

General Agreement on Trade in Services (GATS) and Nepal's Commitments

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Nepal's WTO commitments and roles of stakeholders

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Presentation outline

- ▶ Defining services
- ▶ Overview of GATS
- ▶ Nepal's commitments
- ▶ Role of stakeholders
- ▶ Concluding observations

Defining Services

- ▶ **Traditional and static concept** focuses on three distinguished features of non-storability, non-tradability and intangible.
- ▶ **New and broad concept** defines services are activities that add value, either directly or indirectly, to another economic unit or to a goods belonging to another economic unit.
- ▶ Services may be embodied in the form of transactions relating to consumption, production, distribution, or embodied in the form of goods, human capital, and information.

Defining Services

Modes of Supply

Services could be supplied through:

- **Cross border supply:** supply of services from the territory of one country into the territory of any other country, e.g. computer software, BPOs .
- **Consumption abroad:** services supplied in the territory of one country to the service consumer of any other country, e.g. tourism, education, health.
- **Commercial presence:** services provided by a service supplier of one country, through commercial presence in the territory of any other country, e.g. joint venture, branch or subsidiary company.
- **Movement of natural person:** services supplied by a service supplier of one country, through presence of natural persons of a member in the territory of any other country, e.g. movement of doctors, software consultants, managers, experts.

Defining Services

For negotiation purpose, WTO has categorized services in 12 categories:

- ▶ Business Services
- ▶ Communication services
- ▶ Construction related engineering services
- ▶ Distribution services
- ▶ Education services
- ▶ Environmental services
- ▶ Financial services
- ▶ Health related and social services
- ▶ Tourism and travel related services
- ▶ Recreational, cultural and sporting services
- ▶ Transport services
- ▶ Other services not included elsewhere

Why to liberalize services?

- ▶ Increases competition : reduces waste, improve management and increase efficiency
- ▶ Lower prices : makes rent seeking activities not feasible
- ▶ Improves quality : leads to innovation
- ▶ Improves regulatory system
- ▶ Facilitate trade in goods

Global trade in services

World exports of merchandise and commercial services, 2005-10 (billion US\$ and annual percentage)

	Value 2010	Annual percentage change			
		2008	2009	2010	2005-10
Merchandise	15,238	15	-22	22	8
Commercial services	3,665	13	-12	8	8
Transport	783	16	-23	14	7
Travel	936	10	-9	8	6
Other commercial services	1,945	13	-8	6	9

Source: WTO, World Trade Report 2011.

Nepal's trade in services

Nepal's trade in services (million US\$ and annual percentage)

	Exports (2010)	Imports (2010)	2005-10 (annual percentage change)	
			Exports	Imports
Merchandise	860	5,280	0	18
Commercial services	584	864	17	15
Transport	6.8	33.2		
Travel	59.0	47.5		
Other commercial services	34.2	19.2		
Share in world trade	0.02	0.02		

Source: WTO, Trade Profiles 2011.

Overview of General Agreement on Trade in Services (GATS)

- ▶ Directly modelled on the GATT and relies on many of the same principles
- ▶ 29 Articles and six parts
 - Scope and definition
 - General obligation and disciplines
 - Rules governing the specific commitments in schedules
 - Future negotiation
 - Institutional and final provisions

Overview of General Agreement on Trade in Services (GATS)

General obligations and basic principles

- ▶ **Scope and coverage:** GATS applies to measures by WTO members which affect trade in services. All services are covered except those ‘supplied in the exercise of governmental authority’.
- ▶ **Most Favoured Nations (MFN) treatment :** With respect to any measure covered by GATS, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country. **Exemptions:** economic integration-substantial sectoral coverage, individual countries’ listing in the schedules

Overview of General Agreement on Trade in Services (GATS)

- ▶ **Transparency** : Each Member shall **publish promptly** and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published. Members must also **notify** the Council for Trade in Services of new or changed laws, regulations or administrative guidelines that affect trade in services covered by their specific commitments. **Enquiry point** to be established.

Overview of General Agreement on Trade in Services (GATS)

Domestic regulations: In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a **reasonable, objective and impartial manner**. There must be tribunals or other procedures to which service suppliers can apply for a **review of administrative decisions** affecting their trade. With a view to ensuring that measures relating to **qualification requirements and procedures, technical standards and licensing requirements** do not constitute unnecessary barriers to trade in services.

Overview of General Agreement on Trade in Services (GATS)

- ▶ **Ensuring competition:** A monopoly supplier of a service must not be allowed to act inconsistently with a member's MFN obligations or its specific commitments, nor to abuse its monopoly power.
- ▶ **Restrictions on foreign exchange:** Members may not restrict international transfers and payments for current transactions related to the specific services commitments it has undertaken. However, it permits member in serious balance of payments difficulties (or threatened by such difficulties) to restrict trade in services for which it has undertaken commitments.

Overview of General Agreement on Trade in Services (GATS)

- ▶ **General and security exemptions:** Members may take any measures necessary to **protect public morals** or to **maintain public order**, to **protect human, animal or plant life or health** and to **secure compliance with laws or regulations** which are not inconsistent with the provisions of GATS. Similarly, nothing in GATS shall be construed to require any member to furnish any information, the disclosure of which it considers contrary to its **essential security interests**; or to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests; or to prevent any member from taking any action in pursuance of its **obligations under UN Charter** for the maintenance of international peace and security.

Overview of General Agreement on Trade in Services (GATS)

Sector Specific Commitments

Market access

- ▶ **MFN treatment:** Each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.
- ▶ **Free market access:** The following measures may not be applied to the foreigner service or service supplier unless their use is clearly provided for in the schedule:
 - Limitations on the number of service suppliers,
 - Limitations on the total value of services transactions or assets,

Overview of General Agreement on Trade in Services (GATS)

- Limitations on the total number of service operations or the total quantity of service output;
 - Limitation on the number of persons that may be employed in a particular supplier;
 - Measures that restrict or require supply of the service through specific types of legal entity or joint venture; and
 - Percentage limitations on the participation of foreign capital or limitations on total value of foreign investment.
- ▶ **National treatment** : Each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.

Overview of General Agreement on Trade in Services (GATS)

“special priority” to LDCs (Article IV:3)

- ▶ the strengthening of domestic services capacity and efficiency
- ▶ the improvement of access to distribution channels and information networks
- ▶ the liberalization of market access in sectors and modes of supply of export interest.

Approval of LDCs modalities

Doha round of negotiation

Article XIX:1 obliges WTO members to enter into successive rounds of negotiations with a view to achieving a progressively higher level of liberalization. The first of which was to start “not later than five years from the date of entry into force of the WTO Agreement”, i.e. 1 January 2000, With the launch of the Doha Development Agenda in November 2001, the services negotiations were included in the Doha Round.

Objectives and principles

- ▶ progressive liberalization as enshrined in relevant GATS provisions
- ▶ appropriate flexibility for developing countries, with special priority to be given to least-developed countries

Doha round of negotiation

- ▶ No sectors or modes are excluded from the scope of the negotiations at the outset.
- ▶ Special attention is to be given to export interests of developing countries.
- ▶ Negotiations will include discussions on eliminating existing exemptions from most-favoured nation treatment
- ▶ The Agreement's rule-making agenda — concerning disciplines on domestic regulation (Article VI:4), emergency safeguards (Article X), government procurement (Article XIII) and subsidies (Article XV) — is integrated into the wider context of the services negotiations.

Nepal's commitments

Conditional commitments

- ▶ **Incorporation:** All foreign investments except for Financial Services require approval by the Department of Industry
- ▶ **Equity participation :** Maximum of 80 percent foreign investment is allowed.
- ▶ **Foreign employee :** Temporary entry and stay of natural persons of another Member in the following categories:
 - Service sales persons : representative not getting remuneration in Nepal
 - Person responsible for setting up a commercial presence
 - Intra-corporate transferee : executive, manager and specialist
 - Temporary entry and stay of natural persons considered to be intra-corporate transferees may be limited to 15 percent of local employees

Nepal's commitments

- ▶ **Subsidies** : Incentives and subsidies are available only to enterprises wholly owned by Nepalese nationals.
- ▶ **Real estate**: No selling and buying real estate by foreigners
- ▶ **Commitments on 10 sectors** and about 70 sub-sectors
 - Business services: legal, accounting, auditing and bookkeeping, engineering and architecture, computer, rental leasing, advertising, market research etc.
 - Communication services: courier, telecommunication
 - Construction and related engineering
 - Distribution services: commission agent, franchising etc.
 - Education services: higher, adult etc.

Nepal's commitments

- Environmental services: sewage, refuse disposal, sanitation etc.
- Financial service: banking, insurance
- Health related and social services
- Tourism and travel related services: tourism and restaurants, travel agency and tour operator,
- Recreational culture and sporting services
- Transport services

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Nepal's commitments

Depth of commitments (a comparative picture)

Sectors	Nepal	India	Bangladesh	South Asia
All sectors	33.34	6.69	0.00	10.05
Market access	29.19	5.54	3.36	8.78
National treatment	37.49	7.91	2.24	11.33
Business services	30.32	2.52	4.47	8.03
Communication services	15.68	12.08	0.00	12.84
Construction/engineering services	14.73	4.02	26.68	3.80
Distribution services	54.45	0.00	0.00	9.08
Education services	40.76	0.00	0.00	6.79
Environmental services	68.75	0.00	0.00	11.46
Financial services	47.58	6.19	0.00	12.67
Health/social services	25.53	6.38	0.00	7.80
Tourism/ travel services	66.73	18.20	0.00	30.15
Recreation/cultural services	28.65	0.00	33.09	4.78
Transport services	13.25	0.00	0.00	2.21
Other services	0.00	0.00	0.00	0.00

Source: World Bank. www.worldbank.org.

Stakeholder's role

Who are the key stakeholders?

- ▶ Government ministry primarily responsible for trade policy making and implementation
- ▶ Other relevant government ministries and agencies
- ▶ Private sector
- ▶ Civil society organizations (CSOs)

Stakeholder's role

Where stakeholders could contribute?

- ▶ Policy direction
- ▶ Policy formulation
- ▶ Policy implementation, including identification of trade negotiation position
- ▶ Monitoring and evaluation of policy

Stakeholder's role

What are the problems faced by key stakeholders?

- ▶ Identification and involvement of stakeholders
- ▶ Information dissemination and organization of awareness-raising activities
- ▶ Regular information flow to key stakeholders
- ▶ Improving coordination among relevant government ministries and agencies
- ▶ Improving the feedback to and from private sector and CSOs
- ▶ Building knowledge and expertise of all stakeholders

Concluding Observations

- ▶ Nepal has attempted to 'lock in' unilateral liberalization in WTO,
- ▶ Nepal's commitments provide 'positive' signal to international community
- ▶ Nepal's commitment is not 'unconditional'
- ▶ There exists some 'policy space' to promote national service providers

Thank you

