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Progress or Stagnation?

Services Negotiations in the WTO Doha Development Round

Progress in the negotiations in services trade is to be reviewed at the sixth WTO Ministerial Meeting in Hong Kong in December 2005, this date being crucial for successfully concluding the Doha Development Round. However, the way to a meaningful agreement on services will not be easy. The following article explains the challenges facing the negotiations and the reasons why progress in this field is so difficult to measure.

Services are the most dynamic sector of the world economy: they amount to 60% of global output, 30% of global employment and nearly 20% of global trade. They are equally important to both the developing and the industrialised world. Thus, they respectively account for about 55% and 44% of middle and low income countries' GDP and for 69% of industrialised countries' GDP.¹ In the EU-15, services make up more than two-thirds of the European GDP and two-thirds of the jobs. In 2003, trade in services alone amounted to about 8% of the European GDP.² Services have a significant impact on the growth and efficiency of a wide range of industries as well as on the overall economic performance of all countries. For example, sectors such as transportation, telecommunication or financial services set the conditions under which merchandise, capital and labour can flow.

Driven by innovations, particularly in information technology, increasing specialisation and product differentiation as well as government policies such as deregulation and liberalisation, world trade in services³ has developed particularly strongly since the 1980s: between 1980 and 2003, world exports of services increased almost fivefold from US \$364 billion in 1980 to \$1,795 billion in 2003, while trade in goods grew only 3.6 times from \$2,034 billion to \$7,294 billion in the same period. Thus, trade in services reached slightly higher growth rates than trade in goods, averaging around 7% annually in value terms. Consequently, the share of services in world trade grew from about 15% in the 1980s to

approximately 20% today. After two years of sluggish growth in 2001 and 2002, with annual growth rates of -1% and 5% respectively, trade in services recovered considerably with a growth rate of about 13% in 2003.

Passenger, freight or other transportation services as well as travel services (business and personal travel) still make up the majority of trade in services. However, both sectors lessened slightly in importance in the 1990s: the share of trade in transportation services decreased somewhat, while trade in travel services stagnated at a high level. Contrary to this, trade in communication services (telecommunication, postal or courier services), computer and information services, insurance and personal services as well as financial services have developed strongly.

The main service exporters in 2003 included the USA (16% of world trade), the UK (8%) and Germany (6.4%), followed by France, Spain and Italy. With 2.6% of global services exports, China was the only developing country in the list of the top 10 worldwide service exporters (position nine). The main service importers were once again the USA (12.8% of world trade), Germany (9.6%) and the UK (6.6%) followed by Japan, France and Italy. Here again, China was the only developing country making it into the top 10 list with 3.1% of global services

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¹ WTO: Measuring Trade in Services; http://www.wto.org/english/res_e/statistics_e/services_training_module_e.pdf.

² EU: Cancun Special: Advancing the Doha Development Agenda; http://europa.eu.int/comm/trade/issues/newround/doha_da/cancun/pr060803_en.htm.

³ The WTO Secretariat defines commercial services under the balance of payments/current account as being equal to services minus government services. Services are further sub-divided into transportation, travel, and other commercial services.

Table 1
World Trade in Goods and Services

	Value (US \$ bn.)	Annual Growth Rates in %					
	2002	1990- 2000	1999	2000	2001	2002	2003
Trade in goods	6240	6	4	13	-4	4	16
Trade in services	1540	7	3	6	-1	5	13

Sources: WTO, World Trade in 2003 – Overview, [WWW Document], URL, http://www.wto.org/english/res_e/statis_e/its2004_e/ist04_overview_e.htm.

imports (position eight).⁴ While about three-quarters of the revenues in international trade in services are still realised by industrialised countries, trade in services also grew strongly in the developing world, accounting for more than 50% of the total export revenues of some nations. Thus, developing countries' share in global commercial service exports rose from 20% in 1980 to 26% in 2000. Furthermore, 15 of the world's 40 leading service export companies are from developing countries.⁵

It is a popular misconception that liberalising trade in services only benefits the industrialised world. It also offers great growth potential for developing countries through the traditional gains from comparative advantage as well as by increasing the impulses for competition and efficiency, fostering the break-up of monopolies, lowering the costs of production for industries which are linked to services and providing a more efficient infrastructure. Furthermore, services liberalisation strongly fosters FDI as well as knowledge and technology transfers, which stimulate innovation. Today, developing countries have an interest in a wide range of service sectors – not only in tourism. Thus, many of them have a significant comparative advantage in areas of “back office” activities, i.e. data entry, transactions processing (e.g. insurance claims), software development and maintenance or data management.⁶ This is confirmed by recent trends – par-

⁴ WTO: International Trade Statistics 2004; http://www.wto.org/english/res_e/statis_e/its2004_e/section1_e/i07.xls.

⁵ Guy Karsenty: Trends in Services Trade under GATS - Recent Developments; http://www.wto.org/english/tratop_e/serv_e/symp_assessment_serv_march02_e.htm; European Commission: WTO DDA. WTO Mid-point Agreement Paves the Way for Future Conclusion of Trade Round; <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/1011&format=HTML&aged=0&language=en&uiLanguage=en>.

⁶ Bernard Hoekman and Pierre Sauvé: Liberalizing Trade in Services, World Bank Discussion Paper 243, Washington DC 1994, p. 5.

Table 2
World Exports of Commercial Services in 2000-03

	Value (US \$ bn.)	Annual percentage change		
	2003	2000-03	2002	2003
Commercial services	1795	7	7	13
Transportation	405	5	5	13
Travel	525	4	4	10
Other commercial services	865	9	10	15

Sources: WTO, World Trade Developments in 2003 and Prospects for 2004; http://www.wto.org/english/res_e/statis_e/its2004_e/chp0_e/table_1_e.xls

ticularly in the USA – of outsourcing to developing countries such as India or to East Asian emerging markets. Accordingly, developing countries would benefit greatly from opening up their own economies in these areas. The World Bank estimates that the liberalisation of services in developing countries could provide as much as \$6 trillion in additional income in the developing world by 2015, four times the gains that would result from further liberalising trade in goods.⁷

Additionally, developing countries would benefit significantly from greater market access in services abroad, especially in the temporary movement of individual service suppliers. Thus, while they are less likely to have multilateral service providers as found in industrialised countries, they have individuals who can provide services under individual contracts in construction, distribution, transportation and many other sectors. Since this movement of persons is only temporary, both exporting and importing countries would benefit: given the current population trends, industrialised countries could counteract a shortage of particular service skills by opening up their markets, creating fewer social and political problems than by increasing permanent immigration. The exporting country, on the other hand, would gain from financial, and knowledge and technology, transfers when the service provider returned home after a certain period. This might also relieve permanent migration and labour pressures and increase demand for industrialised countries' products in the developing countries.⁸ Mattoo estimates that an increase in developed countries' quotas of skilled and unskilled temporary labour movement equivalent to 3% of their labour force could lead

⁷ World Bank: Global Economic Prospects and the Developing Countries, Washington 2001.

⁸ World Bank: Globalization, Growth and Poverty: Building an Inclusive World Economy, Washington 2002, pp. 59 f.

to a \$156 billion increase in world welfare, which would be greater than the estimated gains from the liberalisation of trade in goods.⁹

Old Rules Revisited

With global trade in services rapidly growing, old multilateral rules have to be reconsidered and updated, while in some cases new ones have to be found. Central to this is the General Agreement on Trade in Services (GATS) of the WTO. The GATS, which came into force in January 1995 as part of the Uruguay Round Agreement, created the first framework of multilateral rules and disciplines on international trade in services, being broadly comparable to the General Agreement on Tariffs and Trade (GATT). The main goal of the GATS is to promote competitive and efficient markets by reducing or removing structural barriers to services trade, including regulations on:

- the number of services suppliers
- the total value of services transactions or assets
- the total number of services operations or the total quantity of services output
- the total number of natural persons that may be employed in a particular sector
- the specific type of legal entity through which services can be supplied.¹⁰

The GATS covers all internationally traded services, including telecommunications, transportation, distribution, postal services, insurance, financial services, research, computer and information services, to name but a few. It identifies four ways in which services can be traded (“modes of supply”).

- Mode 1 covers services supplied across borders, which is analogous to trade in goods (e.g. software services supplied in one country through mail or electronic means to a consumer in another country).
- Mode 2 applies to services consumed abroad, which usually but not necessarily involve physical movement of the consumer (e.g. tourism).
- Services provided by establishing a commercial presence abroad – that is foreign direct invest-

ment (e.g. foreign banks setting up operations in a foreign country) – fall under Mode 3.

- Mode 4 covers services provided by the movement of natural persons across borders (e.g. construction workers or consultants).

The GATS consists of three main elements. First, the framework agreement contains the general rules and obligations, including the MFN-principle (“favour one, favour all”), the requirement of transparency as well as a number of GATT-like exceptions such as in the case of unfair trade (e.g. subsidies), health and national security. The second element is the national “schedules” which list individual countries’ specific commitments on access to their markets, including individual exceptions to the MFN-principle. The annexes on specific issues of the agreement, which interpret and apply the rules of the general framework agreements to specific sectors (e.g. financial services or telecommunications), are the third element of the GATS. While the GATS is generally guided by the same principles as the GATT, there are some important differences. The GATS differentiates between general obligations (MFN and transparency) and specific commitments (market access and national treatment). The former apply to all service sectors regardless of whether they have been included in the country’s schedule of commitments. Concerning the MFN-principle, countries were allowed some special temporary exemptions alongside their initial commitments. These exemptions could only be made once, are currently under review and are to be phased out after ten years. No exemptions were allowed from the transparency requirement, under which governments must publish all relevant laws and regulations, and set up enquiry points within their bureaucracies.

Contrary to the MFN-principle and the obligation of transparency, the specific commitments on market access and national treatment (imported and locally produced services should be treated equally) do not apply across the board to all service sectors but only to those listed in a country’s schedule, which set forth specific terms and conditions. Consequently, the GATS follows a hybrid list approach (i.e. a positive-list or bottom-up approach), while the GATT follows a negative list approach (top-down approach), under which measures that do not conform to the principles of market access and national treatment must be listed as exceptions.

⁹ Aaditya Mattoo: An Assessment of Services Trade Policy Reform: Some Evidence, 2002; http://www.wto.org/english/tratop_e/serv_e/symp_mar02_mattoo.ppt.

¹⁰ Aaditya Mattoo: Trade in Services: Economics and Law, World Bank, Washington 2002, p. 11.

Initial country commitments on market access were quite disappointing, binding the status quo, rather than achieving liberalisation beyond the original openness of countries. Developing countries in particular were reluctant to commit themselves to anything other than basic standstill commitments. Overall, the GATS was criticised for its structural weakness, as it did not achieve the same scope of coverage as the GATT. However, the GATS succeeded in setting the stage for future trade liberalisation – just as the former GATT did in 1947. Accordingly, two sectoral negotiations have been successfully concluded since the completion of the Uruguay Round – one on basic telecommunications (February 1997), the other on financial services (December 1997), which add significantly to the national schedules of commitments under the GATS.

Services Negotiations under the Doha Development Agenda

Recognising the importance of trade in services and following the mandate of the GATS (Article XIX, “build-in agenda”), negotiations to further liberalise trade in services already started in early 2000 – independently of a comprehensive trade round – that is before the Doha Work Programme was decided upon. The goal of these negotiations was to achieve progressively higher levels of liberalisation (i.e. greater commitments in the country schedules on market access and national treatment), as well as to develop certain GATS rules which had not been agreed upon during the Uruguay Round.

The first phase of negotiations was concluded in March 2001 with the establishment of guidelines and procedures for continuing negotiations. The 2001 Doha Ministerial Declaration accepted these guidelines as the basis for the upcoming Doha Development Round negotiations on services. Furthermore, it incorporated services into the “single undertaking” of the Round,¹¹ set important deadlines for crucial negotiation phases and decided upon a request and offer approach as the main method of negotiating specific commitments on market access and national treatment, with current commitments serving as the reference point for negotiations. The main goals of the negotiations were once again progressive liberalisation and the economic growth of all the trading partners, but now

with an increased participation by developing countries. The negotiations were to cover two aspects:

- liberalisation, i.e. the removal of market barriers, the expansion of commitments on market access and national treatment and the binding of unilateral liberalisation that has occurred in many sectors since 1995
- rule-making, i.e. disciplines for emergency safeguard measures (GATS article X), subsidies (article XV), government procurement (article XIII), and domestic regulation (article VI).

WTO members had to submit initial requests for specific commitments by June 30, 2002. The deadline for submitting proposals on liberalisation offers was March 31, 2003. The fifth Ministerial Conference in Cancún, in September 2003, was to take stock of overall progress, while the initial general deadline for services negotiations was January 1, 2005.

Since July 2002, an intense process of bilateral negotiations on market liberalisation as well as rule-making has been underway. However, WTO members remain divided on whether or not further liberalisation under the GATS is at all desirable and whether new rules for trade in services are really necessary. Thus, negotiations have proven to be both technically and politically difficult, particularly due to the complex nature of services, including measurement problems with respect to international services transactions as well as difficulties in distinguishing clearly between the different modes of supply. Moreover, services negotiations require a review of complicated domestic regulations under the purview of many different ministries. The negotiations are further complicated by considerable tensions between the developing and industrialised countries as well as by the close scrutiny paid to them by civil society.

Services negotiations slowed down even more due to the failure of the fifth WTO Ministerial Meeting in Cancún (Mexico), picking up again only in spring 2004. After intense work on many crucial and controversial issues of the Doha Development Agreement (DDA), particularly agriculture, during the following months, a Framework Agreement for negotiations was finally agreed upon at the General Council meeting of July 27-30, 2004. This “July Package” gave a strong impetus for overall trade talks, including services negotiations. Progress within the negotiations is to be reviewed at the sixth

¹¹ All agreements – with only a few exceptions – have to be signed by all WTO members as a single package.

WTO Ministerial Meeting in Hong Kong in December 2005, this date being crucial for successfully concluding the Doha Round. However, the way to a meaningful agreement on services will not be easy. Thus, the negotiations under the GATS face three major challenges, i.e. expanding the coverage of liberalisation commitments, enhancing multilateral rules and improving information on prevailing policies (transparency). Central to all of these tasks is measuring existing market access, which remains a great challenge in itself.

Negotiating Market Access and National Treatment Commitments

Until the Ministerial Meeting in Cancún, negotiations focused mainly on market liberalisation issues. By that time, virtually all WTO members had received requests, mainly from industrialised and some larger developing countries. About 30 countries had made initial liberalisation offers, among them the EU-15 and the USA. However, the modal coverage and depth of these proposals varied widely, clearly reflecting national policy objectives and levels of economic development, often running along a North-South divide. Countries with strong private services industries such as the USA, the EU members and Japan want to improve access to foreign markets, particularly in the area of financial and telecommunication services, and consequently demand greater liberalisation, especially under the commercially important Modes 1 (cross-border supply) and 3 (commercial presence). At the same time, industrialised countries' own liberalisation proposals focus on areas in which they have a comparative advantage, being rather hesitant to further liberalise services under Mode 4 (temporary movement of persons), since this touches upon very sensitive migration issues. In most cases, industrialised countries offer only horizontal commitments across all sectors to allow intra-corporate transfer of executives and senior workers, focusing clearly on highly skilled personnel originating from other industrialised countries.

This is also reflected in the liberalisation offer of the European Commission and its Member States of April 2003: in telecommunication services, the Commission proposed guaranteeing full access to the EU market to foreign suppliers. The proposal further included full market access in computer and related services, as well as greater market access in business, distribution, environmental services, construction and related engineering services, fi-

nancial, travel and transportation services, and news and entertainment services. The Commission also offered greater market access in professional services, including legal services, broadening the sectoral coverage so that foreign lawyers and firms can provide legal services in all EU member states regarding the law of any country in which those lawyers are qualified. On postal and courier services the proposal confirmed foreign operators' access to the EU. No improvements were proposed for the energy services sector, pending completion of the ongoing work at the WTO to clarify the classification of energy services.

The Commission made offers neither in health related and social services nor in education and audiovisual services, also emphasising that the Community and its member states will not be restricted in their right to regulate public services in order to meet national policy objectives. Furthermore, the Commission stressed that EU members will remain able to provide subsidies in service sectors in order to support research or regional development as well as to preserve the general sustainability of the public sector. Concerning the mobility of persons under Mode 4, the Commission focused clearly on the temporary movement of skilled personnel. Thus, it proposed that self-employed skilled professionals working in certain service sectors may enter the EU for up to six months to provide services to EU clients, also extending the number of sectors that are covered. Furthermore, overseas companies which have a contract to provide certain services to EU clients will be able to send skilled personnel to the EU for up to six months at a time. Lastly, a service company with a graduate training programme will be allowed to transfer "managers of the future" to the EU for up to one year.¹²

The initial requests that the European Commission has made to third countries since July 2002 reaffirm its interest in further liberalisation under Modes 1 and 3. Here, the main objectives are to eliminate entry barriers such as limitations on the number of service suppliers, limits on foreign ownership or shareholding, restrictions on the type of legal entity, compulsory joint-venture or numerical quotas.¹³ However, these are very sensitive ar-

¹² EU: Summary of the Commission's Proposal for the EU's Services Offer, Brussels, April 2003; http://europa.eu.int/comm/trade/issues/sectoral/services/wto_nego/index_en.htm.

¹³ EU: Summary of the EU's Initial Request to Third Countries in the GATS Negotiations, Brussels, July 2002; http://europa.eu.int/comm/trade/issues/sectoral/services/wto_nego/index_en.htm.

eas for most developing countries. Particularly the least developed countries (LDCs) among them are reluctant to open up their markets further under Mode 3 and in areas such as financial services or telecommunication. Despite the potential stimulation of growth and development, they fear that services liberalisation would go along with imposed privatisation, a loss of regulatory autonomy and an uncontrollable opening of sectors in the absence of competition laws. They are further concerned about a possible displacement of less competitive national companies and the introduction of market-oriented supply in public services, including health and education. Many argue that some sectors still need special protection in order to maintain a stable level of economic and social welfare.

While the range of services sectors in which developing countries have an exporting interest is still rather limited due to their restricted export potential, there are some sectors which offer considerable export opportunities, including tourism and travel services. Many developing countries therefore offer greater market access under Mode 2 (consumption abroad), particularly in travel services (tourism), mainly under hotel and restaurant services with fewer commitments in travel agencies and tour operations or tourist guide services. Another comparative advantage of many developing countries lies in the provision of labour- and skill-intensive services such as business services (data entry, processing and maintenance) and technology services (software development, speciality engineering). Accordingly, they also demand greater market access in these areas, particularly under Mode 1. However, the main interest of the developing countries lies clearly in further liberalising temporary movement of individual service suppliers under Mode 4.

WTO members who have not yet submitted their initial offers are required by the July Package to do so as soon as possible; revised offers should be tabled by May 2005. The July Package further stresses that WTO members shall strive to ensure a higher quality of offers, particularly in sectors and modes that are interesting to export-oriented industries in developing countries. Nevertheless, some developing countries have criticised the July Package for not going far enough concerning Mode 4.

New Rules for Trade in Services?

While negotiating greater commitments on market access and national treatment has been at the Intereconomics, May/June 2005

centre of services talks so far, less attention has been paid to the development of possible rules and disciplines under the GATS. Here, work has concentrated mainly on safeguards and the establishment of an emergency safeguard mechanism ("ESM"), which could be used to ease adjustment pressures in situations where a particular industry is threatened by a sudden increase in foreign supplies. However, no consensus has been reached yet on an ESM and countries have remained divided. Many WTO members – among them mostly industrialised countries – are not convinced that such a mechanism is desirable, given the risk of undermining the stability of existing commitments through new emergency provisions. They fear that the ESM could be abused as hidden protectionism, limiting access to services from foreign suppliers and leading to higher prices than under more open conditions. They also doubt its workability in practice, pointing out the scarcity of reliable services data in many sectors and the technical complexities associated with the multi-modal structure. Contrary to this, other WTO members – many of them developing countries – feel that the availability of safeguards is needed as a safety valve in the case of unforeseen sudden economic problems. Furthermore, such an ESM could encourage more liberal commitments in services negotiations. The developing countries also believe that data problems are exaggerated and that possible abuses of the ESM could be avoided through strict procedural disciplines. Given the clear political expectations on the part of these countries that concrete rules must arise from current trade talks, it is likely that some form of ESM will be included into the GATS.¹⁴

Negotiations on subsidy disciplines have not given rise to quite the same degree of controversy and debate as the ESM. Subsidies are already subject to the GATS and the general obligations (including MFN treatment) apply. In scheduled sectors, these are complemented by the national treatment obligation and a variety of conditional obligations. However, since WTO members viewed these provisions as insufficient and foresaw the need for a more comprehensive set of rules to deal with trade-distorting services subsidies, Article XV states that "Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects. The negotiations shall also address the appropriateness of countervail-

¹⁴ Pierre Sauvé: Completing the GATS Framework: Addressing Uruguay Round Leftovers, in: *Außenwirtschaft*, No. 57, 2002, p. 301-341.

ing procedures.”¹⁵ While a work programme was adopted in 2002 to address trade-distorting services subsidies, the outcome is still pending. Many countries believe that the desirability of disciplines in this area will require a more thorough identification phase to determine the extent to which subsidies exist in services industries and actually result in adverse trade or investment effects. Some also argue that possible subsidy rules will need to reflect the specificities of trade in services and investment.

Another critical area of the negotiations is government procurement. The GATS does not impose any effective disciplines on governments’ use of access restrictions (e.g. exclusion of foreign participation or preferential margins favouring domestic suppliers). While there are procurement disciplines under the WTO in the Plurilateral Agreement on Government Procurement, which applies to purchases of goods and services and provides for transparency, this agreement is confined to a few, mostly well-developed WTO members. Furthermore, government procurement is also discussed separately under the DDA, being part of the “Singapore issues”. Both complicate negotiations on government procurement under the GATS: WTO members have agreed neither on whether explicit disciplines on government procurement should be included into the GATS nor whether a more general approach of disciplines covering both services and goods is preferable. There is also disagreement on whether separate GATS rules should go beyond the issue of transparency, which lies at the heart of the overall procurement negotiations under the DDA. Additionally, WTO members still disagree on the importance of a procurement regime for services, many of them arguing that certain regimes – even if explicitly discriminating against foreign suppliers – are unlikely to have major repercussions on domestic or foreign welfare as long as markets are contestable. Other WTO members attach less importance to the issue of government procurement, viewing the removal of barriers to access and presence in services markets as well as the enforcement of domestic competition laws as more important.¹⁶

The July Package requests that WTO members intensify their efforts to conclude the negotiations on rule-making under Articles VI, X, XIII and XV.

However, countries are still far apart on key issues and there is no consent on whether or not new disciplines are politically desirable or practically feasible. Particularly the ESM as well as multilateral disciplines on subsidies could prove to be a stumbling block since many developing countries see progress here as a precondition for accepting new market access commitments.

Negotiating Horizontal Issues

Within the area of horizontal issues, negotiations were centred around credit for autonomous liberalisation, special treatment for LDCs and assessment of trade in services. Concerning credit for autonomous liberalisation, WTO members who have liberalised trade in services unilaterally since the last multilateral negotiations (e.g. under World Bank/IMF structural adjustment programmes) wanted this to be taken into account when they negotiated market access, since current services schedules were to serve as the basis for negotiations. Modalities for the treatment of autonomous liberalisation were agreed upon on March 6, 2003. The framework established how to assess the value of an autonomous liberalisation measure (e.g. sectoral coverage or date of entry and duration of the measure), which is an important first step in giving the liberalising country credit for these measures. To facilitate this assessment, the liberalising country and its trading partner can use either a qualitative, a quantitative, or a mixed approach. By establishing criteria for granting credit for autonomous liberalisation, negotiators – particularly from developing countries – were able to engage more confidently in their bilateral bargaining for specific commitments on market access.¹⁷

Mandated by Article XIX of the GATS to establish modalities on special treatment for LDCs in order to increase their participation in the world economy, WTO members agreed upon a framework for further negotiations on September 3, 2003. This framework reaffirmed that LDCs are facing great difficulties in addressing the numerous and highly complex issues arising in services negotiations due to a lack of institutional and human capacities to analyse and respond to market offers and requests. Therefore, WTO members are required to negotiate specific commitments in view of the special economic situation of the LDCs, to offer effective market access

¹⁵ WTO: General Agreement on Trade in Services, Legal Text; http://www.wto.org/english/docs_e/legal_e/26-gats.doc.

¹⁶ WTO: Services: Rules for Growth and Investment; http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm.

¹⁷ WTO: Negotiators Agree on Modalities for Treatment of Autonomous Liberalization; http://www.wto.org/english/news_e/pres03_e/pr335_e.htm.

in sectors and modes of supply of export interest to them, as well as to restrain from seeking commitments from them. Furthermore, the framework permits LDCs to open fewer sectors, liberalise fewer types of transactions and extend market access progressively according to their development situation. Additionally, LDCs are not expected to offer full national treatment.¹⁸

Equally important for developing countries, but far more controversial than special treatment to LDCs, are negotiations on a full assessment of the effects of the GATS. The GATS mandates that members assess trade in services, including the GATS objective of increasing the developing countries' participation in services trade. Negotiations are then to be adjusted in response to this assessment. Accordingly, preparatory work in this area already started in early 1999. However, a compromise has yet to be found: the developing countries consistently call for an overall assessment of trade in services to be carried out as a precondition for further market access negotiations. They also emphasise their need to identify sectors with export potential, to assess restrictions in their own commitments which have a negative effect on their domestic economy, as well as to reflect public concerns and interests in the commitments. In contrast to this, other WTO members emphasise that the shortage of statistical information and other methodological problems make it impossible to conduct an assessment based on full data. Some industrialised countries also argue against the necessity of an overall assessment, emphasising that the general guidelines of the GATS only provide for national assessments to be conducted by the countries themselves. So far, discussions are still continuing, also with the technical assistance of the WTO Secretariat.¹⁹

Improving Transparency

One of the greatest challenges of the GATS negotiations, which is both central for expanding the coverage of liberalisation commitments as well as for improving multilateral rules, is to increase information on prevailing policies, i.e. transparency. Although transparency is a general obligation of the GATS, progress in this area has been comparatively slow, and meaningful improvements are not very

likely to occur soon – due to analytical and conceptual difficulties such as measurement problems as well as countries' adverse interests.

The fact that the ongoing negotiations give only a vague picture of the liberalisation progress made so far is quite normal, given that negotiating parties usually do not put all their cards on the table until the very last moment. It would be more problematic, however, if negotiators themselves did not have detailed information on the state of protectionism in international service transactions and their various subcategories. As unlikely as this scenario seems, it might very well be reality in the WTO services negotiations. The ongoing talks focus on improving the results of the last negotiating round. But until today, information on these results is very limited, at least compared with GATT agreements on trade in goods, which were the backbone of half a century of negotiations held under the auspices of the GATT.

Agreements on tariffs, export subsidies and import quotas are clear orientation points for negotiators because they focus on numerical goals or on goals that are easily quantifiable. The content of these agreements is clear insofar as they reveal which segments of the international markets have been the focus of the negotiations, which countries have been willing to make progress and, not least, whether or not the final package constitutes progress compared to the status quo. Due to their relative clarity, these agreements have also become the subject of academic analysis. Students of international economics learn what effects the lowering of a tariff has on consumer and producer surplus, on government revenue and, not least, on overall welfare. Empirical studies determine the growth effects of liberalisation measures. As a result, knowledge on international trade policy, its positive results as well as its problems, has disseminated beyond the academic community and has reinforced the liberalisation process. The fact that agriculture, textiles and clothing, for example, are weak spots in an otherwise strong record of multilateral trade negotiations and that it is industrial countries which are to blame for this situation, is certainly not only known to a handful of trade specialists. Moreover, the Doha negotiations very much focus on this problem.

In the services sector no such transparency exists. Who could say which service industries made progress in the last negotiating round and which did not? Who knows which countries have made good progress? Almost two decades after services

¹⁸ WTO: WTO Members Agree on Ways to Boost LDC Participation in Services Negotiations; http://www.wto.org/english/news_e/pres03_e/pr351_e.htm.

¹⁹ WTO: Services: Rules for Growth and Investment; http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm.

were officially put on the agenda of the Uruguay Round and well into the second negotiating round that deals with this topic, remarkably little is known about the particularities of trade barriers in the service industries. One of the reasons for this situation is the broad coverage of the GATS agreement which in itself is a remarkable achievement. As described above, the GATS covers not only trade but three more modes of supply. With its coverage of the movement of natural persons and foreign direct investment, the agreement challenges traditional concepts of the nation state. The second, more malicious reason for the lack of transparency is the nature of the barriers to trade in the service industries. Most of them are part of a complex system of rules that has been created with a view to regulating domestic service suppliers. These rules not only differ from industry to industry but from one market segment to another within each industry. The financial services sector for example has developed different regulatory systems for banking, securities and insurance. Even for insurance business, rules on market access and national treatment vary with respect to different lines of business. In almost all industrial countries, life insurance is completely shielded from foreign competition, while non-life insurance shows a mixed record and reinsurance has been open to foreign competition in the great majority of industrial countries throughout the periods of peacetime in the twentieth century. The overarching goals attached to service regulation add considerably to identifying, evaluating and reducing trade barriers. In financial services, for example, great importance is attached to preserving the safety and soundness of the national markets.

Although multilateral trade talks created for the first time an incentive for systematically reviewing the effects of these regulations on international transactions, only a very small step has been made towards this goal. Instead of systematically analysing the state of protectionism for each industry, international transaction, mode of supply and country, GATS negotiations have relied on liberalisation demands from export-oriented industries. Given the fact that negotiating parties have to react to such demands only as they see fit, the country schedules are not at all a systematic inventory of trade barriers but a colourful testimony to the negotiating dynamics and the many choices offered to negotiating parties through the framework agreement. Thus, no two countries have made commitments for the same service industries, transactions or modes of

supply. Even worse, the fact that the GATS negotiations follow a positive-list approach means that signatories provide information on their trade barriers only for those international service activities for which they decide to make liberalisation commitments. If they decide otherwise, information on market access and national treatment can only be obtained from national sources.

Attempts to Measure Liberalisation Commitments

A first step towards increasing transparency and thus setting the basis for meaningful market access negotiations is to find a comprehensive analytical framework to measure the openness of countries in trade in services. Accordingly, several academic studies have attempted to analyse the state of play. The first major wave of studies that turned to international service transactions dates back to the early years of the Uruguay Round, when liberalisation commitments were not yet on the table and negotiations still concentrated on the particulars of the framework agreement. The main interest of the early studies, which could be characterised as "the discovery of services in international economics", was to give an overview of how the many different service industries provide services internationally. Overwhelmed by the enormous heterogeneity of the service sector and due to a lack of information on the magnitude of international service transactions in the balance of payments, these studies did not approach the question of how to systematically analyse trade barriers in this sector. One of the central insights of these studies was that the international division of labour was much more often accomplished through foreign direct investment and the movement of natural persons than through trade. As obvious as this insight was for all those who had worked in internationally oriented service industries, it did not come easily to economists, as it runs counter to long-held beliefs. Since Ricardo, international economics had not only focussed on trade in goods and ignored international service transactions but had actually assumed in all of its important trade theories that international factor movements do not exist in the world economy.

A second wave of academic research followed when the liberalisation commitments negotiated under the GATS became publicly available in the mid 1990s. The first attempt to analyse the country schedules systematically was made by Hoekman.²⁰ As laudable as this ground-breaking initiative was,

it involuntarily brought to light how difficult it is to make sense of the negotiating results. The first problem that had to be overcome was the great magnitude of information contained in the country schedules. For each service industry, negotiating parties had made commitments in hundreds of fields of the schedules, which result from combinations of the two specific commitments market access and national treatment with the four modes of supply and with the numerous transactions offered by each industry. With a spreadsheet programme and enough manpower, this was a manageable task.

The real problem turned out to be the evaluation of each and every commitment. Only when countries had decided either to make no liberalisation commitment for a certain international service activity at all or to liberalise it without any reservations, was decoding of the commitments straightforward. Hoekman assigned a 1.00 for full liberalisation and a 0.00 for no liberalisation. Much more difficult are the many cases in which countries do not make such a clear-cut decision but decide in favour of a conditional liberalisation commitment. In such cases the fields of the schedules are filled with requirements and specifications that can run to several pages. For example, market access might be granted to foreign life insurance companies in Mode 3 if (a) foreign firms set up as subsidiaries rather than branches, if (b) foreign equity in these subsidiaries does not exceed 60% and if (c) the market share of all foreign life insurance companies does not exceed 20%. The information found in the schedules in such cases are fragments of the complex national services regulations. Deprived of their original context, their meaning to foreign service suppliers will in many cases only be comprehensible with the help of interviews with company representatives.

Hoekman was well aware of these challenges when he assigned 0.50 to the majority of different conditional liberalisation commitments. In doing so he deliberately left the difficult task of analysing these commitments to later studies. Consequently he decided to refrain from publishing results on the liberalisation commitments of individual countries. Nevertheless his work reveals some interesting facts. For example, it shows that high-income countries had made liberalisation commitments on-

ly for about 50% of all international service activities and major developing countries only for 11%. This confirms suspicions that had already been voiced during the negotiations, namely that the many possibilities offered in the framework agreement for making liberalisation commitments had only been used very selectively by negotiating parties.

Because understanding the GATS commitments depends heavily on an intimate knowledge of the service industries under consideration, later studies narrowed their focus accordingly. The only study that was undertaken by the WTO to demystify the GATS commitments was limited to financial services, which together with telecommunication services received the greatest deal of attention in the literature in later years. As it turned out though, even the specialists in Geneva were not able to make much progress. The WTO study made no major attempts to classify the conditional commitments nor did it reveal results on individual countries.²¹

In the following studies the scope of analysis was even further limited. Mattoo, for example, concentrated on the commitments of developing and transition countries for which he only considered core activities of the financial services industry.²² For insurance, he looked at direct life and non-life insurance and for banking at the acceptance of deposits and all types of lending. In some cases he then made attempts to quantify the restrictiveness of the conditional commitments to which Hoekman had evenly assigned 0.50. For commercial presence the study suggests the following numbers: no new entry (0.10), discretionary licensing for new entry (0.25), ceiling on foreign equity at less than 50% (0.50), ceiling on foreign equity at more than 50% (0.75), restrictions on the legal form of commercial presence (0.75), and other minor restrictions (0.75). Mattoo also turned to another problem that Hoekman had already addressed, namely that of modal weights for international service activities. Hoekman had rightly pointed out that a careful analysis of liberalisation commitments has to take into consideration the magnitude of service activities in the world economy. Liberalisation commitments will tend to have larger welfare effects if they are made for modes that are extensively used by service

²⁰ Bernard M. Hoekman: *Tentative First Steps: An Assessment of the Uruguay Round Agreement on Services*, Centre for Economic Policy Research, Discussion Paper 822, London 1995.

²¹ WTO: *Opening Markets in Financial Services and the Role of the GATS*, Geneva 1997.

²² Aaditya Mattoo: *Financial Services and the WTO: Liberalization Commitments of the Developing and Transition Economies*, in: *World Economy*, Vol. 23, 2002, pp. 351-386.

suppliers. In order to arrive at modal weights, Mattoo used data from the USA, the only country that reports statistics on establishment business on a regular basis. For insurance, for example, he found that the volume of services provided through commercial presence is 3.5 times greater than through cross-border trade for imports and more than 6 times as large for exports. Since he did not find accurate data on the activities of foreign service firms from other countries, he also used the US ratios to weigh the commitments of all other signatories. In his own words, this method can only give "the roughest idea" about the real world relevance of the modes. The problem of using ratios from the USA is not only that other countries will have different ratios, but that any such ratio will be influenced by limitations on market access and national treatment that have been applied in the past.

A study conducted by Claessens and Glaessner limits the focus to a much smaller country group, eight newly industrialised countries from East Asia.²³ The authors not only look at commitments made under the GATS but compare these commitments with the status quo, that is, the trade policy regime that had existed independently of the multilateral negotiations. This research design was inspired by a controversy that had come up during the last negotiating round. The USA had temporarily left the negotiating table, complaining that many countries, especially East Asian newly industrialised countries, had not made sufficient liberalisation offers. According to the US point of view, quite a few of these countries had not improved market access and national treatment compared to the status quo, or even worse, they had not even come close to what they had offered to other countries on a unilateral basis. The outcome of the study confirms the US point of view to a certain degree. Looking at all three areas of the financial services sector (banking, insurance and securities) the authors conclude that in a third of all cases reviewed, commitments do in fact fall short of the status quo.

Lately, there have also been studies that have not only analysed the commitments, but have gone a step further, trying to identify factors that influence the level of commitments. Harms, Mattoo and Schuknecht suggest that commitments are determined by factors such as financial market de-

velopment, macroeconomic volatility, the quality of regulation and the presence of service providers in the home country as well as by strategic and distributional considerations of the negotiating parties.²⁴ Valckx looks in a somewhat more sophisticated econometric study not only at the determinants of the WTO financial services commitments but also at their impact on the stability of financial markets.²⁵ Given the many problems with identifying and evaluating commitments, these studies are on shaky ground. This is especially the case because they rely heavily on earlier studies for their analysis of different levels of commitments. In both cases, no major breakthrough has been achieved to deal with the many ambiguities of the commitments and the lack of data on the magnitude of international service transactions.

The Way Ahead

This brief glance at GATS commitments and their analysis shows that transparency is a serious problem of its own – not only for the academic discussion of the progress made in this new field of multilateral trade negotiations but also for negotiators who, in the absence of clear orientation points, have to rely heavily on the liberalisation demands from export-oriented service industries. Improvements on this aspect of the negotiations can only be reached through coordinated efforts at the WTO. Signatories to the agreement would have to agree to engage in a transparency exercise, that is to notify their existing policies to other WTO members and to improve the data collection and dissemination functions of the WTO. A more direct route to improving information on trade barriers in the service industries would be to exchange the positive list approach for a negative list approach, that is, to make it mandatory for all negotiating parties to fill in all fields of the country schedules, and not just a few. The reason that governments did not agree to such an approach in the last negotiating round and that there is no serious discussion on this topic in the ongoing round is simple: the majority of governments do not feel able to collect the necessary information, that is information on the state of play in their own service economy.

²³ Stijn Claessens, Tom Glaessner: Internationalization of Financial Services in Asia, World Bank Policy Research Paper 1911, Washington DC 1997.

²⁴ Philipp Harms, Aaditya Mattoo, Ludger Schuknecht: Explaining Liberalization Commitments in Financial Services Trade. World Bank Policy Research Working Paper 2999, Washington DC 2003.

²⁵ Nico Valckx: WTO Financial Services Commitments: Determinants and Impact on Financial Stability. IMF Working Paper 02/214, Washington DC 2002.