

Glossary of Key GATS Terms

Bound Commitment: A specific commitment that a member takes in a service sector or sub-sector without limitations. By binding a commitment, a government agrees to eliminate all existing non-conforming measures and not to introduce any new measures that are inconsistent with market access and national treatment rules. In sectors and modes of supply where bound commitments have been taken, non-conforming measures can only be maintained or adopted if they can be shown to constitute a permitted exception, or if a country is prepared to pay compensation to all members.

Commercial Presence: Refers to services directly provided by a supplier of one Member in the territory of another. This covers all foreign direct investment related to services, such as the establishment of a school or branch campus by an overseas institution. Commercial presence is also known as “mode 3” mode of supply.

Commitments: See Specific Commitments.

Consumption Abroad: Describes services supplied in the territory of a member to a consumer of another member. For example, this would include students attending a school or training program in another country. It is also referred to as “mode 2” mode of supply.

Cross-Border Supply: Describes services supplied from the territory of one member country to another member country. It covers all services provided through international mail, phone, fax, teleconference, and the Internet. In the case of education, an example of this type of supply would be on-line courses and programs offered by offshore providers. Cross-border supply is the first mode of supply identified in GATS.

Disciplines: The legally-binding obligations of the GATS. General disciplines or “horizontal rules” include Most-Favoured Nation and Transparency obligations that apply to all measures in all service sectors except those supplied in the exercise of governmental authority. National Treatment and Market Access disciplines are specific obligations that apply only to those services in which members have made specific commitments.

Discriminatory Measures: Government measures that under the GATS violate Most-Favoured Nation or National Treatment disciplines. Discriminatory measures include any measures that treat providers from one member less favourably than those from another, or that treat domestic service providers more favourably than overseas providers.

Dispute Settlement: Disagreements arising between members over the interpretation of GATS disciplines and specific commitments taken by members are adjudicated by WTO dispute resolution panels. Decisions of the panels are binding. If a member loses a case, it must bring its inconsistent measure into conformity with the GATS. If it refuses, the complaining party has the right to negotiate compensation. If this fails, the complaining party then has the right to impose retaliatory penalties on the offending member.

Doha Development Round: A broad set of WTO negotiations launched in the Qatari capital of Doha in 2001. The purported aim of the round is to promote development by lowering barriers to trade in agriculture, industrial products, and services. Other issues that form part of the Doha round include negotiations on trade-related intellectual property rights and special and differential treatment for the least developed countries. The Doha Round was originally scheduled to end by 2004, but deep divisions between rich and poor countries over reductions in agricultural subsidies and the lowering of industrial tariffs have stalled the talks.

Domestic Regulation: Measures taken by governments related to qualification requirements and procedures, technical standards, and licensing requirements. The GATS calls for further negotiations to ensure these domestic regulation measures do not constitute barriers to trade. The intended restrictions would apply to non-discriminatory measures and allow WTO dispute settlement panels to decide whether a measure is transparent and objective and is necessary to achieve its stated objective. The latter requirement is also referred to as a necessity test.

Exception: A measure that is otherwise inconsistent with the GATS but which can be maintained or adopted if the government taking the measure can show it is consistent with certain permitted exclusions. Such exclusions include measures taken for national security reasons and for public health reasons. Exceptions are interpreted narrowly.

Formula Approaches: A type of horizontal negotiating approach that establishes binding negotiating guidelines or objectives for a certain level of trade liberalization. Examples of formula approaches include agreements to make specific commitments across a number of sectors or to eliminate all limitations in certain sectors.

Governmental Authority: Services supplied neither on a commercial basis nor in competition with other service suppliers. Services that meet this test are excluded from the GATS. However, governmental authority is defined so narrowly that the exclusion would likely not protect most public services which are delivered by a mix of public and private providers. It is now widely recognized that the governmental authority exclusion is unclear and open to conflicting interpretations.

Government Procurement: The GATS provides no definition of government procurement, though normally it refers to governmental purchasing of goods and services for the direct use of government bodies.

Horizontal Rules: see Disciplines.

Horizontal Negotiating Approaches: The negotiation of commitments that would apply across members, sectors, and/or modes of supply. This might include the negotiation of new horizontal rules or so-called formula approaches.

Limitations: Notes in a country's schedule of specific commitments that exempt or qualify the application of national treatment or market access disciplines within covered sectors. For instance, several countries have made commitments on education services but have limited that commitment to private education only. Others limit the coverage of national treatment to allow for subsidies that are restricted to domestic institutions only.

Market Access: -1) A discipline of the GATS that ensures the right of foreign firms to supply a service in the territory of a member. It applies only to those services and modes of supply in which a member has made a specific commitment. -2) Market Access also refers to Article XVI of GATS which prohibits all government measures that place limits on the number of service suppliers, the value of transactions or assets, the number of persons supplying a service, and the value of foreign capital involved in the supply of a service.

Measures: Laws, regulations, rules, procedures and other government actions that affect the trade in services. The GATS covers measures taken by all levels of government (i.e. both national and sub-national) and non-government bodies given authority delegated by governments.

Members: Refers to the governments that are party to the WTO Agreements. Currently, there are 149 members of the WTO.

Modality: A way to proceed with WTO negotiations. Modalities set broad outlines — such as formula approaches or horizontal negotiating approaches — for final commitments.

Mode of Supply: How services can be traded and consumed across international borders. The GATS identifies 4 modes of supply and delivery: -1) cross-border supply; -2) consumption abroad; -3) commercial presence; and -4) presence of natural persons.

Most-Favoured Nation (MFN): A discipline of the GATS that requires members to extend the best treatment offered any foreign service provider to all foreign service providers.

National Treatment: A discipline of the GATS based on the principle of according overseas service providers the same treatment as domestic providers. Where commitments are taken on national treatment, members cannot apply measures that discriminate in favour of domestic providers, such as providing subsidies or favourable tax treatment only to locally-based providers.

Natural Persons: People, as distinct from "legal persons" such as companies and organizations.

Necessity Test: The principle under the intended restrictions on domestic regulation that certain non-discriminatory government measures must not constitute unnecessary barriers to trade in services. Necessity tests put the burden of proof on governments to justify that measures they have taken are not more burdensome than necessary and that the objectives could not be met in a less trade-restrictive manner.

Non-Conforming Measures: Government regulations, rules and procedures that violate one or more of the GATS disciplines. Non-conforming measures can be maintained only if a country has listed them as specific limitations or if they can be justified as a bona fide exception.

Non-Discriminatory Measures: Government measures applied equally to all service providers and that do not violate existing GATS disciplines. New GATS disciplines being developed on domestic regulation are intended to restrict certain non-discriminatory measures by forcing governments to show they are necessary and are based on objective and transparent criteria.

Offer: A country's initial negotiating proposal for trade liberalization commitments it is willing to make.

Presence of Natural Persons: Refers to the temporary entry of people from one member providing a service in the territory of another member — for example, instructors who travel abroad to teach courses offered in another country. This is also known as “mode 4” mode of supply and applies only to real, flesh-and-blood persons as opposed to “legal persons” such as companies.

Request: A country's negotiating proposal for trade liberalization commitments it is seeking from other members.

Schedule: A WTO member's list of specific commitments on market access and national treatment. Schedules list commitments according to sector, sub-sector and mode of supply.

Service Provider: Natural persons or companies supplying a service across borders.

Singapore Issues: Refers to four controversial issues introduced to the WTO agenda at the December 1996 Ministerial Conference in Singapore: trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation.

Specific Commitments: Refers to cases in which a member has agreed to apply national treatment and market access provisions to specific service sectors or sub-sectors. Specific commitments are legally binding and are listed in each country's schedule.

Trade facilitation: The removal of obstacles to the movement of goods across borders; for example, the simplification of customs procedures.

Transparency: A general discipline in the GATS requiring members to make publicly available their laws, regulations, procedures, administrative rulings and judicial decisions affecting the trade in services.

Unbound Limitation: A limitation that a member makes in a particular sector or sub-sector that permits governments to maintain or develop measures otherwise inconsistent with national treatment or market access rules.

Uruguay Round: Multilateral trade negotiations launched at Punta del Este, Uruguay in September 1986 and concluded in Geneva in December 1993 and signed by Ministers in Marrakesh, Morocco, in April 1994. The GATS was one agreement negotiated during the round.