

GENERAL AGREEMENT
ON TRADE IN SERVICES
(GATS)

BRIEF GLANCE

GATS in Brief

The GATS applies in principle to all service sectors except “services supplied in the exercise of governmental authority”. These are services that are supplied neither on a commercial basis nor in competition with other suppliers’ viz social security schemes and central banking.

Modes of supply

The GATS sets out four modes of supplying services:

- ⌚③ Mode1: Cross-border trade
- ⌚③ Mode2: Consumption abroad
- ⌚③ Mode3: Commercial presence
- ⌚③ Mode4: Presence of natural persons

Mode1

Cross-border trade corresponds with the normal form of trade in goods and maintains a clear geographical separation between seller and buyer. In this case services flow from the territory of one member into the territory of another member crossing national frontiers. (E.g. banking or architectural services transmitted via telecommunications or mail).

Mode2

Consumption abroad refers to situations where a service consumer moves into another Member's territory to obtain a service (e.g. consumer travelling for tourism, medical treatment, to attend educational establishment).

Mode3

Commercial presence is the supply of a service through the commercial presence of the foreign supplier in the territory of another WTO member. In this case a service supplier of one member

establishes a territorial presence, including through ownership or lease of premises, in another member's territory to provide a service. (E.g. the establishment of branch offices or agencies to deliver such services as banking, legal advice or communications)

Mode4

Presence of natural persons involves the admission of foreign nationals to another country to provide services there. An Annex to the GATS makes it clear, however, that the agreement has nothing to do with individuals looking for employment in another country, or with citizenship, residence or employment requirements. The members still has a right to regulate the entry and stay of the persons concerned, for instance by requiring visas.

General Principles

These are basic rules that apply to all members and to all services.

MFN Treatment

Under Article II of the GATS, "each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than it accords to like services and service suppliers of any other country". However, a member is permitted to maintain a measure inconsistent with the general MFN requirement if it has established an exception.

However, all exemptions are subject to review and they should in principle, not last longer than 10 years.

Transparency

The GATS requires each member to publish promptly "all relevant measures of general application" that affect operation of the agreement. Members must also notify the Council for Trade in Services of new or changed laws, regulations or administrative guidelines that affect trade in services covered by their specific commitments under the agreement. Each member is required to

establish an enquiry point, to respond to requests from other members for information.

Specific Obligations

Obligations, which apply on the basis of commitments, laid down in individual country schedules concerning market access and national treatment in specifically designated sectors. These requirements apply only to scheduled sectors.

Market Access

Market access is a negotiated commitment in specified sectors. The GATS also sets out different forms of measure affecting free market access that should not be applied to the foreign service or its supplier unless their use is clearly provided for in the schedule. They are:

- ⌚③ Limitations on the number of service suppliers
- ⌚③ Limitations on the total value of services transactions or assets
- ⌚③ Limitations on the total number of service operations or the total quantity of service output.
- ⌚③ Limitations on the number of persons that may be employed in a particular sector or by a particular supplier
- ⌚③ Measures that restrict or require supply of the service through specific types of legal entity or joint venture
- ⌚③ Percentage limitations on the participation of foreign capital, or limitations on the total value of foreign investment.

National Treatment

A commitment to national treatment means that in the sectors covered by its schedule, subjected to any conditions and qualifications set out in the schedule, each member shall give treatment to foreign services and service suppliers treatment, in measures affecting supply of services, no less favourable than it gives to its own services and suppliers. Again, the extension of national treatment in any particular sector may be made

subject to conditions and qualifications. Members are free to tailor the sector coverage and substantive content of such commitments as they see fit. The commitments thus tend to reflect national policy objectives and constraints, overall and in individual sectors. While some Members have scheduled less than a handful of services, others have assumed market access and national treatment disciplines in over 120 out of a total of 160-odd services.

Exemptions

Members in specified circumstances are allowed to introduce or maintain measures in contravention of their obligations under the Agreement, including the MFN requirement or specific commitments. These circumstances cover measures necessary to protect public morals or maintain public order, protect human, animal or plant life or health or secure compliance with laws or regulations not inconsistent with the Agreement including, among others, measures necessary to prevent deceptive or fraudulent practices.

Also, in the event of serious balance-of-payments difficulties, members are allowed to temporarily restrict trade, on a non-discriminatory basis, despite the existence of specific commitments.

Current Status of Services Negotiations:

The first and second rounds of meetings of all plurilateral groups were held from 28th March to 6th April 2006 and 15th -24th May 2006 respectively. India is the coordinator of Mode-1 (Cross Border Supply) and Mode-4 (Temporary Movement of Natural Persons) plurilateral groups. India has also participated as a requesting member in the Computer and Related Services (CRS) group and Architecture, Engineering and Integrated Engineering Services (AEI) group. As a part of the plurilateral process, India has also received a number of plurilateral requests in all the sectors/areas listed in para 4.2 above except for the Horizontal Request in Mode 3 (Commercial presence), MFN Exemptions (General) and MFN Exemptions (Financial Services). India has therefore received requests in 14 sectors/areas, excluding those sectors/areas in which India is a requesting member and therefore a deemed recipient.

All Members, including India, are expected to respond to the plurilateral requests and bilateral requests placed on them by making improved Offers in the second round.

Along with the Mini –Ministerial a Services Signaling Conference was held on 26 July, 2008 at the WTO. In this Conference, India has indicated that it may improve its Revised Offer in some of the services sectors of interest to the member countries subject to the conditions that the Member countries should also respond positively to India's interest in Modes 4 & 1 and for the disciplining of Domestic Regulations.

Unlike agriculture and NAMA where modalities are yet to be finalized, in Services the modalities have been agreed upon. Members need to finalize their schedule of commitments, which are linked to the outcome of Agriculture and NAMA negotiations. As and when these are finalized, the process of services negotiations would also move for conclusion under the current round.
