

SCOPE AND STRUCTURE OF GATS

The GATS entered into force on January 1, 1995. The agreement, under the WTO umbrella, is the first to establish worldwide rules on trade and investment in services. Trade in services includes all economic activities whose outputs are other than tangible goods, including but not limited to, banking, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, professional services, audiovisual, education, health care and tourism.

The GATS consists of:

1. a framework agreement - which lays out the general obligations for trade in services in much the same way that the General Agreement on Tariffs and Trade (GATT) does for trade in goods (most-favored-nation treatment, market access and national treatment are three of the important principles included in the general framework of the GATS),
2. annexes on specific services sectors (movement of natural persons, air transport, financial services, maritime, and telecommunications), and
3. schedules of commitments for each signatory.

MOST-FAVORED-NATION TREATMENT: All countries guarantee most-favored-nation (MFN) treatment in all service sectors, unless they have listed an exemption for a specific sector. An MFN guarantee means a country will treat the service supplier of another member no less favorably than it does the service suppliers of any other member.

MFN EXEMPTIONS LIST: An MFN exemption is taken when a country explicitly states it will not guarantee most-favored-nation treatment in a particular services sector to service suppliers from other WTO member countries. Usually these exemptions are taken when some countries have been granted special or preferential access to a sector. MFN exemptions can only be taken in principle for ten years and are subject to review after five. MFN exemptions are listed separately from a country's schedule of commitments. The list of MFN exemptions is relatively easy to read. A country includes the following in its MFN exemption list: the sector, the measure inconsistent with MFN, the country/countries to which the exemption applies, the duration of the exemption, and the reason for the exemption.

MARKET ACCESS AND NATIONAL TREATMENT: A country lists limitations on market access and national treatment in its "schedule of commitments." (See discussion on market access and national treatment columns.) When a country lists a sector in its schedule and makes a specific commitment in its schedule, that country agrees to allow foreign service suppliers to enter its market to provide a service (market access) and agrees to treat foreign suppliers under the same terms and conditions as it treats its domestic suppliers (national treatment).

By making a commitment of MFN, national treatment or market access in a particular sector, a country agrees to adhere to the principles as defined by the agreement, subject to the limitations listed in their schedule. A commitment also means a country has agreed not to become more restrictive in that specific service sector, just as tariff schedules are commitments not to raise tariffs in the future above the level scheduled. Any violations of a country's commitments, including guarantees for MFN, market access and national treatment, are covered under the WTO dispute settlement mechanism; a country may be required to pay compensation if a dispute settlement panel finds that it has not kept its commitments.

READING COUNTRY SCHEDULES OF COMMITMENTS

MODES OF SUPPLY: The commitments made and restrictions imposed by each country on a given service sector are listed in respect to four "modes of supply":

MODE 1 - Cross-border supply: the supply of a service across the border by a non-resident to a host country consumer. An example would be an architect who faxes or mails blueprints for a building to a customer in another country. In this mode, only the service crosses the border; the consumer does not move to consume the service and the service supplier does not establish himself abroad to provide the service.

MODE 2 - Consumption Abroad: the consumption by host country consumers of a service provided outside the host country. An example would be a Chilean tourist who visits D.C. and buys tickets to visit the sites of Washington from a Virginia travel agent. In this mode, the consumer moves to consume a service abroad.

MODE 3 - Commercial Presence: a foreign service supplier who establishes, operates, or expands a business to provide service in a host country, through a branch, agency, or wholly-owned subsidiary. An example would be a U.S. accounting firm or bank that sets up a branch office in another country to provide services.

MODE 4 - Presence of Natural Persons: the temporary entry into the host country of individuals providing a service. Examples of this mode would include a computer repair person travelling from the country of sale to the host country to provide repair services on a network device or an expatriate manager employed by an accounting firm established in the host country.

Note that a country does not have a market access or national treatment commitment in a given mode of supply for a given service unless it lists that service in its schedule. However, a country is obliged to provide MFN to unlisted sectors, unless an exemption from MFN is taken for that service.

SCHEDULED SECTORAL COMMITMENTS: A country's schedule of commitments is listed in a table format of four columns with the following headings: sectors/sub-sectors, limitations on market access, limitations on national treatment, and additional commitments. The schedule outlines the specific commitments each country makes in a given sector and lists any conditions on that commitment.

A country only has a commitment if it lists that sector in its schedule and lists any relevant restrictions that apply in its market access or national treatment column. Note again that regardless of the restrictions listed for market access and national treatment, MFN treatment should still be guaranteed to foreign service suppliers, unless a country has specifically exempted that sector and included it in its MFN exemption list.

- **SECTORS AND SUB-SECTORS COLUMN.** The first column in a GATS schedule lists the general or specific service sector under which commitments are made. Countries can schedule all sectors or just certain subsectors for which they wish to make commitments. The WTO secretariat has established twelve broad sector classifications for services: 1) business, 2) communication, 3) construction and engineering, 4) distribution, 5) education, 6) environment, 7) financial, 8) health, 9) tourism and travel, 10) recreation, culture and sports, 11) transport, and 12) other. Countries are free to limit or broaden the scope of a sector.

- **MARKET ACCESS COLUMN.** The second column is for listing market access limitations for a given mode of supply. Restrictions listed here will be maintained by the country. If a restriction is not listed, the country must provide full market access. In general, the limitations to be listed in this column, according to GATS Article XVI, would include the following:

1. limitations on the number of service suppliers;
2. limitations on the total value of service transactions or assets;
3. limitations on the total number of service operations or quantity of service output (based on an economic needs test);
4. limitations on the total number of natural persons employed in a particular sector, or by an individual service supplier;
5. measures which restrict or require specific types of legal entity through which a service can be supplied; and
6. limitations on foreign investment.

- **NATIONAL TREATMENT COLUMN.** The third column is for listing any limitations on national treatment. In general, national treatment requires that a service supplier from another member country be treated no less favorably than service suppliers from the host country.

- **ADDITIONAL COMMITMENTS COLUMN.** The last column is for additional commitments. Commitments in this column are optional and include commitments a country makes above and beyond market access and national treatment. Examples of the types of commitments which could be included in this column are standards, licensing, or regulations applying to a given sector.

HORIZONTAL COMMITMENTS: In nearly all the GATS schedules of WTO members, in addition to the limitations that apply to a particular sector, there are some limitations that apply to all sectors. These types of commitments (which include limitations on market access and national treatment) are called "horizontal" commitments. They are listed at the beginning of a country's schedule or at the beginning of a major sectoral section of a schedule.

Many countries have listed commitments on movement of persons as horizontal commitments. Sectoral commitments under Mode 4, then, would refer back to a country's horizontal commitments on movement of persons. Another example of horizontal commitments could include a country's over-arching foreign investment procedures or restrictions which apply to all sectors. In this case, Mode 3 commitments in a particular sector would be limited by a country's horizontal commitments.

GATS TERMINOLOGY: When there are no limitations for a given sector and for a given mode of supply, the schedule should read "NONE." "NONE" represents the ideal commitment. This means that the sector is completely open to foreign service providers, i.e. no limits on market access or national treatment. Note, however, that horizontal commitments could still limit the service supplier even though the sector-specific entry reads "NONE". In many cases, the country will cross-reference its horizontal commitments, but not always. Therefore, horizontal commitments should always be checked.

The term "UNBOUND" is listed in the market access or national treatment column when a country wishes to make no commitments in a given sector or a given mode of supply. In some cases, a country may simply leave a sector out of its schedule. In such a case, the country is free to place market access and national treatment restrictions on service suppliers in that sector and/or discriminate against foreign suppliers on the basis of market access or national treatment.

Note that in some cases, "UNBOUND*" is also used when provision of a service is believed to be technically infeasible for a given mode of supply.