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Joan Claybrook, President

WTO General Agreement on Trade in Services (GATS) Glossary

The World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) came into force on January 1, 1995 as one of the 17 major "Uruguay Round" Agreements enforced by the WTO. Because the very notion of including the services sector in a 'trade' agreement was so controversial, GATS is structured as a "bottom up" agreement. This means that most GATS requirements only apply to service sectors countries specifically agree to open up to competition by foreign corporations. The GATS consists of three components: a framework agreement which lays out the general rules and obligations for trade and investment in services; several important annexes (sometimes called protocols) on specific service sectors (such as financial and telecommunications services); and a "**schedule of commitments**" for each WTO signatory government that lists the specific service sectors each nation has signed up to the terms of the agreement. To understand the GATS, one must first understand the following terminology.

MODES OF SUPPLY

The "modes" constitute the means of delivering services. Modes of supply are defined on the basis of the origins of the service supplier and the consumer, and the type of territorial presence that both have when the service is delivered. There are four modes of supply:

- **Mode 1 - Cross-border supply:** The service is delivered within the territory of the consumer, from the territory of the service supplier. When most people think of "trade" in a service, they are thinking of Mode 1. Cross-border supply entails conveyance by mail, phones, internet, satellite, etc. from one country to another. The service supplier is not present within the territory where the service is delivered.
- **Mode 2 - Consumption abroad:** The consumer (or the consumer's property) receives a service outside the territory of the consumer's country, either by moving or being situated abroad. Repair services done on equipment shipped to a different country, foreign exchange students and people seeking medical treatment abroad fit into Mode 2.
- **Mode 3 - Commercial presence:** A service supplier establishes any type of business or professional enterprise in the foreign market for the purpose of supplying a service. Practically, the mode involves granting a right for a foreign interest to establish an investment within the territory of another country. Thus, commercial presence includes establishing corporate subsidiaries, trusts, joint ventures, partnerships, sole proprietorships, associations, representative offices or branches, or acquiring such entities.
- **Mode 4 - Movement of natural persons:** The service is delivered by one individual, acting alone or as an employee of a service supplier, being present in a foreign market to provide the service. For example, a French engineering firm that provides engineering in the United States by sending French employees to the United States is delivering its service through the "presence of natural persons."

GATS RULES ON MARKET ACCESS AND NATIONAL TREATMENT

The GATS framework agreement includes a series of binding rules that facilitate the competition of service firms from one WTO member country in another WTO member country's service markets. These rules also place constraints on the regulatory authority of domestic policymakers at the national as well as state and local level.

GATS “**National Treatment**” rule (Article XVII) not only prohibits treating foreign firms differently than domestic firms (non-discrimination), but it goes farther to prohibit *anything* a government does that modifies the “conditions of competition” in favor of local service suppliers. While GATS proponents say the treaty is geared towards simply ensuring nondiscriminatory treatment of domestic service providers and foreign providers, the problem is that the same nondiscriminatory regulations – those that apply evenhandedly to both foreign and local companies – could still be considered a violation of the national treatment rule. For instance, in the construction sector, the WTO Secretariat has said that even if the same controls on land use, building regulations and building permits are applied to domestic and foreign service suppliers, “they may be found to be more onerous to foreign suppliers.” Thus, permits, subsidies and specific perks, such as road access, that are granted to one service provider, but not another, could be considered a trade barrier for altering the conditions of competition between foreign and domestic service suppliers.

The GATS “**market access**” rules (Article XVI) go well beyond requiring that governments treat foreign firms the same as domestic firms. Rather, these rules flatly prohibit governments from placing certain limits on, or applying certain policies to, foreign service operations in covered service sectors. Under GATS market access rules, federal, state and local governments may not:

- limit the number of service suppliers, including through quotas, monopolies, economic needs tests or exclusive service supplier contracts (absolute bans on certain service sector activities, such as bans on hotel construction on protected shoreline have been interpreted as GATS-prohibited “zero quotas” by two WTO trade tribunals);
- limit the total value of service transactions or assets, including by quotas or economic needs tests;
- limit the total number of service operations or the total quantity of a service;
- limit the total number of natural persons that may be employed in a particular service sector;
- establish policies which restrict or require specific types of legal entity or joint venture through which a service supplier may provide a service; or
- limit foreign ownership expressed as a maximum percentage or total value.

KEY TERMS

Commitment: This is the legal term used to describe what precise obligations a country has undertaken under the GATS with regard to specific service sectors. Most commitments are specific to certain service sectors and subsectors. For instance, the United States “committed” the following service sectors in the first round of GATS negotiations, which concluded in 1995: insurance (including health care), other financial services, telecommunications, sewerage services, wholesale and retail distribution services (which implicates local land use policies), gambling, construction and many others. In the new round of GATS negotiations the United States is proposing to make new commitments in higher education and energy services.

Limitation: A limitation on a commitment is an attempt to limit the scope of the commitment in some manner. For instance, the United States committed the service sector “wastewater services,” but limited that commitment to those wastewater services “contracted by private industry.” This limitation is an attempt to exclude municipally-owned and operated sewerage services from the scope of its GATS waste water commitment. Sometimes the words “exemption” or “reservation” are also used for limitation.

Horizontal Commitment/Limitation: In addition to the limitations that may apply to a particular sector, most WTO countries have reserved a section of their schedule for “across the board” or horizontal limitations that apply to all sectors. For instance, the United States uses its horizontal schedule to limit the

number of service workers who can enter the country via Mode 4. These commitments are usually, but not always, referenced in the sectoral schedules. For instance, in the U.S. schedule, the phrase “Unbound, except as indicated in the horizontal section” appears in the Mode 4 row of each service sector commitment.

WRITING A SCHEDULE

A schedule is a WTO member nation’s list of service sectors or sub-sectors that it has committed or is offering to submit to the rules of the GATS. A nation’s schedule is listed in a table format with four columns labeled: **Sector/Subsector**, **Limitations on Market Access**, **Limitations on National Treatment** and **Additional Comments**. Schedules are difficult to read and even more difficult to write. Typically, a nation will commit a service sector in column one, then indicate whether or not the various modes of supplying that service will be bound to the market access rules of the GATS in column two and/or in the national treatment rules in column three. Limitations may be placed in the horizontal section of the schedule or in column one, two or three.

Bound and Unbound Commitments:

- **“Unbound”**: This is the term for declaring an area off limits to some rules. When a mode of supply is listed as “unbound” in the market access or national treatment column, a new measure that is inconsistent with market access and national treatment may be introduced in the future.
- **“None:”** When “none” is listed for a mode of supply in the market access or national treatment column, this means that *no limitations* are being placed, and therefore the mode of supply is fully bound to the market access or national treatment rules. In other words, no further regulations may be applied that violate market access or national treatment rules without triggering the compensation requirements of GATS Article XXI.

Additional commitments column: In the schedule you will see an “Additional Commitments” column. This column in the schedules is to be used only to add to, not subtract from, a WTO member’s commitments. However, in some instances the United States has attempted to place limitations in this column, jeopardizing, rather than protecting, the listed policies. For instance, in the U.S. “legal services” commitments, the additional commitments column for the State of California states: “Practice of 3rd-country law: not permitted.” This limitation should be properly listed as a market access limitation in the market access column of the schedule.

Safeguarding a service sector: If a country wants to safeguard a public service, rather than commit the service sector and try to write in limitations, the best way to do this is *not* to commit the sector or any sector related to it.

Footnotes: In many instances in the schedule, the United States has relied on footnotes to place limitations on its commitments. In particular there are many footnotes that apply to state commitments. If the U.S. government intended that these footnotes exclude the listed policies from GATS rules, it is doubtful whether a footnote alone can do this. The United States itself has argued against the use of footnotes in schedules, and has stated in WTO GATS meetings that there should be no new footnotes allowed: “The representative of the United States expressed concern about the use of footnotes... Ideally, footnotes should be merged in schedules when they related to both market access and national treatment... Existing footnotes might probably have to stay and be grandfathered, while the inclusion of new notes should be prohibited.” (S/CSC/M/10)

MFN EXEMPTIONS

Under the GATS, all WTO countries guarantee most favored nation treatment to all other WTO member nations in all service sectors, *unless* they have listed a specific exemption in a separate list of MFN exemptions. In other words, they must give the service companies or investors from all WTO member nations the same rights and privileges it gives a company or investor from any foreign country. This GATS rule applies across the board, including on service sectors a country has not committed for specific GATS coverage.

UNITED NATIONS PROVISIONAL CENTRAL PRODUCT CLASSIFICATION CODE

The UN Provisional CPC code (CPCprov) is a concordance of goods and service-sector definitions that are used by many countries to identify service sectors in the GATS negotiations. Most WTO governments place the CPCprov code next to the service sector they are offering in these negotiations. It is only by going to the CPCprov data base on the UN website and looking at the categories, subcategories and sub-subcategories that a person can begin to get a more complete picture of what services are being offered, and what is at stake. For instance, under the benign category of “wholesale distribution,” which the United States committed in 1995, a close examination of the CPCprov shows that the commitment includes wholesale distribution of *nuclear fuel*. Thus, U.S. restrictions on the trade and sale of this product could constitute a GATS violation. The CPCprov can be found here:

<http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1>

NEGOTIATING TERMS AND DEADLINES

Request/offer negotiations: Prior to the Hong Kong Ministerial in 2005, GATS negotiations proceeded on a bilateral “request/offer” basis. This means that one nation issued a request document for service sector liberalization to another and indicated what it was willing to offer in a second document. Then the two nations bargained on a bilateral basis.

Plurilateral Negotiations: At the 2005 Hong Kong Ministerial, developed countries succeeded in getting language permitting plurilateral negotiations, in addition to the bilateral request/offer negotiating method. This means a group of countries will issue one request document demanding broad GATS coverage in a particular sector to one country or a group of countries. Rather than negotiating bilaterally, the countries would negotiate as a group. Developing nations were successful in preventing text which would have made entering into plurilateral negotiations mandatory, because they were concerned it would result in developed countries “ganging up” on individual developing countries.

Friends Groups: As part of the plurilateral negotiating process, the WTO formed 13 “Friends Groups” that will develop joint request documents and a list of countries to which these requests will be submitted. Other Friends Groups may be formed or operate in a less formal manner. Although the Friends Groups will be made up of WTO country representatives, huge multinational service businesses have been working closely with each group on both content of the offer and strategy to break into the service markets of countries high on their priority lists. Below is a list of known Friends Groups, and the country chairing their discussions.

Audio-visual services	Chinese Taipei
Air Transport	New Zealand
Computer-related services	Chile

Construction services	Japan
Energy services	EU
Environmental services	EU
Express Delivery services	USA
Financial services	Canada
Legal services	Australia
Logistical services	Switzerland
Maritime services	Japan
Mode 3	Switzerland
Mode 4	Canada
Telecommunication	Singapore

DEADLINES: Submission of plurilateral requests by Friends Groups of WTO members are expected to be submitted starting February 28, 2006. A second round of revised offers is to be submitted by July 31, 2006. Final draft schedules of new GATS commitments are to be submitted by October 31, 2006.

For a more comprehensive glossary of technical trade terms and their meanings and implications, see Global Trade Watch's *Pocket Trade Lawyer* at <http://www.tradewatch.org>. For more information, contact Saerom Park at 202-454-5127/spark@citizen.org.

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