

# The General Agreement on Trade in Service (GATS)

Cape Town, 22-25 August 2007

# GATS: Core objectives

- Expansion of services trade
- Progressive liberalization through successive rounds of negotiations as a means of promoting growth and development
- Transparency of rules and regulations
- Increasing participation of developing countries

# Basic Elements of GATS

- Unconditional obligations
- “Permissible” provisions
- Scheduled (specific) commitments and obligations conditional upon scheduling
- Escape clause provisions
- Other provisions
- Exclusions: services provided under governmental authority; air traffic rights

# Basic Elements of GATS (cont)

- Unconditional obligations
  - MFN (Art. II)
  - Transparency (Art. III) publication of measures of general application
  - Respond to requests for information and establish enquiry points (Art. Iii)
  - Accord full and sympathetic consultations on restrictive business practices (Art. IX)
  - Legal remedies to be available to other Members

# Basic Elements of GATS (cont)

- “Permissible” provisions
  - MFN exemptions: (Art II) scheduled at time of accession, subject to review and supposedly time-bound
  - Economic integration: (Art. V) agreements on services trade among sub-sets of Members subject to certain requirements
  - Labour market integration agreements: (Art Vbis) permits integration of labour markets
  - Recognition: (Art VII) allows mutual recognition but not as a means of discrimination
  - General and security exceptions (Art XIV and XIVbis)
  - Prudential carve-out: (Annex) allowing measures on prudential grounds

# Basic Elements of GATS (cont)



- Scheduled (specific) commitments and obligations conditional upon scheduling
  - Additional transparency obligations: (Art. III) notify new laws or changes to existing ones pertinent to scheduled obligations
  - Domestic regulation: (Art VI) all measures of general application to be reasonable, objective and impartial, timely authorization where required, objective and transparent criteria, no more burdensome than necessary, licenses not to constitute restrictions in themselves, ongoing work programme
  - Monopolies: (Art. VIII) consistency with MFN and specific commitments
  - payments and transfers: (Art XI) no restrictions on payments and transfers linked to specific commitments, except if balance-of-payments provisions apply

# Basic Elements of GATS (cont)

- Escape clause provisions
  - Safeguards: (Art X) provision for negotiations on safeguards, which are still ongoing
  - Balance of payments: (Art XII) non-discriminatory restrictions in situations of serious external financial difficulties or threat thereof
  - Modification of schedules: (Art XXI) Members can modify or withdraw commitments in exchange for negotiated compensatory commitments

# Basic Elements of GATS (cont)

- Other provisions
  - Procurement: (Art XIII) excluded from purview of MFN and specific commitments, negotiations foreseen
  - Increasing participation of developing countries: (Art IV) to be facilitated through negotiated specific commitments relating to strengthened services capacity, improved access, contact points
  - Subsidies: (Art XV) negotiations foreseen together with possible countervail



# Modes of Supply

- Mode 1: Cross-border
- Mode 2: Consumption abroad
- Mode 3: Commercial presence
- Mode 4: Movement of natural persons

# A GATS Schedule of Specific Commitments

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional Commitments
	(1) (2) (3) (4)	(1) (2) (3) (4)	
	(1) (2) (3) (4)	(1) (2) (3) (4)	

# Description of Sectors

- MTN.GNS/W/120 of July 1991 divides sectors into 12 groups
- Altogether ~ 160 sub-sectors identified
- Corresponding number of the Central Product Classification (CPC), Provisional version

Note: CPC is a tool, Members may describe sectors by using other definitions



# Types of limitations to be scheduled

- MARKET ACCESS (Article XVI)
    - Absence of quota-type and similar restrictions
  - NATIONAL TREATMENT (Article XVII)
    - Non-discrimination with regard to **all** measures affecting the supply of a service
- 
- Any limitations must be inscribed in Schedules for each relevant modes(s).

# Types of Market Access Limitations

## Article XVI:(a)- (f)

- (a) Number of service suppliers  
(e.g. new licenses subject to economic needs)
- (b) Value of transactions or assets  
(e.g. assets of foreign banks limited to x percent of total bank assets)
- (c) Total number of operations or quantity of output  
(e.g. restrictions on broadcasting time for foreign films)
- (d) Total number of natural persons  
(e.g. no more than x foreigners per outlet)
- (e) Type of legal entity or joint venture  
(e.g. foreign presence only via subsidiaries)
- (f) Maximum foreign capital participation  
(e.g. foreign equity limited to 49 percent)

# National Treatment Limitations

- Treatment shall be “no less favourable than accorded to own like services and services suppliers”.
- ... “either formally identical or formally different treatment” ...

---

relevant benchmark: no modification of “the conditions of competition” in favour of domestic like services or service suppliers.

# Typical National Treatment Limitations



WTO OMC

- Discriminatory subsidies and other financial measures
- Nationality and residency requirements
- Licensing, qualification and registration requirements
- Technology transfer/training requirements
- Local content requirements
- Prohibitions on land/property ownership
- Limitations on insurance portability, use of education grants, etc.



# Terminology Relating to Limitations

- No limitation (full commitment) = “None”
- No commitment technically feasible = “Unbound\*”
- No commitment = “Unbound”
- Commitment with limitations = only those limitations specifically inscribed may be applied



# What Should Be in the Schedule?

- Measures relating to **licensing, qualification, approval, authorisation, registration** etc.
  - ê Under **Market Access** only those restrictions falling under XVI (a)-(f)
  - ê Under **National Treatment** only those requirements or procedures that are discriminatory
- Additional information (for transparency reasons) not necessary to schedule.

# Illustration of a Schedule

<b>Sector or subsector</b>	<b>Limitations on market access</b>	<b>Limitations on national treatment</b>	<b>Additional commitments</b>
Retailing Services (excluding tobacco)	1) Unbound except for mail order 2) None 3) Foreign service suppliers may supply services only in the form of joint ventures and only in the provinces of.. Foreign suppliers will be permitted to engage in the retailing of all products, except for books, newspapers and magazines 4) Unbound except as indicated in Horizontal Commitments	1) Unbound except for Mail order 2) None 3) None  4) Unbound except as indicated in Horizontal Commitments	Foreign-invested enterprises may distribute their products manufactured within [...] and provide subordinate services as defined in the Annex.

# Horizontal Commitments

- Tool to avoid repetition in sector specific commitments where measures cover all sectors in a schedule.
- Can apply to all or some modes of supply
- No legally different character from specific commitments

# Typical Horizontal Commitments

- Measures can relate to one or more modes of supply:
  - restrictions on land ownership, investment, entry of natural persons
  - discriminatory tax measures
- Horizontal commitments condition all other entries unless otherwise specified:
  - “None” in sector-specific section ->except as set out in horizontal section
  - Departures must be clearly and consistently indicated

# Scheduling Mode 4 Commitments

- Sector-Specific commitments under Mode 4 typically refer to Horizontal commitments
  - ê “Unbound, except as indicated in the horizontal section of the schedule”
- Horizontal Commitments in form of “undertaking”
  - identifying categories of natural persons;
  - duration of temporary stay

# Typical Horizontal Commitments in Mode 4



WTO OMC

Sector or subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>Horizontal commitments</b>			
All sectors included in this schedule	4) Unbound, except for the temporary presence for up to three years of: A. <u>Services salespersons</u>  B. <u>Intracorporate transferees</u> : Executives, Managers, Specialists, Professionals	4) Unbound, except for measures concerning the categories of natural persons referred to in the Market Access column	

# Summary of Some Scheduling Rules



- Any limitations and qualifications pertaining to Articles XVI and XVII **must be** inscribed in Schedules
- Measures falling under other provisions (Articles VI, XII, XIV) should not be scheduled
- Market Access or National Treatment limitations applying across all scheduled sectors may be presented in a **horizontal section**
- Measures inconsistent with both Market Access and National Treatment obligations must be inscribed in the Market Access column only (Art. XX:2)

# Measures and Policies Not Affected by Scheduled Commitments

- Non-discriminatory domestic regulation (standards, licensing requirements, etc.)
- Government procurement
- Private commercial actions (beyond the scope of GATS)
- Actions beyond the modal definition of services trade (e.g. export subsidies or restrictions)