

Annex 25. General Agreement on Trade in Services (GATS): Health Services

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WTO GATS Agreement

Introduction

- GATS is one of a number of agreements under the World Trade Organisation (WTO)
- It limits governments from taking measures that inhibit free trade in services
- Requires countries to provide national treatment to foreign service providers in those service industries that which they have agreed to liberalize under GATS.

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Introduction

STRUCTURE OF THE RESULTS OF THE URUGUAY ROUND MULTILATERAL TRADE NEGOTIATIONS

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GATS Coverage

- Multilateral agreement which was negotiated in the Uruguay Round. It applies to measures affecting trade in services. Measures includes those
 - taken by all government levels (central, regional or local government and authorities); and
 - taken by non-governmental bodies exercising powers delegated by government
- Law, regulation, rule, procedure, decision, administrative action, or any other form
- Covers all services, except "services supplied in the exercise of government authority" – defined as services that are supplied "neither on a commercial basis, nor in competition with one or more service suppliers".
- 'Service' includes the production, distribution, marketing, sale and delivery of that service.

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GATS Coverage – Services exempted

- GATS does not cover 'services supplied in the exercise of governmental authority. A service supplied in the exercise of governmental authority is defined as any service which is supplied :
 - neither on a commercial basis
 - nor in competition with one or more service suppliers

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GATS Objectives & Structure


- Objectives:
 - Ease trade in services
 - Reduce trade barriers
 - Promote liberalization of trade in services
- Structure (GATS consists of):
 - Framework Text – which sets out the general concepts, principles and rules that apply to measures affecting the trade in services
 - Annexes – to the agreement, which establish principles and rules for specific sectors and complement the framework text.
 - Specific commitments liberalizing trade within the service sectors and subsectors listed in the national schedule of member countries.

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General Rules: GATS OBLIGATIONS "Unconditional & Conditional"


- Unconditional Obligation
 - The first set is top down or "general" obligations applying generally to all services, whether or not scheduled
- Conditional Obligations
 - Secondly, there are specific obligations which each country can choose to individually sign up to in their schedule or applicable only to services listed in schedules



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General / Unconditional Obligations


- Apply to all services whether scheduled or not - Among the important general obligations imposed by the GATS framework are those relating to:
 - Extension of Most-Favoured Nation Treatment (MFN)
 - Transparency
 - Domestic Regulations
 - Mutual recognition of the disqualifications required by the supply of services
 - Monopolies and business practices
 - Rules governing monopolies and exclusive service suppliers and other business practices restraining competition
 - Increased participation of developing countries



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Conditional Obligations


- With respect to the sectors where specific commitments are undertaken by members, the following must be complied with:
 - Transparency
 - Ensure that all domestic regulations of general application affecting trade in services are administered in a reasonable and objective way;
 - Domestic regulation
 - Maintain or institute tribunals or procedures providing for the review of administrative decisions affecting trade in services;
 - Issue to foreigner suppliers the authorization required for the provision of services within a reasonable period;
 - Payments and Transfer
 - Not to apply restrictions on international transfers and payment, except when the country is a serious balance of payment difficulties.



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GATS - General Exceptions


- GATS rules cannot be used to prevent measures such as those that are:
 - Necessary to protect public morals or maintain public order
 - Necessary to protect human, animal or plant life or health
 - Necessary to prevent deceptive or fraudulent services
 - To protect individual privacy and confidentiality
 - Relating to safety
 - To collect taxes on traded services or service suppliers
 - To protect security interests



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Degree of market opening & Limitations

- Types of limitations are not allowed in committed service sectors
 - Limitations on Market Access (MA)
 - Quota-type and similar restrictions (e.g. limitation on the number of foreign hospitals; limitation on foreign capital participation)
 - Limitations on National Treatment (NT)
 - Less favourable treatment granted to foreigners (e.g. subsidies reserved for national hospitals)




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Modes of Supply of Services under GATS "How to Trade in Services"

- The four (4) modes of international service transactions:

Mode 1	Cross-border movement of service products e.g. US firm taxes plans to Philippines
Mode 2	consumption abroad or movement of consumers to the country of importation e.g. Tourism
Mode 3	commercial presence or the establishment of a commercial presence in the country where the service is to be provided e.g. U.S. firm opens branch or representative office in the Philippines
Mode 4	movement of natural persons or temporary movement of natural person to another country, in order to provide the service there. e.g. US trade consultant travels to the Philippines in render services



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GATS Categories of Services

- GATS Services cover wide range of economic activities. Services are classified in 12 sectors:
 - Business and professional
 - Communication Services
 - Construction & Engineering Services
 - Distribution Services
 - Education Services
 - Environmental Services
 - Financial (Insurance & Banking)
 - Health Services
 - Tourism & Travel Services
 - Recreation, Cultural & Sporting
 - Transport Services
 - Other Services not included elsewhere.

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Process of GATS negotiation on services

- Request-offer approach
- Request by trade partners in areas with good supply and export capacity, removal of sector-specific barriers
- Analysis of the request received in consultation with local stakeholders- Consideration of the benefits of allowing a foreign service provider within a sector
- Preparation of an "offer" that provides the maximum market access it can provide to all other members.
- Done in a sector-by-sector basis, then mode by mode in each sector
- National Treatment and Market Access limitation

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GATS Modification of Commitments

- A member can modify any commitment in its schedule once it has been in place for three years
- First however it must negotiate a necessary compensatory adjustment to its other commitments that leaves all other members no less well off.
- Compensatory adjustments are made on a MFN basis – every country is entitled to them
- Any member that is not happy with this adjustment can refer the matter to arbitration to enforce its right

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GATS Effects on Health Services

- GATS may force public health to compete on a equal footing with private health care. This could lead to increased costs for patients and cost cutting by health care providers.
- Not for profit trusts and charity groups that provide services like aged care and ambulances will be in direct competition with foreign companies.
- Cultural safety training requirements in nursing may be considered illegal. Many health care services (I.e. dentistry physiotherapy and midwifery) are not even included under the category health care but business

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Trade in Health Services within the GATS Framework

GATS Sectoral Classification	Definition
Professional Services	
a. Medical and dental services	Services mainly aimed at preventing, diagnosing and treating illness through consultations by individual patients without institutional nursing
b. Services provided by midwives, nurses, physiotherapist and paramedical personnel	Services such as supervision during pregnancy and child birth, nursing (without admission) care, advice and prevention for patients at home.
Health Related and Social Services	
a. Hospital services	Services delivered under the direction of medical doctors chiefly to in-patients aimed at curing, reactivating and/or maintaining health status
b. Other human health services	Ambulance services; residential health facilities services other than hospital services; and other human health services (pathology, virology, blood collection etc.)

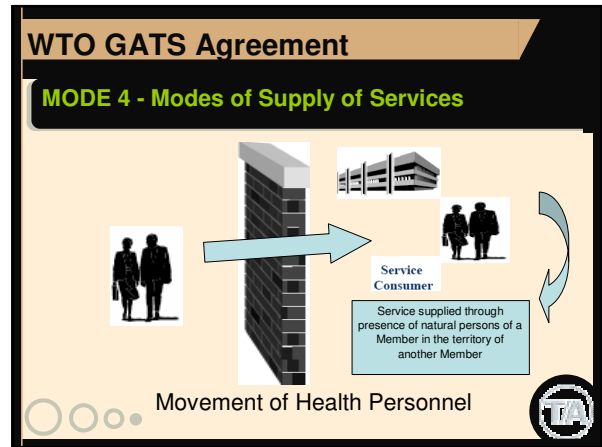
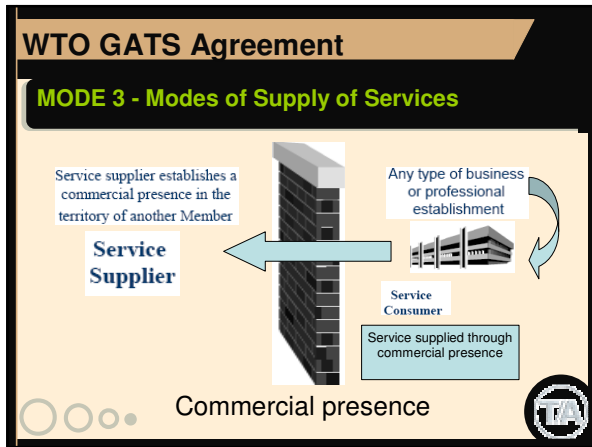
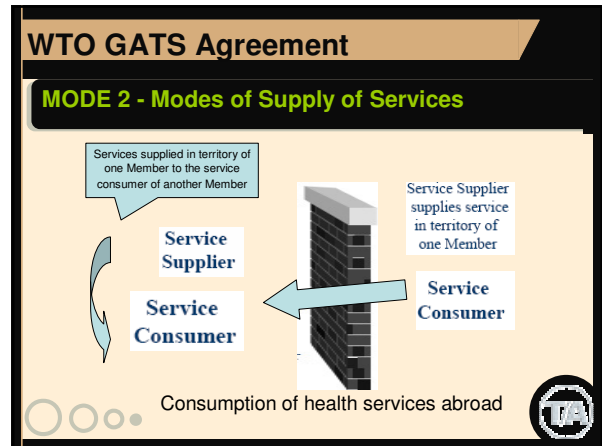
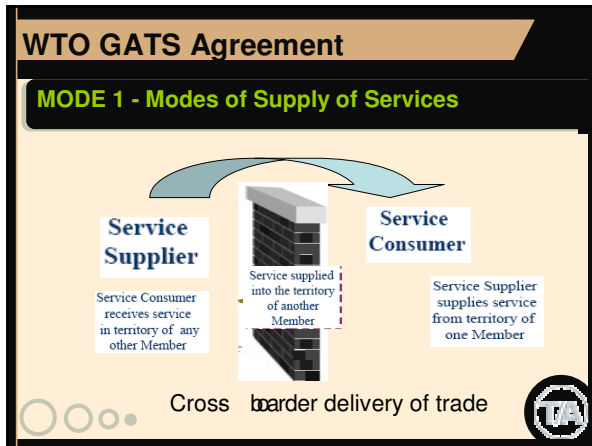
Source: Mortensen 2008

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Mode of Trade in Health Services

Modes	Areas Affected in Health
1 Cross-border supply	Telehealth, teledermatology, telemedicine, teleradiology; laboratory services; BPO -medical transcription bills and claims processing and other outsourced hospital management functions
2 Consumption abroad	Health and Wellness (spa services and alternative/traditional medicine); cosmetic, dental and eye care and surgery; specialized hospital and surgical care; Medical travel, retirement; health sciences education, training in hospitals
3 Commercial presence	Foreign service providers in hospital operation/ management sector; Investments in hospitals; health insurance; temporary or short-term movement to provide services or consulting assignments
4 Presence of natural persons	Employment of health professionals outside their country of origin

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- ### WTO GATS Agreement
- #### GATS Specific Commitment on Health
- **Health Related Sectors:**
 - Medical and dental services
 - Health services of nurses and midwives
 - Hospital services
 - Other medical services
 - Insurance (Life and Health)

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- #### Health Exceptions
- Allowable measures (GATS Articles XIV)
 - Authorizes Member States to take measures to restrict services and service suppliers for the protection of human, animal and plant life or health.
 - Members have the right to determine the level of health protection they deem appropriate.
 - Human health has been recognized by the WTO as being „important in the highest degree“ (Asbestos case).
 - Measures have an overriding effect of other obligations.
 - The relevance of the measures has to be proven scientifically (Good faith).
 - Health measures are required to be no more trade-restrictive than necessary.

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Domestic Health Services


- Major concerns:
 - Deprives governments of policy flexibility;
 - Threatens public health services;
 - Outlaws universal service obligations and subsidized supply;
 - Undermines effective domestic regulation.



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Must commitments be respected at all costs?


- The GATS allows Members to
 - Renegotiate their commitments against compensation;
 - Depart from them for health and other public policy reasons (Exception provisions); or
 - Introduce restrictions to protect the Balance of Payments.



Trade in Health Services

Issues and Challenges


- Opportunities
 - Create new employment
 - Improve access to new technology
 - Remittances of health personnel overseas
- Risks:
 - Brain drain: permanent loss of health personnel
 - Develop 2-tiered health system – crowd out local population & divert resources to service foreigners
- Challenges:
 - Oppressive & exploitative conditions pushing health professionals to leave
 - Issue on Health workers compensation and benefits
 - Health workers job insecurity



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Issues and Challenges

- Developments at the multilateral, regional, and bilateral levels
- Relatively small number of commitments
- Complexity of Trade in Services
- Need to be pro-active



THANK YOU!

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