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**GATS, MODES OF SUPPLY AND THE MANUAL ON STATISTICS OF
INTERNATIONAL TRADE IN SERVICES: THE CASE OF THE MOVEMENT OF
NATURAL PERSONS**

Submitted by WTO¹

I. TRADE IN SERVICES AND THE UR

1. Services production has rapidly become a core economic activity for the majority of the countries. In 2000, the average share of services value added in GDP in developed countries increased by 21% since 1980, reaching 68%. In the same year, developing countries' share was 52%, more than 10 percentage points higher than in 1980. Services tend to be an even more important source of employment, resulting from a shift from the agriculture and industry sectors to the services-producing sector. The strong and growing role of services in world production and employment is not, however, reflected in international trade, where services represents about one fifth of world trade.

2. This imbalance between production and trade is felt to result, on the one hand, from the relative non-tradability of a significant number of services requiring the proximity between the supplier and the consumer for their delivery, and, on the other, from monopolistic regimes affecting several services segments.

3. However, rapid technological advances, such as in computing and telecommunications, including the development of the Internet and electronic commerce, have allowed a number of services to become internationally tradable. Tele-health and on-line courses are striking examples. Also, governments have found it increasingly difficult to continue operating traditional regimes in front of rapid technological developments. Furthermore, the recognition of economy-wide benefits of efficient infra-structural services such as transport, finance and communications, stressed the need for liberalisation in these sectors.

¹ Paper prepared by Guy Karsenty, Statistics Division. The views expressed in this paper are those of the author and not necessarily those of the WTO Secretariat.

4. The Uruguay Round of Trade Negotiations took place in this rapidly changing context. Unlike previous trade rounds which focused on trade in goods, in the Uruguay Round, negotiators undertook the enormous task of integrating new areas in the international trading system – services and trade-related aspects of intellectual property rights. The major results of the Uruguay Round are the creation of the World Trade Organization (WTO) and the multilateral trade agreements including the Agreement on Trade-Related Aspects of Intellectual Property Rights and the General Agreement on Trade in Services (GATS) which came into force on 1 January 1995.

II. THE GATS AGREEMENT

(a) *The GATS*

5. The General Agreement on Trade in Services (GATS), which came into force on 1 January 1995, is the first set of multilaterally negotiated, and legally enforceable rules covering international trade in services. According to the GATS, services can be supplied through four modes:

- Mode 1, cross-border supply, takes place when the consumer remains in his or her home territory while the service crosses national borders, the supplier being located in a different country. The delivery of the service can be effected, for example, by mail, telephone, fax, Internet or other computer mediated links. Freight transport services, correspondence courses and telediagnosis are examples of cross-border supply. Mode 1 corresponds to the traditional notion of trade. During the Uruguay Round, trade negotiators agreed that the Agreement, to be really effective in the services context, needed to cover others modes of supply allowing the proximity between the supplier and the consumer, i.e.:
- Mode 2, consumption abroad, occurs when a consumer moves outside his or her home territory and consumes services in another country. Such tourist activities as visits to museums and theatres are typical examples of consumption abroad. Medical treatment of non-resident persons and language courses taken abroad are other examples of consumption abroad.
- Mode 3, commercial presence in a market abroad, covers not only juridical persons in the strict legal sense, but also legal entities that share some of the same characteristics, such as representative offices and branches. Medical services provided by a foreign-owned hospital, courses in a foreign-owned school, and services supplied by a domestic branch or subsidiary of a foreign bank are examples of supplies through commercial presence.
- Mode 4, presence of natural persons, occurs when an individual has moved temporarily into the territory of the consumer to provide a service, whether self employed or as an employee. Mode 4 applies to two areas: trade in services in the BPM5 traditional sense (e.g., financial auditing services by an auditor sent by a foreign firm, or computer consultancy services), and non-permanent employment (e.g., short term employment of foreign construction workers).

6. The pillars of the GATS are general obligations and specific commitments. General obligations - such as the most-favoured-nation (MFN) treatment and transparency, apply to all WTO Members and virtually all services². Specific commitments resulting from negotiations are limited to the sectors and modes of supply in which a member has chosen to undertaken access obligations³.

² Except services provided in the exercise of governmental authority and most part of air transport services (traffic rights and services directly related).

³ Specific commitments apply to measures on international trade in services, such as laws, regulations, administrative actions and decisions affecting the purchase, payment or use of a service or the presence of foreign service suppliers. For a given sector and mode of supply, the relevant commitment may vary between full competition and denial of any degree of market access and national treatment. In many cases, members

(b) Coverage of the presence of natural persons

7. Mode 4 can be described in terms of both duration and purpose of stay. The supplier gains entry to fulfil a service contract, or as an employee with respect to the supply of a service under the GATS. When the service has been delivered, the natural person should leave the country. Hence the temporary nature of the movement as well as of the type of contact between the service provider and the consumer of the service are key criteria for this mode of supply.

8. However, the GATS does not define what constitutes temporary presence. The Agreement merely exempts from its coverage measures regarding citizenship, migration, residence and employment on a permanent basis. When defined in countries' schedules of commitments, the length of stay varies between about three months for business visitors up to between two to five years for intra-corporate transferees.

III. THE MANUAL ON STATISTICS OF INTERNATIONAL TRADE IN SERVICES (MSITS)

9. The Manual was prepared to meet the wide growing needs of relevant statistics on international trade in services, including the needs arising from service trade negotiations⁴. The wide coverage of the GATS has stressed the need for a coherent statistical framework beyond the traditional notion of international trade in services.

10. To meet this challenge, the Manual builds upon internationally agreed statistical standards. Its cornerstones are:

- an extension of definitions and classification of service transactions between residents and non-residents as defined in the fifth edition of the IMF Balance of Payments manual (BPM5);
- a new framework on concepts, definitions and classifications on services supplied through foreign affiliates in host countries, called Foreign Affiliates Trade in Services (FATS) statistics.

11. In addition, the Manual proposes a simplified statistical approach that may be used as a starting point in allocating BPM5 and FATS transactions to the GATS modes of supply.

12. However, while these building blocks cover relatively well the first three modes of supply, they provide only partial information with regard to mode 4. For this reason, this mode of supply is further dealt with in one of its annexes.

(a) Mode 4 and the main text of the Manual

13. The main text of the Manual identifies three sources of information related to mode 4: i) services transactions in the BOP current account; ii) transactions in the BOP income and transfers accounts; and iii) information derived from FATS statistics.

have opted for an intermediate solution, subjecting their commitments to particular limitations. Typical market access limitations, listed in GATS, are quota-type ceilings on the number of service suppliers, their operations or employees, and restrictions on the legal form of establishment or the participation of foreign capital. Frequently used national treatment limitations concern the eligibility of foreign suppliers for subsidies and restrictions on foreign land ownership.

⁴ The Manual was prepared by the Interagency Task Force on Statistics of International Trade in Services. Membership of the Task force comprises the Statistical Office of the European Communities (Eurostat), the IMF, the Organisation for Economic Co-operation and Development (OECD), the United Nations Statistical Division (UNSD), the United Nations Conference on Trade and Development (UNCTAD), and the World Trade Organisation (WTO), with OECD as chair and secretariat.

(i) Services transactions in the BOP current account

14. Service components between residents and non-residents in the BPM5 current account include transactions supplied domestically by foreign natural persons, and are thus relevant to mode 4. Particularly relevant are the following categories: computer and information services, other business services, personal, cultural, and recreational services, and construction services. However, these categories cover, indistinguishably, transactions related to other modes of supply, and especially mode 1, which may be indeed statistically more significant in many cases.

15. The Manual proposes a simplified approach, as a starting-point to extract trade values by modes of supply. The merit of such an approach is more to enlighten the relationship between modes of supply and services categories than to allow their full allocation.

ii) Transactions in the BOP income and transfers accounts

16. The Manual recognises the relevance non-service transactions in BPM5. These are labour-related flows in the income and transfers accounts in the BPM5 current account, i.e.:

- Compensation of employees comprises wages, salaries, and other compensation received by individuals for work performed for residents (natural or juridical persons) of economies where they are not resident. In addition to staff working abroad for less than one year, compensation of employees covers potentially longer-term employees such as border workers and local employees of embassies, consulates, and international organisations.
- Workers' remittances are current transfers by migrant workers who are employed in a foreign economy and considered to be residents there (more than one year). This information usefully complements compensation of employees which does not concern persons staying abroad for more than one year, since GATS commitments in mode 4 often cover more than one year stays.

17. There are some limitations in the use of these categories as mode 4 statistical indicators. Compensation of employees and workers' remittances relate to workers in non-service sectors such as agriculture and manufacturing, as well as government employees which are beyond the scope of the GATS. It also include, in addition to foreigners employed by foreign companies established in the host economy, those working for national-owned firms. However, the coverage of the latter category by GATS-mode 4 is subject to considerable debates (although this note argues they should be included in a statistical assessment of mode 4). In addition, workers' remittances refers only to the income part that has been sent home, and not spent or saved in the host economy. Furthermore, it concerns all foreign workers, not only temporary ones. Also, a significant proportion of remittances does not flow through official channels and may not be included in the figures.

18. The Manual does not mention migrants' transfers -which represents the flow of goods and changes in financial assets associated with international migration, as this category does not pertain to the BPM5 current account, although it also provide useful supplementary information in relation to mode 4.

iii) Information derived from FATS statistics

19. The FATS statistical framework has been designed to provide information on commercial presence. However, information on presence of an important category (for which a number of commitments have been made) of natural persons may also be available from this source. Since FATS variables include employment by foreign affiliates, if their foreign non-permanent employees could be separately identified, it would provide relevant information on mode 4.

(b) *Mode 4 in the Manual's Annex, and linkages with migration statistics*

20. The main text of the Manual only contains partial information on mode 4, in the context of the balance of payments and FATS frameworks. This subject is discussed more extensively in its first Annex, especially with regard to relevant information outside these two frameworks. Nevertheless, the Manual recognises that a comprehensive statistical framework for the measurement of the movement of natural persons still needs to be developed, and that its Annex is only a first step in the process of constructing such a system.

21. The Annex discusses the coverage of mode 4 in the GATS context (see Box1), and notes that trade through this mode often takes place through employment and under conditions detailed in the national commitments. It describes the GATS Annex on Movement of Natural Persons Supplying Services Under the Agreement, and notes the non-permanent status of the presence as a criterion to qualify for GATS mode 4. It also notes that the temporary or “non-permanent” status may be interpreted by each member state and might also differ for different categories of persons. It stresses that GATS' mode 4 does not address international migration and that permanent employment in the receiving country is not covered. However, it is noted that even though work permits are not subject to multilateral trade negotiations, they have been referred to in some countries' commitments, suggesting that statistics on the number and type of work permits (e.g., by duration and occupation) would be of great interest to trade negotiators.

Box 1. Coverage of natural persons as described in the Annex of the *Manual*

- A. who are independent service providers abroad
- B. who are employed abroad by service companies
 - i. that are foreign (owned, controlled, or affiliated) companies with some presence in the host country; or
 - ii. that are domestically owned firms; or
 - iii. that have no lasting presence in the host country, e.g. if a foreign service supplier sends its employee(s) to the host country to provide a service

22. The Annex examines the relevance of the one year rule for residency as used in the BPM5, the SNA contexts, as well as in the UN recommendations on international migration. It concludes that it does not correspond to the meaning of a “temporary stay” adopted in the GATS, and that available statistical information on economic activities of residents will contain elements related to the temporary presence in the GATS sense.

23. The Annex states that when a natural person provides a service, it is the value of his or her service, or product delivered that is the main variable to be identified and measured. This “value” does not present special measurement difficulties in the case of a service contract between residents and non-residents. However, it is more complex to define in the case of employment, taking into account the need to avoid double counting between, for example, modes 3 and 4. The Annex suggest to use indicators such as number and income of foreign natural persons temporarily engaged for the delivery of services.

24. The Annex also stresses the relevance of the following classifications:

- the UN CPC provides the basis for classifying different services as products of economic activities, including those delivered by foreign natural persons supplying services;
- the ILO International Standard Classification of Occupations (ISCO-88) to distinguish between the different categories of employment;
- the UN International Standard Industrial Classification of All Economic Activities (ISIC) which could be especially relevant in the context of a lack of statistical information on the distribution of foreign employment according to occupation;

- the International Classification of Status in Employment (ICSE-93), relevant to identify “independent service providers” which are often subject to GATS-specific commitments
25. The Annex identifies elements related to the presence of natural persons in the UN Recommendations on Statistics of International Migration (1997), which includes, for example, temporary migration for the purpose of work.
26. More specifically, the UN framework covers:
- foreign border workers; those supplying services under the GATS would fall under mode 4;
 - visitors and foreign business travellers; business visitors would be covered under the GATS;
 - migrants for settlement: and migrants having the right to free establishment or movement, which are excluded from the GATS, except that some entrepreneurs or investors may in some cases fall under the scope of mode 3 – commercial presence;
 - other migrant workers, some sub-categories of which are relevant to mode 4, within the limits of the occupation/activity, i.e., seasonal migrant workers, contract workers, project-tied workers, and temporary migrant workers.

IV. ALTERNATIVE PRESENTATION OF THE PRESENCE OF NATURAL PERSONS AND REMARKS ON COVERAGE

(a) Alternative presentation of the presence of natural persons

27. Box 1 in Section 3(b) shows the coverage of natural persons as described in the Annex of the Manual, i.e., as persons:

- A. who are independent service providers abroad
- B. who are employed abroad by service companies
 - (i) foreign companies with some presence in the host country; or
 - (ii) domestically owned firms; or
 - (iii) that have no lasting presence in the host country, e.g. if a foreign service supplier sends its employee(s) to the host country to provide a service

28. However, this presentation has a number of shortcomings with regards to its applicability to statistical compilation:

- Category B above addresses employees both in the receiving (i.e., B(i) and B(ii)) and in the sending countries (B(iii)). It seems to suggest that the compiling (host) country has to measure employment in the sending country as well, which might be problematic, given that such employment contracts are not under the compiling country's legislation.
- There is no clear separation between services contracts (transactions) and short-term employment. Service contracts are referred to in A and B(iii) (where, what would really matter, is the service transaction with the foreign service supplier, not its employees).
- An implication of the remark above is that BOP transactions are covered indistinguishably in A and B, and the employment activity that is supposed to be measured is not clearly delineated in B
- The assignment of B(iii) in the employment category leads to a situation that might be difficult to translate in statistical terms. For the supply of the same service (e.g., visits of architects) there might be many movements of the same natural person across the border, or, several different natural persons (e.g., software consultancy). Again, in these cases, the service transaction is more relevant than the many movements that could be associated with it.

29. Box 2 suggests an alternative presentation of the scope of the movement of natural persons, from the viewpoint of the recipient/importing country. The only substantial difference compared with Box 1 is the re-allocation from B(iii) to A.

Box 2: Alternative presentation of the movement of natural persons in country A, and statistical coverage

Categories	Statistical coverage
I. Service contracts, delivered in the host country by independent foreign supplier, or its employee(s)	BOP: Service transactions between resident and non-residents, major BPM5 services components
II. Employment contracts (non-permanent), for foreigners, in all domestic firms	BOP: compensation of employees, with adjustments (service sectors, short-term but more than one year, etc.) Employment/migration statistics: short-term migrants working in services. Would need adjustments for short-term but more than one year
(a) of which: foreign-owned or controlled resident services companies	A subset of the above; could be derived using the FATS register

30. The statistical coverage seems more clear with this presentation and the drawbacks listed in the previous section are not applicable. Thus, relevant statistical guidelines would be easier to draw. It is proposed to seek for transaction values for category I (from BOP services transactions), and for income and other variables (such as number of employees, inflow, etc., by activity, occupation, and country of origin) for category II.

(b) Remarks on the coverage of companies

31. The Manual considers mode 4 in the wide sense, i.e., including in national-owned companies. However, although GATS coverage of mode 4 in foreign-owned companies is very clear, the coverage of short-term employment in domestic companies is subject to passionate debates. Beyond these debates, statisticians find interest in measuring mode 4 in the wide sense, but given the uncertainty about the legal coverage, identification of employment in the foreign-companies subset would be of utmost relevance.

32. There is also the issue of whether it is the activity (service) of the employing company that matters, or the occupation of the employee. It is believed that all occupations/activities should be addressed, with a particular focus on services occupations/activities. For similar reasons, in the Manual, FATS statistics cover all companies, not just those providing services as a major activity, although there is a much more detailed breakdown for service activities in the proposed classification (ICFA, based on ISIC).

33. There are other similarities between FATS and mode 4/employment statistics. In both cases, the statistics are often readily available, but for a wider population. The challenge is to identify the subset to be measured.

V. CONCLUDING REMARKS

34. Statistics on trade in services have been designed to suit the needs of trade analysts, trade policy makers and trade negotiators. In a quite different context, migration/labour statistics have been designed for, and to monitor migration and labour policies.

35. It is thus comprehensible that these statistical domains widely differ, with regard to concepts, definitions, classifications, statistical populations, etc.. However, there is an area of

increasing interest at the junction of these domains, the so-called presence of natural persons under the GATS.

36. There is no satisfactory statistical framework for the measurement of the economic impact of these persons in trade statistics. It is believed however that migration/labour statistics could supply useful information, especially if temporary employment were included, bearing in mind a number of limitations, such as:

- Duration of stay. The UN recommendations on migration statistics consider 1 year to be the borderline, but GATS commitments generally refer to longer time periods. Furthermore, stays less than three months are often excluded. However, the author of the present paper believes that a "full" one year rule could be considered as a useful proxy.
- Occupation or sector. Information by economic sector may give useful information, especially when statistics by occupation are lacking. However the sectoral classification used are generally not detailed enough to allow an analysis on the movement of natural persons by relevant service categories.
- Country comparability of statistics is often limited due to the different classification systems and definitions used, such as for the definition of migrant (based on nationality, country of birth, etc.), classifications of education, qualifications, or occupation.

37. It has been argued that tuning of migrations statistics concepts, e.g., duration of stay, and categories of migrants and non-migrants, could be very helpful for trade policy needs. However, it is unlikely that trade policy needs be duly taken into account in migration statistics in the short-term. It should also be noted that GATS mode 4 has not been translated into precise statistical requirements yet. It is nonetheless believed that the alternative presentation introduced in this paper might re-enforce the links between these statistical areas.

38. Finally, the present paper argues that, even in its present form, migration/labour statistics could be quite relevant to give proxies for GATS' mode 4 trade. Major problems would more be related to the lack of comprehensive, regular, and co-ordinated data collection and dissemination by international agencies, and the lack of inter-country comparability of reported data.

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