



## **Trade Guide: WTO GATS**

# **WTO GENERAL AGREEMENT ON TRADE IN SERVICES**

### **What is this Agreement and what does it do?**

The General Agreement on Trade in Services of the World Trade Organization (WTO), commonly known as the GATS, established a multilateral framework of rules and principles for trade in services, a large and fast-growing segment of world trade. It also set in motion a process for the progressive removal of restrictions on international services trade.

The GATS was a major accomplishment of the Uruguay Round of Multilateral Trade Negotiations, and it is incorporated as an annex to the Marrakesh Agreement Establishing the World Trade Organization, which was signed at the Round's conclusion. That Agreement along with the GATS entered into force on January 1, 1995. It has no expiration date. All WTO member governments ([offsite link](#)) are subject to the GATS.

The GATS is designed to ensure that the laws and regulations that WTO member governments apply to services trade are transparent and fair. Its key market-opening element is the Schedule of Specific Commitments that each signatory annexed to the GATS as an integral part of the Agreement. In these Schedules, which resulted from negotiations that took place during the Uruguay Round, signatories identified the extent to which they would accord full market access and national treatment in specific service sectors.

The Schedules, however, were only a first step in the complex process of liberalizing services trade, and many countries continue to impose limitations and conditions on both market access and national treatment. These restrictions are specified in each country's Schedule. Continuing services negotiations that are taking place under the GATS are aimed at removing these limitations and conditions.

### **Who benefits from this Agreement?**

Any company in the United States that is interested in supplying a service to a consumer in (or from) another WTO member country can benefit from the disciplines that have been established by the GATS and the market-opening negotiations that are being carried out under its auspices.

### **How can this Agreement help my company?**

#### **Scope and Coverage**

All services are covered by the GATS, except those that are supplied by governments on a non-commercial basis (such as central banking or social security). The GATS applies not just to the provision of services across borders to consumers in other countries, but also to the provision of services within countries by foreign suppliers. Article I defines trade in services in terms of four different modes of supply:

1. Mode 1, cross-border supply from the territory of one WTO member country into the territory of another (for example, an architect in the U.S. sending plans to a client in Singapore);
2. Mode 2, consumption abroad (for example, an Australian tourist taking a vacation in Las Vegas, or an Argentine citizen coming to the United States for health care);
3. Mode 3, commercial presence (for example, the branch of an American bank in South Africa extending loans to local entrepreneurs); and
4. Mode 4, the presence of “natural persons” for a limited period of time in another country (for example, the representative of an American software company spending a month in France installing the firm’s products on a French company’s computers).

The obligations of the GATS apply to “measures by Members affecting trade in services” (GATS Article I). Measures by Members means measures taken by central, regional and local governments, and by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. Among the general obligations and disciplines of the GATS are:

**Most-Favored-Nation (MFN) Treatment.** (Article II) WTO member governments are obliged to accord MFN treatment to the services and service suppliers of other member countries. This means that the treatment must be no less favorable than that accorded to like services and service suppliers of any other country. The GATS allows countries to maintain measures that are inconsistent with this MFN principle, provided such measures are listed in and meet the conditions of the GATS Annex on Article II (MFN) Exemptions. [link to that Annex] More than 70 signatories received exemptions to do so. These exemptions should not, in principle, last beyond 2004. .

**Transparency (Article III)** The GATS requires WTO member governments to publish all relevant measures (laws, regulations, rules, procedures, decisions and administrative actions) that pertain to the operation of the Agreement. Enquiry points have been established in the governments of WTO member countries to respond promptly to requests for information from other member governments.

**Domestic Regulation (Article VI)** The liberalization of services trade is made particularly complex by the fact that services are regulated by governments to meet a variety of national policy objectives, such as health and safety. Such regulation affects the degree to which services can be traded freely. WTO member governments are obliged to ensure that all domestic laws, regulations, rules, procedures, decisions and administrative actions affecting trade in services are administered in a “reasonable, objective and impartial manner”. Member governments are also expected to have judicial, arbitral or administrative tribunals to which service suppliers can turn for a prompt review of administrative decisions and, where justified, for appropriate remedies.

One of the most important GATS provisions on domestic regulations is Article VI:4, dealing with qualification requirements and procedures, technical standards, and licensing requirements. To ensure that measures taken in these three areas don’t constitute unnecessary barriers to trade in services, the GATS mandates that any such requirements be based on objective and transparent criteria and not be “more burdensome than necessary to ensure the quality of the service”. The GATS stipulates that signatory governments shall not apply licensing requirements or technical standards in ways that nullify or impair the commitments that they have made under the Agreement. It also encourages member governments to undertake negotiations to establish mutual recognition of the educational qualifications of service suppliers.

In certain specified circumstances, the GATS allows WTO member governments to restrict services trade in areas where the Member has undertaken specific commitments. As one example, if a member government is in serious balance of payments difficulties (or threatened by such difficulties), it can apply emergency safeguards to restrict services trade as long as such safeguards are non-discriminatory, temporary and phased out as the situation improves. Negotiations to develop an agreed emergency safeguards mechanism for services are under way in the GATS Rules Committee.

In addition to these general obligations, the GATS contains specific commitments that bind those Members making such commitments in their schedules (see below). These commitments are not general obligations, but result from the negotiating process. The two most important specific commitments are Market Access and National Treatment:

**Market Access (Article XVI):** Each WTO Member shall accord to the services and service suppliers of any other Member treatment no less favorable than that provided for in the Member's schedule. Where market access commitments are undertaken, Members shall not maintain such measures as, inter alia, quotas or other limitations on the number of service suppliers; limitations on the number of natural persons employed in a particular service sector; or limitations on foreign capital participation.

**National Treatment (Article XVII)** In those sectors where a Member makes a commitment in its schedule, each WTO Member is required to accord national treatment to the services and service suppliers of other member countries. This means that the treatment must be no less favorable than the treatment that the government accords to its own like services and service suppliers.

## **Schedules of Specific Commitments**

Each government that signed the GATS drew up a Schedule of Specific Commitments, which is annexed to the GATS as an integral part of the Agreement. Schedules are generally divided into the following 12 sectors, which are in turn broken down into some 150 sub-sectors:

- business (including professional and computer) services
- communication services (including postal, courier, telecom, and -audiovisual services)
- construction and related engineering services
- distribution services (including wholesaling, retailing, and -franchising services)
- educational services
- environmental services
- financial (insurance, banking and securities) services
- health-related and social services
- tourism and travel-related services
- recreational, cultural and sporting services
- transport services (including maritime, air transport, rail and road transport services)
- other services not included elsewhere

The Agreement also includes a section for horizontal commitments, i.e., commitments that apply across all sectors. For example, Mode 4, and certain Mode 3 commitments are often scheduled in the horizontal section.

Modes of supply (cross-border, consumption abroad, commercial presence and movement of natural persons) are specified for each service.

For each service sector, the Schedules describe:

- terms, limits and conditions that the signatory placed on market access for foreign service suppliers;
- conditions and qualifications that the signatory placed on national treatment for foreign service suppliers; and
- undertakings relating to additional commitments (for example, on licensing or standards).

If a country placed no limitations on market access or national treatment for a specific service sector or mode of supply, it entered “none” in the Schedule. If it wished to make no commitments to accord market access or national treatment, it entered “unbound”.

By making commitments in their Schedules to liberalize trade in particular service sectors, in one or more of the four modes of supply, member governments “bound” these commitments, as tariffs are bound under the GATT. They can only be modified or withdrawn after negotiations with other Parties. Such negotiations normally involve compensation in the form of trade concessions of similar value.

For useful advice on “How to Read a GATS Schedule”, see the Introduction to GATS (offsite link) on the WTO web site.

## **Subsequent Negotiations**

Sector-specific negotiations on telecommunications and financial services have taken place since the GATS entered into force. In negotiations on basic telecommunications services, member countries amended their Schedules of Commitments and MFN exemptions to provide significant market openings for foreign suppliers of telecommunications services. The results of these negotiations were incorporated in the Fourth Protocol to the GATS, which entered into force on February 5, 1998. Two rounds of negotiations have been held on financial services- the first was concluded in 1995 and the second in 1997. The second round, in which member countries amended their Schedules of Commitments and MFN exemptions, resulted in significant market openings for insurance companies, banks and securities firms. These were incorporated in the Fifth Protocol to the GATS, which entered into force on March 1, 1999. The substance of the 1997 negotiations can be found in the WTO Understanding on Commitments in Financial Services on the web site of the Commerce Department’s Office of Trade Agreements Negotiations and Compliance.

The GATS provided that successive rounds of services negotiations should begin not later than five years after the entry-into-force of the Agreement, and a new round of services negotiations was formally launched in Geneva in February, 2000. Six GATS negotiations were held in 2000, with WTO Members addressing issues ranging from improved services classifications and increased transparency to mandated reviews of the Air Transport Services Annex and exemptions to most-favored-nation treatment.

Written into the General Agreement on Trade in Services is a commitment by WTO member governments to progressively liberalize trade in services. In December 2000, the United States submitted 12 negotiating proposals addressing 11 service sectors and one cross-sectoral issue, “movement of natural persons”, and the European Community and Japan also submitted negotiating proposals identifying trade barriers in nine service sectors. These negotiating proposals, together with any additional proposals submitted by other Members, formed the basis for market access negotiations that began in March 2001, under the Council for Trade in Services. . Also in March, Members sought to finalize negotiating guidelines and procedures.

These on-going services negotiations were incorporated into the Doha Development Agenda, launched by the Fourth Ministerial of the WTO in Doha, Qatar, in November of 2001. The Doha Declaration endorses the work already done, reaffirms the negotiating guidelines and procedures, and establishes some key elements of the timetable including a deadline for the submission of requests for market access by June 30, 2002, as well as

initial offers by March 31, 2003, while on-going rule-making and other issues continue in the Council's subsidiary bodies. Only less than 1/3 of all members have submitted requests and offers as of these dates. The final deadline for the Doha Round is set for January of 2005.

In September of 2003, the Fifth Ministerial Conference took stock of the on-going negotiations. Agricultural issues emerged as a serious challenge to progress in the Round with developing countries demanding greater access to developed country markets. Since the Round is intended to end in a single undertaking, all issues must be resolved. Market access as well as rule-making talks on services are on-going.

## **Can the U.S. Government help me if I have a problem?**

Yes. If your business is being adversely affected because another WTO member country is not complying with the General Agreement on Trade in Services, contact the Office of Trade Agreements Negotiations and Compliance (TANC) through [its public hotline at the U.S. Department of Commerce](#).

TANC can help you understand your rights under this Agreement and can alert the relevant U.S. Government officials to make inquiries, if appropriate, with the other country involved to help you resolve your problem.

Disputes under the GATS can also, if necessary, be resolved by the U.S. Government through the WTO's dispute settlement process, which is described in the [Trade Guide to the WTO Understanding on the Settlement of Disputes](#).

## **How can I get more information?**

The complete text of the WTO General Agreement on Trade in Services is available from the Office of Trade Agreements Negotiations and Compliance's [WTO Agreements database](#).

If you have questions about this Agreement or how to use it, you can [e-mail](#) the Office of Trade Agreements Negotiations and Compliance, which will forward your message to the Commerce Department's Designated Monitoring Officers for the GATS. You can also contact the Designated Monitoring Officer at the following address:

Designated Monitoring Officers -

GATS

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