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## THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

The General Agreement on Trade in Services - the GATS - is an agreement among close to one hundred nations to provide a detailed and specific system for international trade in services, the fastest growing sector of multilateral commerce. It sets out the rules of the road, as the General Agreement on Tariffs and Trade (GATT) does for trade in goods.

**Please note that the following is a summary only and that the GATS is detailed and extensive.**

The GATS applies to measures affecting trade in services, taken at any level of government (or on behalf of governments). Trade in services is defined as occurring in four modes: (1) cross-border, e.g. engineering plans sent by wire or satellite; (2) consumption abroad, e.g. tourism; (3) commercial presence, e.g. direct investment in the host country; (4) the temporary movement of a person, e.g. an architect. All commercially traded services are covered, although services supplied in the exercise of governmental authority are excluded, provided they are services not supplied on a commercial basis nor in competition with other services suppliers.

There are three main elements to the GATS: 1) a number of basic obligations, 2) binding commitments by nations and 3) provision for temporary exemptions.

### **BASIC OBLIGATIONS**

The key obligation of the GATS is the provision of **Most-Favoured-Nation (MFN)** treatment to all members of the Agreement. This requires that treatment must be no less favourable for any member than that accorded to others. The Agreement allows for exceptions which are addressed below.

Linked to MFN treatment is the general requirement for **national treatment**, i.e., members of the GATS agreement must give service suppliers from other members, and their services, the same treatment they give to their own service suppliers and services.

Another key obligation is the requirement for full **transparency**; regulations affecting business must be easy to obtain. Relevant measures of general application and international agreements must be published or otherwise made publicly available. In addition, enquiry points are to be established within two years of the entry into effect of the GATS.

The Agreement recognizes the need for **domestic regulations** and the right of governments to have them. However, where commitments have been made, a member must ensure that measures of general application are administered in a reasonable, objective and impartial manner. There is also provision for future negotiations to ensure that qualifications and procedures, technical standards and professional licensing requirements do not act as unnecessary barriers to trade. The Agreement also encourages the **recognition of standards, educational levels and qualifications**.

The Agreement deals with **payments and transfers** and prohibits restrictions on current transactions except in certain circumstances akin to the provisions of the GATT, such as balance of payments

constraints. There is a provision for **General Exceptions** for specific situations such as protection of health, the maintenance of public order, and certain taxation measures and agreements, etc.

The GATS provides for the **exchange of commitments**, negotiated bilaterally but, through the MFN obligation, extended to all members. Where a member has made a concession or commitment, it is understood that there are no restrictions on market access or limitations on national treatment for that service or service supplier except what are stipulated in the member's schedule. The Agreement also has provision for **future liberalization** through successive multilateral negotiations. As in the GATT, there is provision for the **modification of schedules** requiring essentially that the over-all balance of commitments be maintained. **Dispute settlement** relating to any provision of the GATS is covered by the World Trade Organization procedures.

There are a number of **Annexes** to the GATS. These clarify how the Agreement should apply to certain otherwise complex circumstances, e.g. commitments on the movement of natural persons and the application of national immigration policies, and the relationship of GATS to the bilateral air transport agreements maintained under the International Civil Aviation Organization. The Agreement also has a number of **Ministerial Decisions** attached to it pertaining, for example, to continuing negotiations in maritime transport where agreement was not achieved in the final negotiations.

## SCHEDULES OF COMMITMENTS

GATS members have made negotiated lists of liberalizing commitments for services or service providers and submitted them as national schedules. Thus, each GATS signatory did not deal with each service in its national schedule. Wherever a services activity has been scheduled, it must be free of all market access restrictions and national treatment limitations except those detailed in the schedule. The exercise of the provisions of the General Exceptions Article do not need to be scheduled, nor professional or quality requirements maintained as domestic regulation, provided they are exercised on the basis of national treatment.

Each entry in a national schedule must cover the four modes of delivery: cross-border, consumption abroad (movement of the consumer), commercial presence (investment), and lastly, movement of the service provider (natural person). The designation unbound means that no liberalizing commitment has been made for that mode or modes. A limitation listed for a mode or modes governs the importation of the scheduled service or service provider. Full market access and national treatment applies, if the mode is not specified as unbound or if no limitation is listed; in the following sectoral summaries the term "open" is used. For some services items, cross-border or consumption abroad may be considered to be not feasible, e.g. tourist guide services. Some members have made such reservations; others have made no reference.

The Agreement recognizes that services may be produced and/or delivered by individual services producers (physical people) or by business entities such as limited companies; references to natural persons means the former, while juridical or legal person means the latter. Mode 4 is limited to natural persons while Mode 3 covers natural persons as well as juridical persons unless otherwise specified in the national schedules.

## EXEMPTIONS FROM THE MFN OBLIGATION

As noted above, the GATS provides for exceptions from the MFN obligation. Such MFN exemptions are, in principle, temporary and are subject to review. They generally relate to obligations entered into by members before the Agreement came into force and which, for various reasons, cannot immediately be subsumed into the GATS. These include bilateral international air agreements, financial services, telecommunications and bilateral taxation agreements and arrangements which are exempted by the Annexes.

Other MFN exceptions are provided to cover for individual members cases and are required to have been

notified prior to the Agreement coming into effect. These are, in most cases, relatively narrow and relate to such national situations as film co-production agreements or reciprocity requirements.

## SECTORAL SUMMARIES

The following provides some general information on the GATS commitments by country for the following selected service sectors: accounting/auditing, advertising, architectural services, distribution, educational services, engineering, franchising, investigation and security services, legal services, management consulting, market research and public opinion services, placement and supply services of personnel, rental and leasing, research and development services, technical testing and analysis, and urban planning.

(Please note the following abbreviations: OECD is the Organization for Economic Cooperation and Development, which is basically made up of the major industrialized countries; EC is the European Community and ASEAN is the Association of South East Asian Nations.)

- Accounting, Auditing and Book-keeping Services
- Advertising Services
- Architectural Services
- Distribution Services
- Educational Services
- Engineering Services
- Franchising
- Investigation and Security
- Legal Services
- Management Consulting Services
- Market Research and Public Opinion Services
- Placement and Supply Services of Personnel
- Rental/Leasing Services without Operators
- Research and Development Services
- Technical Testing and Analysis
- Urban Planning

### **Accounting, Auditing and Book-keeping Services:**

Generally, this sector is relatively open except for auditing services which often require residency and/or registration with local professional associations. No commitments were made by any of the South American or Other Asian countries.

#### *OECD Countries*

Australia is open for natural persons; commercial presence in a partnership requires residency. Austria allows no legal standing in Mode 1; commercial presence in joint ventures are limited to 25% foreign equity and, in special circumstances, advisors are allowed under Mode 4. Mode 1 is unbound for auditors in the European Community and there are various limitations in Modes 3 and 4. Finland is open but requires citizenship for auditors. Japan limits access to natural persons or to Audit Corporations. New Zealand is open, Norway is unbound for Mode 1; Sweden requires residency and use of the Swedish language, and Switzerland requires commercial presence for auditing.

*Central America and the Caribbean*

Antigua, Aruba and Guyana are open; the Antilles is unbound for Modes 1 and 2. Jamaica requires licensing for commercial presence.

*South and East Asia*

Hong Kong offers only auditing and advisory services, is unbound for Mode 1, and limits commercial presence to sole ownership or to partnerships; temporary entry is allowed in Mode 4 for senior managers and specialists. In Malaysia modes 1 and 2 require authorization and joint ventures required for commercial presence are limited to 30% foreign. Singapore requires residency for public accountants and Thailand is unbound for Mode 1. Korea is open in Modes 1 and 2 except for auditing services which are unbound; limitations apply on commercial presence; special temporary entry is allowed under Mode 4 for foreign accountancy, training and transfer of technology.

*Eastern Europe*

The Czech Republic and Slovakia are open; commercial presence for auditors requires registration and limits foreign ownership of juridical persons to 40%. Hungary is unbound for Mode 1 and Poland requires citizenship for auditors.

*Mediterranean Countries*

Israel is open; Morocco is unbound for Modes 1 and 2 and limits foreign commercial presence to 25%. Turkey is unbound in Mode 1 and has limitations in Mode 3.

*Africa (except the Mediterranean)*

South Africa offers auditing only and is unbound for Modes 1 and 2.

**Advertising Services***OECD Countries*

All are open.

*Central America and the Caribbean*

Jamaica requires registration and licensing.

*South and East Asia*

Hong Kong has limited coverage. Malaysia requires commercial presence and joint ventures. Singapore and Thailand are open.

*Other Asia*

Kuwait is unbound for Modes 1 and 2.

*Eastern Europe*

Poland is unbound for Mode 1. Hungary and the Czech and Slovak Republics are open.

*Mediterranean Countries*

Israel and Turkey are open.

**Architectural Services:**

This sector is generally open in the OECD countries, in the ASEAN (except the Philippines) and in Eastern Europe.

*OECD Countries*

All are generally open. In Japan, however, commercial presence is required for all Modes and has some restrictions. In the EC, the UK and Germany are open; various limitations apply in other Member States.

*Central America and the Caribbean*

Guyana is open; Antigua and Jamaica have licensing regulations for Mode 3.

*South and East Asia*

Thailand and Indonesia are unbound for Mode 1 and the latter has some limitations on Mode 3, as does Singapore. In Malaysia, all plans must be approved by a Malaysian architect; commercial presence is limited to natural persons.

*Other Asia*

Kuwait is unbound in Modes 1 and 2.

*Eastern Europe*

The Czech and Slovak Republics require residency for Mode 3. Hungary and Romania are open.

*Mediterranean Countries*

Israel is open as is Turkey but the latter requires membership in the Union of Chambers.

*Africa (except the Mediterranean)*

Senegal is unbound except for Mode 2. South Africa is open.

## **Distribution Services**

### **a) Commission Agents Services**

#### *OECD Countries*

The EC is generally open except for Mode 1 - unbound by Italy and France and for Mode 3 with requirements of residency for Italy, Spain and Portugal and citizenship in France for specified services. Other OECD countries are open.

#### *South and East Asia*

Korea is open but with limited coverage. Thailand is open.

#### *Other Asia*

Kuwait is open.

#### *Eastern Europe*

Romania is open.

### **b) Wholesale Trade Services**

#### *OECD Countries*

Generally open. The EC has limitations for state tobacco monopolies and residency requirements in Spain, Italy and Portugal. France maintains citizenship stipulations for pharmaceuticals.

#### *Latin America*

Argentina, Brazil and Peru (for selected trades) are open.

#### *Asia*

Kuwait is open for Mode 3.

#### *Eastern Europe*

Hungary and the Czech and Slovak Republics are open. Poland and Romania are open for certain trades.

### **c) Retailing Services**

*OECD Countries*

The EC is unbound in Mode 1 and maintains a number of limitations on commercial presence in Member States. Norway requires residency of two years for managers of foreign branches and for the majority of the boards of directors. Switzerland requires commercial presence. Australia, New Zealand, Austria, Japan and the other Nordics are open.

*Latin America*

Argentina is open; Brazil is unbound for Mode 1. Peru is limited to foodstuffs only and is unbound for Mode 1.

*South and East Asia*

Korea is unbound in Mode 1 and has limitations in Mode 3.

*Other Asia*

Kuwait is unbound for Mode 1.

*Eastern Europe*

The Czech and Slovak Republics are open as are Hungary and Romania. Poland is unbound for Mode 1.

*Africa (except the Mediterranean)*

South Africa is open. Senegal is unbound for Mode 3.

**Educational Services****a) Primary Education Services***OECD Countries*

The EC is open but France, Italy and Greece have citizenship requirements. Australia, Finland and Sweden made no commitments; New Zealand and Norway limit commercial presence to private institutions. Switzerland is unbound in Modes 1 and 2.

*Central America and the Caribbean*

Jamaica requires registration and certification.

*South and East Asia*

Thailand is unbound in Mode 1.

*Eastern Europe*

The Czech and Slovak Republics require that a majority of the Boards have citizenship. Poland does not provide any public funding.

*Mediterranean Countries*

Turkey allows international educational institutions for foreigners.

**b) Secondary Education Services**

*OECD Countries*

The EC is open but France, Italy and Greece have citizenship requirements. Finland and Sweden made no commitments; in Norway primary and secondary education are public service functions. Austria and Australia are open. New Zealand limits access to private schools. Japan limits commercial presence to school juridical persons and is unbound in Mode 1. Switzerland is open.

*Central America and the Caribbean*

Jamaica requires registration and certification for Mode 3.

*South and East Asia*

Thailand is unbound on Mode 1.

*Eastern Europe*

The Czech and Slovak Republics require that a majority of the Boards have citizenship. Poland does not provide any public funding.

*Mediterranean Countries*

Turkey allows international educational institutions for foreigners.

*Africa (except the Mediterranean)*

Ghana is open.

**c) Higher Education Services**

*OECD Countries*



The EC is open but France, Italy and Greece have citizenship requirements. Finland and Sweden made no commitments; in Norway primary and secondary education are public service functions. Austria and Australia are open. New Zealand limits access to private schools. Japan limits commercial presence to school juridical persons and is unbound in Mode 1. Switzerland is open.

#### *Central America and the Caribbean*

Jamaica is open subject to registration and certification. Trinidad is unbound in Mode 3.

#### *South and East Asia*

Thailand is open for technical and vocational education.

#### *Eastern Europe*

The Czech and Slovak Republics require that a majority of the Boards have citizenship. Poland does not provide any public funding. Hungary requires certification.

#### *Mediterranean Countries*

Turkey requires that a majority of the administrators of a private university be citizens.

### **d) Adult Education**

#### *OECD Countries*

The EC is open as are Austria and Switzerland. Japan limits access to foreign language training. In Norway, education is a public function.

#### *South and East Asia*

Thailand is limited to technical and vocational schools.

#### *Eastern Europe*

The Czech and Slovak Republics require that a majority of the Boards have citizenship. Poland does not provide any public funding. Hungary requires certification.

### **Engineering Services:**

It should be noted that national requirements that engineers meet professional standards and/or become members of professional associations do not need to be scheduled, so long as the requirements are set on a national treatment basis and do not act as disguised trade restrictions.

### *OECD Countries*

Most countries are open. In the EC Mode 1 is unbound in Greece, Italy and Portugal; Spain, Italy and Portugal restrict Mode 3 to natural persons and the latter two require residency. New Zealand has some certification and residency requirements and Switzerland has some selected restrictions. The Japanese schedule draws attention to the Headnotes of the schedule, which often contains limitations of a general nature.

### *Central America and the Caribbean*

Antigua, the Antilles, Aruba and Guyana are open; Jamaica has a licensing requirement for Mode 3.

### *South and East Asia*

Indonesia is unbound for government projects; for others it is unbound for Mode 1 and has licensing and joint venture requirements for Mode 3. Korea and Thailand are open ; Malaysia requires authentication by Malaysian engineers and limits commercial presence to natural persons. Singapore maintains some limitations on Mode 3.

### *Other Asia*

India is unbound in Modes 1 and 2, and requires joint ventures for Mode 3 (51% foreign ownership). Pakistan has limited coverage, is unbound in Modes 1 and 2, and requires joint ventures for commercial presence (maximum 40% foreign participation). Kuwait is unbound for Modes 1 and 2.

### *Eastern Europe*

The Czech and Slovak Republics require approval by the Professional Association and residency for Mode 3. Hungary and Poland are open. Romania has only partial coverage.

### *Mediterranean Countries*

Israel is open; Turkey requires membership in the Union of Chambers for Mode 3.

### *Africa (except the Mediterranean)*

Ivory Coast has limited coverage, is unbound for Modes 1 and 2, requires approval in Mode 3 and allows temporary entry in Mode 4 for intracorporate transferees who are senior managers or specialists. South Africa is open. Swaziland is unbound for Modes 1 and 4 except for temporary entry for intracorporate transferees who are senior managers or specialists.

## **Franchising**

### *OECD Countries*

All are open except Japan which has some limitations in coverage.

*Latin America*

Argentina is open; Brazil maintains special requirements for the payment of royalties.

*Central America and the Caribbean*

The Antilles have foreign ownership limitations. Aruba is open.

*Eastern Europe*

Hungary and the Czech and Slovak Republics are open.

*Africa (except the Mediterranean)*

South Africa is open.

**Investigation and Security:**

Australia, Austria, Norway and Sweden are open. Finland requires establishment and licensing. Hungary and South Africa are open.

**Legal Services:**

In most cases, commitments, where made, are limited to home country law and to international law. In most countries, foreign practitioners must be members of their national Bar or associated with the domestic Bar directly or through a domestic practitioner.

*OECD Countries*

The market is generally open for own country law and for international law. Australia requires residency; Austria is unbound for commercial presence. In Japan, foreign providers must register with the Ministry of Justice and meet other administrative requirements.

*Central America and the Caribbean*

Trinidad is open; Jamaica requires local certification for commercial presence.

*South and East Asia*

Thailand is open; Malaysia allows commercial presence only in Lacuna.

*Eastern Europe*

The Czech republic is open; Hungary requires residency and Poland citizenship for commercial presence. Romania is unbound for commercial presence.

*Mediterranean Countries*

Israel is open but for commercial presence, requires residency.

*Africa (except the Mediterranean)*

South Africa is unbound for Modes 1 and 2.

**Management Consulting Services**

*OECD Countries*

All are open.

*Central America and the Caribbean*

The Antilles, Aruba and Trinidad are open. Jamaica requires local certification.

*South and East Asia*

Hong Kong has limited coverage and is unbound for Mode 1. Thailand is unbound for Mode 1. Malaysia has limited coverage and requires joint ventures. Singapore and Korea are open.

*Other Asia*

Kuwait is unbound for Modes 1 and 2.

*Eastern Europe*

All are open.

*Mediterranean Countries*

Israel and Turkey are open. Morocco is unbound for Modes 1 and 2.

*Africa (except the Mediterranean)*

South Africa is open. Swaziland is unbound for Mode 1.

**Market Research and Public Opinion Services**

*OECD Countries*

All are open.

*Central America and the Caribbean*

Jamaica requires registration and licensing.

*South and East Asia*

Hong Kong has limited coverage and is unbound for Mode 1. Thailand is unbound for Mode 1 and Korea for Modes 1 and 2. Malaysia requires joint ventures.

*Other Asia*

Kuwait is unbound for Modes 1 and 2.

*Eastern Europe*

Hungary and the Czech and Slovak Republics are open

*Mediterranean Countries*

Israel and Turkey are open.

*Africa (except the Mediterranean)*

South Africa is open.

**Placement And Supply Services Of Personnel:**

Australia is open. The EC has a variety of limitations. Japan has limited and specific coverage, is unbound for Modes 1 and 2, and has numerical restrictions in Mode 3. Norway has some limitations, as does Sweden which is also unbound in Mode 1. Israel and Morocco are unbound for Modes 1 and 2. South Africa is open.

**Rental/Leasing Services Without Operators**

N.B. Although not always specified, most countries have limitations concerning national registration, safety and flag requirements with respect to ships and aircraft.

**a) Relating to Ships:**

*OECD Countries*

Australia, Austria, Finland and Norway are open. The EC has some limitations. Sweden and Switzerland note flag requirements.

*South and East Asia*

Hong Kong is unbound for Mode 1. Korea is unbound for Modes 1 and 2. Malaysia requires local offices or a domestic agent.

*Eastern Europe*

The Czech Republic is unbound for Mode 3 and Hungary for Mode 1. Slovakia is open.

*Africa (except the Mediterranean)*

South Africa is open.

**b) Relating to Aircraft:**

*OECD Countries*

Australia, Austria, Finland, Norway and Sweden are open. The EC has registration and some citizenship requirements.

*South and East Asia*

Korea limits foreign ownership to 49%. Malaysia requires local offices or a domestic agent.

*Eastern Europe*

Hungary is unbound for Mode 1.

*Africa (except the Mediterranean)*

South Africa is open.

**Research and Development Services**

**a) Natural Sciences:**

*Central America and the Caribbean*

Jamaica requires registration and licensing.

*Asia*

India has partial coverage and requires joint ventures; unbound for Modes 1 and 2. Kuwait is unbound for Modes 1 and 2.

*Eastern Europe*

Hungary is open.

*Africa (except the Mediterranean)*

Swaziland is unbound in Mode 1.

**b) Social Sciences and the Humanities:**

*OECD Countries*

The EC is open but Italy and Portugal restricts Mode 3 to natural persons. All others are open.

*Central America and the Caribbean*

Trinidad is open and Jamaica requires registration and licensing.

*South and East Asia*

Korea is unbound for Modes 1 and 2. Malaysia requires joint ventures.

*Other Asia*

Kuwait is unbound in Modes 1 and 2.

*Eastern Europe*

The Czech and Slovak Republics and Hungary are open.

*Mediterranean Countries*

Cyprus is open.

**c) Interdisciplinary Research and Development Services:**

Only Austria and Hungary made commitments, both at open.

### **Technical Testing And Analysis**

#### *OECD Countries*

Austria, Finland, Norway and Switzerland are open. The EC has some Member State limitations.

#### *South and East Asia*

Indonesia is unbound for government projects; commercial presence require joint ventures. Korea requires commercial presence. Malaysia requires joint ventures for Mode 3. Thailand is open.

#### *Other Asia*

India is unbound for Modes 1 and 2; joint ventures are required for Mode 3. Kuwait is unbound for Modes 1 and 2. Pakistan is open.

#### *Eastern Europe*

Hungary is open.

#### *Africa (except the Mediterranean)*

South Africa, Ivory Coast and Zambia are open.

### **Urban Planning:**

#### *OECD Countries*

Most countries are open except New Zealand which did not make any commitments. In the EC, Mode 1 is unbound for Belgium, Greece, Italy and Portugal; for Mode 3, Italy and Portugal allow only natural persons and Greece and Portugal require citizenship.

#### *Central America and the Caribbean*

Jamaica is open but requires registration.

#### *South and East Asia*

Indonesia is unbound for Mode 1 and requires joint ventures for commercial presence. Thailand is unbound for Mode 1. Korea is open.



*Other Asia*

Kuwait is unbound for Modes 1 and 2.

*Eastern Europe*

Hungary and Romania are open. The Slovak Republic requires authorization by the Architectural Association in Mode 3.

*Mediterranean Countries*

Israel is open.

*Africa (except the Mediterranean)*

South Africa is open.

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