
INFORMATION NOTE

The General Agreement on Trade in Services

1. Introduction

1.1 Trade in services refers to exports and imports of services. Exports of services are the sales of services to the rest of the world, whereas imports of services are the purchases of services from the rest of the world. Since such transactions do not involve transfers of physical products across borders, they were originally not regarded as "trade" to be governed by international trading rules.

1.2 By the mid-1980s, many developed countries came to realise the business potential for services trade unleashed by the advance in telecommunications technology and regulatory reforms in tightly regulated sectors. Given the economic importance of trade in services, the need for the development of internationally recognized rules governing related trade flows became increasingly pressing. Therefore, members of the General Agreement on Tariffs and Trade (GATT), the predecessor of the World Trade Organization (WTO), agreed at the launching of the Uruguay Round of trade negotiations in 1986 to include trade in services on the agenda.

1.3 The General Agreement on Trade in Services (GATS) was subsequently signed at the conclusion of the Uruguay Round negotiations, in a move to provide for the extension of the existing multilateral trading system on commodities to services. Since its implementation in January 1995, GATS has been the only set of multilateral rules governing international trade in services. GATS mandates its signatories to liberalize their service industries and to gradually phase out tariff and non-tariff barriers to international competition in the service sectors.

1.4 WTO held its Fifth Ministerial Conference in Cancun of Mexico during 10-14 September 2003, aiming to take stock of the progress made since the previous Conference and move negotiations forward. The Cancun Conference has failed to reach any consensus, which is likely to delay further liberalization of the global services trade precipitated by the implementation of GATS in January 1995. In any event, WTO members agreed on 21 October 2003 to hold the Sixth Ministerial Meeting in Hong Kong.

1.5 The purpose of this information note is to provide Members of the Panel on Commerce and Industry with information on GATS. This information note will present an overview of GATS, in terms of its development, membership, administration, coverage, application, structure of agreement, the basic obligations required of its signatories as well as the dispute settlement procedures under GATS. It will also discuss the development of GATS since its inception in 1995.

2. Membership of the General Agreement on Trade in Services

2.1 A country wishing to become a member of WTO is required to accede to all WTO multilateral agreements and to abide by the provisions contained therein. Since GATS is one of such multilateral agreements¹, all 148 WTO members are obliged to sign GATS and assume the obligations stipulated in the agreement.

3. Administration of the General Agreement on Trade in Services

3.1 The top decision-making body of WTO is the Ministerial Conference, which is composed of representatives of all members. Representatives at the ministerial level of member states attend the Conference which meets every two years. In the interim, the Conference is represented by the General Council, which has representatives (usually ambassadors or equivalent) from member states. Under the guidance of the General Council, the Council for Trade in Services is responsible for overseeing the functioning of GATS. The membership of this Council is also open to all WTO members. It meets several times a year in regular sessions, and conducts special sessions regarding the ongoing service negotiations on areas such as further liberalization of domestic service sectors to foreign service providers.

4. Coverage of the General Agreement on Trade in Services

4.1 GATS covers all internationally-traded services with two exceptions. GATS excludes services supplied in the exercise of governmental authority, defined as those services which are supplied neither on a commercial basis nor in competition with other suppliers. Typical examples include police, fire protection, monetary policy operations, mandatory social security, and tax and customs administration. GATS also excludes services affecting air traffic rights as well as those directly related to the exercise of such rights.

4.2 Depending on the territorial presence of the suppliers and the consumers at the time of the transaction, GATS defines services in terms of the following four modes of supply:

- (i) cross-border supply - where the services are supplied from the territory of one WTO member into the territory of another WTO member (e.g. international phone calls);
- (ii) consumption abroad - where a foreign customer (e.g. tourists) moves into the territory of another member to obtain a service;

¹ WTO has three multilateral agreements, namely GATS, GATT (for goods) and the Trade-Related Aspects of Intellectual Property Rights.

- (iii) commercial presence - where a foreign company sets up a subsidiary or branch to provide services in the territory of another member (e.g. foreign banks setting up operation in other countries); and
- (iv) presence of natural persons - where a foreign national enters into the territory of another member to supply a service (e.g. fashion models and consultants).

4.3 In order to help members negotiate and schedule their specific commitments, WTO has issued a classification list of service sectors. The list contains 12 broad sectors, which are further divided into 160 sub-sectors².

5. Scope of application of the General Agreement on Trade in Services

5.1 GATS applies to measures adopted by WTO members that affect their trade in services. The definition of "measures" is a broad one, and covers any measure adopted by a WTO member, whether it is in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form. In addition, the reach of the definition goes beyond a central government to include measures adopted by regional and local governments, and those by non-governmental bodies exercising powers delegated to them by governmental authorities.

6. Structure of the General Agreement on Trade in Services

6.1 GATS consists of two core parts, namely (i) the framework agreement containing the general rules, disciplines and basic obligations governing trade in services, and (ii) the "schedules of specific commitments" detailing the liberalization undertaking of each WTO member, particularly those services to be opened up for access by foreign suppliers.

² These 12 sectors are business services, communication services, construction and related engineering services, distribution services, educational services, environmental services, financial services (including insurance and banking), health-related and social services, tourism and travel-related services, recreational, cultural and sporting services, transport services, and other services not included elsewhere.

7. Basic obligations under the General Agreement on Trade in Services

7.1 Basic obligations contained in GATS are further categorized into two broad groups: general obligations and specific commitments. General obligations apply to all WTO members across all service sectors, and the most important of them are the most-favoured-nation (MFN) treatment and the principle of transparency³. Specific commitments - the market access and national treatment commitments - apply only to those services which a WTO member chooses to list in its schedule of specific commitments.

General obligations

Most-favoured-nation treatment

7.2 A MFN obligation states that a WTO member must extend immediately and unconditionally to services and service suppliers of another WTO member treatment no less favourable than that accorded to like services and service suppliers of any other WTO members⁴. WTO members are allowed to seek MFN exemptions on those preferential agreements in services signed before their accession to GATS. However, these MFN exemptions could only be made once (at the time of accession to GATS) and should not last longer than 10 years in principle.

Principle of transparency

7.3 The principle of transparency stipulates that WTO members should publish all relevant laws and regulations in the service sectors, and set up enquiry points within their bureaucracies. Foreign companies and governments can use these enquiry points to obtain information about regulations in any service sector. WTO members are also required to notify WTO of any changes in regulations that apply to the services listed in the schedule of specific commitments.

³ Other general obligations include the availability of legal remedies, compliance of monopolies and exclusive providers with the MFN obligations, consultations on business practices, and consultations on subsidies that affect trade.

⁴ For example, China is automatically entitled to permanent MFN treatment by other WTO members after its accession to WTO. Previously, the MFN status granted by the United States of America was renewed on an annual basis.

Specific commitments

Market access

7.4 Under GATS, access by service providers of one WTO member to the markets of other WTO members is not granted automatically. Under a positive list approach, WTO members are required to list in their schedules of specific commitments the service sectors to which their market access commitments apply. For those sectors open to foreign suppliers, limitations can still be imposed on areas such as the number of service suppliers, the value of transactions or assets, the quantity of service output and/or the participation of foreign capital.

National treatment

7.5 Under the principle of national treatment, a WTO member must treat services and service suppliers of other WTO members no less favourable than its own services and service suppliers. However, there are no restrictions on a WTO member attaching limitations to the national treatment commitment. For example, a country making a commitment to allow foreign banks to operate in its territory may impose a restriction on the number of branches a foreign bank can open.

Schedule of specific commitments

7.6 Each WTO member is required to publish a schedule of specific commitments which identifies the services for which the member guarantees market access and national treatment for foreign suppliers. For each listed sector, the schedule must indicate, with respect to the four modes of supply discussed in paragraph 4.2, any limitations on market access and/or national treatment. Further, the schedule may be used to assume additional commitments, such as the implementation of specified standards or regulatory principles.

7.7 WTO members are given the flexibility in the sector coverage of the schedule of specific commitments. They are free to choose which services to be listed in the schedule for making specific commitments to foreign suppliers. Indeed, there is no provision under GATS as to how extensive the schedule should be. There are cases where some least-developed WTO members have made commitments only on one sector.

Modification of schedules

7.8 Specific commitments may be withdrawn or modified after they have been in force for three years. Those WTO members being affected by the modification/withdrawal can request the modifying member for compensation. The compensation does not mean monetary compensation, but merely the replacement of the commitment withdrawn by another of equivalent value.

8. Dispute settlement procedures

8.1 A WTO member can request consultations with another WTO member which the former considers to have breached its obligations under GATS. If the consultations fail to resolve the issue, the complaining member can request the General Council to establish a panel of three independent experts for arbitration. The panel examines the complaint in the light of the relevant legal obligations, and issues a report with binding recommendations for adoption within six months.

9. Development of the General Agreement on Trade in Services after the Uruguay Round negotiations

9.1 The Uruguay Round negotiations marked only a first step in the longer-term process of services liberalization within a multilateral framework. GATS requires member governments to undertake negotiations on specific issues and to enter into successive rounds of negotiations to progressively liberalize trade in services. It also mandates the first round to start no later than five years from 1995. Accordingly, the related service negotiations started officially in early 2000 under the Council for Trade in Services.

9.2 The first phase of negotiations ended successfully in March 2001 when WTO members agreed on the guidelines and procedures for negotiations, a key element in the negotiating mandate. By agreeing to these guidelines, members set the objectives, scope and method of negotiations in a clear and balanced manner.

9.3 In November 2001, the Fourth Ministerial Conference convened in Doha endorsed these negotiations and reaffirmed the negotiating guidelines and procedures. It also established specific deadlines for the service negotiations, including the conclusion of the service negotiations by 31 December 2004.

9.4 As discussed above, the Fifth Ministerial Conference held in Cancun of Mexico during 10-14 September 2003 was scheduled for taking stock of progress in trade negotiations⁵ and moving on from what was agreed in Doha. However, the trade talks at Cancun have ended with no consensus on the way forward for the key issues.

⁵ See paragraph 45 of the Declaration of the Doha Ministerial Conference made in November 2001.

Implications of the negotiation breakdown of the Cancun Conference

9.5 The Cancun Conference was initially expected to achieve progress in negotiations on trade in services, such as broadening and deepening the commitments of WTO members on market access and MFN treatment under GATS, and improving the coverage of the government procurement of services. According to initial assessments by some observers following the conference⁶, the failure of the Cancun Conference is likely to delay talks on further liberalization of the service sectors, which would in turn reduce chances of concluding the trade negotiations by the original deadline of 31 December 2004. Further, it may reinforce the trend of developed countries, notably the United States of America, to shift from multilateral to bilateral and regional trade talks.

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⁶ For example, see "Cancun's Charming Outcome", *The Economist*, 20-26 September 2003 and Arvind Panagariya, "Rich Man, Poor Man", *Asian Wall Street Journal*, 17 September 2003.

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