CHAPTER 6
GENERAL AGREEMENT ON TRADE IN SERVICES
(GATS) -AN OVERVIEW

General Agreement on Trade in Services (GATS) was introduced in 1995 under WTO to promote, liberalize and globalize the trade in services. Until the last years of the twentieth century, the exchange of services across national priorities did not figure prominently in international trade relations. Services were not mentioned in the General Agreement on Trade and Tariff (GATT), negotiated in the years following the end of World War II.

As GATT was applied on a “provisional basis” even if, after more than four decades of its incorporation, many countries chose to treat it as a permanent commitment. It was felt by many nations that the world trade was not flourishing properly; therefore they had started looking for some more liberalized organization dealing with international trade. Many rounds of negotiations for making world trade easier to take place and advantageous for all the parties, many rounds of negotiations were held and finally the organization ‘World Trade Organisation’ (WTO) emerged. The WTO commitments are full and permanent.

6.1 World Trade Organisation (WTO)

The World Trade Organisation was established on January 1, 1995. The WTO is the embodiment of the Uruguay Round results and the successor to GATT. Seventy-six Governments became members of the WTO on its first day. As on 23 July 2008, there are 153 members of the WTO and 32 countries have an observer status. The WTO is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business. The WTO is based in Geneva, Switzerland. Its essential functions are:

- Administering and implementing the multilateral and plurilateral trade agreements, which together make up the WTO;
• Acting as a forum for multilateral trade negotiations;
• Seeking to resolve trade disputes;
• Overseeing national trade policies;
• Technical assistance and training for developing countries
• Cooperating with other international institutions involved in global policy-making.

GATT and WTO Rounds

The General Agreement on Tariffs and Trade (GATT) was a multilateral treaty that laid down agreed rules for conducting international trade. It came into force in January 1948. Its basic aim was to liberalize trade and for 47 years it has been concerned with negotiating the reduction of trade barriers both tariffs and non-tariffs between countries and with international trade relations so that international trade flows freely and swiftly.

Round: WTO member countries tend to negotiate over several years on new agreements for a group of subjects. These series of negotiations are called rounds. They are often lengthy but can have the advantage of offering a package approach to trade negotiations on a single issue, such as the negotiations in financial services and telecommunications in the mid-1990s. The package approach can sometimes be more fruitful since there is always something beneficial for every participant in the negotiation, and therefore the stability to trade-off various issues can make the agreement easy to reach.

Eight major trade negotiations took place under the GATT auspices. The first round in 1947 (Geneva) saw creation of the GATT. The second round in 1949 (Annecy, France) involved negotiation with nations that desired GATT membership. The principal emphasis was on tariff reduction. The third round in 1951 (Torquay, England) continued accession and tariff reduction negotiations. The fourth round in 1956 (Geneva) proceeded along the same track as earlier rounds. The fifth round in 1960-61 (Geneva, Kennedy Round) was hybrid of earlier product-by-product approach with across the board tariff reductions. The seventh round in 1973-79 (Geneva, Tokyo Round) centered on the negotiation of additional tariff cuts and developed a series of agreements governing the use of non-tariff measures. The eighth
round (Uruguay Round) started in 1986 and was concluded in 1994 in Marrakesh, Morrocco because of the crises and deadlocks that developed over the negotiations, they dragged on for over seven years. The Final Act embodying its results came into force on January 1, 1995, resulting in the formation of World Trade Organization (WTO).

When the Uruguay Round was launched in Punta Del Este in 1986, a separate group on negotiations on services was created with a view to expansion of trade under conditions of transparency and progressive liberalization. Since architects of the Uruguay Round were not sure of the outcome of the negotiations on services, the negotiation on services was started separately, though linked to the original system of GATT.

Several reasons may be cited for the difficulties in negotiating the barriers to trade in services.

Firstly, the issue of services in international trade was new one. The services sector was never in agenda of any previous round of negotiations. As a result, it attracted little attention during the negotiations. Secondly, since the barriers to trade in services are not simple and obvious like tariff in goods, they are difficult to identify, to clarify and to negotiate on the traditional basis of reciprocity. Thirdly, the basis of regulating the services is provider rather than the product. The service providers always find the requirements of a foreign market are inconsistent with the requirement of the home market. Finally, in many cases like insurance, banking and other professional services requires investment permanently or for extended periods of time. Issues of foreign investment and immigration often touch raw nerves, particularly in developing countries.

Given the importance of importance of services in promoting economic development, competitiveness and productivity, the GATS is of great significance. Trade liberalizations in services results in increased competition, lower prices, more innovation, technology transfer, employment creation and greater transparency and predictability in trade and investment in flows. The GATS aids in facilitating these benefits.
Trade in Services has acquired an extremely important place in international economic interactions and negotiations in trade in services have reached an equally, if not more, important place in world trade as trade in commodities. The increasing importance of services in world trade brought into focus the need for defining rules and regulations for negotiations in trade in services so as to achieve a greater liberalization in service trade. The General Agreement on Trade in Services (GATS) was not considered a trade issue in GATT till 1986 when USA succeeded in negotiating the inclusion of services in the Punta del Este Ministerial Declaration, only in as much as that GATT procedures and practices will apply to these negotiations though these were not to be placed within the legal framework of GATT. The Final Act of Uruguay Round agreed to on December 15, 1993 included the General Agreement on Trade in Services (GATS).

Usunier (2000) has proposed an outline of service attributes:

- Repair and maintenance (after sales service).
- Installation and commissioning.
- Instruction manuals, product support.
- Other related services/demonstrations technical assistance.
- Ordering time, delivery dates and reliability.
- Guarantees/ Warranties (repair or replacement of goods).
- Spare parts availability.
- Return of goods (Whether defective or not).

However service attributes should also be distinguished from service sectors; these are now divided into 12 areas by WTO and represent the principal services covered by GATS (UNCTAD and World Bank 1994; European Commission 1995):

- Consultancy/ including professional and computer services
- Communications (including information)
- Distribution
- Health
- Education and training
- Environment
- **Finance including banking and insurance**
- Tourism and hospitality
- Transportation services
• Construction and engineering, including sale of technology
• Recreation, culture and sport
• Other services not specified elsewhere.

GATS contains 29 Articles. They cover all service sectors. They contain the general obligations that all members have to apply. It is the first ever set of multilateral, legally binding rules covering international trade in services. Like the agreement on goods, GATS operate on the 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 in goods, GATS has a special fourth element: List showing where countries are temporarily not applying the ‘most favoured nation’ principle of non discrimination. These commitments like tariff schedule under GATT are an integral part of the agreement. So are the temporary withdrawals of most favoured nation treatment. The agreement includes a provision for periodic negotiations that will progressively liberalize trade in services.

The GATS consists of two main elements: general concepts, principles and rules that apply across the board to measures affecting trade in services and commitments on national treatment and market access. The core GATT principle of non-discrimination (MFN and national treatment) applies also in GATS, with one big difference. GATT has a ‘negative list approach’ whereas non-discrimination applies generally, except in instances where explicit allowance is made for violation. That is true only on MFN under GATS, and not for national treatment. GATS adopts a positive list approach to determine the coverage of national treatment rule: it applies only to services listed in a country’s schedule of commitments and then only in so far as measures that would violate the principle are not exempted. GATS also introduces a commitment not found in GATT: a market access obligation. This also applies on a positive list basis to each member. Government services are excluded, further narrowing the GATS coverage.

Various GATT and WTO rounds from 1947 to till date are depicted in table 4.1 below.
Table 6.1: GATT and WTO Rounds

<table>
<thead>
<tr>
<th>Name</th>
<th>Start</th>
<th>Duration</th>
<th>Countries</th>
<th>Subjects covered</th>
<th>Achievements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geneva</td>
<td>1947</td>
<td>7 months</td>
<td>23</td>
<td>Tariffs</td>
<td>Signing of GATT, 45,000 tariff concessions affecting $10 billion of trade</td>
</tr>
<tr>
<td>Annecy</td>
<td>1949</td>
<td>5 months</td>
<td>13</td>
<td>Tariffs</td>
<td>Countries exchanged some 5,000 tariff concessions</td>
</tr>
<tr>
<td>Torquay</td>
<td>1950</td>
<td>8 months</td>
<td>38</td>
<td>Tariffs</td>
<td>Countries exchanged some 8,700 tariff concessions, cutting the 1948 tariff levels by 25%</td>
</tr>
<tr>
<td>Geneva II</td>
<td>1956</td>
<td>5 months</td>
<td>26</td>
<td>Tariffs, admission of Japan</td>
<td>$2.5 billion in tariff reductions</td>
</tr>
<tr>
<td>Dillon</td>
<td>1960-61</td>
<td>11 months</td>
<td>26</td>
<td>Tariffs</td>
<td>Tariff concessions worth $4.9 billion of world trade</td>
</tr>
<tr>
<td>Kennedy</td>
<td>1964-67</td>
<td>37 months</td>
<td>62</td>
<td>Tariffs, Anti-dumping</td>
<td>Tariff concessions worth $40 billion of world trade</td>
</tr>
<tr>
<td>Tokyo</td>
<td>1973-79</td>
<td>74 months</td>
<td>102</td>
<td>Tariffs, non-tariff measures, &quot;framework&quot; agreements</td>
<td>Tariff reductions worth more than $300 billion dollars achieved</td>
</tr>
<tr>
<td>Uruguay</td>
<td>1986-94</td>
<td>87 months</td>
<td>123</td>
<td>Tariffs, non-tariff measures, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc</td>
<td>The round led to the creation of WTO, and extended the range of trade negotiations, leading to major reductions in tariffs (about 40%) and agricultural subsidies, an agreement to allow full access for textiles and clothing from developing countries, and an extension of intellectual property rights.</td>
</tr>
<tr>
<td>Doha</td>
<td>November 2001</td>
<td>Continuing till date</td>
<td>141</td>
<td>Tariffs, non-tariff measures, agriculture, labor standards, environment, competition, investment, transparency, patents etc</td>
<td>The round is not yet concluded.</td>
</tr>
</tbody>
</table>

Source: WTO

Difference between GATT and WTO

The WTO is not simple extension of GATT, rather it completely replaces its predecessor and has a very different character. The principal differences are given below:

(i) The GATT was a set of rules, a multilateral agreement with no institutional foundation, only a small associated secretariat which had its origins in the
attempt to establish an International Trade Organization in the 1940s. The WTO is a permanent institution with its own secretariat.

(ii) The GATT was applied on a “provisional basis” even if, after more than forty seven years, governments chose to treat it as a permanent commitment. The WTO commitments are full and permanent.

(iii) The GATT rules applied to trade in merchandise goods. In addition to goods, the WTO covers trade in services and trade-related aspects of intellectual property.

(iv) While GATT was a multilateral instrument, by the 1980s many new agreements have been added of a plurilateral, and therefore selective in nature. The agreements which constitute the WTO almost all multilateral and, thus, involve commitments for the entire membership.

(v) GATT 1947 was an institution as well as an agreement. WTO has replaced GATT 1947 as an institution, whereas GATT 1994 is GATT 1947 as amended until the Uruguay Round of Negotiations.

(vi) The WTO dispute settlement system is faster, more automatic and thus much less susceptible to blockage, than the old GATT system. The implementation of WTO dispute findings will also be more easily assured.

Structure

- The WTO has nearly 150 members, accounting for over 97% of world trade. Around 30 others are negotiating membership.
- Decisions are made by the entire membership. This is typically by consensus. A majority vote is also possible but it has never been used in the WTO, and was extremely rare under the WTO’s predecessor, GATT. The WTO’s agreements have been ratified in all members’ parliaments.
- The WTO’s top level decision-making body is the Ministerial Conference which meets at least once every two years.
- Below this is the General Council (normally ambassadors and heads of delegation in Geneva, but sometimes officials sent from members’ capitals) which meets several times a year in the Geneva headquarters. The General Council also meets as the Trade Policy Review Body and the Dispute Settlement Body.
• At the next level, the Goods Council, Services Council and Intellectual Property (TRIPS) Council report to the General Council.

• Numerous specialized committees, working groups and working parties deal with the individual agreements and other areas such as the environment, development, membership applications and regional trade agreements.

Secretariat

The WTO Secretariat, based in Geneva, has around 600 staff and is headed by a director-general. Its annual budget is roughly 160 million Swiss francs. It does not have branch offices outside Geneva. Since decisions are taken by the members themselves, the Secretariat does not have the decision-making role that other international bureaucracies are given.

The Secretariat’s main duties are to supply technical support for the various councils and committees and the ministerial conferences, to provide technical assistance for developing countries, to analyze world trade, and to explain WTO affairs to the public and media. The Secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments wishing to become members of the WTO.

Objectives of WTO

In its Preamble, the Agreement Establishing the World Trade Organization reiterates the objectives of GATT. These are: raising standards of living and incomes, ensuring full employment, expanding production and trade, optimal use of the world’s resources. The preamble extends these objectives to services and makes them more precise:

• It introduces the idea of “sustainable development” in relation to the optimal use of the world’s resources, and the need to protect and preserve the environment in a manner consistent with various levels of national economic development.

• It recognizes that there is a need for positive efforts to ensure that developing countries, and especially the least developed among them, secure a better share of the growth in international trade.
Functions of WTO
The primary functions of the WTO are to link all the Multilateral Trade Agreements together, subject them to a common dispute settlement mechanism and provide a framework for the implementation of the results of negotiations on either a multilateral or plurilateral basis. It commits its members to ensure conformity of their laws, regulations and administrative procedures with the obligations in the agreements and also abolished the “grandfather rights” which enabled countries to maintain mandatory legislation otherwise inconsistent with their GATT obligations. The WTO’s functions also include:

1. Administering and implementing the multilateral and plurilateral trade agreements with together make up the WTO;
2. Acting as a forum for multilateral trade negotiations;
3. Seeking to resolve trade disputes;
4. Overseeing national trade policies; and
5. Cooperating with other international institutions involved in global economic policy-making.

Principles of the Trading Systems
WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. They deal with – agriculture, textile and clothing, banking, telecommunication, government purchases, industrial standards, food sanitation, regulations, intellectual property and much more. But a number of simple, fundamental principles run throughout all these documents. These principles are the foundation of the multilateral trading system. The principles in respect of trading system should be-

• Without discrimination- a country should not discriminate between its trading partners (they are all, equally, granted “most-favored-nation” or MFN status); and it should not discriminate between its own and foreign products, services and national (they are given “national treatment”);
• Freer- With barrier coming down through negotiations.
• Predictable- foreign companies, investors and governments should be confident that trade barriers should not be raised arbitrarily; more and more tariff rates and market-opening commitments are “bound” in the WTO.

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More competitive- by discounting “unfair” practices such as export subsidies and dumping products at below cost to gain market share.

More beneficial for less developed countries- by giving them more time to adjust, greater flexibility, and special privileges.

The WTO Agreements

The WTO’s rules — the agreements — are the result of negotiations between the members. The current set were the outcome of the 1986–94 Uruguay Round negotiations which included a major revision of the original General Agreement on Tariffs and Trade (GATT).

GATT is now the WTO’s principal rule-book for trade in goods. The Uruguay Round also created new rules for dealing with trade in services, relevant aspects of intellectual property, dispute settlement, and trade policy reviews. The complete set runs to some 30,000 pages consisting of about 30 agreements and separate commitments (called schedules) made by individual members in specific areas such as lower customs duty rates and services market-opening.

The WTO agreements cover Goods, Services and Intellectual Property, among others. All the agreements, about 60 in numbers, are the results of the Uruguay Round of Multilateral Trade Negotiations. There is an umbrella agreement (Agreement Establishing WTO) and then agreement for each of the three broad areas of trade in goods, services and intellectual property. Also, there are rules for Dispute Settlement and for Trade policy review. These agreements are often called the WTO Trade Rules.

The main five agreements under WTO are:

1. Agreement on Agriculture (AoA).
2. Trade Related Intellectual Property Rights (TRIPS).
3. Trade Related Investments Measures (TRIMS).
4. General Agreement on Trade in Services (GATS).
5. General Agreement on Tariffs and Trade (GATT), which mainly deals with Non-agricultural Market Access (NAMA).

The term NAMA was introduced in WTO terminology for the first time in Doha Declaration (2001).
Goods

It all began with trade in goods. From 1947 to 1994, GATT was the forum for negotiating lower customs duty rates and other trade barriers; the text of the General Agreement spelt out important rules, particularly non-discrimination.

Since 1995, the updated GATT has become the WTO’s umbrella agreement for trade in goods. It has annexes dealing with specific sectors such as agriculture and textiles, and with specific issues such as state trading, product standards, subsidies and actions taken against dumping.

Services

Banks, insurance firms, telecommunications companies, tour operators, hotel chains and transport companies looking to do business abroad can now enjoy the same principles of freer and fairer trade that originally only applied to trade in goods.

These principles appear in the new General Agreement on Trade in Services (GATS). WTO members have also made individual commitments under GATS stating which of their services sectors they are willing to open to foreign competition, and how open those markets are.

Intellectual Property

The WTO’s intellectual property agreement amounts to rules for trade and investment in ideas and creativity. The rules state how copyrights, patents, trademarks, geographical names used to identify products, industrial designs, integrated circuit layout-designs and undisclosed information such as trade secrets — “intellectual property” — should be protected when trade is involved.

Dispute Settlement

The WTO’s procedure for resolving trade quarrels under the Dispute Settlement Understanding is vital for enforcing the rules and therefore for ensuring that trade flows smoothly. Countries bring disputes to the WTO if they think their rights under the agreements are being infringed. Judgments by specially-appointed independent experts are based on interpretations of the agreements and individual countries’ commitments.

The system encourages countries to settle their differences through consultation. Failing that, they can follow a carefully mapped out, stage-by-stage procedure that
includes the possibility of a ruling by a panel of experts, and the chance to appeal the ruling on legal grounds. Confidence in the system is borne out by the number of cases brought to the WTO — around 300 cases in eight years compared to the 300 disputes dealt with during the entire life of GATT (1947–94).

**Policy Review**

The Trade Policy Review Mechanism’s purpose is to improve transparency, to create a greater understanding of the policies that countries are adopting, and to assess their impact. Many members also see the reviews as constructive feedback on their policies.

All WTO members must undergo periodic scrutiny, each review containing reports by the country concerned and the WTO Secretariat.

Evans (1996) made an attempt to identify the position of different stakeholders in the new trading system at the beginning of the Uruguay Round as shown in Table 4.2. Each of the agreements was a battle ground and each one had its champions and opponents.

**Table 6.2: Position of Different Stakeholders in the New Trading System**

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Promoter</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>WTO</td>
<td>1. France</td>
<td>1. USA</td>
</tr>
<tr>
<td></td>
<td>2. Canada</td>
<td>2. EU</td>
</tr>
<tr>
<td>Agriculture</td>
<td>1. Cairns Group</td>
<td>1. USA</td>
</tr>
<tr>
<td></td>
<td>2. USA</td>
<td></td>
</tr>
<tr>
<td>Textile and Clothing</td>
<td>1. Developing Countries</td>
<td>1. Developing Countries</td>
</tr>
<tr>
<td>TRIMS</td>
<td>1. USA</td>
<td>1. Developing Countries</td>
</tr>
<tr>
<td>Pre-shipment inspection</td>
<td>1. Developing Countries</td>
<td>1. Developing Countries</td>
</tr>
<tr>
<td>Subsidies and countervailing Duties</td>
<td>1. USA</td>
<td>1. US</td>
</tr>
<tr>
<td></td>
<td>2. EU</td>
<td>2. USA</td>
</tr>
<tr>
<td>Safeguards</td>
<td>1. USA</td>
<td>1. USA</td>
</tr>
<tr>
<td></td>
<td>2. EU</td>
<td>2. EU</td>
</tr>
<tr>
<td></td>
<td>3. Developed world</td>
<td>3. Developed world</td>
</tr>
<tr>
<td>Services</td>
<td>1. USA</td>
<td>1. USA</td>
</tr>
<tr>
<td></td>
<td>2. EU</td>
<td>2. EU</td>
</tr>
<tr>
<td></td>
<td>3. Developed world</td>
<td>3. Developed world</td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td>1. USA</td>
<td>1. Developing world</td>
</tr>
<tr>
<td></td>
<td>2. EU</td>
<td></td>
</tr>
<tr>
<td>Dispute Settlement</td>
<td>1. USA</td>
<td>1. USA</td>
</tr>
<tr>
<td></td>
<td>2. EU</td>
<td>2. EU</td>
</tr>
<tr>
<td>Anti-dumping</td>
<td>1. Developed Countries</td>
<td>1. USA</td>
</tr>
<tr>
<td></td>
<td>2. Developing Countries</td>
<td>2. EU</td>
</tr>
<tr>
<td></td>
<td>3. Japan</td>
<td></td>
</tr>
</tbody>
</table>

Cairns Group of 14 agricultural exporters: Argentina, Australia, Brazil, New Zealand, Canada, Fiji, Chile, Colombo, Malaysia, Indonesia, Thailand, Hungry, Philippines and Uruguay.


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6.2 General Agreement on Trade in Services (GATS)

The GATS was agreed under the Uruguay Round of multilateral trade negotiations and came into force in 1995. It sets out a framework of legally binding rules governing the conduct of world trade in services. It is supported by a number of specific commitments undertaken by individual Members of the World Trade Organization (WTO) in specified service sectors or across a particular mode of supply.

The concept of “Service” is not defined in GATS. The scope is framed by the concept of ‘trade in services’, which is defined in terms of four different modes of supply.

Mode 1: Cross Border- Cross Border supply of Services without the physical movement of supplier or consumer. For example: consultancy or market research reports, distance training or architectural drawings.

Mode 2: Consumption Abroad- Movement of the consumer to the country of the suppliers. For example – Nationals of A have moved abroad as tourists, students or patients to consume the respective services.

Mode 3: Commercial Presence- Services sold in the territory of Members by foreign entities that have established a commercial Presence. For example- Life insurers, banks, hotel groups etc.

Mode 4: Presence of Natural Persons- the admission of foreign natural persons to another country to provide services there either as an independent supplier (e.g. consultant, health worker) or employee of a service supplier (e.g. consultancy firm, hospital, construction company).

The General Agreement on Trade in Services has three elements: the main text containing general obligations and disciplines; annexes dealing with rules for specific sectors; and individual countries’ specific commitments to provide access to their markets, including indications of where countries are temporarily not applying the “most-favoured-nation” principle of non-discrimination.

How it Works?

Under the successive rounds of negotiations, aimed at progressive liberalization, Members individually choose in which sectors they want to make binding commitments, and in which they do not. This is known as a ‘positive listing’, or a
‘bottom-up’, approach. Negotiations normally proceed on the basis of requests and offers; that is, countries request each other to consider liberalization in particular sectors, and respond with offers. Agreement to liberalize is not reached until all participating Members—including developing countries—are satisfied with the total package being offered.

The new round of GATS negotiations was launched on 25 February 2000. A stock taking meeting in March 2001 reviewed the progressed so far. Negotiating Guidelines and Procedures, which outline principles for the rest of the negotiations, were adopted by consensus among all Members. The Guidelines and Procedures are largely based on a text that was initially prepared by a group of developing countries. Agreement of these guidelines allows the request/offer phase of negotiations to begin.

At the fourth WTO ministerial meeting in Doha in November 2001, WTO members reaffirmed these Guidelines and Procedures and set deadlines for the initial requests and offers that members will make to each other.

**Historical Background to the GATS**

Services have recently become the most dynamic segment of international trade. The creation of the GATS was one of the major achievements of the Uruguay Round of trade negotiations, from 1986 to 1993. This was almost half a century after the entry into force of the General Agreement on Tariff and Trade (GATT) of 1947, the GATS’s counterpart in trade in goods. Among the several new legal disciplines in the field of international trade stemming from the Uruguay Round, the GATS still remains the most complex and unexplored agreement. While admittedly the level of actual liberalization achieved by the WTO in the field of services is relatively low, the new legal disciplines provided in the GATS may potentially have quite far reaching implication for all WTO Members involved.

**Basic Purpose**

As stated in Preamble, the GATS is intended to contribute to trade expansion “under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing
countries”. Trade expansion is thus not seen as an end in itself, as some critical voices alleges, but as an instrument to promote growth and development.

The GATS’ contribution to world services trade rest on two main pillars: (a) ensuring increased transparency and predictability of relevant rules and regulations, and (b) promoting progressive liberalization through successive rounds of negotiations. Within the framework of the Agreement, the latter concept is tantamount to improve market access and extending national treatment to foreign services and service suppliers across an increasing range of sectors. It does not, however entails deregulation. Rather, the agreement explicitly recognizes the right of governments to regulate and to introduce new regulations in order to meet national policy objectives, and the particular need of developing countries to exercise this right.

The GATS main objectives are in nutshell (Weiler, J.H.H. & Cho, 2005):

1. The creation of a credible and reliable system of international trade rules;
2. The stimulation of economic activity through guaranteed policy bindings;
3. The assurance of fair and equitable treatment of all participant (the so-called principle of non-discrimination); and
4. The promotion of trade and development through progressive liberalization.

For the purpose of structuring the commitments, WTO members have generally used a classification system comprising twelve core service sectors:

- Business (including professional and computer services)
- Communication services
- Construction and engineering services.
- Distribution services
- Educational services
- Environmental services
- Financial services (including insurance and banking)
- Health-related and social services
- Tourism and travel-related services
- Recreational, cultural and sporting activities.
- Transport services.
Financial services in the GATS include two broad categories of services:

a. **Insurance and insurance related services**: Especially these insurance and insurance related services cover life and non-life insurance, reinsurance, insurance intermediation such as brokerage and agency services and services auxiliary to insurance such as consultancy and actuarial services.

b. **Banking and other financial services** (excluding insurance). There are three types of stakeholders in the insurance process: the insured (the consumer), the insurer (the provider of a service) and the regulator (generally the government or an independent authority). Other stakeholders in the sector include actuaries and auditors.

**Definition of Insurance Services**

Following the Financial Stability Forum, one can classify insurance into three major categories: life insurance, non-life insurance and reinsurance. The WTO W/120 Sectoral Classification List breaks down financial services into (a) all insurance and insurance-related services and (b) banking and other financial services. The former is further broken down into life, accident and health; and insurance services; non-life insurance services; reinsurance and retrocession; insurance intermediation; and services auxiliary to insurance. The Annex on Financial Services (Annex) defines financial services as any service of a financial nature offered by a financial service supplier. It specifies the inclusion of insurance and insurance-related products. The Annex goes on to list insurance and insurance related product as:

- Direct insurance, both life and non-life
- Reinsurance and retrocession
- Insurance intermediation, such as brokerage and agency services
- Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

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Articles Governing General Agreement on Trade in Services (GATS)

PART I  SCOPE AND DEFINITION
Article I  Scope and Definition

PART II GENERAL OBLIGATIONS AND DISCIPLINES
Article II  Most-Favoured-Nation Treatment
Article III  Transparency
Article III bis  Disclosure of Confidential Information
Article IV  Increasing Participation of Developing Countries
Article V  Economic Integration
Article V bis  Labour Markets Integration Agreements
Article VI  Domestic Regulation
Article VII  Recognition
Article VIII  Monopolies and Exclusive Service Suppliers
Article IX  Business Practices
Article X  Emergency Safeguard Measures
Article XI  Payments and Transfers
Article XII  Restrictions to Safeguard the Balance of Payments
Article XIII  Government Procurement
Article XIV  General Exceptions
Article XIV bis  Security Exceptions
Article XV  Subsidies

PART III SPECIFIC COMMITMENTS
Article XVI  Market Access
Article XVII  National Treatment
Article XVIII  Additional Commitments

PART IV PROGRESSIVE LIBERALIZATION
Article XIX  Negotiation of Specific Commitments
Article XX  Schedules of Specific Commitments
Article XXI  Modification of Schedules

PART V INSTITUTIONAL PROVISIONS
Article XXII  Consultation
Article XXIII  Dispute Settlement and Enforcement
Article XXIV  Council for Trade in Services
Article XXV  Technical Cooperation
Article XXVI Relationship with Other International Organizations

PART VI FINAL PROVISIONS

Article XXVII Denial of Benefits
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Article XXIX Annexes
Annex on Article II Exemptions
Annex on Movement of Natural Persons Supplying Services under the Agreement
Annex on Air Transport Services
Annex on Financial Services
Second Annex on Financial Services
Annex on Negotiations on Maritime Transport Services
Annex on Telecommunications
Annex on Negotiations on Basic Telecommunications

Table 6.3 shows the various articles governing General Agreement on Trade in Services.

**Table 6.3: Articles governing General Agreement on Trade in Services (GATS)**

<table>
<thead>
<tr>
<th>Articles</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope and Definition Article I</td>
<td>Scope: The GATS has three main elements. The GATS consists of (i) a set of general rules and principles which apply across all sectors to measures affecting trade in services and (ii) the second element of GATS is a set of sector-specific or cross-sectoral commitments on national treatment and market access which are applicable to those activities listed in a country’s schedule of commitments. The third important element of GATS is a series of attachments including annexes to the agreement, which pertain to sectoral specificities and Ministerial Declaration regarding GATS’ implementation. Definition: Trade in services is defined as the supply of a service under the four so-called modes of supply. Measures include those taken by “central, regional or local government and authorities” and “non-governmental bodies in the exercise of powers delegated” by those authorities.</td>
</tr>
<tr>
<td>MFN (Most Favored Nation) Treatment Article II</td>
<td>Members to accord immediately and unconditionally to services and service suppliers of any other member treatment no less favorable than they accord to like services and service suppliers of any other country.</td>
</tr>
<tr>
<td>Transparency Article III</td>
<td>Members to publish all relevant measures and inform Council for Trade in Services of any changes to measures significantly affecting trade in services covered by specific commitments</td>
</tr>
<tr>
<td>Disclosure of confidential Information Article III bis</td>
<td>To provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.</td>
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<tr>
<td>-------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Increasing Participation of Developing Countries Article IV</td>
<td>The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:</td>
</tr>
<tr>
<td></td>
<td>(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, <em>inter alia</em> through access to technology on a commercial basis;</td>
</tr>
<tr>
<td></td>
<td>(b) the improvement of their access to distribution channels and information networks; and</td>
</tr>
<tr>
<td></td>
<td>(c) the liberalization of market access in sectors and modes of supply of export interest to them.</td>
</tr>
<tr>
<td>Economic Integration Article V</td>
<td>This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:</td>
</tr>
<tr>
<td></td>
<td>(a) has substantial sectoral coverage, and</td>
</tr>
<tr>
<td></td>
<td>(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:</td>
</tr>
<tr>
<td></td>
<td>(i) elimination of existing discriminatory measures, and/or</td>
</tr>
<tr>
<td></td>
<td>(ii) prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.</td>
</tr>
<tr>
<td>Labour Markets Integration agreements Article V bis</td>
<td>This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration of the labour markets between or among the parties to such an agreement, provided that such an agreement:</td>
</tr>
<tr>
<td></td>
<td>a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;</td>
</tr>
<tr>
<td></td>
<td>b) is notified to the Council for Trade in Services.</td>
</tr>
<tr>
<td>Domestic Regulation Article VI</td>
<td>1. Each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.</td>
</tr>
<tr>
<td></td>
<td>2. (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision</td>
</tr>
</tbody>
</table>
concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

<table>
<thead>
<tr>
<th>Article VII</th>
<th>Recognition</th>
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</table>
| Members’ right to recognize education, experience, licenses or certification of another member providing that (i) other members are given the opportunity to negotiate accession to any agreement and (ii) the application of that recognition does not discriminate between countries or restrict trade in services.

<table>
<thead>
<tr>
<th>Article VIII</th>
<th>Monopolies and exclusive service suppliers</th>
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</table>
| Members to ensure that public and private monopoly suppliers do not act inconsistently with MFN treatment obligations and specific commitments.

<table>
<thead>
<tr>
<th>Article XI</th>
<th>Business Practices</th>
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| Members recognize that certain business practices of service suppliers may restrain competition and thereby restrict trade in services.

<table>
<thead>
<tr>
<th>Article X</th>
<th>Emergency Safeguard Measures</th>
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</table>
| There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement.

<table>
<thead>
<tr>
<th>Article XI</th>
<th>Payments and Transfers</th>
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</table>
| Members may not impose restrictions on capital transactions inconsistently with specific commitments regarding such transactions.

<table>
<thead>
<tr>
<th>Article XII</th>
<th>Restrictions to Safeguard the Balance of Payments</th>
</tr>
</thead>
</table>
| 1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its program of economic development or economic transition.
| 2. The restrictions referred to in paragraph 1: (a) shall not discriminate among Members; (b) shall be consistent with the Articles of Agreement of the International Monetary Fund; (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member; (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; (e) shall be temporary and be phased out progressively as the

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situation specified in paragraph 1 improves.

| Government Procurement Article XIII | 1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.  
2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement. |
|-------------------------------------|--------------------------------------------------------------------------------------------------|
| General Exceptions Article XIV     | Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:  
(a) necessary to protect public morals or to maintain public order;  
(b) necessary to protect human, animal or plant life or health;  
(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:  
(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;  
(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;  
(iii) safety;  
(d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Members;  
(e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound. |
| Security Exceptions Article XIV bis | 1. Nothing in this Agreement shall be construed:  
(a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or  
(b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:  
(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;  
(ii) relating to fissionable and fusionable materials or the materials from which they are derived;  
(iii) taken in time of war or other emergency in |
| **Subsidies Article XV** | Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects. The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programs of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers. |
| **Market Access Article XVI** | Each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule. |
| **National Treatment Article XVII** | In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers. |
| **Additional commitments Article XVIII** | Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member’s Schedule. |
| **Negotiation of Specific Commitments Article XIX** | The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives. |
| **Schedules of Specific Commitments Article XX** | Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify: (a) terms, limitations and conditions on market access; (b) conditions and qualifications on national treatment; |
### Modification of Schedules
**Article XXI**
A Member (referred to in this Article as the "modifying Member") may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.

### Consultation
**Article XXII**
Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Dispute Settlement Understanding (DSU) shall apply to such consultations.

### Dispute Settlement and Enforcement
**Article XXIII**
If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the DSU.

### Council for Trade in Services
**Article XXIV**
The Council for Trade in Services shall carry out such functions as may be assigned to it to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.

### Technical Cooperation
**Article XXV**
1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.
2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

### Relationship with Other International Organizations
**Article XXVI**
The General Council shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services.

### Denial of Benefits
**Article XXVII**
A Member may deny the benefits of this Agreement:
(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;
(b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Member, or that it is a service supplier of a Member to which the denying Member does not apply the WTO Agreement.

### Annex on Financial Services
**Scope and Definition**
(a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as...
defined in paragraph 2 of Article I of the Agreement.

(b) For the purposes of subparagraph 3(b) of Article I of the Agreement, "services supplied in the exercise of governmental authority" means the following:

(i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(ii) activities forming part of a statutory system of social security or public retirement plans; and

(iii) other activities conducted by a public entity for the account with the guarantee or using the financial resources of the Government.

(c) For the purposes of subparagraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

(d) Subparagraph 3(c) of Article I of the Agreement shall not apply to services covered by this Annex.

2. Domestic Regulation

(a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform to the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement.

(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. Recognition

(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(b) A Member that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such agreements or arrangements, or to negotiate...
comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.

(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII shall not apply.

4. Dispute Settlement

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

5. Definitions

For the purposes of this Annex:

(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

**Insurance and insurance-related services**

(i) Direct insurance (including co-insurance):
   (A) life
   (B) non-life

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

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SECOND ANNEX ON FINANCIAL SERVICES

1. Notwithstanding Article II of the Agreement and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the Agreement.

2. Notwithstanding Article XXI of the Agreement, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, improve, modify or withdraw all or part of the specific commitments on financial services inscribed in its Schedule.

3. The Council for Trade in Services shall establish any procedures necessary for the application of paragraphs 1 and 2.
6.3 Summing Up

The General Agreement on Trade in Services integrates the question of trade and investment into a single agreement treating the supply of the market by foreign affiliates, through a local commercial presence as a form of trade in services. The GATS deals, in the area of services, with questions of rights of establishment and the treatment of foreign investors once established.

The General Agreement on Trade in Services is an inter-governmental agreement. It is more complex than similar agreements because the global services sector is highly differentiated, covering both consumers and industrial and institutional customers. Implementation of GATS has resulted into free flow of many services, the world over.