

For other
attachments are
expected to be added



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For example, “ supply of a service” is defined as “ production, distribution, marketing, sale and delivery of a service”, and a “ juridical person” is defined in terms of the ownership of equity or control of an enterprise etc.

Comments

Ongoing Process:

GATS came into effect with several annexes, attached Ministerial Decisions and Understandings. However, in an ongoing process, additional annexes and other attachments are expected to be added over time. Some of these annexes are permanent and cover important issues. These include exemptions and movement of natural persons. We have already said a few words about these above.

Financial Services:

An important sector covered by GATS is that of financial services. It identifies sixteen forms of financial services covered by its special rules, describes them in considerable detail, and distinguishes between insurance and insurance-related services on the one hand and all banking and other financial services on the other.

Sensitivity:

Trade in financial services is a highly sensitive matter because it can be easily misused for fraudulent purposes and thus seriously hurt the economy of the host country. It needs to be recalled that the performance of financial system of a country plays a crucial and indispensable role in development and stability of its economy. The users of financial services (such as

customers of a bank, holders of insurance policies, contributors to mutual funds and pension funds, holders of bonds and equity shares, etc.) can be easily cheated unless they are well protected by strong laws and intensive monitoring of the activities of the financial system.

Safeguards/Exceptions:

To some extent, GATS takes note of the risks associated with freedom of provision of financial services by foreigners and provides three exceptions: 1.

Essential Government Services: “ Services supplied in the exercise of governmental authority” (viz.

, the activities of central banks or other authorities carrying out monetary and exchange rate policies) are excluded from the purview of GATS. 2.

Statutory Services: Foreign service suppliers can also be excluded from supplying those services which fall in the field of statutory social security, public retirement plans or similar other activities. 3. Prudential Carve-Out:

GATS also provide another exception (termed “ prudential carve-out”) from its rules with the explicit purpose that the governments should be able to protect the financial system and its users. However, it also says that this exception is not to be used as an escape route from obligations imposed by GATS.

Conditions:

However, this exclusion is subject to two conditions:

Provision by a Public Entity:

In the host country, these activities should be carried out by a public entity (that is, the government itself or a statutory body created for this purpose) on behalf of the government, or by using the financial resources of the government.

Non-discrimination:

The domestic non-governmental financial suppliers must also be excluded from supplying these services.

The Outcome:

Thus, objectively speaking, from the very beginning, GATS was heavily loaded against the developing and least developed countries by compelling them to open up their financial sectors to the foreigners. In this context the following facts should also be noted: i. Weaknesses of Poorer Countries: The poorer countries are not in a position to take advantage of 'free' access to the services markets of developed countries.

Only some countries like India happen to be in a position to take this advantage— and that also only in some selected services like software and business processing. The imbalance of GATS is further supported by the fact that a typical developing or least developed country has an underdeveloped financial system and its government does not have enough capacity and expertise to effectively monitor and regulate the system. In general, the legal and institutional framework of such a country is not sound enough to provide necessary protection to the ill-informed investors and users of these services. ii. Practical Approach of Developed Countries: Even in these limited

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fields, the developed countries have tried to remain as self-protective as possible, while insisting that the developing countries should provide unrestricted access to their services markets. iii. Commitments by Developed Countries: The Uruguay Round included a separate Understanding regarding scheduled commitments on financial Services by developed countries, (a) These countries adopted, what was termed and still principle.

Under this principle, they agreed to maintain at least the existing level of liberalisation of trade in services, (b) They also agreed to allow foreign suppliers of services to compete with domestic suppliers for purchase of financial services by the government, (c) In addition, they agreed to reduce the scope of monopoly rights affecting the sector, and to permit cross-border trade, without the need for a commercial presence, in several forms of insurance and related services, as well as in financial information and auxiliary services, (d) Other commitments under this approach concerned commercial presence, the provision of new services by established suppliers, transfers of information, temporary entry of personnel, and non-discrimination in national treatment. iv. Violating Commitments: However, as noted above, the developed countries have been very hesitant in implementing these commitments.

In USA, for example, several States are reportedly passing legislation to the effect that government services can be provided by agencies and business firms only by employing people from within the USA.