

FACULTY OF JURIDICAL SCIENCES

Lecture-27



Obligations under the GATS

Obligations contained in the GATS may be categorized into two broad groups: general obligations that apply to all members and services sectors, as well as obligations that apply only to the sectors inscribed in a member's schedule of commitments. Such commitments are laid down in individual schedules whose scope may vary widely between members. The relevant terms and concepts are similar, but not necessarily identical to those used in the GATT; for example, national treatment is a general obligation in goods trade and not negotiable as under the GATS.

(a) General obligations

MFN treatment: Under Article II of the GATS, members are held to extend immediately and unconditionally to services or services suppliers of all other members “treatment no less favorable than that accorded to like services and services suppliers of any other country”. This amounts to a prohibition, in principle, of preferential arrangements among groups of members in individual sectors or of reciprocity provisions which confine access benefits to trading partners granting similar treatment.

Derogations are possible in the form of so-called Article II-exemptions. Members were allowed to seek such exemptions before the Agreement entered into force. New exemptions can only be granted to new members at the time of accession or, in the case of current members, by way of a waiver under Article IX: 3 of the WTO Agreement. All exemptions are subject to review; they should in principle not last longer than 10 years. Furthermore, the GATS allows groups of members to enter into economic integration agreements or to mutually recognize regulatory standards, certificates and the like if certain conditions are met.

Transparency: GATS members are required, among other things, to publish all measures of general application and establish national enquiry points mandated to respond to other members' information requests.

Other generally applicable obligations include the establishment of administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers.

(b) Specific commitments

Market access: Market access is a negotiated commitment in specified sectors. It may be made subject to various types of limitations that are enumerated in Article XVI (2). For example, limitations may be imposed on the number of services suppliers, service operations or employees in the sector; the value of transactions; the legal form of the service supplier; or the participation of foreign capital.

National treatment: A commitment to national treatment implies that the member concerned does not operate discriminatory measures benefiting domestic services or service suppliers. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of the member's own service industry. Again, the extension of national treatment in any particular sector may be made subject to conditions and qualifications.

Members are free to tailor the sector coverage and substantive content of such commitments as they see fit. The commitments thus tend to reflect national policy objectives and constraints, overall and in individual sectors. While some members have scheduled less than a handful of services, others have assumed market access and national treatment disciplines in over 120 out of a total of 160-odd services.

The existence of specific commitments triggers further obligations concerning, among other things, the notification of new measures that have a significant impact on trade and the avoidance of restrictions on international payments and transfers.