

## **The General Agreement on Trade in Services (GATS): objectives, coverage and disciplines**

*Everything you wanted to know about the General Agreement on Trade in Services, but were afraid to ask ...*

### **1. What is the main purpose of the GATS? \_**

The creation of the GATS was one of the landmark achievements of the Uruguay Round, whose results entered into force in January 1995. The GATS was inspired by essentially the same objectives as its counterpart in merchandise trade, the General Agreement on Tariffs and Trade (GATT): creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalization.

While services currently account for over 60 percent of global production and employment, they represent no more than 20 per cent of total trade (BOP basis). This — seemingly modest — share should not be underestimated, however. Many services, which have long been considered genuine domestic activities, have increasingly become internationally mobile. This trend is likely to continue, owing to the introduction of new transmission technologies (e.g. electronic banking, tele-health or tele-education services), the opening up in many countries of long-entrenched monopolies (e.g. voice telephony and postal services), and regulatory reforms in hitherto tightly regulated sectors such as transport. Combined with changing consumer preferences, such technical and regulatory innovations have enhanced the “tradability” of services and, thus, created a need for multilateral disciplines.

### **2. Which countries participate?**

All WTO Members, some 140 economies at present, are at the same time Members of the GATS and, to varying degrees, have assumed commitments in individual service sectors.

### **3. What services are covered?**

The GATS applies in principle to all service sectors, with two exceptions.

Article I(3) of the GATS excludes “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. Cases in point are social security schemes and any other public service, such as health or education, that is provided at non-market conditions.

Further, the Annex on Air Transport Services exempts from coverage measures affecting air traffic rights and services directly related to the exercise of such rights.

### **4. Is it true that the GATS not only applies to cross-border flows of services, but additional modes of supply? \_**

The GATS distinguishes between four modes of supplying services: cross-border trade, consumption abroad, commercial presence, and presence of natural persons.

**Cross-border supply** is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);

**Consumption abroad** refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a service;

**Commercial presence** implies that 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. domestic subsidiaries of foreign insurance companies or hotel chains); and

**Presence of natural persons** consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

#### **5. Why was it necessary to introduce, apart from the traditional concept of cross-border trade, three additional modes of supply? \_**

The supply of many services is possible only through the simultaneous physical presence of both producer and consumer. There are thus many instances in which, in order to be commercially meaningful, trade commitments must extend to cross-border movements of the consumer, the establishment of a commercial presence within a market, or the temporary movement of the service provider himself.

#### **6. Does the GATS affect a Member's ability to pursue national policy objectives and priorities? \_**

The GATS expressly recognizes the right of Members to regulate the supply of services in pursuit of their own policy objectives, and does not seek to influence these objectives. Rather, the Agreement establishes a framework of rules to ensure that services regulations are administered in a reasonable, objective and impartial manner and do not constitute unnecessary barriers to trade.

#### **7. What are the basic obligations under the GATS? \_**

Obligations contained in the GATS may be categorized into two broad groups: General obligations, which apply directly and automatically to all Members and services sectors, as well as commitments concerning market access and national treatment in specifically designated sectors. Such commitments are laid down in individual country schedules whose scope may vary widely between Members. The relevant terms and concepts are similar, but not necessarily identical to those used in the GATT; for example, national treatment is a general obligation in goods trade and not negotiable as under the GATS.

##### **(a) General obligations**

**MFN Treatment:** Under Article II of the GATS, Members are held to extend immediately and unconditionally to services or services suppliers of all other Members “treatment no less favourable than that accorded to like services and services suppliers of any other country”. This amounts to a prohibition, in principle, of preferential

arrangements among groups of Members in individual sectors or of reciprocity provisions which confine access benefits to trading partners granting similar treatment.

Derogations are possible in the form of so-called Article II-Exemptions. Members were allowed to seek such exemptions before the Agreement entered into force. New exemptions can only be granted to new Members at the time of accession or, in the case of current Members, by way of a waiver under Article IX:3 of the WTO Agreement. All exemptions are subject to review; they should in principle not last longer than 10 years. Further, the GATS allows groups of Members to enter into economic integration agreements or to mutually recognize regulatory standards, certificates and the like if certain conditions are met.

**Transparency:** GATS Members are required, *inter alia*, to publish all measures of general application and establish national enquiry points mandated to respond to other Member's information requests.

Other generally applicable obligations include the establishment of administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers.

#### (b) Specific Commitments

**Market Access:** Market access is a negotiated commitment in specified sectors. It may be made subject to various types of limitations that are enumerated in Article XVI(2). For example, limitations may be imposed on the number of services suppliers, service operations or employees in the sector; the value of transactions; the legal form of the service supplier; or the participation of foreign capital.

**National Treatment:** A commitment to national treatment implies that the Member concerned does not operate discriminatory measures benefiting domestic services or service suppliers. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of the Member's own service industry. 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.

The existence of specific commitments triggers further obligations concerning, *inter alia*, the notification of new measures that have a significant impact on trade and the avoidance of restrictions on international payments and transfers.

### 8. What information is contained in services “schedules”?

Each WTO Member is required to have a Schedule of Specific Commitments which identifies the services for which the Member guarantees market access and national treatment and any limitations that may be attached. The Schedule may also be used to assume additional commitments regarding, for example, the implementation of specified standards or regulatory principles. Commitments are undertaken with respect to each of the four different modes of service supply.

Most schedules consist of both sectoral and horizontal sections. The “Horizontal Section” contains entries that apply across all sectors subsequently listed in the schedule. Horizontal limitations often refer to a particular mode of supply, notably commercial presence and the presence of natural persons. The “Sector-Specific Sections” contain entries that apply only to the particular service.

All schedules are available on the WTO website.

**9. When did Members' specific commitments enter into force? \_**

The majority of current commitments entered into force on 1 January 1995, i.e. the date of entry into force of the WTO. New commitments have since been scheduled by participants in extended negotiations (see below) and by new Members that have joined the WTO.

**10. Can commitments be introduced or improved outside the context of multilateral negotiations? \_**

Yes, any Member is free to expand or upgrade its existing commitments at any time.

**11. Can specific commitments be withdrawn or modified? \_**

Pursuant to Article XXI, specific commitments may be modified subject to certain procedures. Countries which may be affected by such modifications can request the modifying Member to negotiate compensatory adjustments; these are to be granted on an MFN basis.

**12. Are there any specific exemptions in the GATS to cater for important national policy interests? \_**

The GATS permits Members in specified circumstances to introduce or maintain measures in contravention of their obligations under the Agreement, including the MFN requirement or specific commitments. The relevant Article provides cover, *inter alia*, for 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. Moreover, the Annex on Financial Services entitles Members, regardless of other provisions of the GATS, to take measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.

Finally, 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.

**13. Are there special provisions for developing countries? \_**

Developing country interests have inspired both the general structure of the Agreement as well as individual Articles. In particular, the objective of facilitating the increasing participation of developing countries in services trade has been enshrined in the Preamble

to the Agreement and underlies the provisions of Article IV. This Article requires Members, *inter alia*, to negotiate specific commitments relating to the strengthening of developing countries' domestic services capacity; the improvement of developing countries' access to distribution channels and information networks; and the liberalization of market access in areas of export interest to these countries.

While the notion of progressive liberalization is one of the basic tenets of the GATS, Article XIX provides that liberalization takes place with due respect for national policy objectives and Members' development levels, both overall and in individual sectors. Developing countries are thus given flexibility for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation. Other provisions ensure that developing countries have more flexibility in pursuing economic integration policies, maintaining restrictions on balance of payments grounds, and determining access to and use of their telecommunications transport networks and services. In addition, developing countries are entitled to receive technical assistance from the WTO Secretariat.

#### **14. What is the so-called “built-in agenda” of the GATS? \_**

The GATS, including its Annexes and Related Instruments, sets out a work programme which is normally referred to as the “built-in” agenda. The programme reflects both the fact that not all services-related negotiations could be concluded within the time frame of the Uruguay Round, and that Members have already committed themselves, in Article XIX, to successive rounds aimed at achieving a progressively higher level of liberalization (see below). In addition, various GATS Articles provide for issue-specific negotiations intended to define rules and disciplines for domestic regulation (Article VI), emergency safeguards (Article X), government procurement (Article XIII), and subsidies (Article XV). These negotiations are currently under way.

At the sectoral level, negotiations on basic telecommunications were successfully concluded in February 1997 and negotiations in the area of financial services in mid-December 1997. In these negotiations, Members achieved significantly improved commitments with a broader level of participation.

#### **15. Are the results of the extended sectoral negotiations in telecommunications and financial services legally different from other sector-specific commitments? \_**

No. The results of sectoral negotiations are new specific commitments and/or MFN exemptions related to the sector concerned. Thus, they are neither legally independent from other sector-specific commitments nor constitute agreements different from the GATS. The new commitments and MFN exemptions have been incorporated into the existing Schedules and Exemption Lists by way of separate Protocols to the GATS.

#### **16. Why was a new services round necessary? \_**

In services, the Uruguay Round was only a first step in a longer-term process of multilateral rule-making and trade liberalization. Observers tend to agree that, while the negotiations succeeded in setting up the principle structure of the Agreement, the liberalizing effects have been relatively modest. Barring exceptions in financial and telecommunication services, most schedules have remained confined to confirming status quo market conditions in a relatively limited number of sectors. This may be explained in

part by the novelty of the Agreement and the perceived need of Members to gather experience before considering wider and deeper commitments. Moreover, many administrations needed time to develop the necessary regulation — including quality standards, licensing and qualification requirements — that ensures that external liberalization is compatible with, and conducive to, core policy objectives (quality, equity, etc.) in socially or infrastructurally important services.

More than six years have passed since the Agreement's inception, and the economic importance of services — in terms of production, income, employment and trade — has continued to rise. There thus appears ample scope for new and/or improved commitments in new negotiations.

**17. What has been achieved to date in the new services round? \_**

Under Article XIX, Members are (self-)committed to launch successive rounds of services negotiations with a view to achieving a progressively higher level of liberalization. The first such round was to begin no later than five years from the date of entry into force of the Agreement and, accordingly, started in January 2000. The initial focus was mainly on the built-in agenda with a view to creating a sound basis for the negotiations of new specific commitments. During a stock-taking session in March 2001, Members agreed on the Negotiating Guidelines and Procedures for the new round (document S/L/93) and discussed a first series of sector proposals which had been submitted by individual countries; the Guidelines and all proposals are available on the WTO Web Site.