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The legal framework governing International trade in services

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Abstract

The General Agreement on Trade in Services, which came into force on 1 January 1995 with the creation of the World Trade Organization, applies to government measures affecting services provided on a commercial basis.

The scope of the GATS is broader than the GATT applies to measures relating to goods. These rules, which are the subject of this section apply to services and service providers, are prescribed in the articles that constitute the legal text of the Agreement.

Keywords_: GATS, services, trade, commitments, rules, provider, agreement.

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INTRODUCTION

A service provided on a commercial basis is "a service supplied in exchange for market prices (a price that covers the cost of current service provision) and provided a service in competition with one or more service providers, is a service provided under the same conditions, especially when it comes to achieving the universal supply obligation. " The GATS applies so as to private sector companies and companies owned or controlled by the government if they provide services on a commercial basis. The scope of the GATS is broader than the GATT applies to measures relating to goods. These rules, which are the subject of this section apply to services and service providers, are prescribed in the articles that constitute the legal text of the Agreement.

the text of the GATS itself; MFN exemptions adopted in accordance with Annex Exemptions set forth in Article II and included in the List of Members of the WTO, the specific commitments on market access, national treatment and additional commitments contained in Members' schedules. (Table 1)

The Annexes to the GATS, are related to sectors and given, such as air transport, financial services, maritime transport services, telecommunications and the movement of natural persons. The ministerial decisions and declarations and subsequent protocols were concluded in relation to certain service sectors. Depending on the purpose of a particular dispute, the legal provisions will be contained in several documents.

Table 1: Main articles GATS.

Article Subject

1	Definition, trade in services covers four modes of supply
2	Obligation of the most favored nation, with possibility of invoking exemptions only once.
3	Notification and publication: the obligation to create a point of information
4	Increasing participation of developing countries. Countries with high incomes should take measures to facilitate trade in developing countries
5	Economic Integration. Clause allows free trade agreements and similar
6	authorizes domestic regulation. Requirements for the formulation and implementation of regulations in the services sector, including in particular the qualification requirements.
7	Recognition of qualifications, standards and certification providers.
8	Monopolies and exclusive service suppliers. Clause requires that such entities comply with the MFN obligations and specific commitments (Articles XVI and XVII and do not abuse their dominant position.
9	business practices. Recognition that business practices may limit trade. Clause requires consultations between members on request.

14	General Exceptions. Clause authorizes measures to achieve non-economic objectives.
16	16 Access to the market. The article defines a set of policies that can be used to limit access to the market for a sector ranked only if they are listed in the specific commitments of a member.
17	National Treatment: it applies in an area if there is a commitment to this effect and no limitation or exception is listed in the concession of a member. Article 19 request of successive negotiations to expand the coverage of specific commitments (Article XVI and XVII).
29	notes that form an integral part of the GATS.

<u>Source</u>: Table prepared on the basis of information provided in the legal text of the GATS

<u>1. The treatment of the most favored nation (MFN)</u>

This clause, which is the cornerstone of the multilateral trading system, in terms of goods, is also at the center of services scheme. (Article 2 of the GATS). According to the terms of this article, "each Member shall accord immediately and unconditionally, treatment no less favorable than that it accords to like services of any other country." This section prohibits any discrimination against foreigners served and their suppliers, which will be in competition law, with their national counterparts. This equality of treatment for all trading partners, applies to all commercial services. Indeed, it is clear that it also applies to service providers so that it applies only to products of the GATT 1947.Cette information is valuable because it shows that the GATS provides a direct effect, making natural and legal persons service providers, beneficiaries under the Agreement. way on a given national market, equal treatment will total between foreign suppliers of services, because the services are similar. Special exemptions, temporary and non-stretch are allowed. These aimed at the signing of the GATS to book preferential agreements at the bilateral level or in small groups. The MFN, known restrictions on services and service providers related to legal and / or administrative measures concerning when these were taken under international agreements.

Article 2 of the GATS states that a contracting party cannot enforce the clause of the most favored nation and adopted a measure inconsistent, but that it should be included in the agreement devoted exemptions of Article II, to qualify for an exemption in this area. The applicant should describe the measure in question, say what it is inconsistent with Article II, 2, specify the proposed duration of the exemption, and possibly its renegotiation. As such, more than 100 States have validated nearly 500 "exemptions", mainly in the sectors of transport, financial services and audiovisual services. These exemptions are reviewed by "the board of trade in services" and must not have a term exceeding ten (10) years. Years reality, they persist and disposal is random.

Exemptions have been validated if they have been notified at the time of entry into force of the GATS, leler January 1995, this is the United States have not failed to do (Article II. 2 and the Annex on "Exemptions announced in section II.) However, as the agreement on services, aimed at facilitating the exchange of services around the world, it allows in Article II, paragraph 3,

parties to provide benefits "partial", that is statements benefits only apply to some of their trading partners under three conditions:

- What are the neighboring countries?
- What are the benefits to facilitate trade
- These benefits relate only to services produced locally and consumed locally.

2. The obligation of transparency

The GATS rules seek to establish and consolidate regulatory transparency. This unconditional obligation is to ensure easy access to information regulations and administrative conditions affecting international trade. It is the subject of a general principle in the GATS (services agreement) and appears in various WTO agreements. (Article 5 of the GATT and Article 63 of the Agreement on Intellectual Property Rights TRIPS). According to the agreements, these provisions impose constraints variables states, ranging from the simple requirement of the official publication of their internal regulations and its rules. the motivation of individual implementing to administrative decisions. Some agreements such as the GATS or the OTC (Agreement on Technical Barriers to Trade), also obligation for each country to an impose designate administrative contacts for access to information "contact points", which are listed in Annex 3. The contact points referred to in Article IV of the GATS, aimed at facilitating the access of service providers developing country Members to information, points of information provided for in Article III are responsible for providing information other WTO Members. The General Agreement on Trade in Services imposes, the publication of all laws, regulations, administrative guidelines and international agreements affecting trade in services (Article XVIII III1 and art.) GATT 1947 includes an identical obligation on trade in goods. Unauthorized changes or modification of laws governing trade in services must be notified to the Council for Trade in Services, which is the body of the Agreement Administrator. Article III4 the GATS stipulates that each Member has the right to information on practices followed by services to its partners. Has the right to receive and in real time all the required details on how other agreement shall apply. However, the transparency obligation is limited to the disclosure of confidential information (Article III bis).

3. Judicial proceedings

GATS through Article VI provides an opportunity for Members contesting decisions or administrative measures that affect trade in services, resorting to national courts or judicial proceedings. "Each Member shall maintain or institute as soon as possible, courts or judicial, arbitral or administrative will, at the request of an affected service supplier, for the prompt review of administrative decisions affecting trade in services and, where warranted, take appropriate corrective action. In cases where these procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that they can actually make an objective and impartial review. Indeed, to resort to judicial proceedings, the States must establish "courts or judicial, arbitral or administrative" that will "revise promptly administrative decisions affecting trade in services and of (...) take corrective action, "and that" at the request of a service provider. "This means two very important points:

• 1. States should establish jurisdiction and / or special procedures on the issue of trade in services.

• 2. Service provider (for a transnational corporation), will be able to enter the court (or the court of arbitration, which would

be worse). If these procedures or courts are not implemented, the supplier may request the State to ask the Dispute Settlement Body (DSB) to condemn the Member State has not implemented this feature particularly in its domestic law. Some was established in case of disputes is thus:

□ The applicant must submit an application meets the requirements of domestic laws and regulations of the host country

 \Box The competent authorities of the host country shall inform the applicant within a reasonable time of the response to his request, and if the applicant so requests, the Further information on the action taken on its request will be provided.

4. Business practices that restrict competition

Unlike the GATT, the GATS contains a provision relating to "business" art (IX) service providers are liable to restrict trade in services. This clause of the GATS is not binding because it obliged to pay for intergovernmental provides only consultations. These provisions also apply to exclusive service suppliers to cases where a Member, formally or in effect, authorizes or establishes a small number of service providers and substantially prevents competition among those suppliers in its territory. Under Article IX, Members also recognize that certain business practices of service providers may restrict competition and thereby restrict trade in services. Each Member shall, at the request of any other Member, enter into consultations with a view to eliminating such restrictive business practices. These business practices may take the form of: Limitations (4.1) to competition or monopolies activities (4.2)

4.1 The limitations of competition: which

• Limitations on the number of service providers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or service requirement of an economic needs.

• Limitations on the total value of transactions or assets in connection with the services in the form of numerical quotas or the requirement of an economic needs test.

• Limitations on the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test

• Limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for the provision of a specific service and deal directly in the form of numerical quotas or the requirement of an economic needs test measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

• Limitations on the participation of foreign capital, expressed as a maximum percentage of share ownership by foreigners, or the total value of private foreign investment or foreign investment overall.

Examples: To illustrate the business practices that restrict competition in international services markets, we cite the common examples include:

• A rule requiring Foreign Service suppliers to establish only a specified number of branches or subsidiaries in the territory of a Member A cap on the number of transactions in connection with the services to be contracted with foreign service providers

• A rule requiring foreign service providers to be incorporated or otherwise legal under the laws of the Member.

• Requirements of nationality for foreign service providers or their boards

• A time limit on broadcast radio or foreign television on a national network.

• Limitations on the participation of capital that foreign nationals may hold a national service provider.

Even when a sector is included in the Member's Schedule, Article XVI does not necessarily obliged to grant unconditional access to markets and free to all services and foreign service providers. Bv registering limitations, conditions and requirements in the relevant columns of their list, members can actually adjust the scope of the commitments they undertake in order to preserve their right to adopt or maintain restrictions on access to markets in specific sectors in the List. To determine whether and to what extent a Member has made commitments on market access in a specific sector and in relation to modes of supply, it is necessary to carefully examine the list of that Member. Where a Member undertakes a commitment in a specific sector, the list shall indicate for each mode of supply, limitations or restrictions if they wish to maintain in terms of access to markets. When the Member is "nil", that is to say no limitation to a specific sector and mode of supply, this means that the Member has committed to grant full access to the markets in this sector . In other words, he pledged not to maintain or establish limitations or restrictions such as those listed in Article XVI: 2. Where a Member labeled "unbound" for a specific sector in mode of supply, this means that has not made any commitment to this sector in this mode of supply. Other practices that restrict competition are monopoly activities are described below.

4.2 Activities of public monopolies

Article VIII on "monopolies and exclusive service suppliers like, while broader provisions of the GATT in state-owned enterprises (Article XVII). Means exclusive provider any public

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or private person entrusted by the State with a mission of providing a service exclusively. Unlike the GATT, the GATS contains a provision relating to "business art (IX)," service providers likely to restrict trade in services. This clause of the GATS is not binding because it provides only obliged to pay for intergovernmental consultations. The General Agreement on Services encourages the harmonization or on internationally agreed criteria. The parties are obliged to ensure that monopolies or exclusive service suppliers, do not abuse their position. The restrictive measures should be consulted between the parties in order to eliminate them. Other public service contracts and those within the market economy must be multilateral negotiations. Regarding subsidies to services, they are not as important as those practiced in the area of goods. Professional services for example are free of subsidies and cons transport receive several grants that can distort the competition. As well as provisions on the treatment of the most favored nation, Article V of the GATS III, limiting monopolies and state enterprises, is Part II of the GATS on "general obligations and disciplines" . However, contrary to the MFN unconditionally that apply to all services that these, whether or not covered by a list of specific commitments, some aspects of Article VIII apply only to the conditions services listed. The GATS restrictions on monopolies could be presented as provisions hybrid combining features of general obligations and specific commitments other. As summarized by the WTO Secretariat, Article VIII of the GATS requires that "monopoly supplier of a service does not act in a manner inconsistent with the obligations of a Member under the nation the most favored or its specific commitments, and he does not abuse its monopoly position "(WTO, October 1999, p. 6). Article VIII. 1 indicates that monopoly suppliers of services are directly subject to the restrictions of the MFN clause and

specific commitments. In the event that any monopoly supplier of a Member competes, either directly or through an affiliate, for the supply of a service outside the scope of its monopoly rights and subject specific commitments on the part of the said Member, the Member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments "(Article VIII. 2 of the GATS)

Under Article VIII on monopolies and exclusive service suppliers, each Member shall ensure that any monopoly supplier of a service in its territory does not in any way inconsistent with the MFN obligations of the Member and specific commitments. In addition, in the event that any monopoly supplier of a Member competes, either directly or indirectly, for the supply of a service outside the scope of its monopoly rights, the Member will ensure that supplier n 'not abuse its monopoly position to act in its territory in a manner inconsistent with that Member's obligations under the GATS. It should be noted that no provision of the Final Act concerning services not disapprove or approve the creation or maintenance of exclusive service suppliers. Parliament had to take account of economic political realities in the field. According to Article VIII, each party shall ensure that the monopoly supplier of a service in its territory comply with the obligations relating to transparency, treatment of the most favored nation, mutual recognition and domestic regulations.

5. The exceptions allowed under the GATS

Like the GATT, the GATS sets out exemptions and general exceptions that allow members to override all obligations under the Agreement to perform certain public policy objectives such as the protection of public morals, protection of health and life of humans, animals or plants or preservations of the protection

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of the essential interests of its security. Apart from these exceptions, certain provisions of the GATS allows Members to derogate from its provisions to participate in economic integration agreements (Article 5) or work (Article Va) or recognition agreements (Article VII). Agreement contains a number of provisions by which national governments can restrict or suspend the contract commitments. Article X relates to the emergency safeguard measures, allowing a Member to modify or withdraw a specific commitment provided to show that this is necessary. Members failing to agree on the feasibility and desirability of such a mechanism in the context of trade in services. At the meeting he desirability of such a mechanism in the context of trade in services. At the meeting of the Working Group on GATS Rules, dated 12 March 2003, the Chairman of the group felt that work on issues that had not yielded tangible results since many essential questions unanswered answers, and there is no consensus on the fundamental question of the form that was of an emergency safeguard mechanism, as well as the question of who would be protected by such a mechanism.

Article XII allows Members to adopt or maintain restrictions on trade in services in case of difficulty, balance of payments. These restrictions shall not be discriminatory. As the GATT (Article XX), Article XIV provides a number of general exceptions that a member may be used provided it is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries . Similar conditions prevail, or a disguised restriction on trade in services. These measures must be necessary to protect, among others, public morals, health?? and life of humans or animals, plant life, the prevention of deceptive practices, protection of privacy in the use of personal data, the implementation of fair taxation and Effective. Article XIV bis is devoted to security exceptions. Annex on Financial Services provides, regardless of other provisions of the GATS, Members entitled to take measures for prudential reasons or to ensure the integrity of the financial system. Curiously, unlike Article XX of the GATT, Article XIV does not provide specific exceptions under the conservation of exhaustible natural resources. However, this exception may be very important in the areas of energy and environmental services. The exceptions allowed are listed as follows:

5.1 Economic Integration Agreements (Article V)

The GATS contains special provisions that allow countries to waive the obligation of the most favored nation when a party to a trade agreement. The diversity of sectoral commitments reflects the decisions of developing countries for inclusion in the lists. Preferential treatment to developing countries where "flexibility" (Article V, paragraph 3.a), the agreements included the liberalization of services is granted subject to Article V of the economic integrations. Thus, this provision gives the opportunity to give this group of countries to grant more favorable treatment to juridical persons owned or controlled by its nationals, which will allow third world countries to ensure that their liberalization efforts primarily benefit their citizens.

5.2 Integration Agreement of labor markets (Section Va)

GATS valid through Article V bis, integration agreements labor market provided it is total, that is to say there is a right of free entry the labor markets of the countries concerned and to be notified to the Council for Trade in Services.

5.3 Recognition (Article VII)

Recognition is subject to Article VII of the GATS, recognition should be based on multilaterally agreed criteria. Companies or people who provide services must obtain this certificate, licenses and other authorizations. Foreign suppliers, often difficult to obtain these authorizations due to the diversity of requirements

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for training and experience. To overcome these difficulties, the Agreement calls on Members to enter into bilateral or plurilateral mutual recognition of qualifications. It further provides that such mutual recognition arrangements must be open to accession by other Members, if they can demonstrate that their national standards and requirements comparable to those of the relevant scheme.

5.4 The emergency safeguard measures

(Article): This is Article X of the GATS sets out the measures that are considered in the trade of services to the escape clause of Article XIX of GATT, based on the idea of a sudden disruption due measures to liberalize trade by the bais of multilateral negotiations. In case of emergency, a Member State may return a specific commitment subscribed. Surges and massive cross-border provision at the expense of internal trade and the influx of foreign persons or entities under a "commercial presence" are cases of market disturbances the most common.

5.5 The exception imbalance of payments (Article XII)

This provision is drawn from the GATT agreement 1947.Le use restrictions to protect the balance of the balance of payments is formalized in the framework of GATS Article XII. In case of serious difficulties with its balance of payments and financial situations, a Member may adopt restrictive measures to address these problems. In case of such difficulties, affected members will not only return to the liberalization of services in the past in respect of specific commitments, but they can also impose restrictions under the IMF. This provision of the GATS is specific as it contains information that spans both the commercial and monetary aspect that is not easy to reconcile. Restrictions as specified by the Agreement, must be nondiscriminatory and temporary especially compatible with the Statute of the International Monetary Fund, which may authorize its members experiencing difficulties in applying exchange restrictions discriminatory nature of certain payments related to invisible transactions. The procedure is that these restrictions appeal to a broad consultation process in the bodies (specialized Committee, General Council and the Ministerial Conference).

5.6 The procurement (Article XIII)

Article XIII, aimed Procurement stipulates that government agencies are exempt from the application of the three principles of the GATS, MFN, market access and national treatment. Such exemptions cannot take place unless they meet three criteria: The services must be purchased for the needs of public authorities

• Services will be resold commercially

• Services will not be used for the provision of services for commercial sale "requirements of government." This service should not be marketed later and should not be used to provide services marketed. Services are concerned the services of architects, consulting engineers, lawyers and health professionals. Covering procurement, government agencies services for the sole purpose "of government."

5.7 General Exceptions (Article XIV)

These exceptions are of a permanent nature for the protection of public order, Article XIV. These are fundamental interests toue society must defend and seek the health and lives of people as animals and plants, morality and public safety. The GATS also formalizes consumer protection services against abuse potential suppliers at the same time he devotes his right to respect for privacy and confidentiality of information. Under certain conditions, the direct taxation of services as well as constraints may waive the clause of the most favored nation than those of national treatment. These measures shall not be diverted from their goals and should not constitute a means of arbitrary discrimination or a disguised restriction on trade in services.

5.8 The subsidies (Article XV)

Article XV, on grants, focuses on collaboration between the parties and the elimination of problems resulting from grants which may be granted to certain services. It is through negotiations, which represent the solution the control system of subsidies, the parties to develop multilateral disciplines, to reflect on the merits of subsidies, assessing the role of subsidies and exchange information and intelligence, all subsidies to domestic service providers and related trade services and treatment measures concerning domestic service providers.

5.9 Security Exceptions

GATS states that it can not be an obstacle to the implementation of measures to "the maintenance of peace and international security." These exceptions are listed in Article XXI of the GATT 1947 (Article XIV bis). Each member may refrain from providing sensitive information on behalf of the protection of the essential interests of its security. Such information may include the provision of services to the armed forces or for a nuclear program.

6. Countries undergoing development in the GATS

The developing countries (DCs) are weakly involved in the negotiations of the General Agreement on Trade in Services (GATS) initiated in 2000.

• The inability of most developing countries to identify areas of interest to them, otherwise say, the areas in which they could compete on equal terms with the developed countries.

• Lack of economic studies on sectors that have been liberalized.

The developing countries need to ensure that multilateral rules governing trade in services contribute to a rational policy to

draw national and international level. Their participation in past negotiations has not led to achieving this goal. The emphasis should be on easing if not the elimination of laws regulation of foreign investment. Developing countries must work to completely free trade in services instead of maintaining the nontariff barriers. Liberalization can increase the volume of their exports to developed countries. The free exchange of services benefits developing countries to developed countries such as telecommunications, transport and financial services Unrestricted access to international markets requires the elimination of restrictions implicit and explicit. Among the reasons why state governments in the third world are reluctant to release the full and immediate trade in the service sector: the protection of their domestic suppliers and international competition for emerging industries say. In terms of foreign direct investment (FDI) to developing countries may wish to take precautions. FDI is a means to help developing countries overcome poverty because it creates jobs, wealth, provides

7. COVID'S19 and its impact on trade on trade of good and services :

This virus That emerged in China infected more than 51 million and almost 1,3 million people globaly .Governments have introduced strict social distancing an containment measures , and these have had a large negative impact on global economic activity .The international monetary fund projected 4.4% drop in the global gross domestic product GDP in 2020 , the largest decrease in 40 years .This reduction in global economic activity has led to a vast decrease in the global flow of goods and services .The worlds trade organization reported a 14,3% decline in the global volume of trade of goods of 2020 compared with the first compared with 2019.

Covid 19 and trade of services :

This pandemic has affected also trade of services. The negative impact of COVID 19, was greater for services that for goods, many services require the movement of the supplier or the customer, and the confinement measures made such movement across national boundaries almost impossible. For examples, in the sector of tourism ,people cannot move from a country to another and this affect really the business of tourism companies public and private.

Others services were affected by COVID 19 such as the transport, finance , communications but lower the tourism services The exports and import of this services decreased by 12,6% and 16,6% respectively. The Covid 19 caused 34,6% contraction of GDP in the world wich 28% could be explained by the distribution of global value chain COVID 19 its clearest impact , was the reduction of people mobility . Firms responded to this by moving many activities on line .

Services requiring the movement of people have been very negatively affected by COVID 19 might cause , until a vaccine is distributed , restrictions to mobility will remain. This and people s'ongoing concerns about health conditions in **destination countries will continue to discourage tourism** and similar provision of services that require movement people .In any case , vaccine notwithstanding , COVID 19 has shown that tourism is very fragile to pandemic .

CONCLUSION:

Service reform in developing countries is vital to reconcile the possibility of increasing competition and the legitimate governments that undertake these reforms to correct market imperfections and to meet the objectives of both noneconomic factors such as universal provision education services or health care. Strengthening multilateral disciplines can contribute significantly to promote and consolidate domestic reforms. Policies for the service sector and national commitments under the WTO agreements or regional agreements on trade and investment.

The pandemic COVID 19, has caused the steepest decrease the international trade not only in goods, but specially in services however the containment measures adopted to arrest the spread of the virus made the decrease especially intense of services.

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