

Summary of (GATS) General Agreement on Trade in Services

The Services Agreement which forms part of the Final Act rests on three pillars. The first is a Framework Agreement containing basic obligations which apply to all member countries. The second concerns national schedules of commitments containing specific further national commitments which will be the subject of a continuing process of liberalization. The third is a number of annexes addressing the special situations of individual services sectors.

Part I of the basic agreement defines its scope — specifically, services supplied from the territory of one party to the territory of another; services supplied in the territory of one party to the consumers of any other (for example, tourism); services provided through the presence of service providing entities of one party in the territory of any other (for example, banking); and services provided by nationals of one party in the territory of any other (for example, construction projects or consultancies).

Part II sets out general obligations and disciplines. A basic most-favoured-nation (m.f.n.) obligation states that each party “shall accord immediately and unconditionally to services and service providers of any other Party, treatment no less favourable than that it accords to like services and service providers of any other country”. However, it is recognized that m.f.n. treatment may not be possible for every service activity and, therefore, it is envisaged that parties may indicate specific m.f.n. exemptions. Conditions for such exemptions are included as an annex and provide for reviews after five years and a normal limitation of 10 years on their duration.

Transparency requirements include publication of all relevant laws and regulations. Provisions to facilitate the increased participation of developing countries in world services trade envisage negotiated commitments on access to technology, improvements in access to distribution channels and information networks and the liberalization of market access in sectors and modes of supply of export interest. The provisions covering economic integration are analogous to those in Article XXIV of GATT, requiring arrangements to have “substantial sectoral coverage” and to “provide for the absence or elimination of substantially all discrimination” between the parties.

Since domestic regulations, not border measures, provide the most significant influence on services trade, provisions spell out that all such measures of general application should be administered in a reasonable, objective and impartial manner. There would be a requirement that parties establish the means for prompt reviews of administrative decisions relating to the supply of services.

The agreement contains obligations with respect to recognition requirements (educational background, for instance) for the purpose of securing authorizations, licenses or certification in the services area. It encourages recognition requirements achieved through harmonization and internationally-agreed criteria. Further provisions state that parties are required to ensure that monopolies and exclusive service providers do not abuse their positions. Restrictive business practices should be subject to consultations between parties with a view to their elimination.

While parties are normally obliged not to restrict international transfers and payments for current transactions relating to commitments under the agreement, there are provisions allowing limited restrictions in the event of balance-of-payments difficulties. However, where such restrictions are imposed they would be subject to conditions; including that they are non-discriminatory, that they avoid unnecessary commercial damage to other parties and that they are of a temporary nature.

The agreement contains both general exceptions and security exceptions provisions which are similar to Articles XX and XXI of the GATT. It also envisages negotiations with a view to the development of disciplines on trade-distorting subsidies in the services area.

Part III contains provisions on market access and national treatment which would not be general obligations but would be commitments made in national schedules. Thus, in the case of market access, each party “shall accord services and service providers of other Parties treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule”. The intention of the market-access provision is to progressively eliminate the following types of measures: limitations on numbers of service providers, on the total value of service transactions or on the total number of service operations or people employed. Equally, restrictions on the kind of legal entity or joint venture through which a service is provided or any foreign capital limitations relating to maximum levels of foreign participation are to be progressively eliminated.

The national-treatment provision contains the obligation to treat foreign service suppliers and domestic service suppliers in the same manner. However, it does provide the possibility of different treatment being accorded the

service providers of other parties to that accorded to domestic service providers. However, in such cases the conditions of competition should not, as a result, be modified in favour of the domestic service providers.

Part IV of the agreement establishes the basis for progressive liberalization in the services area through successive rounds of negotiations and the development of national schedules. It also permits, after a period of three years, parties to withdraw or modify commitments made in their schedules. Where commitments are modified or withdrawn, negotiations should be undertaken with interested parties to agree on compensatory adjustments. Where agreement cannot be reached, compensation would be decided by arbitration.

Part V of the agreement contains institutional provisions, including consultation and dispute settlement and the establishment of a Council on Services. The responsibilities of the Council are set out in a Ministerial Decision.

The first of the annexes to the agreement concerns the movement of labour. It permits parties to negotiate specific commitments applying to the movement of people providing services under the agreement. It requires that people covered by a specific commitment shall be allowed to provide the service in accordance with the terms of the commitment. Nevertheless, the agreement would not apply to measures affecting employment, citizenship, residence or employment on a permanent basis. The annex on financial services (largely banking and insurance) lays down the right of parties, notwithstanding other provisions, to take prudential measures, including for the protection of investors, deposit holders and policy holders, and to ensure the integrity and stability of the financial system. However, a further understanding on financial services would allow those participants who choose to do so to undertake commitments on financial services through a different method. With respect to market access, the understanding contains more detailed obligations on, among other things, monopoly rights, cross-border trade (certain insurance and reinsurance policy writing as well as financial data processing and transfer), the right to establish or expand a commercial presence, and the temporary entry of personnel. The provisions on national treatment refer explicitly to access to payments and clearing systems operated by public entities and to official funding and refinancing facilities. They also relate to membership of, or participation in, self-regulatory bodies, securities or futures exchanges and clearing agencies.

The annex on telecommunications relates to measures which affect access to and use of public telecommunications services and networks. In particular, it requires that such access be accorded to another party, on reasonable and non-discriminatory terms, to permit the supply of a service included in its schedule. Conditions attached to the use of public networks should be no more than is necessary to safeguard the public service responsibilities of their operators, to protect the technical integrity of the network and to ensure that foreign service suppliers do not supply services unless permitted to do so through a specific commitment. The annex also encourages technical cooperation to assist developing countries in the strengthening of their own domestic telecommunications sectors. The annex on air-transport services excludes from the agreement's coverage traffic rights (largely bilateral air-service agreements conferring landing rights) and directly related activities which might affect the negotiation of traffic rights. Nevertheless, the annex, in its current form, also states that the agreement should apply to aircraft repair and maintenance services, the marketing of air-transport services and computer-reservation services. The operation of the annex would be reviewed at least every five years.

In the final days of the services negotiations, three Decisions were taken — on Financial Services, Professional Services and the Movement of Natural Persons. The Decision on Financial Services confirmed that commitments in this sector would be implemented on an MFN basis, and permits Members to revise and finalize their schedules of commitments and their MFN exemptions six months after the entry into force of the Agreement. Contrary to some media reports, the audio-visual and maritime sectors have not been removed from the scope of the GATS.