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FOR NEGOTIATIONS
ON TRADE IN SERVICES**

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PREFACE

Following the "Tools for Multilateral Trade Negotiations on Trade in Services" issued in April 2000 by the Commercial Diplomacy Programme as a basic training text, this second training and research "kit" aims at providing more advanced tools to trade negotiators, policy makers, researchers and members of the business community for the negotiations on services at the multilateral and regional levels. The presentation assumes that the features and basic implications of the WTO General Agreement on Trade in Services (GATS) are familiar to the reader.

As in the basic kit, the focus is on the developing countries' perspective – that is, the identification of their costs and opportunities in the negotiations on services and in the formulation of their national or regional negotiating strategies. It is hoped that researchers find here topics and methodological tools to help them in providing inputs to policy makers and negotiators. Trainers will find definitions, examples and several training presentations in Annex 6 to help them in designing training activities.

This kit does not pretend to provide an exhaustive list of issues that should be considered by trade negotiators or policy makers when they decide which strategy to adopt on trade in services. Rather, its aim is to help identify, understand and analyse the important issues in this field.

The information is based on the state –of play of the negotiations on services at the end of 2001, and it includes the mandates adopted at the Fourth WTO Ministerial Conference in this regard.

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THE STARTING POINT OF THE NEGOTIATIONS ON SERVICES AT THE WTO

1. The "built-in agenda" of the GATS

In February 2000, the General Council of the WTO launched negotiations on trade in services in accordance with the mandates contained in the GATS. These negotiations constitute the GATS "built-in agenda". **Article XIX** of the GATS is the provision that defines the scope and objective of these negotiations. The main objective of **Article XIX** is progressive liberalization in services so as to **continue the trade liberalization** initiated during the Uruguay Round. **Article XIX** reiterates the **flexibility** provided to the developing countries through **Article IV**, and through the structure of the GATS based on the "positive list" approach, whereby the countries can make commitments on:

- specific sectors
- specific types of transaction (mode of supply)

in accordance with their level of development.

Article XIX Negotiations of Specific Commitments

1. *In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.*
2. *The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.*
3. *For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the*



special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

4. *The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.*

Article IV
Increasing Participation of Developing Countries

1. *The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of the Agreement, relating to:*
 - (a) *the strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis;*
 - (b) *the improvement of their access to distribution channels and information networks;*
 - (c) *the liberalization of market access in sectors and modes of supply of export interest to them.*
2. *Developed country Members, and to the extent possible other Members shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:*
 - (a) *commercial and technical aspects of the supply of services;*
 - (b) *registration, recognition and obtaining of professional qualifications;*
 - (c) *the availability of services technology.*
3. *Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.*

This implies that each WTO Member has to **identify which sectors and modes of supply should be proposed as candidates for progressive liberalization** in the new negotiations on services. This requires **national studies** to identify the **national interests** and the existing or potential subregional commitments.

The negotiations on specific rules for trade in services are also part of the "built-in agenda" of the GATS. They include:

- Article X on Emergency Safeguard Measures
- Article XIII on Government Procurement
- Article XV on Subsidies



From the point of view of the developing countries' interests, these negotiations on the rules are as important as the schedules of commitments on specific sectors and modes of supply.

Therefore, the "built-in agenda" of the GATS implies the formulation of negotiating strategies regarding new offers and requests in sectors and modes of supply, as well as objectives on the rules governing the trade in services that were not included in the GATS provisions.

Article X
Emergency Safeguard Measures

1. *There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date no later than three years from the date of entry into force of the WTO Agreement.*
2. *In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force; provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-years period provided for in paragraph 1 of Article XXI.*
3. *The provisions of paragraph 2 shall cease to apply three years after the date of entry into force of the WTO Agreement.*

Article XIII
Government Procurement

1. *Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.*
2. *There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.*

Article XV
Subsidies

1. *Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade distortive effects. Such negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall*



exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

2. *Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.*

2. Guidelines and Procedures

The first phase for the negotiations on services ended in March 2001 with a "stocktaking" exercise by the Special Session of the WTO Council for Trade in Services to consider progress made and how to move forward. Countries agreed on the "**Guidelines and Procedures for the Negotiations on Trade in Services**",¹ which provides that:

- (i) *“the participation of developing countries and a special attention to least-developed countries should be taken into consideration in the negotiations;*
- (ii) *flexibility to liberalize fewer sectors should be granted to them;*
- (iii) *the process of liberalization shall take place with due respect for national policy objectives;*
- (iv) *no exclusion a priori of any service sector or mode of supply;*
- (v) *the starting point for the negotiation of specific commitments shall be the current schedules and the main method of negotiations shall be the “Request and Offer approach”.*

3. Proposals under review

More than 100 proposals have been submitted to the Special Session of the Council for trade in services, the majority of which have been tabled by the developed countries, namely the European Communities (13), Canada (13), the United States (12), Switzerland (10), Australia (10) and New Zealand (7). Among developing countries the Andean Community, Bolivia, Brazil, Chile, Colombia, Costa Rica, Hong Kong (China), India, Kenya, MERCOSUR, Mexico, the Republic of Korea, Venezuela, and the Dominican Republic with several other Latin American countries have made proposals in all but health and education services. Developing countries have also made proposals on several cross-cutting issues, namely classification, temporary movement of natural persons, assessment of trade in services, increasing participation of developing countries, autonomous liberalization in services and the treatment of the most favoured nation (MFN) exemption.

¹ WTO Guidelines and Procedures for the Negotiations on Trade in Services, S/L/93, 29 March 2001.



SOME SECTORAL PROPOSALS

Accounting Services: Australia, United States
Advertising and related services: United States
Architectural services: Australia
Audiovisual and related services: Brazil, Switzerland, United States
Business services: Canada, European Communities
Computer and related services: Canada, MERCOSUR
Construction and related engineering services: Australia, European Communities, New Zealand, Republic of Korea
Distribution services: Canada, European Communities, MERCOSUR, Republic of Korea, Switzerland, United States
Education services: New Zealand, United States
Energy services: Canada, European Communities, United States, Venezuela
Environmental services: Canada, European Communities, Switzerland, United States
Express delivery services: United States
Financial services: Australia, Canada, Colombia, Republic of Korea, Switzerland, United States
Legal services: Australia, United States
Logistics and related services: Hong Kong (China)
Movement of natural persons: Canada, Colombia, European Communities, India, Japan, United States
Postal and courier services: European Communities, Switzerland
Professional services: Canada, Colombia, European Communities, Switzerland
Sporting services: New Zealand
Telecommunication services: Canada, European Communities, Republic of Korea, Switzerland, United States
Tourism services: Canada, European Communities, Switzerland, United States; Dominican Republic, El Salvador, Honduras, Nicaragua, Panama
Transport services: European Communities, Hong Kong (China), Japan, New Zealand, Republic of Korea, Switzerland

SOME HORIZONTAL PROPOSALS

United States: “Transparency in domestic regulation”
New Zealand: “Objectives for the resumed services negotiations”
Chile: “The negotiations on trade in services”
Members of the Andean Community – Bolivia, Colombia, Ecuador, Peru, Venezuela: “Definition of criteria for classification of services”
Norway: “The negotiations in trade in services”
Canada: “Initial negotiating proposal”
Canada: “Initial negotiating proposal on regulatory transparency and predictability”
Canada: “Initial negotiating proposal on small and medium-sized enterprises”
Japan: “The negotiations on trade in services”
European Communities and Member States: “The Cluster Approach”

Both the horizontal and sectoral issues are examined in the next chapter.



LIST OF HORIZONTAL ISSUES TO CONSIDER IN THE NEGOTIATIONS

1. The cluster approach

➤ Definition

The “cluster approach” was introduced² as a way to establish economic linkages in the negotiations between related services sectors. This approach was expected to contribute to increasing the efficiency and coherence of services negotiations. Reference was made to a “cluster of diverse sectoral services” in tourism by a group of developing countries as well.³ The rationale is that, in the case of related services, restrictions on the supply of one service may prevent the supply of service in others. This approach would make it possible to negotiate a “cluster” of services and would thus render the liberalization more coherent.

Clusters should achieve greater liberalization and transparency and are seen by developed countries as a possible negotiating instrument. However, there is no agreed definition of “cluster” at the multilateral level: What should be the limits of a cluster? What are the core/non-core services?

➤ Proposals

There were different interpretations at the Council for Trade in Services as to whether the “cluster approach” proposals were intended for classification or negotiating purposes. Some developed countries suggested that the approach might be used in selected service sectors, and that participation in negotiations using clusters should remain voluntary.

The European Communities consider a cluster as a group of sectors or subsectors that are related and for which negotiators would agree to seek a harmonized and coherent set of commitments. This approach could be used to deal with sectors that are not covered anywhere, such as electronic commerce. The cluster approach could be used as a “checklist” of interrelated sectors for negotiating purposes, or as an *aide-mémoire* to ensure a coherent outcome.

The Dominican Republic, El Salvador and Honduras have proposed an Annex using a “cluster approach” for tourism services, so as to improve the coherence of the commitments undertaken by countries in this field.

The OECD paper “Using Cluster Approaches to Specific Commitments for Interdependent Services” aims to define more precisely what a cluster could be and

² See, for instance, the proposal of the European Communities, “The Cluster Approach”, S/CSS/W/3, 22 May 2000.

³ Proposal of the Dominican Republic, El Salvador and Honduras, WT/GC/W/372, 14 October 1999.



what the implications are in terms of classification and commercialization for the negotiations under the GATS.⁴

➤ **Implications for developing countries**

The cluster proposal may imply a "negative list" approach for a number of sectors, under which members would make commitments to fully open their markets, subject to the maintenance of certain limitations that would be selected from an agreed list of measures. Commitments in such clusters could be also subject to additional commitments along the lines of the Telecommunications Reference Paper, were deemed necessary to ensure effective competition or domestic regulations. In general, developing countries are interested in preserving the architecture of the GATS Agreement, particularly the "positive list" approach, which enables them to select the sectors, subsectors and modes of supply for which they make commitments.

2. Effective implementation of Article IV

One of the main challenges for developing countries is a more effective implementation of Article IV, Increasing Participation of Developing Countries – that is, to ensure the transfer of technology and the capacity building required for increasing participation in international trade in services. Of the proposals submitted to date, only a few have noted the special needs of developing countries, and only to a limited extent. Most proposals do not even address Article IV. Clear exceptions to this are the proposals by developing countries themselves. The latter point out the flexibility and special attention that should be accorded to developing countries in order to ensure that their development needs are met. Besides, a group of developing countries have specifically pointed out which are their interests that should be considered in light of their negotiating proposal on Article IV.⁵

Some proposals suggest giving developing countries transition periods while aiming for the same level of market access and national treatment commitments as developed countries. Other proposals suggest linking capacity-building programmes to liberalization of trade in services in developing countries. However, experience shows that in some areas, like construction services, developing-country suppliers maximize their capacity building when engaging in joint ventures and partnerships with foreign firms in the delivery of service. This measure – that is, the requirement to establish a joint venture – would be viewed as limiting trade liberalization.

Among areas of interest to them, developing countries have so far identified movement of natural persons, professional services and the recognition of qualifications, construction, tourism, maritime, distribution, audiovisual and energy services. Implementation of the Article IV provisions at the horizontal level appears to

⁴ OECD, "Using 'Cluster' Approaches to Specific Commitments for Interdependent Services", TD/TC/WP(2000)9, 7 November 2000.

⁵ WTO, "Increasing Participation of Developing Countries in International Trade in Services: Effective Implementation of Article IV of the GATS", S/CSS/W/131, 06 December 2001.



be difficult. Developing countries seem to be better positioned to achieve progress in negotiations on increasing their participation in trade in services when focusing on how to implement GATS Article IV in the sectors of their interest and in articulating the associated sector-specific issues and measures of immediate concern by way of sector-specific annexes, similarly to the Reference Paper in the area of negotiations on basic telecommunications.

3. Domestic regulations

Developing countries are finding themselves engaged in the increasingly complex negotiations on services, which are going beyond sector-specific liberalization of market access and national treatment. New proposals are increasingly focusing on issues related to domestic regulatory principles or disciplines at the sectoral level, while work in this area is continuing at the horizontal level in the GATS Working Party on Domestic Regulation. Those proposals focus particularly on transparency and necessity requirements.⁶

Other domestic regulation issues, such as privatization and ownership of land and real estate, are also being suggested through negotiating proposals for liberalization in the negotiations.

The content of some proposals may raise questions regarding whether domestic regulatory issues should be solved horizontally (in the Working Party on Domestic Regulation)⁷ or through sectoral-specific negotiations. Many of such proposals address issues related to the “transparency” of procedures and the “fairness of administration” (e.g., distribution services, education services, environmental services, express delivery services). Most proposals by the United States also suggest considering other regulatory principles (e.g. the United States proposal on financial services considers “prior comment” provisions and other improved or far-reaching “regulatory principles” pertaining to development, adoption and enforcement of regulations).⁸ The question remains whether WTO is the appropriate forum for developing detailed disciplines on transparency that go beyond the mandate of the Working Party on Domestic Regulation, or whether the question of how to implement the core GATS principle of transparency should be left to the national level.

4. Anti-competitive practices

⁶ See Report of the Meeting Held on 25 May 2000, S/WPDR/M/6.

⁷ This is probably the preferred approach for developing countries. It may be relevant to note that the “Initial Negotiating Proposal on Regulatory Transparency and Predictability” from Canada (S/CSS/49) suggests exploring current best practices with respect to regulatory transparency and determining whether, on the basis of developments in this area, existing GATS provisions (preamble to the GATS, Articles III, IV, VI and several other elements of the agreement) can be enhanced.

⁸ In any event, it may be worth noting that, based on experience in the accountancy sector (where specific disciplines on domestic regulation have been developed and adopted), additional commitments regarding regulatory issues apply only to sectors/subsectors where specific commitments are undertaken (as per GATS Article VI.1).



The GATS does not provide general rules for promoting and ensuring competition. For this reason, Members' need to establish a pro-competitive regulatory framework is being addressed at the sectoral level. Precedent-setting in this respect were negotiations in the area of basic telecommunications, which resulted in additional commitments by Members on the Reference Paper. In the energy sector, proposals address the issue of competition in the form of an invitation (by the European Communities), as well as in the form of a proposal (by the United States and Norway), to develop a reference paper (RP) in line with the one established for telecommunication services. Regulatory issues, as well as sector-specific "competitive safeguards", also similar to the provisions established for telecommunications, are being proposed by the Dominican Republic, Honduras and El Salvador to be applied to tourism. A reference paper is also suggested by the European Communities for the postal/courier sector; this proposal, though, does not specify whether such an instrument would be meant to prevent anti-competitive practices. No proposal refers to the need to strengthen Article IX on Business Practices.⁹

5. *Movement of persons supplying services*

Most proposals put emphasis on Modes 3 (commercial presence through establishment) and 1 (cross-border trade). On Mode 4 (movement of natural persons), coverage is generally limited to intra-corporate transferees. However, a number of proposals demonstrate interest in holding further discussions on how to improve and facilitate the temporary movement of both intra-corporate transferees and "contractual service suppliers"¹⁰ for the provision of specific services.

Many developing countries are interested in further liberalization of movement of persons (mode 4) on a sectoral basis. Six proposals¹¹ were made on some aspects of the temporary movement of natural persons related to investment. In addition, a number of sectoral proposals have identified some aspects of seeking commitments for the movement of contractual services suppliers, identifying specific categories of persons relevant to the supply of service in those sectors. Developing countries stand to benefit most if the new approach¹² based on adopting the International Labour Organization's (ILO's) classification of occupations is adopted for negotiations on mode 4. These negotiations should not proceed on a horizontal basis but should be conducted within *specific sectors* and for *selected categories* of persons that would allow for specific commitments to lock in existing practices. Additional disciplines, including transparency in administrative procedures in issuing visas and residency and work permits, GATS visas, and criteria for the application of the economic needs test along with circumscribing its application may be necessary in order to improve predictability in market access for mode 4.

⁹ Even though the issue of anticompetitive practices is common to many services sectors. See comments in sectoral tables earlier in this document (e.g. audiovisuals, maritime transport, distribution services).

¹⁰ That is, the service is supplied, on the basis of a contract, by an employee of a company not established in the Member's territory.

¹¹ India, Colombia, the United States, the European Communities, Canada and Japan.

¹² Elements of this approach are contained in the proposal by India.



6. Standstill

The United States is suggesting that the starting point for negotiating specific commitments should be the de facto situation of liberalization in each member country. Both the United States and the European Communities have proposed a commitment on standstill.¹³ However, most other proposals consider the current schedules (i.e. binding commitments) as the starting point for negotiations. This is in accordance with what was agreed by WTO Members in the “Guidelines and Procedures for the Negotiations on Trade in Services” adopted on 29 March 2001 (S/L/93). Paragraph 10 of these guidelines states that “*The starting point for the negotiations of specific commitments shall be the current schedules, without prejudice to the content of requests*”.

7. Expanding the scope of the GATS

Some proposals mention goals such as “full privatization”, and deregulation. The United States proposal (on telecommunications) is actually a proposal on e-commerce more than telecommunications. Some others address issues of “ownership/acquisition of property or land” as national treatment limitations (e.g. the European Communities on telecommunications; Japan on distribution services).

8. Technological neutrality

The United States refers in several proposals (e.g. audiovisuals, energy, telecommunications) to the notion of “technological neutrality”. This notion is not developed in the GATS itself but was introduced in the negotiations on basic telecommunications in order to address the impact of rapidly changing technologies on specific commitments. The thrust of this notion is that where no specific references are made to the type of technology used in providing basic telecommunications services, specific commitments would automatically cover all means of technology – that is, services transmitted via all types of cable, wireless or satellites. Nevertheless, where Members applied different measures in regulating market access or national treatment, depending on the type of technology, WTO Members scheduled them in their commitments.

If a similar goal is pursued in the framework of the negotiations for other sectors, countries may wish to consider whether this approach would affect their flexibility to open their markets, and whether they may need some legal clauses retaining their right to limit the coverage of their commitments, depending on the technology used. Since proposals in different sectors may address this notion, a

¹³ See the communication from the European Communities on “Overall Approach to Services Negotiations”, S/CSS/W/15, 30 November 2000, and the communication from the United States on “Framework for Negotiations”, S/CSS/W/4, 13 July 2000.



relevant question would be whether it is more appropriate to discuss it on a sectoral basis or as a horizontal issue.

9. Linking goods with services

Some proposals, particularly on energy, environmental and distribution services, address restrictions on the entry of goods/equipment and tools. Some of them mention the need for the “movement” (entry)/“temporary movement” (entry) of such goods, equipment and tools. Reference to the relevance of GATT disciplines is also made regarding audiovisuals (the United States proposal).

10. Classification issues

Notwithstanding the ongoing work in the Committee on Specific Commitments, in most sectors there are proposals that suggest sector-specific solutions in clarifying the definition and coverage of services. Most of these proposals relate to the “improvement” of classifications or to broadening of coverage to include “new” services (e.g. audiovisuals); “additional activities” (e.g. distribution services), “complementary” services (e.g. telecommunications) or “related” services (e.g. energy services, environmental services, maritime transport/logistics services, tourism services). The proposal on energy refers to a category of services that does not have an independent entry in the existing classification of service sectors. Environment services have attracted considerable attention to the issue of improving their classification. The question of how to proceed with the changes in classification without undermining existing legal commitments remains to be addressed.

11. Approaches to the scheduling of commitments

The impact of the gradualism and flexibility contained in Article XIX may differ depending on how the schedules of commitments are shaped. Several approaches to formulating the schedules of commitments are suggested in different proposals, such as the use of “model schedules”; setting up well-defined benchmarks for liberalization (e.g. maritime transport, energy); and the use of predetermined sets of commitments (e.g. the Understanding on Commitments in Financial Services).

12. Lack of clarity in addressing barriers

Many proposals (e.g. those by the United States on education, express delivery, distribution and tourism services) address the question of barriers to trade without differentiating between market access restrictions, national treatment limitations, and barriers resulting from domestic regulatory provisions.



13. Limited reference to subsidies

Except for references in a few proposals to subsidies as a barrier, no proposal explicitly addresses the issue of the distorting effects of trade-related subsidies when referring to barriers to trade. The notable exception is a specific reference to subsidies in the United States proposal on audiovisuals.¹⁴ Also, in its proposal on environmental services, the European Communities state their intention to deal with subsidies, among other “horizontal issues”, in a possible future proposal. Subsidies are also enumerated as horizontal restrictions, for example, in some proposals by the European Communities (e.g. on distribution services and on financial services).

14. E-commerce

E-commerce is in some cases mentioned as part of the negotiations on services – through direct proposals to remove obstacles to the transmission of services across national borders through electronic means (e.g. the United States proposal on education services¹⁵ or the proposal by the Republic of Korea on distribution services¹⁶) and to work on extended sectoral coverage to include services that can be delivered electronically (e.g. the U.S. proposal on telecommunications¹⁷); by references to the role of e-commerce in trade in services (e.g. the Canadian proposals on financial services and distribution services, or the proposal by Hong Kong, China, on logistics and related services);¹⁸ or indirectly through proposals for certain definitions of services (e.g. the United States proposal on express delivery) that include the use of electronic technologies, or proposals that state a need to respect the “principle” of “technological neutrality” (e.g. the United States proposal on audiovisuals).¹⁹

15. Autonomous liberalization undertaken by developing countries

As in other aspects of economic and trade liberalization, autonomous liberalization in services has been undertaken for two reasons. While it has usually

¹⁴ A permissive subsidies regime applicable to this sector is suggested as an alternative to an outright exemption for cultural services.

¹⁵ See the proposal from the United States on “Higher (Tertiary) Education, Adult Education, and Training”, S/CSS/W/23, 18 December 2000.

¹⁶ See the proposal from the Republic of Korea on “Negotiating Proposal for Distribution Services”, S/CSS/W/85, 11 May 2001.

¹⁷ In its proposal on telecommunication services, S/CSS/W/30, the United States seeks commitments not only on telecommunications services as such, but also on “complementary services”, as well as on all services that can be delivered electronically, such as training, health care and professional services. Under the heading “Classification Flexibility”, the United States suggests “explor[ing] ways to ensure that commitments remain relevant to future technological developments. For example, for value-added service commitments to be meaningful, they must be able to incorporate technological developments such as the shift towards Internet-based services.”

¹⁸ In its proposal S/CSS/W/68, Hong Kong (China) announces that it will shortly submit a paper on how the WTO could help promote a facilitating environment for the conduct of e-commerce.

¹⁹ It must also be noted that in its “Initial Proposal on Small- and Medium-Sized Enterprises”, S/CSS/W/49, Canada notes that “Electronic commerce may be a preferred vehicle of delivery for many service SMEs. To the extent that they establish a commercial presence in foreign markets, entry and exit barriers in foreign markets may be barriers to their effective participation.”



been undertaken because of independent domestic policy considerations, sometimes it has been undertaken with a view to implementing structural adjustment programmes. The issue is whether a country would be weakening its bargaining position in new trade negotiations by undertaking autonomous liberalization. Autonomous liberalization contributes to the objectives of the WTO, and this fact should be acknowledged.

Developing countries would like the autonomous liberalization that they have undertaken to be recognized in the multilateral trade negotiations. Countries understand “autonomous liberalization” to mean a *voluntary* and *not bound measure* – that is, not a WTO commitment. It seems that “liberalization undertaken autonomously” means liberalization undertaken by individual Members unilaterally, outside a negotiating context. As far as “previous negotiations” are concerned, the question is whether this refers only to liberalization that has occurred since the Uruguay Round.

Developing countries are seeking credit in the negotiations for having undertaken these autonomous measures. In the context of trade negotiations, giving credit might be interpreted as exempting a country from some liberalization measures it might otherwise commit to. In the Uruguay Round tariff negotiations, the concept of “credit” was linked to binding commitments, while “recognition” was applied to autonomous trade initiatives.

The establishment of modalities and criteria for the recognition of voluntary liberalization undertaken since the Uruguay Round, along with a more precise definition of the term, would facilitate identification of the starting point for any negotiation on that issue. Though mandated in GATS Article XIX.3 and reconfirmed in the *Guidelines for the Negotiations*, agreement on developing modalities and criteria for recognition has not been achieved.



➤ **Concepts implied by autonomous liberalization**

Transparency requirements

Article III of GATS provides for a transparency requirement in order to ensure the predictability and security of trade in services.

The notification of autonomous liberalization measures not covered by specific commitments is certainly outside the scope of GATS Article III. The problem is, therefore, to determine how to provide for the treatment of autonomous liberalization in the absence of information regarding the scope and content of such measures.

The concept of “recognition”

Recognition could be given in bilateral or multilateral negotiations. The liberalizing Member and any interested trading partner should discuss and seek agreement on their respective bindings relative to the autonomous liberalization, including the issue of credit. Here, the idea is that recognition is not enough: developing countries that have implemented significant autonomous liberalization should be given “credit” for it – that is, should not be asked to “pay” with additional commitments, since they have already “paid”. According to this line of reasoning, “credit” follows recognition and permits seeking non-reciprocal commitments from other countries.

This kind of bilateral agreement could take place during negotiations. However, for further negotiations, multilateral recognition based on an agreed method would be the most adequate basis for evaluating the autonomous liberalization measures, particularly from the perspective of developing countries. Indeed, Article XIX provides for a multilateral process and not for bilateral negotiations, and the *Guidelines for the Negotiations* reconfirm that credit shall be given based on multilaterally agreed criteria prior to the start of negotiations on specific commitments.

Recognition of autonomous liberalization in terms of receiving “credit” would give countries a strong incentive to unilaterally initiate liberalization and ensure that policy reforms are not postponed in anticipation of reciprocal trade concessions. Credit would be given in terms of reciprocal benefits and concessions.

A multilateral mechanism for the recognition of autonomous liberalization could be based either on a case-by-case approach or on a general formula. Furthermore, bilateral talks could be pursued at the same time as multilateral ones, in order to further recognize the autonomous measures, by a greater exchange of concessions.



The concept of “value for liberalization measures taken autonomously”

One of the issues is to determine the "value" of autonomous liberalization measures for the purpose of demanding and obtaining credit for them in the negotiations. Countries have discussed possible ways of assessing the offers and giving credit for autonomous liberalization.²⁰ The concepts of yardsticks and benchmarks have been considered, but so far it seems difficult to apply them in practice to trade in services. Some countries have pointed out that offers would be compared with the yardstick or objective established, and credit would be granted to participants according to the proximity of their offers to those yardsticks. But countries have raised the question of whether the value of liberalization measures could simply be established across the board for all Members and all sectors. The credit given by countries would be tied to the kind of sector that is liberalized, and therefore a general value seems difficult to apply in reality.

The concept of “binding”

Members have to consider two issues:

- (i) whether credit can be given only once the autonomous liberalization has been bound or can also be envisaged for unbound liberalization, since its benefits accrue to other members through the MFN provisions; and
- (ii) how the value of autonomous liberalization could be gauged through specific benchmarks.

Some countries have pointed out that autonomous liberalization should be bound into the GATS in the form of specific commitments. This would mesh with the WTO objective of achieving predictability in international trade. On the other hand, some countries are arguing that the modalities used to deal with autonomous liberalization should not create unconditional and binding obligations, since the trading partners have already benefited from autonomous liberalization.

16. Proposals for negotiations on autonomous liberalization

A group of developing countries²¹ have drawn attention to the special needs of developing countries, which have to be reflected in developing the criteria and modalities for recognition of the treatment of autonomous liberalization.

Japan proposes to consider an appropriate treatment for autonomous liberalization so that the liberalization process can be facilitated even between negotiation periods.²² Appropriate recognition should be given to measures that are

²⁰ Special Session of the Council for Trade in Services, 30 March 2001.

²¹ Communication from Brazil, Colombia, Cuba, Ecuador, the Dominican Republic, Guatemala, Honduras, Indonesia, Malaysia, Nicaragua, Pakistan, Panama, Paraguay, Peru, the Philippines, Senegal, Uruguay and Venezuela, “Autonomous Liberalization and Developing Countries”, S/CSS/W/130, 30 November 2001.

²² Proposal by Japan, "The Negotiations on Trade in Services", S/CSS/W/42, 22 December 2000.



liberalized autonomously and are notified to Members through, for instance, the Council for Trade in Services.

The Andean Community, some Latin American countries and some Asian countries have reaffirmed that, based on multilaterally agreed criteria, account should be taken of autonomous liberalization undertaken by Members since previous negotiations, and credit for such liberalization should be given in market access negotiations.²³

Hong Kong (China) has stated that it is in the interest of all Members that Members who have undertaken autonomous liberalization be encouraged to bind it fully into their schedules.²⁴

Switzerland is of the view that this issue should be left to bilateral negotiations among the Members concerned, since it would be difficult to define the notion of "credit" multilaterally, as the definition would be different for each Member.²⁵

The United States proposed two modalities for treatment of autonomous liberalization.²⁶ First, any Member that has liberalized autonomously should make the nature of the liberalization known to interested trading partners. Second, this autonomous liberalization should be bound through bilateral negotiations. Additionally, the value of particular autonomous liberalization could be measured against the agreed targets for multilateral liberalization (e.g. in the form of model schedules).

²³ Proposal "Elements for Negotiating Guidelines and Procedures", S/CSS/W/13, 24 November 2000.

²⁴ See the proposal by Hong Kong (China), "Guidelines and Procedures for the Negotiations in Services", WT/GC/W/325, S/C/W/125, 21 September 1999.

²⁵ See the proposal by Switzerland, " Guidelines for the Mandated Services Negotiations ", S/CSS/W/16, 5 December 2000.

²⁶ See the proposal by the United States, "Framework for Negotiations ", S/CSS/W/4, 13 July 2000.



SECTORAL ISSUES AND IMPLICATIONS TO CONSIDER IN THE NEGOTIATIONS

At the Uruguay Round, developing countries were able to make commitments in fewer sectors than did developed countries, and also to some extent attach conditions to opening of their market access or national treatment. These negotiations achieved progress mainly in the liberalization of investment in all services sectors, with the tourism sector seeing the largest number of commitments by all WTO members. However, countries acceding to the WTO are making increasingly high levels of liberalization commitments in all areas of services.

Commitments on services at the end of the Uruguay Round

	Number of services commitments	Commitments as % of maximum possible
Industrialized countries	2,423	53.8
Developing countries	2,159	17.2
Latin America	738	15.3
Africa	396	9.8
Middle East	106	16.5
Asia	796	26.0

Source: GATT Secretariat (1994), *The Results of the Uruguay Round of Multilateral Trade Negotiations*; and World Bank (1995), *Global Economic Prospects and the Developing Countries*.

In the subsequent negotiations on basic telecommunications and financial services, many developing countries undertook additional commitments in these sectors.²⁷ However, very limited progress has been achieved in liberalizing areas of interest to developing countries, especially in the movement of persons.

1. Energy services²⁸

Energy is central to achieving the interrelated economic, social and environmental aims of sustainable human development, and energy services play a crucial role in providing efficient access to energy in support of development. They also constitute the value added in the energy chain, from exploration to consumption. Developing countries are thus faced with the challenges of, on the one hand, achieving more reliable and efficient access to energy, and, on the other hand, obtaining a greater share of the energy “business”. The pursuit of both goals requires

²⁷ A total of 71 Governments tabled offers by the end of the basic telecommunications negotiations on 15 February 1997. These included offers by 40 developing countries. In the area of financial services, a total of 56 offers (representing 70 Governments) were submitted by the negotiating deadline of 12 December 1997 and annexed to the Fifth Protocol to the GATS. Of these, 38 offers were submitted by developing countries, either new submissions (six countries), or improvements upon their original 1995 schedules.

²⁸ UNCTAD has produced a detailed analysis of the main issues involved in “energy services”. See “Energy Services in International Trade: Development Implications”, TD/COM.1/EM.16/2, 18 June 2001.



access to knowledge, expertise, technology and managerial know-how. An energy services sector strategy for developing countries often includes the following objectives: (a) to ensure efficient access to energy by all segments of the population; (b) to strengthen the countries' competitive position in the supply of energy services at the various stages of the energy chain; and (c) to negotiate commitments and additional provisions supporting these objectives in the ongoing multilateral negotiations on trade in services.

➤ **Implications for developing countries**

The growth of the energy services sector can be attributed to increasing demand for energy combined with the externalization of activities, first at the upstream stage by transnational enterprises, and more recently at the downstream stage, through increasing competition and de-monopolization, particularly of the gas and electricity segments.

Developing-country energy producers are major importers of traditional energy services, such as services related to oil and gas exploration, well and pipeline construction, drilling services and derrick erection. Provision of these services, which tend to be increasingly sophisticated and technology-intensive, is often beyond the capacity of developing countries. Those countries have made few commitments in this subsector in their GATS schedules and thus still have the flexibility to liberalize where this is deemed to be most consistent with domestic energy policy objectives, and to seek substantial reciprocal concessions.

Only a limited number of developing countries have experience in making structural reforms in the energy sector; consequently, they have not developed those emerging energy services that usually emanate from the breaking up of integrated energy systems and the introduction of competition, especially in the gas and electricity segments – for example, energy trading and brokering, energy management and the operation of power pools. The design of effective domestic energy policies would be promoted by a better understanding of the experiences of countries that have implemented reforms in their energy sectors and permitted competitive energy markets to emerge. Additional emerging services include those related to greenhouse gas emissions reductions and trading of emission rights.

The WTO “Services Sectoral Classification List” (document MTN.GNS/W/120) does not include a separate comprehensive entry for energy services. Although the United Nations Provisional Central Product Classification (CPC) does not list energy services as a separate category, its Annex I provides a compendium of energy-related products listed under different headings in the CPC, including energy-related services. Additionally, important energy services cut across existing sectoral classifications. Architectural and engineering services, scientific and technical consulting services, construction services, wholesale and retail trade services with respect to fuels and energy equipment, transportation services and several financial services are some of the subsectors and sectors that might be relevant to the energy sector. In addition, three specific energy-related activities are explicitly listed



as separate subsectors in the WTO classification list: “transportation of fuel” under the broad category of Transport Services; “services incidental to mining”, which fall under the category of Other Business Services;²⁹ and “Services Incidental to Energy Distribution” (CPC 88700), under Other Business Services.

A series of issues appear to confront developing countries in the multilateral negotiations on services. With respect to classification, a sufficient degree of precision in the definition of “energy services” would facilitate an approach whereby negotiations of specific commitments could be undertaken in a manner consistent with energy policy objectives. Another issue would be whether additional provisions, reflecting the specificity of the energy services sector, could be attached to the liberalization commitments. Such specificities could relate to the interconnectivity aspects of energy transmission and distribution (the relevance of the WTO Reference Paper on Basic Telecommunications has been mentioned) and to the importance of the provisions of GATS Article IV (e.g. those on transfer of technology and access to distribution channels and information networks), with a view to increasing the competitiveness of developing-country firms supplying energy services.

An additional set of conditions could strive to ensure that, where foreign enterprises are permitted to operate in liberalized energy markets in developing countries, a set of “public services” obligations are attached. The inclusion of these conditions in an Annex or Reference Paper applicable to the sector could ensure that developing countries obtain benefits they might not be able to effectively negotiate with stronger trading partners, or with investors in a bilateral context. The objectives would be (a) to “level the playing field”; (b) to clearly link energy and development, including the achievement of public services goals; and (c) to prevent developing countries from competing among themselves to attract investment in the energy sector by lowering their requirements vis-à-vis foreign providers.

Some oil-producing and -exporting developing countries have not only been able to encourage the creation of a specific energy services sector, but have also strengthened the supply capacity in other service sectors supplying the oil industry. These approaches might be replicated by other developing countries.

In developing countries, construction of utilities such as power plants and hydroelectric stations is largely financed by multilateral or bilateral assistance programmes. However, local firms are often excluded from the bidding procedures because they do not meet the prequalification requirements set by financial institutions. A primary concern for developing countries is to improve the competitiveness of their firms so that they can compete successfully in the multilaterally or bilaterally financed construction projects in their countries. Once they have accumulated expertise and strengthened their competitiveness, these may be translated into export capacity.

²⁹ However, mineral prospecting services, oil and gas field exploration and seismic and geological surveying services are excluded and are classified under “Geological, geophysical and other scientific prospecting services” (subclass 86751), under “Related scientific and technical consulting services” (class 8675).



2. **Tourism services**

➤ **Overview of the sector**

International tourism is defined by the World Tourism Organization as occurring when a traveler crosses an international border and pays for a product abroad for personal consumption. Tourism services sector accounts for one-third of the value of total worldwide services trade.³⁰ The supply of tourism is characterized primarily by the cross-border movement of consumers (i.e. the consumer's coming to the supplier). The industry is highly infrastructure dependent, and immigration regulations directly influence the supply of international tourism services.

➤ **WTO definition**

During the Uruguay Round, a Working Group on Tourism Services was formed, and tourism and Travel-related services were included under Category 9 of the Classification List (W/120). There are four subsectors: hotels and restaurants, travel agencies and tour operator services, tourists guide services and other services. No further subsectors are provided in this list.

The GATS definition of tourism in general, as reflected in the list, leaves out many service activities, such as transport, hotel construction and car rentals, although the World Tourism Organization considers them key tourism-related industries.

➤ **Schedule of commitments**

Specific commitments are more numerous in tourism than in any other sector, with 120 WTO Members having undertaken such commitments. However, the level of commitments varies by subsector. The subsector Hotel and Restaurants shows the greatest number of commitments (all Members have committed under this subsector), while Travel Agencies and Tour Operator Services shows fewer than 100. The subsector Other has less than 20 commitments. Half of the countries that have made commitments have done so for three or more subsectors.

In terms of modes of supply, tourism has the highest level of open market-access commitments. Consumption abroad is the most liberalized mode of supply, followed by cross-border supply and commercial presence. Mode 4 (movement of natural persons) is the last mode of supply to be liberalized.

The least developed countries (LDCs) have liberalized this sector more than other service sectors, which indicates their desire to use the multilateral instrument of the GATS to expand their tourism industry and attract investment.

Following are examples of remaining barriers to trade in the tourism sector. There is a citizenship requirement for supplying hotel and bar services; an economic

³⁰ UNCTAD background note on "Tourism and Development in the Least Developed Countries", UNCTAD/LDC/ Misc. 64, UNLDC III, 2001.



test is often needed for permission to invest in infrastructure such as hotels; the permitted number of foreign travel agencies is fixed as a share of domestic agencies or at a certain number; establishment is allowed in a form of joint venture, incorporation, private limited company, or alternatively branches or subsidiaries are not allowed; limits are placed on foreign equity; and so forth.

➤ **Competitiveness of tourism services**

The tourism industry is largely dominated by large transnational companies that have financial means, current technology and access to worldwide market networks. The dominant position of these global players can lead to anticompetitive practices, which affect the social and economic development of developing countries.³¹ These practices occur mostly in services such as travel agencies, tour operators and global distribution systems. Thus there is a need to develop procompetitive norms and disciplines in the GATS to minimize the occurrence of restrictive business practices in the tourism industry. At the same time, developing countries should implement regulatory frameworks to create a sound economic environment for tourism services.

➤ **Internet use and e-commerce in tourism**

The Internet has expanded opportunities for developing countries to export their tourism services.³² Information technology is essential to the tourism industry, since it provides the infrastructure and network facilities for airlines, tour operators and travel agencies. However, developing countries particularly the LDCs, still have limited access to the Internet, and transfer of technology in this area should be enhanced.

➤ **Implications for developing countries**

Full liberalization of tourism services should in principle be a win-win situation for all countries. However, developing countries should make sure that certain conditions are met so they can fully benefit from liberalization. Those conditions include the prevention of anticompetitive practices by dominant players in the market; adequate coverage and consistency of commitments in all tourism-related activities; effective access to distribution systems; implementation of an adequate framework for sustainable development; and preservation of cultural heritage.

New negotiations should grant recognition to liberalization effected by developing countries. Facilitation of the movement of natural persons, particularly in the tourism sector, would benefit developing countries, and progress is needed in opening markets in developed countries to the temporary movement of persons in this

³¹ David Diaz Benavides and Ellen Perez-Ducy, eds., "Tourism in the Least Developed Countries", UNCTAD/WTO, III UNCLDC Brussels, May 2001.

³² UNCTAD, "Electronic Commerce and Tourism: New Perspectives and Challenges for Developing Countries", 2000.



sector. Article IV concerning the increasing participation of developing countries should be effectively implemented in these new negotiations.

Finally, the competition issue seems to be at the core of the problem of the efficiency and sustainability of tourism in many developing countries. There is a real need to establish an appropriate legal framework governing competition policy in developing countries. The proposal of the Dominican Republic, El Salvador and Honduras asks that the use of “competitive safeguards” be included in the proposed Annex to the GATS on Tourism. Another possibility would be to strengthen Article IX on business practices.³³

Article IX
Business Practices

1. *Members recognize that certain business practices of services suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.*

2. *Each Member shall, at the request of any other Member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member addressed shall also provide other information available to the requesting Member, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member.*

➤ **LDCs and tourism**

80 per cent of the world’s poor live in 12 countries. In 11 of these, tourism is significant or growing. In the 100 or so poorest countries, tourism is significant in almost half of the low-income countries and virtually all of the lower-middle-income countries. "Significant" means that tourism accounts for over 2 per cent of gross domestic product (GDP) or 5 per cent of exports.³⁴

During the 1990s, tourist flows to the LDCs increased more rapidly than tourist flows to the rest of the world but were concentrated in seven countries (Cambodia, Mali, the Lao People’s Democratic Republic, Myanmar, Samoa, Uganda and the United Republic of Tanzania). Africa’s share of the total volume of international arrivals remains stagnant at about 2 per cent. Furthermore, the shortage of domestic investment resources leads to high dependence on foreign capital and foreign management.

³³ Proposal submitted by the Dominican Republic, El Salvador and Honduras, WT/GC/W/372, 14 October 1999.

³⁴ World Tourism Organization, “The LDCs and International Tourism”, UNLDC III, March 2001, Geneva.



The traditional priorities of tourism development have been to contribute to gross national product (GNP), to foreign exchange earnings and to employment. However, concerns have been raised about the potentially negative social, cultural and environmental effects of tourism. Active management and regulation can reduce the negative effects while improving the participation of the poor and the distribution of benefits. Therefore, there is no unique formula for ensuring "pro-poor" tourism development, and each country needs to develop its own strategy.

Tourism can be considered an opportunity for training human resources and developing transferable skills. Moreover, tourism can contribute to the reduction of poverty through the creation of employment and changes in employment practices (e.g. by giving priority to employment for women and young people). Furthermore, the tourism industry offers viable opportunities for the development of a wide range of small and medium-size enterprises (SMEs).³⁵ Development of SMEs needs to be stimulated through training in business management and access to capital.³⁶

➤ **Proposals submitted in the ongoing negotiations**

Among proposals submitted since the negotiations started in February 2000, one dates back to the 1999 WTO Ministerial Conference, when three developing countries, the Dominican Republic, El Salvador and Honduras, made a proposal for a Tourism Annex.³⁷ The proposal, which has been resubmitted in modified form by a larger group of Latin American³⁸ countries, calls for an Annex on Tourism Services that would incorporate provisions for disciplining anticompetitive practices in tourist-originating countries. This approach could be applied in other sectors or clusters and broadened to include other disciplines related to the effective implementation of Articles IV and XIX. The logic is that it is difficult to devise across-the-board provisions in favour of developing countries without arriving at the lowest common denominator. On the other hand, in a sectoral context more specific provisions could be negotiated.

The proposal addresses the inadequacy of the GATS tourism classification, making clear that the tourism sector should be considered a "cluster", defined as including "those services which are characteristic and connected to tourism, both forming part of services conventionally denominated as specific to tourism, as well as services non-specific to tourism".

Furthermore, the proposal emphasizes the need for a competitive framework under the GATS to deal with the anticompetitive business practices in this sector. According to this proposal, specific commitments undertaken following the "Request and Offer" approach would fail to address the elimination of barriers to trade in tourism services. The current GATS framework indeed fails to discipline the

³⁵ In Europe, 70 per cent of total tourist accommodation capacity is provided by small and medium-sized firms.

³⁶ Gambia is a good example, with an increasing number of tourists who stay in locally owned accommodation. *Tourism in the LDCs*, UNLDC III, 2001, Geneva.

³⁷ Proposal submitted by the Dominican Republic, El Salvador and Honduras, WT/GC/W/372, 14 October 1999.

³⁸ Proposal submitted by Bolivia, the Dominican Republic, Ecuador, El Salvador, Honduras, Nicaragua, Panama, Peru and Venezuela, S/CSS/W/107, 26 September 2001.



anticompetitive practices in this sector. In this context, the proposal includes in the Annex a provision on “competitive safeguard”, for the prevention of anti-competitive practices in the “tourism cluster”, and on consumer safeguards. Finally, the proposal points out the need to implement Article IV of the GATS, which aims at enhancing the participation of developing countries in world trade.

The implementation of existing commitments and the elimination of remaining restrictions on all modes of supply, but especially on investment, appear to be the priorities in negotiations on the tourism sector for countries like Canada, the European Communities and Japan. The proposal by the United States covers only hotels and lodging, while Japan’s proposal covers hotels and restaurants, tourist guide services and travel agencies. Compared with this limited coverage of the tourism sector by these developed countries, the proposal by the group of developing countries to negotiate an Annex on tourism, similar to the Reference Paper in basic telecommunications, is no doubt much more far-reaching and comprehensive.

3. Health services³⁹

➤ **The scope of health care services**

Health care services include the general and specialized services of medical doctors, deliveries and related services, nursing services, physiotherapeutic and paramedical services, all hospital services, ambulance services, residential health facilities services and services provided by medical and dental laboratories.

Health services have long been considered as nontradable services, and in many countries public institutions were considered to be the sole supplier.

However, rising health care costs, resulting in growing pressures on public health care systems and finances, have led to regulatory changes in this sector aimed at improving the quality as well as the efficiency of the health sector. Often this has resulted in a more liberalized sector. At the same time, technological innovations such as telemedicine have created new potential for cross-border trade in this sector. Health services are a dynamic market in many developed countries and in some developing countries, where regional trade is particularly important in this area.

➤ **The GATS framework**

"Health-related and social services" – which include all hospital services – are listed as a separate sector in the classification list of the GATS W/120. In this classification, the professional services of doctors and nurses are distinguished from hospital services. Dental and veterinary services are classified under professional

³⁹ *International Trade in Health Services: a Development Perspective*, UNCTAD/WHO, Geneva, 1998, UNCTAD/ITCD/TSB/5, WHO/TFHE/98.1.



services, as are those of nurses and doctors; these services include those provided outside the hospital (e.g. in the doctor's office).

Services provided by private hospitals, as well as public hospitals if the services are provided "*on a commercial basis or in competition with other providers*",⁴⁰ would be subject to the scope of the GATS and the specific commitments. However, the supply of services by a public hospital, free of charge, would fall under Article I.3(c) of the GATS and would not be covered. A question is whether public hospitals can be considered to fall under Article I.3.

➤ **Mode of supply**

The growth of trade in mode 1 (*cross-border supply*) depends on developments in technology. A recent World Health Organization (WHO) publication points out the increasing importance of cross-border supply of medical services through telemedicine,⁴¹ which can be used to provide medical services to poor countries and remote regions within countries.

Consumption abroad, in which foreign patients come to a country to consume health services (mode 2), plays a significant role in health services and has remained an economically relevant mode of supply.. However, traditional high barriers for this mode of supply remain, such as the portability of health insurance. The development of specialized tourism related to health care may be benefiting developing countries, such as India and Cuba, that are competitive in this sector.

Commercial presence (mode 3) remains the most important mode of supply, especially for countries that try to attract FDI in this sector and thus reduce the pressure on their public health care systems.

The *movement of natural persons* (mode 4) is still limited by strict regulations and the difficulty in achieving recognition of diplomas, an issue that future negotiations should address. Some developing countries, such as India, will certainly benefit from the liberalization of mode 4, since they are beginning to be competitive in this sector. However the movement of health professionals raises the issue of "brain drain", the economic losses, temporary or permanent, incurred by a country when trained specialists seek employment abroad. The issue to be addressed, then, is the impact of trade liberalization on the quality and availability of health services in developing countries.

➤ **Relevant GATS provisions**

The transparency requirement under Article III of the GATS in the sector of health services could have a great impact. Developed countries often have complex

⁴⁰ Article I.3(c) of the GATS states that the agreement's scope does not apply for "a service supplied in the exercise of governmental authority, meaning any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers".

⁴¹ WHO (1997), *Measuring Trade Liberalization against Public Health Objectives: The Case of Health Services*, Geneva.



trade regimes, and making these more understandable for developing countries would enable services suppliers to expand their activities.

A key issue for the facilitation of trade in professional health services would be the development of multilaterally agreed criteria for the recognition of qualifications. Article VII of the GATS explicitly favors the mutual recognition among Members of certifications or licenses.⁴²

Article VI of the GATS ("Domestic Regulations") requires the Member States to achieve objectivity and impartiality in the regulatory environment for services. Laws and other regulations should not favor domestically supplied services; if they do, this should be explicitly mentioned in the schedule of the member.

➤ Commitments under the GATS

Health Services: GATS commitments

WTO Member countries	Hospital services	Medical & dental services ¹	Midwives, nurses, etc.	Other human health services	No commitment ²
Low-income ³	9	13	6	6	8
Lower middle-income ⁴	10	9	3	4	11
Upper middle-income ⁵	8	12	4	4	9
High-income ⁶	5	8	4	3	9
EU members (12) ⁷	1	1	1	-	-
Total	44	54	29	17	37

¹ Include veterinary and other health-related social services.

² Argentina, Aruba, Bahrain, Brazil, Canada, Chile, Colombia, Cuba, Cyprus, Egypt, Gabon, Ghana, Guinea, Haiti, Honduras, Hong Kong (China), Iceland, Indonesia, Israel, Kenya, Liechtenstein, Macau, Malta, Mauritius, Morocco, New Zealand, Nicaragua, Nigeria, Paraguay, Peru, Philippines, the Republic of Korea, Romania, the Solomon Islands, Sri Lanka, Thailand, Tunisia, the United Arab Emirates and Venezuela.

³ Burundi, Congo, Gambia, Georgia, India, Kyrgyzstan, Lesotho, Malawi, Pakistan, Rwanda, Senegal, Sierra Leone and Zambia.

⁴ Belize, Bolivia, Bulgaria, Costa Rica, the Dominican Republic, Ecuador, Guyana, Jamaica, Jordan, Latvia, Saint Vincent, Swaziland and Turkey.

⁵ Antigua and Barbuda, Barbados, Botswana, the Czech Republic, Estonia, Hungary, Malaysia, Mexico, Panama, Poland, Saint Lucia, the Slovak Republic, South Africa and Trinidad and Tobago.

⁶ Australia, Austria, Brunei, Finland, Japan, Kuwait, Norway, Qatar, Slovenia, Sweden, Switzerland and the United States.

⁷ EU member States are counted individually.

Source: Adlung R, Carzaniga A (2001). Health services under the General Agreement on Trade in Services. *Bulletin of the World Health Organization*, 79(4): 352–364.

Many developing countries, including LDCs, have made broad commitments for various health and medical services. The liberalization of these sectors may be a device for attracting foreign investment.

⁴² Article VII of the GATS aims at facilitating recognition of education or training received between countries and at the same time making sure that such recognition does not constitute a means of discrimination between countries. Countries shall offer adequate opportunities for other Members to negotiate recognition. Recognition should be based on multilaterally agreed criteria.



➤ **Challenges for developing countries**

The challenge for developing countries in the future negotiations is to obtain market access in the areas of their comparative export advantage.

At an UNCTAD Expert Meeting in 1997,⁴³ experts pointed out that, according to available statistics, selected developing countries had a revealed comparative advantage in niche markets in the area of health services. Such niche markets were linked not only with lower production costs, including in the area of health education, but also with the provision of unique services (e.g. Chinese medicine), the potential to combine health care and tourism, and natural resources with perceived curative benefits.

Yet there seemed to be a lack of awareness in developing countries of this potential in the health sector. This significantly limited the expansion of trade in health services.

However, health markets in developing countries are growing, and therefore South-South trade could become an important element in the expansion of trade in health services. Yet a distinction should be made between developing countries as a whole, which indeed enjoyed some export competitiveness, and LDCs, whose health sectors are extremely vulnerable and require special attention.

The quality of health services is a key issue for the protection of people's health and the safety of traded services. One fundamental aspect of quality concerns the standards and qualification requirements imposed on service providers. Article VI (Domestic Regulation), which requires that the measures be administrated in a reasonable and impartial manner,⁴⁴ and Article VII (Recognition), which requires that recognition not constitute a means of discrimination, are particularly relevant in this respect. Regulations such as qualification and licensing requirements for individual health professionals, approval requirements for institutional suppliers, and rules and practices governing insurance schemes have negative trade effects. Developing countries should negotiate mutual recognition agreements with developed countries and among themselves in order to assure that their suppliers will not engage in discrimination.

One particularly restrictive set of barriers to the movement of services suppliers includes visa and entry regulations, nationality and residency requirements, and licensing and recognition of qualifications. Educational equivalence systems, harmonized accreditation standards and mutual recognition of qualifications should be promoted, with the assistance of professional associations and regional and subregional groupings. Furthermore, the liberalization of mode 4 by developed

⁴³ UNCTAD Expert Meeting on "Strengthening the Capacity and Expanding Exports of Developing Countries in the Services Sector: Health Services", held at the Palais des Nations, Geneva, from 16 to 18 June 1997.

⁴⁴ GATS Article VI.1 states that "in sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administrated in a reasonable, objective and impartial manner".



countries would benefit developing countries, such as India, that export health professionals. Indeed, for many medical, health and social services, mode 4 restrictions are particularly significant.

It is acknowledged that the fact that health insurance is often not portable across borders deters the movement of patients and retirees wishing to be treated abroad. Portability could create significant trade opportunities for developing countries.

➤ **Ongoing negotiations**

No proposal for the negotiations has been made so far with regard to health services and related services.

4. Cultural services⁴⁵

➤ **Characteristics of cultural services**

The sectors of education, health and cultural services share similar characteristics: all of them involve public goods, which are "non-excludable" and "non-rivalrous" in consumption. Traditionally the state has regulated and provided these services, because of market failures. Today, the decision of whether to have the state produce such public services is a political one and depends on the kind of economic development strategy adopted by a country. The trend is towards recognizing that the private sector plays a role in providing such services.

The current debate on the GATS is focusing on the liberalization of sectors such as culture and health, which so far have been not involved in the multilateral trading system. Today, the scope of trade policy is far wider than it was in the past, and some countries are willing to open these sectors to trade.

➤ **The scope of the GATS**

The GATS is structured in such a way that it can accommodate all the conceptions of "public goods": it allows for either public or private providers, and it provides for progressive liberalization. One issue is to determine the scope of the coverage of the GATS, particularly the meaning of Article 1.3(b), which states that "*the term services includes any service in any sector except services supplied in the exercise of governmental authority*". This provision raises the difficult questions of what "governmental authority" is and what its scope should be.

In the absence of universally accepted definitions, classifications are extremely important for defining which services activities can be subject to negotiations. Six subcategories of services are listed in the document W/120: motion

⁴⁵ See vanGrasstek, Craig, "Politically Sensitive Service Sectors and the GATS 2000 Negotiations", Report prepared for the OECD, 2001. Currently, educational and audiovisual services are attracting interest in the negotiations. Other services may also have cultural implications. This section does not pretend to be exhaustive.



picture and videotape production and distribution, motion picture projection, radio and television, radio and transmission, sound recording, and other services (see also the classification of recreational and entertainment services for other categories).

➤ **Jurisdiction**

The issue of the relations between the WTO and specialized agencies such as UNESCO is important. The stance of the WTO is that cultural services are tradable, while UNESCO's stance is to deny such trade-related aspects.

However, the GATS allows some trade restrictions to protect domestic cultural production under certain conditions, such as Article IV of the GATT with regard to screen quotas and Article XX (f) of the GATT with regard to national treasures.

***GATT Article IV
Special Provisions relating to Cinematograph Films***

If any contracting party establishes or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of screen quotas which shall conform to the following requirements:

- (a) Screen quotas may require the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized, over a specified period of not less than one year, in the commercial exhibition of all films of whatever origin, and shall be computed on the basis of screen time per theater per year or the equivalent thereof;*
- (b) With the exception of screen time reserved for films of national origin under a screen quota, screen time including that released by administrative action from screen time reserved for films of national origin, shall not be allocated formally or in effect among sources of supply;*
- (c) Notwithstanding the provisions of subparagraph (b) of this Article, any contracting party may maintain screen quotas conforming to the requirements of subparagraph (a) of this Article which reserve a minimum proportion of screen time for films of a specified origin other than that of the contracting party imposing such screen quotas; Provided that no such minimum proportion of screen time shall be increased above the level in effect on April 10, 1957;*
- (d) Screen quotas shall be subject to negotiation for their limitation, liberalization or elimination.*

Article XX (f)

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:



(f) *Imposed for the protection of national treasures of artistic, historic or archeological value.*

The GATS does not include a formal and explicit "cultural exception", but *de facto* there is one, since member States can choose not to include this sector in their schedule of commitments.

Education and training services

Under the GATS, the scope of government activity is considered to be limited to basic education, meaning primary and secondary school. The traditional barriers to entry in this sector are particularly high, since recognition of diplomas is still rare and restriction of movement of persons makes cross-border supply difficult.

Education services is the least committed sector after energy services. Thirteen of the 30 country schedules⁴⁶ have included commitments for at least four of the five subsectors.⁴⁷ Thus, the number of schedules containing commitments on the different education subsectors is relatively constant: 21 on primary education, 23 on secondary education, 21 on higher education and 20 on adult education. The least frequently committed subsector is "other education", listed in 12 schedules. Wide-ranging sectoral coverage is more prevalent in the schedules of developed countries and countries in transition than in those of developing countries. Nevertheless, there are exceptions; two of the most comprehensive schedules are those of two LDCs.⁴⁸

Schedules containing *full commitments* for market access across modes 1, 2 and 3 are most common in relation to the "adult" and "other education" subsectors, in which more than half of the schedules are free of limitations.⁴⁹ By contrast, full commitments in modes 1, 2 and 3 for the primary, secondary and higher education subsectors are contained in only one-quarter of the schedules.⁵⁰ The United States is the principal *demandeur* for education services in the ongoing negotiations, since it would like to liberalize the sector for adult education and training education and to enhance the supply of education services through the Internet.⁵¹

The impact of science and technology is particularly relevant for the supply of services. It is now possible to circumvent regulatory barriers; for example, in the education sector, mode 3 may be prohibited, but the Internet makes it possible to circumvent the prohibition. The issues of access and equity are therefore key, especially in developing countries.

⁴⁶ Since Austria's schedule has not yet been integrated into that of the European Communities and their Member States, Austria is counted independently. (Finland and Sweden have not taken any commitments in the sector.)

⁴⁷ These Members are the Czech Republic, Lesotho, the European Union, Hungary, Japan, Liechtenstein, Mexico, Norway, Poland, Sierra Leone, the Slovak Republic, Switzerland and Turkey.

⁴⁸ Sierra Leone and Lesotho.

⁴⁹ Adult 11 of 20, other 7 of 12.

⁵⁰ Primary 4 of 21, secondary 5 of 23, higher 6 of 21.

⁵¹ See the United States proposal on "Higher Education, Adult Education and Training", S/CSS/W/23.



➤ **Audiovisual services**

The United States, as the largest market for audiovisual products as a whole, as well as the largest overall producer, will be in a position of *demandeur* in the ongoing negotiations in this sector. The European Union, on the other hand, dominates worldwide music recording. The most controversial issue has been the demand for an outright exception from WTO rules for cultural industries as a whole.⁵² However, the "Guidelines and Procedures for Negotiations on Trade in Services"⁵³ state that there shall be no *a priori* exclusion of any sector in the negotiations.

While cultural services have commercial importance, they are also closely tied to many countries' national policy objectives. This is reflected in the extensive regulation of the sector in a large number of countries and in the low level of commitments made by WTO Members. Indeed, only 22 out of 144 Members have made commitments, and those are mostly partial bindings.

➤ **Implications for developing countries**

Developing countries; especially those that have or may develop export industries in this area, should examine supply mode 1. The Internet, as a medium for the delivery of movies and sound tracks, enables circumvention of traditional barriers to entry. Developing countries should also ensure that the negotiations on electronic commerce are undertaken in accordance with the principles of Article IV. Transfer of technology and capacity-building support in the sector of telecommunications and the Internet could be envisaged as preconditions to negotiating market access in the area of audiovisual and Internet services. Under the UNCTAD-CAPAS Programme, a national study was undertaken on audiovisual services in Mali that could be helpful to developing countries with interest in audiovisual and cultural services.

➤ **The ongoing negotiations from the perspective of the developing countries**

Developing countries should address this issue by determining which types of cultural production and services they want to protect from the negative effects of trade. Furthermore, clarification is needed regarding the actual extent to which countries subsidize their services sectors, particularly the cultural sector. The United States has suggested that this sector be subject to a more permissive subsidy regime, as an alternative to an outright cultural exemption.⁵⁴ It is obvious that this proposal concerns the European Union and developed countries and does not address the concerns of developing countries, which have fewer resources than developed countries and would be at a serious competitive disadvantage in any subsidy war. Moreover, in line with Article IV of the GATS, subsidies should in fact be allowed only to developing countries, as positive measures to help them develop their audiovisual industries.

⁵² France and Canada have been the leaders in this issue of the "cultural exception" clause.

⁵³ Adopted on 29 March 2001, S/L/93.

⁵⁴ See the proposal by the United States concerning the audiovisual sector, S/CSS/W/21, 18 December 2000.



Cultural services are considered as being of great social and political importance, reflecting the social and cultural characteristics of nations and their peoples. During the Uruguay Round, there was a strong focus in particular on the cultural specificity of the film and television industries. There was no specific recognition of these concerns in the GATS, but at the end of the Uruguay Round, only 13 countries made commitments in this sector and more than 30 listed MFN exemptions specifically mentioning the audiovisual sector. As a result of accessions, the number of Members making commitments has risen to around 20.

Particularly relevant are the data regarding the scope of commitments made by countries acceding to the WTO. The countries that acceded in 1995 and 1996 made commitments in an average of 14.5 sectors, while those acceding during 1998 and 1999 made commitments in an average of 25.3 sectors. Furthermore, the latter group made more commitments in the cultural and health sectors (on average 6.5 sectors) than did the earlier group (2 sectors).

5. Construction services

➤ **The state of play in construction services⁵⁵**

The construction services sector in developing countries is a fundamental economic activity that permeates all sectors of the economy. It is an instrument for employment creation, a key infrastructure service and a tool for upgrading welfare. The construction industry is seen as a barometer of the health of an economy because of its strong link to cyclical fluctuations in the economy. In the lower-income countries, the share of construction services accounts for 2 to 3 per cent of the GDP, and for the advanced developing countries and the OECD countries the figure is between 5 and 7 per cent of the GDP. At the same time, the sector is high-labour-intensive and counts for 10 per cent of employment in Japan, Germany and Mexico.

During the last two decades, up to 70 per cent of construction business opportunities in international markets were found in developing countries. In developed countries, the main activities are repair and maintenance. Increasing competition and the growing technical sophistication of construction processes as well as the size of some projects has led to the growing importance of partnership agreements and strategic alliances in bidding for and implementing construction projects. Companies from developing countries have increasingly entered into ad-hoc cooperation agreements with companies in developed countries. This cooperation has helped the transfer of technology and managerial skills. However, the dominant players in the international markets remain firms from developed countries.

⁵⁵ UNCTAD paper “Regulation and Liberalization in the Construction Services Sector and Its Contribution to the Development of Developing Countries”, TB/B/COM.1/EM.12/2, 12 September 2000, and UNCTAD paper on the outcome of the Expert Meeting on National Experiences with Regulation and Liberalization, TD/B/COM.1/EM.12/3, 18 December 2000.



➤ **The GATS classification list**

Construction services include two subsectors: architectural and engineering design services and “physical” construction services. Under the Sectoral Classification list W/120, “physical construction” services include (i) general construction work for buildings; (ii) general construction work for civil engineering; (iii) installation and assembly work; (iv) building completion and finishing work; and (v) other services. Architectural and engineering services are listed under the subsector Professional Services in the sector Business Services. As defined in the GATS, these include architectural services, engineering services, integrated engineering services and urban planning and landscape architectural services.

➤ **Characteristics of the market**

While tens of thousands of firms are involved in construction, international trade in construction services involves participation in a relatively limited number of large projects. Moreover, developing-country penetration of developed countries’ markets has been insignificant.

One internal reason for the weaknesses of developing-country firms is their inability to secure adequate financing. Another reason may be the lack of research and development (R&D) in the developing countries. (In developed countries, governments often support private-sector R&D.) That is why developing country firms have used joint ventures to acquire technology from abroad.

Furthermore, bilateral development assistance is often “tied”, implying giving subsidies to national firms for delivering services abroad. This can present barriers to other firms operating in third markets and can affect the ability of domestic firms to compete for projects within their own market. However, multilateral aid often gives preference to domestic companies in developing countries to enable them to obtain the experience necessary to compete in the international market.

E-commerce has great potential in international trade in construction services, especially in making requests for proposals, bidding and finalizing transactions over the Internet. Developing countries’ participation in such networks may become vital for their trade and for obtaining specialized information and training.

➤ **Traditional barriers to developing countries’ entry into the construction services market**

Regulation of temporary presence of natural persons

A crucial cause of the difficulty that developing-country firms face in entering developed countries’ markets is the regulation concerning the temporary movement of persons. The movement of foreign nationals is often subject to visa and residency requirements and economic need tests, even for project-related work of short duration,



and frequently with little transparency regarding the criteria applied in issuing visas and work permits.

Licensing requirements and other regulations

Developing-country construction firms' ability to obtain market access in developed countries has also been undermined by complex qualification procedures and differing technical standards and licensing requirements. Firms attempting to penetrate foreign markets must conform to numerous regulations affecting areas such as building permits and inspection, registration of proprietors, technical requirements, environmental regulations and fiscal policy measures. Licensing is prevalent and construction services suppliers have to comply with prequalification standards relating to the environment, site safety and so on.

Recognition of qualifications

Developing countries have been at a disadvantage since most of the mutual recognition of qualifications happens between developed countries, excluding the developing countries. However, GATS Article VII favours mutual recognition among countries.

Article VII of the GATS

Recognition

1. For the purpose of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers and subject to the requirements of paragraph 3, a Member may recognize the education or the experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate compatible ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Member's territory should be recognized.

3. A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. Each Member shall:

(a) Within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1.



- (b) *Promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase.*
- (c) *Promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.*
5. *Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.*

➤ **Negotiating proposals**

Developing countries should bear in mind that Article XIX of the GATS enables developing countries to seek commitments in the construction services sector without symmetrical opening of their own country markets, since they are permitted to open fewer sectors and may offer reciprocal commitments or concessions in other sectors. Under Article XIX, the process of liberalization must take into account national policy objectives and the level of development of developing countries. Furthermore, developing countries may attach conditions to market opening aimed at achieving those objectives.

In the current round of negotiations, developing countries have an opportunity to pursue improved access to foreign construction markets. The problems facing developing countries in this sector, as highlighted in the negotiating proposals by Brazil and Kenya,⁵⁶ include difficulties in meeting the criteria for participating in multilaterally financed projects, tied aid, movement of personnel, transfer of technology, elimination of trade-distortive export subsidies, and complexity in licensing and authorization procedures, which could be addressed through specific negotiated commitments pertaining to that sector. Developing-country suppliers maximize their capacity building when engaging in joint ventures and partnerships with foreign firms in the delivery of service. The right of developing countries to attach such conditions to giving market access to foreign service suppliers should be recognized in line with GATS Article XIX. The developing countries should seek from these negotiations the removal of the above barriers and the giving of a more specific operational character to the implementation of the provisions of Article IV.

Schedules of commitments

Among 144 WTO members, 78 have undertaken specific commitments in construction services, which identified barriers that foreign service suppliers face in entering their market and in national treatment. All 78 countries, which include the

⁵⁶ S/CSS/W/113 and S/CSS/W/109.



major players in the international markets, have defined – in full or with some limitations – trade barriers to commercial presence. Among them, 44 countries do not impose any trade-limiting measures for companies supplying construction services.

Barriers to foreign commercial presence⁵⁷

	Market access	National treatment
Developing countries	Economic needs test; permit; authorization; access only for projects over \$100 million; joint venture, partnership, contractual association is required; foreign equity limited to 49 % to 51%; compulsory subcontracting system.	Preferential use of local services; Government approval necessary; employment and training of local executives; license valid for 3 years; joint operation with local company, which is a member of contractors' association; foreign equity limited to 49 %; one third of joint stock company's board of directors and 50% of staff must be nationals.
Developed countries	Local incorporation required; exclusive rights for construction, management and maintenance of highways and airport; nationality condition for managers of board of directors.	Non-resident must make a deposit or guarantee under the contract (4 or 6 % of contract amount)

New Zealand's main focus is on improving the quantity and quality of commitments for construction and related engineering services. New Zealand is particularly interested in exploring ways of ensuring that future specific commitments encompass all stages of the construction process, ranging from "pre-erection work at construction sites through the building completion and finishing work".⁵⁸ This approach seems to propose a general, horizontal view of the commitments and may reflect a willingness to use a kind of "cluster approach" for construction and related services. This would, according to New Zealand, ensure greater certainty of access conditions for foreign services suppliers.

Mode 4 of supply

In addressing barriers to the movement of natural persons abroad, proposals by developed countries have identified the following issues:

- Nationality requirements
- The need to ensure timely admission of employees and contractors
- The importance of seeking to participate in MRAs for relevant professional qualifications
- The need to take stock of measures aimed at implementing GATS Article VII "Recognition"
- Facilitating temporary movement of natural persons

⁵⁷ Based on national schedules of GATS-specific commitments in construction.

⁵⁸ Proposal by New Zealand, "Negotiating Proposal for Construction and Related Engineering Services", S/CSS/W/91, 26 June 2001.



Commercial presence

Developed countries in their proposals seek to remove a number of barriers to commercial presence, including the following:

- Limitations on the participation of foreign capital and on forms of establishment
- Restrictions on currency exchange, transfer of funds between projects
- Discriminatory treatment in taxation and remittance of earnings
- Discriminatory treatment in bidding procedures and attaching conditions for “local content requirement”, including subcontracting to domestic firms and hiring of local staff
- Unduly onerous licensing requirements

Article XIII on government procurement

Construction services procured by governments at all levels are estimated to account for as much as half the total demand for construction services.⁵⁹ Article XIII exempts all services purchased by governmental agencies for governmental purposes and not with a view to commercial resale, or with a view to use in the supply of services for commercial resale, from the MFN, market access and national treatment provisions of the GATS. The same Article provides that there shall be multilateral negotiations on government procurement on services within two years of entry into force of the WTO (i.e. beginning in 1997), but so far these have not produced any concrete results. Given the importance of public procurement in the construction sector, these provisions, in fact, exclude much of the trade in the sector from GATS disciplines.

Effective implementation of Article IV

Negotiations should take into account individual countries’ level of development, and special treatment should be accorded to the LDCs in order to take account of the asymmetries caused by the size of their markets and the structural weaknesses of those markets. Countries should then aim at effective implementation of Article IV. Any consideration of specific classifications or methodologies to be used as tools or aids for negotiations should ensure that the architecture of the GATS is not modified.

➤ Implications for developing countries

Negotiations should aim at effective implementation of GATS Article IV, which provides the framework for developing countries to acquire knowledge and transfer of technology as a way to develop domestic capacities in the construction services sector. Any consideration of specific classifications or methodologies to be used as tools or aids for negotiations should ensure that the architecture of the GATS is not modified and should have as its objective the effective implementation of

⁵⁹ See WTO, S/C/W/38.



Article IV in the construction services sector. Government practices can have a significant impact on trade in this sector, and some countries are pushing to make the rules on government procurement clearer and more transparent. However, developing countries' governments may be willing to use government procurement to give preferences to local producers to help them obtain expertise and build their capacities while providing local employment opportunities.

The GATS negotiations should also address measures that impede the ability of developing-country firms to compete *in their own markets* or those of other countries, including subsidies, tied aid, discriminatory qualification requirements and anticompetitive practices. Developing countries should seek the removal in the GATS negotiations of measures that impede the ability of their firms to *penetrate developed countries' markets*. These include restrictions on the temporary movement of personnel, discriminatory and nontransparent licensing and standards, nonrecognition of professional qualifications, problems of access to networks for the supply of construction services, government procurement practices that discriminate against developing countries' construction services providers, subsidies and discriminatory tax policies. In all cases, developing countries should define how the disciplines applicable to these restrictions would preserve special and differential treatment (SDT).

6. Financial services

➤ Classification issues

The classification list used by WTO Members (MTN.GNS/W/120) considers financial services as a sector that includes three subsectors: (i) all insurance and insurance-related services; (ii) banking and other financial services; and (iii) other services. This list does not correspond exactly to the United Nations CPC classifications.⁶⁰

The **GATS Annex on Financial Services** contains a nonexhaustive list of financial services, with a slightly modified version of the classification in the W/120 document. The Annex includes only two subsectors: (i) all insurance and insurance-related services; and (ii) banking and other financial services. However, the Annex includes a more detailed list of all the services included in the subsectors. It seems, then, that the Annex provides for a more disaggregated and more appropriate classification for the purpose of scheduling commitments than the CPC classification.

A large majority of Members have based their Schedules on the classification in the Annex on Financial Services or on the W/120 classification. However, since those classifications are not binding, some countries have used original national classifications.

⁶⁰ See WTO, "Background Document by the Secretariat on Financial Services", S/C/W/72, 2 December 1998.



Furthermore, given the rapid change in this sector that tends to blur the distinction between services, the classification issue has become important in the ongoing negotiations on services.

Finally, an **Understanding on Commitments in Financial Services** has been included in the Marrakech agreement and gives an alternative approach to making specific commitments in this sector by introducing additional provisions.

➤ **Definitions of financial services**

ANNEX ON FINANCIAL SERVICES

5. Definitions

For the purposes of this Annex,

(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

- (i) Direct insurance (including co-insurance):*
 - (A) Life*
 - (B) Non-life*
- (ii) Reinsurance and retrocession;*
- (iii) Insurance intermediation, such as brokerage and agency;*
- (iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.*

Banking and other financial services (excluding assurance)

- (v) Acceptance of deposits and other repayable funds from the public;*
- (vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;*
- (vii) Financial leasing;*
- (viii) All payments and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;*
- (ix) Guarantees and commitments;*
- (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:*
 - A. money market instruments (including cheques, bills, certificates of deposits*
 - B. foreign exchange;*
 - C. derivative products including, but not limited to, futures and options;*
 - D. exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;*
 - E. transferable securities;*
 - F. other negotiable instruments and financial assets, including bullion.*
- (xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;*



- (xii) *Money brooking;*
 - (xiii) *Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;*
 - (xiv) *Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;*
 - (xv) *Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;*
 - (xvi) *Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraph (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.*
- (b) *A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term of “financial service supplier” does not include a public entity.*
- (c) *“Public entity” means:*
- i. *a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or*
 - ii. *a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.*

➤ **The state of play in financial services**

The public sector has traditionally been involved in financial services. In many countries, banking activities are still controlled by the state, although since the 1980s there has been a clear tendency towards privatization. Among the most regulated of all services sectors, the financial sector involves a fundamental economic activity underlying the whole economy, and the associated government policies are aimed at maintaining market stability, reducing risks and in general upholding a sound and safe financial system. That is why the Annex on financial services of the GATS recognizes that it is the role of government to pursue such policies by allowing domestic regulation and prudential measures to be taken.

Annex on Financial Services

2. Domestic Regulation

- (a) *Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform to the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement.*



At the same time, numerous bilateral agreements and Memorandums of Understanding for the exchange of supervisory information and cooperation between national supervisory authorities have been made in this area.⁶¹ A possible means to address concerns arising from differences in prudential regulation between countries is for each Member to recognize the prudential measures of other countries with high standards of prudential regulation and supervision. This recognition may be done unilaterally or through a consultation process.

Annex on Financial Services

3. Recognition

(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

The development of international agreements in the area of financial services and accounting of financial transactions and institutions has been increasing in the last decade, in order to make the process more transparent and to avoid barriers to trade.

The most important mode of supply of banking services is still mode 3 (commercial presence). Particularly for areas such as asset management and private banking or life insurance that require attention by personnel, a direct contract between parties is still deemed to be necessary. An examination of the specific commitments of Members reveals that mode 3 is often a precondition for the supply of financial services, even if these commitments are subject to numerous and significant reservations (legal form, authorized participation of foreign capital, number of suppliers, economic needs test, etc.). There are fewer specific commitments for mode 1 (cross-border supply) and 2 (consumption abroad), suggesting a lesser degree of liberalization. Although the relative importance of mode 1 of supply in financial services seems to be increasing, mode 3 may still be the predominant mode, particularly in developing countries. In the long term, however, mode 1 (cross-border supply) may become more and more prevalent with increased use of the new technologies.

➤ **Commitments made by countries**

Countries have reflected in their schedule of commitments the liberalization that has taken place so far in this area. Removal of the limitations on market access and national treatment has not occurred only through multilateral negotiations and bilateral or regional agreements. The negotiations in the WTO have been extended in the aftermath of the conclusion of the Uruguay Round in the area of financial services. These negotiations resulted in a significant number of commitments annexed to the

⁶¹ See WTO, S/C/W/72, 2 December 1998.



Fifth Protocol to the GATS upon their conclusion in December 1997. Indeed, the European Community, NAFTA, ASEAN and MERCOSUR agreements include a provision to liberalize financial services among the countries concerned.

The traditional barriers to entry are the requirements for joint venture and the limitations on the participation of foreign capital in local financial institutions. A number of barriers have been justified for supervisory reasons, and their removal requires international cooperation.

Other limitations on market access include limitations on the number of licenses granted: countries often apply economic needs tests. As far as national treatment is concerned, limitations applied are nationality and residency requirements, limitations on land ownership and discriminatory taxes.

Countries' schedules of commitments show that almost all Members with commitments in financial services cover the "core" services in insurance, banking and securities. Fewer Members made commitments in insurance intermediation or transfer of financial information. As far as modes of supply are concerned, most of the commitments have been made for mode 3 (commercial presence), and fewer for cross-border supply (mode 1), as mentioned above.



➤ **Proposals for the negotiations on financial services**

Developing countries' concerns

The proposal by the Republic of Korea points out that imprudent financial services liberalization could have negative effects on the development of financial systems as well as on the stability of emerging market economies.⁶² Therefore, before further liberalizing the sector, countries should strengthen their financial systems. Negotiations on financial services should aim at achieving more orderly and sequenced liberalization in accordance with the levels of developments of the financial market and the supervisory system.

Furthermore, the Republic of Korea supports the idea of giving credits for autonomous liberalization, particularly in this sector. The Republic of Korea is also of the view that an “Understanding of Commitments on Financial Services” may lead some countries to undertake a level of commitments that goes beyond what their financial circumstances allow for. That is why it supports the idea that the liberalization process should occur according to the capacity of countries and through discussion among WTO Members.

Colombia’s proposal points out that liberalization in the financial sector should take into consideration countries’ level of development.⁶³ The risk of destabilizing the financial system makes the economic needs test for commercial presence necessary, according to Colombia.

Classification issue

Switzerland points out in its proposal the classification problem: certain countries have not been able to use the classification list W/120, and certain new financial products can be classified in any one of the several categories.⁶⁴ Furthermore, the distinction between insurance and banking activities has started to blur, because of the convergence of those sectors. Therefore, the Swiss proposal calls for a review of the classification used in financial services.

The proposal by the United States points out that the Annex on Financial Services continues to provide a comprehensive and coherent basis for scheduling commitments. The definitions in the Annex are broad and still relevant and can therefore accommodate different regulatory approaches.⁶⁵

Canada supports the view that countries should use the Annex on Financial Services when scheduling commitments in financial services.⁶⁶

⁶² Communication from the Republic of Korea, “Negotiating Proposal for Financial Services”, S/CSS/W/86, 11 May 2001.

⁶³ Communication from Colombia, “Financial Services”, S/CSS/W/96, 9 July 2001.

⁶⁴ Communication from Switzerland, “GATS 2000: Financial Services”, S/CSS/W/71, 4 May 2001.

⁶⁵ Communication from the United States, “Financial Services”, S/CSS/W/27, 18 December 2000.

⁶⁶ Communication from Canada, “Initial Proposal on Financial Services”, S/CSS/W/50, 14 March 2001.



According to Norway, the classification set out in the Annex on Financial Services and the Understanding on Commitments in Financial Services provide a comprehensive and transparent basis for scheduling commitments. Norway encourages all Members to adhere fully to the broad definitions used therein when scheduling commitments. Furthermore, Norway emphasizes the need for additional commitments in the field of insurance related to maritime shipping.⁶⁷

Method of negotiation

The proposal by the Republic of Korea supports the traditional “request and offer” method of negotiating but points out that a more horizontal approach may enhance the level of liberalization of financial services.

Colombia points out in its proposal the lack of clarity caused by the different classification of financial services. Colombia proposes to use only the Annex on Financial Services included within the GATS.

The European Communities propose that countries use the Understanding when they schedule their commitments, so as to achieve more coherent liberalization.⁶⁸

Further commitments

The proposal by the Republic of Korea points out that trade barriers that constrain commercial presence should be removed gradually. These barriers are mainly limitations on equities-sharing types of operation, number of operations and the nationality of management employees. The proposal supports the view that the MFN exemptions should be gradually removed as well, and that in particular the reciprocity test should be abolished. Finally, it is pointed out that e-finance is a great opportunity for the financial sector, since it creates more opportunities for large-scale and rapid cross-border capital movements. Since financial transactions tend to increase without commercial presence, it is still appropriate to create a safe and sound system through an adequate prudential framework.

Colombia supports the removal of limitations on MFN, such as the reciprocity test. Colombia also stated that clarification is needed to determine precisely the services supplied through cross-border supply and those supplied through commercial presence.

Switzerland recommends that the “Understanding” be promoted as a minimum standard for liberalization, in order to enhance the clarity of the commitments made so far. It proposes to relax the restrictions on commercial presence, such as restrictions relating to equity participation and the number of financial suppliers. As was mentioned earlier, the distinction between mode 1 and mode 2 has become fuzzy, and

⁶⁷ Communication from Norway, “The Negotiations on Trade in Services”, S/CSS/W/59, 21 March 2001.

⁶⁸ Communication from the European Communities and their Member States, “GATS 2000: Financial Services”, S/CSS/W/39, 22 December 2000.



therefore Switzerland wishes countries to make more homogeneous commitments and asks the Council for Trade in Financial Services (CTFS) to examine the possibility of merging these two sectors. Furthermore, Switzerland urges countries to liberalize more generally the fields of banking and insurance in all sectors and in all modes of supply.

The United States proposal supports the removal of the restrictions on foreign suppliers' ability to establish preferred forms of commercial presence, such as subsidiaries, branches or joint ventures. The United States also supports the removal of restrictions on suppliers' ability to provide certain financial services on a cross-border basis. Therefore, countries should make commitments under modes 1 and 2 and should remove quantitative restrictions on the number of service suppliers (e.g. quotas, monopolies or exclusive providers, and economic tests). Mode 4 of supply should be liberalized and the discrimination in terms of taxes and domestic regulations against foreign suppliers should be removed. Canada proposes to expand and strengthen market access and national treatment commitments and to achieve further reductions in barriers to trade in financial services and in all four modes of supply.⁶⁹

Australia supports the liberalization process in the financial services sector, proposing greater liberalization of market access and national treatment (e.g. through greater opportunities for foreign equity participation, greater flexibility to establish foreign commercial presence and greater flexibility for movement of persons).⁷⁰ The European Communities support further liberalization through the whole mode of supply and for banking and insurance. In their view, restrictions on market access and national treatment should be removed, as well as discrimination against foreign suppliers. Japan supports the liberalization process in financial services and hopes that the negotiations will aim at reducing the restrictions.⁷¹ Finally, Norway invites Members to undertake real improvements in their commitments with regard to market access and national treatment and to reduce or eliminate remaining MFN exemptions.⁷²

Transparency

Prudential regulations and measures are recognized to be necessary in the financial sector; however, the proposal by the Republic of Korea points out the need to enhance transparency with regard to these prudential measures, in order to avoid protectionism. In its proposal, the United States includes an attachment concerning transparency in the field of financial services.⁷³ With regard to domestic regulation, it proposes to improve disciplines in relation to development, adoption, and application, and enforcement of regulations, including those related to licensing procedures, so

⁶⁹ Communication from Canada, "Initial Negotiating Proposal on Financial Services", S/CSS/W/50, 14 March 2001.

⁷⁰ Communication from Australia, "Negotiating Proposal for Financial Services", S/CSS/W/66, 28 March 2001.

⁷¹ Communication from Japan, "The Negotiations on Trade in Services", S/CSS/W/42, 22 December 2000.

⁷² Communication from Norway, S/CSS/W/59.

⁷³ "Attachment on Transparency and Other Principles for Regulation of Financial Services", S/CSS/W/27, 18 December 2000.



that domestic and foreign suppliers will be able to understand the commitments made by countries. Canada supports the proposals of the United States for enhancing transparency requirements. The European Communities also emphasize their support for regulation that is transparent, proportionate and necessary.

E-finance

Switzerland's proposal stresses the new possibilities offered by the ability to make electronic transactions in the financial area and points out that a financial institution must be able to operate in a suitable commercial environment. The Swiss proposal expresses regret that the WTO's work in this field has been limited.

Switzerland encourages Members to undertake commitments in modes 1 and 2, in order to contribute to the growth of electronic commerce, and asks the WTO Committee on Trade in Financial Services (CTFS) to work further on this issue, particularly the question of how electronic commerce affects the relationship between modes of supply 1 and 2.

7. Environmental services

➤ The context⁷⁴

Factors contributing to the growth of demand for and international trade in environmental services are mainly related to the development and enforcement of appropriate environmental legislation at the country level, especially through regulatory instruments. However, market-based incentives, fiscal policies and public education and awareness also contribute to ensuring sustainable demand for environmental goods and services, particularly in developed countries. Multilateral and bilateral assistance represents an important market driver in developing countries, where external financing makes it possible to secure at least some of the needed environmental goods and services.

Strengthening capacity in the environmental services sector in developing countries may help them solve or minimize their environmental problems, with resulting improvements in the quality of life for inhabitants. However, several conditions need to be satisfied in order to achieve this result. Appropriate domestic environmental legislation has to be developed and enforced and economic incentives have to be set up to generate sustainable demand for environmental goods and services and to make sure that environmental improvements are not decoupled from economic benefits. A situation conducive to the transfer of environmentally sound technologies (ESTs) has to be established and domestic firms have to develop the skill to absorb ESTs and adapt them to local needs.

⁷⁴ See UNCTAD "Strengthening Capacities in Developing Countries to Develop Their Environmental Services Sector", TD/B/COM.1/EM.7/2, 12 May 1998. See UNCTAD, Report of the Expert Meeting, TDB/COM.1, 20-22 July 1998.



➤ **Definition of environmental services and classification under the GATS**

As far as environmental services are concerned, GATS classification list W/120 is relatively restricted. It lists environmental services as a sector, including as subsectors sewage services, refuse disposal services, sanitation and similar services" and other services. This list is largely based on the United Nations Provisional Central Product Classification (CPC). The subsector "other" therefore arguably includes the remaining elements of the CPC list, such as exhaust gases and noise abatement services.

The W/120 list is limited, since it does not include all services that may benefit the environment. It is difficult to accurately define environmental services, but according to the OECD/Eurostat, they include services provided to "measure, prevent, limit, minimize or correct environmental damage to water, air, soil, as well as problems related to waste, noise and eco-systems".⁷⁵ Yet W/120 focus mainly on pollution control and waste management, and the other remaining activities under environmental services may be included under "other". Furthermore, the list is non-binding, and therefore Members are free to adapt their classification system as they want.

All the proposals submitted on environmental services stress the classification problem and try to identify the subsectors and other related services that should be included in the classification list.

➤ **The state of play in environmental services**

Historically, because environmental services have been considered as public goods or natural monopolies, they have been supplied by public authorities. Today the situation is different, because of the belief that the private sector may achieve environmental objectives in a more economically efficient way. Still, the public sector remains widely involved in activities such as water treatment and waste recycling.

Developed countries are more involved in environmental services, accounting for 87 per cent of the global market.⁷⁶ The tendency is towards increasing concentration in the environmental industry. Trade in environmental services appears to be relatively free of restrictions in comparison with other service sectors.

Unlike in many other service sectors, exports of environmental services involve considerable investment in the importing country, and thus ownership and control become a significant consideration. The movement of natural persons is also a relevant factor. Thus, additional commitments in the framework of the GATS could offer new market opportunities to firms from developed countries and provide

⁷⁵ See "Environmental Services", WTO Background Note, S/C/W/46, 6 July 1998.

⁷⁶ See WTO S/C/W/46.



developing countries with greater access to such services, to the benefit of the environment, the people and their own developing environmental services industry.

As in other service sectors, trade in environmental services may be affected by lack of market access in other sectors. Engineering, consulting and analytical services are almost invariably key to the provision of environmental services. Liberalization would therefore include several sectors in a single package, where both developing and developed countries could find a trade interest. However, the benefits of such liberalization, both in terms of the trade interests of the exporter and the objectives of the importing country related to environmental protection and building domestic capacity, may not be realized if certain preconditions are not satisfied. In particular, appropriate domestic environmental legislation has to be developed and enforced and economic incentives have to be created to generate sustainable demand for environmental goods and services.

➤ **Trade restrictions**

The suppliers of the major environmental services rely significantly on the commercial presence mode of supply. Therefore, the barriers limiting the ability to establish commercial presence are the traditional barriers to trade in this field – most often limitations on foreign investment, on the type of legal entity required and on the scope of operations, as well as the application of an economic needs test to determine whether new entry will be allowed. Another barrier to trade is the limitation on mode of supply 4 (movement of natural persons). This limitation takes the form of nationality and residency requirements, immigration policy and so on.

Because environmental services are subject to numerous regulations, some of them can be seen as technical barriers to trade (TBT). Environmental norms should be designed to ensure that they do not become technical barriers to trade.

➤ **Government procurement**

Government still plays an important role in environmental services. In OECD countries, the public and private sectors account for roughly equal shares of total environmental expenditures, while in developing countries the share of the public sector is around 70 per cent.⁷⁷

The Agreement on Government Procurement (GPA) now has 28 signatories.⁷⁸ Nearly all signatories to the GPA have included the full range of environmental services as defined in the W/120 classification list within the scope of their commitments.

⁷⁷ See UNCTAD, TD/B/COM.1/EN.7/2, May 1998.

⁷⁸ Austria, Belgium, Canada, Denmark, the European Communities, Finland, France, Germany, Greece, Hong Kong (China), Iceland, Ireland, Israel, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Netherlands with respect to Aruba, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom, the United States.



➤ **Implications for developing countries**

Presently most developing countries do not have export capacities in the environmental services sector. A situation conducive to the transfer of environmentally sound technologies (ESTs) needs to be established, and domestic firms need to develop the skill to absorb ESTs and adapt them to local needs. Forging partnerships between firms in developing and developed countries is proving to be a viable tool for helping firms from developing countries to acquire state-of-the-art technologies, reach markets that otherwise would be difficult to access, and become part of an international network. For firms from developing countries, such partnerships facilitate their activities in emerging markets, where environmental and business conditions can be quite different from those at home. Partnerships seem to have dramatically contributed to enhancing technological capabilities in developing countries.

A gap exists between the environmental needs of developing countries and the resources available to satisfy them. International cooperation and financing are key factors in enabling developing countries to address their most pressing environmental problems. Education and information can encourage public authorities, producers and consumers to adopt more sustainable approaches. Political willingness and leadership play a crucial role in making it possible to devote efforts and resources to environmental improvements. Governments, especially in developing countries where, resources are limited and several key environmental needs remain to be satisfied, have an interest in ensuring that environmental policy decisions are the result of a participatory process. Strengthening capacities in the environmental services sector in developing countries, while primarily aimed at addressing and eventually solving environmental problems, may also result in their ability to become international providers in this field. It can also help them increase their capacity to meet environmental requirements in importing markets, become more appealing destinations for foreign direct investment, gain easier access to capital and strengthen other domestic sectors, such as tourism.

➤ **Proposals for negotiations**

Four countries – Switzerland, Canada, the United States and the European Communities – have submitted proposals dealing with negotiations on environmental services. Both the United States and the European Communities suggest win-win situations resulting from liberalization in environmental services.⁷⁹ Both seek the removal or reduction of what they define as barriers or obstacles affecting trade and investment in all the subsectors of environmental services. The European Commission proposes that environmental services be subject to a special “cluster” or “checklist”, used as an *aide-mémoire*, in order to enable more comprehensive liberalization measures.

⁷⁹ See communication from the United States, "Environmental Services", S/CSS/W/25, 18 December 2000 and communication from the European Communities and their Member States, "GATS 2000, Environmental Services", S/CSS/W/38, 22 December 2000.



According to the European Communities, commitments should be scheduled according to a revised classification including seven subsectors. These “core” environmental services would be classified according to the environmental media (air, water, solid and hazardous waste, noise, etc). Canada’s proposal also points out that a cluster approach could be used during the negotiations, more as a checklist than as an attempt to change the structure of the GATS.⁸⁰ This approach would allow liberalization of both the activities contained in the core list of environmental services under the W/120 list and other related services.

The United States proposal seems similar to the European one in proposing that the negotiations in this sector cover an all-encompassing package of related activities, including construction, engineering and consulting. These services have not historically been classified as being environmentally related, but according to the United States proposal they are significant to the provision of environmental services. This last approach would seem to take away much of the flexibility contained in the GATS.

The proposals by the European Communities, Canada, Switzerland and the United States proposals address the issue of horizontal and vertical limitations of liberalization. The United States emphasizes the view of liberalization of the sectors currently classified as environmental services as well as additional “related” sectors, focusing on mode 3 and 4. The European Communities seek full commitments for modes 1, 2 and 3. On mode 4, “further discussions” should be held on “how to improve and facilitate the movement of natural persons” for the provision of specific services. Canada and Switzerland maintain that Members that currently do not have commitments should make bound commitments in all subsectors and modes of supply.

The United States and Canadian proposals explicitly recognize the right of Members to regulate and the importance of maintaining appropriate domestic legislation in this sector. Furthermore, both proposals in this sector make reference to the concerned countries’ respective proposals on transparency.

⁸⁰ Communication from Canada, “Initial Negotiating Proposal on Environmental Services”, S/CSS/W/51, 14 March 2001.



NEGOTIATIONS ON GATS RULES:⁸¹ SAFEGUARDS, PROCUREMENT AND SUBSIDIES

The negotiations on GATS rules are unquestionably linked with the negotiations concerning Article XIX, on progressive liberalization, and Article IV, on increasing participation by developing countries in trade in services. Generally speaking, the principles contained therein encompass all the negotiations under way on the WTO “built-in agenda”, adding the objective of further liberalization while taking into account the needs of national development policies.

The developing countries should carefully assess the benefits and risks that might result from the negotiations on each subject of the GATS rules. The ways in which the agreements are applied in practice can often produce paradoxical results, as in the case of safeguard measures concerning goods, where one of the countries that make the most use of the exception to compliance with the obligations in emergencies is a developed country. Similarly, the capacity to apply any rules domestically should be weighed carefully. The existence of a set of rules on countervailing measures in subsidies does not necessarily mean that the developing countries have the infrastructure, statistical resources or institutional capacity to carry out investigations that meet international requirements.

A situation might also arise in which some developing country might benefit from the adoption of rules traditionally opposed by the developing countries in WTO, a case in point being transparency in government procurement, from which both domestic and foreign firms could benefit. With this reservation in mind, the following specific points can be made.

1. Emergency safeguard measures (ESM)

Among issues that developing countries have emphasized are the rule-making work and the need for disciplines and agreement on the emergency safeguard measures in the context of the mandated negotiations under GATS Article X. The real importance of the negotiations on safeguards is that they will set out the conditions under which governments can differentiate between foreign and domestically owned enterprises operating in their territories, and thus will have implications for any future negotiations on investment.

⁸¹ See Vivas Eugui D, "Negotiations in WTO on the Rules of the General Agreement on Trade in Services: The Case of Venezuela", paper prepared for UNCTAD, UNCTAD/DITC/TNCD/6, 7 February 2001.



There are two main concerns with respect to ESM:

1. The need for a mechanism that would allow Members to take measures in case of serious injury or threat to cause serious injury to the domestic service industry; and
2. The temporary suspension of obligations under a specific agreement in order to promote the development of a domestic supply sector.

A set of horizontal rules on ESM in services would give developing countries a legitimate way to suspend their GATS commitments in the event of supply increases, especially in modes 1 and 2, where developed countries benefit from a comparative advantage. This set of rules would give them more room to manoeuvre than a sector-specific approach.

Developing countries have emphasized the rule-making work and the need to agree on disciplines concerning the Agreement on the Emergency Safeguard Measures in the context of GATS Article X. So far, negotiations on ESM have been conducted along the lines of a concept paper put forward by ASEAN countries.⁸² This paper takes an approach based on the WTO Safeguard Agreement by suggesting that the basic principles for the safeguard relating to goods could be adapted to services: to be permitted to implement an ESM, countries should prove that there is an increase in the supply of services in any of the modes of supply, serious injury to domestic or national industry and a link between the two.

➤ **Issues for discussion**

1.- MFN and national treatment obligations: Article X states that ESM negotiations should be based on the principle of nondiscrimination. It is then important for countries to address issues such as the following:

- ▶ Should the ESM be applied to already established foreign suppliers?
- ▶ Would it constitute discrimination against foreign suppliers?
- ▶ Would it lead to disinvestments?
- ▶ If safeguard measures were applicable to established foreign suppliers, would this be inconsistent with Members' MFN obligations vis-à-vis new entrants?
- ▶ How to define domestic services suppliers for the purpose of safeguard petitions and injury determination?

2.- The procedure for implementing ESM: The debate on how to prove that there are an increase in supply, an injury and a causal link is still unresolved. However, all countries agree that the procedure should be based on investigation and should respect the principles of transparency and due process. Developed countries have raised concerns about the effectiveness of the measures, since they believe that these would lead to disinvestment in the sector concerned. However, Members agree

⁸² See proposal from ASEAN, "Concept Paper: Elements of a Possible Agreed Draft of Rules on Emergency Safeguard Measures for Trade in Services", S/WPGR/W/30, 14 March 2000.



that the measures would take the form of suspension, amendment or temporary withdrawal of the commitments undertaken under the schedules for market access and national treatment and the additional commitments annexed to the GATS.

2. Subsidies in services

In principle, the establishment of a set of rules on subsidies and countervailing measures would benefit countries that cannot afford to fund activities related to the supply of services. As can be deduced from the section on subsidies in services, the main activities for which State aid is provided in the developed countries are in the areas of research and development, audiovisual services, transport and finance. The developing countries, for their part, provide passive subsidies to attract foreign investment in areas of interest to them such as manufacturing, tourism and social activities. The developing countries should draw up lists of the subsidies they consider “negative” and “positive” with respect to their interests, both by sector and by mode of supply.

In recent years, developing countries have acquired some experience in the area of investigations into subsidies for goods. This experience, when linked with policies for institution building and, where possible, the collection of statistics on both the supply and the consumption of services in the areas of interest, could enable rules on subsidies and countervailing measures to be applied in services.

Developing countries have strongly criticized the Agreement on Subsidies and Countervailing Measures, arguing that the non-actionable subsidies allow exceptions to be made for activities carried out principally by the developed countries and not developing ones (e.g. for R&D). That is why developing countries have proposed that this agreement be reviewed before being considered as a reference point for subsidies in services.

3. Government procurement

Negotiations on government procurement under Article XIII of the GATS have so far consisted of a general exchange of views on procurement in services. These negotiations should profit from the work being carried out by the Working Group on Transparency in Government Procurement regarding transparency in services. It is relevant to point out that in Doha Members agreed that negotiations on transparency in government procurement would take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.

Government procurement seems to be the area in which the developing countries have the least interest in seeing multilateral disciplines established. This lack of interest is evident in the small number of companies from developing countries with the capacity to supply the amounts needed and meet the requirements set by the



Governments of the developed countries, and also in the important role of public spending in domestic policies on industrial and social development and on establishing service suppliers. Developing countries' capacity to obtain access to markets for government procurement in services is still very limited, and for the moment any agreement on the subject will not translate into an increase in the supply of services to the developed countries. Acceptance of any commitment on government procurement in services within WTO should first identify possible trade-offs in areas of interest.

On the other hand, if the negotiations reach the point where commitments on market access are being analysed, the developing countries should clearly assert the objectives of Article XIX, on progressive liberalization, and Article IV, on increasing participation by developing countries. It will be necessary to identify the sectors of interest to the developing countries and to seek to have those interests included in the developed countries' schedules of commitments. They should also take advantage of "cross-list schemes" (i.e. seek bilateral concessions) to put pressure on the commercial partners they have historically dealt with, in order to consolidate markets.

The subject of concessions can be approached from various angles, depending on each State's political viewpoint. Many countries have reservations about granting this kind of privilege to foreigners for reasons of national security, or because they want to keep strategic service-management sectors in the hands of their own nationals and thus do not wish to undertake international commitments in this area. Others, in contrast, consider concessions as a means of investment similar to privatization and wish to attract foreign capital to build and manage public services. The latter countries tend to be more flexible with regard to possible commitments. There is, therefore, no single concept or universal scheme for concessions. It will be up to each developing country to choose the route that best suits its political and economic programme.

In conclusion, unless there is **joint progress in the areas of safeguards, subsidies and government procurement** in services, it will be very difficult to achieve any concrete results in the negotiations. In the last few years, the developing countries have learned how to make progress on subjects that are important to them. The idea that trade liberalization should reflect the interests and needs of both the industrialized and the developing countries is becoming more firmly established.



SPECIAL AND DIFFERENTIAL TREATMENT IN THE NEGOTIATIONS ON SERVICES: MAIN ELEMENTS TO TAKE INTO ACCOUNT

Article IV of the GATS acknowledges the **asymmetry** existing with respect to the degree of development among WTO Members and the need for industrialized countries to compensate for imbalances in trade in services. There is a recognition of Members' right to regulate the supply of services in order to meet national policy objectives. The means acknowledged by Article IV are the following:

- (a) **Strengthening of their domestic services capacity and its efficiency and competitiveness through access to technology on a commercial basis;**
- (b) **Improvement of their access to distribution channels and information networks; and**
- (c) **Liberalization of market access in sectors and modes of supply of export interest to them.**

However, the wording of Article IV does not specify the actions required to achieve these goals, nor how to make them legally enforceable, and little progress has been made so far in increasing the participation of the developing countries in trade in services. The supply constraints should be viewed in this context.

GATS provisions reflecting special and differential treatment

The Preamble of the GATS recognizes the rights and particular needs of developing countries to regulate and to introduce new regulations on the supply of services in order to meet national policy objectives. The implementation of the GATS should facilitate the participation of the developing countries in trade in services and their expansion of services' exports.

Article IV concerns the increasing participation of the developing countries in the world trade system. The situation of the Least Developed Countries (LDCs) is stressed so that special attention should be given to them.

Article V provides for a more favorable treatment granted to firms of developing countries Members of a regional trade agreement.*

Article XIX recognizes that developing countries can liberalize more gradually and may obtain trade-offs on the basis of the positive list approach.

*The Agreement recognizes the particular pressure on the **Balance of Payments** of developing countries Members and economies in transition. Therefore it is allowed for those countries to **restrict trade in services**, in order to maintain adequate level of financial reserves.*

* See the discussion of regional integration and liberalization of trade in services earlier in this document.



1. The positive list approach

The "positive list approach" has been adopted as the mechanism of liberalizing the GATS structure – that is, separating general obligations that would be accepted by all parties in Part II from the market access and national treatment provisions in Part III that would be the subject of specific negotiations. It means that each country can strategically select the individual service sector or transaction that it is willing to open up at a given time, subject to specific conditions and limitations. Market access results from individual commitments, which are negotiated in pursuance of long-term progressive liberalization, and national treatment is negotiated, not granted automatically.

Therefore the impact of the GATS on specific countries depends very much on their capacity to negotiate offers and requests according to their level of development. Article XIX.2 of the GATS acknowledges the imbalances between developing and developed countries, allowing countries greater flexibility to open fewer sectors according to their level of development.⁸³

The challenge for developing countries remains how to establish their specific needs in the framework of GATS Article IV, leading to actual transfer of technology and capacity building. This could be achieved by negotiating Annexes in sectors of interest to developing countries that would include other disciplines related to the effective implementation of GATS Articles IV and XIX. The rationale is that it is difficult to devise across-the-board provisions in favour of developing countries without arriving at a lowest common denominator. On the other hand, in a sectoral context, more specific provisions could be negotiated. Similarly, although Article XIX.2 provides that developing countries can attach conditions to access to their markets, very few have done, most likely because of imbalances in negotiating strength. However, developing countries might aim at negotiating such conditions on a sectoral or "cluster" basis. Those conditions could include elements such as those mentioned above in the context of construction and energy services, or could be related to other areas, such as anticompetitive practices. Anticompetitive practices are subject to extremely limited disciplines under GATS Article IX, yet they are very distortive of trade in many service sectors. Thus, the negotiations on services will have to deal with the contradictions between the goals of certain developed countries that wish to simply pursue their market access agenda for liberalization and those of developing countries that wish to ensure the implementation of the GATS provisions in their favour.

⁸³ Article XIX.2 reads as follows: "The process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing countries Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV".



2. *Increasing participation by developing countries*

To identify their national interests, developing countries need to establish an effective domestic consultative mechanism to help define national objectives. This identification of national interests should be the basis of the negotiating strategy and request.

Mechanisms need to be developed to ensure the effectiveness of Article IV as well as obtain an authoritative interpretation of the provisions relating to developing countries. For example, positive measures could be taken by developed countries, for example through **transfer of technology** and access to **distribution channels** and **information networks** by providing incentives to firms to settle in developing countries.

Developing countries should make sure that the SDT provisions are recognized in the ongoing negotiations as legally binding and are implemented. SDT should be recognized as more than a "best endeavor clause".

Furthermore, few developing countries have taken advantage of the possibility of including access conditions, such as joint ventures and training of local employees, aimed at achieving the objectives of Article IV. These conditions should be used more fully in the future to ensure that imports of services lead to supply capacity building.



REGIONAL INTEGRATION AND LIBERALIZATION OF TRADE IN SERVICES

Article V of the GATS concerns economic integration and is reproduced here.

1. Article V of the GATS and its implications for developing countries

Article V

Regional Integration

1. *This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:*

(a) *has substantial sectoral coverage*, and*

(b) *provides for the absence or elimination of substantially all discrimination, in sense of Article XVII, between or among the parties, in the sectors covered under paragraph (a), through:*

i. *elimination of existing discriminatory measures and/or*

ii. *prohibition of new or more discriminatory measures,*

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. *In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.*

3. (a) *Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.*

(b) *Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favorable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.*

4. *Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.*

5. *If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2,3 and*



4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

**This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the a priori exclusion of any mode of supply.*

Article V provides for an exception to the general obligation of MFN treatment contained in Article II of the GATS for parties of a regional trade agreement. It means, therefore, that the preferential treatment that applies among members of this agreement does not have to be extended to other WTO Members. However, any regional trade agreement should be compatible with the provisions of Article V of the GATS and should be notified to the Council for Trade in Services at the WTO; the Committee on Regional Trading Agreements (CRTA) will examine its consistency with Article V.

To achieve compatibility, an agreement liberalizing trade in services should fulfill two basic conditions.

- It must have "substantial sectoral coverage" in terms of the number of sectors covered, the volume of trade affected and modes of delivery, and
- It has to provide for national treatment for services providers of the parties, eliminating "substantially" all discrimination.

These conditions must be met either upon the entry into force of the regional agreement or within a "reasonable time frame" that is not specified.

More flexibility for developing countries parties to a regional trade agreement is provided for under Article V.3. This means that developing countries and LDCs have flexibility in the application of Article V.1 requirements and can cover fewer



sectors, a smaller volume of trade and fewer modes of delivery, maintain a wider range of limitations vis-à-vis national treatment and progressively extend market access in accordance with their development situation. Furthermore, they can attach conditions to the granting of access to their markets to foreign service suppliers.

Two important issues relating to Article V that need clarification are:

- the meaning of "**substantial coverage**" and
- what is considered to be a "**reasonable**" time period.

This means that the flexibility allowed to developing countries depends on how these issues are interpreted. Developing countries could adopt the interpretation that there is a larger margin for them to exclude sectors and modes of delivery, and to maintain discriminatory measures with regard to national treatment when developing their regional framework for trade liberalization on trade in services. The coverage of Regional Trade Agreements (RTAs) to liberalize trade in services among members should be defined on the basis of the grouping's interests and should take into account what is politically and economically feasible.

The implication of the GATS provisions for regional agreements on services is that the higher the level of commitments adopted in the GATS, the smaller the margin of preference left for regional negotiations. If a country binds in the GATS unrestricted market access to all members (MFN) in all service sectors and for all modes of delivery, it will not be able to grant preferential treatment in any sector or mode of supply to the members of the regional agreement. Therefore, the regional agreement will be less attractive for all parties concerned compared to the multilateral agreement, since the margins of preference determine the relevance of the regional agreement compared to the multilateral agreement.

The main elements for developing countries to take into consideration when initiating regional negotiations on services are:

- coverage of the liberalizing commitments;
- principles governing liberalization; and
- related disciplines.

National sectoral studies to determine the costs and benefits of regional liberalization versus multilateral liberalization are required before undertaking decisions in these three areas.

1. *Coverage*: It is critical for a regional agreement to first define whether the agreement will apply universally as classified under the GATS, or to a limited number of sectors. It would be useful for developing countries to consider making some exceptions, permanent or temporary, in any preferential agreement. These could involve culturally or politically sensitive sectors, sectors for which there are constitutional constraints, or activities whose domestic development could be seriously jeopardized by external competition.



2. *Liberalization principles:* Liberalization of trade in services is basically founded on three principles that are the backbone of the GATS negotiations: MFN treatment, national treatment and market access. Other agreements have introduced additional principles such as the "no local presence requirement or freedom to choose the mode of supply", the right to free transit and temporal presence of natural persons, automatic recognition of degrees, certifications or licenses, and the elimination of residency and nationality requirements. All or any one of these principles could be adapted to regional negotiations in services and used to establish greater preferences for intra-regional trade in services.
3. *Related disciplines:* As the third element of a regional agreement, these disciplines address specific issues of trade in services, or particular disciplines that guarantee that the commitments adopted by the parties will not be affected by the behavior of the state or service providers. These disciplines are transparency, domestic regulations, recognition, monopolies and competition, safeguard measures, subsidies, rules of origin, preferential treatment for least developed members, technical cooperation and dispute settlement. Most related disciplines are also incorporated into the GATS.

Therefore, the framework for the liberalization of trade in services that will be defined by developing countries, by Member States of a regional trade agreement and in the Economic Partnership Agreements (EPAs) to be negotiated with the European Communities have to be compatible with the provisions of Article V of the GATS. On the basis of the above-mentioned elements, developing countries could consider different sets of combinations when developing the EPAs with the European Communities in the area of services. Since different mixes of the various components of these elements will produce different models for liberalizing trade in services, the combinations of elements will depend on the interests of the parties to the agreement. However, the implications of different architectures have to be evaluated carefully by the developing countries in light of the particularities of their services sector and economic, financial and developmental needs.

In the future development of the EPAs, it will be important for developing countries to introduce the issue of preferential treatment for LDCs and developing countries and to adopt policy decisions in any regional agreement to liberalize trade in services. To date, the Association Agreements between the European Communities and the Mediterranean countries do not incorporate provisions on preferential treatment and are thus of a reciprocal nature, with all parties, developed and developing, adopting the same level of commitments.



2. Regional trade agreements among developing countries, including services⁸⁴

➤ **Example 1: The Andean Community**⁸⁵

The Andean Community is a *subregional integration scheme* established in 1969 among five Latin American countries (Bolivia, Colombia, Ecuador, Peru and Venezuela). The Andean Community provides for supranational rules on the trade regimes of Member States. The Decisions adopted at the level of the Community become directly applicable at the national level (*direct applicability*) by the Members of the Community. The objective of the Community is to *achieve a common market by 2005*.

The trade liberalization of the Andean Commission concerns goods as well as services. For services, the commitment of the Andean Community is to *eliminate restrictive measures to trade in services to enable the creation of a common market of services among Andean countries*. This is elaborated in Decision 439 adopted in June 1998, entitled "**General Framework of Principles and Rules for Liberalizing the Trade in Services in the Andean Community**".

This commitment applies to *all services except air transport services and services provided by the government*.

The principles of *MFN, national treatment, market access, right to free transit and temporal presence, automatic recognition of qualifications and licenses* are applied within the Andean Community. The long-term objective is to *switch from a positive list to a negative list* by the year 2005 through progressive negotiations.

➤ **Example 2: Southern African Development Community (SADC)**⁸⁶

Another example of integrating services trade in regional groupings is seen in the context of **SADC**, which covers 14 African countries,⁸⁷ and where plans are underway to initiate negotiations on trade in services. The mandate for the negotiations on trade in services, issued by SADC Ministers of Industry and Trade, is contained in the Maseru Ministerial Declaration adopted in June 2000. According to the declaration, the SADC Trade Negotiating Forum is to follow a **three-track** implementation plan utilizing the **GATS-Plus approach**, the **SADC-Plus approach** and **consolidation of the two approaches** to develop a regional negotiating strategy. The sectors earmarked for liberalization commitments are the following: communication services, transport services, financial services, tourism services, construction services and services in the energy sector.

⁸⁴ See Annex 4 of this document.

⁸⁵ See www.comunidadandina.org.

⁸⁶ See www.sadc.int.

⁸⁷ The countries are Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.



Under the **GATS-Plus approach**, sectors subject to commitments in the six priority areas should be the starting point, this being the status quo in the country. For those countries without WTO commitments in the sectors, the country's laws and regulations will be instrumental in the negotiations. The main advantage of this approach is that negotiators get to use the experience they have already acquired in the GATS negotiations and utilize the GATS guidelines and procedures, where appropriate.

The **SADC-Plus approach** involves analysis and implementation of work already undertaken by the relevant sector coordinating units dealing with services sectors, and the involvement of all the stakeholders in the negotiations so that the relevant expertise and particularities of a sector or country are taken into consideration during the negotiations.

The **consolidation of these two approaches**, GATS-Plus and SADC-Plus, leads to the identification of the progress already achieved and the level of binding WTO commitments of the countries in the region. The level of work already undertaken at the national, regional and multilateral levels can then be used as the basis for the regional negotiations, and decisions taken at the regional level will then act as a means of developing proposals for the multilateral negotiations.

The table on page 71 gives an example of a GATS-Plus approach using the tourism services sector. In SADC, this is the sector with the greatest participation, since 12 of the members have made relevant commitments under the GATS. Only Mozambique did not make commitments in tourism and travel-related services, and the Seychelles are not a member of the WTO. The table shows that only Mauritius and Botswana have some limitations in the first three modes of supply. Therefore, in this sector, they are the ones with bargaining power at the regional level, since the market of the other SADC countries is already open to all WTO members.

In this case, the two countries with limitations can then liberalize their markets in this sector at the regional level, requesting concessions from the other Member States in one or the other of the sectors under negotiation. GATS-Plus refers to the fact that the negotiations do not have to start again from scratch, but can take into consideration what Member States have achieved at the WTO.



**Regional Integration and Liberalization of Services in the SADC Region:
Examples of (Sub)sectors for Alignment of Commitments Using the GATS-Plus
Approach**

TOURISM AND TRAVEL-RELATED SERVICES								
Hotel and restaurants including catering								
COUNTRY	MODE OF SUPPLY							
	Mode 1		Mode 2		Mode 3		Mode 4	
	MA	NT	MA	NT	MA	NT	MA	NT
Angola	N	N	N	N	N	N	U''	U''
Botswana	N	N	L	U	L	L	U	U
Dem. Rep. of the Congo	N	N	N	N	N	N	U	U
Lesotho	N*	U	N	N	U	U	U	U
Malawi	N	N	N	N	N	N	U	U
Mauritius	L	L	N	N	L	L	U	U
Namibia	N	N	N	N	N	N	N	N
South Africa	N*	N	N	N	N	N	U	U
Swaziland	N	N	N	N	N	N	U	U
Tanzania	N	N	N	N	L	U	U°	U
Zambia	N	N	N	N	N	N	U	U
Zimbabwe	N	N	N	N	N	N	U	U

MA = Market access

NT = National treatment

N = None, no limitations

U° = Unbound except for senior managers possessing skills not available locally

U'' = Unbound except for measures affecting senior managers and specialists with knowledge essential for the provision of the service

L = Limitation

U = Unbound

N* = None except for catering



➤ **An example of technical assistance to regional integration in services: the CAPAS initiative⁸⁸**

The **UNCTAD CAPAS IV programme** (the **Coordinated African Programme of Assistance on Services**) is designed to assist African countries in formulating approaches to subregional trade liberalization in services and strengthening their negotiating capacities in the GATS negotiations. The methodology and experiences of this technical assistance programme could be extended to other developing countries' regional agreements.

During earlier phases of CAPAS, the emphasis was on developing national research capacities in areas relating to trade in services and on linking that capacity to national policy making by encouraging a dialogue among national decision makers and researchers. National studies on the strengths and weaknesses of strategic service sectors were carried out by national research teams and inter-institutional working groups as part of policy-making and capacity-building efforts in the field of services. This approach can be described as a "positive agenda" approach to negotiations on trade in services.

CAPAS IV focuses on providing analytical instruments and training workshops to enable negotiators and trainers from African countries to acquire the knowledge, expertise and relevant experience required to execute the analysis and negotiations required by trade in services. This phase of the programme is also meant to ensure that the experience acquired during the earlier phases of CAPAS is at the service of the trade negotiators for the negotiations on services. Therefore, it aims to help African countries devise a strategic approach to subregional and multilateral liberalization of trade in services. CAPAS

also assists in identifying issues that are crucial for African countries in the GATS negotiations in light of these countries' desire to promote production, trade and investment in the services sector.

Since its inception, CAPAS has placed strong emphasis on providing African countries with tools for assessing their national economic policies in the areas of services and for participating fully in the WTO negotiations on services. In so doing, the programme has also stressed the development of an endogenous analytical capacity not limited to the government machinery but also involving the national academic and consulting communities and representative organizations from the private sector. The list of the National Studies that have been carried out under the CAPAS programme can be found in the Annex 5.

The studies highlight sectors where African countries have a comparative advantage both at the national and regional levels. This has been the key factor in the decision by the SADC Member States to initiate negotiations, at the regional level, on trade in services to facilitate trade in the region and provide a means of presenting

⁸⁸ See Annex 5 of this document for a list of national studies carried out under the CAPAS programme.



common positions at the ongoing multilateral negotiations on trade in services at the WTO.

Under the umbrella of CAPAS, the SADC Trade Negotiating Forum on services has held three subregional workshops. During the workshops, it was agreed that UNCTAD, jointly with national governments and in the framework of CAPAS IV, will organize seminars and workshops with the members of the national working groups on services to sensitize the private sector and other economic actors to the issues involved in the liberalization of services. The first workshops were held in Mauritius (May 2001), Egypt (May 2001), and Kenya (September 2001). (See annex 5 on the profile of the meetings.) Others were organized in Botswana and South Africa.

➤ **A database on measures affecting services trade (MAST)**

MAST is a computerized database used to prepare an inventory of measures affecting trade in services exported by developing countries in accordance with GATS Articles XVI, XVII and VI, that is, market access, national treatment and domestic regulations respectively. According to Article XXVIII (Definitions), a measure is a law, regulation, rule, procedure, decision, administrative action, or any other form that is a barrier to or regulator of trade in services.

Under the GATS, there are three main types of measures affecting trade in services. First, there are “horizontal measures” which are measures affecting all sectors, such as labor laws, immigration laws governing the movement of natural persons including the definition of work categories, rights, obligations and conditionalities when undertaking remunerated economic activities in any sector of the national economy. Horizontal measures apply to all sectors unless specifically mentioned in the commitments.

Second, “sector-specific measures” are measures applied to the sector in question. These include laws, rules and regulations that affect operations in the specified sector. Analysis is needed to determine whether the measure affects market access or national treatment. Market access is quantitative, affecting the quantity of suppliers, the number of people employed, the number of transactions, etc. Under market access, the GATS uses the positive list approach to list six categories of limitations under Article XVI. National treatment, on the other hand, is defined as treatment not less than that accorded to the citizens of a particular member country in terms of services and service suppliers. An example is imposing restrictions on licensing of additional branches of a foreign bank that already has a branch in a country, when such a restriction does not also apply to a domestic bank.

Third, “domestic regulations” are measures embodied in procedures and requirements for providers of services of specific sectors, or modes of supply, such as licensing requirements for providers of financial or professional services.



The focus of the MAST database is on making information accessible to a variety of clients, especially from developing countries, including Governments, regional organizations, and service exporters. The database provides regulatory information on a wide variety of sectors, countries and types of measures, thus contributing to increased transparency in the services sector. This information can be used to strengthen the negotiating process. For developing countries formulating new regulatory regimes in their services sectors, MAST can be a source of information on how other countries have regulated similar sectors and dealt with similar regulatory issues. MAST can also be a useful tool for providing information in the context of accession of new contracting parties to WTO, and for contracting parties that wish to make further commitments in the service sector. Furthermore, MAST can be used by interested contracting parties for setting up the enquiry points on national legislation envisaged in the GATS.



ANNEX 1

BASIC STRUCTURE OF THE GATS

	<i>Provisions</i>	<i>Key features</i>
<i>Part I Article I</i>	<i>Scope and definitions</i>	
<i>Part II Articles II-XV</i>	General Obligations and disciplines <i>Key articles</i> <i>II MFN</i> <i>III Transparency</i> <i>IV Increasing participation of developing countries</i> <i>V Economic integration</i> <i>IX Business practices</i> <i>X Emergency safeguard measures</i>	<i>Basic principles inspired by disciplines applied to trade in goods.</i>
<i>Part III (Articles XVI-XVIII)</i>	Specific commitments <i>Articles</i> <i>XVI Market access</i> <i>XVII National treatment</i> <i>XVIII Additional commitments</i>	<i>Specific national schedules of commitments are to be negotiated, much like tariff bindings and rates in the GATT.</i>
<i>Part IV (Articles XIX-XXI)</i>	Progressive liberalization <i>Articles</i> <i>XIX Negotiations on specific commitments</i> <i>XX Schedule of specific commitments</i> <i>XXI Modification of schedules</i>	<i>Progressive liberalization is seen as proceeding via a series of negotiating rounds, as in the GATT. First round: launched in February 2000 as part of the “built-in Agenda” of the WTO.</i>
<i>Part V (Articles XXII-XXVI)</i>	Institutional provisions <i>Key articles</i> <i>XXII Consultation</i> <i>XXIII Dispute settlement and enforcement</i>	<i>Similar to trade in goods.</i>
<i>Part VI (Art. XXVII-XXIX)</i>	Final Provisions	
Annexes	<i>Articles</i> <i>Article II exceptions</i> <i>Movement of Persons</i> <i>Financial Services</i> <i>Telecommunications</i> <i>Air Transport</i> <i>Negotiations on Basic Telecommunication</i>	<i>Sectoral commitments.</i>

Source: John Whalley, “Services in the Uruguay Round and beyond”, in UNCTAD, *Uruguay Round Results and the Emerging Trade Agenda*, New York & Geneva, 1998.



ANNEX 2

WTO BRIEFING NOTES: "TRADE AND SERVICES: THE WORK PROGRAMME AND THE CURRENT NEGOTIATIONS", NOVEMBER 2001⁸⁹

1. Overview of current work

The WTO's General Agreement on Trade in Services (GATS) contains separate mandates for a heavy work programme covering a wide range of subjects. Work on some of the subjects started in 1995, as mandated, soon after the GATS came into force in 1995. Work on other subjects, including the negotiations to further liberalize international trade in services, started in 2000, also as mandated. All these subjects come under the current work programme, some of which involves negotiations and some of which calls for study and review. As yet, no deadlines have been set for conclusion of work on any of these subjects, with one exception - the negotiations on safeguards (see "Work on GATS rules", page 77).

➤ **Negotiations to further liberalize trade in services (Articles XIX and IV.3)**

Negotiations to further liberalize international trade in services started in early 2000 as mandated by the GATS (Article XIX). Now in their second year, the negotiations are continuing actively with the full commitment of all members.

The first phase of the negotiations concluded successfully in March 2001 when members agreed on the guidelines and procedures for the negotiations. Agreement on the guidelines marks the fulfilment of a key element in the negotiating mandate as laid down in the GATS. By agreeing these guidelines, members have not only set the objectives, scope and method for the negotiations in a clear and balanced manner, but also unequivocally endorsed some of the fundamental principles of the GATS – namely members' right to regulate and to introduce new regulations on the supply of services in pursuit of national policy objectives; their right to specify which services they wish to open to foreign suppliers and under which conditions; and the overarching principle of flexibility for developing and least developed countries. The guidelines therefore reflect great sensitivity towards public policy concerns in relation to important sectors such as healthcare, public education and cultural industries, while stressing the importance of achieving higher levels of liberalization and ensuring effective market access.

Since March 2001, the negotiations have moved into a more intensive phase of discussing specific proposals. So far, around 100 proposals have been submitted by 50 members covering a wide range of services sectors, the movement of natural persons

⁸⁹ Source: www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief06_e.htm.



and other issues such as the treatment of small and medium-sized enterprises, transparency of regulations, classification issues and MFN exemptions. Members have agreed to review progress in March 2002.

➤ **Work on GATS rules (Articles X, XIII and XV)**

Negotiations started in 1995 and are continuing on the development of possible disciplines that are not yet included in the GATS: rules on emergency safeguard measures, government procurement and subsidies. Work so far has concentrated on safeguards, where members have agreed to conclude the negotiations by March 2002. But the results will come into effect at the same time as the results of the current services negotiations – for which no deadline has been fixed as yet. Rules on safeguards will define the procedures and disciplines under which a member can introduce temporary measures to limit market access in situations of market disruptions.

➤ **Work on domestic regulations (Article VI.4)**

Work started in 1995 to establish disciplines on domestic regulations, i.e. the requirements foreign service suppliers have to meet in order to operate in a market. The focus is on qualification requirements and procedures, technical standards and licensing requirements. By December 1998, members had agreed disciplines on domestic regulations for the accountancy sector. Since then, members have been engaged in developing general disciplines for all professional services and, where necessary, additional sectoral disciplines. All the agreed disciplines will be integrated into the GATS and become legally binding by the end of the current services negotiations.

➤ **Review and negotiations concerning MFN exemptions (Annex on Article II)**

Work on this subject started in 2000. When the GATS came into force in 1995, members were allowed a once-only opportunity to make an exemption from the MFN principle of non-discrimination between a member's trading partners. The measure for which the exemption was made is described in a member's MFN exemption list, indicating to which member the more favourable treatment applies, and specifying its duration. In principle, these exemptions should not last for more than 10 years. As mandated by the GATS, all these exemptions are currently being reviewed to examine whether the conditions which created the need for these exemptions in the first place still exist. And in any case, they are part of the current services negotiations.



➤ **Treatment or autonomous liberalization (Article XIX)**

The negotiating guidelines and procedures agreed by members in March 2001 (see above) also stated that, on the basis of multilaterally agreed criteria, account shall be taken and credit shall be given in the negotiations for autonomous liberalization undertaken by members since previous negotiations, and that members shall endeavour to develop such criteria prior to the start of negotiations on specific commitments. Members are continuing their discussions on various issues, including the relationship between credit and binding of commitments, how to assess the value of the liberalization measures and hence of the credit to be granted, and multilateral versus bilateral treatment of autonomous liberalization.

➤ **Assessment of trade in services (Article XIX)**

Preparatory work on this subject started in early 1999. The GATS mandates that members shall conduct an assessment of trade in services with reference to the objectives of the agreement, including those related to increasing the participation of developing countries in services trade. The negotiating guidelines also restate this mandate, make it a standing item on the members' agenda, and state that the negotiations shall be adjusted in the light of the results of the assessment. Members have generally acknowledged that the dearth of statistical information and other methodological problems make it impossible to conduct an empirical assessment of trade in services. However, they are continuing their discussions with the assistance of several papers produced by the secretariat.

➤ **Review of air transport services (Annex on Air Transport Services)**

At present, most of the air transport sector – traffic rights and services directly related to traffic rights – is excluded from GATS coverage. However, the GATS mandates a review by members of this situation. The purpose of the review, which started in early 2000, is to decide whether additional air transport services should be covered by the GATS. The review could develop into a negotiation in its own right, resulting in an amendment of the GATS itself by adding new services to its coverage and by adding specific commitments on these new services to national schedules.



ANNEX 3

MAIN ISSUES AND PROPOSALS FROM THE POINT OF VIEW OF DEVELOPING COUNTRIES

1. Horizontal issues

The following proposals have been tabled by the members of the Andean Community (S/CSS/W/89), Canada (S/CSS/W/46, S/CSS/W/47 and S/CSS/W/49), Chile (S/CSS/W/88), European Communities (S/CSS/W/32), Japan (S/CSS/W/42 and suppl.1), the Republic of Korea (S/CSS/W/82), New Zealand (S/CSS/W/90), Norway (S/CSS/W/59), Switzerland (S/CSS/W/70) and the United States of America (S/CSS/W/102). Some of the main elements addressed are described below.

Objectives

Negotiations aim at achieving extensive and economically meaningful commitments (New Zealand), over a broad (Canada) and comprehensive (EC) range of services.

Infrastructure services as a special focus (Republic of Korea), with attention accorded to the maritime services sector.

Services negotiations viewed as part of the new round (Japan) or mandated negotiations (New Zealand).

Specific commitments to reflect the scale and economic growth of the economy (Japan).

Regulatory issues

With the liberalization of market access, regulatory barriers are becoming increasingly important, hence the importance of continuing discussion in the Working Party on Domestic Regulation (the European Communities, New Zealand and Norway).

Regulatory issues should be addressed as a horizontal issue (preference by Japan) and on a sector basis (Norway, Switzerland and the United States).

Enhancing regulatory transparency (Japan, Canada, Switzerland and the United States), including in licensing procedures, allowing for prior comment and necessity test, redress procedures.

Exchange best practices in this area (Canada and the United States).

Conditionalities

The right to introduce new regulations to be recognized, especially in public education, health and social services (Canada) or to protect consumers' health and safety (the United States).

Liberalization is not to compromise measures aimed at the achievement of national policy objectives (Canada, the European Communities and Norway) and measures to preserve cultural identity (Norway) and social and cultural policies (Canada).

Privatization and public services are to remain outside the scope of the GATS (Canada).



Environmental impact is to be taken into account in trade liberalization (Canada, Norway, New Zealand, the European Communities and the United States).

MFN exemptions

In accordance with the relevant Annex, exemptions to be eliminated or reduced (Japan, New Zealand and Norway).

These exemptions should be negotiated as part of the liberalization process (Canada and Switzerland).

Small and medium-sized enterprises (SMEs)

Promote the interests of SMEs (Canada, New Zealand and the United States), especially in professional services, computer and related services and environmental services.

Importance of the mutual recognition agreements for SMEs (Canada).

Classification (Andean Community)

Adopt a single reference list based on existing classifications and adapted to economic realities, and with adequate detail of disaggregation necessary for developing countries.

Differential treatment for developing countries

Longer periods of transition for market access opening (European Communities and Switzerland) may be accorded.

Support the negotiating capacities of developing countries (Canada).

Provide technical assistance in the area of trade capacity building (Norway).

Provide necessary flexibility (Canada, Norway and Switzerland), including in scheduling commitments (New Zealand).

Liberalization of market access in the areas of interest to developing countries (Norway) and exploration of ways to address their interests (New Zealand).

Address concerns of developing countries in the area of transparency (the United States).

Possible issues of interest to developing countries

So far, proposals have not addressed in a horizontal manner the issue of implementation of provision contained in Article IV in terms of securing the increasing participation of developing countries. No concrete proposals were made on how in practice to provide for access to technology on a commercial basis, or on how access to distribution channels and information networks could be improved. In fact, there is an increasing tendency to limit preferences granted in negotiations only to the least developed countries.

2. Movement of natural persons under the GATS (mode 4)

Five proposals have been presented in this area by Canada (S/CSS/W/48), Colombia (S/CSS/W/97), India (S/CSS/W/12), Japan (S/CSS/W/42/Suppl.3), the



European Communities (S/CSS/W/45) and the United States (S/CSS/W/29). The main elements addressed in the proposals included:

Ways of addressing negotiations

Negotiations should be pursued horizontally and on a sector basis (Japan, India, Canada and the European Communities).

Additional regulatory disciplines could be developed in this area (the United States and India).

Developed countries should undertake commitments in specific services sectors (Colombia).

Promote participation of developing countries in MRAs (India and Colombia).

Allow for duty-free entry of portable tools (Canada).

Categories of persons

Intra-corporate transferees obtain barrier-free market access (Japan).

Explore the establishment of the single list of categories of skilled personnel (the European Communities and India).

Include commitments on contractual supply of services (Canada, the European Communities and India).

Improve commitments on intra-corporate transferees, business visitors and professionals (Canada), including low-skilled workers.

Economic needs tests

Remove or limit ENTs in selected areas of mode 4 supply (India, Japan and the European Communities).

Develop and/or specify the criteria for the ENT (the European Communities, India and Japan).

Develop common code of practice (European Communities)

Definition

Explore the possibility of using the existing ILO definition of occupations (India, the European Communities and Andean Community)

Transparency

Relevant laws and regulations are made publicly available (United States, European Communities, India and Japan).

Access to information related to entry and work abroad (European Communities and United States).

Improvement of trade-related visa procedures (India).

Possible issues of interest to developing countries

A number of issues related to mode 4 have been raised in specific sectoral proposals, which could be well linked to their consideration in the context of mode 4 issues. For example, specific categories of occupations have been identified in sectoral proposals and could merit consideration in line with the proposal made by India. It would appear that a new approach is necessary in order to achieve any progress in the negotiations on mode 4 and that this approach should be handled at a level of detail so that these negotiations would not be overtaken by the non-trade concerns. Some other issues of consideration could include:



- What might be the minimum sufficient international rules or clarification needed of established principles that would limit a negative trade impact on the movement of natural persons and would be compatible with the overall development objectives of developing countries?
- For which sectors or categories of professions is liberalization of the movement of persons critical with regard to the export of services from developing countries?
- How to decrease the degree of subjectivity associated with economic needs tests?
- In which selected services sectors could non-application of economic needs tests be sought?
- To what extent can developing countries benefit from market access for contractual movement of persons and in which sectors and occupations?
- Are issues such as MRAs denying opportunities to developing countries for trade in mode 4?

3. *Tourism services*

A number of submissions have been made: three by the Dominican Republic, El Salvador and Honduras (GC/W/127 and S/CSS/W/9); one together with Nicaragua and Panama (W/19); two by the European Communities (W/40, and W/5); one by Canada (W/54/Rev.1); one by Japan (W/42); one by Switzerland (W/79); and one by the United States (W/31).

Main elements of the proposals

Negotiating an Annex on Tourism, similar to the one on telecommunications (Dominican Republic, El Salvador and Honduras (hereinafter: DR, ES and H)).

Implementation of existing commitments and elimination of remaining restrictions (including all modes, with emphasis in investment) focusing on the W/120 classification: a priority (European Communities, Canada and Japan).

Limited coverage (United States and Japan) versus whole-encompassing negotiations (DR, ES and H).

A new (broad) classification based on definition by the World Tourism Organization (RD, ES and H) versus a shorter new classification (European Communities); a “cluster” approach as a negotiating basis (DR, ES and H) versus such an approach as an aide-mémoire or “checklist” (European Communities and Canada); distinction between “core” and “related” services.

Considering a list of obstacles that include market access and national treatment, as well as regulatory barriers (United States).

Additional commitments relating to: travellers and international conferences (United States); access to GDS/CRS and ancillary services (DR, ES, and H).

Horizontal commitments/limitations (European Communities).

Regulatory issues: some to be treated generically by the Working Party on Domestic Regulations or in the Air Transport Annex review (European Communities), or to tackle all in a Tourism Annex (DR, ES and H).



Competitive safeguards/anti-competitive practices; consumer safeguards (DR, ES and H).

Consideration of SMEs (Canada and European Communities).

Tourism and sustainable development (DR, ES, H; European Communities; Switzerland and United States).

Elimination of economic needs test (Switzerland).

Evaluation of restrictions on mode 4 with respect to travel agencies, tour operators and tourist guide services (Switzerland)

Identified barriers to trade in tourism services

Economic needs test

Size limitations for establishments

Restrictive licensing practices

Fixed equity limits

Residency and nationality requirements

Restrictions on mobility of key personnel

Restrictions on the form of doing business

Limitations on the purchase or rental of real estate for the sector

Measures requiring the use of local partners or joint ventures to establish in the market

Tax treatment that discriminates against foreign suppliers

Lack of transparency of domestic laws and regulations and fairness of administration

Possible issues of concern to developing countries

Full liberalisation of tourism services should be a win-win situation for all trading parties. However, the benefits of liberalization of tourism are being threatened by the predatory practices of a few dominant suppliers in the world tourism markets. The main issues affecting the viability / sustainability of tourism in many developing countries include: a) the impact of the “leakage” (i.e. the low retention within the host country of the revenue generated by total sales to foreign tourists), and b) the relative marginalization by the creation of giant industry conglomerates in developed countries, which control a large number of market shares. Developing countries may need to ensure the following: a) adequate coverage and consistency of commitments in all tourism activities; b) prevention of predatory behaviour with anti-competitive practices by dominant integrated suppliers in the originating markets; c) effective access to and use of distribution systems and information networks on a non-discriminatory basis; d) the implementation of an adequate framework for sustainable development in tourism; and e) preservation of the cultural heritage.

The implementation of existing commitments and the elimination of remaining restrictions (including all modes of supply, with emphasis on investment) appear to be the priority in negotiations in the tourism sector for countries such as Canada, the European Communities and Japan. The United States proposal covers only hotels and lodging, while Japan’s proposal covers hotels and restaurants, tourist guide services and travel agencies. Against this limited coverage of the tourism sector by these developed countries, the proposal by the Dominican Republic, El Salvador and



Honduras to negotiate an Annex on tourism, similar to the one established on telecommunications, is no doubt much more far-reaching and comprehensive.

Negotiating an Annex on Tourism would seem to make it possible to deal with the specific and heterogeneous nature of tourism, and to fill the gap in existing provisions in the GATS to deal with the barriers and anti-competitive practices that affect the participation of developing countries in tourism markets.

The Tourism Satellite Account (TSA) of the World Tourism Organization is the only classification available that has been officially recognized worldwide. In any event, it appears that an exhaustive coverage of tourism services and tourism-related services should be sought. Careful reflection is needed, however, since this could be used as a justification to use this modality in other sectors as well.

It may be useful to note that the tourism sector has the highest level of binding in the GATS. However, while most developing countries have consolidated their commitments without conditions (particularly on mode 3), specific commitments by many developed countries are nullified by conditions included in their horizontal commitments. As regards mode 4, limitations are maintained, *inter alia*, in the form of economic needs tests (ENTs).

New negotiations should grant recognition to unconditional liberalization undertaken by developing countries and should lead to the dismantling of conditions that developed countries maintain in their horizontal commitments, particularly on modes 3 and 4. How to improve and facilitate the movement of natural persons (including, but not restricted to, “specialized” and “skilled” personnel) for the provision of services may be a priority issue for some developing countries. While obtaining further commitments on market access and national treatment (NT) in the tourism sector in general may be an important objective for developing countries in these negotiations, it may be equally relevant for them to address the obstacles and limitations contained in the horizontal commitments of developed countries, as well as de facto obstacles created by the anti-competitive practices of their transporters, tour operators, travel agencies, CRS and GDS.

In accordance with Articles IV and XIX of the GATS, developing countries may wish to consider attaching conditions to market access concessions. The “positive approach” for the negotiating and scheduling of commitments should be preserved, so as to ensure gradualism and flexibility in liberalization by developing countries.

The competition issue and the treatment of anti-competitive behaviour seem to be at the core of the problems of the efficiency, viability and sustainability of tourism in many developing countries. There is a real need to establish appropriate legal frameworks governing competition in developing countries, as well as to create enforceable multilateral pro-competitive disciplines within the GATS. The proposal by the Dominican Republic, El Salvador and Honduras tackles this problem via the establishment of provisions on “competitive safeguards” (to be included in the



proposed annex). Another complementary approach that could be considered for addressing this problem is the strengthening of Article IX on business practices. This latter possibility may well deserve the attention of developing countries, in view of the fact that the problem of anti-competitive practices is not exclusive to the tourism sector, but concerns many other services sectors as well.

4. *Energy services*

Six proposals on energy services have been tabled up until October 2001 in the framework of the ongoing services negotiations. The United States builds upon its earlier submission and includes an “Index for Classification of Energy Services” to identify broad categories that contain energy services, under both the W/120 and the CPC Provisional Classification lists, including “architectural services”, “engineering services”, “management consulting services”, “installation work” and “wholesale trade services”. The proposal suggests that the index be used to negotiate the broadest possible market access and national treatment commitments. It encourages countries to allow the temporary entry of the highly specialized personnel necessary for the delivery of energy services, to liberalize the movement of electronic information and transactions, and, should negotiations on goods begin, to consider the elimination of tariffs on energy-related goods.⁹⁰ This approach has been confirmed in the recent recommendations by the National Energy Policy Development Group for a national energy policy in the United States, which includes a specific recommendation for a sectoral trade initiative to expand investment and trade in energy-related goods and services. These recommendations identify energy-producing countries, both WTO Members (e.g. Venezuela, Qatar and United Arab Emirates) and countries which are in the process of accession to the WTO (e.g. Algeria, Azerbaijan, Kazakhstan, Saudi Arabia and the Russian Federation), from which improved access for trade and investment in energy services will be sought.

The European Communities⁹¹ propose a number of sectors and subsectors where commitments should be made in all modes of supply, covering a broad spectrum of services related to exploration and production; construction of energy facilities; networks; storage; supply; services for final use; decommissioning; and other energy-related services, such as installation, maintenance and repair of energy equipment. The European Communities propose that further discussions be held on how to improve and facilitate the temporary movement of natural persons for the provision of specific services, including the movement of contractual service suppliers.

The proposal by Canada⁹² differs from the United States and European Communities proposals in that it avoids addressing the issue of downstream energy markets and focuses mainly on upstream oil and gas services, encouraging WTO

⁹⁰ Communication from the United States, “Energy Services”, S/CSS/W/24, 18 December 2000.

⁹¹ Communication from the European Communities and Their Member States, “GATS 2000: Energy Services”, S/CSS/W/60, 23 March 2001.

⁹² Communication from Canada, “Initial Negotiating Proposal on Oil and Gas Services”, S/CSS/W/58, 14 March 2001.



Members to broaden and deepen their liberalization commitments in all four modes of supply. In addition to the specific entry “services incidental to mining”, services related to oil and gas can be found in other sectors and subsectors of the existing classification list (e.g. real estate services, rental/leasing services, scientific and technical consulting services); and services related to the energy sector could be subject to a “checklist” that Members may use as an aide-mémoire during negotiations.

Norway⁹³ suggests that, in order to realize fully the benefits of efficient and competitive energy services and to make economically meaningful commitments as regards market access and national treatment, the entire chain of activities involved in resource identification, production, transmission, transportation, distribution, sales and marketing should be considered. A preliminary “checklist” for energy services, to be used as a negotiating tool to assist Members in scheduling commitments, includes engineering services, computer and related services, R&D services, management consulting services, wholesale trade services and environmental services. Since several of the services included cover activities with dual or several end uses, the reference is limited to the energy-relevant component of the activities.

The Venezuelan proposal,⁹⁴ based on the principles of flexibility and specificity of energy sources, suggests a classification of the energy services sector according to three criteria: the sources of energy (e.g. oil, gas and hydropower); the phases of the energy process (e.g. services related to transport, distribution and sales); and a distinction between “core” energy services, which are those directly involved in the main processes of the value chain, and the “non-core” services, which are related to processes which support this chain. This detailed classification would represent the precondition for WTO Members to schedule liberalization commitments in this strategic sector, and would preserve flexibility for countries to liberalize their markets according to their national development strategies. Negotiations on energy services would be linked to the achievement of development objectives for developing countries, mainly their ability to continue to use energy services as a lever to diversify their economies, promote their development and strengthen their private sector.

Chile⁹⁵ suggests that negotiations should include the whole spectrum of energy services related to the electricity and hydrocarbons industries - those related to generation, transformation, transport, distribution and supply - and stresses that subsidies play an important role in the energy sector and hamper the development of open and competitive markets. The issue of subsidies should be addressed in the negotiations on the liberalization of the energy services sector.

There are both common elements and divergent elements in the proposals. These proposals are based on the assumption that improved market access in the energy services sector can have beneficial effects for all countries; that negotiations

⁹³ Communication from Norway, “The Negotiations on Trade in Services”, S/CSS/W/59, 21 March 2001.

⁹⁴ Communication from Venezuela, “Negotiating Proposal on Energy Services”, S/CSS/W/69, 29 March 2001.

⁹⁵ Communication from Chile, “The Negotiations on Trade in Services”, S/CSS/W/88, 14 May 2001.



on the liberalization of the energy services sector should not address the issue of ownership of natural resources; and that the energy sector will continue to be regulated to ensure the achievement of public goals. They acknowledge that countries are in different phases of regulatory development, and that their commitments will therefore reflect the levels of existing market reform.

The Norwegian and Venezuelan proposals refer to the need to promote trade for all and to secure a share of international trade for developing countries. The United States and Norwegian proposals call for the development of a reference paper, similar to the WTO Reference Paper on Basic Telecommunications, whose purpose would be to ensure transparency in the formulation and implementation of rules, and non-discriminatory third-party access to and interconnection with energy networks and grids, and to prevent anti-competitive practices for energy services in general. The proposal by the European Communities omits reference to the need for a reference paper, but invites WTO Members to establish an appropriately transparent, objective and pro-competitive regulatory framework for the energy services sector. The European Communities and the United States refer to energy activities irrespective of the energy source, and regardless of the political and strategic sensitivities and the existence of different regulatory regimes. The United States recommends tariffs elimination for energy-related goods.

The United States proposal refers to the concept of "technological neutrality", a concept introduced in the negotiations on basic telecommunications, to the effect that where no specific references are made to the type of technology used in providing basic telecommunications services, specific commitments would automatically cover all means of technology, i.e. services transmitted via all types of cable, wireless or satellite. Nevertheless, where different measures were applied by WTO Members in regulating market access or national treatment, depending on the type of technology, Members scheduled them in their commitments. The sectoral approach is seen by its different proponents as serving different purposes, and first of all, simply as a means of facilitating greater coherence in negotiations by enabling negotiators to have a clearer view of the economic and business interrelationships among subsectors when making specific commitments. Some proposals are more ambitious, aiming at achieving the maximum degree of liberalization commitments within the sector, as was the case, for example, with the post-Uruguay Round financial services and basic telecommunications negotiations. The sectoral approach also permits the negotiation of additional regulatory provisions. The WTO Reference Paper on Basic Telecommunications was drawn up in recognition of the fact that the liberalization commitments made in that sector required additional provisions specific to telecommunications (interconnectivity), intended to ensure that those commitments resulted in effective access to the market. It has been suggested that the transmission of electricity and gas has many aspects in common with telecommunications and that a reference paper with a similar objective should be negotiated. It has also been suggested that additional regulation could secure the effective implementation of Article XIX:2 and, by implication, Article IV of the GATS to ensure that the supplying developed country firms provide access to technology and to distribution channels and information networks as a condition for enjoying the access to markets



provided in commitments made in the sector. Public services obligations could also be included in a reference paper.

Possible issues of concern to developing countries

In the area of negotiations, developing countries may want to address the following:

What key elements should be in the negotiations on energy services to ensure that there is compatibility with the objectives of Articles IV and XIX of the GATS?

Could complementary actions be taken at the regional level in pursuit of these development objectives?

How to define negotiating objectives for energy services that would take account of the interests of both exporters and importers of energy?

5. Financial services

Nine proposals have been presented for this sector by Australia (S/CSS/W/66), Canada (W/50), Colombia (W/96), the European Communities (W/39), Japan (W/42), the Republic of Korea (W/86, Corr.1), Norway (W/59), Switzerland (W/71) and the United States (W/27). Their main elements are:

Maintenance of the practice of having distinct negotiations in this sector utilizing the Committee on Trade in Financial Services (Canada).

Further exploration of a method of phasing in commitments over a specific period (Canada). The United States and the European Communities also mention this possibility.

Classification/scheduling of commitments: use of broad definitions in the Annex on Financial Services (United States, Canada, European Communities, Norway, and Colombia).

Use of the Understanding on Financial Services for scheduling purposes (Australia, European Communities, Japan, and Norway).

Enhancing of sectoral and modal coverage for commitments on market access and national treatment (Australia, Canada, European Communities, Japan, United States and Norway), including impacts of the development of e-commerce on modes 1 and 2 (Canada).

How to deal with modes 1 and 2 when undertaking commitments, and the need for clarity in the differentiation between the two modes of supply in the scheduling of commitments and the possibility of merging these two modes.

Tackling horizontal commitments/limitations (European Communities and Republic of Korea).

Grandfathering (European Communities and United States).

Respect for the "technological neutrality" of commitments (Switzerland).

Elimination of MFN exemptions (European Communities, Japan, Republic of Korea and Colombia).

Regulatory issues: transparency, plus other principles/disciplines (all-US).

In-depth discussions on liberalization of mode 1, especially through e-banking (Republic of Korea and Switzerland)



Gradual removal of barriers/obstacles in financial services to avoid rapid movement of capital and avoid financial crisis (Korea)

Need for economic needs tests since this is a sensitive sector (Colombia)

Pace of implementation of liberalization of financial services must take into account Members' institutional development, national policies and Members' level of development (Colombia)

Identification of barriers to trade in financial services

Restrictions on suppliers' ability to supply certain financial services on a cross-border basis

Quantitative limitations on the number of service suppliers

Discrimination between domestic and foreign suppliers regarding the application of laws, regulations and practices

Ceilings on foreign shareholding

Economic needs tests to allow new market entry

Limitations on the form of commercial presence

Restrictions on geographical expansion and discrimination as to the types of activities that can be carried out in different geographical areas

Restrictions relating to equity participation

Restrictions on the number of employees and nationality and residency requirements for executives and employees

Mandatory outward reinsurance obligations, monopoly by State insurance agencies

Discriminatory tax treatment against foreign firms

Different regulations across subcentral and local governments

Limitations on the recognition of qualifications obtained overseas

Possible implications for developing countries

Financial services are a sector in which separate negotiations have taken place under the GATS, and in which the principle of progressive liberalization has been expressly recognized (associated particularly with phased commitments/transitional periods), as well as the right and need for flexibility to take prudential measures to protect investors and to ensure the integrity and stability of domestic financial systems. All proposals currently on the table recognize such a right, and Canada, the United States and the European Communities mention the possibility of further exploring a method of phasing in commitments over a specific period. Canada supports maintaining the practice of having separate negotiations in this sector.

While the European Communities' proposal suggests initiating a debate on broad aims for negotiations in this sector, the United States proposal provides "general benchmarks" to address what it sees as remaining obstacles in this sector. Such obstacles cover issues related to market access and NT, but also, and to a great and far-reaching extent, regulatory issues. On the issue of negotiating approaches, the United States maintains that this is only an initial proposal which will be complemented by other negotiating approaches (horizontal approaches, request-offer) while Canada mentions the use of model schedules, request-offer or other means. The Republic of Korea recognizes the use of a formula approach to enhance the level of liberalization.



The proposals by the United States, Canada, the European Communities and Norway suggest that the classification list/broad definitions contained in the financial services Annex be used. In relation to this, it is clear that the use of “broad” definitions may have the effect of reducing the possibility for developing countries to limit the scope of their commitments in a specific subsector, and therefore their capacity to apply the principles of flexibility and progressivity contained in the GATS (Article XIX). Such flexibility and progressivity would seem to be even more potentially compromised should they agree to use the “Understanding” (as proposed by Australia, the European Communities, Japan and Norway) in the scheduling of their commitments, which, as mentioned above, consists of a predetermined set of improved commitments, from which exemptions are possible and which indicates specific criteria for the liberalization of the financial sector.

A large majority of Members have based their schedules on the classification contained in the Annex on Financial Services, which contains a non-exhaustive list of financial services, and is a slightly modified (broader) version of the W/120 classification. Some have used the W/120 list, and others have used national classifications. The Understanding on Commitments in Financial Services consists of a predetermined set of (improved) commitments, which covers such issues as, standstill, monopoly rights and financial services purchased by public entities. It also addresses the issue of the definition of “new financial services”, and has been used only by around 30 Members.

All the proposals call for the enhancing of sectoral and modal coverage for commitments on market access and national treatment. Most of them provide lists of identified restrictions/limitations, including horizontal commitments/limitations (EC). Canada stresses a particular interest in discussing the impacts of the development of electronic commerce on modes 1 and 2. How to deal with modes 1 and 2 when undertaking commitments would seem to be an issue to be clarified.

Among the sets of restrictions/limitations identified and listed by countries that have submitted proposals and of which they demand the removal, is one that has striking elements, namely restrictions on suppliers' ability to establish a preferred form of commercial presence, whether as a subsidiary, branch or joint-venture. Australia, Japan, the European Communities and the United States would like to see their investors have the right (or greater flexibility, as wished by Australia) to be able to establish themselves in the legal form of their choice. However, most developing countries' legislation contains provisions that either allow only selected forms of commercial establishment (e.g. branches not allowed) or lay down requirements for local participation in foreign companies. These conditions are aimed at improving the capacity building of local service suppliers. Often developing countries are interested in promoting competition and allowing free market entry for new service suppliers. The only conditionalities they tend to maintain are those with respect to the form of commercial presence, e.g. joint ventures.

Acquired rights for commercial presence/ "safeguard" of investment are an issue raised by the United States and the European Communities. This issue has more



commonly been addressed as “grandfathering”. Apparently, it has been discussed in the most recent financial services negotiations between some WTO Members and some Asian countries. This was when the commitment in a Member’s schedule became more restrictive than the status quo in the country (for example, in terms of the share of foreign capital allowed in local financial institutions, or in terms of the number of branches or subsidiaries allowed) owing to a change in the laws of the country, and a specific commitment was made by some countries to guarantee the prevailing level of market access to foreigners. However, this concept does not exist anywhere in the GATS text, or in any of its related legal instruments.

While Canada proposes that transparency disciplines in this sector be clarified and the European Communities emphasize their support for regulation that is “transparent, proportionate and necessary”, the United States proposes the establishment of a far-reaching set of “improved disciplines” in relation to development, adoption and application/enforcement of regulations. This proposal seems to contain a clear element of intrusion in the domestic regulatory process, and may create heavy administrative burdens. Complying with such a broad list of obligations would seem to require important regulatory reforms, particularly in developing countries. Some disciplines, such as the one that obliges Members to “provide applicants information on reasons which could justify denial of authorization or licence”, place the burden of proof on the importing country with regards to a matter where the country may prefer to maintain its freedom to regulate.

6. Professional services

Six proposals have been submitted in this sector by: Colombia (S/CSS/W/98), Switzerland (W/75), Canada (W/52), the European Communities (W/33), Japan (W/42) and Chile (W/88).

Main elements of the proposals

Ensure full compliance with and the effective implementation of Article IV.2(b) (Colombia)

Elimination of overt discriminatory requirements such as nationality and residency requirements (Canada, Colombia, Chile, European Communities and Switzerland)

Minimize restrictions on forms of establishment, e.g. partnerships, sole proprietorship and incorporation (European Communities)

Improvements in the coverage for temporary entry of foreign professionals (Canada, Colombia, European Communities and Switzerland)

Means to encourage the development of mutual recognition agreements between professional regulators, ensuring participation of all WTO Members (Canada and Colombia)

Improving the openness of domestic regulatory regimes (Canada, Colombia and Chile)

Examine the need for rules to allow for the temporary admission of professional equipment (Canada)

Elimination of MFN exemptions (European Communities)



Compliance with and effective implementation of Article VII (European Communities, Colombia and Chile)

Relevance of Article VI measures for effective market access, and some degree of specification of Article IV disciplines such as those in accountancy services as a basis for additional commitments (Switzerland)

Elimination of basic obstacles while maintaining the unique characteristics of each profession (Japan)

Identified barriers to trade in professional services

Nationality or residency requirements

Restrictions on the investments and forms of commercial presence

Restrictions on entry of professional services providers

Stringent procedures for presenting and processing a request for authorization to exercise a profession in another Member country

Reciprocity on permissions regarding qualifications

Lack of legal framework for accepting professionals with foreign qualifications, or lack of internal consistencies of such a framework

Prohibition on the establishment of offices or branches

Restrictions on capital participation and joint business obligations

Limitations on the total number of foreign businesses

Restrictions on the use of firm names

Possible issues of concern to developing countries

Professional services have gained importance in many developing countries as a means of developing investment and other service subsectors. In this regard, there is a need to guarantee quality and protect consumers, and thus there is also a need for effective regulations in the sector. Therefore, when dealing with foreign licensed professionals, Governments may have no choice but to link professional practice to certain modes of delivery (FDI and temporary residence of foreign personnel) so as to ensure that foreign professionals practising in their country are properly licensed.

In terms of licensing and certification measures, it is important to note the difference between consulting and practising. Licensed professionals may work in an importing country without being licensed as long as their activities fall short of the very activities subject to licensing – for example, a foreign architect may assist in the preparation of drawings as long as those are signed by a locally licensed architect. This relies on the importing country's commitments under the movement of natural persons mode of supply.

There is a need to implement Article VII (Recognition) and Article IV.2(b) which provide for a route towards mutual recognition and harmonization of professional qualification and licensing standards. Thus discussions aimed at liberalizing market access for foreign licensed professionals should centre on the harmonization of licensing requirements and the mutual recognition of professional qualifications.

Subject to compliance with domestic requirements, the stay of foreign professional service providers in the host country should be facilitated through the elimination of nationality and residency requirements, which act as a barrier to trade in professional services, particularly the movement of natural persons.



ANNEX 4

SERVICES IN THE CONTEXT OF REGIONAL AND SUBREGIONAL TRADE AGREEMENTS: OVERVIEW OF EXISTING PROVISIONS

Following the precedent set at the multilateral level, many regional and subregional trade agreements include disciplines aimed at liberalising trade in services among the signatories to the agreements. The GATS (Article V) provides the multilateral framework that allows preferential treatment for trade in services among signatories to these regional agreements.

REGIONAL & SUBREGIONAL AGREEMENTS	PROVISIONS REGARDING TRADE IN SERVICES	WEB SITES
EU (European Union)	Within the framework of the Single Market, the EU has developed comprehensive regulations related to the freedom to provide services and the right of establishment in various services sectors. A recent example can be found in the <i>Official Journal</i> (2000/c 43/03) regarding the establishment of a Single Market in the insurance sector.	europ.eu.int/keypub/en/smrpagez.htm
NAFTA (North American Free Trade Agreement: Canada, Mexico and the United States).	(a) The final goal of the Agreement in relation to services is to eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties. Chapter Twelve, Article 1201, contains measures to liberalize cross-border trade in services by service providers of another Party. It covers all traded sectors with some exceptions, such as financial services and air transport. (b)	www.nafta.net/naftagre.htm
ANZCERTA (Australia - New Zealand Closer Economic Trade Agreement)	(c) The Protocol on Trade in Services signed in 1998 set out the objective of liberalizing trade in services between the signatory countries. The agreement provides for national treatment and commercial presence for all services sectors except for those included in the signatories'	www.dfta.gov.au/geo/pacific/nz/anz_cer/anz_cer_services.htm



UNCTAD
Commercial Diplomacy Programme

REGIONAL & SUBREGIONAL AGREEMENTS	PROVISIONS REGARDING TRADE IN SERVICES	WEB SITES
	list of exemptions.	
MERCOSUR (Argentina, Brazil, Paraguay and Uruguay)	The Services Agreement has been in effect since December 1997. It is modelled on the GATS in terms of its structure, general obligations, progressive liberalization of trade in services, and specific sectoral commitments on market access and national treatment. Like the GATS, it covers all sectors and modes of supply. It exempts government procurement.	www.americasnet.com/mauritz/mercosur/ www.americasnet.com/mauritz/mercosur/english/page04.html
CAN (Andean Community: Bolivia, Colombia, Ecuador, Peru and Venezuela)	The Principal objective of Decision 439, adopted on 11 June 1998, is the creation of a common market in services among the countries of the Andean Community through the elimination of restrictive barriers to trade in services. The Decision covers all service sectors with the exception of air transport and government procurement.	www.comunidadandina.org/DEC/D439.htm
ALADI (Association of Latin-American Integration: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela)	Resolution 34 on trade in services was approved on 30 November 1992 by the Council of Ministers. It envisages progressive liberalization in trade in services among all ALADI members.	www.aladi.org/ www.aladi.org/cgi-win/juridica.exe?titulo=servicios&incluye=alguna&organo=&tipo=&submit=Consultar
CARICOM (Caribbean Community: for members - see the web page)	(d) Subprogramme 7.5 of 1997 promotes the liberalization of trade in services and the start of an integral programme to develop and facilitate trade in services in the region.	www.caricom.org/expframes2.htm
The Group of Three (Colombia, Mexico and Venezuela).	In this free trade agreement, chapter X, 1991, provides for liberalization in all services sectors except transport services.	www.sice.oas.org/trade/go3/G3C10.STM
APEC (Asia Pacific Economic Cooperation)	The Committee on Trade and Investment (CTI) was established by the Declaration on an APEC Trade and Investment Framework in November 1993. The Group on Services (GOS) is an informal subgroup of the CTI mandated by the Committee to address the trade and investment liberalization and facilitation (TILF) tasks in the area of	www.apecsec.org.sg/cti/cti98/rpt2mins98a1_2.html



REGIONAL & SUBREGIONAL AGREEMENTS	PROVISIONS REGARDING TRADE IN SERVICES	WEB SITES
	services. Its aim is to create a free trade area in goods, services and capital no later than the year 2020 (2010 for developed countries).	
FTAA (Free Trade Area of the Americas)	(e) The 1998 Ministerial Declaration of San José, Costa Rica, established the Negotiating Group in Services for the progressive liberalization of trade in services with the aim of creating a free trade area in the hemisphere.	www.alcaftaa.org/VIEW_E.asp alcaftaa.org/ngroups/ngserv_e.asp
ASEAN (Association of South-East Asian Nations)	Preliminary steps towards the inclusion of services and investments in the area were taken in December 1995. Negotiations are still under way.	is.eunet.ch/astarte/pbo/afta/afta0.htm
Decision No. 1 of the Joint Council of the Agreement on Partnership, Economic Cooperation and Political Coordination between the EU and Mexico	Adopted in February 2000. Covers all service sectors with a few exceptions, and includes rules on investment and related payments, intellectual property and a dispute settlement mechanism.	
AEC (African Economic Community)	The treaty establishing the AEC provides for services in the form of specialized technical committees that deal with the services sector, namely the Committees on: <ul style="list-style-type: none"> ▪ Monetary and Financial Affairs ▪ Transport, Communication and Tourism ▪ Health and Labour and Social Affairs ▪ Education, Culture and Human Resources In order to boost intra-Community trade in services, the AEC envisages cooperation in monetary and financial fields and also in the area of transport and communications.	
COMESA (Common Market for Eastern and Southern Africa)	Like the AEC, services in the COMESA treaty are dealt with under technical committees, the services covered by which are: <ul style="list-style-type: none"> ▪ Comprehensive information systems ▪ Finance and monetary affairs ▪ Labour, human resources and social affairs 	www.comesa.int



REGIONAL & SUBREGIONAL AGREEMENTS	PROVISIONS REGARDING TRADE IN SERVICES	WEB SITES
	<ul style="list-style-type: none">▪ Legal affairs▪ Natural resources and environment▪ Tourism and wildlife▪ Transport and communications	
EAC (East African Cooperation)	In the EAC treaty, provisions for services are found in Article 114 (transport and communications), Article 115 (meteorological services), Article 117 (development of human resources, science and technology), Article 124 (tourism and wildlife management) and Article 125 (health, social and cultural activities).	
ECOWAS (Economic Community of West African States)	The principal objective of the treaty is the creation of an economic and monetary union. To this end, the community in terms of services has been pursuing the physical integration of its Member States through the development and modernization of regional highways and telecommunication networks. They are also being implemented are a project for a regional pipeline for the distribution of natural gas, cooperation in health matters and harmonization of financial policies.	
SADC (Southern African Development Community)	Services in the SADC trade Protocol are covered under Part VI, Article 23. It states in part that “Member States recognize the importance of trade in services for the development of the economies of SADC Countries”. It also states that members shall adopt policies and implement measures according to their obligations, under the GATS, with a view to liberalizing their services sector within the Community. SADC Member States have a mandate, contained in the Maseru Declaration of June 2000, to begin negotiations on trade in services.	www.sadc.int
UEMOA (West African Economic and Monetary Union)	One of the main services-related objectives of the Union is to create a common market among Member States based on the free circulation of people, goods, services and capital.	



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REGIONAL & SUBREGIONAL AGREEMENTS	PROVISIONS REGARDING TRADE IN SERVICES	WEB SITES
ACP/EU post-Cotonou Agreements	The Cotonou Agreement, signed in June 2000, provides for negotiations on trade in goods and services between the ACP countries and the EU. The negotiations for the new reciprocal partnership agreements have to be concluded by 31 December 2007.	



ANNEX 5

NATIONAL STUDIES CARRIED OUT UNDER THE COORDINATED AFRICAN PROGRAMME OF TECHNICAL ASSISTANCE ON SERVICES (CAPAS)⁹⁶

- Les Services au Bénin, 1994
- Etude National sur les Services au Bénin, Volume II, including Les Services de Logistique Commerciale and Les Services financiers, Septembre 1996
- Les Services au Burkina Faso, 1994
- Les Services au Burundi, 1994
- Les Services Financiers au Burundi, February 1996
- Les Services Logistiques au Burundi 1996
- Les services au Cameroon, 1994
- Les Services en Côte d'Ivoire, 1994
- Services in Ghana, 1994
- Trade Logistics Services in Ghana, August 1996
- Financial Services in Ghana, August 1996
- Les Services en Guinée, 1994
- Les Services de Logistique Commerciale en Guinée, February 1996
- La libéralisation des Services Bancaires et Financiers en Guinée, February 1996
- Etude sur la Libéralisation des Services Bancaires et Financiers en Guinée, Mise à jour, Septembre 1996
- Services in Kenya, 1994
- Trade Logistics Services: the Case of Kenya, August 1996
- Financial Services Reforms in the Context of the GATS: the Case of Kenya, September 1996
- Services in Lesotho, 1998
- Les Services au Madagascar, 1994
- Les Services au Mali, 1994
- Services in Mauritius, 1999
- Services in Namibia, 1998
- Services in Nigeria, 1994
- Les Services au Sénégal, 1994
- Les Services de Logistique Commerciale au Sénégal (y compris le Transport Maritime), January 1996
- Les Services de Logistique Commerciale au Sénégal: Résumé de l'Etude, September 1996
- La Libéralisation des Services Financiers au Sénégal, August 1996
- Services in South Africa, 1998
- Services in Tanzania, 1996
- Services in Uganda, 1995
- Financial Services in Uganda, August 1996
- Services in Zambia, 1998

⁹⁶ This list indicates the original language of the study. No translation is available.



- Services in Zimbabwe, 1994
- Trade Logistics Services in Zimbabwe, September 1996
- Financial Services in Zimbabwe, September 1996
- An overview of Kenya's Trade in Services, 2000
- The Assessment of Trade in Services: A case of Tanzania, 2000
- Les Services Touristiques, Les Services Professionnels, le Commerce électronique (Téléservices): les cas du Sénégal, 2000

The following regional studies have been carried out under the CAPAS:

- Trade in Skilled Labour Services in Africa, by Oliver Saasa, March 1996
- The Development of Telecommunications in Africa and the General Agreement on Trade in Services, by Brahim Sanou and Simon Moshiro, jointly with ITU, March 1996
- Le Développement des Télécommunications en Afrique et l'Accord Général sur le Commerce des Services, by Brahim Sanou and Simon Moshiro, jointly with ITU, March 1996
- Le Développement des Télécommunications en Afrique et l'Accord Général sur le Commerce des Services: Note de présentation, by Brahim Sanou, September 1996
- Financial Services Liberalization in the Context of the GATS: The Case of the CAPAS Countries, by Rohinton Medhora and Jamel Zarrouk, September 1996
- Note on Country Reports on Trade Logistics with a Calculation of the Costs of Inefficiency, by Olof Karsegard, September 1996
- Legal Barriers in Trade in Services, Possibilities and Methods of Integration of Services in East Africa, November 2000

In Phases I, II and III, the following general papers were written:

- Services and Technology in Africa in the Context of the Uruguay Round Negotiation: Dar-es Salaam
- Brainstorming Meeting, 1-2 April, 1992, Eisenhower Center, Columbia University, and UNCTAD
- CAPAS: Phase I Methodology, Eisenhower Center, Columbia University and UNCTAD, 1992
- CAPAS Phase 1: Nairobi Regional Meeting, 2-5 May, 1994 (Phase I Conclusion), UNCTAD
- CAPAS: Phase II: Work Programme, UNCTAD and UN-DDSMS, June 1994
- CAPAS: Phase II: Kick-off Meeting: Harare, 16-17 March 1995, UNCTAD and UN-DDSMS
- CAPAS: A Prospectus, UNCTAD and UN-DDSMS, April 1995
- CAPAS: Phase II: Kick-off of the Financial Sector Studies/Lancement des Etudes sur le Secteur Financier, Réunion de Dakar, 29 May 1995, UNCTAD and UN-DDSMS
- CAPAS-III Launching Meeting: Johannesburg, 27-29 November 1997, UNCTAD, UNDESA and ITU



ANNEX 6
TRAINING PRESENTATIONS