Outline of GATS

Learning Objectives

This chapter is to help students understand:

1. Importance of trade in services for WTO member countries;
2. Importance of regulations on trade in services compared with those for trade in goods;
3. Distinctions between regulation on trade barriers to distort competition or restrict market access and regulation on requirements from the legitimate policy objectives to be pursued by the government;
4. Legal characteristics of GATS compared with GATT;
5. Definition of service in trade by the supplying modes;
6. Extremely wide scope of application of GATS compared with GATT.

6.1 Introduction

Services production is a core economic activity in virtually all countries, developing and developed alike.

In a number of countries, services have been very important for employment and employment growth, because many traditional services, including distribution, education and social services, are labor intensive. In many service sectors it has also proved more difficult to substitute capital for labor than in manufacturing. The expansion of services\(^1\) has been driven in particular by income-related demand

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\(^1\)For more details, see Kennedy (1998, p. 484). “The service sector has overtaken manufacturing as the most important part of developed country’s economies. Service industries account for 61 percent of gross domestic product (“GDP”) and over one-half of employment in developed countries. The ratio of world merchandise trade to services trade was four to one in 1995. The WTO estimates that world trade in services $4 trillion annually. Jobs in the service sector provide nearly 80 percent of U.S. employment. That figure is expected to increase to 88 by 2005. The service sector generated 75 percent of GDP in the United States in 1996. Services trade represents more than one quarter of total U.S. exports. In 1995, total U.S. exports of services was over $210
shifts, benefiting for example the hotel and tourist industry; the economic stimulus results from new information and communication technologies; and the growing importance of basic infrastructural services, including transport, communication and finance, for a wide range of user industries.²

New transmission technologies have overturned traditional concepts of distance – banking, education and medical services may now be provided over the Internet – and many governments have sought to open long-entrenched monopolies so as to promote efficiency and mobilize new capital and expertise.³

As the share of services in international trade has steadily increased, international efforts to deal with international trade in services also have increased.⁴ This has culminated in the adoption of the General Agreement on Trade in Services (GATS).⁵ GATT 1947 was concerned almost exclusively with rules on trade in goods. The Uruguay Round’s banner achievements were in expanding the scope of the GATT-WTO system to include non-goods sectors, liberalizing trade in several advanced sectors, and setting the WTO Members on a course to further liberalization agreements on advanced-sector trade. With the successful conclusion of the General Agreement on Trade in Services and the TRIPs Agreement, the negotiators broke new ground by introducing core GATT disciplines to trade in services and

billion, which grew in 1996 to nearly $224 billion. This figure compares with surplus in services of $68 billion in 1995, and of $73 billion in 1996. It enjoys a services trade surplus with Canada, the EU, and Japan.”


³Id.

⁴GATS, as the result of the first step to internationally regulate the trade in services, would raise the interpretation public agreements like GATS, except the attempts by the Vienna Convention of the Law of International Treaties, Jan. 27, 1980, 1155, U.N.T.S. 331 (Art. 3.2 of the Dispute Settlement Understandings brings the Vienna Convention into the interpretative sphere of the WTO, because the Convention is clearly recognized as incorporating customary rules of interpreting public international law). Regarding the interpretation of GATS, it was analyzed: “GATS, . . . and Lists of Art. II Exemptions are, . . . unique instrument. The WTO . . . is comprised of nations with various legal systems and economic policies, diverse historical and cultural backgrounds, and vastly different economic strengths and populations. These considerations, . . . must be appreciated when interpreting GATS . . .”. See Jarreau (1999). It is reasonable to read the drafters’ intention interpreting the agreements. Remembering the WTO does not have legislative histories, in the domestic sense, reference to the achievement of respected trade periodicals may be a beneficial, secondary source of authority (id., at 71). The Preamble offers interpretative insight into GATS (id). The Dispute Settlement Panel in Brazil-Measures Affecting Desiccated Coconuts held that “central objects and purposes” of the WTO Agreements are reflected in the preambles to the Agreements. Brazil-Measures Affecting Desiccated Coconuts held that “central objects and purposes” of the WTO Agreements are reflected in the preambles to the Agreements. See also Abu-Akeel (1999, p.189).