

PART THREE

**INTERNATIONAL RULES
GOVERNING TRADE IN SERVICES**

CHAPTER 14

General Agreement on Trade in Services (GATS)

Summary of the main rules

Trade in services is growing and currently accounts for over 20% of all international trade. The General Agreement on Trade in Services (GATS), which has been negotiated in the Uruguay Round, applies the basic rules on trade in goods to trade in services. However, the rules have been suitably modified to take into account the differences between goods and services and the four modes in which international trade in services takes place.

The GATS consists of:

- *A framework of rules; and*
- *Liberalization commitments specific to the service sectors and sub-sectors listed in each country's schedule.*

The framework of rules requires countries to apply MFN treatment by not discriminating between service products and service providers of different countries. However, it may be possible for a country to maintain for a transitional period of 10 years

measures that are not consistent with the MFN principle. The national treatment principle, as embodied in the framework of rules, visualizes that countries should not treat foreign services and service providers less favourably than their own service products and service providers. While the framework does not impose a binding obligation, it requires countries to indicate in their schedule of concessions the sectors in which and the conditions subject to which such national treatment is to be extended.

Among the other important provisions of the framework of rules are those which:

- *Require member countries to ensure transparency in the regulations applicable to service industries and activities;*
- *Aim at ensuring the increasing participation of developing countries in trade in services.*

1. General

The term “services” covers a wide range of economic activities. The WTO secretariat has divided these divergent activities into the following 12 sectors:

- Business (including professional and computer) services;
- Communication services;
- Construction and engineering services;
- Distribution services;
- Educational services;
- Environmental services;
- Financial (insurance and banking) services;
- Health services;
- Tourism and travel services;
- Recreational, cultural and sporting services;
- Transport services;
- Other services not included elsewhere.

These 12 sectors have been further divided into 155 sub-sectors (see Appendix IV for a listing).

I. FOUR MODES IN WHICH THE SERVICE TRADE TAKES PLACE

2. Difference between goods and services

How do services differ from goods? One of the main characteristics of services is that they are intangible and invisible; goods by contrast are tangible and visible. Furthermore, services, unlike goods,

cannot be stored.²² These differences between services and goods were vividly highlighted by *The Economist* when it asserted that “anything sold in trade that could not be dropped on your foot” is a service.²³

3. Four modes of international service transactions

The different characteristics of goods and services also influence the modes in which international transactions take place. While international trade in goods involves the physical movement of goods from one country to another, only a few service transactions entail cross-border movements. Examples of cross-border transactions are services that can be transmitted by telecommunications (e.g. transfer of money through banks) or services embodied in goods (e.g. a consultant’s technical report or software on a diskette).

In the bulk of service transactions, however, *their time and place of consumption* cannot be separated and proximity between the service supplier and the consumer is required. Such proximity can be established through a *commercial presence* in the importing country (for instance by setting up a branch or subsidiary company) or the movement of *natural persons* for temporary periods (e.g. lawyers or architects moving to another country to provide their services). The nature of a few service transactions requires consumers to move to the country

²² The above description is not without limitations. Some services are visible (for example, a consultant’s report on diskette). Some services are stored (for example, the telephone answering system).

²³ As quoted in: *Liberalizing International Transactions in Services, A Handbook* (United Nations publication, Sales No. E.94.II.A.11), page 1.

where the services are available (e.g. tourists visiting countries of tourist interest or students going to another country for higher education).

Thus, unlike international transactions in goods which require a physical transit across a country's borders, services are supplied internationally according to one or a combination of four modes of supply, namely:

- ❑ Cross-border movement of service products;
- ❑ Movement of consumers to the country of importation;
- ❑ The establishment of a commercial presence in the country where the service is to be provided; and
- ❑ Temporary movement of natural persons to another country, in order to provide the service there.

The total value of services traded through the last two modes is probably much greater than that of the trade in services taking place through the first two modes. However, the lack of statistics makes any concrete estimate difficult to make.

4. How protection is granted in the service sectors

Another major difference between goods and services lies in the way protection is granted by governments to domestic industries. Industries producing goods are generally protected by the imposition of tariffs or other border measures such as quantitative restrictions. As noted in Part I, the GATT rules require countries to give such protection through tariffs and discourage them from using quan-

titative restrictions or other similar restrictive measures. Because of the intangible nature of services and as many service transactions do not involve cross-border movements, protection to service industries cannot be granted through measures applicable at the border. Service industries are protected mainly by national domestic regulations on foreign direct investment and the participation of foreign service suppliers in domestic industries. Such regulations may, for instance, prohibit foreign service suppliers (e.g. bank or insurance companies) from investing in or establishing a branch that is necessary for the supply of services. Regulations may be applied on a discriminatory basis to natural persons providing services, thus treating them less favourably than domestic producers (non-application of the national treatment principle). They may also provide for dissimilar treatment of service suppliers from different countries (non-application of the MFN principle).

5. The growing importance of international trade in services

Exports of services currently account for about \$1 trillion or 20% of world exports. Although the share of developing countries in total exports of services is relatively small, as annex I reveals, a few of them are already among the world's 25 leading exporters. The export trade in services is rising in importance not only in the newly industrializing countries (NICs) but also in some low-income and least developed countries.

A large number of developing countries are currently heavily dependent on imports of services. The liberal import of services is steadily on the increase. The productivity of industries is today closely linked with the ready availability, at reason-

able costs, of financial, computer and information services. Enterprises looking for markets in foreign countries have also to spend far more than they did in the past on market research and development, advertising and after-sales support.

The rapid technological progress that is taking place in communications is making it possible for suppliers, heretofore confined to domestic markets, to operate internationally. Banks and insurance companies can operate far more quickly and efficiently because of the development of fax, electronic mail and other facilities. Architects can provide their architectural designs and supervise work from thousands of miles away with the aid of up-to-date information technology. Likewise, consulting engineers can transmit computer-aided designs to customers in distant countries. International trade in services is therefore expected to expand rapidly and, according to some, may overtake trade in goods within the next 10 years.

II. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Prior to the Uruguay Round, trade in services was not subject to any discipline at the international level. The GATS, which was negotiated in the Round, takes a first major step towards bringing the trade gradually under international discipline.

6. Objectives

The objectives of the GATS are similar to those of GATT. It aims at “promoting the economic growth of all trading partners and the development of developing countries” through the expansion of

trade in services. It seeks to achieve this by applying to the service trade the rules of GATT, with the modifications necessary to take into account its special features.

7. Structure of GATS

The GATS consists of a framework which sets out:

- The general concepts, principles and rules that apply to measures affecting trade in services. The annexes, which establish principles and rules for specific sectors, complement the text.
- Specific commitments liberalizing trade within the service sectors and sub-sectors listed in the national schedules of member countries.

8. Framework text of GATS

8.1 Scope and main obligation

The GATS applies to government measures affecting services provided on a commercial basis. It thus covers both private-sector enterprises and companies owned (or controlled) by governments if they supply services on a commercial basis. Services obtained by government departments and agencies for their own use are excluded from the purview of the Agreement. The provisions of the Agreement on Government Procurement described in Part Four cover such transactions.

GATS, Article I:3

The term “services” covers any service in any service sector,²⁴ including their production, distribution, marketing, sales and delivery according to the four modes described in section I of this chapter.

GATS, Part II

The obligations which the framework imposes can be broadly divided into two categories. These are:

- General obligations, which apply to all service sectors;
- Conditional obligations applicable to sectors covered by commitments specified in the national schedules.

8.1.1 General obligations

Among the important general obligations imposed by the framework text are those relating to:

GATS, Article II

- The extension of MFN treatment;

GATS, Article III

- Transparency of regulations;

GATS, Article VII

- Mutual recognition of the qualifications required for the supply of services;

GATS, Articles VIII and IX

- Rules governing monopolies and exclusive service suppliers and other business practices restraining competition;

GATS, Article IV

- Measures to be taken to liberalize trade, including those securing the greater participation of developing countries.

²⁴ According to the Annex on Air Transport, traffic and related rights are excluded from GATS coverage.

8.1.1.1 MFN treatment

GATS, Article II

The framework text imposes an obligation to apply MFN treatment:

- To service products; and
- To suppliers of services.

GATS, Article II, Annex on Article II Exemptions

The Agreement, however, provides that it may be possible for a country to maintain for a transitional period of 10 years measures that are not consistent with the rule by incorporating them in a list of exemptions. Box 30 explains the reasons that have prompted some 60 countries to list exemptions. These exemptions are temporary and the need for maintaining them is to be reviewed periodically after five years; they are to be abolished after 10 years.

Box 30

EXCEPTIONS TO THE MFN RULE

One objective of countries in making exceptions to the MFN principle is to maintain the preferential treatment they extend to some countries in the service sector under regional cooperation or other arrangements. Thus the Nordic countries have excluded from the MFN obligation measures promoting Nordic cooperation. These measures include guarantees and loans to Nordic investment projects and financial assistance to companies of Nordic origin for the utilization of environmental technology. The European Union has, by making an exception to the MFN rule, ensured that the benefits of special arrangements which its member States have with certain countries* would not be automatically extended to nationals of other countries. The arrangements provide for the grant of temporary work permits to these countries' nationals on the basis of contracts between a company in an EU State and service providers in these countries in service sectors such as construction, hotels and catering.

Some countries with liberal import regimes have made exceptions to the MFN rule in such sectors as financial and maritime services. Their aim is to maintain their bargaining leverage when negotiating for liberalization with countries that have more restrictive regimes.

* In Central, Eastern and South-Eastern Europe (including the Russian Federation, Ukraine and Georgia) and in the Mediterranean basin.

From then on, the MFN rule will, in principle, apply unconditionally to trade in services, as it does to trade in goods.

8.1.1.2 Transparency: establishment of enquiry and contact points

Foreign suppliers often find it difficult to do business with firms in outside countries because of the rules and regulations applicable there. The lack of transparency of such rules poses even more serious problems in the service sectors where domestic regulations are the main means used to protect domestic producers from foreign competition. The Agreement therefore requires each member country to establish one or more *enquiry points* from which other member countries can obtain information on laws and regulations affecting trade in the service sectors of interest to their industries.

GATS, Article III:4

In addition, in order to assist *service suppliers* in developing countries, the Agreement calls on developed country members to establish *contact points*. To obtain information from enquiry points, service enterprises will have to channel their requests through their national governments; requests for information from contact points can be made direct. The contact points are to be geared to providing information at the business level. In particular, the Agreement requires contact points to provide on request to service suppliers in developing countries information on:

GATS, Article IV

- ❑ The availability of service technology;
- ❑ Commercial and technical aspects of the supply of services;
- ❑ Registering, recognizing and obtaining professional qualifications.

These enquiry and contact points are expected to be established within a period of two years from the entry into force of the Agreement, i.e. before 1 January 1997.

GATS, Article VII

8.1.1.3 Mutual recognition of qualifications required for the supply of services

Companies or persons providing services have to obtain certificates, licences or other authorization entitling them to do business. Foreign suppliers often find it difficult to obtain such authorization because of differing regulatory requirements for educational qualifications and working experience. To overcome such difficulties, the Agreement urges its member countries to enter into bilateral or plurilateral arrangements for the mutual recognition of the qualifications required for obtaining authorization. It further provides that such mutual recognition systems should be open for accession by other member countries, if they can demonstrate that their domestic standards and requirements are comparable with those of the systems concerned.

8.1.1.4 Rules governing monopolies, exclusive service suppliers and other business practices restraining competition

GATS, Article VI II:1 and 2

Service industries often exercise monopoly powers in the domestic market; exclusive rights to supply services are sometimes given by governments to a small number of suppliers. In all such cases, members are under obligation to ensure that such suppliers do not abuse their monopoly or exclusive rights or act in a manner inconsistent with their general and specific obligations under the Agreement.

GATS, Article IX

The Agreement further recognizes that service suppliers could adopt practices that may distort competition and thereby restrain trade. Whenever a problem of this nature occurs, the affected member country has a right to request the member where the service supplier is situated for consultations with a view to eliminating such practices.

GATS, Article XIX

8.1.1.5 Liberalization commitments

The Agreement visualizes a continuous process of negotiations in WTO for the liberalization of trade in specified sectors. In addition, the Agreement itself provides that beginning “not later than five years from the date of entry into force of the WTO Agreement” (i.e. before 1 January 2000) a new round of negotiations should be held.

GATS, Article XVI

Market access commitments

In trade in goods, the liberalization commitments assumed by countries take the form of tariff bindings and the removal of measures (e.g. quantitative restrictions) applied at the border. Protection to domestic service industries is granted basically through domestic regulations and not through border measures. The Agreement therefore visualizes that commitments to liberalize *market access* should primarily take the form of modifications to domestic regulations for the purpose of providing increased market access both to service products and to providers of services in the four modes in which the service trade takes place. Such commitments could relate to:

- Maximum foreign ownership limitations: for instance, a maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

- ❑ Restrictions on the establishment of some kind of local representation.
- ❑ Limitations on the total number of service operations or on the total quantity of service output.
- ❑ Limitations on the total number of service personnel that may be employed in a particular service sector.
- ❑ Restrictions on the ability of service suppliers to choose the business form (e.g. company, partnership) in which they want to operate.
- ❑ Limitations on the overall number of service suppliers allowed to operate in the market, because of a quota system or a monopoly situation.

GATS, Articles XVII, XVIII

National treatment commitments

Differences in the way protection is granted to manufacturing industries and service industries also limit the extent to which the national treatment principle, as embodied in GATT, can be applied to trade in services. The national treatment rule prohibits member countries from imposing internal taxes on, or applying domestic regulations to, an imported product, which in the first case are higher and in the second case more rigorous than those applicable to a similar domestic product, after the import has entered the country on payment of customs duties and other charges payable at the border. The rule is intended to ensure that, in practice, the domestically produced product does not obtain protection higher than that resulting from the levy of tariffs. Since countries do not impose tariffs on imports of services, the application of the national treatment princi-

ple, by requiring countries to apply their national regulations on the same basis to domestic and foreign suppliers, would have resulted in the sudden loss by domestic service industries of their entire protection. In the event, it was agreed that the national treatment principle should be extended by countries through negotiations during which they would indicate the sectors or sub-sectors and the conditions and qualifications under which they would be prepared to extend such treatment.

GATS, Article IV

8.1.1.6 Increasing the participation of developing countries in trade in services

The Agreement further recognizes that there is *asymmetry* in the development of service industries in developed and developing countries and that this situation will have to be taken into account in the negotiations for the liberalization of trade in the service sector. To assist developing countries in the development of their service industries, it provides for a three-pronged approach.

First, it calls on countries to give priority to the liberalization of access in the modes of supply and service sectors of export interest to developing countries.

Second, it recognizes that in order to promote the growth of their service industries, developing countries may have to maintain higher levels of protection, both overall and in individual sectors. It therefore provides that these countries should have the *flexibility* to open fewer sectors to import competition and to liberalize fewer types of transaction.

Third, it provides that, while making commitments for liberalization, developing countries could impose conditions requiring foreign suppliers wishing to invest in the service industry and to establish a subsidiary (or other types of commercial presence) in their territory:

- ❑ To set up joint ventures;
- ❑ To provide the local company access to their technology and/or access to their information and distribution channels.

GATS, Article XX

8.1.1.7 Schedules of commitments

The commitments assumed by countries are listed in each country's schedule of commitments. The extent and conditions to which and under which the basic principles of GATS — market access, national treatment and MFN treatment — apply to individual service sectors in any country can be assessed only by referring to that country's schedule, the character of the existing regulatory regime and the nature of the limitations, if any, to which the commitments are subject.

The schedules are complex as they cover 12 sectors and 155 sub-sectors. For each sub-sector, the commitments are further listed according to the four modes in which the service trade takes place.

A detailed explanation of the nature and content of the commitments and their beneficial impact on trade is given later. At this point, it is appropriate to note the remaining important provisions of the framework text and of the annexes, which complement the text.

8.1.2 Conditional obligations and other provisions

As noted earlier, the Agreement imposes, in addition to the general obligations described above,²⁵ certain conditional obligations that aim at ensuring fuller implementation of the commitments assumed by countries. In relation to *sectors where specific commitments are undertaken*, these include the following obligations:

- | | |
|------------------------|---|
| GATS, Article VI:2 | <input type="checkbox"/> To ensure that all domestic regulations of general application affecting trade in services are administered in a reasonable and objective way; |
| GATS, Article VI: 3 | <input type="checkbox"/> To issue to foreign suppliers the authorization required for the provision of services within a reasonable period; |
| GATS, Articles XI, XII | <input type="checkbox"/> Not to apply restrictions on international transfers and payments, except when the country is in serious balance-of-payments difficulties. |

8.1.3 Other provisions

Box 31 summarizes the remaining provisions.

8.1.4 Annexes to the Agreement

When the Uruguay Round negotiations were being concluded, it was visualized that it might not be possible to complete the negotiations on trade liberalization in a number of sectors. It was therefore decided to complement the framework text with annexes, which lay down additional rules on *sectoral*

²⁵ The obligations which the rules on monopolies (GATS, Article VIII) and on increasing the participation of developing countries (GATS, Article IV) lay down can be considered conditional obligations even though they are listed under Part II of GATS (*General Obligations and Disciplines*).

Box 31

OTHER PROVISIONS IN THE GATS FRAMEWORK TEXT

The remaining provisions in the framework text can be broadly divided into two groups. In the first group are the areas for which the text provides that negotiations should take place. In the second group are provisions granting exceptions to the general rules.

A. Provisions on further negotiations

The framework text provides that member countries should undertake further negotiations to develop rules governing the use of *subsidies* and the application of *safeguard measures* to trade in services.

B. Provisions providing for exceptions

Economic integration. The Agreement permits countries to enter into arrangements for liberalizing trade among a limited number of countries, provided substantial service sectors are covered and the other conditions prescribed are met.

Balance-of-payments restrictions. Member countries are permitted to impose restrictions on transfer of payments, even in sectors in which they have undertaken specific commitments, when they are in balance-of-payments difficulties.

Labour market integration. The Agreement does not prevent a member country from entering into an arrangement with another country for full integration of their labour markets by exempting each other's citizens from work permit requirements.

General and security exceptions. As with trade in goods, the Agreement does not prevent countries from taking measures which they consider necessary for the protection *inter alia* of public morals; human, animal and plant life; or their essential security interests.

specifications and provide guidelines for the continuation of negotiations for further liberalization. These annexes,²⁶ which constitute an integral part of GATS, cover:

²⁶ While the first four annexes deal primarily with sectoral specifications, the last two provide guidelines for further negotiations.

- Financial services;
- Movement of natural persons;
- Telecommunications;
- Basic telecommunications;
- Maritime transport;
- Air transport.

The negotiations held after the the Uruguay Round on the further liberalization of the trade in financial services and the movement of natural persons were completed by the end of July 1995. Negotiations on basic telecommunications are expected to be completed before the end of June 1996.

Annex II to this chapter summarizes the main contents of these annexes to GATS.

III. NATURE AND CONTENT OF THE LIBERALIZATION COMMITMENTS

GATS, Articles XIX, XX

9. Liberalization commitments

This section of the Guide describes the liberalization commitments made by countries in their national schedules. Broadly speaking, by including a service sector or a sub-sector in its national schedule, the country indicates that it will apply to trade in the sector market access and national treatment obligations. It is, however, open to a country to indicate the *limitations* under which it will grant market access or national treatment for *each of the four modes* in which international trade in services takes place. Such restrictions could be:

- Horizontal, covering the entire range of services; or
- Specific to the sector or activity in question.

Box 32 presents an example of a schedule of horizontal and specific commitments. Where no limitations are indicated against any mode of supply (i.e. the term “none” in the schedule), the country enters into a binding commitment not to take any new measures to restrict entry into the market or the operation of the service. Where limitations have been indicated against a particular mode of supply (such as when incorporation of a company is made a condition for carrying out a service activity), the country is obliged not to impose any other limitations that would further restrict the entry of foreign suppliers. Where, however, the term “unbound” appears under either horizontal or specific commitments, the country indicates that at least at that stage it maintains its freedom to modify its regulations and possibly to change the conditions of entry for foreign suppliers.

9.1 Horizontal commitments

Almost all limitations under horizontal commitments apply to services for which a commercial presence in the importing country is necessary, and to the movement of natural persons.

Broadly speaking, developed countries have not specified many horizontal limitations on the establishment of a commercial presence by foreign suppliers. The creation of a subsidiary company or a branch by a foreign supplier to carry out a service activity or to make an investment in the domestic service industry will therefore continue to be permitted under their existing legislations. These, as a rule, provide for the grant of authorization on liberal terms.

Box 32

**FORMAT AND EXAMPLE OF A SCHEDULE OF HORIZONTAL
AND SPECIFIC COMMITMENTS**

Commitments	Mode of supply	Conditions and limitations on market access	Conditions and qualifications on national treatment
Horizontal commitments (i.e. across all sectors)	Cross-border supply	None	None, other than tax measures that result in difference in treatment of R & D* services.
	Consumption abroad	None	Unbound for subsidies, tax incentives, and tax credits.
	Commercial presence (FDI**)	Maximum foreign equity stake is 49%	Unbound for subsidies. Under Law x, approval is required for equity stakes over 25% and for new investment exceeding y million.
	Temporary entry of natural persons	Unbound except for the following: intra-corporate transfers of executives and senior managers; specialist personnel for stays of up to one year; specialist personnel subject to economic needs test for stays longer than one year; service sellers (sales people) for stays of up to three months.	Unbound, except for categories of natural persons referred to in the market access column.
Specific commitment: 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 under horizontal commitments	Unbound, except as indicated under horizontal commitments.
* R & D: Research and development		** Foreign direct investment	

However, in the majority of the Uruguay Round schedules, horizontal commitments relating to *the movement of natural persons* were largely limited to:

- ❑ Intra-company transfers covering “essential personnel”, i.e. managers and technical staff linked with commercial presence in the host country; and
- ❑ Business visitors who are short-term visitors not gainfully employed in the host country.

One of the key demands of developing countries was that member countries should assume firm and legally binding commitments to permit independent professionals to work abroad without being required to establish a company or other form of commercial presence. In the Uruguay Round negotiations these demands were met in only a very few instances. As a result of further negotiations held after the conclusion of the Round, six members have improved their commitments. The European Union and its member States have guaranteed to varying degrees opportunities for foreign professionals without commercial presence to perform temporary assignments in 14 member States (excluding Portugal). The additional commitments of Switzerland and Norway are similar in nature but limited in scope. Canada has added a number of professions to its Uruguay Round commitments on the entry and temporary stay of foreign, contract-based professionals. Australia has introduced some flexibility to its existing offer on business visitors. India has improved some of its earlier commitments.

A number of developing countries have prescribed conditions which require foreign suppliers to establish joint ventures with domestic service indus-

tries. These conditions further limit in some cases the share in equity which foreign suppliers can hold. Some of these countries have taken advantage of the provisions in the Agreement for *increasing participation of developing countries* and have specified that approval of proposals to establish a *commercial presence* will be granted on the basis of such factors as *economic need* and the readiness of the foreign supplier to bring in the most up-to-date technology (see box 33 for details).

Box 33

NATURE OF LIMITATIONS IMPOSED BY DEVELOPING COUNTRIES IN THEIR HORIZONTAL COMMITMENTS PERMITTING THE ESTABLISHMENT OF COMMERCIAL PRESENCE

A number of developing countries have taken advantage of the provisions for increasing the participation of developing countries and have specified that permission to establish a commercial presence will be granted on the basis of economic need criteria to strengthen domestic service capacities. The conditions imposed for the attainment of this objective include the following:

- The establishment of commercial presence will be allowed on the basis of a joint venture;
- The foreign supplier will be permitted to have less than a majority share in the equity of such a joint venture;
- A specific number of board members must be nationals of the country;
- The foreign service supplier should use appropriate and advanced technology and managerial experience;
- It should train and pass on the benefit of technology to local employees;
- It should employ, wherever possible, domestic sub-contractors;
- It must furnish accurate and prompt reports on its operations, including technological, accounting, economic and administrative data.

9.2 Sectoral commitments

Commitments undertaken by countries in their sectoral schedules complement their horizontal commitments. While developed countries have included in their schedules all service sectors, developing countries have exercised a certain degree of flexibility and have covered a limited number of sectors, taking into account such factors as the stage of their development.

The type of limitation specified in the sectoral schedules relates to the characteristics of the service activity and the modes in which service transactions primarily take place. The paragraphs that follow explain the nature and content of the commitments undertaken and the limitations imposed in four sectors. These have been drawn, for the purpose of this Guide, from among the sectors in which developing countries are considered to have a potential for developing export trade or for benefiting from import liberalization:

- Construction and related engineering services;
- Health-related and social services;
- Management consultancy services;
- Financial services.

9.2.1 *Construction and related engineering services*

This sector covers:

- General construction work for buildings;
- General construction work for civil engineering;
- Installation and assembly work; and
- Building completion and other work.

The national schedules of 48 countries carry commitments in this sector.

Trade in the sector does not take place through cross-border movements or through the movement of consumers to places abroad. However, suppliers of construction engineering services are required to establish an office in the country where the services are to be provided. The competitiveness of most construction engineering companies in developing countries in regard to work in outside countries is greatly dependent on how far the latter countries permit technicians like masons and plumbers and other workers to stay for temporary periods.

As regards the right to establish a commercial presence in order to engage in construction engineering activities, all developed countries and a large number of developing countries have indicated in their schedules that they impose no limitations. In other words, they will apply to foreign companies the rules applicable to domestic suppliers in regard to the establishment of companies for the conduct of such activities. A few developing countries have, however, indicated that foreign suppliers wishing to engage in the construction business must establish a joint venture with domestic companies providing such services.²⁷

As regards the movement of *natural persons*, all countries have specified that this mode of providing service is unbound. In other words, the countries have not undertaken any commitment to allow per-

²⁷ The countries which require foreign suppliers to establish joint ventures or some other type of operation involving domestic suppliers include India, Malaysia, Morocco, Pakistan, Thailand and Turkey.

sons below managerial level to enter the country to work on the basis of temporary contracts in the construction industry.

9.2.2 Health-related and social services

Only a limited number of countries have made commitments in this sector. This is partly due to the fact that, in many countries, such services are provided not by the private sector but by government or public hospitals. The sector covers the following:

- Hospital services,
- Other human health services,
- Social services.

As regards the right of foreigners to establish hospitals, both the European Union and the United States have indicated that such requests will be subject to *need-based quantitative limits* taking into account such factors as the number of beds in relation to the population of each region. Some developing countries have specified that the establishment of hospitals with foreign participation will be possible only on the basis of joint ventures with local participation.

Most countries have, however, specified that the movement of natural persons to provide such services is unbound. This means that they will continue to apply their existing regulations, which do not generally recognize as equivalent degrees and other professional qualifications obtained in other countries and thus do not permit foreigners holding such qualifications to work in hospitals as doctors, nurses or midwives, or to provide other health or social services.

9.2.3 Management consultancy services

Management consultancy services cover a wide range of activities such as general, financial, production, marketing and human resource consultancy services.

It is possible to provide such services across borders through communications facilities. However, for more effective servicing, commercial presence in the country where the service is to be provided is essential. Of the 45 countries that have included management consultancy services in their schedules, a large majority have bound the supply of such services without limiting supply on a cross-border basis or requiring the establishment of commercial presence. A few developing countries have, however, not bound the supply of service on a cross-border basis and have indicated that the establishment of a branch or office will be possible only on the basis of joint ventures with local consultancy firms. None of these countries have agreed to bind the supply of such services through the movement of natural persons. This means that the existing regulations which prohibit foreign suppliers from providing such services unless they have established a commercial presence in the country will continue to apply.

9.2.4 Financial services

Financial services cover a wide range of insurance, reinsurance and other insurance-related services as well as a host of banking and other financial services.

Negotiations in this sector for the further improvement of the commitments assumed in the Uru-

guay Round were held after the termination of the Round and were completed in July 1995. The new commitments assumed include:

- ❑ Improvements in the number of licences available for the establishment of foreign financial institutions;
- ❑ Guaranteed levels of foreign equity participation of branches, subsidiaries or affiliates of banks and insurance companies;
- ❑ Removal or liberalization of nationality or residence requirements for members of boards of financial institutions; and
- ❑ The participation of foreign-owned banks in cheque-clearing and settlement systems.

One of the features of the agreements reached is the non-participation of the United States in the arrangement covering financial services. The United States considered that the advantages which its banking and insurance industry would obtain in other countries were not commensurate with the benefits which industries in these countries would acquire in the United States as a result of the open and liberal policies it had been pursuing in this sector and the commitments offered by it. It therefore decided to withdraw its offers.

The arrangement reached on financial services is being implemented by all WTO member countries, with the exception of the United States, for an initial period ending 1 November 1997. Further negotiations are expected to take place (during the 60 days following that date) which may meet some of the concerns of the United States and facilitate its participation in the arrangement.

IV. BUSINESS IMPLICATIONS

10. Assessment of benefits

With the assumption of the commitments described above, countries have taken the first preliminary steps towards liberalizing international trade in services. Unlike trade in goods, it is however not possible to quantify the potential trade effects of liberalization in the service sector for two reasons. First, there is no equivalent of customs duties in the service sector. As protection is granted through domestic regulations which discriminate against foreign suppliers, the effect of such measures or their removal cannot easily be quantified. Second, at least at present, the comprehensive data needed to estimate the trade effects of liberalizing particular services under different modes of supply or even in aggregate terms do not exist. Preliminary steps have only recently been taken to collect such data on a systematic basis.

The practical difficulties of quantifying trade gains should not, however, lead one to ignore the fact that the liberalization commitments which countries have undertaken and the discipline which GATS imposes do provide service industries with new opportunities for trade. They can take advantage of these opportunities both as importers and as exporters.

10.1 Importance of service imports

The commitments which some developing countries have taken in the financial sector will lead to the establishment of more foreign banks, insurance companies and securities firms in these countries. As noted earlier, the efficiency and competitiveness of manufacturing industries as well as of

agricultural producers depend greatly on the availability of services (banking, insurance and other services) and the existence of a telecommunications system and information infrastructure. In most developing countries, the growth of the service industries has, however, lagged behind that of the manufacturing sector. Furthermore, because of the high level of protection extended to the service sector, its level of efficiency is low. The development of an efficient and thriving service sector is, therefore, a high priority for many countries.

10.1.1 *New opportunities for collaboration with foreign suppliers*

In the circumstances, the commitments assumed by governments provide service industries in developing countries a new opportunity to collaborate with foreign service industries and to benefit from their technology. In negotiating collaborative arrangements, the industry can use as bargaining leverage the limitations imposed by their governments in their schedules of commitments. These, *inter alia*, specify that approval will be granted only if foreign service suppliers agree to bring in the most up-to-date technologies and to train local employees in their use.

10.1.2 *Benefits of contact points*

One of the major handicaps which service industries in developing countries suffer when entering into collaborative arrangements is their lack of knowledge of the commercial and technical aspects of the services and technologies they want to obtain. The GATS therefore provides for the establishment by developed countries of contact points from which such information can be obtained by interested serv-

ice industries in developing countries. As noted earlier, these contact points are to be set up before the end of 1996.

10.2 New export opportunities

On the export side, developing countries are generally considered to have a comparative advantage in service sectors that are either labour intensive or require highly skilled technical personnel. The sectors or sub-sectors in which it may be possible for these countries to develop trade, taking into account the above two factors, are listed below:

- Business services, including management consultancy services, computer services, professional services, R & D services, rental services;
- Communications;
- Construction and engineering;
- Distribution;
- Educational services;
- Environmental services;
- Financial (insurance and banking) services;
- Health services;
- Tourism and travel services;
- Recreational, cultural and sporting services;
- Transport services.

10.2.1 The link of commitments with domestic legislation

The description on pages 278-282 of commitments in several sectors provides a broad idea of the nature and content of the commitments that countries have assumed in regard to services. However, the commitments relate only to certain aspects of domestic regulations. In order to assess their benefi-

cial impact, it is necessary to examine them against the full background of the domestic regulations and rules applicable to the service sector in the countries giving the commitments. In some cases, the commitment may simply reaffirm or bind an existing practice, for instance, of giving approval to the establishment of a branch or a subsidiary company. In other cases, it may amount to accepting a new obligation.

For service suppliers interested in developing trade, the information contained in the schedules will therefore be of practical value only if they have all the relevant information on the domestic legislation, rules, regulations and practices forming the backdrop to such commitments. To assist service and other industries in obtaining such information, the GATS requires member countries to establish enquiry points. These should provide information on the laws and regulations applicable to the service sector.

10.2.2 Increased opportunities for natural persons to provide services

In some sectors, the competitive advantage of a number of developing countries, particularly NICs, arises from the existence of a vast pool of technically qualified people. Many skill-intensive services are provided through the temporary movement of natural persons to the countries where the service is provided. The horizontal commitments which countries have assumed in recently concluded negotiations on the movement of natural persons will now provide new opportunities for technically and professionally qualified persons to provide such services, without having to establish an office or other form of commercial presence.

10.2.3 Importance of adopting a juridical personality

It is important to note that in their horizontal and sectoral commitments a number of countries have indicated the conditions they currently apply when permitting their companies to employ for temporary periods the services of foreign technicians and specialists. While these commitments open up only limited opportunities, knowledge of the conditions imposed should enable foreign companies to take full advantage of them. The commitments often indicate that approval will be granted if the local company enters into a contract with a legally constituted foreign business enterprise to obtain the services of a specialist. It will therefore be desirable for persons interested in providing such services to organize themselves into a company or partnership rather than to act as individuals or loosely formed groups.

10.2.4 Opportunities for the expansion of trade among developing countries

Lastly, the commitments assumed by developing countries have opened up new opportunities for the expansion of South-South trade in services through the establishment of joint ventures and other collaborative arrangements especially on a regional basis. Apart from promoting South-South trade, regional consortia have a larger potential to compete with industrialized countries in bidding for service contracts. Such consortia can offer an impressive range of skills and experience, thus enhancing their image and underlining their competence, particularly in relation to work in their own region.

ANNEX I

Leading exporters and importers in the world trade in services, 1993

Rank	Exporters	Value (\$ billion)	Share (%)	Annual change in value in 1993	Rank	Importers	Value (\$ billion)	Share (%)	Annual change in value in 1993
1	United States	167.5	16.4	4	1	United States	113.4	11.5	8
2	France	100.8	9.9	-2	2	Germany	111.9	11.3	-3
3	Germany	61.8	6.1	-8	3	Japan	100.7	10.2	3
4	Italy	59.0	5.8	-8	4	France	83.3	8.4	-1
5	United Kingdom	53.5	5.2	-5	5	Italy	58.8	5.9	-16
6	Japan	53.2	5.2	7	6	United Kingdom	44.4	4.5	-5
7	Netherlands	37.0	3.6	1	7	Netherlands	35.9	3.6	-2
8	Belgium-Luxembourg	36.7	3.6	2	8	Belgium-Luxembourg	32.3	3.3	-3
9	Spain	31.7	3.1	-12	9	Canada	27.1	2.7	1
10	Austria	29.7	2.9	-1	10	Taiwan Province (China)	21.3	2.2	11
11	Hong Kong	28.9	2.8	16	11	Austria	21.1	2.1	6
12	Singapore	20.8	2.0	11	12	Spain	19.3	1.9	-13
13	Switzerland	19.7	1.9	0	13	Switzerland	16.8	1.7	-6
14	Canada	16.7	1.6	3	14	Korea, Rep. of	16.5	1.7	13
15	Korea, Rep. of	15.4	1.5	20	15	Hong Kong	16.0	1.6	9
16	Mexico	14.3	1.4	6	16	Saudi Arabia	13.9	1.4	-8

Rank	Exporters	Value (\$ billion)	Share (%)	Annual change in value in 1993	Rank	Importers	Value (\$ billion)	Share (%)	Annual change in value in 1993
17	Taiwan Province (China)	13.8	1.4	29	17	Norway	13.9	1.4	-6
18	Denmark	12.8	1.3	-14	18	Sweden	13.6	1.4	-30
19	Norway	12.6	1.2	-6	19	Australia	13.1	1.3	-5
20	Sweden	12.6	1.2	-21	20	Thailand	11.8	1.2	20
21	Thailand	11.2	1.1	17	21	China	11.6	1.2	26
22	China	10.9	1.1	21	22	Singapore	11.5	1.2	14
23	Australia	10.9	1.1	3	23	Mexico	11.2	1.1	-3
24	Turkey	9.4	0.9	13	24	Denmark	10.0	1.0	-7
25	Greece	8.5	0.8	-1	25	Indonesia	8.8	0.8	11
26	Egypt	7.4	0.7	1	26	Brazil	8.7	0.8	36
27	Philippines	6.9	0.7	2	27	Malaysia	8.3	0.8	8
28	Portugal	6.8	0.7	19	28	Israel	7.2	0.7	12
29	Israel	6.2	0.6	5	29	Finland	6.4	0.6	-15
30	Malaysia	5.9	0.6	7	30	Portugal	5.5	0.6	20
	Total of above	883.0	86.5	-		Total of above	874.4	88.3	-
	WORLD		100.0	1		WORLD	990.0	100.0	0

ANNEX II

Summary of the main provisions of the annexes to GATS

Annex on Movement of Natural Persons Supplying Services under the Agreement

This annex specifies that natural persons who are themselves service suppliers or employed by a service supplier shall be allowed to provide services in accordance with the *specific commitments* given by countries relating to the entry and temporary stay of such persons.

Annex on Financial Services

The annex applies to insurance- and reinsurance-related services, banking and other financial services. It emphasizes that the provisions of GATS should not prevent countries from taking measures for *prudential reasons* (e.g. for the protection of investors, depositors or policyholders or to ensure the integrity and stability of the financial system).

Annex on Telecommunications

This annex requires each member country to provide all service suppliers — foreign or domestic — access to any public telecommunications transport network and service offered within or across its borders for the supply of a service included in its schedule. It further requires countries to accord MFN and national treatment to all foreign service suppliers seeking access to, and the use of, public telecommunications transport networks and services. However, it does not require such treatment for cable or broadcast distribution of radio and television programming. Service suppliers are permitted to use their own equipment and operating protocols, provided they comply with certain technical specifications. Developing countries may impose *reasonable* conditions to strengthen their domestic telecommunications infrastructures and to

increase their participation in the international trade in telecommunications services. However, such conditions must be specified in the country's GATS schedule, making them more transparent and subject to future negotiations.

Annex on Negotiations on Basic Telecommunications

Negotiations for the liberalization of basic long-distance and international telecommunications services were being held at the time of the preparation of this Guide in accordance with the guidelines in the annex and the related decision. These are expected to be completed by 30 April 1996.

Annex on Negotiations on Maritime Transport Services

In the case of maritime services (international shipping, auxiliary services, and access to and use of port facilities), negotiations will continue until June 1996, at which time WTO members will implement the results of the negotiations and other actions recommended in the final report of the negotiating group. In the meantime the GATS does not apply to the sector, nor is it necessary to list MFN exemptions. Until the date on which the results of the negotiations take effect, members may improve, modify or withdraw commitments without offering compensation.