Chapter 3

Specific commitments

In addition to the general obligations discussed in chapter 2, each Member is expected to assume specific liberalization commitments through a process called 'scheduling' (the preparation of a formal schedule of commitments which forms part of GATS). Under Article XX, a certain flexibility has been created for the scheduling process. Each Member first identifies the services sectors in which it is willing to make either 'standstill' (freezing the status quo) or 'rollback' (increasingly liberal) commitments. Then the Member states the conditions under which it will allow services and services suppliers access to its market. This is done by indicating any limitations it wishes to place either horizontally or on a sectoral basis.

Unlike GATT, there is no general obligation under GATS for Members to extend either market access or national treatment to other Members. These obligations are negotiated on a sector-by-sector basis and are inscribed in the Member's schedule of commitments. Once negotiated, the commitments form a minimum level of treatment of foreign services and services suppliers (much like a GATT-bound tariff). That minimum level will either remain unchanged or be further liberalized as a result of the Member's subsequent commitments during sectoral negotiations (such as those on financial services) or in the GATS round scheduled to begin on 1 January 2000. In the meantime, there is nothing to prevent a Member from treating another Member's services or services suppliers more favourably than is stated in its schedule, as long as that treatment is extended to others on an MFN basis.

Indeed, many of these initial schedules represent conservative bindings with actual practices being more liberal.

A summary of commitments by country and by main sector is provided in Appendix VIII.

Given the nature of GATS, schedules of commitments continue to change and users may wish to obtain more detailed country-specific and sector-specific data. Appendix IX provides a listing of on-line resources that can be used, of which the WTO Web site (*http://www.wto.org*) and the European Commission's INFO-POINT (*http://gats-info.eu.int/*) are likely to be the most useful. The reader should take note of the WTO Web page which lists recently posted information.

The market access commitment

An African tour management firm wishes to promote eco-tourism among potential tourists from the United States. It has been having difficulty acquiring visas for its marketing staff to do a series of promotional lectures across the northern United States and is asking whether this difficulty is legal under GATS.

A Latin American firm providing maintenance services for office equipment in UNDP offices in Andean Community countries wants to expand into certain Central American countries. It is wondering what barriers its supervisors and technical personnel might face in travelling to the new markets.

A Middle Eastern aircraft maintenance firm wishes to export the expertise it has developed at its national hub airport by targeting airlines in Europe already familiar with it from their flights through this airport. For reasons of managerial efficiency, however, it would like to be closer to its potential foreign customers and is considering establishing an office in Malta. It wishes to know if any GATS provision could be used to support its bid to establish such an office.

The market access provision requires non-discrimination among services or services suppliers. Members are entitled to enforce some restrictions to market access as long as those restrictions are scheduled, are imposed in a non-discriminatory fashion, and fall within the following allowable types of quantitative and legal restrictions:

- The number of services operations;
- The value of services transactions or assets;
- The number of operations or quantity of output;
- The number of natural persons supplying a service;
- The participation of foreign capital;
- The type of legal entity.

Note that these types of restrictions apply primarily to Mode 3. Other types of restrictions to market access are not allowed.

In the first example given above, the issue relates to Mode 4 access. Since marketing staff do not intend to remain in the United States, failure to grant temporary entry visas could be challenged. In the second example, if the intention is commercial establishment (Mode 3) – and commercial presence is allowed in the target market's schedule – then the Latin American firm should be able to locate its supervisory and technical staff temporarily in the country of interest. In the third example, Malta would have the right to restrict the number of aircraft maintenance firms; however, since the services are to be supplied outside Malta, restricting this firm's entry could be challenged.

While there is no general obligation to provide market access, restricting market access can disadvantage domestic enterprises by reducing their opportunities for servicing foreign customers. Limiting visitor access (Mode 2), for example, will also limit the domestic multiplier effects arising from possible purchases by visitors. If it is difficult for business visitors to obtain visas to visit a country in order to attend professional conferences, conference organizers may begin using the

Internet to offer virtual conferences. Conferences will still be held and the attendance fees earned, but the domestic economy will not benefit from spending on food, lodging, transportation, sightseeing, etc.

The national treatment commitment

A Central American Government wishes to encourage the earning of foreign exchange through the distance delivery of training services for health workers, especially Spanish-speaking trainees in Florida. It wants to obtain recognition of its training credential as equivalent to credentials issued by training firms based in the United States, but has heard that it must be established in Florida to become accredited.

The national treatment provision requires non-discrimination between foreign and domestic services and services suppliers once the foreign service or services supplier has entered the market. There are, however, certain barriers to equality of competitive opportunity between domestic and foreign services suppliers that are administered in ways not consistent with national treatment. Examples are government subsidies available only to domestic suppliers (e.g. for research and development, provision of rural services, export market development).

Non-discrimination is to be based on equitable, rather than equal, treatment – known as the 'equality of competitive opportunity'. This distinction is critical in that in some instances 'equal' treatment would actually place the foreign supplier at a competitive disadvantage. As long as 'no less favourable' treatment is accorded, foreign suppliers may receive either formally identical or formally different treatment provided that the treatment does not modify the conditions of competition in favour of domestic suppliers. In the case above, if accreditation is granted at the State level, and United States firms from outside Florida must have an office in Florida to have their training credential accredited, then the Central American training firm can be legitimately required to comply.

The scheduling of commitments

Members have two levels of decisions that they must make with regard to a particular services sector: first, whether or not to schedule any commitments for that sector and, second, what commitments to schedule. If a Member *does not* elect to submit a schedule of commitments for a particular services sector, then that Member remains free to be as liberal or as restrictive as it chooses at any given time. If the Member *does* submit a schedule, then that Member automatically becomes obligated to be transparent about current policies and regulations and to provide notification to other Members of any changes.

At the first level, GATS has adopted a 'positive list' approach, meaning that Members have liberalization-related obligations only if they have chosen to submit a schedule. At the second level, the 'negative list' approach applies. Once a schedule has been submitted for a particular services sector, it is assumed that no trade barriers exist *unless* the Member has noted limitations.

All schedules are written in two parts, with separate columns for conditions and limitations on market access, and conditions and qualifications on national treatment:

- Horizontal commitments, applying across all services sectors by mode of supply.
- Sectoral commitments, with specific limitations listed by services sector and mode of supply.

One must look at both parts in order to understand a Member's commitments for a given services sector.

After a commitment has been in force for three years, a Member may modify or withdraw it, provided that notification is given and any necessary compensatory adjustments are made if the modification is less liberal than before. A Member may modify commitments to make them more liberal at any time.

The following standard terms have been used in the schedule columns under market access and national treatment:

None	This means that there are no limitations on foreign services or foreign services suppliers that are inconsistent with the relevant market access or national treatment provisions of GATS.
[text]	The text states the limitation(s) for the particular mode of supply.
Unbound	This means that measures inconsistent with the market access or national treatment provisions of GATS may exist or be introduced.
*Unbound**	This means that the mode is 'unbound' because it is not technically possible or feasible for a given service to be supplied through that particular mode.

Note that, while in some instances an item has been left blank, this technically should not occur and the presumption is 'None'. Services sectors that are not scheduled are automatically 'unbound'. It is important to note that 'binding' (through the use of stated limitations or using 'None') is *not* the same as a commitment to 'free trade'. Many of the conditions or limitations stated when binding a sector, while allowable under GATS, may effectively block trade.

Box 6 provides an illustration of the format used in scheduling commitments. To read a schedule:

❑ See if the services sector of interest is mentioned at all in the schedule, keeping in mind that not all Members have used the same classification system. If it is, then:

Box 6
Sample schedule of commitments

Commitments	Mode of supply	Limitations on market access	Limitations on national treatment	Additional comments
Horizontal commitments (applicable to all sectors)	1. Cross-border supply	None	None other than tax measures that result in differences in treatment with respect to R & D services.	
	2. Consumption abroad	None	Unbound for subsidies, tax incentives and tax credits.	
	3. Commercial presence (foreign direct investment or FDI)	Maximum foreign equity stake is 49 per cent	Unbound for subsidies. Under Law *x*, approval is required for equity stakes over 25%; new investment that exceeds *y* million.	
	4. Temporary entry of natural persons	Unbound except for the following: intracorporate transfers of executives and senior managers; specialist personnel for up to one year; specialist personnel subject to economic needs test for stays longer than one year; services sellers (sales people) for up to three months.	Unbound except for categories of natural persons referred to in the market access column.	
Sectoral commitments: Limitations (applicable to specific service activities) 1.A.D. Architectural services	Cross-border supply	Commercial presence required	Unbound	
	Consumption abroad	None	None	
	Commercial presence (FDI)	25% of senior management should be nationals	Unbound	
	Temporary entry of natural persons	Unbound, except as indicated in Horizontal commitments.	Unbound, except as indicated in Horizontal commitments.	

- Look at the horizontal commitments at the beginning of the schedule to see if there are any limitations being imposed across all scheduled sectors and note what they are by mode of supply.
- Look at the listed MFN exemptions to see if an exemption has been made for the services sector of interest.

❑ For the section of the schedule addressing the services sector of interest:

- Look at the column on 'Limitations on market access' to see if any limitations are listed under the modes of supply of interest.
- Look at the column on 'Limitations on national treatment' to see if any limitations are listed under the modes of supply of interest.
- Look at the column on 'Additional commitments' to see if commitments have been made in areas not covered by market access or national treatment (e.g. technical standards).

When seeking information on the commitments of a particular Member, keep in mind that 12 of the now 15 European Union members (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, United Kingdom) are covered under the European Communities in schedules prepared before 1995. For more recent agreements (such as those on financial services and basic telecommunications), the European Communities' schedule also covers Austria, Finland and Sweden.

An overview of liberalization commitments

In the first attempt to make binding agreements on measures affecting trade in services, significant progress was made. Commitments have been registered in all 11 of the major services categories, with at least 40% of Members making commitments in each category (*see* table 7). Over half of the developed countries have made binding commitments in all categories, as well as four developing and transition economies (Bulgaria, the Gambia, Panama and Slovenia).

Table 7 WTO Members: level of commitments by services sector and by category of countries

Sector	Members making commitments (% of total)			Total number of Members
	Developed economies	Developing and transition economies	All Members	
Tourism and travel	100	93	94	123
Business services	100	69	75	98
Financial services	100	69	74	97
Communication	100	63	71	91
Construction	100	43	53	69
Transport services	100	52	47	79
Recreation, *et al.*	91	34	44	58
Environmental	96	25	37	49
Distribution	100	22	36	47
Health-related	70	25	33	43
Educational services	83	20	31	41
Averages	**95%**	**44%**	**53%**	**69**

Source: WTO Web site.

Note: The number of Members (excluding the European Communities) with scheduled commitments equals 131, of which 108 are developing and transition economies. The Members represented by the European Communities are each counted separately.

There is a great deal of variability among the major sectors with regard to the number of commitments made. The lead sector, with commitments from 94% of Members, is travel and tourism, reflecting the sector's high export interest. The sector with the least commitments is educational services, traditionally a government monopoly. That variability also exists by level of economic development, with the different groupings making the fewest commitments in the following sectors:

– Developed economies: health and social services;

- Transition economies: recreational, cultural, sports;
- Developing economies: educational services;
- Least developed economies: distribution services.

A simple counting of commitments, however, does not provide a full picture of the degree of liberalization for two reasons. First, some Members may not have included all activities that fall within their commitments. Second, in many instances there is at least one mode of supply that is limited in some way.

The sections that follow analyse the main issues by sector (or, in some cases, by subsector) and illustrate the type of service currently being exported from developing and transition economies. The sectors are discussed in the order of the percentages of Members making commitments.

Liberalization commitments in the tourism and travel services sector

An African international conference centre has developed a major promotional campaign to attract international events, especially from Europe. It is finding that most flight schedules for participant travel entail transit through intermediate airports where transit visas are required. As these are in addition to the visa required for entry into the African country where the centre is located, the visa requirement can serve as a real disincentive. The marketing director of the centre wants to use GATS as a lever to have visa requirements re-examined.

Commitments made in tourism and travel cover the services used by persons travelling to and staying in other Members' territories for a period of not more than a year – particularly the activities of travel agencies and tour operators, hotels and restaurants, catering and tourist guide services (*see* table 8). Tourism is a high-growth sector, viewed as a major employment generator worldwide, and one in which many developing and transition countries are competitive (with the Czech Republic and Poland being among the new top destination markets). Nearly all Members (94%) have made commitments, particularly on the services of hotels and restaurants.

Table 8 WTO Members: level of commitments in the tourism and travel sector

Tourism and travel subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
Hotels/restaurants	23	23	93	93
Travel agencies	23	23	71	71
Tourist guides	22	22	35	35
Other	1	1	11	11
Percentage of Members listing no limitations:				
Hotels/restaurants	0	0	0	0
Travel agencies	0	0	0	0
Tourist guides	0	0	0	0
Other	0	0	0	0

Source: WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) with scheduled commitments in the sector equals 123, of which 100 are developing and transition economies. The Members represented by the European Communities are each counted separately.

The primary limitations scheduled under the main mode of supply (consumption abroad, or Mode 2) are hard currency regulations. Travel agencies and tour operators may face restrictions on the establishment of a presence (Mode 3) in major supply markets in order to capture tourism business, including restrictions on travel abroad of supervisory staff. Another major trade constraint is in access to, and the provision of, global distribution systems for tourism-related information. Given the increased use of global computer reservation systems to book hotels, rental cars, tours, etc., any restrictions on use by locally owned travel agencies can have a trade-distorting effect.

The example given above illustrates the challenge of trying to address trade in services only as a trade issue as, at present, there is no lever in GATS to help the marketing director. No matter how non-discriminatory the operating environment for services suppliers (including the ability of the staff of the supplier to enter foreign markets under Mode 4), there will be no tourism revenues if tourists (the consumers) cannot enter the destination market easily. Immigration officials need to be engaged alongside trade officials in ensuring such access.

Liberalization commitments in the business services sector

Commitments in regard to the business services sector cover professional services, computer services, research and development, real estate services, rental and leasing services, and a range of other business support services (*see* table 9). The business services sector covers a wide range of activities that provide support to management and are vital to the operations of all organizations. The level and quality of commitments vary substantially by subsector. At one extreme of regulation are professional services, for which mutual recognition of professional credentials, forms of business entities allowed, and technical standards can all form barriers to trade. Regulation of the professions typically occurs at the subfederal level and may include factors unrelated to competence (e.g. nationality requirements). Commitments made in legal services are offered as an example.

Table 9 WTO Members: level of commitments in the business services sector

Business services subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
Professional services	22	22	56	56
Other business services	23	23	54	54
Computer services	23	23	49	49
Research and development	21	21	25	25
Rental/leasing	23	23	23	23
Real estate	21	21	7	7
Percentage of Members listing no limitations:				
Professional services	0	0	0	0
Other business services	100	100	81	81
Computer services	87	87	84	84
Research and development	95	95	88	88
Rental/leasing	91	91	91	91
Real estate	95	95	30	30

Source: WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) scheduling commitments in this sector equals 98, of which 75 are developing and transition economies. The Members represented by the European Communities are each counted separately.

Legal services (CPC 861). Legal services include advisory and representational services as well as all activities relating to the administration of justice. Legal services are an example of a subsector where the CPC[3] classifications appear problematic for Members. Instead, the following distinctions have been made in scheduling:

- Host country law (advisory/representation);
- Home country and/or third country law (advisory/representation);
- International law (advisory/representation);

3 The United Nations' provisional Central Product Classification.

- Legal documentation and certification services;
- Other advisory and information services.

Among the areas of practice experiencing particular growth are new areas such as corporate restructuring, privatization, cross-border mergers and acquisitions, intellectual property rights, new financial instruments and competition law. Growth in international legal services has come from the demands of corporate clients doing business abroad (met through Modes 1, 3 and 4) as well as services provided to potential investors (Mode 2). The subsector comprises a large number of small firms, as well as a growing number of multinational firms and legal referrals networks.

The primary barrier to trade in legal services, other than constraints to general foreign investment and the movement of natural persons, is the predominantly national character of law. Lawyers are trained not only in the laws of a particular country but also in case law or the legal codes of a particular legal system (e.g. common law, civil law, Islamic law, etc.), and so their training is not necessarily transferrable to another national environment. In addition, certain legal tasks are allocated differently under national legislation, most notably notarial activities which in some economies are restricted to lawyers and, in others, to notaries public. Other barriers include restrictions on legal form (e.g. prohibiting incorporation), restrictions on the use of international or foreign firm names, restrictions on partnerships with locally licensed professionals, nationality or residency requirements, and a host of licensing requirements.

In most countries, there are national and/or subfederal professional associations that regulate the legal profession and enforce a code of professional conduct. There is also an International Bar Association, with an International Code of Ethics, which has recently adopted *General Principles for the Establishment and Regulation of Foreign Lawyers*. The International Union of Lawyers, the International Union of Civil Notaries, and the Young Lawyers International Association are among the many other international and regional professional bodies.

Under GATS, 56 Members have made commitments regarding trade in legal services, of which 33 are developing and transition economies. Commitments are most common in advisory international law and advisory home country law.

At the other extreme from the highly regulated professional services are the 'other' business services, which include a wide range of activities that businesses often contract out. These speciality services are multiplying rapidly, especially with the incorporation of information technology (IT), and hold excellent potential for job creation. For many of these business-to-business services, there are no specific domestic regulations; rather, market access is conditioned by general regimes on foreign investment (in the case of Mode 3) or the movement of natural persons (in the case of Mode 4). An increasing number of these services are being provided cross-border as back-office services and so will be affected by the WTO work programme on electronic commerce[4]. Commitments made in advertising services, one of the 'other' services that is often regulated, are offered as an example.

Advertising (CPC 871). Advertising services comprise the creative work in developing advertising materials, the strategic and operational aspects of advertising campaign planning, and the sale or leasing of advertising space or time. Growth in advertising services is related to the increased need of firms to attract customer attention and to build customer loyalty as markets become more diversified. It can be facilitated or constrained by circumstances in the media through which advertisements are distributed (i.e. print, radio, television, electronic, and multimedia). The sector is dominated by large global agencies with agencies in over 70 countries, the top 20 of which account for at least one quarter of the sector's revenues.

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4 This programme originated from the Geneva Ministerial Declaration on Global Electronic Commerce which was adopted on 20 May 1998.

The primary barriers to trade in advertising services, other than general foreign equity constraints, are contained in domestic regulations not covered by the market access or national treatment provisions of GATS. The types of regulatory restrictions most often cited include:

- Government control of the media in which advertising occurs.
- Regulations aimed at consumer protection by banning false or misleading advertising, advertising deemed immoral, advertising of products considered a health or safety hazard (such as alcohol, tobacco, certain pharmaceuticals).
- Bans on the advertising of professional services.
- Overly stringent product packaging and labelling requirements.
- Restrictions on vocabulary and language, the use of testimonials or endorsements, comparative advertising, the type of content aimed at children, the use of cartoon characters, and the use of sexually explicit images.
- Unfavourable tax policies (such as tax deductions only for advertisements in national media or excise taxes on advertisements in foreign media).

There is a set of international guidelines for ethical practice – the *ICC International Code of Advertising Practice*. As well, there are international policies such as the United Nations *Guidelines on Consumer Protection* (Res. 39/2488 of 9 April 1985, now being revised to include sustainable consumption), which protect a government's right to regulate advertising within its jurisdiction. In a growing number of countries, there are also industry associations that focus on self-regulation.

Under GATS, 51 Members have made commitments regarding trade in advertising services, of which 23 are developed countries and 28 are developing and transition economies. Of these commitments, 88% cover all activities under CPC 871. Fourteen Members have scheduled limitations under market access and/or national treatment in Modes 1 to 3. Limitations under Mode 4 are generally horizontal limitations on the movement of persons. Further liberalization in advertising services will depend on changes in domestic regulatory environments and on enhancement of the industry's ability to regulate itself in keeping with the cultural mores of a given market.

Liberalization commitments in the financial services sector

Commitments made in financial services cover insurance, banking and securities-related services (*see* table 10) and were reached through a series of negotiations culminating in the December 1997 *Fifth Protocol to the GATS*. As of mid-1998, 97 Members had made commitments, and the number will rise to 102. One of the most important accomplishments of the last round of negotiations was the removal of MFN exemptions by a number of Members.

Table 10 WTO Members: level of commitments in the financial services sector

Financial subsectors	Developed economies	Developing and transition economies
Number of Members making commitments:		
Insurance:		
Life	26	54
Non-life	26	58
Reinsurance	26	63
Intermediation	26	42
Banking:		
Deposits	26	67
Lending	26	68

Table 10 (cont'd)

Financial subsectors	Developed economies	Developing and transition economies
Trading in:		
Foreign exchange	26	47
Derivatives	25	30
Securities:		
Trading	26	53
Underwriting	26	48
Other:		
Asset management	26	48
Financial information	26	43

Source: WTO Secretariat (results of the negotiations on financial services concluded in December 1997 and embodied in the *Fifth Protocol to the General Agreement on Trade in Services*).

Note: The number of Members (excluding the European Communities) scheduling commitments in the sector equals 104, of which 78 are developing and transition economies. The Members represented by the European Communities are each counted separately.

While the level of commitments in financial services is high, there are qualifying considerations. For example, 39 Members have taken MFN exemptions and a significant number of limitations have been listed under both market access and national treatment. A number of developing and transition economies have been more willing to make commitments in banking than in insurance. However, a number of other developing and transition economies with offshore financial services were more inclined to make commitments in insurance. It is worth noting that some least developed countries have made commitments covering the entire banking and other financial services subsector (e.g. Mozambique), with Sierra Leone covering all financial services without exclusion.

The Annexes to GATS on financial services create some special rules for this sector, which acknowledge the critical role played by the financial sector in fiscal accountability and economic stability. The functions of a central bank or monetary authority are exempted, whether they are supplied by the government or by a private entity acting for the government. Specific "services supplied in the exercise of governmental authority" are also exempted, namely, activities related to monetary or exchange rate policies, activities of public entities using the financial resources of the government, and activities that form part of a statutory system of social security or public retirement plans. As would be expected, there is a special exception to allow Members to take measures for prudential reasons, as long as such measures are not undertaken to avoid commitments or obligations under GATS. A more precise guarantee on confidentiality is included, and a requirement is added that dispute settlement panels must have the necessary expertise.

Liberalization commitments in the communications services sector

Commitments made in communications cover postal and courier services, audiovisual services, and basic and enhanced telecommunications (*see* table 11), with 93 Members making commitments in at least one subsector. The postal services subsector has received the least attention, with only five Members making commitments, as it remains a public monopoly in most countries, followed by courier services. Regarding audiovisual services, only 19 Members have made commitments in this subsector which is often highly regulated owing to its link to cultural values.

Table 11 WTO Members: level of commitments in the communications services sector

Communication subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
Postal	No data	No data	5	5
Courier	4	4	29	29
Telecommunications	23	23	47	47
Audiovisual	3	3	16	16

Table 11 (cont'd)

Communication subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Percentage of Members listing no limitations:				
Postal			0	0
Courier	0	0	0	0
Telecommunications	30	30	57	57
Audiovisual	100	100	75	75

Source: WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) scheduling commitments in the sector equals 93, of which 70 are developing and transition economies. The Members represented by the European Communities are each counted separately.

Liberalization in the telecommunications sector is one of the success stories of GATS. Value-added telecommunications (e.g. e-mail, voice mail, on-line data processing, on-line database storage and retrieval, and electronic data interchange or EDI) had been covered under the original GATS text and commitments. However, decisions on basic telecommunications (e.g. voice telephony, telex, telegraph, facsimile, data transmission, private leased circuit services, fixed and mobile satellite systems and services, cellular telephony, mobile data services, paging, and personal communication services) had been postponed until further negotiations could be held. With State-owned enterprises supplying basic telecommunications in most economies, there was initial resistance to considering liberalization which was perceived as a threat to national regulators and even to national sovereignty.

An important advance was the recognition (inscribed in the *Annex on Telecommunications to GATS*) that access to telecommunications services was critical for trade in services and that users were entitled to fair terms of access. At the same time, regulators began to be aware that the structure of the industry was changing and that monopolistic control and protected markets were no longer viable. Call-back systems, virtual private networks, satellite and wireless networks, and telephony via the Internet were all bypassing the traditional wired telecommunications networks. This allowed the discussion to shift from whether to how. Understanding the need for a pro-competitive regulatory framework, a "Reference Paper" (*see* Appendix IV) providing definitions and principles related to the regulatory framework for basic telecommunications services was drawn up by the Negotiating Group on Basic Telecommunications (a Group established under a mandate provided by the Marrakesh Ministerial Decision on Negotiations on Basic Telecommunications). It has become the first multilateral document to deal with substantive aspects of competition policy and stipulates the following principles:

- The establishment of independent regulators;
- The adoption of competitive safeguards;
- Measures to ensure inter-connectivity;
- Transparent and nondiscriminatory practices with respect to licensing;
- Universal service obligations.

The markets covered by the negotiations on basic communications make up more than 90% of the world market for telecommunications.

Liberalization commitments in the construction and engineering services sector

Commitments made in construction cover buildings, civil works and speciality trades (*see* table 12), with 69 Members scheduling commitments. Because of the inclusion of construction-related engineering services in this sector, there is a direct overlap with professional services covered under the business services sector which will make statistical measurement more difficult.

Table 12 WTO Members: level of commitments in the construction and engineering services sector

Construction subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
General: buildings	21	21	26	26
General: civil	21	21	24	24
Installation/assembly	21	21	26	26
Completion/finishing	20	20	19	19
Other	18	18	15	15
Percentage of Members listing no limitations:				
General: buildings	0	0	0	0
General: civil	0	0	4	4
Installation/assembly	0	0	0	0
Completion/finishing	0	0	0	0
Other	0	0	7	7

Source: WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) scheduling commitments in the sector equals 69, of which 46 are developing and transition economies. The Members represented by the European Communities are each counted separately.

Construction is a core economic activity in all economies and one that governments frequently use (i.e. public works) to stimulate economic growth. Construction services are primarily provided through the establishment of the services supplier at or near the construction site, with on-site offices normally in existence only for the life of the project. Joint ventures between foreign and domestic suppliers are common, in part to aid the foreign supplier in dealing with domestic regulations. Many Members have treated cross-border supply as "unbound due to lack of technical feasibility"; however, there is active cross-border (electronic) trade in design, site investigation and project management services.

Given the dominance of government as a procurer of construction services, restrictions on government procurement is the most important barrier to trade in construction services. Another common barrier is restrictions on the movement of construction personnel (Mode 4) to the target market for particular projects. The greatest challenge for construction firms is the maze of domestic regulations that have to be managed, often at all levels of government. They typically include controls on land use; building regulations and technical requirements; building permits and inspection; registration of proprietors, contractors and professionals; regulation of fees and remunerations; and environmental regulations. Transparency of regulations is as much an issue as national treatment.

Liberalization commitments in the transportation services sector

Commitments made in transportation services cover maritime, air, space, pipeline, and land transportation and related services (*see* table 13), with 64 Members scheduling commitments. The maritime transportation subsector is highly competitive and one where trade liberalization efforts have been very challenging. Prior to the suspension of negotiations in June 1996, the Negotiating Group on Maritime Transport Services had proposed a three-pillar approach:

- International (deep sea, blue water) traffic of freight and passengers, in which the primary negotiating objective is to eliminate cargo sharing and unilateral cargo reservation practices.
- Commercially related auxiliary services (e.g. cargo handling, storage and warehousing, customs clearance, container stations and depots, agency and freight forwarding), in which the primary negotiating objective is to facilitate the multimodal integration and free marketing of shipping services.
- Fair access to, and use of, port services (e.g. pilotage, towing, fuelling, garbage, port captain, navigation aids, utilities, emergency repairs, anchorage and

berthing), which are considered the indispensable technical complement for guaranteeing the effectiveness of any liberalization undertaken.

The negotiations are to be resumed during the comprehensive negotiations on services scheduled to begin in January 2000. Members are enjoined not to attempt to improve their negotiating positions and leverage in the meantime.

Table 13 WTO Members: level of commitments in the transportation services sector

Transport subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
Maritime transport	5	5	28	28
Internal waterways	2	2	8	8
Air transport	22	22	27	27
Space transport	3	3		
Rail transport	20	20	13	13
Road transport	23	23	24	24
Pipeline transport	3	3	2	2
Auxiliary services	21	21	20	20
Other transport services	14	14	4	4
Percentage of Members listing no limitations:				
Maritime transport	80	80	64	64
Internal waterways	0	0	50	50
Air transport	36	36	85	85
Space transport	0	0		
Rail transport	35	35	62	62
Road transport	52	52	83	83
Pipeline transport	66	66	0	0
Auxiliary services	91	91	0	0
Other transport services	0	0	0	0

***Source*:** WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) scheduling commitments in the sector equals 64, of which 41 are developing and transition economies. The Members represented by the European Communities are each counted separately.

The only air transportation services covered at present by GATS are the so-called 'soft rights' of aircraft repair and maintenance, excluding line maintenance; selling and marketing (which includes market research, advertising and distribution of literature) except pricing and other conditions of sale; and computer reservation systems (for information on schedules, availability, fares and fare rules; the making of reservations; and the issuance of tickets). GATS applies to both scheduled and non-scheduled air transport services, as well as to ancillary services. Not included are the traffic rights ('hard rights') and services directly related to the exercise of those rights. Traffic rights include landing rights, routes, capacity, fares, and criteria for the ownership and control of airlines. Nothing negotiated within GATS affects Members' existing rights and obligations under bilateral or multilateral agreements such as the Convention on International Civil Aviation, commonly known as the Chicago Convention. The GATS *Annex on Air Transport* provides that, at least every five years, the possibility of applying GATS disciplines to this subsector will be reviewed.

Land and multimodal transportation have not yet received much attention, with Members electing to maintain existing bilateral and plurilateral agreements by taking the necessary MFN exemptions. Areas like rail transport are often controlled by government monopolies, and there has been little demand for negotiations.

Liberalization commitments in the recreational, cultural and sporting services sector

Commitments made in the recreational, cultural and sporting services sector cover entertainment; news media; libraries, archives and museums; and sporting events (*see* table 14). This is a relatively new area for trade liberalization discussions, and 58 Members have made commitments (primarily in entertainment and sports). Reservations in this sector stem primarily from concerns about the protection of national culture and heritage in an age of globalization. There may also be specific concerns about protecting minority groups with regard to linguistic and culturally compatible access to services.

Changes in information and telecommunications technology are having a direct impact on this sector. Services traditionally considered 'cultural' are now being provided digitally on the Internet. Broadcast media as well as virtual reality options are competing with in-person recreational and sporting activities. Mergers among entertainment, news, computer and telecommunications companies are creating integrated multimedia services that face a mixture of outdated regulatory regimes. The WTO work programme in electronic commerce (set up in accordance with the Ministerial Declaration on Global Electronic Commerce of May 1998) will be relevant to new liberalization discussions on this sector.

Table 14 WTO Members: level of commitments in the recreational, cultural and sporting services sector

Recreational, cultural and sporting subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
Entertainment	17	17	21	21
News agencies	21	21	2	2
Libraries, museums	4	4	4	4
Sporting	20	20	13	13
Other	1	1	1	1
Percentage of Members listing no limitations:				
Entertainment	0	0	0	0
News agencies	0	0	0	0
Libraries, museums	0	0	0	0
Sporting	0	0	0	0
Other	0	0	0	0

Source: WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) scheduling commitments in the sector equals 58, of which 37 are developing and transition economies. The Members represented by the European Communities are each counted separately.

Liberalization commitments in the environmental services sector

Commitments made in the environmental services sector explicitly cover sewage, disposal, and sanitation services (*see* table 15). One of the immediate difficulties is the fact that such services are only a small part of what is commonly viewed as 'environmental services'. Of the 49 Members that have made commitments, 34 have made commitments under 'other' types of environmental services such as noise reduction, air quality control, remediation and clean-up, environmental assessment and monitoring, energy efficiency, and natural resource conservation.

The global demand for environment services is expected to expand rapidly, especially as awareness of environmental issues increases. In most countries, the primary demand for environmental services has been funded by public expenditures, making government procurement restrictions a critical barrier to trade growth. National and international environmental regulations have been the engine of growth, making the lack of such regulations or their inconsistent application another barrier to trade expansion. Other barriers that affect trade growth in environmental services include those applying to professional services in general, investment restrictions, inadequate protection of intellectual property rights, complex authorization processes and regulatory restrictions based on outdated technologies.

The environmental services sector is an example of a sector where the types of services are evolving, with an emphasis on packaged solutions involving both products and services. There is an ongoing shift in the structure of the industry in keeping with the change in emphasis from end-of-pipe clean-up to environmentally sound technologies (EST), and from regulatory compliance to resource productivity.

Table 15 WTO Members: level of commitments in the environmental services sector

Environmental subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
Sewage services	21	21	13	13
Refuse disposal	22	22	14	14
Sanitation	21	21	15	15
Other	21	21	13	13
Percentage of Members listing no limitations:				
Sewage services	0	0	0	0
Refuse disposal	0	0	0	0
Sanitation	0	0	0	0
Other	0	0	0	0

Source: WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) scheduling the sector equals 49, of which 27 are developing and transition economies. The Members represented by the European Communities are each counted separately.

Liberalization commitments in the distribution services sector

Commitments made in the distribution services sector cover commission agents, wholesale, retail, and franchising (*see* table 16), with the most liberal treatment being given to wholesale and retail. Distribution services form the critical link between producers and consumers, and failures in the distribution sector can lead to significant misallocation of resources. While only 47 Members have made commitments in this sector to date, there is a growing realization that deregulation and liberalization can significantly improve the performance of suppliers of distribution services.

Table 16 WTO Members: level of commitments in the distribution services sector

Distribution subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
Commission agents	22	22	8	8
Wholesale	23	23	20	20
Retailing	23	23	19	19
Franchising	21	21	12	12
Other	2	2	No data	No data
Percentage of Members listing no limitations:				
Commission agents	0	0	0	0
Wholesale	0	0	0	0
Retailing	0	0	0	0
Franchising	0	0	0	0
Other	0	0		

Source: WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) scheduling the sector equals 47, of which 24 are developing and transition economies. The Members represented by the European Communities are each counted separately.

The distribution sector is undergoing significant change. Already the lines between producer and distributor are blurring, with manufacturers often assuming the distribution function through vertical integration. As well, the role of the distributor is expanding to include functions such as credit advance, quality control and administration, inventory maintenance, advertising and packaging. Increased consumer demand for door-to-door services has stimulated the full integration of the transportation and distribution sectors. Even couriers (presently classified as communication services) are assuming a broader distribution function, with companies such as Federal Express maintaining inventory for major manufacturing customers.

Electronic commerce is expected to have a major impact on distribution services. In part the influence will be structural, and the changes in border-crossing procedures resulting from the adoption of electronic data interchange (EDI) bear witness to this. The provision of retailing services is now facing direct competition from cyber-malls, specialized on-line retailers, and on-line multi-product megastores. Internet retailing can achieve economies of scale through low fixed costs (for retail space and inventory storage), more rapid turnover, and a wider selection of products. Electronic purchasing also allows on-line retailers easy tracking of buying patterns and customer preferences for follow-up targeting.

Distribution services are traded primarily through commercial presence (Mode 3) and cross-border trade (Mode 1), though Mode 2 applies to retail sales to tourists. Common trade barriers include explicit restrictions on foreign services or suppliers, excessively burdensome domestic regulations, or the uneven enforcement of domestic laws. Most distribution operations are regulated at the local government level, and distributors may face different requirements in different local jurisdictions. Some of the regulations are enshrined in zoning and planning laws, while others stem from anti-competitive practices within the domestic distribution industry. Given the economic impact of distribution services and the very few Members that have offered fully liberal access, there is considerable room for improving commitments in this sector.

Liberalization commitments in the health and social services sector

Commitments made in the health and social services sector may cover hospital services; medical and dental services; services provided by midwives, nurses, physiotherapists and paramedical personnel; and social services (*see* table 17). Only 43 Members have made commitments in this sector, primarily in hospital services.

Table 17 WTO Members: level of commitments in the health and social services sector

Health-related subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
Hospital services	15	15	20	20
Other human health services	2	2	6	6
Social services	13	13	3	3
Other	No data	No data	No data	No data
Percentage of Members listing no limitations:				
Hospital services	0	0	0	0
Other human health services	0	0	0	0
Social services	0	0	0	0
Other				

Source: WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) scheduling commitments in the sector equals 43, of which 27 are developing and transition economies. The Members represented by the European Communities are each counted separately.

In many economies, health and social services remain the responsibility of the government and government agencies as exclusive services suppliers. As delivery costs spiral upwards, consumer expectations of specialist care rise; and populations age, with the attendant chronic health problems. Demand for cost-effective health-care solutions is therefore outstripping the capacity of many governments. Private sources of health-care and social services are increasing, and both private and governmental agencies face a dynamic international market place.

Health and social services are traded through all four modes and face significant barriers in each one. In addition to issues of market access and national treatment, domestic regulations can also inhibit trade. The primary barriers cutting across all services are the lack of internationally recognized standards for the mutual recognition of professional credentials; non-portability of insurance coverage for services received abroad or from foreign providers in one's home market; a lack of standards for electronic medical records; conflicting regulations intended to address patient privacy and confidentiality issues; and difficulties in cross-jurisdictional malpractice liability.

The cross-border supply of a range of health services (tele-health) has increased dramatically as supporting technologies evolve, with a world market estimated at above US$ 1.1 trillion. Skilled health professionals in developing and transition economies have the potential to provide consultation from a distance now that medical images, X-rays, magnetic resonance imaging, etc. can be digitized and transmitted via computer, provided that the issue of mutual recognition of professional credentials can be solved. Health researchers in the United States estimate that up to 80% of expensive visits to specialists do not require the personal presence of the patient; rather, the diagnosis and treatment planning can be handled by a specialist located anywhere in the world. Other distance delivery options include training and ongoing professional development for health-care professionals, speciality back-up for health-care workers in more remote communities, development and maintenance of interactive on-line health education databases, and remote medical records management.

A number of developing and transition economies have been targeting health tourism or investing in becoming regional centres for specialized training, both involving Mode 2 supply. Experience has shown that patients will travel abroad for specialized treatment involving advanced technology or particular medical approaches (such as traditional Chinese medicine or India's prana healing), convalescent care, and lower-cost quality outpatient care. In the case of health cooperatives in MERCOSUR (Southern Common Market) countries, Tarjeta MERCOSUR allows those enrolled in one country to receive health care from an associate cooperative in another MERCOSUR country. The European Union has also participated in bilateral agreements with several developing countries to provide medical care where delivery capacity in Europe is constrained. The primary barrier to this mode of supply is the failure of health insurance policies to cover treatment abroad.

The movement towards managed care, as illustrated by the proliferation of health maintenance organizations and the establishment of outpatient urgent-care clinics to supplement more expensive hospital structures, is driving trade growth through commercial presence. Efficient health-facility management firms in developing countries have profitable opportunities to develop private health facilities in other developing countries that have an affluent middle class not presently able to access quality health care. The management of long-term care facilities in developed economies where demand currently exceeds supply is another growth market. The barriers to this mode of supply are those common to commercial presence.

Numerous opportunities exist in the provision of direct medical services through the movement of professionals to foreign markets. While demand is currently being satisfied primarily through the temporary migration of skilled professionals as individuals to markets where there is a shortage, future growth is more likely to occur through the temporary travel of employees of health-care firms, provided that constraints such as those imposed at present by economic needs tests can be addressed. Examples of opportunities include on-site training and improving the skills of professionals, and consultation with health authorities (e.g. regarding AIDS prevention).

Liberalization commitments in the educational services sector

Commitments made in educational services cover primary, secondary, tertiary and adult education (*see* table 18). Only 41 Members have made commitments in this sector. It may be helpful to separate 'public' education (i.e. primary, secondary and degree-granting tertiary) from adult literacy and technical/commercial education and training. In the first instance, educational systems are generally the responsibility of governments and are a major investment in the development of a nation's human resources. While private provision and management of 'public' educational systems are increasingly common, governments have a vested interest in controlling the content and quality of the services provided.

Table 18 WTO Members: level of commitments in the educational services sector

Educational subsectors	Developed economies		Developing and transition economies	
	Market access	National treatment	Market access	National treatment
Number of Members making commitments:				
Primary education	16	16	12	12
Secondary education	17	17	13	13
Higher education	16	16	12	12
Adult education	16	16	10	10
Other	2	2	6	6
Percentage of Members listing no limitations:				
Primary education	0	0	0	0
Secondary education	0	0	0	0
Higher education	0	0	0	0
Adult education	0	0	0	0
Other	0	0	0	0

Source: WTO, *The Results of the Uruguay Round* (CD-ROM), 1996.

Note: The number of Members (excluding the European Communities) scheduling the sector equals 41, of which 22 are developing and transition economies. The Members represented by the European Communities are each counted separately.

Adult literacy programmes are generally part of social development initiatives, often funded by international financial institutions or bilateral aid programmes. Commercial provision of, and competition in, such services are usually absent.

It is in the area of technical/commercial education and training that commercial enterprises have the strongest trade-related interests. The principle of lifelong learning (especially important in an environment of rapid technological change and labour market reconfiguration) is gaining wide acceptance and will fuel demand for a broader range of training options. Distance education (or distributed learning) delivered over the Internet is becoming increasingly common.

Education and training are typically regulated at the sub-federal level, and services providers may face a lack of recognition of educational credentials even from one State or province to the next. Agreement on a non-trade-distorting approach to licensing, qualifications and technical standards remains to be achieved. Growth in trade in educational services will require a re-examination of regulatory regimes to allow for competency-based standards setting, international protocols for credential assessment and credential equivalencies, and non-discriminatory treatment among the modes of supply so as not to distort or impede the choice of the most appropriate mode of supply.