

General Agreement on Trade in Services (GATS): An Overview

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Scheme of Presentation

- Why Service Sector to be included in the UR/WTO?
- Int. Legal Regime Regulating Services before WTO
- Uruguay Round and Services Sector Negotiations
- An Overview on Application of GATS
- GATS and Legal Services in India

Why Service Sector to be included in the WTO

- Contribution of Service Sector to the Global Economy
- Developed and Developing Countries
- Technological Developments
- Globalization of Economies
- Other Concepts like Liberalization, De-regulation and Privatization also Contributed

Int. Agreements for Liberalization of Services Sector before WTO

- FCN Treaties
- Rome Treaty of 1957 and EU
- Bi-lateral Agreements
- The Canada-US Free Trade Agreement
- NAFTA
- OECD Invisible Codes

Why Uruguay Round?

- To Understand the globalization better let us also know the Uruguay Round which paved the path for the establishment of WTO.
- By 1980s, world-trading system changed, the factors, which are responsible for these changes include; the liberalization, globalization and the privatization process.
- Added to this, the service sector contributed to more than 40 - 60% but it was out of the GATT system.
- As a consequence, investments required guarantees, the IPRs required better protection and the proper dispute settlement mechanism was required.
- As GATT could not address all the above-mentioned areas the Uruguay round of negotiations attracted lot of importance.

The Goals of the Uruguay Round

- To further liberalization of trade by reducing tariffs and other barriers to trade.
- To properly reflect the modern developments in the world trade by including in the GATT negotiations for the first time TRIMS, GATS, and IPRs.
- To bring an end to exemptions of the GATT rules such as those granted to the agriculture, clothing and textiles sectors and resubmit them to GATT
- To improve and strengthen the GATT dispute settlement procedure for effective implementation of international trade regulations

Uruguay Round—Problems and Prospects

- No other international treaty has been as little understood and yet has raised as much concern and hostility in our country.
- Wide range apprehensions have been expressed in many developing countries including India, Which include;
- our sovereignty was compromised; our agriculture would be ruined; farmers would have to buy their seed every year from multinational corporations; genetic wealth would lost; drug prices would shoot up; and our market would become heaven for foreigners.
- Main contentious issues were the agricultural subsidies, public distribution system, patenting of seeds and life forms, and textiles and clothing.

Achievements of the Uruguay Round and the WTO

- Uruguay Round Establishment of the WTO and put important treaties as Annexes to the WTO
- 4 Annexes to the WTO
- Annex 1A-Trade in Goods
- Annex 1B- Trade in Services
- Annex 1C-TRIPS
- Annex 2 -DSU/DSB
- Annex 3-Trade Policy Review Mechanism
- Annex 4- Plurilateral Agreements

Basic Principles of WTO/GATS

- Most favored nation (MFN) Treatment:
- National Treatment:
- The Principle of Non-Discrimination and Equality of states
- Changing Concept of Sovereignty & Protection of National Interests
- Transparency and Reciprocity
- Free Trade and Fair Trade
- Binding Commitments
- P.S.N.R and Non-Intervention in Domestic Affairs

Overview of GATS

- The GATS, which was also negotiated during the Uruguay Round, sets out a comprehensive framework of rules governing trade in services.
- It sets out a set of basic rules, a clear set of obligations for each member country and a dispute-settlement mechanism to ensure that the rules are enforced.
- The GATS applies to all service sectors and all forms of trade in services, though with adjustments and exceptions tailored to the type of service.
- Operation of GATS: Three Levels i.e. Framework Agreement, Annexes and Schedules

Part 1-Scope and Definitions

- **The forms (or "modes") of trade in services are:** Cross-border trade in services: a firm deals with a client in another country (e.g. electronically) without crossing the border;
- Consumption abroad: a client travels to a firm's country of operation to consume a service;
- Commercial presence: a firm establishes an operation in the market of another country; and
- Temporary movement of a natural person: a firm travels to the client's country of operation to provide the service.
- Definition: Art.1(3) (b) Services include any service in any sector except services supplied in the exercise of governmental authority

Scope of GATS

- Classification of Services based on UN Central Product Classification (UNCPC) identifies 12 broad Categories which include
 - (1) Business Services
 - (2) Communication Services
 - (3) Construction and Related Engineering Services
 - (4) Distribution Services
 - (5) Educational Services
 - (6) Environmental Services
 - (7) Financial Services including Banking and Insurance
 - (8) Health Related and Social Services
 - (9) Tourism and Travel Related Services
 - (10) Recreational, Cultural and Sports Services
 - (11) Transport Services, and
 - (12) Miscellaneous or Other Services not included in the above Categories
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Part 2: General Obligations and Disciplines Articles 2-15

- a. General Obligation i.e **Most Favoured Nation Obligation**: Each service supplier from a Member country must receive from other Members treatment no less favorable than is accorded to other foreign service suppliers.
- Other Obligations include Transparency, increasing participation of LDCs, Economic Integration, Domestic Regulations, Recognition of Licenses or certification of service suppliers (State Trading), Monopolies and exclusive service suppliers, Business Practices, Emergency Safeguard Measures, Payments and Transfers, Restrictions on BOPs, Government Procurement, General Exceptions, Security Exceptions and Subsidies

Part III Specific Commitments: articles 16-18

- **Specific Commitments:** In addition to creating general obligations, the GATS also provides a legal basis for negotiating the multilateral elimination of barriers to trade in services. The GATS negotiations are designed to improve market access and to reduce discrimination against service suppliers based on nationality.
- (i) **Market Access:** Market Access is a negotiated right and obligation under the GATS. A Member is obliged to provide market access to services suppliers from other Members only in those sectors which the Member has included in its schedule.
- (ii) **National Treatment: National** If a Member includes a service sector in its schedule of National Treatment obligations, that Member must "accord to services and services suppliers of any other Member . . . treatment no less favourable than that it accords to its own like services and services suppliers." This obligation essentially prohibits discrimination against foreign providers of services.
- (iii) **Additional Commitments:** Members may negotiate additional commitments including qualifications, standards or licensing matters

Part IV: Progressive Liberalization: Articles 19-21

- Art. 19 Negotiation of Specific Commitments
- Art. 20 Schedules of Specific Commitments
- Art. 21 Modification of Schedules

Part V: Institutional Provisions: Articles 22-26

- Art. 22 Consultations
- Art. 23 Dispute Settlement and Enforcement
- Art. 24 Council for Trade in Services
- Art. 25 Technical Cooperation
- Art. 26 Relationship with other Int. Orgs.

Part VI: Final Provisions articles 27-29

- Art. 27 Denial of Benefits
- Art. 28 Definitions
- Art. 29 The Annexes

The GATS and the Legal Services

- To date, 151 countries have signed the GATS. The GATS applies to legal services.
- This means that once a country signs the GATS; its regulation of legal services is automatically subject to certain provisions of GATS. For example, all GATS signatories are subject to a transparency requirement, which specifies that all relevant measures be published or otherwise publicly available.
- In addition to these general requirements, most countries have included legal services on their Schedule of Specific Commitments, which means that legal services are subject to many additional provisions of GATS.
- For example, if a country lists legal services on its Schedule, then its regulation of legal services not only must be transparent, but must also be administered in a reasonable, objective and impartial manner.

Globalization of Legal Services

- The globalization of legal services is a serious issue, which needs the attention of the all the stakeholders.
- At present, the legal services industry is experiencing a fundamental transformation as a result of the expansion of trade and development of new fields of law, which include:
- corporate restructuring, privatization of government departments, cross-border mergers and acquisitions, issues dealing with intellectual property rights and competition law have generated increasing demand for more sophisticated legal services.
- This also led to the emergence of a new type of lawyers mainly involved in advisory services—as opposed to the traditional local court advocate—expected to provide advice to clients in respect of transactions and investments covering countries around the world.

Legal Services and National Laws

- The regulation of lawyers has historically been a domestic policy issue.
- In order to uphold the integrity of their laws and the judicial systems, countries have enacted elaborate regulatory schemes to control who would provide legal services and how they are provided.
- During the last two decades, globalization of the legal services industry has increased the general awareness of the effects of national regulations, particularly as they affect foreign lawyers.
- The globalization of markets and the internationalization of trade in services have increased scope for lawyers, while reducing traditional protective barriers.
- Globalization of legal services will lead, increasingly, to issues of regulation.

influence of GATS on Indian Legal Profession

- India as a founder member of the WTO and GATS has the imperative that the restructuring of the regulatory regime, keeping in mind the GATS and the consequent imminent changes, should be done after thorough study and analysis, in a very careful and detailed manner.
- In India, in particular, e.g., it is felt that the following points should be kept in mind while restructuring a proper regulatory regime:
 - 1) There is a distinction between those foreign lawyers who want to practice in Indian courts and those who want to work primarily as Foreign Legal Consultants.
 - 2) Most foreign firms are interested in non-litigation legal consulting business.
 - 3) Any regulatory regime must be decided after consulting the Bar as well as the various Bar Associations, Bar Councils, Law Officers and leading law firms, and must address the following issues.
 - a) Reciprocity rights of the Indian lawyer in the foreign country's jurisdiction.
 - b) Discipline control and maintenance of ethical standards as prevailing in India.
 - c) Undertakings that the FLCs will not practice Indian law or employ.

The law governing and regulating the legal profession in India is the Advocates Act, 1961. Provisions relevant to the present discussion are -

- Section 24 provides that only an Indian Citizen has the right to practice and be enrolled as an Advocate in India
- A proviso to the section provides that a national of any other country may be admitted as an Advocate, if citizens of India are permitted to practice law in that other country ("reciprocity")
- Section 47 clarifies that the Bar Council of India may prescribe conditions subject to which foreign qualifications in law obtained by "foreigners" (and not Indian Citizens) shall be recognized for admission as an Advocate
- Bar Council of India Rules

Challenges and Opportunities for Indian Lawyers

- The legal profession which was highly regarded during the independence struggle and also post independent
- India has to reorient itself to face and actively participate in the challenges posed by WTO/GATS agreements.
- The Advocates who become experts in legal matters arising out of WTO/GATS agreements will have bright futures

Conclusion

- Last but not least, it was considered that ignorance of law is no excuse
- but now we can tell ignorance of WTO is no excuse in the interest of our nation.
- Know the Rules to play the Game well