Chapter 1

About the General Agreement on Trade in Services

Until 1995, no multilateral agreement existed on rules for the trade in services. This was largely due to a lack of knowledge about the services trade itself. Economists generally viewed services as not tradeable or, even worse, as non-productive economic activities and therefore unworthy of policy focus. Academic studies had concentrated on employment patterns in services or on services as supports to manufacturing – ignoring the direct contributions services industries made to domestic production and foreign exchange earnings. Government export development planning tended to target goods, and so government agencies were largely unfamiliar with the activities of their own services exporters. As national statistical agencies did not collect detailed trade statistics on services, few accurate and comprehensive data sets existed.

In actuality, services (especially transportation, travel and international finance) have been an important part of the trade environment for a long time. But trade policy makers by and large have assumed either that the services trade flows were too small to be of importance, or that virtually all traded services originated in developed countries, or that focusing on liberalizing the goods trade would automatically result in an expansion of the services trade. With no trade agreements to provide clarity about ground rules, services enterprises were left to expand internationally by being adaptable and learning to manage despite unpredictable and often blatantly discriminatory regulatory environments.

Beginning in the late 1970s, private-sector groups in the United Kingdom (British Invisibles) and the United States of America (the Coalition of Service Industries) started lobbying their Governments for a more level playing field in accessing foreign markets. Those early initiatives by services firms ultimately resulted in the inclusion of international services transactions in the Uruguay Round.

Defining an internationally traded service

One of the barriers to multilateral discussions was a lack of clarity about how services could be traded (linked to the general sense that services were not tradeable). In order to address the definitional issue, one must first remember what defines an external trade activity in its most basic form – namely, an economic exchange between residents and non-residents, either firms or persons (or, put more simply, the gain or loss of foreign exchange). For the trade in goods, the concept is relatively straightforward because the producers stay in one country and the good travels across a border to another country.

A service is traded when the supplier and the customer are from different countries, regardless of the location of the transaction.

For services, the situation is more complex because in many cases the supplier and the customer need to be in the same location. This means that there are four possibilities for movement: the service moves across the border, the customer moves across the border to receive the service, the producer moves across the border to provide the service through a commercial establishment, or the producer moves across the border only temporarily to provide the service. The result has been the so-called 'modes of supply' definition of the services trade. The General Agreement on Trade in Services (GATS) states that

> trade in services is defined as the supply of a service:
>
> (a) from the territory of one Member into the territory of any other Member **[cross-border]**

(b) in the territory of one Member to the service consumer of any other Member **[consumption abroad]**

(c) by a service supplier of one Member, through commercial presence in the territory of any other member **[commercial presence]**

(d) by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member **[movement of natural persons]**.

Box 1 gives examples of the four modes of supply.

Challenge: Educating service providers about when they are exporting.

One of the peculiarities of the services trade is that many service exporters are not aware that they are in fact exporting! This is particularly true for Mode 2 (consumption abroad), under which services firms earn foreign exchange by supplying services to local foreign companies, business persons temporarily in the market or the local offices of international agencies, without considering such activities as exports. It is very difficult to obtain accurate trade statistics when exporters do not recognize or report their own export activities. Statistical agencies are therefore finding that they must first educate services firms about what constitutes an export.

Trade flows in services

The term 'other services' denotes all services covered by GATS – with the exception of transport, and tourism and travel services. It thus encompasses business services; communication services; construction and related engineering services; distribution services; educational services; environmental services; financial services; health-related and social services; recreational, cultural and sporting services; and other services not included elsewhere.

Services account for at least 20% of recorded world trade as well as the majority of domestic activities in most economies. The Organisation for Economic Co-operation and Development (OECD) and the World Trade Organization (WTO) estimate that the world market for services was valued at more than US$ 3 trillion in 1998. The share of developing and transition economies in this trade has been rising, as table 1 shows. Some analysts believe that services will reach 50%

Box 1
Trade in services: modes of supply

Mode 1: Cross-border

Here the service crosses the border, independent of the supplier or the consumer. Examples include services provided through the telecommunications or postal infrastructure, such as consulting or market research reports, tele-medicine and distance training.

Mode 2: Consumption abroad

Here the consumer crosses the border and so is a non-resident in the country where the service is consumed. Examples include hotel or restaurant services for non-residents, training programmes for foreign students and health services provided to non-residents. Covered also is the movement of the consumer's property (e.g. sending a ship or other equipment abroad for repair).

Mode 3: Commercial presence

Here the supplier of the service is a locally established affiliate, subsidiary or representative office of a non-resident service supplier, which may employ local personnel, be incorporated under local laws, etc. While the actual service provision is by a 'resident', the investor is of foreign origin. Examples include local offices of multinational services firms and offices for infrastructure projects.

Mode 4: Movement of natural persons

Here the supplier of the service is in the country on a temporary basis and so remains a non-resident. Examples include independent services suppliers (e.g. individual consultants, health workers) or employees of a services supplier.

of world trade by the year 2020. Trade in 'other services' (as defined in the inset on page 3) has been growing at over 9% a year since the conclusion of the Uruguay Round.

Table 1 Services: percentage share in world exports, by group of countries, 1990 and 1997

Sector	Developing countries		Developed countries	
	1990	1997	1990	1997
Goods	29.2	35.0	70.8	65.0
Services	23.9	29.4	76.1	70.6
of which:				
Travel	27.0	32.7	73.0	67.3
Transport	24.6	27.6	75.4	72.4
'Other services'	20.1	28.8	79.9	71.2

Source: Calculated from IMF balance-of-payments data.

Given the hesitations about the relevance of the services trade negotiations for developing and transition economies, it is interesting to note that these countries' fastest growth has been in exports of 'other services', which have increased at an average annual rate of 14.3% (*see* table 2). Such exports include new services offerings supported by information technologies, which were unknown even three years ago (e.g. Web site design, Web site management, the management of electronic commerce).

Table 2 World trade in services: average annual growth, by group of countries, 1990 and 1997 (percentages)

Sector	Developing countries		Developed countries	
	Exports	Imports	Exports	Imports
Goods	9.7	10.5	5.6	5.0
Services	9.8	8.5	5.5	4.8
of which:				
Travel	9.9	12.7	5.7	4.4
Transport	6.2	6.1	3.9	4.0
'Other services'	14.3	10.4	6.8	6.5

Source: Calculated from IMF balance-of-payments data.

Despite increased competition, services exporters in developing and transition economies have succeeded almost as well as their goods exporting counterparts in terms of percentage of world trade (*see* table 1). In international tourism, revenues in developing and transition economies grew at an average rate of 9.9% between 1990 and 1997, giving them a positive trade balance in 1997 of US$ 26,753 million (*see* table 3). In 'other services', they had a positive balance of US$ 6,629 million for the first time in 1996 (though they reverted to a small deficit in 1997). Specifically, 15 developing and transition economies had a positive trade balance in 'other services' in 1996; five of these (Chile, Czech Republic, Hungary, Singapore and Turkey) had a positive balance of at least US$ 100 million.

Table 3 Services trade balances, by group of countries, 1990 and 1997 (in millions of United States dollars)

Sector	Developing countries		Developed countries	
	1990	1997	1990	1997
Goods	57 400	16 100	–30 400	99 700
Services	–48 711	–53 777	8 811	56 677
of which:				
Travel	22 874	26 753	–11 454	7 513
Transport	–34 978	–52 114	–13 198	–19 258
'Other services'	–20 523	– 4 979	30 631	55 161

Source: Calculated from IMF balance-of-payments data.

Exact figures on the international services trade are difficult to obtain, especially on a bilateral basis, because many services cannot be 'counted' at the border in the way that exported goods can be. The United Nations Statistical Division (UNSD), the International Monetary Fund (IMF), the Statistical Office of the European Communities (Eurostat), and various national statistical agencies (led by Statistics Canada) have made significant progress; however, a great deal of work remains to be done. On the basis of the balance-of-payments data available through IMF, one can say that

Challenge: To develop accurate statistics on the services trade to make it possible to determine whether or not to make binding commitments and to measure the impact of trade liberalization measures.

the majority of the top exporting countries and the top importing countries for services and 'other services' are still the developed countries (table 4).

Table 4 Top 10 exporters and importers of services and 'other services', 1997

Services		'Other services'	
Exporters	**Importers**	**Exporters**	**Importers**
United States	United States	United States	Japan
United Kingdom	Japan	United Kingdom	United States
France	Germany	Japan	Germany
Germany	United Kingdom	Germany	Italy
Italy	Italy	France	France
Japan	France	Italy	Netherlands
Netherlands	Netherlands	Netherlands	United Kingdom
Spain	Canada	Singapore	Canada
Belgium-Luxembourg	Belgium-Luxembourg	Belgium-Luxembourg	Belgium-Luxembourg
Singapore	China	Switzerland	Spain

Source: Based on IMF balance-of-payments data.

One of the reasons for the invisibility of services trade activities is that public attention tends to focus on personal services (e.g. fast-food chains, beauty parlours) while much of the activities in the services sector are actually 'producer services' (as defined in the inset). In developed economies, producer services average at least 50% of total services production, with a value at least double that of manufactured outputs. The same trend applies to electronic commerce. The majority of services sales via the Internet are business to business.

The term 'producer services' refers to services sold to other businesses (e.g. accounting and audit services, advertising, design services, legal services, management consulting, market research).

Commercial opportunities in the services trade have expanded as a result of several specific global trends. One, information technologies, coupled with telecommunications, have made virtually all services tradeable through one mode of supply or another. Second, information technologies are supporting the unbundling of production and consumption, thereby allowing for more specialized producer services inputs. Third, organizations in both goods and services production are outsourcing their non-core producer services inputs to increase their competitiveness, creating new producer services opportunities.

Smaller services firms worldwide face competition from three types of competitors which enjoy economies of scale. First, there are the large services multinationals (*see* table 5) with massive financial strength, access to the latest technology, worldwide networks and sophisticated information technology infrastructure. Second, customer demand for quality assurance and predictability has led to an increase in various forms of integrated global delivery networks (e.g. franchise chains; multi-site management companies such as those providing managed health care, computer reservations systems and global distribution systems). Third, customer demand for one-stop service is resulting in the bundling of complementary services through various forms of strategic alliance (including cross-marketing and cross-branding).

Table 5 The world's top 100 multinationals: revenues from services and manufacturing, 1997

	Services	Manufacturing
Number of firms	48	52
Average revenues (US$ '000 000)	$51 170.6	$54 728.2
Average number of employees	125 644	166 346
Average revenue per employee (US$)	407 267	329 001

Source: Calculated from data in *Fortune*.

Despite their smaller size and more limited resources, many services firms in developing and transition countries are already successful exporters. Although government officials in these countries often focus primarily on tourism and the movement of labour, their private-sector services firms report a wide range of profitable export activities (*see* table 6). The present low visibility of services exports from developing and transition economies may be due to a negotiating preoccupation with North-South trade, overlooking the rapidly expanding South-South services trade. Regional integration agreements also continue to support growth in services exports by liberalizing market access and national treatment within regions, and by encouraging alliances among services firms in developing and transition economies.

Table 6 Examples of services currently exported by developing and transition economies

Services covered by GATS	Already exported by: Most developing and transition economies	Already exported by: Selected developing and transition economies
Business and professional services a/		
Accountancy	✔	
Architectural services		✔
Computer services	✔	
Computer software development		✔
Data processing		✔
Design services		✔
Geographic information services		✔
Internet-related services		✔
Legal services		✔
Maintenance services	✔	
Management consulting	✔	
Market research	✔	
Marketing services		✔
Oil and gas services		✔
Research and development		✔
Security services		✔
Support services for United Nations offices	✔	
Surveying services		✔
Translation services	✔	
Utilities management		✔
Communication, including:		
Postal and courier services	✔	
Telecommunications	✔	
Construction and related engineering services	✔	
Distribution services	✔	
Educational services, including:		
Training		✔
Environmental services		✔

Services covered by GATS	Already exported by:	
	Most developing and transition economies	Selected developing and transition economies
Financial services		
Banking	✔	
Brokerage		✔
Insurance	✔	
Health services		✔
Tourism and travel-related services, including:	✔	
Hotel services	✔	
International conferences		✔
Recreational, cultural, sporting services, including:		✔
Film production		✔
Printing/publishing		✔
Transport services		
Aviation and airport services	✔	
Shipping and port services		✔
Other services not included elsewhere, including:		
Peacekeeping services		✔

Source: International Trade Centre UNCTAD/WTO.

a/ The categories shown are those used by services exporters to describe the range of business and professional services they were exporting and do not necessarily correspond to the categories in GATS.

The rationale for GATS

The Uruguay Round was a historic series of trade negotiations covering not only further liberalization in the goods trade but also the establishment of frameworks for liberalization in services, investment measures and trade-related intellectual property rights. When the Round was launched in Punta del Este (Uruguay) in September 1986, discussions assumed that the outcome would be a broadening of the framework of the existing General Agreement on Tariffs and Trade (GATT). By the time the Round concluded in Marrakesh (Morocco) in April 1994, a new World Trade

Organization (WTO) had been born within which the revised General Agreement on Tariffs and Trade (GATT 1994, covering trade in goods), a General Agreement on Trade in Services (GATS), and an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) would have separate attention.

Agreement to begin negotiations on the services trade, however, was given reluctantly. Under its mandate, the Working Group on Services had as its first task the definition of 'trade in services' and obtaining accurate statistics on services trade flows. Examining the case of tourism, where a customer travels to the producing economy, immediately challenged the constraints of the traditional cross-border trade definition from GATT 1947. This led to the critical agreement on trade in services as covering four modes of supply.

Challenge: Addressing domestic regulations that have a trade-distorting effect.

Another formative realization was the fact that the market structure for services differed from that for goods. Historically, a number of services have been provided for the public good by government monopolies – e.g. transportation, telecommunications, postal services, banking, insurance and reinsurance, health care, education. Many services provided in the private sector are heavily regulated, often at the sub-federal level. Therefore, constraints to trade were due as much – or more – to domestic regulatory environments as to trade policies. For a number of services providers (particularly in the professional services sector), it was easier to export services than it was to provide those services in other parts of their own country owing to regulatory restrictions.

As trade negotiators became more familiar with services trade issues, it was apparent that some key principles that had guided the liberalization of the goods trade were equally applicable to services – e.g. transparency, most-favoured-nation (MFN) treatment, non-discrimination, and national treatment (*see* definitions in box 2). They also noted some differences. First, they

Box 2

Definitions of basic liberalization principles as they apply to the services trade

Transparency

Members must notify each other of all relevant measures affecting the services trade, including prompt publication, maintenance of enquiry points and fair judicial review.

Most-favoured-nation (MFN) status

Members must grant each other the most-favourable treatment accorded to any of their trading partners (whether or not they are WTO Members) immediately and unconditionally. In practice, however, MFN may be less favourable than treatment under the Generalized System of Preferences (GSP) or under the terms of bilateral or regional free trade agreements.

Non-discrimination

Members must treat services and services suppliers from one Member no less favourably than those from other Members.

Market access

In terms of access to the market of a Member, services and services suppliers of any other Member must be accorded the same treatment specified in its schedule of commitments.

National treatment

Services and services suppliers of a Member must be permitted access to the market of another Member on the same terms as those accorded to domestic services or services providers.

realized that, even if non-discrimination were practised, there could still be structural barriers to market access (e.g. limits on the number of suppliers allowed); they therefore needed to introduce the principle of market access into any agreement on services. Second, one of the basic mechanisms for liberalizing the goods trade was the negotiation of schedules for reducing tariffs. While reductions in non-tariff barriers were also important, tariff concessions were central to trade agreements. For services, however, the reverse was true. Therefore, the primary constraints to be negotiated were non-tariff barriers to trade, which did not apply equally to all modes of supply.

The examination of services issues also underscored the fact that barriers were not limited to those that prevented the flow of the service itself. Because services were created and delivered by persons, restrictions on the movement of these persons also served as trade barriers. Similarly, the inability of potential customers to travel freely to markets where they might consume services (like tourism or training) or constraints on the ability of services providers to travel abroad for business development purposes would have a restricting effect on the expansion of trade in services. Such issues, however, were typically controlled by immigration authorities rather than trade ministers.

Challenge: Liberalizing the temporary movement of business persons, which is not under the authority of trade ministers.

As the discussions progressed, trade negotiators realized that there was a need for a separate agreement on trade in services rather than simple amendments or additions to GATT. That agreement would need to address all measures that affected trade in services, whether their origin was in trade policy or in domestic regulation. Liberalization commitments would need to be made not only by services industry but also by mode of supply. Finally, there would need to be an annex on the liberalization of the movement of persons for temporary business purposes (distinct from permanent immigration).

The purpose of GATS

GATS is an inter-governmental agreement to "establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries." Through this statement of purpose in the preamble, the link between economic development and a strong domestic services capacity is recognized.

As with GATT, GATS intends to increase trade in services through increased transparency and predictability. The assumption is that by supporting informed choices by exporters and increasing international competition in services provision, GATS will encourage the improvement of services quality, price competitiveness and innovation in services delivery. In contrast to GATT 1947, GATS incorporates not only specific commitments to prevent further trade restrictions but also the requirement to engage in ongoing rounds of negotiations for progressive liberalization.

The coverage of GATS

GATS is Annex 1B of the Marrakesh Agreement Establishing the World Trade Organization which came into effect on 1 January 1995. It establishes a rules-based framework for international transactions in services, clarifies the obligations of Members within that framework, and delineates a legal structure for ensuring that those obligations are observed.

The structure of GATS

GATS consists of:

- *A framework of principles*. This outlines the general obligations that apply to all Members on any measures (laws, rules, regulations, procedures, decisions or administrative actions) affecting trade in services. It comprises 29 Articles arranged in six Parts (*see* list in box 3) and the Annexes, which address special conditions for individual sectors. The full text of the Agreement is given in Appendix I to this Guide.

Box 3

GATS: The framework text

Part I	*Gives the scope of the Agreement and defines trade in services.*
Part II	*Outlines the general obligations and disciplines which each Member is bound to follow.*
Part III	*Covers the specific commitments of each Member, horizontal or by service sector and mode of supply, with regard to market access and national treatment; additional commitments.*
Part IV	*Establishes the basis for Members to enter into successive rounds of negotiations to achieve progressively higher levels of liberalization.*
Part V	*Covers institutional and procedural provisions, including the establishment of a WTO Council for Trade in Services and dispute settlement procedures.*
Part VI	*Final provisions, including a reference to the Annexes to the Agreement.*
Annexes	*On Article II exemptions; movement of natural persons; air transport services; on financial services (two Annexes); negotiations on maritime transport services; telecommunications; and negotiations on basic telecommunications.*

- *Schedules of specific commitments*. These are the detailed commitments made by individual Members on how much access foreign service providers are allowed in specific services sectors and under what conditions.

The principles cover the concepts mentioned earlier – transparency, MFN treatment, market access and national treatment. Transparency and MFN are considered general obligations regardless of specific sectoral commitments made. Market access and national treatment commitments are made specifically by service sector and mode of supply. In addition, Members may make horizontal commitments – i.e. measures or limitations affecting all scheduled sectors.

Definitions used

The basic legal definitions used in GATS are contained in Article XXVIII. In order to help the reader, some plain-language definitions particularly relevant to the discussion in this Guide are given below.

- *Bound*. The self-imposed obligation to maintain the degree of liberalization specified in schedules for a particular services sector or subsector.

- *Commercial presence*. Any type of foreign-owned business or professional establishment that is created, acquired or maintained in order to supply a service.

- *Measures affecting trade*. Includes laws, regulations, rules, procedures, decisions, administrative actions in respect of:

  - Purchase, payment or use of a service;

  - Access to, and use of, in connection with the supply of a service, services offered to the public generally;

  - The presence, including commercial presence, of persons in order to supply services.

- *Member*. A signatory to the WTO Agreement and therefore to GATS.
- *Notification*. Providing information to the Council on Trade in Services regarding new measures or changes to existing measures governing services that have been scheduled or bound.
- *Person*. Can either be natural (an individual) or juridical (a legal entity such as a corporation).
- *Scheduling*. Agreeing to bind a given service sector or subsector.
- *Supply of a service*. Includes the production, distribution, marketing, sale and delivery of a service.
- *Unbound*. No guarantee even of the status quo with the freedom to increase protection in a given service sector or subsector.

The services covered

GATS covers all commercially traded services in any services sector except those supplied in the exercise of governmental authority. It includes services whether or not they are supplied on a commercial basis or in the presence or absence of domestic competition. For purposes of discussion and scheduling, the WTO Secretariat has divided services into the following 12 areas:

- Business (including professional and computer services);
- Communications;
- Construction and engineering;
- Distribution;
- Education;
- Environment;
- Finance (including insurance and banking);
- Health;

- Tourism and travel;
- Recreation, cultural and sporting services;
- Transportation services; and
- Other services not included elsewhere.

These 12 areas are further subdivided into 155 subsectors (*see* Appendix II for a full list). While all of these services may potentially be included in Members' schedules of commitments, in actuality binding commitments exist only for those services selected by each Member for scheduling.

Coverage of services suppliers

While GATT focuses only on the product being traded, GATS addresses both the service and the service supplier. This means that MFN treatment is extended to suppliers of services as well as to the services they provide. Any notification regarding trade barriers or liberalization commitments must address the impact on both the service and the service supplier.

Coverage of levels of government

Each national government that is a Member of WTO has an obligation under GATS Article I.3 to ensure that commitments are observed by regional and local governments within its territory as well as by non-governmental bodies that exercise powers delegated to them by governmental authorities.

The Annexes

GATS contains Annexes which clarify how the Agreement applies under a series of circumstances. The Annexes, which are reproduced in Appendix I, are briefly described below.

- *Annex on Article II Exemptions*. This Annex details the conditions under which a Member, at the time the

GATS entered into force, could be exempted from its MFN obligations and the associated process of review and termination of such exemptions.

- *Annex on Movement of Natural Persons Supplying Services under the Agreement.* This Annex specifies that, under Mode 4, GATS applies only to the temporary stay of natural persons supplying services in the market, not to persons seeking permanent employment. Members have the sovereign right to control that temporary entry through visa requirements.

- *Annex on Air Transport Services.* This Annex specifies that GATS does not affect Members' obligations under bilateral or multilateral agreements in effect on air traffic rights and limits GATS coverage to aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservations system services.

- *Annex on Financial Services.* This provides a detailed list of what are defined as financial services and allows for Members to take prudential measures in order to safeguard their financial systems.

- *Second Annex on Financial Services.* This details conditions for scheduling specific commitments in the financial services sector.

- *Annex on Negotiations on Maritime Transport Services.* This Annex specifies the timing relationship between the listing of specific commitments in maritime transport and the negotiations on maritime transport services to be conducted.

- *Annex on Telecommunications.* This specifies that Members must ensure that foreign services suppliers have access to public telecommunications networks and services on a non-discriminatory basis and provides guidance on acceptable access conditions and criteria. It also recognizes the critical role of telecommunications in the expansion of the services trade and encourages technical cooperation.

- *Annex on Negotiations on Basic Telecommunications.* This Annex addresses the listing of MFN exemptions in relation to the negotiations on basic telecommunications.

In the process of finalizing GATS, agreement was reached to continue negotiations in the six areas itemized below during the period before the start of a new round on trade in services. Any negotiated agreements become Protocols to GATS; the commitments made by individual Members are annexed to these Protocols.

- *Movement of natural persons.* In July 1995, negotiations were concluded on the movement of persons providing contractual services, with 17 Members making commitments. Those Members were the 12 countries of the European Communities (as of 1994), Australia, Canada, India, Norway and Switzerland. The agreement is embodied in the *Third Protocol to GATS* (reproduced in Appendix III to this Guide).

- *Basic telecommunications.* In February 1997, negotiations on liberalizing basic telecommunications were concluded, with 69 Members scheduling commitments, of which over 40 were developing and transition economies. The result was the Agreement on Basic Telecommunications Services, which went into effect on 1 January 1998. The Agreement is contained in the *Fourth Protocol to GATS*, also reproduced in Appendix III.

- *Financial services.* In December 1997, negotiations on financial services reached a successful conclusion, with 70 Members scheduling commitments. The Agreement, embodied in the *Fifth Protocol to GATS*, entered into force on 1 March 1999 (*see* Appendix III).

- *Maritime transport.* Negotiations on maritime transport, which were to have been concluded by June 1996, were suspended until the year 2000.

- *Professional services.* In December 1998, the Council for Trade in Services adopted the *Disciplines on Domestic Regulation in the Accountancy Sector* which had been developed by the Working Party on Professional Services. In addition to transparency requirements and general provisions, the Disciplines contain provisions on licensing requirements, qualification requirements and procedures, and technical standards for the accountancy profession. A key provision is the general requirement that measures taken for these purposes should not be more trade-restrictive than is necessary to fulfil a legitimate objective. Some of these legitimate objectives are specified in the Disciplines. The Disciplines do not have immediate legal effect, but are expected to be integrated into GATS before the end of the round of negotiations on services starting in January 2000. The Working Party has also developed *Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector*. The Guidelines and Disciplines are found in Appendix IV.

- *Specific rules and disciplines*. Discussion continues on trade-distorting subsidies, emergency safeguards, government procurement practices, and trade-distorting domestic regulations.

Article XIX of GATS obliges members to launch a new round of trade liberalization negotiations by the year 2000.

What is not yet covered

For an initial agreement, the scope of GATS is wide. There are, however, some areas that are not yet covered which can have an impact on service providers:

- Most immigration rules applicable to temporary business entry;
- Services supplied under government authority;
- Fiscal policy and taxation measures;
- Exchange rate management;
- Air traffic and landing rights.

In each instance, the applicable policy area, while relevant to the services trade, is outside the usual mandate of a trade minister. Addressing such issues will require the involvement of finance and immigration ministries, as well as public service commissions.

Examining modes of supply

The distinctions among modes of supply are at the heart of the GATS request-and-offer negotiating process. For services enterprises, they are equivalent to delivery decisions, except that enterprises often use several modes to deliver their services. For example, a consultant may prepare a report that is transmitted to the client electronically (Mode 1), visit the client abroad to discuss the implementation of the report's recommendations (Mode 4), and then invite client staff for skills training (Mode 2) to support that implementation. Some considerations for each of the modes of supply that may be helpful in determining commitments to be made or interpreting commitments already made are outlined below.

Cross-border supply (Mode 1)

With the rapid growth in abilities to transmit information electronically, services firms are now becoming less dependent on commercial presence (Mode 3) or movement of persons (Mode 4). Any information that can be digitized can be manipulated at a distance, and real-time Internet technologies allow for on-line chat facilities and inexpensive video conferencing. Increasingly, service exporters are using Mode 1 for electronic communication with customers, strategic partners, or (in the case of commercial presence) headquarters, regardless of the ultimate mode of service delivery. Discussions underway regarding electronic commerce (*see* chapter 5) will have a direct impact on competitiveness through this mode.

Consumption abroad (Mode 2)

Travel of tourists continues to be the primary subset of this mode of supply, followed by the training abroad of students or executives. Distance training (Mode 1), however, is rapidly replacing traditional in-person training (Mode 2). Sales of services to firms present in developing and transitional markets with foreign ownership are also Mode 2 exports and can often be an excellent low-cost way for services providers to develop their export profile.

Commercial presence (Mode 3)

Commercial presence is the mode of supply most frequently bound in GATS, especially by developing and transition economies, which reflects the desire of Members to attract investment in order to stimulate technology transfer, create employment and reduce dependence on imported services. Developing and transitional economies can benefit from Mode 3 not only as recipients of inward investment but also by increasing legal predictability (and thus profitability) for their own services multinationals in sectors such as hotels, retail, and engineering and construction. It should be kept in mind that Mode 3 liberalization commitments were made at a time when Internet communications and electronic commerce were only beginning to develop. The need for commercial presence is now being partly superseded by an increasing emphasis on electronically facilitated cross-border trade (Mode 1) via the Internet. Indeed, many smaller service firms are more concerned about their right *not* to establish a local commercial presence.

Presence of natural persons (Mode 4)

This mode remains controversial, in part because of the bundling together of the different concerns indicated below.

Temporary business entry (no revenues earned)

Business travellers wishing to travel for business development or to attend conferences abroad face time-consuming visa application procedures more appropriate to permanent immigration and often requiring the submission of financial statements or specific letters of invitation. Such procedures preclude market development activities in target markets where the firm is not already known and spontaneous market visits to explore newly emerging opportunities. They also make it impossible to attend professional conferences without prolonged lead time for visa acquisition. In some instances, business travellers must acquire visas not only for their destination markets but also for countries through which they must make travel connections but which do not offer transit facilities (e.g. many United States airports). Decoupling visa facilitation for temporary business visitors from the controversy around labour migration is urgently needed.

Temporary contract-specific entry (revenues earned)

Temporary entry (and associated work permits) for project-specific staff or persons wishing to work temporarily in a foreign market (as individuals) is usually subject to an economic needs test, i.e. the discretion to limit new entrants into a new market by reference to existing local capacity. Conditions for granting temporary entry under such a test typically include a determination that no resident or national of the host country is available and qualified to carry out the same assignment, the job has been advertised domestically, employment conditions (level, wages) are the same as for nationals, professional qualifications are recognized, and so forth. Under some regional free trade agreements, specified categories of managers, professionals and technicians may obtain a work permit without an economic needs test once a contract for service delivery has been concluded (e.g. Mexican architects travelling to Canada or the United States).

Temporary entry associated with commercial presence (wages earned)

Persons setting up new establishments under Mode 3 and intracorporate transfers sometimes face significant delays in accessing their foreign work location.

Factor labour movement (wages earned)

A wide range of examples regarding individual employees exist, from the temporary movement of trained professionals to that of domestic and agricultural workers. Because such workers often remain abroad long enough to qualify for social services (at national taxpayers' expense) or to leverage the employment contract to immigrate permanently, discussions of this mode have sparked considerable controversy with immigration officials. While citizens who live and work abroad temporarily may remit earnings and thus generate foreign exchange, such activities can also contribute to brain drain and may have limited economic development impact. Pursuing rapid liberalization in the movement of labour, rather than temporary business travel, will not necessarily provide developing and transition economies with the greatest economic multipliers.

Linkages exist among the four modes of supply so that their separation is to some extent artificial. Contract work in other countries (Mode 4) is often used in developing and transition economies to build domestic capacity by encouraging professionals to take short-term assignments in countries where skills are more highly specialized and in-service training is available. Returning professionals with enhanced skills can then launch cross-border exports or meet foreign visitors' services expectations more successfully. Business travel (Mode 4) is also used to complement cross-border supply (Mode 1) in order to meet customer needs for personal contact. Similarly, granting Mode 3 access is often used to build local capacity for Mode 2 or Mode 1 by leveraging soft technology transfer. For example, by attracting targeted foreign direct investment (FDI) in areas such as software customization or the management of health facilities, developing and transition economies can build a reputation for quality that can be parlayed into cross-border supply.

How GATS works

The WTO Agreement provides a single international framework (the World Trade Organization or WTO) and a common dispute settlement mechanism for the three multilateral Agreements it contains – GATT 1994, GATS and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Four plurilateral agreements were also renegotiated as part of the Uruguay Round, of which the Agreement on Government Procurement is of relevance to services suppliers. The Agreement is reproduced in Appendix V.

The World Trade Organization, which was created by the WTO Agreement out of the former GATT Secretariat, also administers the implementation of the Understanding on Rules and Procedures Governing the Settlement of Disputes and the Trade Policy Review Mechanism. As an administrative body, the WTO Secretariat in Geneva is responsible for five functions in relation to GATS:

- Overseeing the implementation of the terms of GATS, including the commitments that have been made for ongoing work in areas such as professional services; financial services; basic telecommunications; maritime transportation; movement of natural persons; and rules on safeguards, subsidies and government procurement.
- Facilitating the settling of trade disputes between Members through support to panels and the Appellate Body.
- Providing technical assistance to developing and transition economies.

- Coordinating the trade policy review process (which involves periodic reviews of each Member's economy) and drafting a background report for comment by the Member.

- Providing a forum for ongoing trade liberalization negotiations, including the preparation of analytical papers as requested by the Council on Trade in Services.

WTO is headed by a Ministerial Conference which is held every two years, and a General Council oversees its operations. Note that WTO Members are members of an international organization, not simply signatories to a treaty, and are bound by all three multilateral Agreements.

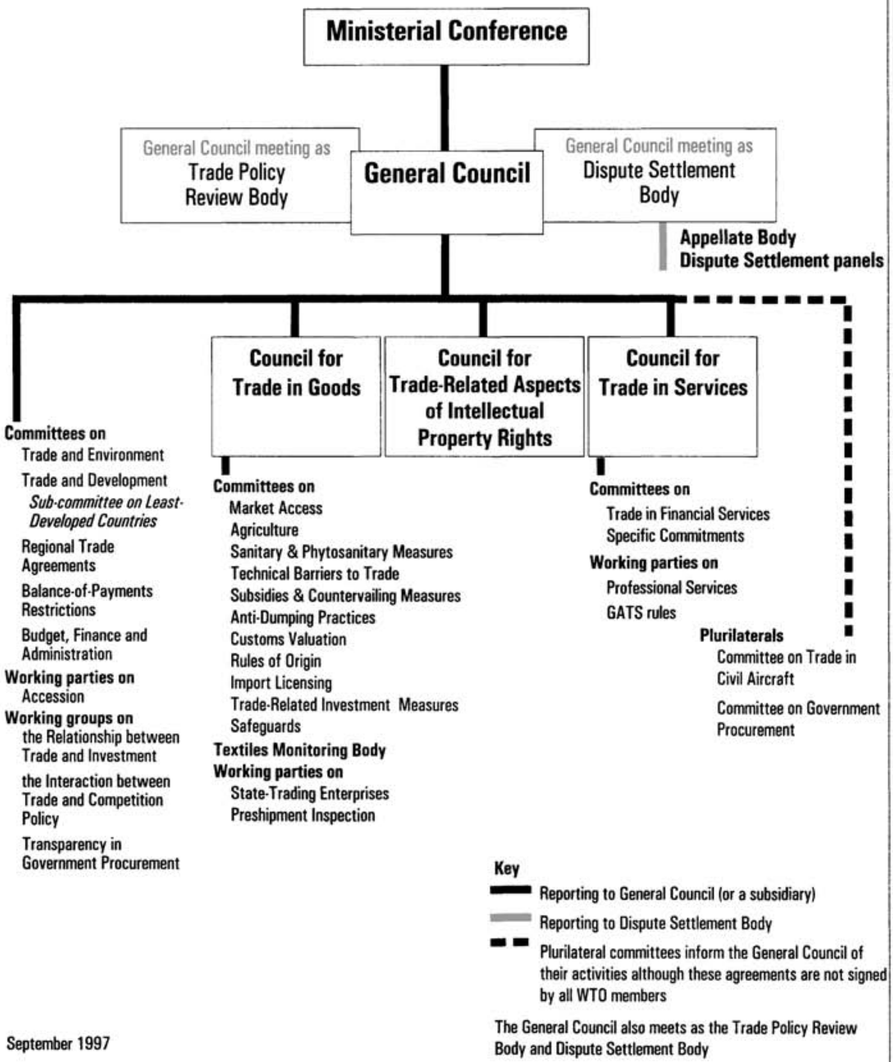
As of May 1999, WTO had 134 Members (*see* Appendix VI for a list), most of which are national governments. The European Communities, a non-voting Member, represents its member countries (each of which is a WTO Member) in the WTO by casting votes on their behalf. Each Member (and all levels of its government) is committed to all three of the multilateral Agreements which are annexed to the WTO Agreement.

GATS is administered by the Council for Trade in Services which reports in turn to the General Council of the WTO (*see* box 4 for the structure of WTO). Its mandate is set out in Article XXIV. The Council for Trade in Services is open to all Members. Decisions within the Council are made by consensus, although there are provisions for decision by majority vote when consensus is not possible, with each Member having one vote. Consensus in this context means that no Member present at a particular meeting formally objects to the matter under consideration. Reporting to the Council are various subsidiary bodies such as the Committee on Trade in Financial Services, the Committee on Specific Commitments, the Working Party on Professional Services, and the Working Party on GATS Rules.

The WTO Agreement has provisions for consultation and cooperation with other intergovernmental and

Box 4
WTO structure

All WTO members may participate in all councils, committees, etc. except the Appellate Body, Dispute Settlement panels, Textiles Monitoring Body, and plurilateral committees.



September 1997

Source: WTO.

non-governmental organizations. There is no direct access for private-sector firms to the WTO dispute settlement mechanism, however, as difficulties are reported through one's government (*see* box 5 for information on the dispute settlement process).

Box 5

Dispute settlement within WTO

Step 1. *Complaint from a Member stating that another Member has breached its obligations under GATS.*

Step 2. *Bilateral consultations to reach a mutually agreeable solution.*

Step 3. *If consultation fails, the complaining Member may request the Dispute Settlement Body (DSB) to establish a panel of three qualified government and non-government representatives chosen from an existing roster of panellists to examine the complaint.*

Step 4. *The panel examines the case against existing rights and obligations under GATS and has six months to issue a report with binding recommendations for adoption by DSB.*

Step 5. *Any of the parties to the dispute may appeal the panel report; such appeals are considered by the Appellate Body.*

Step 6. *If the party in breach does not appeal and fails to comply with the panel report or fails to comply with the decision of the Appellate Body within a reasonable period, the complaining Member may request compensation. Alternatively, the party in breach may itself offer to pay compensation.*

Step 7.	*If the party in breach fails to comply and adequate compensation where requested is not provided, the complaining Member can request permission from the Dispute Settlement Body to take retaliatory action by suspending concessions or other obligations vis-à-vis the Member in breach.*
Step 8.	*The provision of compensation and authorization by DSB of retaliatory measures are temporary measures. The ultimate step is for the party in breach to implement decisions. DSB keeps these cases under review to secure full implementation.*

All Members are required to maintain national enquiry points from which other Members can obtain information on laws and regulations affecting the trade in services. In addition, GATS (Article IV) calls on developed country Members to establish contact points in order to assist services suppliers in developing and transition economies. Enquiry points are for the use of governments and services enterprises have to channel their requests for information through their national governments. However, they can make direct requests for information from contact points. The explosion of the Internet is facilitating direct electronic access for private firms on a range of trade-related issues.

The list of GATS enquiry and contact points is given in Appendix VII.

GATS and the business community

With 134 Members in May 1999, GATS covers over 90% of the global trade in services. In addition, 30 other countries/areas [including the Russian Federation and other countries in the Commonwealth of Independent

States, China, and Taiwan Province (China)] have applied to join WTO (and therefore GATS). Their membership would mean that almost 100% of the global trade in services would fall within the purview of GATS. Services providers will find that GATS disciplines apply in many of the export markets they are considering. Under Mode 3, investing in commercial operations abroad is also covered.

GATS is still a very young agreement. In the first round of commitments, the primary gain consisted of standstill commitments (i.e. commitments not to increase protectionism), rather than major advances in trade liberalization. The strength and coverage of commitments vary substantially among Members. There were, however, some major strides in rolling back nationality requirements and relinquishing the right to grant market access on a reciprocal (rather than MFN) basis.

A major gain for the business community has been the focusing of attention on a wide range of policies and regulations that have the potential to distort the services trade. For the first time, there is a coordinated mechanism for gaining information about domestic regulatory environments and how they can limit market access or national treatment. Through the liberalization commitments made, enterprises will have improved access not only to export markets but also to more competitive imported services inputs. In addition, developing and transition economies have the increased potential for benefiting from technology transfer and training from foreign firms establishing a commercial presence in their territories.

Overall, the gain for the business community is in increased predictability or legal certainty within the trading environment. The commitments that have been made help to ensure that there will be no arbitrary regulatory intervention by governments. Even if limitations and restrictions continue to exist, at least they have been identified and can be anticipated. And once Members have made commitments on specific services, they cannot withdraw these commitments without compensating other Members.