

Introduction to Trade in Services

Services: Rules for growth and investment

The General Agreement on Trade in Services (GATS) is the first ever set of multilateral, legally enforceable rules covering international trade in services. It was negotiated in the Uruguay Round.

Like the agreements on goods, GATS operates on three levels: the main text containing general principles and obligations; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets.

Unlike the agreements on goods, GATS has a fourth special element: lists showing where countries are temporarily not applying the "most-favored-nation" principle of non-discrimination. These commitments — like tariff schedules under GATT — are an integral part of the agreement. So are the temporary withdrawals of most-favored-nation treatment.

A WTO Council for Trade in Services oversees the operation of the agreement. Negotiations on commitments in four topics have taken place after the Uruguay Round. A full new services round started, as required in GATS, in 2000.

Total Coverage

The agreement covers all internationally traded services. This includes all the different ways of providing an international service — GATS defines four:

- Cross-border supply: services supplied from one country to another (e.g. international telephone calls)
- Consumption abroad: consumers or firms making use of a service in another country (e.g. tourism)
- Commercial presence: a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country)
- Presence of natural persons: individuals traveling from their own country to supply services in another (e.g. fashion models or consultants)

Countries' Commitments on Market-Opening

Each country lists specific commitments on service sectors and on activities within those sectors. The commitments guarantee access to the country's market in the listed sectors, and spell out any limitations on market access and national treatment.

For example, if a government commits itself to allow foreign banks to operate in its domestic market, this is considered a market access commitment. If the government limits the number of licenses it will issue, then this is considered a market access limitation. If foreign banks are only allowed one branch while domestic banks are allowed numerous branches, then this is considered an exception to the national treatment principle.

Most-Favored-Nation (MFN) Treatment

Favor one, favor all.

“MFN” means treating ones trading partners equally. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. (This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO.)

MFN applies to all services, but some special temporary exemptions have been allowed.

What about national treatment?

National treatment — equal treatment for foreigners and one’s own nationals — is treated differently for services. For goods (GATT) and intellectual property (TRIPS) it is a general principle. In GATS it only applies where a country has made a specific commitment, and exemptions are allowed.

Transparency

GATS says governments must publish all relevant laws and regulations. Within two years (by the end of 1997) they have to set up inquiry points within their bureaucracies. Foreign companies and governments can then use these inquiry points to obtain information about regulations in any service sector. Furthermore, they have to notify the WTO of any changes in regulations that apply to the services that come under specific commitments.

Regulations: objective and reasonable

Since domestic regulations are the most significant means of exercising influence or control over services trade, the agreement says governments should regulate services reasonably, objectively, and impartially. When a government makes administrative decisions that affect a service, it should also provide an impartial means for reviewing the decision (for example a tribunal).

Recognition

When two (or more) governments have agreements recognizing each other’s qualifications (for example, the licensing or certification of service suppliers), GATS says other members must also be given a chance to negotiate comparable pacts. The recognition of other countries’ qualifications must not be discriminatory, and it must not amount to protectionism in disguise. These recognition agreements have to be notified to the WTO.

International payments and transfers

Once a government has made a commitment to open a service sector to foreign competition, it must not normally restrict money being transferred out of the country as payment for services supplied (“current transactions”) in that sector. The only exception is when there are balance-of-payments difficulties, and even then the restrictions must be temporary and subject to other limits and conditions.

Specific commitments

Individual countries’ commitments to open markets in specific sectors — and how open those markets will be — are the outcome of negotiations. The commitments appear in “schedules” that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies.)

These commitments are “bound”: like bound tariffs, they can only be modified or withdrawn after negotiations with affected countries — which would probably lead to compensation. Because “unbinding” is difficult, the commitments are virtually guaranteed conditions for foreign exporters and importers of services and investors in the sector to do business.

Progressive liberalization

The Uruguay Round was only the beginning. GATS requires more negotiations, the first to begin within five years. The goal is to take the liberalization process further by increasing the level of commitments in schedules.

SERVICES SECTORS

The GATS covers all services, with few exceptions:

- Accountancy services
- Advertising services
- Architectural and Engineering services
- Audiovisual services
- Business services
- Computer and Related services
- Construction and Related Engineering services
- Distribution services
- Education services
- Energy services
 - Oil and gas services
- Environmental services
- Express delivery services
- Financial services
- Health and social services
- Legal services
- Logistics and related services
- Postal and Courier services
- Professional services
- Sporting services
- Telecommunications
- Tourism services
- Transport services
 - Air transport
 - Land transport
- Maritime transport
 - Services auxiliary to all modes of transport

Other GATS-Related Issues:

- Movement of natural persons
- Small and medium enterprises (SMEs)
- Safeguards, subsidies and government procurement
- Classification

See also:

AN INTRODUCTION TO THE GATS

http://www.wto.org/english/tratop_e/serv_e/serv_e.htm#intro

http://www.wto.org/english/tratop_e/serv_e/gsintr_e.doc

Services: Rules for growth and investment

http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm

Hyper Links

http://www.wto.org/english/docs_e/legal_e/final_e.htm#services

http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#mfn

http://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm#council

Most-favored-nation (MFN) treatment

http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#mfn

National Treatment

http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#national

Specific commitments

http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm2_e.htm#binding

Services Sectors

http://www.wto.org/english/tratop_e/serv_e/serv_sectors_e.htm

Financial services

http://www.wto.org/english/tratop_e/serv_e/finance_e/finance_e.htm

Telecommunications

http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm

Maritime transport

http://www.wto.org/english/tratop_e/serv_e/transport_e/transport_maritime_e.htm

Movement of natural persons

http://www.wto.org/english/tratop_e/serv_e/movement_persons_e/movement_persons_e.htm

WTO Secretariat, October 1999, Trade in Services Division

Jordan's Commitments

The following link exhibits Jordan's schedules of commitment in trade in services under the FTA
Services Schedule A in Annex 3.1

Jordan

Schedule of Specific Commitments

(This is authentic in English only)

<http://www.ustr.gov/regions/eu-med/middleeast/ann31Jor.pdf>

Jordan's Commitments under the GATS to the WTO

Horizontal Commitments:

- ◆ Minimum foreign capital investment limit: JD 50,000, excluding public shareholding companies.
- ◆ Cabinet approval as a precondition and reciprocity for purchase and lease of real estate.
- ◆ Economic needs examination to be used in permitting the entry and temporary residence of foreign individuals.
- ◆ Temporary residence and work permits are issued for a maximum of one year, but may be renewable.

Sector-Specific Commitments:

- ◆ Business Services
- ◆ Management Consulting Services
- ◆ Computer Services
- ◆ Market Studies
- ◆ Research and Development
- ◆ Health
- ◆ Tourism

Exceptions from the Commitments:

- ◆ Auditing
- ◆ Real Estate Leasing and Sales
- ◆ Public Opinion Polling and Survey
- ◆ Energy Distribution
- ◆ Labor Hiring and Recruitment
- ◆ Scientific, Art, and Photographic Consulting
- ◆ Communications and Radio and television broadcasting
- ◆ Contracting and Construction
- ◆ Distribution, Education, Environment, and Insurance
- ◆ Financial and Banking
- ◆ Aircraft Maintenance (RJ-Contracted)

Commercial Presence:

Restricted to Jordanians in

- ◆ Real estate,
- ◆ Overland transportation for passengers, including buses, trucks, and taxis,
- ◆ Quarries for construction stones and sand
- ◆ Security and Investigation
- ◆ Organization of Sports Events
- ◆ Clearing Services

Foreign Investment is restricted to 50% in the following sectors:

- ◆ Engineering and Construction
- ◆ Construction and Contracting
- ◆ Media, Distribution, and Photography
- ◆ Leasing and Re-leasing of Machinery and Equipment, excluding Engines and Turbines
- ◆ Scientific and Artists' Services and Related Services
- ◆ Labor Hiring and Recruitment
- ◆ Cinema Film Productions, Videos, and Distribution thereof, Voice Recording, and Garbage Disbursement, (excluding radioactive and dangerous waste)
- ◆ Insurance Related Services, (including Brokerage and Agencies)
- ◆ Restaurants, and aircraft catering
- ◆ Travel and Tourism Agencies, Computer Reservations, Sales, Marketing, and Equipment Maintenance
- ◆ Maritime, air, and Overland Transportation, and related Services, such as leasing of ships
- ◆ Warehousing and Distribution, (could obtain a franchising agreement from the government if the location is within public estates)
- ◆ Forwarding, including cargo transportation, cargo inspection, and packaging

Foreign Investment is restricted to 50% in the following sectors with a commitment to permit 100% foreign ownership by 2003:

- ◆ Leasing and Re-Leasing of operator-free equipment and machinery, especially engines and turbines

Foreign Investment is restricted to 51% in the following sectors with a commitment to permit 100% foreign ownership by 2002:

- ◆ Leasing and Re-Leasing of Agricultural machinery and equipment

Foreign Investment is restricted to 60% in the following sectors:

- ◆ Printing and Publishing services, (excluding periodicals), ship and aircraft maintenance and repair

Foreign Investment is restricted to 60% in the following sectors with a commitment to permit 100% foreign ownership by 2002:

- ◆ Leasing and Re-Leasing of operator-free machines and equipment on ships and courier services
- ◆ Educational, hospital, medical care and rehabilitation, and special laboratories

Foreign investment is open for 100% ownership:

Computer Services

Management Consulting and Market Studies

Packing Services

Research and Development in social and human sciences

Hotels, Motels, and Catering

Banks, Insurance catering, and Financial Services

Internet Services

Health Hygiene, including environmental services

Jordan has also committed to free the basic telecommunications and mobile phone sector by 2004 and allow 100% for the foreign investor.

Foreign investments in the following Jordanian services sectors are permitted after obtaining approval from the Cabinet of Ministers and a license from the government:

- ◆ Radio and Television Broadcasting
- ◆ Energy Distribution
- ◆ Scientific and Technical Services and Consulting (excluding topography, excavations, explorations, and utilization of natural resources).
- ◆ Railway transport services and supporting services thereof
- ◆ In the following fields, the government will set the number of licensees: Pulling and towing services in transport, internal waterways, catering, and utilization of natural resources.

Commitments related to entry and temporary residence of foreigners:

Jordan permitted the entry and temporary residence of foreign business people, managers, executives, and employees transferred by their mother company to work in Jordan in a number of sectors. Work permits may be granted for specializations and occupations that do not compete with Jordanians, and depending on the economic need examination.

In a number of specified sectors, managers and employees must be Jordanian nationals. These sectors are:

- ◆ Research and Development
- ◆ Real Estate Agents and Surveyors
- ◆ Advertising and Promotion
- ◆ Public Opinion Polling Centers
- ◆ Printing and Publishing
- ◆ Continuing Education and Cultural Centers
- ◆ Cinema theaters and Video / audio recording shops
- ◆ Medical Laboratories
- ◆ Travel and Tourism
- ◆ Insurance Brokers
- ◆ Forwarders, Assessors, and Inspectors
- ◆ Auditors
- ◆ General Physicians
- ◆ Veterinarian services
- ◆ Pharmacists
- ◆ Engineers

Jordan's schedules of commitments excluded lawyers and legal services from the schedules. However, foreigners were permitted to provide counseling on foreign laws, including visa and immigration services to Canada, New Zealand, and Australia.

U.S. COMMITMENTS UNDER THE GATS AND THE FTA

The U.S. Schedules of Commitments under the GATS to the WTO have not been changed from those it made to the FTA.

The following link exhibits the U.S. Commitments under trade in services in the FTA

Services Schedule A in Annex 3.1

The United States of America

Schedule of Specific Commitments

(This is authentic in English only)

<http://www.ustr.gov/regions/eu-med/middleeast/ann31US.pdf>

The following link exhibits the U.S. - Jordan Understanding Concerning Certain Reciprocity Requirements in trade in services.

<http://www.ustr.gov/regions/eu-med/middleeast/Ann32.pdf>

Horizontal Commitments:

Entry and temporary residence of foreign natural persons: Individuals are classified into a number of groups with each group subject to a particular, but different treatment under labor law and residence provisions. The following explains the different groups

Sales Agents: Should be working outside the U.S. and unpaid by any organization inside the U.S. Permit is granted for 90 days.

Transfer Employees: Classified as executives or managers. Permit is granted for three years and renewable for additional two years, but provided that the length of stay does not exceed five years.

Employees Designated to Establish U.S. Branches: Should be operating within a year of entry into the U.S., and should be compensated by the mother company. The Designated employee must provide evidence of the legal establishment of the foreign company.

Fashion Models and Professional Occupations: The U.S. permits up to 65000 at one time as the number of individuals in these professions permitted to stay in the U.S., provided they highly skilled. The maximum period of stay is 3 years.

Real Estate: This type of commercial presence is permitted to foreign individuals without any restrictions. However, non-U. S. citizens are not allowed to purchase estates owned by the Federal Government. Foreign firms incorporated under U.S. laws are permitted to own lands and estates anywhere in the U.S.

A number of States permit foreign ownership, but within limits. These limits apply in Kentucky and South Carolina. Oklahoma, Florida, and Wyoming permit foreign ownership to residents only. However, purchase of lands by foreigners in Hawaii, Idaho, Mississippi, Montana, and Oregon is not permitted.

Taxation Measures: Different taxation measures and fee apply with foreign ownership, investment, and residence in the U.S.

Subsidy Measures: Only U.S. citizen are eligible for scholarships.

Sector-Specific Commitments:

The U.S. did not offer any commitments in a number of distribution services, such as wholesale trade, alcoholic beverages, transportation and related services, internal waterway transportation, and passenger and cargo transportation.

The U.S. permits foreign supply of the services:

- ◆ Business and Professional Services
- ◆ Management and Computer Consulting
- ◆ (A number) of Real Estate lease and purchase services
- ◆ Market Studies, Public Opinion Polling, and Research and Development
- ◆ Energy Distribution
- ◆ Labor Recruitment
- ◆ Investigation and Security Services
- ◆ Scientific, technical, and Photographic Services
- ◆ Cleaning, Packing, and Printing and publishing services
- ◆ Communications and Radio and T.V. Broadcasting
- ◆ Contracting, Construction, Distribution, education, Environment, Health, and Tourism Services.

The following services have been excepted from the commitments in services:

- ◆ General legal services (except international law)
- ◆ Medical Services
- ◆ Insurance Services, Banking, and Financial Services
- ◆ One company cannot own a newspaper, and operate a radio and television station at one time.

U.S. Commitments on Commercial Presence

The following sectors are closed for U.S. citizens or residents:

- ◆ Legal Services
- ◆ Accounting, Auditing, and Bookkeeping
- ◆ Integrated Engineering Services in Washington, D.C.
- ◆ Real Estate and Recruitment Services in Arkansas
- ◆ Investigation and Security Services
- ◆ (A number of) Telecommunications and radio and television services
- ◆ All financial, banking, brokerage, and consulting services
- ◆ (A number of) Medical Services and support services in the transportation sector.

A foreign investor must participate with a U.S. investor, but the percentage of foreign ownership has been identified, especially in the following sectors:

- ◆ Accounting, Auditing, and Bookkeeping Services
- ◆ Architectural, Town Planning, and Design Services
- ◆ (A number of) Telecommunications Services, such as mobile services and radio and television broadcasting
- ◆ Establishing and managing hospitals or health clinics

A foreign investor is allowed to own up to 100% in a number of sectors, such as:

- ◆ Taxation Services
- ◆ Engineering and Integrated Engineering Services
- ◆ Computer Services
- ◆ Real Estate Leasing and Sales Services
- ◆ Non-Operated Machinery Leasing
- ◆ Publicity Services, except sky and air publicity activities
- ◆ Market Research and Public Opinion Polling
- ◆ Management Consulting Services and support services, including support services for agriculture, hunting, fishing, forestry (except supply of machinery), mining, and energy distribution
- ◆ Scientific and technical Services and related services
- ◆ Machinery / equipment maintenance and Repair, except those used for transportation
- ◆ General Cleaning Services
- ◆ Photography Services, excluding air photography
- ◆ Packaging and Publishing
- ◆ Land Based Courier Services
- ◆ (A number of) specialized communications services
- ◆ Cinema theaters, radio and television, and voice recording services
- ◆ Contracting and Construction and related engineering services
- ◆ Distribution and environmental services and hotel and catering services
- ◆ Cultural, recreational, and press agency services
- ◆ Maintenance and repair of aircrafts, trains, overland transport modes, including charter passenger and cargo services on civil roads.

In the State of Kentucky, the number of services providers in the beauty care education services has been limited. Also the government should license or franchise service providers operating as tour guides or recreational service providers.

Commitments Relating to Entry and Temporary Residence of Foreigners

Business people, executive managers, professionals, transfer employees, and special profession providers are permitted to provide such services in the U.S., provided that the offered expertise is not available locally.

The U.S. citizenship is a precondition for the following services:

- ◆ Managers and employees of national banks, licensed operators of radio and television stations, and investigation and security services In the State of Main.
- ◆ Recruitment services in Arkansas.
- ◆ Real estate brokerage and lease and purchase in Mississippi and New York
- ◆ Engineering and integrated engineering services in Washington, DC
- ◆ Accounting Services in North Carolina

All States have restricted the supply of legal services to U.S. citizens.

There are many local requirements, conditions, and qualification licensing procedures in the U.S. There are also professional permit issuance requirements, professional accreditation and

recognition procedures that must be adhered to. Such measures are impediments, but they needed to be transparent and accessible.