

# Product and Market Development

## Business Guide

*to the*

***General Agreement  
on Trade in Services***



International Trade Centre



Commonwealth Secretariat

***BUSINESS GUIDE TO THE GENERAL  
AGREEMENT ON TRADE IN SERVICES***



**International Trade Centre**



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**ABSTRACT FOR TRADE INFORMATION SERVICES**

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Guide to the General Agreement on Trade in Services (GATS) and the key features of the multilateral system of trade rules covering services – examines rights and benefits conferred and obligations imposed by GATS on the business community and governments; implications for developing countries and economies in transition; identifies main opportunities and challenges encountered at the practical business level in the implementation of GATS rules and market access commitments.

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## Foreword

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The General Agreement on Trade in Services (GATS) is an historical agreement covering a wide range of international service transactions. The underlying theme of this Guide is that competitive suppliers of all kinds of services, both from developing and developed economies, can expect to benefit directly from the more open trading regime of GATS which aims to reduce and eventually eliminate regulatory restrictions affecting the international supply of services. Users of services, including service businesses themselves, can also expect to gain from the greater variety of service products and prices offered by more companies around the world. The primary focus of the Guide is to inform the business community of the key features of the multilateral system of trade rules covering services. It seeks to improve understanding by the business community of the rights and benefits GATS confers and the obligations it imposes on them and their governments. It also identifies the main opportunities and challenges that may be encountered at the practical business level in the implementation of GATS rules and market access commitments.

A new round of liberalization negotiations will begin by the year 2000. It is hoped that the Guide will also be helpful to trade officials in developing countries and economies in transition as they develop their trade policies and prepare for the next round. In support of further trade negotiations, the Guide also highlights issues on which the business community may wish to provide input as preparations for trade negotiations move forward.

## Acknowledgements

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## Note

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The following abbreviations are used:

CPC	Central Product Classification
FDI	Foreign direct investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IMF	International Monetary Fund
ITC	International Trade Centre UNCTAD/WTO
MFN	Most favoured nation
OECD	Organisation for Economic Co-operation and Development
TRIMs	Trade-Related Investment Measures (Agreement on)
TRIPS	Trade-Related Aspects of Intellectual Property Rights (Agreement on)
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

## Chapter 1

# About the General Agreement on Trade in Services

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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.

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## Defining an internationally traded service

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

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.

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.

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.

**Challenge:** Educating service providers about when they are exporting.

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## 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 of which:	23.9	29.4	76.1	70.6
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 of which:	9.8	8.5	5.5	4.8
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 of which:	-48 711	-53 777	8 811	56 677
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

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).

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.

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	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.

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

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

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

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

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.

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).

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## 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.

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## 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.

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## 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.

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## 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.

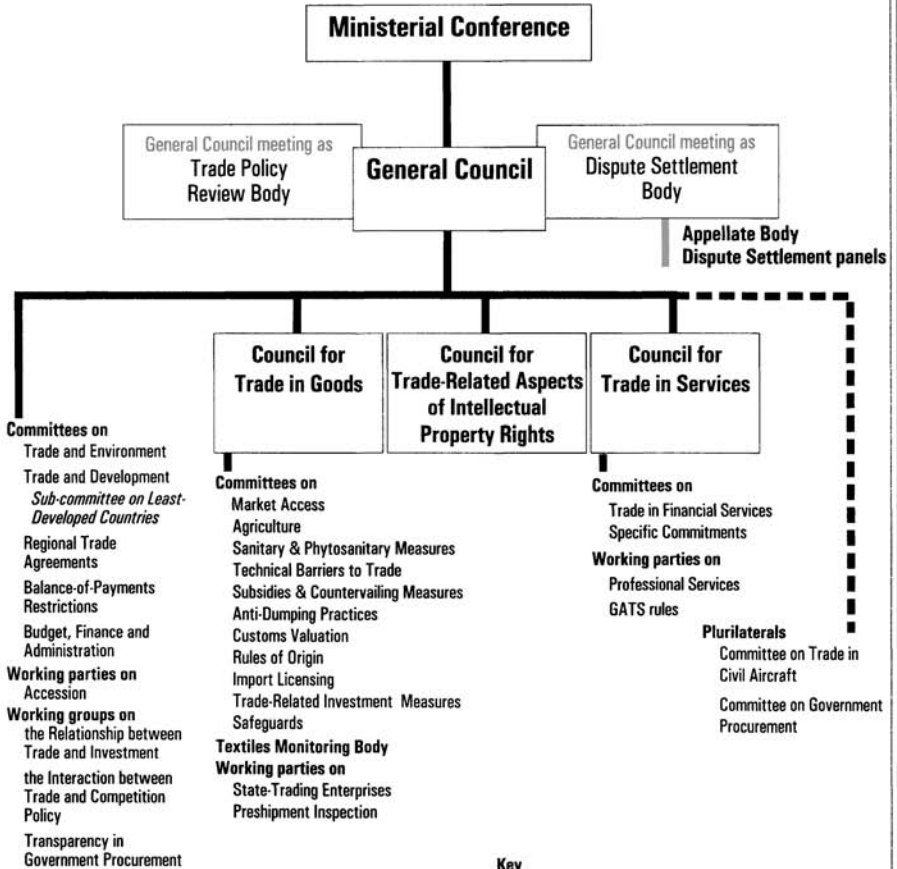
As of May 1999, WTO had 134 Members (*see* Appendix VI for a list), most of which are national governments. The European Communities, a non-voting Member, represents its member countries (each of which is a WTO Member) in the WTO by casting votes on their behalf. Each Member (and all levels of its government)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



**Key**  
 — Reporting to General Council (or a subsidiary)  
 — Reporting to Dispute Settlement Body  
 - - Plurilateral committees inform the General Council of their activities although these agreements are not signed by all WTO members

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

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 panelists 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.

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## **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.

## Chapter 2

# General and supporting obligations

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By the end of the Uruguay Round, despite initial scepticism, significant progress had been made in developing general disciplines for governments regarding international transactions in services. Those disciplines can be described in four categories: legal rights; the general obligations of transparency and MFN treatment; the conditional obligations of market access and national treatment; and other supporting obligations. The general obligations of Members are modelled in large part on experience under GATT, the difference being that each obligation undertaken is extended to both the services and services suppliers of Members. This chapter covers general and supporting obligations; conditional obligations are taken up in chapter 3.

In order to illustrate each of the disciplines, sample trade scenarios are presented below in italics. These scenarios are composites created from situations reported by a range of exporters (rather than actual occurrences) and are intended only to help clarify the principle under discussion.

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## Rights of Members

*Members of a service industry association in an Asian country have been lobbying their government to ensure both that foreign professionals coming to work temporarily in their country meet domestic licensing criteria and that national licensed professionals have the*

*ability to work temporarily in export markets abroad. The association's executive director hopes that GATS provides support for such a request.*

At the heart of GATS is a commitment (stated in the preamble) to “securing an overall balance of rights and obligations”. Central to that balance is the recognition that Members have the right to regulate the supply of services within their territories as long as the measures used are administered in a reasonable, objective and impartial manner and are not trade-distorting in their impact. Similarly, Members have the right to define and pursue their own national policy and economic development objectives as long as those objectives do not interfere with the multilateral obligations they have undertaken. In the example cited above, any licensing criteria that are transparent and objective (e.g. competence and the ability to supply the service) are well within the prerogative of a national government to require, especially if the intention is to ensure the quality of the service and protect consumers from unethical practices.

At present, the rights of Members are recognized as extending beyond establishing objective criteria to include measures that have as their goal the protection of domestic labour markets or in general limiting foreign access to the domestic market. Asian professionals wishing to work abroad, for example, might face quotas or economic needs testing for foreign suppliers without such measures being deemed inappropriately protectionist. The premise of GATS is progressive liberalization as an ongoing process, and developing country Members are not expected to liberalize as much as and as fast as developed country Members.

Members' rights also include provisions under Article XIV that allow for the enforcement of measures considered by the Member to be necessary to protect public morals and human, animal or plant life or health. Other areas of discretionary action by Members, regardless of GATS rules or specific commitments made, include measures to:

- Maintain public order and safety;
- Prevent deceptive or fraudulent practices;
- Prevent or contain the effects of default in services contracts;
- Protect individual privacy and the confidentiality of records;
- Impose or collect direct taxes;
- Protect essential security interests;
- Provide for prudential regulation in financial services.

The only requirement is that the regulations imposed should not discriminate arbitrarily or contain a disguised restriction to trade, and that the Council on Trade in Services should be informed of the actions taken.

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## The obligation of transparency

*A computer training firm in a transitional economy has been working on a strategy to deliver 'distance training' electronically to small United States firms. It has just learned accidentally that it will be required to obtain a certificate of authority in each State where it does substantial business. This is news to the company, and it feels that such a requirement should have been made clear to it sooner.*

*A South American technical laboratory and testing firm wishing to export its services to a country has just discovered that this country requires foreign laboratories to work with locally owned laboratories to provide such services. The firm has already invested time and resources in developing an export development strategy and believes that the target market should have made this restriction known under Article III of GATS.*

Access to information on rules and regulations is a critical adjunct to trade expansion. The principle of

transparency of regulations (Article III) requires Members to identify and make public their “measures” affecting the services trade. The obligations under GATS are prompt publication of measures (ideally before they enter into force), notification (at least annually) of regulatory changes in sectors where commitments have been made, and maintenance of enquiry points and prompt response to queries. Note that there is no requirement to disclose confidential information.

Two specific obligations exist to increase access to information on domestic regulatory environments. First, Article III requires Members to establish enquiry points from which other Members can seek clarification on local laws and regulations affecting trade in services scheduled. Private-sector firms are expected to obtain information through their own government’s enquiry point. Second, there is a requirement for developed country Members to establish contact points to provide information of special interest to services suppliers from developing and transition economies (Article IV).

Since the publication and notification process takes place on a government-to-government basis, services enterprises may not necessarily receive that information in a timely and efficient manner. In the first example above, the computer services firm may have a legitimate complaint if the United States Government had not listed certificates of authority as a State-level requirement for firms doing business in the country. However, since the requirement for a certificate of authority also applies to any United States firm from outside a particular State, the United States could argue that the requirement is not itself trade distorting and so does not have to be notified. If the information was listed and available to other governments but either had not been passed on to the private sector or had not been sought by the computer training firm, then the issue is one of communication between the public and private sectors or inadequate market research rather than a lack of transparency *per se*.

Members have the general obligation of transparency in regard to regulatory information on services sectors

covered by GATS as well as to establish an enquiry point and respond to queries or complaints; however, they are obliged to notify changes in laws or regulations only for services sectors where they have scheduled liberalization commitments. In the second example above, checking the relevant schedule of commitments would have revealed that technical testing and analysis are unbound for government-funded projects. This should have alerted the South American firm to the fact that any number of restrictions might apply about which they would have to find information on their own. Unbound sectors are often sensitive sectors subject to many restrictions and discriminatory practices.

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## The obligation of most-favoured-nation (MFN) treatment

*An African market research firm wishes to expand its offices abroad, especially into Europe. It has heard about 'MFN' and 'conditional MFN' and wonders if these concepts are relevant to its market selection.*

The MFN obligation applies across all sectors and all modes of supply unless otherwise negotiated through an MFN exemption. Under the MFN obligation, a Member must give to all WTO Members immediately and unconditionally the most favourable treatment it has accorded to any of its trading partners (whether or not that trading partner is a Member). In the context of GATS, the MFN obligation (Article II) is applicable to any measure that affects trade in any services sector *whether specific commitments have been made or not.*

The MFN obligation has been the cornerstone of trade liberalization since the Second World War as it avoids the slower process of bilateral trade negotiations or the constraints of bilateral reciprocity. It embodies the principle of non-discrimination among trading partners and allows smaller economies to benefit from concessions gained by larger negotiating partners. In the case above, if a particular Member allows market

research firms from the United States and France to establish offices, then it cannot arbitrarily refuse to allow in the market research firm in question. ‘Conditional MFN’<sup>1</sup> would not apply as MFN is an all-or-nothing concept. Note that the MFN obligation is not retroactive – i.e. there is no obligation to give newcomers the same treatment that was accorded to services suppliers which entered the market prior to the coming into force of GATS. There is discussion under WTO auspices, however, of whether ‘grandfathering’<sup>2</sup> is a single event or whether the more favourable conditions granted under ‘grandfathering’ would be subject to a new decision each year, in which case MFN obligations would need to be reviewed.

Ultimately, the MFN obligation means that Members must accord trade concessions to each other, across all sectors and all Member countries, on the basis of overall trade benefits to be gained rather than on a sector-by-sector basis. Because of the fear of ‘free riders’ (i.e. Members who might benefit from the concessions of other Members without giving any in return), there is a mechanism under Article II for Members to take a one-time exemption in order to offer more favourable treatment to certain trading partners for a period of no more than 10 years. More than 90 Members have submitted MFN exemptions primarily in the financial services, basic telecommunications, maritime transport and audiovisual services sectors. The most common use of the MFN exemption is to allow for preferential regional trade agreements. In the case of the African market research firm cited above, for example, the favourable market entry conditions agreed among members of the European Union do not mean that the African firm could expect the same liberal treatment.

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1 MFN clause to which conditions are attached.

2 Also referred to as the ‘grandfather’s clause’ under which, if any legislation is changed to the disadvantage of a foreign investor, the laws in force at the time the enterprise with foreign investment was registered continue to be applied for a certain period after the date of registration.

GATS also provides specifically for exemptions to cover economic integration agreements and obligations agreed prior to GATS. Such obligations include bilateral civil aviation agreements and bilateral double taxation treaties.

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## The supporting obligations of Members

In addition to the two primary obligations of transparency and MFN, there are a number of other obligations that also apply across sectors.

### **Economic integration**

*A Mexican architectural firm is aware that provisions under the North Atlantic Free Trade Agreement (NAFTA) and GATS for the temporary movement of its design support personnel are not the same. Which will prevail if it is pursuing a contract in Canada?*

Economic integration agreements (EIAs), under which a group of Members agree to liberalize trade in services among themselves more rapidly, are permitted under GATS (Article V) as long as such an agreement:

- Has substantial sectoral coverage,
- Provides for the absence or elimination of virtually all discrimination.

To be allowed, EIAs must provide for specific liberalization, or at least prevent an increase in overall restrictions. In addition, subsidiaries of firms from non-EIA countries which are engaging in business operations in an EIA country must benefit from the same treatment accorded to the subsidiaries of firms from EIA countries. Nearly all WTO Members have signed regional trade agreements, of which there are more than 100 (e.g. the European Union, NAFTA, and the Southern Common Market or MERCOSUR). WTO has now established a Committee on Regional Trade Agreements to review existing EIAs and their potential

repercussions on the functioning of the WTO system and to examine in detail future regional trade agreements notified to WTO. It is interesting to note that the treatment of trade in services is more liberal in all existing EIAs than it is at present under GATS.

Under Article V *bis*, GATS addresses agreements on labour market integration. Such agreements differ from free trade agreements in that they seek to create a ‘borderless’ environment for their workers. If an agreement does establish full integration, exempting citizens from requirements of residency and work permits, then GATS does not view national treatment obligations *vis-à-vis* other Members to have been violated.

The role of EIAs continues to be debated. Opponents of EIAs argue that such agreements can distort trade flows by encouraging a country to import from a member of its trading bloc rather than from a supplier outside its region or, in more extreme cases, by erecting barriers against other trade blocs. Supporters of EIAs argue that such arrangements have tended to increase the flow of trade and, to date, have had more liberal services trade provisions than GATS. The temporary business entry provisions of NAFTA are a case in point, and the Mexican architectural firm mentioned above would benefit from those more liberal provisions. A further benefit reported by the World Bank is that developing and transition economies participating in EIAs become more knowledgeable negotiators on behalf of their services firms.

## **Recognition of qualifications**

*An employment agency for Asian nurses has had difficulties in marketing its nurses in North America despite a shortage there of nursing personnel. The problem seems to be a lack of recognition of the nurses’ credentials. The agency is wondering if such lack of recognition is allowed under GATS.*

At present, there is no requirement that all Members recognize the licences or certification of professionals

from other Members. Article VII permits Members to recognize qualifications bilaterally, plurilaterally or multilaterally provided that:

- ❑ Recognition is based on objective criteria and does not discriminate among Members where similar conditions prevail.
- ❑ Members in a mutual recognition agreement shall give other Members adequate opportunity to negotiate their accession to that agreement or to negotiate comparable ones.
- ❑ If recognition is accorded automatically, the Member shall give other Members the opportunity to demonstrate that the education, experience, licences or certifications obtained in their territory should likewise be recognized.
- ❑ Other Members are notified of existing mutual recognition agreements or the launching of negotiations to create a mutual recognition agreement.

There is, however, under Article VI a requirement that Members should provide for a mechanism to verify the competence of professionals of any other Members. In the example above, non-recognition of nursing credentials may well be allowed.

Members have an obligation to notify the Council for Trade in Services of existing recognition agreements, as well as new ones that are negotiated. Over time, Members are expected to conform to standards set by recognized international bodies based, where possible, on multilaterally agreed criteria. The longer-term objective is to develop and adopt common international standards for the recognition of credentials and the practice of relevant services trades and professions. The *Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector*, developed by the Working Party on Professional Services, is a first step (see Appendix IV).

## Monopolies and exclusive services providers

*A Latin American baggage-handling company would like to apply for a contract with an airport abroad on the basis of its reputation for efficiency. It wants to know whether it can be excluded from consideration if the targeted airport is government controlled.*

GATS does not forbid monopolies or exclusive services providers *per se* (Article VIII) as long as the monopoly supplier observes the MFN obligation and does not abuse its monopoly position. In addition, Members must report the formation of new monopolies to the Council for Trade in Services and follow the procedures for compensatory adjustments under the rules for modification or withdrawal of commitments. In the example cited above, the national government would be within its rights to continue managing airport services through a monopoly arrangement.

## Business practices

*An African airport authority would like to reserve the right to restrict all equipment maintenance and repair to airport employees. Is this allowed under GATS?*

There are a number of business practices, in addition to monopolies, that may constrain competition and so restrict trade in services. Article IX requires Members to enter into consultation as requested, in good faith, including supplying publicly available non-confidential information regarding the practices in question. In addressing potentially restrictive business practices, it is helpful to remember that anti-competitive practices can arise from private-sector enterprises or from professional associations. In the first instance, the current trend towards collaboration among services providers in order to compete more effectively can create problems if market dominance is abused. Alliances among market leaders may effectively exclude smaller players from the market or may restrict their ability to negotiate favourable terms as suppliers or affiliates. In the second instance, professional associations can block market

opportunities for services exporters in developing countries by reducing price competition and restricting new entrants in an attempt to ensure the provision of services at certain quality levels.

The topic of trade and competition policy was not addressed in the main body of GATS, though some initial principles have been developed for telecommunications (as embodied in the *Reference Paper* drawn up by the Negotiating Group on Basic Telecommunications – see Appendix IV). In the example cited above, the national government would have the right to restrict who provides the services as long as the services are supplied under reasonable and non-discriminatory terms and conditions, in accordance with the GATS provisions on monopolies and exclusive service suppliers.

## Domestic regulation

*A communications and printing company in Latin America would like to bid on contracts for the production of media materials from Canadian firms. It is concerned, however, about Canadian content regulations and whether these regulations would apply to such contracts.*

*An Asian firm wants to establish a joint venture to supply data processing services to public-sector organizations in Massachusetts. It is wondering if there are State regulations that would affect its joint venture plans.*

One of the challenges of services trade liberalization arises from the fact that many barriers to export expansion are domestic regulations that were developed without regard to potential competitive distortions. GATS recognizes that domestic regulations, rather than border tariffs, create the primary barrier to trade in services. Addressing market access and national treatment barriers will not lead to the expansion of the services trade unless domestic regulations are also included.

GATS provides under Article VI for domestic measures to be administered in a reasonable, objective and impartial manner. Members are required to render decisions on the right to operate in the Member's territory "within a reasonable period of time" after the submission of an application that is complete under domestic law, as well as to provide information concerning the status of that application.

Rationalizing services industry regulations across subfederal jurisdictions (e.g. educational requirements for professional licensing, reserve requirements for insurers or financial institutions) would not only meet GATS obligations for progressive liberalization but also support the growth of domestic services suppliers. The following are types of regulations that are currently in place which can constrain economic growth; some are a matter of domestic regulation and some of national treatment (Article XVII):

□ *Regulations restricting growth opportunities*

- Differing technical and licensing requirements across subfederal jurisdictions, necessitating re-qualification in each jurisdiction.
- Technical standards for licensing that include variables unrelated to professional competence (e.g. requirements for citizenship or residency). [Article XVII]
- Absence of domestic legislation to protect intellectual property rights or to support environmental initiatives. [Article XVII]

□ *Regulations increasing operating costs*

- Expensive Internet connections (usually by monopoly providers) which effectively block access to on-line facilities and services.

□ *Regulations reducing competitiveness*

- Price controls requiring uniform pricing, imposing minimum or maximum prices, or enforcing price-setting formulas (e.g. on air transportation, financial services, telecommunications).

- Restrictions on business structures (e.g. options for the legal entity; use of an internationally recognized firm or brand name; scope of services, particularly multi-disciplinary professional services practices). [Article XVII]

The challenge in revising any domestic regulation is to ensure appropriate consumer protection and subfederal autonomy while not unduly restricting growth and innovation opportunities for services firms.

Principles to help Members ensure that domestic regulations are not trade distorting have yet to be developed, with the exception of those now developed for accountancy under the Working Group on Professional Services (the *Disciplines on Domestic Regulation in the Accountancy Sector*). With regard to qualification requirements and procedures, technical standards, and licensing requirements, such principles will include the following criteria:

- Requirements should be based on objective and transparent criteria, such as competence and the ability to supply the service;
- They should not be more burdensome than necessary to ensure the quality of the service;
- Licensing procedures should not in themselves be a restriction on the supply of the service.

In the first scenario cited above, the Canadian Government has the sovereign right to impose Canadian content requirements as long as these apply impartially to domestic and foreign suppliers alike. In the second example, Massachusetts currently has legislation prohibiting the award of State contracts to firms doing business in the Asian country concerned (a subfederal measure currently under review by WTO), which would make the joint venture untenable.

## Payments and transfers

*A Middle Eastern translation firm is about to launch an export development initiative to establish offices*

*abroad for its multilingual conference support services. It has concerns, however, about being able to capitalize initial operations abroad and repatriate profits once established.*

GATS Article XI requires Members to allow international transfers and payments for current transactions relating to specific commitments, which is usually interpreted by IMF as including the transfer of profits. With regard to capital movements in connection with commercial presence, a Member is obliged to allow the related capital flow into its territory but has no obligation to allow capital outflow. In the example above, if the translation firm selected a target market where commitments had been made to allow commercial establishment in translation services, then it should theoretically have no difficulty either bringing in capital to begin the commercial venture or repatriating profits. However, the firm may face restrictions from its own government with regard to the amount of capital it can move abroad.

### **Access to telecommunications systems**

*An Asian cellular telephone communications firm wants to provide its services in a target market that has traditionally restricted cellular licences and wonders if the new WTO Agreement on Basic Telecommunications will improve opportunities.*

As a result of the Uruguay Round negotiations, most countries undertook commitments on value-added telecommunications services, but only a few countries included basic telecommunications. The follow-up 1997 negotiations on basic telecommunications resulted in binding commitments by 69 signatories in most basic telecommunications subsectors. The new agreement, called the Agreement on Basic Telecommunications, consists of the Fourth Protocol of GATS and the commitments and MFN exemption lists annexed to it. It entered into force on 5 February 1998 with 72 signatories. At its heart is the reference paper developed by the Negotiating Group on Basic Telecommunications.

The paper (reproduced in Appendix IV) contains the basic definitions and principles for the regulatory framework for telecommunications services which were negotiated and accepted by the signatories and which those signatories are expected to follow in order to ensure non-discriminatory market access. The paper covers the following issues:

- ❑ Safeguards against anti-competitive activities such as cross-subsidization, using a competitor's proprietary information against them, and withholding technical and commercial information necessary for other suppliers to provide services.
- ❑ Non-discriminatory interconnection, covering issues of interoperability, rates, connection quality, end-user access, timeliness and unbundling. Interconnection arrangements should be transparent and the procedures publicly available.
- ❑ Universal service obligations, which can be defined freely by the signatories as long as they are transparent, non-discriminatory and competitively neutral.
- ❑ Public availability of licensing criteria.
- ❑ Allocation and use of scarce resources, such as radio spectrum and telephone numbers, and the inherent right-of-way issues involved with building outworks (i.e. conduits, poles and transmission towers on public and private land).
- ❑ The establishment (or maintenance) of an independent regulator to make sure the above requirements are impartially enforced.

Some Members have been allowed to phase in market access commitments because they were either bound by current contracts preserving the status quo for a fixed period, or because some changes were too difficult to be implemented immediately. So, for example, the dates for liberalizing services such as public voice telephony vary from 1998 to 2011.

## **Progressive liberalization**

Under Article XIX, Members are committed to enter into a new round of negotiations no later than January 2000. This reflects the statement in the preamble to the effect that the Members desire to achieve “progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations”. In general, the approach to liberalization under GATS is based on mutual exchanges of concessions (the traditional request-and-offer approach). However, recognizing the benefits to be gained from liberalization, particularly in terms of becoming more attractive to foreign investors, some Members have liberalized autonomously. In preparation for the next round of negotiations, GATS provides for the establishment of negotiating guidelines that recognize the liberalization undertaken autonomously by Members since the previous negotiations.

## Chapter 3

# Specific commitments

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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.

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## 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.

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## 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.

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## 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**

<b>Commitments</b>	<b>Mode of supply</b>	<b>Limitations on market access</b>	<b>Limitations on national treatment</b>	<b>Additional comments</b>
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 <i>x</i> , approval is required for equity stakes over 25%; new investment that exceeds <i>y</i> 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.

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## **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, <i>et al.</i>	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
<b>Averages</b>	<b>95%</b>	<b>44%</b>	<b>53%</b>	<b>69</b>

**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.

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## 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
<b>Number of Members making commitments:</b>				
Hotels/restaurants	23	23	93	93
Travel agencies	23	23	71	71
Tourist guides	22	22	35	35
Other	1	1	11	11
<b>Percentage of Members listing no limitations:</b>				
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.

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## **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
<b>Number of Members making commitments:</b>				
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
<b>Percentage of Members listing no limitations:</b>				
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<sup>3</sup> 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<sup>4</sup>. 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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<sup>4</sup> 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
<b>Number of Members making commitments:</b>		
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
<b>Number of Members making commitments:</b>				
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
<b>Percentage of Members listing no limitations:</b>				
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.

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## **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
<b>Number of Members making commitments:</b>				
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
<b>Percentage of Members listing no limitations:</b>				
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.

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## 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
<b>Number of Members making commitments:</b>				
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
<b>Percentage of Members listing no limitations:</b>				
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.

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## **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
<b>Number of Members making commitments:</b>				
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
<b>Percentage of Members listing no limitations:</b>				
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.

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## 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
<b>Number of Members making commitments:</b>				
Sewage services	21	21	13	13
Refuse disposal	22	22	14	14
Sanitation	21	21	15	15
Other	21	21	13	13
<b>Percentage of Members listing no limitations:</b>				
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
<b>Number of Members making commitments:</b>				
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
<b>Percentage of Members listing no limitations:</b>				
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.

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## **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
<b>Number of Members making commitments:</b>				
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
<b>Percentage of Members listing no limitations:</b>				
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).

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## **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
<b>Number of Members making commitments:</b>				
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
<b>Percentage of Members listing no limitations:</b>				
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.

## **Chapter 4**

# **Implications for developing and transition economies**

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At the beginning of the Uruguay Round, many assumed that trade in services was a post-industrial issue. As discussions progressed, though, Members began to realize that most economies obtain the largest part of their gross domestic product from services industries. Re-examination of economic development showed that, of the countries commonly looked to as economic leaders, neither the United States nor Japan has ever been primarily a manufacturing economy. Both countries went from basically agricultural economies to mainly services economies at the beginning of this century. Some developing and transition economies continue to believe that protecting the emerging domestic services industries is critical to development. Actual experience has shown that, because services enterprises are both suppliers and users of services, they typically benefit overall from rapid liberalization initiatives and are constrained by any service inefficiencies that result from protection.

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## **Services and economic development**

Services facilitate all economic activities, including other services, as can be seen from table 19. No economy can function without transportation, communications, financial services, health services, education services and so forth. Services firms purchase over 60% of the

equipment and supplies produced by the manufacturing sector; the survival therefore of manufacturing operations depends heavily on having a growing services sector. Services also account for up to 70% of the value added to manufactured goods and agricultural products. So, both services suppliers and goods producers are directly dependent on the quality of services inputs for their competitiveness.

**Table 19** Examples of critical intersectoral linkages by sector

Linked to:	Sector			
	Computer services	Environmental services	Health services	Tourism
Accounting/auditing	✓	✓	✓	✓
Air transportation			✓	✓
Construction		✓		✓
Consulting engineering		✓		
Insurance			✓	✓
Legal services a/	✓	✓		
Local transportation				✓
Management consulting		✓		✓
Research and development		✓		
Telecommunications	✓	✓	✓	✓
Training	✓	✓	✓	✓

a/ Including the protection of intellectual property rights.

*Note:* The table illustrates that service providers in a given sector depend on other service inputs to be competitive. Computer service providers, for example, rely on accounting services, legal services, telecommunications and training services.

Developing and transition economies already benefit from the outputs of their domestic services industries, which earn foreign exchange and provide critical but often unacknowledged support to all domestic economic activities. Growth in services activities contributes to economic growth by creating jobs for skilled university graduates and a range of school-leavers who often find it hard to obtain work, expanding the domestic availability of speciality services (supported by an international customer base), and providing competitive substitutes for previously imported services inputs. The growth of

services exports can also stem the brain drain from less developed regions to the extent that growth comes through Modes 1 and 2.

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## **The status of developing and transition economies**

Several development-related concerns have shaped the text of GATS. Initially, developing and transition economies were fearful that too rapid liberalization would result in massive foreign investment from more developed countries before their domestic services industries became fully competitive. Many developing and transition economies have substantial portions of their populations still living below the poverty line and often without basic social services; therefore, there was a clear need to be able to direct resources towards social issues, not just commercial competitiveness. Given that some sectors had been heavily protected, there was also a concern that too rapid deregulation and market opening would produce negative economic and social consequences. At the same time, a number of developing and transition economies recognized the potential benefits of having access to competitive services inputs and to the resources that foreign investors could bring.

Developed countries, on the other hand, felt that in certain sectors developing and transition economies were already very competitive. The rapid growth of back-office services exports from the latter countries (delivered at a distance using telecommunications and information technology) during the period of the Uruguay Round strengthened a perception that the competitive edge was not entirely with the developed countries. Perhaps the most hotly contested area of debate was in regard to Mode 4, with developed countries fearing an onslaught of qualified professionals from developing and transition economies vying for scarce high-skill jobs in their economies.

With 82% of WTO Members being developing and transition economies, it was critical to find a balance on development issues. The solution, in contrast to

GATT 1947, was to structure GATS as having only one class of membership with no special status for developing and transition economies. The importance of supporting developing and transition economies to become equal partners has been underscored in several ways in GATS:

- ❑ The preamble specifically mentions the importance of developing Members.
- ❑ Members are acknowledged to have the right to set and implement their own national policy objectives, including those for economic development.
- ❑ GATS provides the flexibility to developing and transition economies, especially the least developed among them, to schedule fewer sectors and liberalize fewer types of transactions.
- ❑ Developed countries are committed to provide market access in sectors and modes of supply where developing and transition economies have the strongest export interests.
- ❑ Developed countries are required to set up contact points to provide access to information to services suppliers from developing and transition economies on the commercial and technical aspects of the supply of services, the registration and obtaining of professional credentials, and the availability of services technology.
- ❑ The WTO Secretariat is to provide multilateral technical assistance to developing and transition economies at the request of the Council for Trade in Services.

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## **Technical assistance commitments in GATS**

Several forms of technical assistance have been made available to developing and transition economies in relation to GATS from five intergovernmental agencies:

- *WTO Secretariat*. Through its Technical Cooperation Division, the Secretariat carries out five main types of technical assistance activities:
  - Seminars at the national, subregional or regional level;
  - Workshops on particular areas of trade policy;
  - Technical missions to help with the drafting of legislation or regulations, or with meeting notification requirements;
  - Briefing sessions, generally for Geneva-based delegations; and
  - Trade policy courses for officials.
- *United Nations Conference on Trade and Development (UNCTAD)*. One of UNCTAD's many programmes is the Integrated Country Programme for Trade-Related Technical Assistance, which includes technical assistance on services trade issues.
- *International Trade Centre UNCTAD/WTO (ITC)*. ITC, through its Trade in Services Unit, has launched a series of technical assistance initiatives which include:
  - Workshops on the impact of GATS;
  - Publications on the services trade including the following: *Business Guide to the World Trading System*; *Information Technology Services: A Handbook for Exporters from Developing Countries*; *ISO 9000, A Workbook for Service Firms in Developing Countries*; *Environmental Engineering and Support Services, A Handbook for Exporters from Developing Countries*; *Turnkey Plants and Project Engineering Services, A Handbook for Exporters in Developing Countries*;
  - Profiles of market opportunities in key sectors;
  - Tools such as a *Services Export Readiness* diagnostic diskette; and
  - A *Services Exporting Homepage* (<http://www.intracen.org/serviceexports>).

- ❑ *World Bank*. Jointly with WTO, the World Bank sponsors an on-line Trade and Development Centre (<http://www.itd.org>) which contains answers to frequently asked questions, links to World Bank sites of relevance to developing and transition economies, and a query/response function.
- ❑ *International Telecommunication Union (ITU)*. As part of its strategic plan to launch pilot projects to stimulate the planning and deployment of telecommunications infrastructure, ITU has launched an electronic commerce pilot project with small and medium-sized enterprises (SMEs) in Africa. The pilot project, known as the EC-DC Model, is bringing even the smallest family businesses onto the information highway.

In addition, six agencies are responsible for the *Integrated Framework for Trade-Related Technical Assistance, including for Human and Institutional Capacity-Building, to Support Least-Developed Countries in Their Trade and Trade-Related Activities* which was approved at the Singapore Ministerial Conference in December 1996. To date, 34 countries have expressed interest in participating. The agencies involved are the International Monetary Fund, ITC, UNCTAD, UNDP, the World Bank and WTO. Work under the Framework is supervised by an Inter-Agency Working Group, whose day-to-day work is handled by an Administrative Unit at ITC.

In general, technical assistance from WTO, UNCTAD, and the World Bank is targeted primarily at Member governments; ITU works with private-sector firms; and ITC focuses on enterprises and associations. The WTO Secretariat's technical assistance initiatives are overseen by the WTO Committee on Trade and Development as well as by its Sub-committee on Least-Developed Countries. In October 1996, the Committee adopted *Guidelines for Technical Cooperation* which provide the basis for the WTO's technical cooperation and training activities, and define their objectives and principles.

One of the compelling lessons learned from technical assistance initiatives to date is that Members benefit

from sharing their experiences. Developing and transition economies have found it extremely useful to hear from similar countries on their experiences with services liberalization. In some instances, case studies serve to allay fears about negative consequences; in others, these studies can help colleagues avoid pitfalls. Views from countries facing similar development challenges sometimes carry more credibility than statements from experts from the developed world.

Another lesson is that direct, pragmatic technical assistance brings benefits. Prior to the last round of negotiations on telecommunications, for example, the WTO Secretariat was given funds to carry out national technical workshops on relevant trade policy issues in 23 developing and transition countries over a nine-month period. As a result, 21 of these submitted liberalization schedules.

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## **Maximizing benefits from the liberalization of the trade in services**

In order to take further advantage of trade liberalization opportunities under GATS and thrive in an increasingly competitive global services environment, developing country firms will need their governments and other technical assistance agencies to ensure an enabling environment by providing:

- ❑ A world class telecommunications infrastructure in order to obtain cost-efficient access to the Internet and international telecommunications.
- ❑ Help in incorporating information technology into the provision of their services and adapting to an environment of electronic commerce.
- ❑ Opportunities for the continuous upgrading of skills and for keeping abreast of technical and professional advances (now much easier if they have cost-efficient access to the Internet).

- ❑ Assistance to meet and exceed international quality standards for services.
- ❑ The negotiated ability to travel on business to the widest possible range of foreign markets unimpeded by visa restrictions.
- ❑ A more sophisticated array of financing support, especially for export development (e.g. operating lines against accounts receivable).
- ❑ Access to appropriately skilled staff.

With appropriate support to services enterprises, developing and transition economies can expect to compete effectively in all of the services sectors covered by GATS. The most likely exception would be sectors constrained by factors such as a requirement for large hard currency reserves (e.g. financial services and insurance/reinsurance) or controlled through cartel agreements (e.g. transportation routes). Examples of niche opportunities include providing services like the following:

- ❑ Quality professional services at lower cost (e.g. architecture, consulting engineering, legal research, market research).
- ❑ Professional specialities linked to emerging concerns (e.g. sustainable design and forensic accounting, the use of intelligence gathering techniques and accountancy skills to assist lawyers to pursue or defend actions which may or may not be decided in a court of law).
- ❑ Technical assistance to other developing economies linked to experience with commonly used low- and medium-technology production processes (e.g. industrial engineering, industrial design).
- ❑ Back-office operations with higher value added than basic data entry (e.g. data capture and repair, adjudicating claims, management of electronic medical records).

- Services that leverage cultural or linguistic strengths (e.g. provision of multilingual offshore call-centre services).

Four different types of national competitive strategies are described below to illustrate that developing and transition economies may already have competitive strength in services.

- *Competing on cost.* Barbados was one of the first countries to attract back-office data processing operations, beginning with the American Airlines' Caribbean Data Services which now employs over 1,100 persons and has data-entry contracts with two dozen other major United States companies. It has diversified into a range of cost-competitive data capture and administrative support services such as the processing of credit card applications; direct mail-order processing; insurance claims processing; litigation support services; medical transcription; typesetting and other pre-press publishing activities; processing of warranty cards and claims; and computer-aided design. Other countries with lower labour costs and a skilled work force, such as China and Viet Nam, are now challenging Barbados for market share.
- *Marketing specialized expertise.* With the privatization of pension fund management in Chile, Chilean financial services firms have become highly sophisticated and successful. They are now exporting pension fund management services to other Latin American countries. Similarly, Ugandan engineers are successfully exporting their expertise in water utilities management to neighbouring countries. In a slightly different approach, China has developed a successful strategy for soliciting technical assistance from developed countries and then repackaging that expertise themselves for export to other developing economies.
- *Marketing excess capacity.* Cuba has positioned itself to attract 'health tourists'. Making use of extra capacity in its health-care facilities and the fact that its

health-care professionals can provide quality care at very reasonable rates, Cuba has a strategy for attracting tourists for vacation plus low-cost medical treatment (such as physical check-ups or elective medical procedures).

- *Repositioning a service industry.* One of the most impressive success stories is the repositioning of India's software industry from virtually no international credibility to one of the world leaders with an estimated 12% of the global market for customized software. India's software exports have grown from under US\$ 5 million in 1980 to over US\$ 700 million in 1996, and are estimated to have reached US\$ 1 billion in 1998. Over the past 10 years, growth in export earnings has averaged 54% a year, compared with 33% for growth in domestic software sales. Over 600 firms are involved in various types of data capture and software customization services. This phenomenal success is due to the availability of a large pool of university trained, technically qualified programmers and analysts plus careful adherence to international quality standards.

One additional potential benefit from national policy attention to the services industries is worth noting. Many developing and transition economies face brain drain. Jobs in the services sectors are generally skilled or highly skilled and so are attractive to precisely the types of professional workers that often emigrate abroad. India provides a good example in the software industry of how creating a growing number of well-paid, stimulating jobs has made staying in India even more attractive than living abroad.

Finally, there is the potential for a range of developing and transition economies to capture part of the US\$ 438 billion market in back-office services. Given the proper information technology support, any service that does not require face-to-face contact with customers can be provided in an offshore back office because it is not bound to a particular location. Examples include not only the more traditional data capture and processing, but also electronic publishing, Web site design and

management, customer call centres, medical records management, hotel reservations, credit card authorizations, remote secretarial services, technical on-line support, indexing and abstracting services, research and technical writing, and technical transcription. In addition, manufacturers are increasingly contracting out product design, logistics management, research and development, and customer services support.

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## Export planning and the GATS commitments

The sale of services to foreigners depends in large part upon the development of credibility in the international market place. Some markets are more viable than others, however, and an understanding of how to use GATS schedules in export planning can be highly beneficial. There are a series of common decision points where even the preliminary information in these schedules can be helpful:

*Question #1: Is a particular services sector covered?*

To find out whether or not a services sector has been the subject of possible liberalization commitments, review the listing in Appendix II to this Guide.

*Question #2: Is the infrastructure needed covered?*

Many services firms depend on telecommunications infrastructure, for example, to deliver services. Again, review the listing in Appendix II. For information about ensuring access to telecommunications infrastructure, refer to the *Annex on Telecommunications* and the *Annex on Negotiations in Basic Telecommunications* (Appendix I) and the negotiated commitments in basic telecommunications tabled in February 1997 (see the *Fourth Protocol on Basic Telecommunications* in Appendix III).

*Question #3: Are related sectors covered?*

Often services providers combine their services with those of complementary services to provide a one-stop service. Again, review the listing in Appendix II to see if those related services have been considered.

*Question #4: Are there any major barriers in short-listed markets?*

In developing an export plan, most firms have several countries (markets) that they consider seriously (their short list). Turning to the schedules for those countries, first check whether there are any horizontal limitations that would block one from entering the market in a preferred mode. For example, if one wants to set up a local office, are there *a priori* limits on Mode 3? Then check whether the service has been scheduled by the Member in question.

*Question #5: What about barriers to market access? National treatment?*

For the short list of countries, look up their schedules of commitments to see if any limits are listed.

*Question #6: What about getting into the market?*

Unless all business is done electronically, it is important to check carefully on horizontal and sub-sectoral commitments in Mode 4. Also, independent professionals or small service enterprises may wish to consider operating as consortia to improve competitive access to markets.

*Question #7: What about transit visas?*

If access to the target market requires travel through another country, be sure to check the temporary entry provisions for that country as well.

*Question #8: What about an overall sense of the countries on the short list?*

If the countries of interest have been through a WTO trade policy review, a country report will be available from the WTO Secretariat.

*Question #9: What about on-line bidding opportunities?*

All international financial institutions (such as the World Bank) now have on-line bidding information and procedures. Some Members also allow on-line access to government procurement opportunities, e.g. Canada, the European Communities, Finland, Japan, Mexico, Norway, Poland and the United States.

*Question #10: What about specific questions on regulations?*

If the questions are about developed countries, there should be a contact point through which to make the query. It is usually helpful to follow up with the specific ministry responsible for the services sector concerned.

*Question #11: What about protecting intellectual property?*

Check the Agreement on Trade-Related Aspects of Intellectual Property Rights.

*Question #12: What about selling to governments?*

Check whether or not both your government and the Member in question have signed the Agreement on Government Procurement.

An easy way to check country schedules on-line is to use the European Union GATS Web site (<http://gats-info.eu.int>; click on Legal Texts and Commitments, GATS Commitments by Country, the country of interest, and then your sector/subsector. Remember when checking the schedules that the European Communities' schedule covers the 12 members of the European Union as of 1994.

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## Private-sector strategies for influencing liberalization under GATS

Many Members are severely challenged to keep abreast of all WTO issues, especially if they have only small delegations in Geneva. Trade in services poses particular problems because of the lack of readily available trade statistics and background analyses. There are at least four ways in which private services firms in developing and transition economies can work with their Governments to influence liberalization in the services trade:

- *Raise awareness of the contribution of services exports to the economy.* Despite all the discussions over the past 12 years since the start of the Uruguay Round, it is still common for trade officials to be unaware of the contribution of the services trade to their own economies. Publishing success stories in the services export trade, urging services industry associations to collect and circulate information on the export activities of their members, and preparing briefing papers for officials responsible for trade issues can help ensure that those officials remain well informed on trade in services.
- *Help ensure that a schedule is complete and as liberal as possible.* Some developing and transition economies have been far-reaching and aggressively liberal in their scheduling; however, many have not. Two-thirds of the developing and transition economies that are WTO Members have made commitments in only half of the major sectors. Private-sector enterprises can help improve their country's liberalization process by making sure that:
  - All of the sectors are scheduled, even if there are a number of limitations.
  - All of the limitations stated in schedules are really necessary and desired by the private sector.

- All domestic regulations at both federal and subfederal levels that affect trade have been identified and scheduled.
- *Recommend technical assistance options for government officials if they are not already being used.* Key intergovernmental agencies are providing extensive technical assistance to developing and transition economies. Below are types of technical assistance that can be requested:
  - Training of trade policy officials (and also of immigration and finance officials) in services trade policy.
  - Improving services trade statistics.
  - Gaining increased access for services firms in developing and transition economies to projects funded by international financial institutions (like the World Bank).
  - Upgrading telecommunications infrastructure, including Internet access.
  - Establishing and maintaining trade enquiry points, including the development of a comprehensive inventory of federal and subfederal domestic regulations affecting trade in services.
- *Lobby for a strong negotiating position in the next round of negotiations on services.* In preparation for the round scheduled to start by January 2000, there are several areas where services enterprises can provide input into trade policy planning, for example:
  - Developing a joint private- and public-sector initiative to assess the impact (positive or negative) to date of the liberalization of trade in services.
  - Ensuring a well-informed national position on each of the issues raised in chapter 5 of this Guide that are likely to be included in the agenda of the new round.

- Engaging immigration officials in a pragmatic discussion of temporary business travel issues in order to stimulate bilateral negotiations on visa-related issues and clarify priorities under Mode 4.
- Identifying priority subsectors where the private sector wants improved market access, along with a short list of the most attractive markets (keeping in mind the developed countries' commitment to addressing the needs of the priority sectors of developing and transition economies).
- Promoting among government officials the benefits that services firms gain from trade liberalization.

## Chapter 5

# Preparing for the year 2000

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Members have agreed, in Article XIX, to resume liberalization negotiations on trade in services by 1 January 2000. These negotiations will be launched during the Seattle Ministerial Conference.

Since the conclusion of the Uruguay Round, the rapid changes in information technology and telecommunications have resulted in a virtually borderless global economy in which any service that can be digitized and transmitted electronically can be produced and delivered anywhere in the world. Electronic commerce's potential as the great equalizer will influence the new round as it begins.

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## Building on the progress made

In preparation for a new round of negotiations, several preliminary tasks have already begun:

- *The Exchange of Information Programme.* GATS negotiators need to be familiar with the way in which different services industries operate and how various services are traded, and not only with negotiating rules and principles. The WTO Secretariat has been preparing a series of background sectoral papers in order to stimulate policy thinking, as well as to facilitate the ongoing exchange of information on regulatory environments in member countries.

- *Assessment of trade.* Members naturally want to know what effect liberalization commitments have had in increasing trade in services, changing laws and regulations that impede trade in services, and promoting the growth of developing countries. The continuing lack of accurate services statistics is an obstacle to doing this effectively.
- *Guidelines for future negotiations.* WTO has started to prepare suggestions on the negotiating structure and procedures, including objectives for the next round with particular reference to securing benefits for developing and transition countries.
- *Committee on Specific Commitments.* This committee is examining options for modifying the schedule of commitments in a number of ways, including:
  - Ensuring a better match between the Central Product Classification (CPC) system used by statistical agencies, the list of services used by the WTO Secretariat for scheduling commitments, and the way in which Members describe their services in their schedules.
  - Re-examining the way in which new services are defined.
  - Determining a way to consolidate and update the schedules electronically.

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## Issues for the next round

For the next round, there is already a rather full list of potential agenda items:

- *Completing the outstanding work programme.* Several issues that were to have been resolved remain outstanding and create a built-in agenda, such as:
  - *Maritime transportation.* Negotiations that were to have been concluded by 1996 stalled in 1995 and have been postponed until the new round.

- *Professional services.* While guidelines have been developed for the transparent regulation of accountancy, they fall short of what the accountancy profession and WTO had hoped for. A decision will need to be taken on how to move forward on disciplines for domestic regulation, including whether to continue on a sectoral basis or to revert to a horizontal approach in order to address the matter to the satisfaction of the private sector, industry regulators and trade negotiators alike.
  - *Ongoing issues.* Work has been underway on emergency safeguards, subsidies and government procurement. The status of the discussions on each issue is described in greater detail further below.
- *Consolidating and advancing the liberalization process.* GATS is the first multilateral undertaking on trade in services, and much has been learned since its signing. To achieve its main purpose of placing disciplines on governments so that they cannot act in an arbitrary or discriminatory manner, there are several types of discussions that need to occur:
- *Completing the initial sectoral scheduling.* The schedules originally filed by Members are far from complete. Even if a number of limitations are listed, it would be a major advance to have all services scheduled by all Members and hence subject to transparency. One of the challenges in broadening the coverage will be to determine how to liberalize sectors like energy or postal services that have traditionally been subject to monopoly or exclusive rights.
  - *Strengthening the scheduling process.* Without changing the architecture of the schedules, there are several possible improvements to be considered: harmonizing regulations at the federal and subfederal levels; withdrawing MFN exemptions, at least for developed economies; and developing a competition code.

There has also been some discussion of making national treatment a general rather than a sector-specific obligation.

- *Further liberalization in financial services and telecommunications.* It seems likely that Members will want to register the advances they have made in liberalizing these two traditionally heavily regulated sectors, if only to increase their attractiveness to investors.
- *Re-examining GATS and the issue of the movement of natural persons supplying services.* Many developing and transition countries were unaware during the Uruguay Round of how many of their services firms were already exporting. Instead, they developed a presumption that one of the few ways in which these countries export services is embodied in the movement of labour. As a result, Mode 4 has become for some synonymous with the movement of individuals seeking temporary employment abroad. This concerned both high-skill (e.g. doctors, nurses) and low-skill (e.g. construction workers) personnel. Strongly held feelings about the issuing of work permits to foreign workers have obscured the pressing issue of temporary business travel for the staff of services firms.

Because many services are not produced until the customer has agreed to their purchase, potential customers typically want to meet the persons who will produce those services. This means that services exporters must be able to travel in order to develop business, not just in order to execute a given project. Services providers from many developing countries, however, face stringent visa requirements, often including the need to produce a letter of invitation in order to be given permission to enter the foreign country. Such requirements, varying as they do on a bilateral basis, clearly contradict the concepts of most-favoured-nation status and equitable market access.

For most developing and transition economies, the contribution of worker remittances to the balance of payments is substantially less than their foreign exchange earnings from 'other services' or tourism (*see* table 20). What has not entered the debate to date is the economic cost of barriers to visa-less business travel. At a conservative estimate, services firms from developing and transition countries average 12 hours of staff time for visa-related formalities for each business trip abroad. Reducing such opportunity costs (i.e. the costs that arise because of the lost opportunity for carrying out a potentially revenue-generating activity) could have substantial benefits for these countries.

**Table 20** Developing countries: sources of foreign exchange earnings, 1997

	Export earnings (US\$ million)			Worker remittances as % of export earnings from:	
	Travel	Other services	Worker remittances	Travel	Other services
Africa	9 138	4 300	6 410	70.1	149.1
Asia	61 285	103 400	20 929	34.2	20.2
Europe	32 533	26 493	5 521	17.0	20.8
Middle East	9 330	17 610	6 560	70.3	37.3
Americas	25 213	13 583	9 748	38.7	71.8

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

By not reaching a clear agreement on temporary business travel, developing countries have handicapped their services exporters in a critical way. In order to move this issue forward, government officials responsible for immigration policy would need to be included at the negotiating table. Further, those officials would need to be willing to shift focus from screening access to their own economies to facilitating access by their citizens to foreign markets.

- *Continued requests and offers.* In the new round, there will be the usual requests and offers to secure

further liberalization of each other's schedules. Developing and transition countries will do well to bear in mind the commitment of developed Members to make concessions in the services sectors and modes of trade of greatest interest to them.

- *Addressing structural issues.* In addition to the definitional and administrative issues already under discussion in the Committee on Specific Commitments, there are more fundamental factors to be considered. The private sector has complained that the schedules are cumbersome to use and that the modal approach does not reflect commercial reality (where firms often use all four modes in their design and delivery of services). To be competitive, services firms must be able to select strategically among all four modes if they are to increase market share.

Further, the distinctions allowed in the degree of liberalization among sectors create problems for private firms which operate in a more integrated environment. To capitalize on market opportunities, there often needs to be collaboration and cooperation among sectors as what is possible in one sector can significantly constrain what is possible in another sector. For example, while cross-border delivery of health services (tele-health) is technically feasible and well received by consumers, restrictions on insurance payments for out-of-jurisdiction health care can drastically reduce the viability of such trade.

While the objections raised are cogent, the present structure does at least have the virtue of familiarity. From a practical perspective, negotiators may find it more constructive to press for full scheduling and the withdrawal of limitations on market access or national treatment than to spend time on the architecture of the schedules itself.

- *Addressing new substantive issues.* In addition to the outstanding work from the Uruguay Round, there are several new issues that cannot be ignored. At a minimum, these are likely to include:

- *Civil aviation.* Aviation is a service that has been negotiated largely bilaterally in the past on the basis of the Chicago Convention ‘freedoms’. There is already evidence that open-skies policies have expanded the number of airline carriers to a given destination and have also led to an increase in tourism and business travel to the markets following such policies. At present, GATS covers only equipment repair, ticketing and sales, and computer reservation systems. At a minimum, charter airlines and air cargo companies want to begin a discussion on multilateral disciplines. Hopefully, there can also be a full discussion of landing rights for commercial airlines.
- *Electronic commerce.* The maturing of the Internet has raised a range of issues affecting trade in services. It remains to be seen how effectively the use of the Internet, as an infrastructure through which goods and services are marketed and delivered, can be regulated within the current GATS context. A more detailed examination of this issue is given further below.
- *Trade and competition policy.* The matter of competition policy is one of interest to the General Council, not just to the Council on Trade in Services. The guidelines in the *Reference Paper* on telecommunications have provided a starting point for such discussion (*see* Appendix IV to this Guide).

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## Ongoing issues

At the conclusion of the Uruguay Round, there were several outstanding issues on which Members agreed to undertake further work: subsidies, emergency safeguards and government procurement practices. All three remain have unresolved; however, negotiations are underway and will run on into the new round.

## Subsidies

*A transition economy has been reviewing the incentives it offers to the offshore data companies established in its export processing zone. It is wondering whether these incentives would be considered trade-distorting subsidies and thus come under GATS discipline.*

Subsidies are financial contributions by a government or any public body within the territory of a Member or any form of income or price support which confer a benefit (i.e. lower operating costs). As a matter of course, governments often provide subsidies in specific sectors – e.g. utilities, transportation, financial services, health, education, and cultural or entertainment industries. Governments may also allow or encourage cross-subsidization among different services or types of consumers. GATS is concerned only with trade-distorting subsidies (Article XV) that are specific – i.e. that are provided to an enterprise or industry or group of enterprises or industries.

While there is a WTO Agreement on Subsidies and Countervailing Measures, that Agreement has been developed for the goods trade. A number of challenges arise in trying to set for services the boundaries of what is or is not trade-distorting. To help with the ongoing discussion, four general types of subsidies have been identified, each of which has its own definitional challenges and could have trade-distorting effects:

- *Production subsidies.* Subsidization of production costs for one mode of supply generally results in distortion from one mode to another. For example, subsidizing domestic producers of certain services (e.g. education) could result in domestic consumers taking advantage of local education rather than importing education services from another Member through Mode 2. In this case, the injured party could potentially be any other Member that exports education services through Mode 2.

- ❑ *Investment subsidies.* Since such subsidies apply only to Mode 3 (commercial presence), the foreign entities being subsidized could be more cost competitive than domestic suppliers of the same service. If a Member has committed itself to providing national treatment in the sector, then the injured party would be the domestic providers (as well as any foreign investors who did not receive the subsidy).
- ❑ *Export subsidies.* Subsidies that are contingent on export performance would qualify as export subsidies. If a Member has committed itself to providing national treatment but restricted the export subsidy to national exporters, the injured party would be foreign services suppliers with affiliates (commercial presence) in its territory which engage in export activities.
- ❑ *Consumption subsidies.* Subsidies contingent upon purchasing from a national source (i.e. partial or complete health-care costs underwritten by the government) are classified as consumption subsidies. If a Member has made a commitment in regard to national treatment, then the injured party would be foreign services suppliers active in its territory which also supply the subsidized service.

The rationale for subsidies is usually that of advancing social objectives such as local capacity building, regional development, providing equitable access to basic services, protection of the cultural heritage, or ensuring the viability of infrastructure services. In the example above, although the foreign firms are exporters and do not compete in the domestic market, such subsidies would serve as an export subsidy to these firms and could limit the export potential of domestic firms.

Even though the definitional issues have not yet been resolved, any subsidies that alter the conditions of competition in favour of either domestic or foreign firms could be in violation of national treatment obligations (unless the limitation is scheduled).

## Emergency safeguards

*A resource management firm from the Middle East with offices in an Asian country has been reviewing the measures taken by that country's government in the face of its financial crisis.*

Emergency safeguards refer to temporary measures that Members may take to limit market access (i.e. suspend their scheduled commitments) in cases of market disruption. Article X of GATS provided for multilateral negotiations on disciplines for emergency safeguards to be completed by the end of 1997 and to come into force no later than the beginning of 1998. However, agreement has not yet been reached.

Members already have two mechanisms under Article XII with which to address serious balance-of-payments problems: restricting the extent of commitments, and restricting trade-related payments, transfers and capital movements. Such actions must be temporary, not excessive, non-discriminatory and avoid unnecessary damage to other Members. If a Member does invoke such a restriction, the WTO General Council must be notified. In the example above, the foreign exchange crisis faced by the Asian government would qualify as a circumstance under which suspending commitments could apply.

The challenge in developing disciplines on safeguards is to define what constitutes an injury (e.g. a decline in domestic share?). Among the issues are whether or not all modes of supply should be included, and whether safeguards are needed at all since the scheduling of commitments is so flexible.

## Government procurement practices

*An accounting firm from the Republic of Korea would like to be able to bid for audit contracts with major government-owned enterprises in Japan and is wondering if it can be excluded from bidding under GATS.*

Governments are major purchasers of services. If government contracts are not open to services suppliers from other Members, the impact on trade in services could be considerable. At present, GATS does not apply to government procurement practices; however, there does exist a renegotiated Agreement on Government Procurement signed mainly by developed countries and a handful of developing countries/territories. The Agreement calls for transparency and non-discrimination in both the calls for tender and the award process, and operates on the basis of reciprocity. The Agreement uses the WTO dispute settlement mechanism and prohibits cross-retaliation between the Agreement and GATS. In the example given above, since both the Republic of Korea and Japan are signatories to the Agreement, it is likely that the Republic of Korea firm could bid for the audit contracts. Further negotiations to improve the Agreement and achieve better coverage on the basis of mutual reciprocity have been scheduled to begin in 1999.

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## **Links with the Agreements on TRIPS and TRIMs**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides minimum standards for the protection of intellectual property rights as well as the procedures and remedies for their enforcement. Built on the existing relevant international conventions (e.g. the Berne Convention), its provisions apply to patents, copyright and related rights, trademarks, industrial designs, layout designs of integrated circuits, undisclosed information, and geographical indications. The Agreement on TRIPS should have a harmonizing effect on standards for intellectual property rights among Members. The Agreement provides for a transition period of five years (i.e. up to January 2000) for developing countries to bring their IPR legislation into conformance with the provisions of the Agreement, with the period extended to 11 years (i.e. to January 2006) for least developed countries. The Agreement on

TRIPS is administered by the WTO's Council for TRIPS; a review of the Agreement is scheduled to begin on 1 January 2000.

A critical feature of globalization is the complementary activities of trade and investment, with at least half of FDI flows being in the services industries. Mode 3 under GATS already covers the terms and conditions on which a foreign investor may enter a market and the conditions under which its commercial establishment may operate. The Agreement on Trade-Related Investment Measures (TRIMs) prohibits certain types of requirements imposed on investors, namely local content and trade-balancing requirements. If such requirements exist, signatories are to phase them out by 2000. The operation of the Agreement on TRIMs is to be reviewed by the year 2000; the review will also consider whether or not provisions on investment policy and competition policy should be included in the Agreement.

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## Services statistics

It has been clear since early in the Uruguay Round that officially published statistics do not provide an accurate picture of the services being traded. Efforts to improve services statistics continue, with discussion covering the following issues:

- ❑ *Classification.* Since domestic regulations play such a large role in facilitating or limiting access to markets, comparable domestic services data are as important as accurate and comparable trade statistics. The United Nations Statistical Division has led the development of a provisional Central Product Classification (CPC) system for national accounts; however, there remain unresolved issues both in the grouping and enumeration of service activities and in the distinction between services industries and service commodities. Services suppliers in a particular industry (e.g. accountancy) may well

produce several different kinds of services (e.g. accounting, auditing, computer systems consultation, management consulting). On the trade statistics side, the International Monetary Fund has issued the fifth edition of its *Balance of Payments Manual*, which provides for greater detail in disaggregating traded services, especially 'other services'.

In order for any classification system to be useful, it must be used consistently by all parties. At present, there are inconsistencies between CPC (the classification system used in GATS) and the classifications used by Members in their schedules. All Members should be required to use a common classification system such as CPC.

- *Linking trade statistics to modes of supply.* Traditional methods of collecting trade statistics assume that products move across borders (Mode 1). The services trade is underestimated as there are no mechanisms for measuring trade volumes in the other modes of supply, and even in Mode 1 the electronic transfer of services is not well captured. In regard to Mode 3, the United States has estimated that affiliate services trade may be equivalent to at least 84% of the cross-border services trade of parent companies (*see* table 21).
- *Capturing 'other services'.* Although the highest trade growth is occurring in 'other services', only the transportation and travel accounts typically have adequate data collection methodologies. OECD has estimated that the growing discrepancy between global services exports and imports is due in large part to an under-reporting of exports of 'other services' by as much as 40%. As an example of services not being correctly captured, the United States has estimated that at least 9% of reported goods trade actually consists of embedded services (such as maintenance and training contracts, financing).

- *Bilateral trade flows.* In order to study the effects of market opening and determine the importance of various export markets, data on bilateral trade flows are essential. At present, there are few publicly available statistics on bilateral services trade. Where they exist, they are typically disaggregated only for the highest-volume markets.

**Table 21 United States: exports of selected services, 1994**  
(in millions of United States dollars)

Services	Exports		MOFA as % of BOP
	BOP a/	MOFA b/	
Accounting/management	1 792	5 678	316.9
Computer services	3 837	16 714	435.6
Insurance	4 944	30 941	625.8
Total commercial services	182 704	153 541	84.0

**Source:** Coalition of Service Industries, United States.

a/ Exports by firms established in the United States whose exports are reported in the balance of payments (BOP).

b/ Majority-owned foreign affiliates (MOFA) of United States companies located outside the United States.

## Electronic commerce

The newest structural change affecting services exporters is the explosion in Internet use, with the number of Internet users said to be doubling every year. In contrast to the 4.5 million Internet users in 1991, WTO estimates that there will be as many as 300 million by the end of 1999. Encryption technologies have advanced sufficiently for sales to take place electronically, though electronic commerce is most likely to be used for services viewed as low risk. Estimates indicate that at least US\$ 18 billion in sales is already taking place via the Internet, with 2002 estimates placed at US\$ 330 billion.

Although already over 10% of all consumer shopping is taking place electronically, business-to-business

transactions on the Internet are 10 times the volume of consumer purchases. Web site researchers report that the majority of site visitors are looking for information to help with a purchase decision, or to comparison shop, rather than wanting to purchase electronically. But there are already firms whose sales over the Internet exceed a billion dollars a year. Countries with a telecommunications infrastructure that is open to competition have five times the number of Internet hosts and less than half the connection charges than countries whose infrastructures are closed to competition.

Electronic commerce may radically alter industry structures, eliminating the need for distributors, wholesalers and even retailers in some instances. For financial and telecommunications services in particular, there are likely to be dramatic consequences. Many financial transactions are already being done on-line, making intermediary personnel redundant. Internet telephony is already a reality, providing international telephone and fax services at the cost of a local call (owing to better use of bandwidth). Electronic commerce will also make the tracking of international trade infinitely more difficult, and has led to proposals such as a tax-free zone for electronic commerce.

For countries without Internet access, priority attention to going on-line can make the difference between operating from a level playing field and being marginalized. The Internet provides a low-cost, highly efficient way to approach potential customers worldwide, in support of which the UNCTAD GTPNet (Global Trade Point Net) is gradually being transformed from a pre-transactional electronic trading network to a transactional tool for electronic commerce.

The second WTO Ministerial Conference adopted a Declaration on Global Electronic Commerce “to establish a comprehensive work programme to examine all trade-related issues relating to global electronic commerce, taking into account the economic, financial, and

development needs of developing countries." The Council for Trade in Services was directed to report on the treatment of electronic commerce in the GATS legal framework by July 1999, addressing the following issues: scope (including modes of supply); MFN treatment; transparency; increasing the participation of developing countries; domestic regulation, standards and recognition; competition; protection of privacy and public morals and the prevention of fraud; market-access commitments on the electronic supply of services (including basic and value-added telecommunications); national treatment; access to and use of public telecommunications networks and services; customs duties; and classification issues.

The emerging use of the Internet for telephony is an illustration of some of the challenges lying ahead for GATS.

## Appendix I

# General Agreement on Trade in Services

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## GENERAL AGREEMENT ON TRADE IN SERVICES

*Members,*

*Recognizing* the growing importance of trade in services for the growth and development of the world economy;

*Wishing* 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;

*Desiring* the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

*Recognizing* the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

*Desiring* to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

*Taking* particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby *agree* as follows:

### PART I

#### SCOPE AND DEFINITION

##### *Article I*

##### *Scope and Definition*

1. This Agreement applies to measures by Members affecting trade in services.
2. For the purposes of this Agreement, 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;
  - (b) in the territory of one Member to the service consumer of any other Member;
  - (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
  - (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.
3. For the purposes of this Agreement:
- (a) “measures by Members” means measures taken by:
    - (i) central, regional or local governments and authorities; and
    - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

- (b) “services” includes any service in any sector except services supplied in the exercise of governmental authority;
- (c) “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

## PART II

### GENERAL OBLIGATIONS AND DISCIPLINES

#### *Article II*

##### *Most-Favoured-Nation Treatment*

1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.
2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

*Article III*

*Transparency*

1. Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.

5. Any Member may notify to the Council for Trade in Services any measure, taken by any other Member, which it considers affects the operation of this Agreement.

*Article III bis*

*Disclosure of Confidential Information*

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

*Article IV**Increasing Participation of Developing Countries*

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:

- (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;
- (b) the improvement of their access to distribution channels and information networks; and
- (c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

- (a) commercial and technical aspects of the supply of services;
- (b) registration, recognition and obtaining of professional qualifications; and
- (c) the availability of services technology.

3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

*Article V**Economic Integration*

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

- (a) has substantial sectoral coverage<sup>1</sup>, and

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<sup>1</sup> This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

- (b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:
  - (i) elimination of existing discriminatory measures, and/or
  - (ii) prohibition of new or more discriminatory measures,

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

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

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

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

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

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

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

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant

modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

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

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

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

#### *Article V bis*

##### *Labour Markets Integration Agreements*

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration<sup>2</sup> of the labour markets between or among the parties to such an agreement, provided that such an agreement:

- (a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;
- (b) is notified to the Council for Trade in Services.

#### *Article VI*

##### *Domestic Regulation*

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an

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<sup>2</sup> Typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits.

affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

- (i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
- (ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.

(b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations<sup>3</sup> applied by that Member.

6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

### *Article VII*

#### *Recognition*

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

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

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

4. Each Member shall:

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

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<sup>3</sup> The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

- (b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase;
- (c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

### *Article VIII*

#### *Monopolies and Exclusive Service Suppliers*

1. Each Member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II and specific commitments.

2. Where a Member's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Member's specific commitments, the Member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The Council for Trade in Services may, at the request of a Member which has a reason to believe that a monopoly supplier of a service of any other Member is acting in a manner inconsistent with paragraph 1 or 2, request the Member establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of the WTO Agreement, a Member grants monopoly rights regarding the supply of a service covered by its specific

commitments, that Member shall notify the Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.

5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Member, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

### *Article IX*

#### *Business Practices*

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

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

### *Article X*

#### *Emergency Safeguard Measures*

1. There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement.

2. In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force; provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-year period provided for in paragraph 1 of Article XXI.

3. The provisions of paragraph 2 shall cease to apply three years after the date of entry into force of the WTO Agreement.

*Article XI*

*Payments and Transfers*

1. Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.
2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund.

*Article XII*

*Restrictions to Safeguard the Balance of Payments*

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1:
  - (a) shall not discriminate among Members;
  - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
  - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member;
  - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
  - (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Members may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the General Council.

5. (a) Members applying the provisions of this Article shall consult promptly with the Committee on Balance-of-Payments Restrictions on restrictions adopted under this Article.

(b) The Ministerial Conference shall establish procedures<sup>4</sup> for periodic consultations with the objective of enabling such recommendations to be made to the Member concerned as it may deem appropriate.

(c) Such consultations shall assess the balance-of-payment situation of the Member concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:

- (i) the nature and extent of the balance-of-payments and the external financial difficulties;
- (ii) the external economic and trading environment of the consulting Member;
- (iii) alternative corrective measures which may be available.

(d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phaseout of restrictions in accordance with paragraph 2(e).

(e) In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Member.

6. If a Member which is not a member of the International Monetary Fund wishes to apply the provisions of this Article; the Ministerial Conference shall establish a review procedure and any other procedures necessary.

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<sup>4</sup> It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.

*Article XIII*

*Government Procurement*

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

*Article XIV*

*General Exceptions*

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

- (a) necessary to protect public morals or to maintain public order;<sup>5</sup>
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;

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<sup>5</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>6</sup> imposition or collection of direct taxes in respect of services or service suppliers of other Members;
- (e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

*Article XIV bis*

*Security Exceptions*

1. Nothing in this Agreement shall be construed:
  - (a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
  - (b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:
    - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

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<sup>6</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.

Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

- (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
- (iii) taken in time of war or other emergency in international relations;  
or
- (c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

*Article XV*

*Subsidies*

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.<sup>7</sup> The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

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

PART III

SPECIFIC COMMITMENTS

*Article XVI*

*Market Access*

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member

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<sup>7</sup> A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted.

treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.<sup>8</sup>

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>9</sup>
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

#### *Article XVII*

##### *National Treatment*

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service

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<sup>8</sup> If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

<sup>9</sup> Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.<sup>10</sup>

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

#### *Article XVIII*

##### *Additional Commitments*

Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule.

### PART IV

## PROGRESSIVE LIBERALIZATION

#### *Article XIX*

##### *Negotiation of Specific Commitments*

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual

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<sup>10</sup> Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

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

#### *Article XX*

##### *Schedules of Specific Commitments*

1. Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate the time-frame for implementation of such commitments; and
- (e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.

3. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

*Article XXI*

*Modification of Schedules*

1. (a) A Member (referred to in this Article as the “modifying Member”) may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.

(b) A modifying Member shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Council for Trade in Services no later than three months before the intended date of implementation of the modification or withdrawal.

2. (a) At the request of any Member the benefits of which under this Agreement may be affected (referred to in this Article as an “affected Member”) by a proposed modification or withdrawal notified under subparagraph 1(b), the modifying Member shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Members concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.

(b) Compensatory adjustments shall be made on a most-favoured-nation basis.

3. (a) If agreement is not reached between the modifying Member and any affected Member before the end of the period provided for negotiations, such affected Member may refer the matter to arbitration. Any affected Member that wishes to enforce a right that it may have to compensation must participate in the arbitration.

(b) If no affected Member has requested arbitration, the modifying Member shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Member may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

(b) If the modifying Member implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article II, such a modification or withdrawal may be implemented solely with respect to the modifying Member.

5. The Council for Trade in Services shall establish procedures for rectification or modification of Schedules. Any Member which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

## PART V

### INSTITUTIONAL PROVISIONS

#### *Article XXII*

##### *Consultation*

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Dispute Settlement Understanding (DSU) shall apply to such consultations.

2. The Council for Trade in Services or the Dispute Settlement Body (DSB) may, at the request of a Member, consult with any Member or Members in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

3. A Member may not invoke Article XVII, either under this Article or Article XXIII, with respect to a measure of another Member that falls within the scope of an international agreement between them relating to the avoidance of double taxation. In case of disagreement between Members as to whether a measure falls within the scope of such an agreement between them, it shall be open to either Member to bring this matter before the Council for Trade in Services.<sup>11</sup> The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.

#### *Article XXIII*

##### *Dispute Settlement and Enforcement*

1. If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the DSU.

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<sup>11</sup> With respect to agreements on the avoidance of double taxation which exist on the date of entry into force of the WTO Agreement, such a matter may be brought before the Council for Trade in Services only with the consent of both parties to such an agreement.

2. If the DSB considers that the circumstances are serious enough to justify such action, it may authorize a Member or Members to suspend the application to any other Member or Members of obligations and specific commitments in accordance with Article 22 of the DSU.

3. If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the DSU. If the measure is determined by the DSB to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Article 22 of the DSU shall apply.

*Article XXIV*

*Council for Trade in Services*

1. The Council for Trade in Services shall carry out such functions as may be assigned to it to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.

2. The Council and, unless the Council decides otherwise, its subsidiary bodies shall be open to participation by representatives of all Members.

3. The Chairman of the Council shall be elected by the Members.

*Article XXV*

*Technical Cooperation*

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.

2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

*Article XXVI*

*Relationship with Other International Organizations*

The General Council shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services.

## PART VI

## FINAL PROVISIONS

*Article XXVII**Denial of Benefits*

A Member may deny the benefits of this Agreement:

- (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
  - (i) by a vessel registered under the laws of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement, and
  - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;
- (c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Member, or that it is a service supplier of a Member to which the denying Member does not apply the WTO Agreement.

*Article XXVIII**Definitions*

For the purpose of this Agreement:

- (a) “measure” means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service;
- (c) “measures by Members affecting trade in services” include measures in respect of
  - (i) the purchase, payment or use of a service;

- (ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;
- (iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member;
- (d) “commercial presence” means any type of business or professional establishment, including through
  - (i) the constitution, acquisition or maintenance of a juridical person, or
  - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Member for the purpose of supplying a service;
- (e) “sector” of a service means,
  - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Member’s Schedule,
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (f) “service of another Member” means a service which is supplied,
  - (i) from or in the territory of that other Member, or in the case of maritime transport, by a vessel registered under the laws of that other Member, or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part; or
  - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Member;
- (g) “service supplier” means any person that supplies a service;<sup>12</sup>
- (h) “monopoly supplier of a service” means any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service;

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<sup>12</sup> Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

- (i) “service consumer” means any person that receives or uses a service;
- (j) “person” means either a natural person or a juridical person;
- (k) “natural person of another Member” means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member:
  - (i) is a national of that other Member; or
  - (ii) has the right of permanent residence in that other Member, in the case of a Member which:
    - 1. does not have nationals; or
    - 2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO Agreement, provided that no Member is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals;
- (l) “juridical person” means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (m) “juridical person of another Member” means a juridical person which is either:
  - (i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - 1. natural persons of that Member; or
    - 2. juridical persons of that other Member identified under subparagraph (i);

- (n) a juridical person is:
  - (i) “owned” by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member;
  - (ii) “controlled” by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
  - (iii) “affiliated” with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (o) “direct taxes” comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Article XXIX

Annexes

The Annexes to this Agreement are an integral part of this Agreement.

## ANNEX ON ARTICLE II EXEMPTIONS

*Scope*

1. This Annex specifies the conditions under which a Member, at the entry into force of this Agreement, is exempted from its obligations under paragraph 1 of Article II.
2. Any new exemptions applied for after the date of entry into force of the WTO Agreement shall be dealt with under paragraph 3 of Article IX of that Agreement.

*Review*

3. The Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the WTO Agreement.
4. The Council for Trade in Services in a review shall:
  - (a) examine whether the conditions which created the need for the exemption still prevail; and
  - (b) determine the date of any further review.

*Termination*

5. The exemption of a Member from its obligations under paragraph 1 of Article II of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.
6. In principle, such exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.
7. A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement.

*Lists of Article II Exemptions*

[The agreed lists of exemptions under paragraph 2 of Article II will be annexed here in the treaty copy of the WTO Agreement.]

ANNEX ON MOVEMENT OF NATURAL PERSONS  
SUPPLYING SERVICES UNDER THE AGREEMENT

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.

2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.
4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.<sup>13</sup>

#### ANNEX ON AIR TRANSPORT SERVICES

1. This Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement.
2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:
  - (a) traffic rights, however granted; or
  - (b) services directly related to the exercise of traffic rights,except as provided in paragraph 3 of this Annex.
3. The Agreement shall apply to measures affecting:
  - (a) aircraft repair and maintenance services;
  - (b) the selling and marketing of air transport services;
  - (c) computer reservation system (CRS) services.

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<sup>13</sup> The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

4. The dispute settlement procedures of the Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

5. The Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector.

6. Definitions:

(a) "Aircraft repair and maintenance services" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

(b) "Selling and marketing of air transport services" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

(c) "Computer reservation system (CRS) services" mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

(d) "Traffic rights" mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

## ANNEX ON FINANCIAL SERVICES

1. *Scope and Definition*

(a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article I of the Agreement.

(b) For the purposes of subparagraph 3(b) of Article I of the Agreement, "services supplied in the exercise of governmental authority" means the following:

- (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (ii) activities forming part of a statutory system of social security or public retirement plans; and
- (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

(c) For the purposes of subparagraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.

(d) Subparagraph 3(c) of Article I of the Agreement shall not apply to services covered by this Annex.

## 2. *Domestic Regulation*

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

(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

## 3. *Recognition*

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

(b) A Member that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the

parties to the agreement or arrangement. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.

(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII shall not apply.

#### 4. *Dispute Settlement*

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

#### 5. *Definitions*

For the purposes of this Annex:

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

##### *Insurance and insurance-related services*

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

##### *Banking and other financial services (excluding insurance)*

- (v) Acceptance of deposits and other repayable funds from the public;
- (vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) Financial leasing;
- (viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) Guarantees and commitments;

- (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (A) money market instruments (including cheques, bills, certificates of deposits);
  - (B) foreign exchange;
  - (C) derivative products including, but not limited to, futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (E) transferable securities;
  - (F) other negotiable instruments and financial assets, including bullion.
- (xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (xii) Money broking;
- (xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
- (xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term “financial service supplier” does not include a public entity.

(c) “Public entity” means:

- (i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
- (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

## SECOND ANNEX ON FINANCIAL SERVICES

1. Notwithstanding Article II of the Agreement and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the Agreement.
2. Notwithstanding Article XXI of the Agreement, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, improve, modify or withdraw all or part of the specific commitments on financial services inscribed in its Schedule.
3. The Council for Trade in Services shall establish any procedures necessary for the application of paragraphs 1 and 2.

## ANNEX ON NEGOTIATIONS ON MARITIME TRANSPORT SERVICES

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for international shipping, auxiliary services and access to and use of port facilities only on:
  - (a) the implementation date to be determined under paragraph 4 of the Ministerial Decision on Negotiations on Maritime Transport Services; or,
  - (b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Maritime Transport Services provided for in that Decision.
2. Paragraph 1 shall not apply to any specific commitment on maritime transport services which is inscribed in a Member's Schedule.

3. From the conclusion of the negotiations referred to in paragraph 1, and before the implementation date, a Member may improve, modify or withdraw all or part of its specific commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI.

## ANNEX ON TELECOMMUNICATIONS

### 1. Objectives

Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement.

### 2. Scope

(a) This Annex shall apply to all measures of a Member that affect access to and use of public telecommunications transport networks and services.<sup>14</sup>

(b) This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

(c) Nothing in this Annex shall be construed:

- (i) to require a Member to authorize a service supplier of any other Member to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or
- (ii) to require a Member (or to require a Member to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

### 3. Definitions

For the purposes of this Annex:

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<sup>14</sup> This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.

(a) “Telecommunications” means the transmission and reception of signals by any electromagnetic means.

(b) “Public telecommunications transport service” means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer’s information.

(c) “Public telecommunications transport network” means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

(d) “Intra-corporate communications” means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Member’s domestic laws and regulations, affiliates. For these purposes, “subsidiaries”, “branches” and, where applicable, “affiliates” shall be as defined by each Member. “Intra-corporate communications” in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.

(e) Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

#### 4. *Transparency*

In the application of Article III of the Agreement, each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

#### 5. *Access to and use of Public Telecommunications Transport Networks and Services*

(a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply

of a service included in its Schedule. This obligation shall be applied, *inter alia*, through paragraphs (b) through (f).<sup>15</sup>

(b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, subject to paragraphs (e) and (f), that such suppliers are permitted:

- (i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
- (ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and
- (iii) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

(c) Each Member shall ensure that service suppliers of any other Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member. Any new or amended measures of a Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

(d) Notwithstanding the preceding paragraph, a Member may take such measures as are necessary to ensure the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

(e) Each Member shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

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<sup>15</sup> The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

- (i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- (ii) to protect the technical integrity of public telecommunications transport networks or services; or
- (iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule.

(f) Provided that they satisfy the criteria set out in paragraph (e), conditions for access to and use of public telecommunications transport networks and services may include:

- (i) restrictions on resale or shared use of such services;
- (ii) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;
- (iii) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 7(a);
- (iv) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (v) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
- (vi) notification, registration and licensing.

(g) Notwithstanding the preceding paragraphs of this section, a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Member's Schedule.

## 6. *Technical Cooperation*

(a) Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the

expansion of their trade in services. To this end, Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.

(b) Members shall encourage and support telecommunications cooperation among developing countries at the international, regional and sub-regional levels.

(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

(d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

#### *7. Relation to International Organizations and Agreements*

(a) Members recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

(b) Members recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

### ANNEX ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for basic telecommunications only on:

- (a) the implementation date to be determined under paragraph 5 of the Ministerial Decision on Negotiations on Basic Telecommunications; or,
- (b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Basic Telecommunications provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on basic telecommunications which is inscribed in a Member's Schedule.

## Appendix II

# WTO classification of services sectors

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SECTORS AND SUBSECTORS	CORRESPONDING CPC <sup>a/</sup> Section B
<b>I. BUSINESS SERVICES</b>	
<b>A. Professional services</b>	
a. Legal services	861
b. Accounting, auditing and bookkeeping services	862
c. Taxation services	863
d. Architectural services	8671
e. Engineering services	8672
f. Integrated engineering services	8673
g. Urban planning and landscape architectural services	8674
h. Medical and dental services	9312
i. Veterinary services	932
j. Services provided by midwives, nurses, physiotherapists and paramedical personnel	93191
k. Other	
<b>B. Computer and related services</b>	
a. Consultancy services related to the installation of computer hardware	841
b. Software implementation services	842
c. Data processing services	843
d. Database services	844
e. Other	845+849
<b>C. Research and development services</b>	
a. R & D services on natural sciences	851
b. R & D services on social sciences and humanities	852
c. Interdisciplinary R & D services	853

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a/ Central Product Classification (United Nations).

SECTORS AND SUBSECTORS	CORRESPONDING CPC Section B
<b>D. Real estate services</b>	
a. Involving own or leased property	821
b. On a fee or contract basis	822
<b>E. Rental/leasing services without operators</b>	
a. Relating to ships	83103
b. Relating to aircraft	83104
c. Relating to other transport equipment	83101+83102+
	83105
d. Relating to other machinery and equipment	83106-83109
e. Other	832
<b>F. Other business services</b>	
a. Advertising services	871
b. Market research and public opinion polling services	864
c. Management consulting service	865
d. Services related to management consulting	866
e. Technical testing and analysis services	8676
f. Services incidental to agriculture, hunting and forestry	881
g. Services incidental to fishing	882
h. Services incidental to mining	883+5115
i. Services incidental to manufacturing	884+885
	(except for 88442)
j. Services incidental to energy distribution	887
k. Placement and supply services of personnel	872
l. Investigation and security	873
m. Related scientific and technical consulting services	8675
n. Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+
o. Building-cleaning services	8861-8866
p. Photographic services	874
q. Packaging services	875
r. Printing, publishing	876
s. Convention services	88442
t. Other	87909*
	8790
<b>2. COMMUNICATION SERVICES</b>	
A. Postal services	7511
B. Courier services	7512
C. Telecommunication services	
a. Voice telephone services	7521
b. Packet-switched data transmission services	7523**
c. Circuit-switched data transmission services	7523**
d. Telex services	7523**

SECTORS AND SUBSECTORS	CORRESPONDING CPC Section B
e. Telegraph services	7522
f. Facsimile services	7521**+7529**
g. Private leased circuit services	7522**+7523**
h. Electronic mail	7523**
i. Voice mail	7523**
j. On-line information and database retrieval	7523**
k. Electronic data interchange (EDI)	7523**
l. Enhanced/value-added facsimile services including store and forward, store and retrieve	7523**
m. Code and protocol conversion	n.a.
n. On-line information and/or data processing (including transaction processing)	843**
o. Other	
<b>D. Audiovisual services</b>	
a. Motion picture and video tape production and distribution services	9611
b. Motion picture projection service	9612
c. Radio and television services	9613
d. Radio and television transmission services	7524
e. Sound recording	n.a.
f. Other	
<b>E. Other</b>	
<b>3. CONSTRUCTION AND RELATED ENGINEERING SERVICES</b>	
A. General construction work for buildings	512
B. General construction work for civil engineering	513
C. Installation and assembly work	514+516
D. Building completion and finishing work	517
E. Other	511+515+518
<b>4. DISTRIBUTION SERVICES</b>	
A. Commission agents' services	621
B. Wholesale trade services	622
C. Retailing services	631+632
	6111+6113+6121
D. Franchising	8929
E. Other	
<b>5. EDUCATIONAL SERVICES</b>	
A. Primary education services	921
B. Secondary education services	922
C. Higher education services	923
D. Adult education	924
E. Other education services	929

SECTORS AND SUBSECTORS	CORRESPONDING CPC Section B
<b>6. ENVIRONMENTAL SERVICES</b>	
A. Sewage services	9401
B. Refuse disposal services	9402
C. Sanitation and similar services	9403
D. Other	
<b>7. FINANCIAL SERVICES</b>	
<b>A. All insurance and insurance-related services</b>	812**
a. Life, accident and health insurance services	8121
b. Non-life insurance services	8129
c. Reinsurance and retrocession	81299
d. Services auxiliary to insurance (including broking and agency services)	8140
<b>B. Banking and other financial services (excluding insurance)</b>	
a. Acceptance of deposits and other repayable funds from the public	81115-81119
b. Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction	8113
c. Financial leasing	8112
d. All payment and money transmission services	81339**
e. Guarantees and commitments	81199**
f. Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:	
- money market instruments (cheques, bills, certificates of deposits, etc.)	81339**
- foreign exchange	81333
- derivative products including, but not limited to, futures and options	81339**
- exchange rate and interest rate instruments, including products such as swaps, forward rate agreements, etc.	81339**
- transferable securities	81321*
- other negotiable instruments and financial assets, including bullion	81339**
g. Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of service related to such issues	8132
h. Money broking	81339**
i. Asset management, such as cash or portfolio management, all forms of collective investment	8119+** 81323*

SECTORS AND SUBSECTORS	CORRESPONDING CPC Section B
management, pension fund management, custodial depository and trust services	
j. Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments	81339** or 81319**
k. Advisory and other auxiliary financial services on all the activities listed in Article 1B of MTN.TNC/W/50, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	8131 or 8133
l. Provision and transfer of financial information, and financial data processing and related software by providers of other financial services	8131
<b>C. Other</b>	
<b>8. HEALTH-RELATED AND SOCIAL SERVICES (other than those listed under 1.A.h-j.)</b>	
A. Hospital services	9311
B. Other human health services	9319 (other than 93191)
C. Social services	933
D. Other	
<b>9. TOURISM AND TRAVEL-RELATED SERVICES</b>	
A. Hotels and restaurants (including catering)	641-643
B. Travel agencies and tour operators services	7471
C. Tourist guides services	7472
D. Other	
<b>10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)</b>	
A. Entertainment services (including theatre, live bands and circus services)	9619
B. News agency services	962
C. Libraries, archives, museums and other cultural services	963
D. Sporting and other recreational services	964
E. Other	
<b>11. TRANSPORT SERVICES</b>	
<b>A. Maritime transport services</b>	
a. Passenger transportation	7211
b. Freight transportation	7212
c. Rental of vessels with crew	7213

SECTORS AND SUBSECTORS	CORRESPONDING CPC Section B
d. Maintenance and repair of vessels	8868**
e. Pushing and towing services	7214
f. Supporting services for maritime transport	745**
<b>B. Internal waterways transport</b>	
a. Passenger transportation	7221
b. Freight transportation	7222
c. Rental of vessels with crew	7223
d. Maintenance and repair of vessels	8868**
e. Pushing and towing services	7224
f. Supporting services for internal waterway transport	745**
<b>C. Air transport services</b>	
a. Passenger transportation	731
b. Freight transportation	732
c. Rental of aircraft with crew	734
d. Maintenance and repair of aircraft	8868**
e. Supporting services for air transport	746
<b>D. Space transport</b>	733
<b>E. Rail transport services</b>	
a. Passenger transportation	7111
b. Freight transportation	7112
c. Pushing and towing services	7113
d. Maintenance and repair of rail transport equipment	8868**
e. Supporting services for rail transport services	743
<b>F. Road transport services</b>	
a. Passenger transportation	7121+7122
b. Freight transportation	7123
c. Rental of commercial vehicles with operator	7124
d. Maintenance and repair of road transport equipment	6112+8867
e. Supporting services for road transport services	744
<b>G. Pipeline transport</b>	
a. Transportation of fuels	7131
b. Transportation of other goods	7139
<b>H. Services auxiliary to all modes of transport</b>	
a. Cargo-handling services	741
b. Storage and warehouse services	742
c. Freight transport agency services	748
d. Other	749

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SECTORS AND SUBSECTORS	CORRESPONDING CPC Section B
I. Other transport services	
12. OTHER SERVICES NOT INCLUDED ELSEWHERE	95+97+98+99

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The (\*) indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

The (\*\*) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

## Appendix III

# Protocols to the General Agreement on Trade in Services

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### THIRD PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES

Members of the World Trade Organization whose Schedules of Specific Commitments to the General Agreement on Trade in Services relating to movement of natural persons are annexed to this Protocol,

*Having* carried out negotiations under the terms of the Ministerial Decision on Negotiations on Movement of Natural Persons adopted at Marrakesh on 15 April 1994,

*Having* regard to the results of such negotiations,

*Having regard* to the Decision on the Movement of Natural Persons adopted by the Council for Trade in Services on 30 June 1995,

*Agree* as follows:

1. The commitments on Movement of Natural Persons annexed to this Protocol relating to a Member shall, upon the entry into force of this Protocol for that Member, replace or supplement the relevant entries on movement of natural persons in the Schedule of Specific Commitments of that Member.
2. This Protocol shall be open for acceptance, by signature or otherwise, by Members concerned until 30th June 1996.
3. This Protocol shall enter into force on the 30th day after 1st January 1996 for those Members which have accepted it by that date, and for those accepting it after that date, which date shall not be beyond 30th June 1996, it shall enter into force on the 30th day following the date of each acceptance. If a Member whose schedule is annexed to this Protocol does not accept it by that date, the matter shall be referred to the Council for Trade in Services for consideration and appropriate action.

4. This Protocol shall be deposited with the Director-General of the World Trade Organization. The Director-General shall promptly furnish to each Member a certified copy of this Protocol and notifications of acceptances thereof pursuant to paragraph 3.

5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this — day of [month] one thousand nine hundred and ninety-five, in a single copy in English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

#### FOURTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES

Members of the World Trade Organization (hereinafter referred to as the “WTO”) whose Schedules of Specific Commitments and Lists of Exemptions from Article II of the General Agreement on Trade in Services concerning basic telecommunications are annexed to this Protocol (hereinafter referred to as “Members concerned”),

*Having* carried out negotiations under the terms of the Ministerial Decision on Negotiations on Basic Telecommunications adopted at Marrakesh on 15 April 1994,

*Having* regard to the Annex on Negotiations on Basic Telecommunications,

*Agree* as follows:

1. Upon the entry into force of this Protocol, a Schedule of Specific Commitments and a List of Exemptions from Article II concerning basic telecommunications annexed to this Protocol relating to a Member shall, in accordance with the terms specified therein, supplement or modify the Schedule of Specific Commitments and the List of Article II Exemptions of that Member.

2. This Protocol shall be open for acceptance, by signature or otherwise, by the Members concerned until 30 November 1997.

3. The Protocol shall enter into force on 1 January 1998 provided it has been accepted by all Members concerned. If by 1 December 1997 the Protocol has not been accepted by all Members concerned, those Members which have accepted it by that date may decide, prior to 1 January 1998, on its entry into force.

4. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish to each Member of the WTO a certified copy of this Protocol and notifications of acceptances thereof.

5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this [— day of month] one thousand nine hundred and ninety-seven, in a single copy in the English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

#### FIFTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES

Members of the World Trade Organization (hereinafter referred to as the “WTO”) whose Schedules of Specific Commitments and Lists of Exemptions from Article II of the General Agreement on Trade in Services concerning financial services are annexed to this Protocol (hereinafter referred to as “Members concerned”),

*Having* carried out negotiations under the terms of the Second Decision on Financial Services adopted by the Council for Trade in Services on 21 July 1995 (S/L/9),

*Agree* as follows:

1. A Schedule of Specific Commitments and a List of Exemptions from Article II concerning financial services annexed to this Protocol relating to a Member shall, upon the entry into force of this Protocol for that Member, replace the financial services sections of the Schedule of Specific Commitments and the List of Article II Exemptions of that Member.
2. This Protocol shall be open for acceptance, by signature or otherwise, by the Members concerned until 29 January 1999.
3. This Protocol shall enter into force on the 30th day following the date of its acceptance by all Members concerned. If by 30 January 1999 it has not been accepted by all Members concerned, those Members which have accepted it before that date may, within a period of 30 days thereafter, decide on its entry into force.
4. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish to each Member of the WTO a certified copy of this Protocol and notifications of acceptances thereof pursuant to paragraph 3.
5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this — day of [month] one thousand nine hundred and ninety-[—], in a single copy in English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

## Appendix IV

# GATS: Post Uruguay Round documents

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### DECISION ON DISCIPLINES RELATING TO THE ACCOUNTANCY SECTOR

Adopted by the Council for Trade in Services on 14 December 1998

*The Council for Trade in Services,*

*Having regard to the Decision on Professional Services adopted by the Council on 1 March 1995 (S/L/3) and the recommendations of the Working Party on Professional Services contained in document S/WPPS/4.*

*Decides as follows,*

1. To adopt the text of the Disciplines on Domestic Regulation in the Accountancy Sector contained in document S/WPPS/W/21. These disciplines are to be applicable to Members who have entered specific commitments on accountancy in their schedules.
2. The Working Party on Professional Services shall continue its work pursuant to the terms of reference contained in the Decision on Professional Services (S/L/3) taking account of any decisions which may be taken in the Council regarding work on Article VI:4. In doing so the Working Party shall aim to develop general disciplines for professional services, while retaining the possibility to develop or revise sectoral disciplines, including accountancy. No later than the conclusion of the forthcoming round of services negotiations, the disciplines developed by the WPPS are intended to be integrated into the General Agreement on Trade in Services (GATS).
3. Commencing immediately and continuing until the formal integration of these disciplines into the GATS, Members shall, to the fullest extent consistent with their existing legislation, not take measures which would be inconsistent with these disciplines.

## DISCIPLINES ON DOMESTIC REGULATION IN THE ACCOUNTANCY SECTOR

Adopted by the Council for Trade in Services on 14 December 1998

### **I. OBJECTIVES**

1. Having regard to the Ministerial Decision on Professional Services, Members have agreed to the following disciplines elaborating upon the provisions of the GATS relating to domestic regulation of the sector. The purpose of these disciplines is to facilitate trade in accountancy services by ensuring that domestic regulations affecting trade in accountancy services meet the requirements of Article VI:4 of the GATS. The disciplines therefore do not address measures subject to scheduling under Articles XVI and XVII of the GATS, which restrict access to the domestic market or limit the application of national treatment to foreign suppliers. Such measures are addressed in the GATS through the negotiation and scheduling of specific commitments.

### **II. GENERAL PROVISIONS**

2. Members shall ensure that measures not subject to scheduling under Articles XVI or XVII of the GATS,<sup>1</sup> relating to licensing requirements and procedures, technical standards and qualification requirements and procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in accountancy services. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, *inter alia*, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, and the integrity of the profession.

### **III. TRANSPARENCY**

3. Members shall make publicly available, including through the enquiry and contact points established under Articles III and IV of the GATS, the names and addresses of competent authorities (i.e. governmental or non-governmental entities responsible for the licensing of professionals or firms, or accounting regulations).

4. Members shall make publicly available, or shall ensure that their competent authorities make publicly available, including through the enquiry and contact points:

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<sup>1</sup> The text of GATS Articles XVI and XVII is reproduced in an appendix to this document.

- (a) where applicable, information describing the activities and professional titles which are regulated or which must comply with specific technical standards;
- (b) requirements and procedures to obtain, renew or retain any licences or professional qualifications and the competent authorities' monitoring arrangements for ensuring compliance;
- (c) information on technical standards; and
- (d) upon request, confirmation that a particular professional or firm is licensed to practise within their jurisdiction.

5. Members shall inform another Member, upon request, of the rationale behind domestic regulatory measures in the accountancy sector, in relation to legitimate objectives as referred to in paragraph 2.

6. When introducing measures which significantly affect trade in accountancy services, Members shall endeavour to provide opportunity for comment, and give consideration to such comments, before adoption.

7. Details of procedures for the review of administrative decisions, as provided for by Article VI:2 of the GATS, shall be made public, including the prescribed time-limits, if any, for requesting such a review.

#### **IV. LICENSING REQUIREMENTS**

8. Licensing requirements (i.e. the substantive requirements, other than qualification requirements, to be satisfied in order to obtain or renew an authorization to practice) shall be pre-established, publicly available and objective.

9. Where residency requirements not subject to scheduling under Article XVII of the GATS exist, Members shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were set, taking into account costs and local conditions.

10. Where membership of a professional organisation is required, in order to fulfil a legitimate objective in accordance with paragraph 2, Members shall ensure that the terms for membership are reasonable, and do not include conditions or pre-conditions unrelated to the fulfilment of such an objective. Where membership of a professional organization is required as a prior condition for application for a licence (i.e. an authorization to practice), the period of membership imposed before the application may be submitted shall be kept to a minimum.

11. Members shall ensure that the use of firm names is not restricted, save in fulfilment of a legitimate objective.

12. Members shall ensure that requirements regarding professional indemnity insurance for foreign applicants take into account any existing insurance coverage, in so far as it covers activities in its territory or the relevant jurisdiction in its territory and is consistent with the legislation of the host Member.

13. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations. A concessional fee for applicants from developing countries may be considered.

## **V. LICENSING PROCEDURES**

14. Licensing procedures (i.e. the procedures to be followed for the submission and processing of an application for an authorization to practise) shall be pre-established, publicly available and objective, and shall not in themselves constitute a restriction on the supply of the service.

15. Application procedures and the related documentation shall be not more burdensome than necessary to ensure that applicants fulfil qualification and licensing requirements. For example, competent authorities shall not require more documents than are strictly necessary for the purpose of licensing, and shall not impose unreasonable requirements regarding the format of documentation. Where minor errors are made in the completion of applications, applicants shall be given the opportunity to correct them. The establishment of the authenticity of documents shall be sought through the least burdensome procedure and, wherever possible, authenticated copies should be accepted in place of original documents.

16. Members shall ensure that the receipt of an application is acknowledged promptly by the competent authority, and that applicants are informed without undue delay in cases where the application is incomplete. The competent authority shall inform the applicant of the decision concerning the completed application within a reasonable time after receipt, in principle within six months, separate from any periods in respect of qualification procedures referred to below.

17. On request, an unsuccessful applicant shall be informed of the reasons for rejection of the application. An applicant shall be permitted, within reasonable limits, to resubmit applications for licensing.

18. A licence, once granted, shall enter into effect immediately, in accordance with the terms and conditions specified therein.

## **VI. QUALIFICATION REQUIREMENTS**

19. A Member shall ensure that its competent authorities take account of qualifications acquired in the territory of another Member, on the basis of equivalency of education, experience and/or examination requirements.

20. The scope of examinations and of any other qualification requirements shall be limited to subjects relevant to the activities for which authorization is sought. Qualification requirements may include education, examinations, practical training, experience and language skills.

21. Members note the role which mutual recognition agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.

## **VII. QUALIFICATION PROCEDURES**

22. Verification of an applicant's qualifications acquired in the territory of another Member shall take place within a reasonable time-frame, in principle within six months and, where applicants' qualifications fall short of requirements, shall result in a decision which identifies additional qualifications, if any, to be acquired by the applicant.

23. Examinations shall be scheduled at reasonably frequent intervals, in principle at least once a year, and shall be open for all eligible applicants, including foreign and foreign-qualified applicants. Applicants shall be allowed a reasonable period for the submission of applications. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations. A concessional fee for applicants from developing countries may be considered.

24. Residency requirements not subject to scheduling under Article XVII of the GATS shall not be required for sitting examinations.

## **VIII. TECHNICAL STANDARDS**

25. Members shall ensure that measures relating to technical standards are prepared, adopted and applied only to fulfil legitimate objectives.

26. In determining whether a measure is in conformity with the obligations under paragraph 2, account shall be taken of internationally recognized standards of relevant international organizations<sup>2</sup> applied by that Member.

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<sup>2</sup> The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

## APPENDIX

For the purpose of clarity, the text of GATS Articles XVI and XVII is reproduced below.

### Article XVI

#### Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.<sup>3</sup>

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>4</sup>
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign share-holding or the total value of individual or aggregate foreign investment.

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<sup>3</sup> If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

<sup>4</sup> Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

## Article XVII

### National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.<sup>5</sup>
2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

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<sup>5</sup> Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service supplies.

## GUIDELINES FOR MUTUAL RECOGNITION AGREEMENTS OR ARRANGEMENTS IN THE ACCOUNTANCY SECTOR

### Introduction

This document provides practical guidance for governments, negotiating entities or other entities entering into mutual recognition negotiations on accountancy services. These guidelines are non-binding and are intended to be used by Members on a voluntary basis, and cannot modify the rights or obligations of the Members of the WTO.

The objective of these guidelines is to make it easier for parties to negotiate recognition agreements and for third parties to negotiate their accession to such agreements or to negotiate comparable ones. The most common way to achieve recognition has been through bilateral agreements. Article VII of the GATS recognises this as permissible. There are differences in education and examination standards, experience requirements, regulatory influence and various other matters, all of which make implementing recognition on a multilateral basis extremely difficult. Bilateral negotiations will enable those involved to focus on the key issues related to their two environments. Once bilateral agreements have been achieved, however, this can lead to other bilateral agreements, which will ultimately extend mutual recognition more broadly.

Where autonomous recognition is granted, it is suggested that the WTO be informed of the relevant elements in these guidelines for transparency purposes. Such elements could include, for example, those covered in sections B.3, B.4(a) and (b), B.5 and B.6.

The examples listed under the various sections of these guidelines are provided by way of illustration. The listing of these examples is indicative and is intended neither to be exhaustive nor as an endorsement of the application of such measures by WTO Members.

### A. Conduct of negotiations and relevant obligations under the GATS

*With reference to the obligations of WTO Members under Article VII of the GATS, this section sets out points considered useful in the discharge of these obligations. A copy of Article VII is annexed to these guidelines.*

#### 1. Opening of negotiations

The information supplied to the WTO should include the following:

the intent to enter into negotiations;

- the entities involved in discussions (e.g. governments, national organisations in the accountancy sector or institutes which have authority - statutory or otherwise - to enter into such negotiations);
- a contact point to obtain further information;
- subject of negotiations (specific activity covered);
- the expected time of the start of negotiations and an indicative date for the expression of interest by third parties.

## 2. Results

On conclusion of an MRA, the information supplied should include the following:

- the content of the agreement (if a new agreement);
- significant modifications to the agreement (if an agreement already exists).

## 3. Follow-up actions

For WTO Members supplying information under paragraph (1) above, follow-up actions include ensuring that:

- the conduct of negotiations and the agreement itself comply with the provisions of GATS - in particular Article VII;
- they adopt any measures and undertake any action required to ensure the implementation and monitoring of the agreement, on their own account, and by the competent authorities, or, in pursuance of Article I of the GATS, encourage adoption of such measures and action by relevant sub-national authorities and by other organisations;
- they respond promptly to requests from other WTO Members seeking to enter into MRA negotiations.

## 4. Single negotiating entity

Where no single negotiating entity exists, Members are encouraged to establish one.

## B. Form and content of agreement

*This section sets out various issues that may be addressed in any negotiations and, if so agreed, included in the final agreement. It includes some basic ideas on what a Member might require of foreign professionals seeking to take advantage of an MRA.*

## 1. Participants

The MRA should identify clearly:

- the parties to the agreement (for example, governments, national accountancy organisations or institutes);
- competent authorities or organisations other than the parties to the agreement, if any, and their position in relation to the agreement;
- the status and area of competence of each party to the agreement.

## 2. Purpose of agreement

The purpose of the MRA should be clearly stated.

## 3. Scope of agreement

The MRA should set out clearly:

- the scope of the agreement in terms of the specific accountancy professions or titles and professional activities it covers in the territories of the parties;
- who is entitled to use the professional titles concerned;
- whether the recognition mechanism is based on qualifications, or on the licence obtained in the country of origin, or some other requirement;
- whether the agreement covers temporary and/or permanent access to the profession concerned.

## 4. Mutual recognition provisions

The MRA should clearly specify the conditions to be met for recognition in the territories of each party and the level of equivalence agreed between the parties. The precise terms of the agreement will depend on the basis on which the MRA is founded, as discussed above. In case the requirements of the various sub-central jurisdictions of a party to an MRA are not identical, the difference should be clearly presented. The agreement should address the applicability of the recognition granted by one sub-central jurisdiction in the other sub-central jurisdictions of the party.

### (a) Eligibility for recognition

#### (i) *Qualifications*

If the MRA is based on recognition of qualifications, then it should, where applicable, state:

- the minimum level of education required (entry requirements, length of study, subjects studied);
- the minimum level of experience required (location, length and conditions of practical training or supervised professional practice prior to licensing, framework of ethical and disciplinary standards);
- examinations passed (esp. examinations of professional competence);
- the extent to which home country qualifications are recognised in the host country;
- the qualifications which the parties are prepared to recognise, for instance, by listing particular diplomas or certificates issued by certain institutions, or by reference to particular minimum requirements to be certified by the authorities of the country of origin, including whether the possession of a certain level of qualification would allow recognition for some activities but not others.

(ii) *Registration*

If the MRA is based on recognition of the licensing or registration decision made by regulators in the country of origin, it should specify the mechanism by which eligibility for such recognition may be established.

(b) Additional requirements for recognition in the host state (“compensatory measures”)

Where it is considered necessary to provide for additional requirements, in order to ensure the quality of the service, the MRA should set out the conditions under which those requirements may apply, e.g. in case of shortcomings in relation to qualification requirements in the host country or knowledge of local law, practice, standards and regulations. This knowledge should be essential for practice in the host jurisdiction or required because there are differences in the scope of licensed practice.

Where additional requirements are deemed necessary, the MRA should set out in detail what they entail (for example, examination, aptitude test, additional practice in the host country or in the country of origin, practical training, language used for examination).

5. Mechanisms for implementation

The MRA should state:

- the rules and procedures to be used to monitor and enforce the provisions of the agreement;
- the mechanisms for dialogue and administrative co-operation between the parties;
- the means of arbitration for disputes under the MRA.

As a guide to the treatment of individual applicants, the MRA should include details on:

- the focal point of contact in each party for information on all issues relevant to the application (name and address of competent authorities, licensing formalities, information on additional requirements which need to be met in the host country etc.);
- the length of procedures for the processing of applications by the relevant authorities of the host country;
- the documentation required of applicants and the form in which it should be presented and any time limits for applications;
- acceptance of documents and certificates issued in the country of origin in relation to qualifications and licensing;
- the procedures of appeal to or review by the relevant authorities;
- any fees that might be reasonably required.

The MRA should also include the following commitments:

- that requests about the measures will be promptly dealt with;
- that adequate preparation time will be provided where necessary;
- that any exams or tests will be arranged with reasonable periodicity;
- that fees to applicants seeking to take advantage of the terms of the MRA will be in proportion to the cost to the host country or organisation;
- that information on any assistance programmes in the host country for practical training, and any commitments of the host country in that context be supplied.

## 6. Licensing and other provisions in the host country

Where applicable:

- the MRA should also set out the means by which, and the conditions under which, a licence is actually obtained following the establishment of eligibility, and what this licence entails (a licence and its content, membership of a professional body, use of professional and/or academic titles etc.). Any licensing requirements other than qualifications should be explained, e.g.:
  - an office address, an establishment requirement or a residency requirement;
  - a language requirement;
  - proof of good conduct and financial standing;
  - professional indemnity insurance;
  - compliance with host country's requirements for use of trade/firm names;
  - compliance with host country ethics (for instance independence and incompatibility).
- in order to ensure the transparency of the system, the MRA should include the following details for each party:
  - the relevant laws and regulations to be applied (disciplinary action, financial responsibility, liability, etc.);
  - the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential limitations on the professionals;
  - the means for ongoing verification of competence;
  - the criteria for and procedures relating to revocation of the registration of professionals;
  - regulations relating to any nationality and residency requirements needed for the purposes of the MRA.

## 7. Revision of the agreement

If the MRA includes terms under which it can be reviewed or revoked, the details should be clearly stated.

## ANNEX

### *Article VII*

#### *Recognition*

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized.
3. A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.
4. Each Member shall:
  - (a) within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;
  - (b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase;
  - (c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

## Negotiating Group on Basic Telecommunications

24 April 1996

### REFERENCE PAPER

#### Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

#### Definitions

**Users** mean service consumers and service suppliers.

**Essential facilities** mean facilities of a public telecommunications transport network or service that

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

**A major supplier** is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

#### 1. Competitive safeguards

##### 1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

##### 1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and

- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

## **2. Interconnection**

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

### **2.2 Interconnection to be ensured**

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

### **2.3 Public availability of the procedures for interconnection negotiations**

The procedures applicable for interconnection to a major supplier will be made publicly available.

### **2.4 Transparency of interconnection arrangements**

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

### **2.5 Interconnection: dispute settlement**

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or

(b) after a reasonable period of time which has been made publicly known to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

### 3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

### 4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and
- (b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

### 5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

### 6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

## Appendix V

# Agreement on Government Procurement

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*Parties to this Agreement* (hereinafter referred to as “Parties”),

*Recognizing* the need for an effective multilateral framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

*Recognizing* that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and services and to foreign or domestic suppliers so as to afford protection to domestic products or services or domestic suppliers and should not discriminate among foreign products or services or among foreign suppliers;

*Recognizing* that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement;

*Recognizing* the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level;

*Recognizing* the need to take into account the development, financial and trade needs of developing countries, in particular the least-developed countries;

*Desiring*, in accordance with paragraph 6(b) of Article IX of the Agreement on Government Procurement done on 12 April 1979, as amended on 2 February 1987, to broaden and improve the Agreement on the basis of mutual reciprocity and to expand the coverage of the Agreement to include service contracts;

*Desiring* to encourage acceptance of and accession to this Agreement by governments not party to it;

*Having undertaken* further negotiations in pursuance of these objectives;

Hereby *agree* as follows:

## Article I

### Scope and Coverage

1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement by entities covered by this Agreement, as specified in Appendix I.<sup>1</sup>
2. This Agreement applies to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of products and services.
3. Where entities, in the context of procurement covered under this Agreement, require enterprises not included in Appendix I to award contracts in accordance with particular requirements, Article III shall apply *mutatis mutandis* to such requirements.
4. This Agreement applies to any procurement contract of a value of not less than the relevant threshold specified in Appendix I.

## Article II

### Valuation of Contracts

1. The following provisions shall apply in determining the value of contracts<sup>2</sup> for purposes of implementing this Agreement.
2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.
3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Agreement.
4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:

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<sup>1</sup> For each Party, Appendix I is divided into five Annexes:

- Annex 1 contains central government entities.
- Annex 2 contains sub-central government entities.
- Annex 3 contains all other entities that procure in accordance with the provisions of this Agreement.
- Annex 4 specifies services, whether listed positively or negatively, covered by this Agreement.
- Annex 5 specifies covered construction services.

Relevant thresholds are specified in each Party's Annexes.

<sup>2</sup> This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article IX.

- (a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or
- (b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

5. In cases of contracts for the lease, rental or hire purchase of products or services, or in the case of contracts which do not specify a total price, the basis for valuation shall be:

- (a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value;
- (b) in the case of contracts for an indefinite period, the monthly instalment multiplied by 48.

If there is any doubt, the second basis for valuation, namely (b), is to be used.

6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

### *Article III*

#### *National Treatment and Non-discrimination*

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than:

- (a) that accorded to domestic products, services and suppliers; and
- (b) that accorded to products, services and suppliers of any other Party.

2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure:

- (a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and
- (b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV.

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement.

#### *Article IV*

##### *Rules of Origin*

1. A Party shall not apply rules of origin to products or services imported or supplied for purposes of government procurement covered by this Agreement from other Parties, which are different from the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same products or services from the same Parties.

2. Following the conclusion of the work programme for the harmonization of rules of origin for goods to be undertaken under the Agreement on Rules of Origin in Annex 1A of the Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement") and negotiations regarding trade in services, Parties shall take the results of that work programme and those negotiations into account in amending paragraph 1 as appropriate.

#### *Article V*

##### *Special and Differential Treatment for Developing Countries*

##### *Objectives*

1. Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular least-developed countries, in their need to:

- (a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;
- (b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;
- (c) support industrial units so long as they are wholly or substantially dependent on government procurement; and

- (d) encourage their economic development through regional or global arrangements among developing countries presented to the Ministerial Conference of the World Trade Organization (hereinafter referred to as the "WTO") and not disapproved by it.

2. Consistently with the provisions of this Agreement, each Party shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of least-developed countries and of those countries at low stages of economic development.

#### *Coverage*

3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 shall be duly taken into account in the course of negotiations with respect to the procurement of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their coverage lists under the provisions of this Agreement, shall endeavour to include entities procuring products and services of export interest to developing countries.

#### *Agreed Exclusions*

4. A developing country may negotiate with other participants in negotiations under this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in subparagraphs 1(a) through 1(c) shall be duly taken into account. A developing country participating in regional or global arrangements among developing countries referred to in subparagraph 1(d) may also negotiate exclusions to its lists, having regard to the particular circumstances of each case, taking into account, *inter alia*, the provisions on government procurement provided for in the regional or global arrangements concerned and, in particular, products or services which may be subject to common industrial development programmes.

5. After entry into force of this Agreement, a developing country Party may modify its coverage lists in accordance with the provisions for modification of such lists contained in paragraph 6 of Article XXIV, having regard to its development, financial and trade needs, or may request the Committee on Government Procurement (hereinafter referred to as "the Committee") to grant exclusions from the rules on national treatment for certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraphs 1(a) through 1(c).

After entry into force of this Agreement, a developing country Party may also request the Committee to grant exclusions for certain entities, products or services that are included in its coverage lists in the light of its participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraph 1(d). Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.

6. Paragraphs 4 and 5 shall apply *mutatis mutandis* to developing countries acceding to this Agreement after its entry into force.

7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 shall be subject to review in accordance with the provisions of paragraph 14 below.

#### *Technical Assistance for Developing Country Parties*

8. Each developed country Party shall, upon request, provide all technical assistance which it may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.

9. This assistance, which shall be provided on the basis of non-discrimination among developing country Parties, shall relate, *inter alia*, to:

- the solution of particular technical problems relating to the award of a specific contract; and
- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.

10. Technical assistance referred to in paragraphs 8 and 9 would include translation of qualification documentation and tenders made by suppliers of developing country Parties into an official language of the WTO designated by the entity, unless developed country Parties deem translation to be burdensome, and in that case explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.

#### *Information Centres*

11. Developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, *inter alia*, laws, regulations, procedures and practices regarding government procurement, notices about intended procurements which have been published, addresses of the entities covered by this Agreement, and the

nature and volume of products or services procured or to be procured, including available information about future tenders. The Committee may also set up an information centre.

#### *Special Treatment for Least-Developed Countries*

12. Having regard to paragraph 6 of the Decision of the CONTRACTING PARTIES to GATT 1947 of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203-205), special treatment shall be granted to least-developed country Parties and to the suppliers in those Parties with respect to products or services originating in those Parties, in the context of any general or specific measures in favour of developing country Parties. A Party may also grant the benefits of this Agreement to suppliers in least-developed countries which are not Parties, with respect to products or services originating in those countries.

13. Each developed country Party shall, upon request, provide assistance which it may deem appropriate to potential tenderers in least-developed countries in submitting their tenders and selecting the products or services which are likely to be of interest to its entities as well as to suppliers in least-developed countries, and likewise assist them to comply with technical regulations and standards relating to products or services which are the subject of the intended procurement.

#### *Review*

14. The Committee shall review annually the operation and effectiveness of this Article and, after each three years of its operation on the basis of reports to be submitted by Parties, shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article III, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 through 6 of this Article shall be modified or extended.

15. In the course of further rounds of negotiations in accordance with the provisions of paragraph 7 of Article XXIV, each developing country Party shall give consideration to the possibility of enlarging its coverage lists, having regard to its economic, financial and trade situation.

### *Article VI*

#### *Technical Specifications*

1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions,

symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

2. Technical specifications prescribed by procuring entities shall, where appropriate:

- (a) be in terms of performance rather than design or descriptive characteristics; and
- (b) be based on international standards, where such exist; otherwise, on national technical regulations<sup>3</sup>, recognized national standards<sup>4</sup>, or building codes.

3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as “or equivalent” are included in the tender documentation.

4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

## *Article VII*

### *Tendering Procedures*

1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.

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<sup>3</sup> For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

<sup>4</sup> For the purpose of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.
3. For the purposes of this Agreement:
  - (a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.
  - (b) Selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, those suppliers invited to do so by the entity may submit a tender.
  - (c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.

### *Article VIII*

#### *Qualification of Suppliers*

In the process of qualifying suppliers, entities shall not discriminate among suppliers of other Parties or between domestic suppliers and suppliers of other Parties. Qualification procedures shall be consistent with the following:

- (a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;
- (b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of other Parties than to domestic suppliers and shall not discriminate among suppliers of other Parties. The financial, commercial and technical capacity of a supplier shall be judged on the basis both of that supplier's global business activity as well as of its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations;
- (c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off a suppliers' list or from being considered for a particular intended procurement. Entities shall

recognize as qualified suppliers such domestic suppliers or suppliers of other Parties who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;

- (d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;
- (e) if, after publication of the notice under paragraph 1 of Article IX, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;
- (f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;
- (g) each Party shall ensure that:
  - (i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and
  - (ii) efforts be made to minimize differences in qualification procedures between entities.
- (h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

### *Article IX*

#### *Invitation to Participate Regarding Intended Procurement*

1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II.

2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.

3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.

4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.

5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article XVIII and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.

6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:

- (a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured;
- (b) whether the procedure is open or selective or will involve negotiation;
- (c) any date for starting delivery or completion of delivery of goods or services;
- (d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;
- (e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (f) any economic and technical requirements, financial guarantees and information required from suppliers;
- (g) the amount and terms of payment of any sum payable for the tender documentation; and

- (h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:

- (a) a statement that interested suppliers should express their interest in the procurement to the entity;
- (b) a contact point with the entity from which further information may be obtained.

8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:

- (a) the subject matter of the contract;
- (b) the time-limits set for the submission of tenders or an application to be invited to tender; and
- (c) the addresses from which documents relating to the contracts may be requested.

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Appendix III a notice of the following:

- (a) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;
- (b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and
- (c) the period of validity of the lists, and the formalities for their renewal.

When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:

- (d) the nature of the products or services concerned;
- (e) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that

further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.

10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.

#### *Article X*

##### *Selection Procedures*

1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.

3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

4. Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile.

#### *Article XI*

##### *Time-limits for Tendering and Delivery*

##### *General*

1. (a) Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before

the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.

- (b) Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.

### *Deadlines*

- 2. Except in so far as provided in paragraph 3,
  - (a) in open procedures, the period for the receipt of tenders shall not be less than 40 days from the date of publication referred to in paragraph 1 of Article IX;
  - (b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 25 days from the date of publication referred to in paragraph 1 of Article IX; the period for receipt of tenders shall in no case be less than 40 days from the date of issuance of the invitation to tender;
  - (c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than 40 days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication referred to in paragraph 1 of Article IX.
- 3. The periods referred to in paragraph 2 may be reduced in the circumstances set out below:
  - (a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:
    - (i) as much of the information referred to in paragraph 6 of Article IX as is available;
    - (ii) the information referred to in paragraph 8 of Article IX;
    - (iii) a statement that interested suppliers should express their interest in the procurement to the entity; and
    - (iv) a contact point with the entity from which further information may be obtained,

the 40-day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than 10 days;

- (b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 40-day limit for receipt of tenders may be reduced to not less than 24 days;
- (c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than 10 days from the date of the publication referred to in paragraph 1 of Article IX; or
- (d) the period referred to in paragraph 2(c) may, for procurements by entities listed in Annexes 2 and 3, be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.

4. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.

## *Article XII*

### *Tender Documentation*

1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the WTO.

2. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for paragraph 6(g) of Article IX, and the following:

- (a) the address of the entity to which tenders should be sent;
- (b) the address where requests for supplementary information should be sent;
- (c) the language or languages in which tenders and tendering documents must be submitted;
- (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;

- (e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;
- (f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;
- (g) a complete description of the products or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;
- (h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of products or services of other Parties, customs duties and other import charges, taxes and currency of payment;
- (i) the terms of payment;
- (j) any other terms or conditions;
- (k) in accordance with Article XVII the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of that Article, will be entertained.

#### *Forwarding of Tender Documentation by the Entities*

3. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.
- (b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate, and shall reply promptly to any reasonable request for explanations relating thereto.
- (c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

#### *Article XIII*

##### *Submission, Receipt and Opening of Tenders and Awarding of Contracts*

1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

- (a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or facsimile are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or facsimile. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or facsimile shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and
- (b) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

*Receipt of Tenders*

2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.

*Opening of Tenders*

3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

*Award of Contracts*

4. (a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.
- (b) Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined

to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.

- (c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

#### *Option Clauses*

5. Option clauses shall not be used in a manner which circumvents the provisions of the Agreement.

### *Article XIV*

#### *Negotiation*

1. A Party may provide for entities to conduct negotiations:
  - (a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in paragraph 2 of Article IX (the invitation to suppliers to participate in the procedure for the proposed procurement); or
  - (b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.
2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.
3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.
4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:
  - (a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;
  - (b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;
  - (c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and

- (d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.

*Article XV*

*Limited Tendering*

1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of other Parties or protection to domestic producers or suppliers:

- (a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;
- (b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
- (c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;
- (d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services<sup>5</sup>;
- (e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for

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<sup>5</sup> It is the understanding that "existing equipment" includes software to the extent that the initial procurement of the software was covered by the Agreement.

- research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products or services shall be subject to Articles VII through XIV<sup>6</sup>;
- (f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract;
  - (g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;
  - (h) for products purchased on a commodity market;
  - (i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers;
  - (j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.

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<sup>6</sup> Original development of a first product or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

*Article XVI*

*Offsets*

1. Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.<sup>7</sup>

2. Nevertheless, having regard to general policy considerations, including those relating to development, a developing country may at the time of accession negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. Conditions shall be objective, clearly defined and non-discriminatory. They shall be set forth in the country's Appendix I and may include precise limitations on the imposition of offsets in any contract subject to this Agreement. The existence of such conditions shall be notified to the Committee and included in the notice of intended procurement and other documentation.

*Article XVII*

*Transparency*

1. Each Party shall encourage entities to indicate the terms and conditions, including any deviations from competitive tendering procedures or access to challenge procedures, under which tenders will be entertained from suppliers situated in countries not Parties to this Agreement but which, with a view to creating transparency in their own contract awards, nevertheless:

- (a) specify their contracts in accordance with Article VI (technical specifications);
- (b) publish the procurement notices referred to in Article IX, including, in the version of the notice referred to in paragraph 8 of Article IX (summary of

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<sup>7</sup> Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.

the notice of intended procurement) which is published in an official language of the WTO, an indication of the terms and conditions under which tenders shall be entertained from suppliers situated in countries Parties to this Agreement;

- (c) are willing to ensure that their procurement regulations shall not normally change during a procurement and, in the event that such change proves unavoidable, to ensure the availability of a satisfactory means of redress.

2. Governments not Parties to the Agreement which comply with the conditions specified in paragraphs 1(a) through 1(c), shall be entitled if they so inform the Parties to participate in the Committee as observers.

### *Article XVIII*

#### *Information and Review as Regards Obligations of Entities*

1. Entities shall publish a notice in the appropriate publication listed in Appendix II not later than 72 days after the award of each contract under Articles XIII through XV. These notices shall contain:

- (a) the nature and quantity of products or services in the contract award;
- (b) the name and address of the entity awarding the contract;
- (c) the date of award;
- (d) the name and address of winning tenderer;
- (e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract;
- (f) where appropriate, means of identifying the notice issued under paragraph 1 of Article IX or justification according to Article XV for the use of such procedure; and
- (g) the type of procedure used.

2. Each entity shall, on request from a supplier of a Party, promptly provide:

- (a) an explanation of its procurement practices and procedures;
- (b) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and

- (c) to an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.

3. Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.

4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

### *Article XIX*

#### *Information and Review as Regards Obligations of Parties*

1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, in the appropriate publications listed in Appendix IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to any other Party its government procurement procedures.

2. The government of an unsuccessful tenderer which is a Party to this Agreement may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.

3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to any other Party.

4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the

legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the party providing the information.

5. Each Party shall collect and provide to the Committee on an annual basis statistics on its procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:

- (a) for entities in Annex 1, statistics on the estimated value of contracts awarded, both above and below the threshold value, on a global basis and broken down by entities; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities;
- (b) for entities in Annex 1, statistics on the number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;
- (c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded under each of the cases of Article XV; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value under each of the cases of Article XV; and
- (d) for entities in Annex 1, statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.

To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its entities. With a view to ensuring that such statistics are comparable, the Committee shall provide guidance on methods to be used. With a view to ensuring effective monitoring of procurement covered by this Agreement, the Committee may decide unanimously to modify the requirements of subparagraphs (a) through (d) as regards the nature and the extent of statistical information to be provided and the breakdowns and classifications to be used.

*Article XX*

*Challenge Procedures*

*Consultations*

1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

*Challenge*

2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.

3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.

6. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) participants can be heard before an opinion is given or a decision is reached;
- (b) participants can be represented and accompanied;
- (c) participants shall have access to all proceedings;
- (d) proceedings can take place in public;
- (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;

- (f) witnesses can be presented;
  - (g) documents are disclosed to the review body.
7. Challenge procedures shall provide for:
- (a) rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;
  - (b) an assessment and a possibility for a decision on the justification of the challenge;
  - (c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.
8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

#### *Article XXI*

##### *Institutions*

1. A Committee on Government Procurement composed of representatives from each of the Parties shall be established. This Committee shall elect its own Chairman and Vice-Chairman and shall meet as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.
2. The Committee may establish working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

#### *Article XXII*

##### *Consultations and Dispute Settlement*

1. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the "Dispute Settlement Understanding") shall be applicable except as otherwise specifically provided below.

2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body established under the Dispute Settlement Understanding (hereinafter referred to as “DSB”), as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.

3. The DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible, provided that only Members of the WTO Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement.

4. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days of the establishment of the panel:

“To examine, in the light of the relevant provisions of this Agreement and of (name of any other covered Agreement cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in this Agreement.”

In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, paragraph 3 shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement.

5. Panels established by the DSB to examine disputes under this Agreement shall include persons qualified in the area of government procurement.

6. Every effort shall be made to accelerate the proceedings to the greatest extent possible. Notwithstanding the provisions of paragraphs 8 and 9 of Article 12 of the Dispute Settlement Understanding, the panel shall attempt to provide its final report to the parties to the dispute not later than four months, and in case of delay not later than seven months, after the date on which the composition and terms of reference of

the panel are agreed. Consequently, every effort shall be made to reduce also the periods foreseen in paragraph 1 of Article 20 and paragraph 4 of Article 21 of the Dispute Settlement Understanding by two months. Moreover, notwithstanding the provisions of paragraph 5 of Article 21 of the Dispute Settlement Understanding, the panel shall attempt to issue its decision, in case of a disagreement as to the existence or consistency with a covered Agreement of measures taken to comply with the recommendations and rulings, within 60 days.

7. Notwithstanding paragraph 2 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in the said Appendix 1.

#### *Article XXIII*

##### *Exceptions to the Agreement*

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.

#### *Article XXIV*

##### *Final Provisions*

##### *1. Acceptance and Entry into Force*

This Agreement shall enter into force on 1 January 1996 for those governments<sup>8</sup> whose agreed coverage is contained in Annexes 1 through 5 of

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<sup>8</sup> For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Communities.

Appendix I of this Agreement and which have, by signature, accepted the Agreement on 15 April 1994 or have, by that date, signed the Agreement subject to ratification and subsequently ratified the Agreement before 1 January 1996.

## 2. *Accession*

Any government which is a Member of the WTO, or prior to the date of entry into force of the WTO Agreement which is a contracting party to GATT 1947, and which is not a Party to this Agreement may accede to this Agreement on terms to be agreed between that government and the Parties. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession which states the terms so agreed. The Agreement shall enter into force for an acceding government on the 30th day following the date of its accession to the Agreement.

## 3. *Transitional Arrangements*

- (a) Hong Kong and Korea may delay application of the provisions of this Agreement, except Articles XXI and XXII, to a date not later than 1 January 1997. The commencement date of their application of the provisions, if prior to 1 January 1997, shall be notified to the Director-General of the WTO 30 days in advance.
- (b) During the period between the date of entry into force of this Agreement and the date of its application by Hong Kong, the rights and obligations between Hong Kong and all other Parties to this Agreement which were on 15 April 1994 Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (the "1988 Agreement") shall be governed by the substantive<sup>9</sup> provisions of the 1988 Agreement, including its Annexes as modified or rectified, which provisions are incorporated herein by reference for that purpose and shall remain in force until 31 December 1996.
- (c) Between Parties to this Agreement which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement.
- (d) Article XXII shall not enter into force until the date of entry into force of the WTO Agreement. Until such time, the provisions of Article VII of the 1988 Agreement shall apply to consultations and dispute settlement under this Agreement, which provisions are hereby incorporated in the Agreement by reference for that purpose. These provisions shall be applied under the auspices of the Committee under this Agreement.

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<sup>9</sup> All provisions of the 1988 Agreement except the Preamble, Article VII and Article IX other than paragraphs 5(a) and (b) and paragraph 10.

- (e) Prior to the date of entry into force of the WTO Agreement, references to WTO bodies shall be construed as referring to the corresponding GATT body and references to the Director-General of the WTO and to the WTO Secretariat shall be construed as references to, respectively, the Director-General to the CONTRACTING PARTIES to GATT 1947 and to the GATT Secretariat.

#### 4. *Reservations*

Reservations may not be entered in respect of any of the provisions of this Agreement.

#### 5. *National Legislation*

- (a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its lists annexed hereto, with the provisions of this Agreement.
- (b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

#### 6. *Rectifications or Modifications*

- (a) Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.
- (b) Where a Party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no

sooner than 30 days from the date of notification and no objection has been made. In the event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII. In considering the proposed modification to Appendix I and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence.

#### 7. *Reviews, Negotiations and Future Work*

- (a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the General Council of the WTO of developments during the periods covered by such reviews.
- (b) Not later than the end of the third year from the date of entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions of Article V relating to developing countries.
- (c) Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under subparagraph (b), seek to eliminate those which remain on the date of entry into force of this Agreement.

#### 8. *Information Technology*

With a view to ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress, Parties shall consult regularly in the Committee regarding developments in the use of information technology in government procurement and shall, if necessary, negotiate modifications to the Agreement. These consultations shall in particular aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. When a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential problems.

#### 9. *Amendments*

Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred

in accordance with the procedures established by the Committee, shall not enter into force for any Party until it has been accepted by such Party.

10. *Withdrawal*

- (a) Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date on which written notice of withdrawal is received by the Director-General of the WTO. Any Party may upon such notification request an immediate meeting of the Committee.
- (b) If a Party to this Agreement does not become a Member of the WTO within one year of the date of entry into force of the WTO Agreement or ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect from the same date.

11. *Non-application of this Agreement between Particular Parties*

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

12. *Notes, Appendices and Annexes*

The Notes, Appendices and Annexes to this Agreement constitute an integral part thereof.

13. *Secretariat*

This Agreement shall be serviced by the WTO Secretariat.

14. *Deposit*

This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to paragraph 6 and of each amendment thereto pursuant to paragraph 9, and a notification of each acceptance thereof or accession thereto pursuant to paragraphs 1 and 2 and of each withdrawal therefrom pursuant to paragraph 10 of this Article.

15. *Registration*

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

*Done* at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices hereto.

NOTES

The terms “country” or “countries” as used in this Agreement, including the Appendices, are to be understood to include any separate customs territory Party to this Agreement.

In the case of a separate customs territory Party to this Agreement, where an expression in this Agreement is qualified by the term “national”, such expression shall be read as pertaining to that customs territory, unless otherwise specified.

*Article 1, paragraph 1*

Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to the untying of such aid, this Agreement does not apply to procurement made in furtherance of tied aid to developing countries so long as it is practised by Parties.

## Appendix VI

# WTO membership

(As of 31 July 1999, with dates of membership in WTO)

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Government	Entry into force Membership	Government	Entry into force Membership
Angola	1 December 1996	Cyprus	30 July 1995
Antigua and Barbuda	1 January 1995	Czech Republic	1 January 1995
Argentina	1 January 1995	Democratic Republic of the Congo	1 January 1997
Australia	1 January 1995	Denmark	1 January 1995
Austria	1 January 1995	Djibouti	31 May 1995
Bahrain	1 January 1995	Dominica	1 January 1995
Bangladesh	1 January 1995	Dominican Republic	9 March 1995
Barbados	1 January 1995	Ecuador	21 January 1996
Belgium	1 January 1995	Egypt	30 June 1995
Belize	1 January 1995	El Salvador	7 May 1995
Benin	22 February 1996	European Communities	1 January 1995
Bolivia	13 September 1995	Fiji	14 January 1996
Botswana	31 May 1995	Finland	1 January 1995
Brazil	1 January 1995	France	1 January 1995
Brunei Darussalam	1 January 1995	Gabon	1 January 1995
Bulgaria	1 December 1996	Gambia	23 October 1996
Burkina Faso	3 June 1995	Germany	1 January 1995
Burundi	23 July 1995	Ghana	1 January 1995
Cameroon	13 December 1995	Greece	1 January 1995
Canada	1 January 1995	Grenada	22 February 1996
Central African Republic	31 May 1995	Guatemala	21 July 1995
Chad	19 October 1996	Guinea Bissau	31 May 1995
Chile	1 January 1995	Guinea	25 October 1995
Colombia	30 April 1995	Guyana	1 January 1995
Congo	27 March 1997	Haiti	30 January 1996
Costa Rica	1 January 1995	Honduras	1 January 1995
Côte d'Ivoire	1 January 1995	Hong Kong, China	1 January 1995
Cuba	20 April 1995		

Government	Entry into force Membership	Government	Entry into force Membership
Hungary	1 January 1995	Panama	6 September 1997
Iceland	1 January 1995	Papua New Guinea	9 June 1996
India	1 January 1995	Paraguay	1 January 1995
Indonesia	1 January 1995	Peru	1 January 1995
Ireland	1 January 1995	Philippines	1 January 1995
Israel	21 April 1995	Poland	1 July 1995
Italy	1 January 1995	Portugal	1 January 1995
Jamaica	9 March 1995	Qatar	13 January 1996
Japan	1 January 1995	Romania	1 January 1995
Kenya	1 January 1995	Rwanda	22 May 1996
Korea	1 January 1995	Saint Kitts and Nevis	21 February 1996
Kuwait	1 January 1995	Saint Lucia	1 January 1995
Kyrgyzstan	20 December 1998	Saint Vincent & the Grenadines	1 January 1995
Latvia	10 February 1999	Senegal	1 January 1995
Lesotho	31 May 1995	Sierra Leone	23 July 1995
Liechtenstein	1 September 1995	Singapore	1 January 1995
Luxembourg	1 January 1995	Slovak Republic	1 January 1995
Macau	1 January 1995	Slovenia	30 July 1995
Madagascar	17 November 1995	Solomon Islands	26 July 1996
Malawi	31 May 1995	South Africa	1 January 1995
Malaysia	1 January 1995	Spain	1 January 1995
Maldives	31 May 1995	Sri Lanka	1 January 1995
Mali	31 May 1995	Suriname	1 January 1995
Malta	1 January 1995	Swaziland	1 January 1995
Mauritania	31 May 1995	Sweden	1 January 1995
Mauritius	1 January 1995	Switzerland	1 July 1995
Mexico	1 January 1995	Tanzania, United Rep. of	1 January 1995
Mongolia	29 January 1997	Thailand	1 January 1995
Morocco	1 January 1995	Togo	31 May 1995
Mozambique	26 August 1995	Trinidad and Tobago	1 March 1995
Myanmar	1 January 1995	Tunisia	29 March 1995
Namibia	1 January 1995	Turkey	26 March 1995
Netherlands - For the Kingdom in Europe and for the Netherlands Antilles	1 January 1995	Uganda	1 January 1995
New Zealand	1 January 1995	United Arab Emirates	10 April 1996
Nicaragua	3 September 1995	United Kingdom	1 January 1995
Niger	13 December 1996	United States	1 January 1995
Nigeria	1 January 1995	Uruguay	1 January 1995
Norway	1 January 1995	Venezuela	1 January 1995
Pakistan	1 January 1995	Zambia	1 January 1995
		Zimbabwe	3 March 1995

## Observer Governments

Albania	Ethiopia	Oman
Algeria	Former Yugoslav Republic of Macedonia	Russian Federation
Andorra	Georgia	Samoa
Armenia	Holy See (Vatican)	Saudi Arabia
Azerbaijan	Jordan	Seychelles
Belarus	Kazakhstan	Sudan
Bhutan	Lao People's Democratic Republic	Taiwan Province (China)
Bosnia and Herzegovina	Lebanon	Tonga
Cambodia	Lithuania	Ukraine
Cape Verde	Moldova	Uzbekistan
China	Nepal	Vanuatu
Croatia		Viet Nam
Estonia*		Yemen

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### Note:

All observer countries have applied to join WTO except the Holy See (Vatican) and, for the time being, Ethiopia, Cape Verde, Bhutan and Yemen. Estonia's application for membership was approved by the General Council in May 1997.

International organization observers in the General Council (observers in other councils and committees differ):

- United Nations
- United Nations Conference on Trade and Development (UNCTAD)
- International Monetary Fund (IMF)
- World Bank
- Food and Agriculture Organization of the United Nations (FAO)
- World Intellectual Property Organization (WIPO)
- Organisation for Economic Co-operation and Development (OECD)

**Source:** WTO.

## Appendix VII

# General Agreement on Trade in Services: National enquiry and contact points

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### AUSTRALIA

The Director  
Services Trade Section  
Trade Negotiations and Organisations  
Division  
Department of Foreign Affairs and Trade  
Parkes ACT 2600  
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Ministry of Commerce  
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Manama  
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### BRAZIL

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+(55 61) 211 6376,  
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International Relations and Trade and

Development Division  
Ministry of Industry and Primary Resources  
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### CANADA\*

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### CHILE

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Dirección General de Relaciones Económicas  
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### COLOMBIA

Ministerio de Comercio Exterior  
Dirección de Negociaciones  
Calle 28, Número 13 A 15, Piso 6

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a/ Unless otherwise stated, the addresses given are enquiry points. An asterisk (\*) indicates that the address given is both an enquiry and a contact point.

Santafé de Bogotá, D.C.  
Tel: +(571) 336 2495  
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**CUBA**

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**CZECH REPUBLIC\***

Ministry of Industry and Trade  
Department of International Trade  
Organizations  
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**DOMINICAN REPUBLIC**

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**EGYPT**

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Ministerio de Economía  
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**EUROPEAN COMMUNITIES\*****EUROPEAN COMMISSION\***

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Services and External Dimension of  
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**FRANCE\***

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**GREECE\***

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**ITALY\***

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**NETHERLANDS\***

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**SPAIN\***

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**HONDURAS**

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Department of International Organisations  
and Tariff Policy  
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1880 - Budapest  
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Fax: +(354) 562 4878

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+(91 11) 301 6461  
Fax: +(91 11) 301 4418,  
+(91 11) 301 3583

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Fax: +(972 2) 651 3207

Ministry of Industry and Trade  
Foreign Trade Administration  
30 Agrron Street  
Jerusalem 94190  
Tel: +(972 2) 622 0289  
Fax: +(972 2) 624 3005

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International Trade and Negotiations Division  
Planning Institute of Jamaica  
8 Ocean Boulevard  
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Tel: (1876) 967 3690-2  
Fax: (1876) 967 4871, (1876) 967 3688

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Ministry of Foreign Affairs  
Services Trade Division  
Kasumigaseki 2-2-1, Chiyoda-ku  
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Fax: +(81 3) 3592 6296

Ministry of Foreign Affairs  
Services Trade Division  
Kasumigaseki 2-2-1  
Chiyoda-ku  
Tokyo  
Tel: +(81 3) 3580 3311 ext. 2751 or 2752  
Fax: +(81 3) 3592 6296

**KENYA\****Services:*

Department of External Trade  
P.O. Box 43137  
Nairobi  
Tel: +(254 2) 333 555  
Fax: +(254 2) 226 036

*Movement of natural persons:*

(a) Ministry of Labour & Manpower  
Development  
Social Security House  
P.O. Box 40326  
Nairobi  
Tel: +(254 2) 729 700, +(254 2) 729 800  
Fax: +(254 2) 726 497

## (b) Immigration Department

Office of the President  
Nyayo House  
P.O. Box 90284  
Nairobi  
Tel: +(254 2) 333 551  
Fax: +(254 2) 220 731

*Air transport services:*

Ministry of Transport & Communication

P.O. Box 52692  
Nairobi  
Tel: +(254 2) 729 200  
Fax: +(254 2) 726 362

*Financial services:*

Ministry of Finance  
Treasury Building  
P.O. Box 30007  
Nairobi  
Tel: +(254 2) 338 111  
Fax: +(254 2) 330 426

**LIECHTENSTEIN**

Office for Foreign Affairs  
Heiligkreuz 14  
9490 Vaduz  
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Fax: +(41 75) 236 6059

**MADAGASCAR**

Ministère chargé du commerce  
B.P. 454  
Antananarivo 101  
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Fax: +(261 2) 264 26, +(261 2) 312 80

**MALDIVES**

Ministry of Trade and Industries  
Government of Maldives  
Ghaazee Building  
Ameeru Ahmed Magu  
Male 20-05  
Tel: (960) 323 668, (960) 325 205  
Fax: (960) 323 840  
E-mail: trademin@dhivehnet.net.mv

**MEXICO**

Secretaría de Comercio y Fomento Industrial  
Dirección General de Negociaciones de  
Servicios y Coordinación con Europa  
(Ministry of Trade and Industrial  
Development  
Directorate General for Negotiations on  
Services and Coordination with Europe)  
Alfonso Reyes 30, Colonia Condesa  
06140 Mexico DF  
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Boulevard Moulay Youssef  
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**NEW ZEALAND**

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Section IV (Services, investment)  
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0032 - Oslo  
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Dirección Nacional de Servicios al Comercio  
Exterior  
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Paítilla  
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Fax: +(507) 236 0495  
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**PARAGUAY\***

Ministerio de Industria y Comercio  
Subsecretaría de Estado de Comercio  
Avenida España 323 c/EE.UU  
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**PERU**

Dirección de Relaciones Económicas

Internacionales  
Ministerio de Relaciones Exteriores  
Jirón Lampa No. 535  
Lima  
Fax: +(51 1) 426 0128

**PHILIPPINES**

National Economic Development Authority  
(NEDA)  
NEDA sa Pasig  
Amber Avenue, Pasay City  
1600 Metro Manila

**POLAND\***

Ministry of Economy  
Trade and Services Department  
GATS Enquiry Point  
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00-507 Warsaw  
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**QATAR**

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**ROMANIA**

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Ministry of Industry and Commerce  
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Fax: (410) 411 2342

**SINGAPORE**

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Bugis Junction Office Tower

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+(66 2) 282 6173, +(66 2) 282 6174,

+(66 2) 282 6175, +(66 2) 282 6176,

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Telex: 84361 DEPBUS TH

**TRINIDAD AND TOBAGO**

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(256 41) 230 933

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The Ministry of Labour and Social Services

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Crested Towers Building  
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Kampala  
Tel: (256 41) 258 334

*Financial and banking services*

The Bank of Uganda  
Research Department  
P.O. Box 7120  
Kampala  
Tel: (256 41) 259 866  
Fax: (256 41) 230 878

*Transport services*

The Ministry of Transport and  
Communications  
Airport Road  
P.O. Box 10  
Entebbe  
Tel: (256 42) 201 01 / 9  
Fax: (256 42) 201 35

*Tourism*

The Uganda Tourist Board  
IPS Building, Parliament Avenue  
P.O. Box 7211  
Kampala  
Tel: (256 41) 342 196 / 7  
Fax: (256 41) 342 188

*Telecommunications*

The Uganda Post & Telecommunications  
Corporation  
P.O. Box 7171  
Kampala  
Tel: (256 41) 256 151  
Fax: (256 41) 345 505  
E-mail: upteccp@imul.com

*Energy*

The Ministry of Natural Resources  
Amber House  
29/53 Kampala Road  
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Kampala  
Tel: (256 41) 230 243, (256 41) 254 732

*Insurance*

The National Insurance Corporation  
NIC Building  
Pilkinton Road  
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Dirección para Asuntos de la OMC  
División sobre Comercio de Servicios  
Avenida Libertador  
Centro Comercial "Los Cedros", Piso 5  
Caracas 1050  
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Trade and Industry  
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Lusaka  
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Fax: +(260) 122 3273  
E-mail: comtrade@zamnet.zm

## Appendix VIII

# Summary of specific commitments

WTO Members	Business	Communications	Construction/Engineering	Distribution	Education	Environment	Finance	Health	Tourism	Recreation/Culture/Sports	Transport	TOTAL
<b>Developed economies</b>												
Australia	x	x	x	x	x	x	x	x	x	x	x	11
Austria	x	x	x	x	x	x	x	x	x	x	x	11
Belgium	x	x	x	x	x	x	x	x	x	x	x	11
Canada	x	x	x	x		x	x		x		x	8
Denmark	x	x	x	x	x	x	x	x	x	x	x	11
Finland	x	x	x	x		x	x		x	x	x	9
France	x	x	x	x	x	x	x	x	x	x	x	11
Germany	x	x	x	x	x	x	x	x	x	x	x	11
Greece	x	x	x	x	x	x	x	x	x	x	x	11
Iceland	x	x	x	x		x	x		x	x	x	9
Ireland	x	x	x	x	x	x	x	x	x	x	x	11
Israel	x	x				x	x		x			5
Italy	x	x	x	x	x	x	x	x	x	x	x	11
Japan	x	x	x	x	x	x	x	x	x	x	x	11
Liechtenstein	x	x		x	x	x	x		x	x	x	9
Luxembourg	x	x	x	x	x	x	x	x	x	x	x	11
Netherlands	x	x	x	x	x	x	x	x	x	x	x	11
New Zealand	x	x	x	x	x		x		x		x	8

<b>WTO Members</b>	<b>Business</b>	<b>Communications</b>	<b>Construction/Engineering</b>	<b>Distribution</b>	<b>Education</b>	<b>Environment</b>	<b>Finance</b>	<b>Health</b>	<b>Tourism</b>	<b>Recreation/Culture/Sports</b>	<b>Transport</b>	<b>TOTAL</b>
Norway	x	x	x	x	x	x	x		x	x	x	10
Portugal	x	x	x	x	x	x	x	x	x	x	x	11
Spain	x	x	x	x	x	x	x	x	x	x	x	11
South Africa	x	x	x	x		x	x		x		x	8
Sweden	x	x	x	x		x	x		x	x	x	9
Switzerland	x	x	x	x	x	x	x		x	x	x	10
United Kingdom	x	x	x	x	x	x	x	x	x	x	x	11
United States	x	x	x	x	x	x	x	x	x	x	x	11
<b>Total</b>	<b>26</b>	<b>26</b>	<b>24</b>	<b>25</b>	<b>20</b>	<b>25</b>	<b>26</b>	<b>16</b>	<b>26</b>	<b>22</b>	<b>25</b>	
<b>Per cent</b>	<b>100</b>	<b>100</b>	<b>92</b>	<b>96</b>	<b>77</b>	<b>96</b>	<b>100</b>	<b>62</b>	<b>100</b>	<b>85</b>	<b>96</b>	
<b>Transition economies</b>												
Bulgaria	x	x	x	x	x	x	x	x	x	x	x	11
Czech Republic	x	x	x	x	x	x	x		x		x	9
Hungary	x	x		x	x	x	x	x	x	x	x	10
Poland	x	x	x	x	x	x	x	x	x		x	10
Romania	x	x	x	x		x	x		x		x	8
Slovak Republic	x	x	x	x	x	x	x		x		x	9
Slovenia	x	x	x	x	x	x	x	x	x	x	x	11
<b>Total</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>7</b>	<b>6</b>	<b>7</b>	<b>7</b>	<b>4</b>	<b>7</b>	<b>3</b>	<b>7</b>	
<b>Per cent</b>	<b>100</b>	<b>100</b>	<b>86</b>	<b>100</b>	<b>86</b>	<b>100</b>	<b>100</b>	<b>57</b>	<b>100</b>	<b>43</b>	<b>100</b>	
<b>Developing economies</b>												
Angola							x		x	x		3
Antigua and Barbuda	x	x					x		x	x	x	6
Argentina	x	x	x	x			x		x			6
Bahrain							x					1
Barbados	x	x					x			x		4
Belize	x	x						x				3
Benin	x						x		x		x	4

WTO Members	Business	Communications	Construction/Engineering	Distribution	Education	Environment	Finance	Health	Tourism	Recreation/Culture/Sports	Transport	TOTAL
Bolivia		x						x	x	x		4
Brazil	x	x	x	x			x		x		x	7
Brunei Darussalam	x	x					x				x	4
Cameroon	x								x			2
Chile	x	x					x		x		x	5
Colombia	x	x	x			x	x		x			6
Congo									x	x		2
Costa Rica	x				x			x	x	x	x	6
Côte d'Ivoire	x	x	x						x		x	5
Cuba	x	x	x				x		x	x	x	7
Cyprus	x	x					x					3
Democratic Republic of the Congo	x	x	x		x				x	x		6
Dominica		x					x		x	x		4
Dominican Republic	x	x	x				x	x	x			6
Ecuador	x	x	x	x		x	x	x	x	x	x	10
Egypt			x				x		x		x	4
El Salvador	x	x				x	x		x		x	6
Fiji									x			1
Gabon	x		x				x		x			4
Ghana		x	x		x		x		x		x	6
Grenada		x					x		x	x		4
Guatemala	x	x					x		x		x	5
Guinea Bissau									x	x		2
Guyana	x	x					x		x		x	5
Honduras	x						x		x		x	4
Hong Kong, China	x	x	x	x			x		x	x	x	8
India	x	x	x				x	x	x			6
Indonesia	x	x	x				x		x		x	6

WTO Members	Business	Communications	Construction/Engineering	Distribution	Education	Environment	Finance	Health	Tourism	Recreation/Culture/Sports	Transport	TOTAL
Jamaica	x	x			x		x	x	x	x		7
Kenya		x					x		x		x	4
Korea	x	x	x	x		x	x		x		x	8
Kuwait	x		x	x		x	x	x	x	x		8
Macau	x						x		x			3
Madagascar	x											1
Malaysia	x	x	x				x	x	x	x	x	8
Malta							x		x		x	3
Mauritius		x							x			2
Mexico	x	x	x	x	x		x	x	x		x	9
Mongolia	x	x	x	x			x		x			6
Morocco	x	x	x			x	x		x		x	7
Namibia	x								x			2
Nicaragua	x	x					x		x		x	5
Nigeria		x					x		x		x	4
Pakistan	x	x	x				x	x	x			6
Panama	x	x	x	x	x	x	x	x	x	x	x	11
Papua New Guinea	x	x	x				x		x		x	6
Paraguay							x		x			2
Peru	x	x		x			x		x	x	x	7
Philippines	x	x					x		x		x	5
Qatar	x	x	x			x	x		x			6
Saint Kitts and Nevis		x					x		x	x	x	5
Saint Lucia							x	x	x	x	x	5
Saint Vincent & the Grenadines							x	x	x	x	x	5
Senegal	x	x		x					x	x	x	6
Singapore	x	x	x				x		x	x	x	7
Solomon Islands	x		x				x		x			4

<b>WTO Members</b>	<b>Business</b>	<b>Communications</b>	<b>Construction/Engineering</b>	<b>Distribution</b>	<b>Education</b>	<b>Environment</b>	<b>Finance</b>	<b>Health</b>	<b>Tourism</b>	<b>Recreation/Culture/Sports</b>	<b>Transport</b>	<b>TOTAL</b>
Sri Lanka		x							x			2
Suriname		x							x		x	3
Swaziland	x							x	x			3
Thailand	x	x	x	x	x	x	x		x	x	x	10
Trinidad and Tobago	x	x	x		x		x	x	x	x	x	9
Tunisia		x					x		x			3
Turkey	x	x	x		x	x	x	x	x		x	9
United Arab Emirates	x	x	x			x	x		x			6
Uruguay	x	x					x		x	x	x	6
Venezuela	x	x	x				x		x	x	x	7
Zambia	x		x					x	x			4
Zimbabwe		x					x		x			3
<b>Total</b>	<b>53</b>	<b>53</b>	<b>32</b>	<b>12</b>	<b>9</b>	<b>11</b>	<b>58</b>	<b>18</b>	<b>69</b>	<b>27</b>	<b>40</b>	
<b>Per cent</b>	<b>71</b>	<b>71</b>	<b>43</b>	<b>16</b>	<b>12</b>	<b>15</b>	<b>77</b>	<b>24</b>	<b>92</b>	<b>36</b>	<b>53</b>	
<b>Least developed economies</b>												
Bangladesh		x							x			2
Botswana	x	x							x			3
Burkina Faso									x			1
Burundi	x		x	x				x	x			5
Central African Republic	x	x				x			x	x		5
Chad									x			1
Djibouti	x	x							x	x		4
Gambia	x	x	x	x	x	x	x	x	x	x	x	11
Guinea	x					x		x	x		x	5
Haiti	x		x		x		x		x			5
Lesotho	x	x	x	x	x	x	x		x		x	9
Malawi	x		x				x	x	x			5

WTO Members	Business	Communications	Construction/Engineering	Distribution	Education	Environment	Finance	Health	Tourism	Recreation/Culture/Sports	Transport	TOTAL
Maldives	x											1
Mali					x				x			2
Mauritania									x			1
Mozambique							x					1
Myanmar									x		x	2
Niger									x		x	2
Rwanda	x				x	x			x	x		5
Sierra Leone	x	x	x		x	x	x	x	x	x	x	10
Tanzania									x			1
Togo			x						x	x		3
Uganda									x			1
Total	12	7	7	3	6	6	6	5	21	6	6	
Per cent	52	30	30	13	26	26	26	22	91	26	26	
<b>GRAND TOTAL</b>	<b>98</b>	<b>93</b>	<b>69</b>	<b>47</b>	<b>41</b>	<b>49</b>	<b>97</b>	<b>43</b>	<b>123</b>	<b>58</b>	<b>78</b>	
Per cent	75	71	53	36	31	37	74	33	94	44	60	

## Appendix IX

# Selected resources

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### On-line resources

European Commission's INFO-POINT on World Trade in Services

<http://gats-info.eu.int/>

GATS: Basic telecommunications

<http://www.wto.org/wto/services/tel.htm>

GATS: Dispute settlement cases

<http://www.wto.org/wto/dispute.bulletin.htm>

GATS: Financial services

<http://www.wto.org/wto/services/financia.htm>

GATS: Legal text

<http://www.wto.org/wto/legal/finalact/htm#services>

GATS: Schedules of commitments and MFN exemptions by country

<http://gats-info.eu.int/gats-info/gatscomm.pl?MENU=eee>

Industry Canada's Services 2000 site

<http://strategis.ic.gc.ca/SGC/bil18268e.html>

International Trade Centre

<http://www.intracen.org/serviceexport>

International Trade Law Monitor

[http://ra.irv.uit.no/trade\\_law/itlp.html](http://ra.irv.uit.no/trade_law/itlp.html)

OECD Trade Directorate

<http://www.oecd.org/ech>

U.S. Trade Representative

<http://www.ustr.gov/>

- U.S. International Trade Commissioner  
<http://www.usitc.gov>
- World Bank Group  
<http://www.worldbank.org/>
- World Bank-WTO Trade and Development Centre  
<http://www.itd.org/>
- WTO: Administrative structure  
<http://www.wto.org/about/organsn1.htm>
- WTO: Document dissemination facility  
<http://www.wto.org/wto/ddf/ep/public.html>
- WTO: Government procurement  
<http://www.wto.org/wto/ddf/ep/public.html>
- WTO: Intellectual property rights  
<http://www.wto.org/intellect/intellect.htm>
- WTO: Legal texts  
<http://www.wto.org/wto/legal/finalact.htm> WTO: List of Members  
<http://www.wto.org/wto/about/organsn6.htm>
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<http://www.wto.new/whatsnew.htm>
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UNCTAD/CNUCED

# INTERNATIONAL TRADE CENTRE



WTO OMC

The International Trade Centre UNCTAD/WTO (ITC) is the focal point in the United Nations system for technical cooperation with developing countries in trade promotion. ITC was created by the General Agreement on Tariffs and Trade (GATT) in 1964 and since 1968 has been operated jointly by GATT (now the World Trade Organization, or WTO) and the UN, the latter acting through the United Nations Conference on Trade and Development (UNCTAD). As an executing agency of the United Nations Development Programme (UNDP), ITC is directly responsible for implementing UNDP-financed projects in developing countries and economies in transition related to trade promotion.

ITC works with developing countries and economies in transition to set up trade promotion programmes for expanding their exports and improving their import operations. This covers six areas:

- **Product and market development:** Direct export marketing support to the business community through advice on product development, product adaptation and international marketing for commodities, manufactures and services.
- **Development of trade support services:** Creation and enhancement of foreign trade support services for the business community provided by public and private institutions at the national and regional levels.
- **Trade information:** Establishment of sustainable national trade information services and dissemination of information on products, services, markets and functions to enterprises and trade organizations.
- **Human resource development:** Strengthening of national institutional capacities for foreign trade training and organization of direct training for enterprises in importing and exporting.
- **International purchasing and supply management:** Application of cost-effective import systems and practices in enterprises and public trading entities by strengthening the advisory services provided by national purchasing organizations, both public and private.
- **Needs assessment and programme design for trade promotion:** Conception of effective national and regional trade promotion programmes based on an analysis of supply potential and constraints, and identification of related technical cooperation requirements.

In addition to specific technical cooperation projects with individual developing countries and economies in transition, or groups of these countries, ITC provides services from its headquarters in Geneva that are available to all such countries. These include publications on trade promotion, export development, international marketing, international purchasing, supply management and foreign trade training, as well as trade information and trade statistics services of various types.

The broad policy guidelines for ITC's technical cooperation work are determined by the governing organs of ITC's parent bodies. Recommendations on ITC's future work programme are made to these organs by ITC's annual intergovernmental meeting, the Joint Advisory Group on the International Trade Centre UNCTAD/WTO (JAG).

ITC is headed by an Executive Director. Several hundred staff work at ITC's headquarters and in the field. In addition a number of consultants are assigned to ITC projects in developing countries and economies in transition.

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## COMMONWEALTH SECRETARIAT

The Commonwealth Secretariat is the principal international organisation of the Commonwealth. It was established in 1965 and forms the Commonwealth's own civil service based in London, effectively carrying out the priorities of its 54 member governments.

The Secretariat works towards advancing the Commonwealth's fundamental values including good governance and democracy; sustainable economic and social development; and the rule of law, human rights and gender equality. Its primary duties include promoting consultation and exchanges among members, preparing and circulating information on issues of concern, particularly in international and economic affairs, assisting in advancing the development of member countries, acting as a focal point for specialised Commonwealth institutions and organising and servicing intergovernmental meetings.

Fifty Commonwealth members are developing countries and the Commonwealth Fund for Technical Co-operation (CFTC) is the principal means by which the Commonwealth promotes economic and social development in these countries. Administered by the Commonwealth Secretariat, the CFTC is the development wing of the Commonwealth. The CFTC operates on the principle of mutual assistance, with governments contributing financial and technical skills on a voluntary basis and obtaining technical assistance as needed.

Within the operational framework of the CFTC, the Commonwealth Secretariat has been helping its developing member countries in implementing economic reform programmes. The Export and Industrial Development Division (EIDD) provides specialised technical assistance services to developing member countries to help them establish and strengthen appropriate export promotion structures, develop the necessary infrastructure, widen their export base, improve quality standards and enlarge market access for their products. Assistance to such member countries for understanding and benefiting from the new international trade agreements is a key component of the work undertaken by the Division.

In this respect, the Division offers technical assistance programmes specifically designed to assist developing countries to cope with preparing for, and participating in, the multilateral trading system. Several member states from across the Commonwealth have benefited from assistance in meeting WTO accession requirements. An important component of this programme is the technical advice provided to representatives of Commonwealth Developing Countries to the WTO, through a Geneva-based consultant. The Export and Industrial Development Division further seeks to support the trade and industry development goals of member states through its **Combinet** initiative, an electronic network which links businesses and trade-related organisations throughout the Commonwealth.

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