

**WTO/ESCAP Second ARTNeT  
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**Trade in Services**

# Trade in Services

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- Contrasts between goods and services
    - Tangibility
    - Timing of consumption and production
    - Physical proximity
    - Measurability
    - Regulatory control
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# Service sectors

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- Communications, all types
  - Construction
  - Distribution
  - Education
  - Environment
  - Financial
  - Health and social
  - Tourism
  - Recreation & cultural
  - Transport, all types
  - Business and professional
  - Other
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# Basic Elements of GATS

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- Unconditional obligations
  - “Permissible” provisions
  - Negotiating mandates
  - Scheduled (specific) commitments and conditional obligations
  - Escape clause provisions
  - Exclusions: services provided under governmental authority; air traffic rights
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# GATS and Regulation (Article VI)

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- In scheduled sectors: **Reasonable, objective and impartial** administration of measures (Art. VI:1)
  - **“Standstill” in committed sectors** (Art. VI:5): No new regulation that:
    - (i) would be unnecessarily burdensome,
    - (ii) could not have been expected, and
    - (iii) would nullify or impair a commitment.
  - **Negotiations on necessary disciplines** (Art. VI:4)
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# Modes of Supply

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- Mode 1: Cross-border
  - Mode 2: Consumption abroad
  - Mode 3: Commercial presence
  - Mode 4: Movement of natural persons
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# Types of Limitations to be Scheduled

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- MARKET ACCESS (Article XVI)
    - Absence of quota-type and similar restrictions
  
  - NATIONAL TREATMENT (Article XVII)
    - Non-discrimination with regard to **all** measures affecting the supply of a service
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- Any limitations must be inscribed in Schedules for each relevant modes(s).
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# Types of Market Access Limitations

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## Article XVI:(a)- (f)

- (a) Number of service suppliers  
(e.g. new licenses subject to economic needs)
  - (b) Value of transactions or assets  
(e.g. assets of foreign banks limited to x percent of total bank assets)
  - (c) Total number of operations or quantity of output  
(e.g. restrictions on broadcasting time for foreign films)
  - (d) Total number of natural persons  
(e.g. no more than x foreigners per outlet)
  - (e) Type of legal entity or joint venture  
(e.g. foreign presence only via subsidiaries)
  - (f) Maximum foreign capital participation  
(e.g. foreign equity limited to 49 percent)
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# National Treatment Limitations

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Treatment shall be “no less favourable than accorded to own like services and services suppliers”.

- ... “either formally identical or formally different treatment” ...

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relevant benchmark: no modification of “the conditions of competition” in favour of domestic like services or service suppliers.

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# Typical National Treatment Limitations

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- Discriminatory subsidies and other financial measures
  - Nationality and residency requirements
  - Licensing, qualification and registration requirements
  - Technology transfer/training requirements
  - Local content requirements
  - Prohibitions on land/property ownership
  - Limitations on insurance portability, use of education grants, etc.
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# Illustration of a Schedule

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
Retailing Services (excl. tobacco)	<p>1) Unbound except for mail order</p> <p>2) None</p> <p>3) Foreign service suppliers may supply services only in the form of joint ventures and only in the provinces of..Foreign suppliers will be permitted to engage in the retailing of all products, except for books, newspapers and magazines</p> <p>4) Unbound except as indicated in Horizontal Commitments</p>	<p>1) Unbound except for Mail order</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound except as indicated in Horizontal Commitments</p>	<p>Foreign-invested enterprises may distribute their products manufactured within [...] and provide subordinate services as defined in the Annex.</p>

# What Should Be in the Schedule?

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Measures relating to **licensing, qualification, approval, authorisation, registration** etc.

↓ Under **Market Access** only those restrictions falling under XVI (a)-(f)

↓ Under **National Treatment** only those requirements or procedures that are discriminatory

- Additional information (for transparency reasons) not necessary to schedule.

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# Services in the Doha Negotiations

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## **Doha Objectives and Principles**

progressive liberalization; increasing participation of developing countries; appropriate flexibility for individual developing countries; special priority for LDCs; no change in structure and principles of GATS; due respect for national policy objectives.

## **Scope**

no prior exclusion of sectors or modes; negotiation of (current) MFN exemptions; target dates for negotiations on GATS Rules and Domestic Regulation.

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# Services Negotiations

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□ July 2004:

- Need for progress on offers by May 2005, especially in areas of interest to developing countries
  - Negotiations to accelerated on rules (procurement, subsidies and emergency safeguards), plus domestic regulation
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# Services Negotiations (cont.)

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## □ Hong Kong

- In addition to bilaterals, requests and offers on a (voluntary) plurilateral basis; offers to be submitted by 28 February 2006
  - Model objectives
  - New timeline
  - Work to continue on rules, particularly on domestic regulation
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