

## Lecture 17: General Agreements on Trade in Services (GATS)

Dear students, this week we are going to discuss about two WTO Agreements. The first one is the General Agreement on Trade in Services (GATS), and the other one is the TRIMS Agreement, Trade-Related Investment Measures.

### CONCEPTS COVERED

- **Global Trade in Service**
- **Conditions of Developing Countries in Global trade in Service**
- **Service Sector in South Asia**
- **Service Sector in India**
- **Trade in Service and GATS Provisions**

And today we are going to discuss about the service Agreement specifically, and we also want to look into the global service trade and where we are and what the scenario of service trade in developing and developed countries is and also the service sector in India and some of the provisions of GATS Agreement, General Agreement on Trade in Services.

## GATS

- **he General Agreement on Trade in Services (GATS) is the first multilateral trade agreement to cover trade in services. Its creation was one of the major achievements of the Uruguay Round of trade negotiations, from 1986 to 1993.**
- **This was almost half a century after the entry into force of the General Agreement on Tariffs and Trade (GATT) of 1947, the GATS' counterpart in merchandise trade.**
- **While services currently account for over two-thirds of global production and employment, they represent no more than 25 percent of total trade.**

So, the GATS Agreement is the first multilateral trade agreement that covers trade in services. So, this particular Agreement concluded in the Uruguay round of negotiations,

and you can see that in most of the provisions, this service sector is a new entrant to the GATS system. So, the entire GATS system only dealt with the merchandise trade. So, the service sector, even though there were discussions to include the service sector, was never seriously discussed in the GATS and the GATS only took care of the merchandise trade, but the Uruguay round of negotiations included the service trade as well. Presently, the service trade constitutes more than 25 per cent of the total trade and also two-thirds of global production and employment. So, it contributes 25 percent to the total trade, but if we take India into consideration, it is almost 50 to 60 percent of the GDP. So, in some countries, the total service trade is 25 per cent but in India it contributes more than double of that to the Indian economy. So, the service sector is important for every country.

## GATT Period and GATS

- **Reflecting peculiarities of services trade, however, there are also notable differences in scope and content between the two agreements.**
  - a. **Unlike the GATT, the GATS covers measures affecting both the product (service) and the supplier.**
  - b. **The definition of services trade covers not only cross-border supply, but three additional forms of transaction (“modes of supply”).**
  - c. **While quota-free entry (“market access”) and national treatment are generally applicable obligations under GATT, they apply under the GATS on a sector-by-sector basis and only to the extent that no qualifications (“limitations”) have been scheduled.**

When it comes to the GATT period, GATT was dealing with a particular service trade, which means GATT was only talking about very limited services, and GATS affects both the product services and the supplier. So, the GATT was talking only about the supplier. So, the GATS, the present Agreement, talks about the service as well as restrictions on the service providers. And it talks about the modes of supply; we will see what are the four modes of supply. It talks about market access and exceptions to the national treatment principles. So, GATS is a special agreement, a sector-by-sector negotiation and acceptance by the members. So, you can see the structure of the service Agreement. There is a service Agreement and a sector-specific commitment, which are added to this main Agreement as a schedule of every country. This means that the schedule will differ from country to country, and the agreement is common. The schedule limits the opening up of a particular service sector. So, this changes from country to country, and that is basically the difference between other Agreements, for example, the goods Agreement and Service Agreement. For example, if you take the Anti-Dumping Agreement, there is no schedule; if you take the SPS Agreement, there is no schedule; the TBT Agreement, there are no country-based schedules, but in services, the commitments are put in specific country schedules. So, it means the opening up of the service sector is based on bilateral commitments. So, the Indian commitment is in the Indian schedule; the US commitment

is in the US schedule, which is attached to this particular Agreement. So, it is not a uniform commitment.

## Global Trade in Services (Features)

- **Trade in services has grown faster than merchandise**
  1. **60% of global output**
  2. **30% of global employment**
  3. **20% of global trade**
  4. **World Services trade growth- 155% between 199-2002; mfg. – 97% and Ag.- 40%**

And if we look into trade, how is it that the global trade, service trade is important for us. Almost you can say that 60 per cent of global output and now it has gone to 30 per cent of global employment and 20-25 per cent of global trade. So, the growth rate once upon a time was 155 per cent. So, you can see that there is an absolute increase in world service trade, or I would say that the movement of people or movement of services from developed countries to developing countries and the movement of persons from developing countries to developed countries has tremendously increased because of opening up of this sector. And also we can without any doubt say that India is one of the countries most benefited by opening up of this particular sector: service sector.

## Global Trade in Services (Features)

- **Holds an immense potential in terms of further expansion of world trade:**
  1. **By 2050 the world services exports would exceed merchandise**
  2. **In case of USA this situation would come much earlier- 2037**

Trade in services: You can see the expansions. The WTO has projected that by 2050, service exports will overtake merchandise trade. They say that in the case of the United States, one of the largest exporters of services, by 2037, the service trade will exceed the merchandise trade. So, it is very near. So, in the service exports or service trade, the growth rate is immense, the growth rate is much higher than the merchandise trade. So, service trade is under the WTO regime under this Service Agreement; the GATS Agreement is going up very quickly.

## Global Trade in Services (Features)

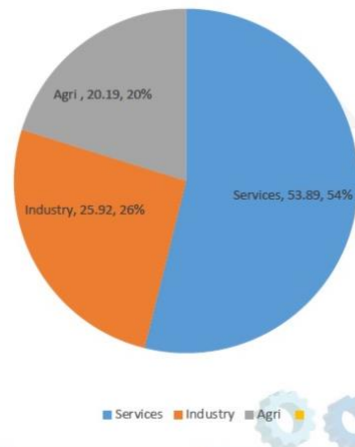
- **Developing Countries likely to benefit more:**

1. **Global gain of \$260 bn p.a. by eliminating all post UR barriers- ½ of it from services (Dee et al., 2000).**
2. **Benefits vary from under 1% to over 50% of GDP (GEP 2002, WB)**
3. **Significant gain for DCs- 1.6% (India) to 4.2% of GDP if tariff-equivalents of protection cut by 1/3 in all countries (Chadha et al., 2000)**
4. **Increased developed countries' quotas by 3% of their labour force generates gains of \$150bn p.a. (Winters et al., 2002)**

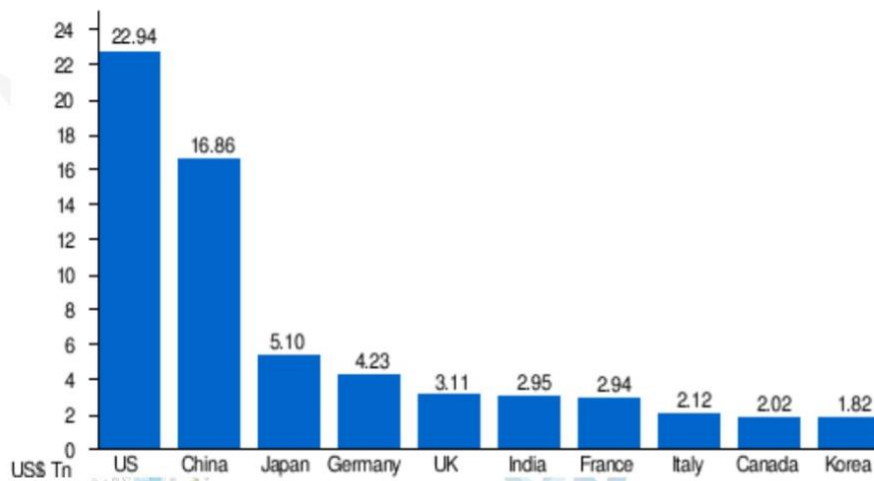
We can also see that in terms of revenue, some countries earn 50 per cent of their earnings from the service sector. In developing countries, it is said that around 4 per cent, 4.2 per cent of the GDP contribution is the service sector. In developed countries, the growth rate is around 3 per cent. So, various studies at various points of time show that there is a lot of growth rate in the service sector.



## Contribution to GDP 2021-22

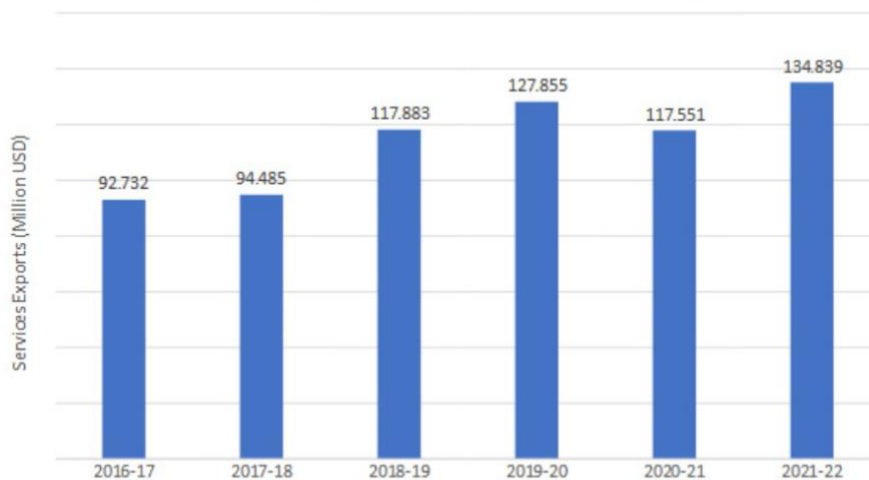


If you take India, you can see that the service sector in the last one decade, around last one decade, the service sector contribution is decreasing. So, if you take 2010, it was around 60 percent contribution to the GDP, and now it reached around 53 or 54 per cent. And this is mainly because for the last 5 years, you can see there is a growth rate from 16 to 17 percent to 26 percent of the industry. So, the industrial growth rate in India is going at a very fast pace, but agriculture, for example, I was looking into the 2021, 2022, 2023 data, and the agriculture is going down. So, now, it is less than 20 percent, around 17 to 18 percent. So, the contribution of agriculture is going down, the industry is going up, and the service sector also is going down. So, you can find the contribution to the GDP. That is why I said earlier that India's service sector is its lifeline. The growth of the service sector is its lifeline because it contributes more than 50 per cent to the country's GDP.



If you look into some of the countries, you can see what the service trade means. So, it is the US, China, then Japan, Germany, and the UK, and we were 5<sup>th</sup>. So, these are the economic data. So, we have taken over the UK and are now in the 5<sup>th</sup> economic position. So, in a period of time, we may overtake Germany as well. So, we will be the 4<sup>th</sup> largest economy in the world. So, you have to see the position of India as a service provider to the whole world. So, then the service sector should again grow then only we can, our economy will grow, and the total volume of merchandise trade will also increase, and the service sector will also grow, and the contribution to the GDP also will increase, and our total economic size will increase, and we will take over some other countries as well as the largest economies, with our largest population.

Services Exports from India (April-October)



So, this is up to 2022 data, which says what our service exports are and our service exports are; you can see that very constant even during the pandemic time. It was especially high during the pandemic time. So, you can see that from 2018 to 2019, service exports increased by almost 100 million US dollars. So, what does it mean? Though the merchandise trade stopped during the pandemic, but the service trade increased, the services increased the highest in 2021-2022 to the tune of 134.839 million US dollars. So, it means that the whole world continues to use the Indian export sector and Indian service sector all over the world. So, especially after the pandemic the service sector growth, you can see that the income from the service sector is increasing. So, continuously, it is increasing, and especially after the pandemic, the digit has gone up from 2 to 3. So, the income is going up. So, the service exports are going up and which contributes to the country's GDP.



If we look into the Indian scenario, overall, in India, it has around 55 percent or 56 percent market share. So, it was 17-18 per cent, then 55 per cent; now it is around 57 per cent maximum. So, it fluctuates from 55 to 60 per cent, but it is in decreasing mode because the industry sector is in increasing mode. So, Indian IT companies are the lifeline of the whole world. So, you have 700 global delivery centres across 80 countries and IT and other ITes services and are second in India in attracting foreign direct investment in IT and other ITes services. At the same time, the IT industry employs a very small percentage of employees. In India, agriculture contributes to employment, and now the industry also contributes to employment, not the IT industry, as our perception is that the IT industry contributes millions and millions, but it is a very small number. And every year it is adding. So, it means that if the global service sector uses more and more Indian people, the employment opportunities will increase, but you can see even in 2023 also, the number is much less. And then you can see that most of this employment is in the business process. The outsourcing industry is using more people. So, I have shown only the IT sector what its contribution is in terms of employment, it is very low, but in terms of income, it is very high. So, only the IT sector, not the service sector, only the IT sector contributes around 8 per cent or to the tune of 7 to 8 per cent or even 9 per cent of the

total GDP. So, the IT sector itself is the major contributor to the service sector in the country.

## Services Industry in India- 2021-22

- **20.19% - Agriculture**
- **Contributes 53.89% Services**
- **Industry – 27.92%**
- **Major Areas:**
  1. **Tourism**
  2. **Information Technology**
  3. **Banking and Insurance**
  4. **Hotel and Restaurant**
  5. **Consultancy, Legal and Other Professional Services**

And also, the service sector shows, as I told you, that it now contributes around 53 per cent. So, it is in a decreasing mode. So, the industry is in an increasing mode. So, the service sector if you take into consideration, the major sector is tourism, it is not the IT industry. IT industry is only second. The third is banking and insurance and fourth is hotel and store and industry. Then, consultancy services and professional services, fifth, even though we have not opened up, we will discuss the opening of the legal sector. The legal sector is still not opened up, it has limited opening, but still the consultancy and professional services are the fifth major area, contributing to almost 53 per cent - 8, 9 percent of service sector.

## Purpose of GATS

- **As stated in its Preamble, the GATS is intended to contribute to trade expansion “under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries.”**
- **Trade rests on two main points:**
  - a. **Ensuring increased transparency and predictability of relevant rules and regulations;**
  - b. **Promoting progressive liberalization through successive rounds of negotiations.**



So, if you look into the purposes of GATS, you can see that the GATS Agreement says the same purpose, which is mentioned in other Agreements: transparency, progressive liberalisation, and the promotion of economic growth of trading partners, especially developing countries. So, I think this objective is mostly suited to the service Agreement as far as India is concerned, with the economic growth and development of developing countries. Because in the merchandise trade, we are in the negative mode. We are a net importing country, and we are not an exporting country. So, here you can see that other agreements and other trade agreements also mention transparency, predictability, and progressive liberalisation. So, the same objective is also put in the service Agreement which is complied by all the member countries.

## Coverage

- **Services currently account for over 60% of global production and employment, they represent not more than 20% of total trade.**
- **The GATS applies in principle, to all service sectors, with the following two exceptions:**
  1. **Article 1 (3b) of the GATS excludes “services supplied in the exercise of governmental authority.” (Police, fire protection, monetary policy operations, mandatory social security, and tax and custom administration).**
  2. **Annex on Air Transport Services exempts from coverage measures affecting air traffic rights and services directly related to the exercise of such rights.**

And many times, we saw the contribution of the service sector. So, it is around 20 to 30 per cent of the global trade. So, you cannot discount the service sector at all. So, the service sector only excludes two exceptions: (1) service supplied in the exercise of governmental authority and (2) air transport services. So, these are the two exceptions from the service sector; otherwise, all the service sectors will come under the GATS Agreement. So, very limited exceptions are provided, like police and fire protection. So, the boundary operations, mandatory social security, tax, customs administration and also we can say that the civil service. Countries like India do not allow opening up civil services. Air transport services because air transport services are exclusively bilateral Agreements, Air Transport Agreements. So, these are the only two exemptions which are made under the Service Agreement.



## Exemptions

- **But includes:**

1. **Aircraft repair and maintenance services;**
2. **Computer reservation system services;**
3. **Selling and Marketing of air transport services.**

So it is very clear. It includes, we said that Air Transport Agreements are excluded, but it includes aircraft repair and maintenance services. So, it means that foreign service providers can open their shop in India with regard to aircraft repair. Computer reservation system services, selling and marketing of air transport services. So, this is opened up. So, some of the services of exempted areas are opened up.

## Trade in Services

- **For the purpose of this Agreement, trade in services is defined as the Supply of a service:**
  - a. **From a territory of one member into the territory of any other member;**
  - b. **In the territory of one member to the service consumer of any other member;**
  - c. **By a service supplier of one member, through commercial presence in the territory of any other member;**
  - d. **By a service supplier of one member, through presence of natural persons of a member in the territory of any other member.**

And when we come back to the service sector, you can see what exactly trading services mean? What is the supply of services? (1) Supply of services means it must be from one territory of one member country to the territory of another member country that is the first condition. And (2) in the territory of one member to the service customer of any other member. So, again, two countries are required, one territory of one member country to the service given to consumers of another country. (3) The service supplier of one

member country goes to another country and establishes its commercial presence. This is the third mode which we will discuss, and (4) one country supplies natural persons to provide services in the territory of another country. So, the modes of supply are based on these four principles and four modes of supply are described.

## **GATS Scheme**

- **Agreement**
- **Annex on Article II – Exemptions**
- **Annex on Movement of Natural Persons**
- **Annex on Air Transport Services**
- **Annex on Financial Services**
- **Annex on Telecommunications**
- **Annex on Negotiations on Maritime Transport Services**



So, we will elaborate on the four modes of supply. So, here is the entire GATS scheme, which includes all these Agreements. For example, the main Agreement exemptions in Article 2, then there is an annex on natural persons. So, most of the countries have the mode for service the movement of natural people. So, there are exemptions which are put in the annex. Then annex on air transport services, I said that this mostly happens through bilateral Agreements which are not included in the Service Agreement. These are exemptions. Then, annex on financial services, telecommunication services, and maritime transport services. So, the service Agreement includes all the main Agreements plus these particular annexes.

## Individual Provisions of the GATS

- **Part I (Article I):**

**Outlines the scope of the Agreement, its sectoral coverage and declines trade in services.**

- **Part II (Articles II to XV):**

**Sets out Members' general obligations which apply either conditionally, i.e., contingent on the existence of specific commitments, or unconditionally to all sectors.**

- **Part III (Articles XVI to XVIII):**

**Specifies the scope of the specific commitments governing market access and national treatment and any additional commitments which Members may undertake in scheduled sectors.**



So, here you can see some of the provisions of the Agreement. So, the part I deals with the sectoral coverages and part II deals with general obligations. And part III talks about the specific commitments governing market access and national treatment principles. And even some of the countries can say no commitments with regard to market access and also with regard to national treatment principles.

## Individual Provisions of the GATS

- **Part IV (Articles XIX to XXI):**

**Provides a framework for future services rounds, specifies the structure of schedules, and the procedures governing modification or withdrawal of commitments.**

- **Part V (Articles XXII to XXVI):**

**Clarifies institutional and procedural issues, including the mandate of the GATS Council for Trade in Services, and recourse to dispute settlement.**

- **Part VI (Articles XXVII to XXIX):**

**Includes final provisions and definitions.**



And Part IV deals with future service rounds which talks about the structure of the schedules and procedures. And Part V talks about institutional procedural issues, which talk about the GATS council. And also, part VI talks about the final provisions and definitions.

## Description on Individual Provisions of the GATS

### • Part I (Article I):

Article I stipulates that GATS provides measures by Members affecting trade in services. GATS provisions shall be applicable universally, irrespective of the fact that, such measure is taken at central, regional or local government, non-governmental bodies exercising delegated powers. It covers:

- The purchase, payment or use of a service;
- The access to and use of, in connection with the supply of a service, services that offered to public generally;
- The presence, including commercial presence, of persons of a Member for the supply of a service in another territory Member.

So, if you look into part I, which we already talked about, trade in services, this first part applies to old countries. So, whether it is, the central government, it must make sure that these provisions are applicable at all levels of governance. All levels, including the central, regional, local government and even non-governmental bodies comply with these particular provisions. For example, in the service sector, the important criterion is most of the service providers are private entities. So, it is applicable to non-governmental entities and bodies as well. So, it covers purchase, payment or use of a service, access to and use of in connection with the supply of services and offer certain services offered to the public generally. Then, commercial presence and commercial presence we already said with regard to the financial and other areas.

## Description on Individual Provisions of the GATS

### • Part II (Articles II to XV):

Under the GATS, the **most-favoured nations (MFN)** has been provided under Article II.

This MFN principle is a cornerstone of the multilateral trading system that conceived after World War II, which seeks to replace the frictions and distortions of power-based (bilateral) policies with the guarantees of a rules-based framework.

MFN obligations is applicable to any measure that affect trade in services in any sector, covered under GATS.

And here, the most favoured national treatment is provided in Article 2. So, the MFN principle is we said that one of the corner stones or one of the cardinal principles of WTO Agreements. So, the MFN clause is included in Article 2.

## Description on Individual Provisions of the GATS

- **Part III (Articles XVI to XVIII):**

- **Part III broadly speaks about the provisions relating to market access, national treatment, and purpose of the commitments.**

- **Under Article XVI, the market access provisions cover six types of restrictions that must not be maintained in the absence of limitations and those restrictions are related to:**

- a. The number of service suppliers;**
- b. The value of service transactions or assets;**
- c. The number of operations or quantity of output;**
- d. The number of natural persons supplying a service;**
- e. The type of legal entity or joint venture**
- f. The participation of foreign capital**

In the third part, we can see specifically about market access and national treatment. And also we can see that certain restrictions and members are free to impose certain restrictions with regard to the number of service suppliers, then value of service transactions, then number of operations or quantity of output, the number of natural persons, and the type of legal entity whether it is a joint venture or collaborations or what is the legal entity of those who are coming to your country for providing service can be regulated, the participation of foreign capital. So, it means that these are the heads where a domestic country can put restrictions on providing supply; otherwise, they cannot put restrictions.



## Description on Individual Provisions of the GATS

- **Part IV (Articles XIX to XXI):**

- **Article XX speaks about the Content of the Schedule, in which, the Members require to submit a schedule of commitments.**
- **However, the provision does not prescribe the sector scope or level of liberalization. Therefore, on one hand, some Members have limited their commitments to less than a handful of sectors, while others have listed several dozens**
- **The Article also specifies some core elements to be covered in each Member's schedule, which subsequently, provides a schedules, that form "an integral part" of the GATS.**



And here, Article 20 talks about the schedule. So, the Schedule of Commitments: every country has a schedule of commitments which they have to give under Article 20. So, the sectors scope; you can liberalise your own sectors. For example, India has opened up many sectors - financial institutions, tourism and many others sectors India has opened up. Some of the sectors have not been opened up, for example, the legal sector, the wholesale sales sector and very few sectors we have still not opened up. For example, the higher education sector. So, India may be opening very soon or in the future. So, these schedules of commitments are integral parts of the service Agreement.

## Description on Individual Provisions of the GATS

- **Part V (Articles XXII to XXVI):**

- **Article XXII broadly speaks about the consultation provision, in which, the Council for Trade in service or the Dispute Settlement Body (DSB) may, at the request of a member, shall consult with other member(s) in respect of any matter, that has not been possible to find a satisfactory solution through consultation.**
- **While Article XXIII deals with the Dispute Settlement and Enforcement mechanism, there Articles XXIV, XXV and XXVI establish the provisions for Council for Trade in Service, Technical Cooperation and harmonious relationship with Other International Organizations.**



And here again, most importantly, Article 22 talks about the application of the dispute settlement procedures to the service Agreement. And also talks about the dispute settlement procedures and the role of the service council or council for trade in services

technical cooperations. So, the Agreement talks about the application of dispute settlement and also talks about the role of the council, the GATS council.

## Description on Individual Provisions of the GATS

### • Part VI (Articles XXVII to XXIX):

**Article XXVII deals with provisions relating to denial of benefits. According to this provision, any Member may deny the benefits of GATS:**

- a) To supply of a service, if such service is supplied from the territory of a non-member or of a member to which the denying member does not apply the WTO Agreement;
- b) To the supply of a maritime transport service, if it has been supplied by a vessel or by a person who operates that vessel, registered under the laws of a non-member or member does not apply to WTO agreement
- c) To a service supplier that is a juridical person, if such supplier covered by the denying member who does not apply for WTO agreement.

Also, you can see that Article 27 deals with the denial of benefits. In certain cases, the members can deny the benefits. For example, in the case of supply of service from a non-member of a member. So, this from a non-member is not applicable. Maritime transport service so, if it has been supplied from a vessel or a particular person who operates that vessel registered under the laws of a non-member country. That means, if a ship carries a flag of a non-member, then the WTO rules cannot be applicable. Then, if the service person is a legal entity. So, then also if such a supplier is covered by the denying member who does not apply for the WTO Agreement, that means on the organisations and legal entities certain exemptions are applicable.

## Description on Individual Provisions of the GATS

### • Part VI (Articles XXVII to XXIX):

**Article XXVIII deals with the definitions, that are pertinent to consider, in order to understand the nuances of the global trade in service sector with the GATS provisions to strengthen the service sector. Few important definitions are:**

1. “measure” that means efforts taken by the Members in a form of law, regulations, rules, procedure, decisions, administrative actions and many more.
2. “supply of a service” includes the production, distribution, marketing, sale and delivery of a service.
3. “service supplier” refers to any person that supplies a service.



Then you can see some of the provision Article 28 which talks about what you exactly mean by a supplier, supply of service and service provider, service supplier, measure, etcetera. So, because for the service suppliers, uniform definition is very important, which clearly says that any person that supplies service. This is uniformly applicable to all 164 member countries, the same definition.

## Description on Individual Provisions of the GATS

- **Part VI (Articles XXVII to XXIX):**

**Article XXIX provides Annexes that form an integral part of this Agreement.**

**These Annexes specify the conditions under which a Member, at the entry, is exempted from its obligations till new exemptions have been applied by the WTO Agreement**



Then you can see the other provisions Article 29. So, this annex specifically puts the conditions. So, certain exemptions and obligations and new obligations and exceptions are applicable to the WTO Agreement.

## Conclusion

- **GATS, which generally laid down The General Agreement on Trade in Services, is a relatively a new Agreement under WTO.**
- **GATS has been formed and regulated at the parlance of the General Agreement on Tariffs and Trade (GATT), which specifically addresses the need for a trade agreement in service.**
- **Large segments of the services economy, from hotel to personal services are traditionally called as domestic activities, that do not lend themselves to the application of trade policy.**
- **Therefore, Service has become the most dynamic segment of international trade. Since 1980s, world service trade has grown faster, albeit from a relatively modest basis, than merchandise flows.**



So, we can say that the GATS Agreement opened up a new economic scenario in developing countries. It opened up opportunities, especially for the developing countries. And also it is the first time that the services came for negotiations to the Uruguay round

of negotiations. And the large economies opened their service sector at the same time the developing countries also opened their service sector. And this opening increases the opportunity for most of the developing countries. And in the next lecture, we will see the different modes of supply and only the controversies with regard to certain areas like the movement of natural persons mode four. Otherwise, the services Agreement is highly effective, when compared to the 1980s or before 1995 and after 1995, the service sector has had a very good growth rate when compared to the merchandise trade. And it is predicted that the service trade will take over the merchandise trade by 2050.

So, it means that the service Agreement has a greater role to play. Most importantly, the service agreement has to open up more areas. The countries like India should open up all areas. So, more opportunities will come, with more investment in India, and more opportunities will be opened up for Indians abroad as well. So, the service sector is going to decide the economic growth of your country in the next decade. So, in the next class, we will deal with the different modes of service.

Thank you.