

# The Concept and Characteristics of Trade in Services in International Law

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**Abstract:** This paper explores the evolving concept and legal characteristics of international trade in services, emphasizing the growing importance of the service sector in the global economy. The study examines the challenges in defining “services” in legal and economic contexts and reviews the international legal framework, particularly the General Agreement on Trade in Services (GATS). By analyzing the modes of service delivery and sector classifications, the paper highlights the complexity and dynamism of service trade regulation. It concludes that while services are central to economic development, their legal treatment remains fluid due to their intangible, diverse, and rapidly changing nature.

**Keywords:** Trade in services, international law, GATS, WTO, service sector, economic globalization, legal framework, service classification, liberalization.

**Introduction:** The global economy has experienced a significant shift toward service-based activities, with trade in services becoming one of its fastest-growing components. Despite its growth, the sector faces legal and regulatory challenges that hinder liberalization and international cooperation. Unlike goods, services are intangible, often inseparable from their delivery, and vary in classification and treatment across legal systems. This paper investigates the conceptual underpinnings of “services” and examines how international law, particularly under the GATS framework, addresses the complexities of cross-border service provision.

## METHODS

This research is based on a qualitative analysis of legal texts, international treaties (notably GATS), and scholarly interpretations concerning trade in services. Primary sources include the text of the General Agreement on Trade in Services, the Treaty of Rome, and sectoral classifications such as the UN’s Central Product Classification (CPC). Secondary materials consist of legal and economic scholarship analyzing the integration of services into international trade law. The paper applies a comparative legal method to contrast domestic and international approaches to defining and

regulating services.

## RESULTS

The analysis reveals that there is no universally accepted definition of “services” in international trade law. Key findings include:

- Services differ fundamentally from goods in their immaterial nature and consumption dynamics.
- GATS introduces a functional categorization of service trade through four modes of supply.
- The service sector is classified into 12 core areas encompassing over 160 sub-sectors.
- Regulatory frameworks acknowledge both the need for liberalization and the preservation of domestic policy autonomy.
- The notion of “public services” is excluded from GATS to protect governmental sovereignty over essential services.

## DISCUSSION

The findings demonstrate that the legal characterization of services remains fragmented and context-dependent. The evolution of GATS has provided a structured, albeit flexible, mechanism to address the global trade in services. However, national laws and regional agreements often diverge in their

definitions and commitments. The discussion also highlights the dual nature of services—economic and legal—positioning trade in services at the intersection of policy, market liberalization, and sovereign regulation. As technological and economic changes accelerate, international legal instruments must adapt to the emergence of new service models and delivery methods.

Nowadays, the importance of the services market for international trade and the world economy as a whole cannot be ignored. The development of the service sector accelerates countries' economic growth. However, there are still many barriers to international trade in services. Therefore, the main issues in international trade negotiations are the liberalization of international trade in services and the economic security of national markets.

Today, the service market is one of the fastest-growing sectors of the world economy. Although services themselves are increasing rapidly, they serve as a decisive resource in the manufacturing of products, and therefore, services account for approximately 50 percent of world trade in terms of value added. Countries have begun to include trade-in-service provisions in regional trade agreements.

To understand the concept of “service”, it is necessary to turn it into the theory of economics because services have an economic nature. Until now, there was no clear definition of the concept of “service” in international trade law. On the one hand, in the science of civil law, “service” means the actions of the subjects of civil transactions that do not end with a specific result or end with an intangible result. Attempts to define the concept of “services” by specific characteristics, for example by comparing the “intangibility” of services with the “tangibility” of goods, have lost their relevance in the development of the economic sphere. In contrast to goods, which can be moved and stored, services are immobile and cannot be stored. The difference between services and goods is that the provision of services is inseparable from their consumption, while the production and receipt of goods are two separate processes. Accordingly, the process of providing a service includes the result. In most cases, the consumer is the object of service provision and can participate directly in the process of service provision; the service is usually individual in terms of provision and consumption. The service provider does not usually act as the owner of the result of the service provided. It should be noted that, although the above characteristics apply to many types of services, they do not always apply to a specific service.

The need for a trade agreement in the service sector

has long been questioned. Large segments of the service economy, from hotels and restaurants to personal services, have traditionally been viewed as domestic activities beyond the scope of trade policy concepts and tools. Other industries, from rail to telecommunications, are considered classic areas of state ownership and control, given their infrastructural importance and, in some cases, the existence of natural monopolies. A third group of critical sectors, including health, education and basic insurance services, is considered a government responsibility in many countries.

Nevertheless, some service industries, notably international finance and maritime transport, have remained open for centuries as natural complements to trade in goods. Other major industries have undergone radical technical and regulatory changes in recent decades that have opened them up to private commercial participation and lowered, if not eliminated, existing barriers to entry. The advent of the Internet has helped create a range of internationally sought-after products from electronic banking to telehealth and distance learning that were unknown two decades ago, and trade that puts long-distance suppliers and users at a disadvantage removed barriers (professional services such as software development, consulting services, etc. to relevant industries). A growing number of governments are gradually opening up formerly monopolistic industries to competition, telecommunications can be an example of this.

Examples include visible tourism services; the travel company organizes a tour for the consumer before the consumer uses the results of the provided service, etc. Even though the studied concept is essentially economic, the content of the relations that arise in connection with the sale of services, including the order of organization and the legal capacity of the participants in these relations, is regulated by legal norms. It follows that the peculiarity of the legal study of trade in services has a mixed nature and is located at the intersection of economics and law.

An example of the definition of “service” at the regional level can be found in Article 60 of the Treaty of Rome establishing the European Economic Community in 1957, where “service” is defined as an activity to satisfy needs, i.e., goods, capital or, if the rules on the free movement of persons are not regulated, normally provided in return for payment. This distinguishes an important characteristic of services, i.e. the provision of services in return for payment.

However, experts in international economic law consider this concept of “service” as too broad. When goods are exchanged, ownership of the goods is

transferred to the buyer. In the process of buying and selling services, the ownership of material things is not transferred; the question is whether or not there is an obligation to perform some action (transport, insurance, advice). Customs tariffs apply to the purchase and sale of goods and the national legislation of the Member State applies to the provision of services. "The adaptation of domestic legislation to the needs of international trade in services is a legal revolution in almost all areas of law".

The criterion of "crossing borders" or, in other words, "cross-border" was not suitable for defining international trade in services in a literal sense. Therefore, in preparation for the creation of the World Trade Organization, the understanding that services can be supplied in different ways was reinforced. As a result, the GATS defined 4 modes of supply: cross-border supply, consumption abroad, commercial presence, and physical presence in the country where services are consumed. The General Agreement on Trade in Services uses the concept of "supply of services", which confirms the development of the services market as a trade operation, which is confirmed by the increase in the positions and volume of "trade" services.

GATS is intended to contribute to the expansion of trade "in a context of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the progress of developing countries." Thus, trade expansion is seen, as some critical voices have argued, not as an end in itself, but as a tool for growth and development. The development link is further strengthened in the Preamble with clear references to the objective of increasing the participation of developing countries on trade in services and to the specific economic situation and development, trade and financial needs of least developed countries.

The contribution of GATS to world trade in services based on two main pillars: (a) ensuring transparency and predictability of relevant norms and rules, and (b) facilitating progressive liberalization through successive rounds of negotiations. Under the deal, the latter concept amounts to improving market access and extending national treatment to foreign services and service providers in various sectors. However, this does not imply the abolition of regulation. Rather, the agreement clearly recognizes the right of governments to regulate and introduce new rules to achieve national policy objectives, and the particular needs of developing countries to exercise this right.

In the process of developing the current GATS text, the production of services is understood as an activity

aimed at satisfying the specific needs of service consumers. During the negotiations that preceded the adoption of the GATS, the problem of defining the concept of "trade in services" arose. Developed countries supported the idea that the provision of services on a large scale requires the presence of a service provider in the territory of another country through investment. In turn, developing countries proposed to include the movement of factors of production in the concept of "trade in services", if this movement is fundamental for the supplier. As a result, a system consisting of 4 regimes of service provision strengthened in Article 2 of the GATS was developed. Clause 2 of Article 1 of the GATS contains the concept of "trade in services". The General Agreement on Trade in Services does not define the term "service". At the same time, the provision of services in the Agreement means their production, distribution, sale, and delivery by both legal entities and individuals.

The forms of international trade in services covered by the Agreement are as follows:

- a) cross-border trade, i.e., a situation where trade is conducted from the territory of one state to the territory of another state, where the seller and the buyer of the service do not cross the border themselves, only the service crosses the border (banking services, communication services, etc.);
- b) consumption abroad, i.e., a situation where a consumer from one country buys services in the territory of another country (tourism, education – study in foreign educational institutions);
- c) commercial presence (commercial presence or right of establishment) in the country where the service is provided, i.e., a branch providing the service through the service provider crossing the border and being in the territory of a certain country, the situation of opening a representative office or a subsidiary. The service itself and its customer do not cross the border (auditing, advertising and other services);
- d) the presence of natural persons providing services, i.e., the presence of natural persons providing services, i.e., the presence of persons from abroad (qualified employees of the TNC or holders of certain professions: consultants, engineers, doctors, sportsmen, artists, teachers, etc.).

The adoption of the General Agreement on Trade in Services became the basis for the separate legal regulation of trade in services. Prior to the adoption of the GATS, which was specifically designed to regulate trade in services, the application of the GATT to this area was very different from trade in goods, and the subject matter was difficult to define and required considerable adaptation.

During the Uruguay Round, a new understanding of what constitutes international trade in services was developed. The study by UNCTAD, the WTO's International Trade Centre, showed that services are the subject of international trade if the transaction between these persons, which is also reflected in the GATS, the producer and the consumer of these services are natural or legal persons – from different countries. This follows from the fact that the provision of services is a result, product or activity aimed at satisfying the consumer of services, regardless of the location of the GATS.

The GATS does not define “services”, but defines “service of another member” as goods supplied from the territory of another member state or by sea / by a vessel registered under the laws of that state by a person of that State providing the service or the use of the vessel in whole or in part; or services provided by a service provider of another country through commercial presence or physical presence .

There are also definitions of the concepts of “service sector”, “service provider” and “service consumer”. For GATS, a special description draws on a sectoral classification of services, which includes 160 types of services grouped into 12 main sectors: business services; distribution; communication services; education; financial services; construction and engineering; health services; environmental services; recreational, cultural and sporting services; transport services; services related to tourism and travel; other services.

It should be noted that this classification does not cover the characteristics of services, and reference is therefore made to the UN's Provisional Central Product Classification. The CPCs provide a consistent structure for classifying goods and services based on a set of internationally agreed concepts, definitions, principles, and classification rules. It contains all types of information requiring product details, including industrial production, domestic and foreign trade in goods, international trade in services, the balance of payments, consumption and price statistics, and other information used in national standards and serves as an international standard for summarisation and tabulation.

According to the GATS, restrictive measures include:

- limiting the number of service providers (quoting, granting exclusive rights);
- limiting the volume of trade in this type of service;
- limiting the number of operations or the number of services provided;
- limiting the number of individuals who may be

employed in the relevant service sector;

- the requirement of a specific legal form of the company;

- limiting the share of foreign capital in the form of the maximum percentage of participation in the company.

At the same time, each sector is divided into specific sub-sectors, e.g. the 'Business Services' sector comprises Research and development services; Professional, technical, and business services (except research and development, legal and accounting services); Telecommunications, broadcasting and information services, etc. The classification of services is necessary for the negotiations on the liberalization of trade in services and for the preparation of Member States' commitments in the negotiations. It should be noted that trade in services is constantly developing, which leads to periodic revisions of the classification of services. The incompleteness of the classifier is its main advantage.

According to Article 1 of the General Agreement on Trade in Services (GATS), “services” include services in all fields other than those provided in the exercise of public authority. At the same time, public services should be understood “not in an organizational sense, but in a material and legal sense” . At the same time, public services should be understood “not in an organizational sense, but in a material and legal sense.” Consequently, government services are excluded from the scope of the GATS, thereby expanding the GATS to “tradable” services, commercial services provided on a competitive basis. When national governments procure services for public needs, they are governed by the Government Procurement Agreement and are not covered by the GATS.

## CONCLUSION

Trade in services represents a critical frontier in international economic law, reflecting both the opportunities and complexities of globalization. While the GATS has laid the groundwork for a cohesive regulatory framework, the rapid evolution and heterogeneity of services challenge the stability of legal definitions and commitments. Ongoing negotiations and legal adaptations are essential to ensure that international trade law remains responsive to market realities, particularly in balancing liberalization with national policy interests.

In conclusion, it should be noted that the uniqueness, diversity and constant emergence of new types of services do not allow us to give a clear and permanent definition of the concept of “services”. The changing classification of trade in services is also a result of the current development of these relations.

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