td>Delivery outside the territory of the Member</td>
<td>Movement of consumer or property abroad (e.g., tourism, ship repair)</td>
</tr>
<tr>
<td>Commercial presence</td>
<td>Yes</td>
<td>Through local establishment of local entities</td>
<td>Corporations, joint ventures, representative offices</td>
</tr>
<tr>
<td>Presence of Natural Persons</td>
<td>Yes</td>
<td>Through physical presence of service supplier</td>
<td>Consultants, doctors, lawyers, interpreters etc (including employees)</td>
</tr>
</tbody>
</table>

*Rolf Adlung, Counsellor, Trade in Services Division, WTO*
How commitments are recorded in schedules

- Where there are no limitations on market access or national treatment in a given sector and mode of supply, the entry reads NONE.

- If a Member wishes to maintain measures inconsistent with market access and national treatment, the entry reads UNBOUND.

- In some situations, a particular mode of supply - such as the cross-border supply of bridge-building services - may not be technically feasible. Then the entry reads UNBOUND* (due to lack of technical feasibility).
## AUSTRALIA'S SCHEDULE OF SPECIFIC COMMITMENTS

### Architectural Services, page 5

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

<table>
<thead>
<tr>
<th>Sector or sub-sector</th>
<th>Limitations on market access</th>
<th>Limitations on national treatment</th>
<th>Additional commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Architectural services (CPC 8671)</td>
<td>1) None</td>
<td>1) None</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2) None</td>
<td>2) None</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3) None</td>
<td>3) None</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4) Unbound, except as indicated in horizontal section</td>
<td>4) Unbound, except as indicated in horizontal section</td>
<td></td>
</tr>
</tbody>
</table>
Investment in the GATS

- The GATS is the first multilateral agreement containing obligations on the treatment of foreign investors.
- It does not cover investment policies per se, but does so to the extent that they relate to the supply of services.
  - It treats investment as a mode of service delivery (establishment) to which obligations of transparency, dispute settlement, MFN apply.
After the Uruguay Round

GATS talks that resumed after the end of the Uruguay Round:

- **Basic telecommunications** completed February 1997
- **Financial services** completed December 1997
- **Maritime transport** suspended
- **Movement of natural persons** completed July 1995
- **Other issues for future negotiation:** subsidies, government procurement, safeguards, qualifications, technical standards, licensing
WTO 2000 services negotiations, (to be launched in Seattle on 30 November to 3 December).

- ‘Achieving a progressively higher level of liberalisation’
- We will encourage Members to make expanded commitments in all sectors
- We have a particular interest in:
  - sectors which need revisiting because of technological changes/limited offers (financial, telecommunications, professional services)
  - sectors in which we have a particular interest (environmental, educational, construction and engineering, and distribution services)
  - sectors with limited coverage (eg air transport services and maritime)
- Other issues include: regulation, GATS rules