WTO/GATS and Air Transport

Dr. V. Balakista Reddy
Professor of Law and Registrar
NALSAR University of Law, Hyderabad
E-mail: balakistareddy@yahoo.com
www.nalsarl.ac.in

WTO/GATS: An Overview

- Bretton Conference and the IMF and IBRD
- GATT- Objectives and Structure
- Uruguay Round and WTO
- Goals of Uruguay Round
- Uruguay Round: Problems and Prospects
- Uruguay Round Establishment of the WTO and put important treaties as Annexes to the WTO
- WTO GATS and Financial Services
- WTO,GATS and Air Transport Services
- Domestic Implementation of IL- Why and How
- Domestic Implementation of IL in India
- Domestic Implementation of ITL
- Conclusion

Bretton Conference and Int. Trade

- Why Bretton woods Conference?
- Economic Policies of late 19th early 20th Century- beggar-thy neighbor, Great Depression, World War II let to set back to international trade
- Bretton Woods Conference and the establishment of the IMF, IBRD and ITO
- IMF, IBRD and International Monitory and Banking Regulations
- ITO/GATT and Trade Regulations
- Objectives and Structure of GATT
- GATT Rounds and International trade

GATT and ITL

- Objectives of the GATT

  Raising standards of living, ensuring full employment, tariff reduction, free trade, etc.,
- Basic principles of GATT

  MFN, National Treatment, Binding commitments, transparency, etc.,
- General Description of GATT: GATT now consists of Objectives and Four parts-
- Part 1 (art. 1 & 2) on MFN Clause and tariff binding or schedules of concessions;
- Part II (Art.3-23) containing commercial provisions which form the GATT's code of for its C.Ps with regards to trade matter
- Part III (Art, 24-35) Procedural and miscellaneous provisions
- Part IV (Art. 36-38) Provisions relating to developing countries.
- GATT Contribution to International Trade Regulations

A Note on Early Rounds

- The Geneva, 1947: 23 founder CPs 45000 Tariff concessions were agreed covering 10 Billions and scope of future negotiations
- The Annecy,(France)1948-49, 33 CPs,5000 Tariff concessions were exchanged
- The Torquay (England) 1950-51, 37 CPs 8700 tariff concessions were agreed
- The Geneva, 1955-56, 22 CPs participated worth 2.5 billion tariff concessions were agreed
- The Dillon Round (Geneva)1960-61 45 CPs, about 4400 T.C. covering 4.9 billion trade. Single schedule concession was agreed to EEC (1957)
- The Kennedy Round (Geneva) 1964-67, 50 CPs who accounts 75 per cent of world trade. T.C covered 40 billions trade and code on anti dumping was approved.
- The Tokyo Round 1973-79, 102 CPs and worth 300 billion trade agreements were reached. Other codes like TBT, Subsidies, import licenses custom valuations etc.. Were developed.

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; LPG or GLP
- 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
  - Annex1A-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 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**
- Framework Agreement containing basic obligations which apply to all member countries.
- The Second a number of annexes addressing the special situations of individual services sectors.
- The Third concerns national schedules of commitments containing specific further national commitments which will be the subject of a continuing process of liberalization.

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

- A comprehensive legal framework of rules and disciplines covering 162 service activities across 12 classified sectors
- Classification of Services bases 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

Part II: General Obligations and Disciplines Articles 2-15

- 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)
- Monopolicies and exclusive service suppliers , Business Practices, Emergency Safeguard Measurs, Payments and Transfers, Restrictions on BOPs, Government Procurement, General Exceptions, Security Exceptions and Subsidies

Part III Specific Commitments: Articles 16-18

- Countries make commitments in specific sectors (sectoral schedules) and across sectors (horizontal schedules)
- Countries have flexibility in choosing sectors to table for negotiations and in type of commitments made
- GATS commitment structure is voluntary and flexible in nature
- No compulsion to open up a sector/subsector or a particular mode of supply if concerns about impact and political economy constraints to liberalization
- **Specific Commitments:**

 (i) **Market Access**

 (ii) **National Treatment**

 (iii) **Additional Commitments**

Part IV: Progressive Liberalization, Institutional and Final Provisions : Articles 19-29

- Art.19 Negotiations of Specific Commitments
- Art. 20 Schedules of Specific Commitments
- Art. 21 Modification of Schedules
- Art. 22 Consultations
- Art. 23 Dispute Settlement & Enforcement
- Art. 24 Council for Trade in Services
- Art. 25 Technical Cooperation
- Art. 26 Relationship with other Int. Orgs.
- Art. 27 Denial of Benefits
- Art. 28 Definitions
- Art. 29 The Annexes

GATS and Financial Services

- The GATS negotiations in the financial services sector include two broad categories of services:

1. **Insurance and Insurance-related services:**

- Insurance and insurance-related services cover life and non-life insurances, reinsurance, insurance intermediation such as brokerage and agency services, and services auxiliary to insurance such as consultancy and actuarial services.

2. **Banking**

- Banking includes all the traditional services provided by banks such as acceptance of deposits, lending of all types, and payment and money transmission services.

3. **Other financial services.**

- trading in foreign exchange, derivatives and all kinds of securities, securities underwriting, money broking, asset management, settlement and clearing services, provision and transfer of financial information, and advisory and other auxiliary financial services.

Types of Financial Services under GATS

Under the Annex on Financial Services to GATS, financial services are defined to include the following banking and other financial services:

- acceptance of deposits,
- lending of all types,
- financial leasing,
- payment services,
- guarantees and commitments,
- trading money market instruments,
- foreign exchange,
- derivatives,
- exchange rate and interest rate instruments,
- securities and other financial assets,
- money brokering,
- asset management etc.

GATS and Air Transport

- The GATS came into effect in 1995, after more than ten years of preparation and negotiations. It provided, for the first time, a multilateral framework of principles and rules for trade in services similar to that covering trade in goods since 1947 under the General Agreement on Tariffs and Trade (GATT).
- Three features of the GATS are particularly important:
- • first, the GATS defines a process aimed at the progressive removal of barriers to trade in service;
- • second, the aim is to cover all tradable services in all sectors;
- • third, the balance of benefits for a country is measured in relation to trade in all goods and services and not just in any one sector.

GATS and Air Transport

- The air transport world is generally unfamiliar with the WTO and the GATS and has, with some exceptions, viewed bringing air transport completely into the GATS with apprehension.
- While many aspects of international air transport are dealt with on a multilateral basis, relations between States are still governed by bilateral treaties. But it is recognised that there is pressure to move, over time, from the present system towards a different multilateral or plurilateral framework.
- In considering how to expand the coverage of the Annex, there is also growing recognition of the need: • to better define the industry ‘sub-sectors’ for trade purposes; • to keep the airline industry ‘on-board’, and • to generate new thinking, inter alia on whether the concept of ‘conditional most-favoured nation’ (MFN) could be applied to air transport in the context of the GATS.

ANNEX ON AIR TRANSPORT SERVICES

- This annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment made or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect at the entry into force of the Agreement Establishing the WTO.
- The Agreement, including its dispute settlement procedures, shall not apply to measures affecting: (a) traffic rights, however granted; or (b) services directly related to the exercise of traffic rights, except as provided in paragraph 3 of this Annex. 3.
- The Agreement shall apply to measures affecting:
- (a) aircraft repair and maintenance services;
- (b) the selling and marketing of air transport services;
- (c) computer reservation system (CRS) services

Review of developments in 14 sub-sectors

- Aircraft repair and maintenance
- Selling and marketing including e-commerce
- Computer reservation services
- Franchising
- Services auxiliary to all modes of transport
- Rental and leasing
- Catering
- Refuelling
- Ground handling
- Airport management services
- Air traffic control services
- General aviation services
- Other auxiliary services
- Commercial aviation

ICAO, WTO and Air Transport

- ICAO has maintained an active interest in the evolution of trade in services negotiations. It has discussed this matter at several Sessions of its Assembly.
- Its current policy is contained in Assembly Resolution A35-18. In addition, the ICAO Council adopted, on 22 November 1999, a Council Resolution on Trade in Services Negotiations addressed to both ICAO Contracting States and the WTO.
- The ICAO Secretariat attended and/or monitored closely a number of meetings of the Council for Trade in Services (CTS) of the WTO which addressed the review and expansion of the GATS Annex and provided substantive contributions to the WTO Secretariat on the review process.

Industry views on air transport and GATS

- In preparation for this review, an IATA developed an industry position on air transport and the GATS. These views are set out in a position paper that has been circulated.
- Let me share some of the conclusions with you:
- with few exceptions, airlines do not see the GATS as the vehicle for fundamental reform of international air transport at this time;
- ICAO remains the inter-governmental agency best qualified to take account of the particular characteristics, regulatory arrangements and structure of the air transport sector;
- there is a strong preference in the industry for air transport services to continue to be dealt with on a sectoral basis, and not to be negotiated together with other services on a comprehensive basis;
- nevertheless, the review of the Air Transport Annex presents the opportunity to clarify the scope of the coverage of air transport services that are directly related to the operation of traffic rights;
- finally, there is a growing belief that a hybrid system can be developed that would permit multilateral and bilateral arrangements to co-exist depending on regional preferences and needs.

Air Transport and the GATS today

- As you are no doubt aware, the coverage of air transport under the GATS is determined by the Annex on Air Transport Services.
- As things stand, this Annex excludes traffic rights and all services directly related to their operation. The reason for this exclusion from the GATS was that international air transport is governed by a complex network of more 3,500 bilateral agreements between States.
- The bilateral system continues to provide States with control over the speed and the way in which they liberalise market access to their aviation markets. Relations between States continue to be based on the principles of reciprocity and fair and equal opportunity to compete.
- Bilateral agreements also provide effective procedures for handling disputes involving anti-competitive practices, market access issues and a wide range of other services related to the provision of air transport as well as computer reservation systems. I shall come back to this later.

GATS and 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

Domestic Implementation of IL and ITL in India

- Why Domestic Implementation?
- Changing Notions of State Sovereignty
- Independent States to Interdependent States
- Law Makers to Law Takers
- Role of States have changed from Regulator to Facilitator
- Status of IL is changing from a weak (unenforceable) to strong (enforceable) Law
- How Domestic Implementation Happens?
- Domestic Implementation of I.L
- Various Theories and
- Constitutional provisions
- Pre-constitution: British practice
- Constitutional provisions (a) General art. 51 (b) Executive Provisions art. 53, 73, & 77 and Legislative Provisions art. 245, 253, etc

Domestic Implementation ITL

- Customs Tariff Act, 1975;
- FEMA, 1999
- The Foreign Trade (Development and Regulation) Act, 1992
- The Foreign Trade (Regulation) Rules, 1993
- The Foreign Trade (exemption from Application of Rules), 2002; The Conservation of Foreign Exchange And Prevention Of Smuggling Activities Act, 1974;
- The Customs and Excise Revenue Appellate Tribunal Act, 1986;
- The Smugglers and Foreign Exchange Manipulator (Forfeiture of Property) Act, 1976
- The Special Cess Act, 1986;
- The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976.

Conclusion

- "Globalize or Perish" is now the buzzword synonymous to "Do or Die" which conveys that there is no alternative to globalization and everybody should learn to live with it.
- India, being a signatory to the W.T.O, can no way step backwards. This is not the time to curse the darkness but to work for making India emerge as a global market leader.
- 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

Thank You