6

Setting the Agenda for the Next Round of Negotiations on Trade in Services

GEZA FEKETEKUTY

The over 130 countries that belong to the World Trade Organization (WTO) will likely launch a major round of negotiations on trade in services on 1 January 2000. It is a date full of symbolism, because services will be at the center of the 21st century world economy. The liberalization of domestic and international competition in services will be critical to the future economic growth of nations, and the new round of negotiations on trade in services therefore will have an important role to play.

These new talks will build on the General Agreement on Trade in Services (GATS) negotiated in the Uruguay Round of Multilateral Trade Negotiations. The GATS established a basic framework of rules for liberalizing trade in services and national commitments on market access for services produced by foreign suppliers.

In addition, new services talks will build on the results of WTO negotiations. At the signing of the Uruguay Round agreements at Marrakech, Morocco on 15 April 1994, trade ministers set target dates for the completion of negotiations on a number of issues. Negotiations on some subjects have been concluded (basic telecommunication services and financial services), and some are still in progress (e.g., accounting services), but other subjects (e.g., labor mobility, sea and air transportation services, government procurement, and subsidies) have been deferred for all practical purposes to a new round of negotiations on services.

Geza Feketekuty is director of the Center for Trade and Commercial Diplomacy, Monterey Institute of International Studies, California.

The GATS contains a provision on future negotiations and specifically calls for another major round of negotiations on trade in services to begin no later than 1 January 2000. To prepare for these negotiations, the GATS has assigned the Council for Trade in Services the task of developing negotiating guidelines and procedures in light of its "assessment of trade in services in overall terms and on a sectoral basis" (Article XIX:3) in meeting the objectives of the agreement. This chapter is designed to provide a contribution to that assessment.[1]

Expanding the Sectors Covered by Market Access Commitments

The foremost challenge in the new round of negotiations on trade in services will be to expand the national market access commitments. In approaching this task, the negotiators should prioritize their efforts. The first objective should be to achieve full sectoral coverage in national schedules. The commercial benefit of GATS rules rises significantly in sectors where a country has made a market access or national treatment commitment on at least one service product. In all such sectors, a country is required to list all national measures that impede market access or infringe on national treatment in its national schedule and follow basic principles in framing and administering its regulations in such sectors.

The purpose is to encourage as many countries as possible to commit themselves to maintain the current degree of access to their markets through all four modes of accessing the market: cross-border trade, establishment, consumption abroad, and temporary entry by foreign suppliers. Developed countries should commit themselves to bind the current degree of openness in all sectors and in all areas; developing countries should set a percentage target for coverage.

In terms of sectoral priorities, countries should give top priority to full coverage of services that can be traded through the transmission of information over telecommunication systems. Regulatory obstacles to trade in information-based products remain limited and the potential growth in this sector is quite high. Another priority should be to achieve more comprehensive coverage on telecommunication and financial services, thus reinforcing the progress made in the sectoral agreements in these two areas.

1. While these preparations are underway, countries will need to continue to address issues related to ongoing talks regarding the accession of China and other countries, negotiations on accounting services, and the implementation of recent agreements on telecommunications and financial services.

Reducing the Level of Protection in Traded Services

The next priority should be to liberalize overt barriers such as embargoes, quotas, and other forms of discrimination against foreign suppliers of services. Generally, these barriers can be tackled without major regulatory changes within the countries involved.

Negotiators should consider adopting a "formula" approach to the market access negotiations, whereby countries would agree to a percentage reduction or elimination of particular types of market access restrictions such as quotas, citizenship requirements, and limitations on locally established foreign firms' volume of activity. For certain types of barriers it might even be possible to apply a formula to all sectors, while other barriers may require approaches that are adapted to sector-specific characteristics. Both horizontal and sectoral formulas could establish separate targets for developed countries, developing countries, and least-developed countries.[2]

Reforming Regulations That Restrict Competition

Negotiations aimed at removing overly restrictive regulations should follow a three-prong approach:

- Strengthen disciplines in GATS Article VI to minimize regulatory barriers to trade in many services sectors, particularly the newer professional services and services related to the information economy.
- Negotiate sectoral agreements in heavily regulated sectors, akin to the basic telecommunications accord, to establish ground rules for competition among firms operating under different national regulatory regimes (and thus allow countries to address specific regulatory measures that could tilt international competition).
- Negotiate additional specific commitments in national schedules to address specific issues related to national legal systems, cultural practices, or institutions.

The three-prong approach would serve a number of different purposes. It would reduce international regulatory requirements to the minimum necessary to provide a viable framework for market entry and open cross-border competition; it would provide a pragmatic basis for liberalizing

2. EU Commission Vice President Sir Leon Brittan first made this suggestion in a 1995 speech to a global meeting of national services coalitions in Geneva, Switzerland.

trade in regulated sectors while preserving national preferences, and it would provide alternative avenues for making progress.

Strengthening GATS Article VI

Article VI of the GATS provides a basic framework for minimizing the distortions of trade created by domestic regulation. Strengthening this article could facilitate market access liberalization by committing countries to the reform of regulations that impede market-oriented competition. Article VI now specifies that regulations be administered in a reasonable, objective, and impartial manner; countries establish procedures for the review of regulations at the request of service suppliers; and regulations be based on objective and transparent criteria, not be more burdensome than necessary to ensure the quality of the service, and, in the case of licensing procedures, not in themselves impose restriction on the supply of the service.

These provisions could be strengthened in a number of ways. Article VI could expand on the scope of GATS Article I on transparency by requiring members to explicitly state the public policy objectives served by a regulation. This would expedite any examination of whether the regulation is "more burdensome than necessary to ensure the quality of the service," as provided in Article VI:4b.

A revision of Article VI could also clarify that the words "quality of service" refer not only to the reliability of the service from a consumer's perspective, but that they also encompass regulations aimed at achieving the full range of social objectives, including safety, integrity of networks, service to underserved regions or population segments, etc. This broader interpretation of the term "quality of service" is consistent with the overall intent of Article VI, but it is not necessarily clear if the sentence is taken out of context.

Article VI could also contain a new provision that would encourage WTO members to limit the scope of a regulation to the minimum necessary to achieve its objective. This would be fully consistent with the spirit of the requirement that regulations not be more burdensome than necessary to ensure the quality of service and would amplify that rule. Countries would be encouraged to regulate only those activities that have a direct bearing on the regulatory objective and refrain from regulating ancillary activities carried out by the same firm. For example, such a provision could encourage countries to focus the regulation of infrastructure services more narrowly on the terms of access to physical infrastructures such as pipelines and electric transmission lines, and allow competitive suppliers of services to decide what services to provide over the network facilities and the prices at which they will be supplied.

Article VI could also include a general restatement of the competitive safeguards built into the Telecommunications Annex of the GATS and

the Agreement on Basic Telecommunications Services. Such a provision would help to ensure that monopoly providers of essential services would not abuse their position by charging unreasonable fees or by giving themselves preferential access to essential services in the competitive provision of downstream products. This provision could apply not only to "transport services" provided over electric conduits or pipelines but also to a variety of other monopoly inputs such as water.

Another rule under Article VI could encourage countries to adopt performance-oriented regulations rather than regulations that seek direct bureaucratic control over commercial decisions by enterprises. Such a provision would parallel the principles embedded in the GATT Code on Technical Barriers to Trade. It would build on GATS Article VI:4a, which requires regulations to be based on objective and transparent criteria.

Another possible addition could encourage member countries to use market-based incentives and disincentives to achieve regulatory objectives where that is feasible and appropriate. Market-based regulations tend to achieve desired social objectives with greater economic efficiency than do directive regulations that seek to control the behavior of market participants. For example, it would be economically more efficient to allocate scarce resources such as landing slots through an auction rather than through a system of licensing that benefits incumbents.

Finally, Article VI could encourage self-regulation by industry in circumstances where it fulfills the desired social objective. At the same time, it should require member governments in such cases to ensure that compulsory private regulatory or standards-making activities be open to all service providers, including foreign service providers.

Sectoral Agreements

In some heavily regulated sectors, a degree of international rulemaking on a sectoral basis is inevitable, particularly when the regulations specifically limit competition or competitive entry or when the regulations set high performance standards for service providers. Countries with regulations that permit open entry and competition are concerned about market access conditions in countries that limit competition. Countries with strict performance standards are reluctant to grant open entry to foreign firms that are not required to maintain adequate performance standards by their own governments. Therefore, international trade and competition in these sectors may require some degree of international understanding on the allowable forms and extent of competition and on the minimum performance standards that should be met.

As was the case with the GATT treatment of standards, the WTO should focus on establishing legally binding obligations centered on some key principles and procedures while leaving much of the substantive details to other international organizations, national governments, and

voluntary private bodies. This would require a judicious blend of legally binding obligations on key principles, voluntary guidelines that could serve as reference points for international regulatory norms, and references to standards and work carried out in other public and private organizations.

This chapter can only touch on the content of individual sectoral agreements. Some useful ideas on how one might proceed in key sectors such as transportation, professional services, electronic commerce, and financial services are included in the appendix to this chapter.

Finishing the GATS Rules

Uruguay Round negotiators identified three areas of rulemaking that need follow-up work: safeguards, subsidies, and government procurement. Developing appropriate disciplines in these areas will require a careful analysis of the special characteristics of services in general and of individual services sectors in particular. There are four difficulties in developing substantive rules in these areas:

- Uncertainty about the need for GATS provisions. The existence of GATT rules in these three areas for trade in goods leads some to conclude that parallel rules are needed in the GATS for trade in services. But there is not enough solid empirical data at this stage to build a persuasive case.
- Data on production, consumption, costs, and prices are generally available only for broad categories of services, but not for individual products. This makes it difficult to prepare objective analysis of price and cost data for a rule-based application of safeguard and countervailing-duty measures.
- Significant differences in the industrial structure, method of distribution, and public good content of various types of services. These differences make it more difficult to develop a common discipline in areas such as subsidies for all services in an equally effective manner and may make a sectoral approach more feasible than a generic approach.
- Market access commitments cover not only cross-border trade but also trade based on local establishment, movement of consumers, and movement of service providers. The coverage of all four modes in the GATS makes it necessary to decide whether the discipline should distinguish among them.

Each of these four factors—uncertainty, measurement and data problems, sectoral differences, and the complex modes of market access—

affect the rule-making effort differently. All require more detailed analysis of the issues that are likely to arise in different sectors. Empirical experimentation may be useful in specific sectors where the need for discipline is most evident. With these caveats in mind, the following comments on each of the three areas might provide further insights on how to proceed in WTO negotiations.

Emergency Safeguard Measures

The purpose of safeguards is to facilitate the negotiation of binding liberalization commitments by providing governments with the means to respond to potential adverse effects of those reforms on their domestic economy. The availability of emergency safeguard measures can encourage countries to undertake more substantive commitments by affording them an "escape clause," that is, a legal right to withdraw those commitments temporarily if a surge of imports threatens to injure the domestic industry.

There are two basic problems in devising an appropriate safeguard rule for services. First, there is very little empirical data on the use of safeguards in services to inform the rule-making process. This lack of data may be due to insufficient analytical work in this area. However, there may also be more fundamental reasons. Traded services are less portable and therefore subject to less surges than are goods. Also, many domestic regulations that restrict trade in services are harder to liberalize through incremental changes. Whatever the case, more information about real world situations where safeguard actions have been taken or could have been taken would be helpful. It might also be useful to analyze how countries have managed liberalizing internal services markets and what transitional regulatory safeguards were adopted to manage adjustment problems resulting from domestic deregulation in sectors such as telecommunications, retail distribution, transportation, etc.

Second, it is difficult to devise an approach that could apply equally to all four modes of providing services. Unlike the GATT market access commitments on goods, the GATS market access commitments cover not only cross-border trade but also trade based on local establishment and movement of either the consumer or the supplier of services. This raises a key question. Should a country be allowed to limit the activities of locally established suppliers when the import disruption is due to cross-border trade or vice versa? Should a country in such cases be allowed to limit the temporary entry of service suppliers or the consumption of services abroad by its own citizens?

One of the reasons why safeguard measures taken on cross-border trade in goods afford limited protection is that such measures usually do not prevent the foreign producers from expanding their investment in the importing country. For example, the protective effect of safeguard

measures taken by a number of countries in the steel and automobile industries were significantly cushioned by foreign investment in these industries. This would suggest that countries should be forced to justify safeguard actions taken with respect to any one mode in terms of the injury or threat of injury that exists from imports in that mode. In other words, safeguard actions should be mode-specific.

A viable option is to maintain the two interim safeguard alternatives that are available to countries. A country that is concerned about the uncertain economic impact of a liberalization measure can build an emergency safeguard clause directly into the liberalization commitment inscribed in its national schedule. Alternatively, Article X of the GATS allows a country to notify the Council for Trade in Services of its intention to modify or withdraw a specific commitment one year after such notification, provided that the country can explain its early withdrawal. This interim provision was initially only available during a three-year transition period, but this period has now been extended until mid-1999. A GATS committee is now developing a permanent procedure for the withdrawal of concessions that will replace this interim measure.

Subsidies

The rulemaking effort on subsidies breaks down into two components—the possible discipline on subsidies and the nature of an appropriate remedy. Under GATT rules, subsidized imports are subject to countervailing duties, while distortions created in the home market of the subsidizing country or in third markets are subject to the remedies available under the dispute settlement system.

There are few, if any, instances of direct export subsidies in services. Following the example of the GATT in prohibiting direct export subsidies should therefore not pose an insurmountable problem. The bigger issue concerns domestic subsidies, which tend to concentrate in a few sectors such as sea, air, and land transportation, telecommunications, and in public "goods" such as health, education, and pension systems. Countries that extensively use such subsidies will likely press for a full or partial exclusion of these sectors from any discipline on domestic subsidies. Alternatively, special subsidy rules could be incorporated in sectoral agreements in these sensitive areas.

With respect to transportation and telecommunication, any sector-specific subsidy agreements would have to deal with two issues: transitional issues related to the adjustment of inefficient "national champions" in both industries and subsidizing socially desirable telecommunication and transportation services to rural areas, the elderly or the poor, as well as the use of environmentally friendly forms of transport.

With respect to health, education, and pensions, any provision needs to recognize that most governments consider these activities as public

goods that they can legitimately subsidize. Sector-specific agreements in these areas would have to give governments wide latitude to subsidize public services.

The issue of an appropriate remedy is more complex. Because of the special characteristics of services, it would be difficult to devise a workable countervailing duty. First, the invisible nature of many service imports would make it as impractical to impose a countervailing duty as it would be to impose a tariff on cross-border trade. Second, the difficulty associated with identifying the production costs of an individual unit of services would make imposing a countervailing duty on the purchase of a service product a completely arbitrary exercise. A more feasible remedy might take the form of the remedies currently available under the dispute settlement system for subsidized competition in the home market of the subsidizing country or in third markets.

Government Procurement

Developing disciplines on government procurement will need to address two special characteristics of services. First, government procurement of many services is made on the basis of small contracts that would fall under the thresholds built into the Government Procurement Code for goods. While it would be possible to lower the threshold for services, it may be too costly to impose the requirements associated with the code on small transactions.

The second issue is that the procurement of many services, particularly professional services, involves judgment calls about the quality of service. In fact, many professions have discouraged competition and marketing based on price, on the argument that the choice of a professional is all about quality and reputation. Without pandering to that view, an approach to the procurement of professional services would need to address how judgments about professional competence can be factored into objective decisions.

There are a number of services where neither contract size nor quality judgments are an overriding issue. Therefore, it would make sense to apply the procurement code to services such as transportation, telecommunications, construction, and financial services.

Amplifying the GATS Rules

A negotiation on services could usefully incorporate a number of rules-related issues that have emerged on the trade agenda since the Uruguay Round. The key elements of the new trade agenda that are particularly relevant for services are competition policy, investment, and bribery/corruption.

The GATS already includes provisions relevant to each of these three topics. However, comprehensive negotiations in each of these areas could reach beyond the coverage established within the GATS context to date. GATS disciplines in competition policy are mainly focused on specific competition-policy issues related to deregulating telecommunication services; investment disciplines are sector and product specific and, thus, do not cover many aspects of investment policy such as expropriation.[3] Any generic disciplines that might be developed in these areas would significantly strengthen the obligations of the GATS.

Moreover, the experience gained from negotiating issues related to investment and competition policy in the GATS context could serve as a useful input into broader negotiations that might be launched in the WTO in these areas.

Possibilities for broadening and deepening Article VI on domestic regulation, discussed earlier, could also be relevant to WTO negotiations on bribery and corruption. At the same time, the negotiation of regulatory reform principles could amplify and reinforce benefits that might be derived from a clearer set of GATS provisions on domestic regulation.

Improving the Institutional Architecture

A number of issues may need to be considered with respect to the constitutional architecture of the GATS. The issues most commonly raised relate to the absence of an across-the-board national treatment commitment in the GATS and the scheduling of exceptions to the most favored nation (MFN) principle in particular sectors.[4] However, both are transitional issues that will be self-correcting.

National Treatment: Top Down or Bottom Up?

Cross-border trade in services is not easily controlled at the border since the actual flow is invisible. Barriers to services instead involve the discriminatory application of domestic regulatory measures. Therefore, applying national treatment is equivalent to countries abandoning all barriers that favor domestic providers (though countries would still be able to keep regulations that protect incumbent firms from new domestic as well as foreign competitors). Most critics recognized the need for exceptions to national treatment; however, they would have preferred that countries be required to enumerate exceptions to national treatment rather than to assume the absence of such an obligation unless a country

3. For an expanded discussion of the relationship between the GATS and possible negotiations on investment in the WTO see Sauvé (1994).

4. See for example Hoekman (1995), Sauvé (1994), Snape and Bosworth (1996).

schedules a positive commitment. This is self-correcting, however, because the national treatment provision in the GATS automatically applies to any sector in which a country schedules a commitment and is binding unless the country enters a reservation in its national schedule. As countries schedule commitments for even one services product in any given sector, they become committed to provide national treatment for all services in that sector unless they enter an exception in their schedule.

A bigger problem is that in most cases where countries have enumerated exceptions to national treatment, they have used the meat ax rather than the scalpel. Instead of listing the specific regulatory measure that creates an exception to national treatment, they have simply carved out all the activities covered by that measure. This creates very broad exceptions to liberalization and provides little information to potential exporters on the real nature of the problem. To remedy this situation, countries should agree to subject their exceptions to rigorous reviews by other member countries, with the objective of narrowing down the exceptions to the minimum necessary.[5]

MFN

Under the GATS, countries are allowed to enter reservations to MFN treatment in individual sectors when they adopt the agreement. Countries are expected to remove these reservations, however, when a sufficient number of countries agree to a balanced package of reciprocal market access commitments in these sectors. This has occurred in basic telecommunications. As satisfactory agreements emerge in other heavily regulated sectors such as transportation, the scope of the MFN exception will be steadily reduced.

GATS and GATT: Forever Separate?

The more interesting constitutional question arises with respect to the relationship between the GATS and the GATT on issues that span both goods and services. The issue of how to handle cross-cutting topics has already arisen in the Singapore Ministerial decision to pursue a new initiative on transparency in government procurement beyond the entities currently covered by the code. It is likely to receive more prominence in future WTO negotiations on investment. Advocates of such an agreement seek to develop a set of binding disciplines that would apply to all investments, unless a country entered a reservation for a particular service or activity. Would it make sense to have different rules for investment in service-producing industries than for investment in goods-

5. For additional views on these issues see Hoekman (1995) and Sauvé (1994).

producing industries? Can one even distinguish between the two when an increasing number of manufacturing firms also produce services?

A similar issue could arise if member countries were to conclude that any commitments on the movement of natural persons should apply not only to persons engaged in the supply of services but also to those engaged in the supply of goods. In any case, once disciplines on investment cover both goods and services it will be difficult to make this distinction, because many firms will have employees involved in the production of both goods and services.

Another area where an issue of overlapping disciplines might emerge is restrictive business practices.

There are three possible approaches that could be taken with respect to disciplines that apply to both goods and services. The first would be to maintain a complete legal separation between services and goods by carrying out separate negotiations under each umbrella agreement, even if the issues were essentially the same. The second approach would be to maintain the legal distinction between the two agreements but to combine the negotiations of common issues into a single negotiation and insert the provisions that result from those talks simultaneously into both agreements. The third approach would be to carve cross-cutting disciplines out of both the GATT and the GATS and place them under a combined umbrella agreement. For a number of reasons, this third approach should be the one that is adopted.

First, the distinction between goods and services is already difficult to make in many cases. For example, the information that is contained in goods such as books, records, tapes, or computer chips can be transmitted electronically and in that alternative format would be difficult to treat as a good. Yet it would not make sense to apply different rules, depending on whether information was sold as a book or as an electronic transmission.

Some have proposed to solve this problem by treating both the book and its electronic transmission as information products subject to similar rules. However, this only raises new issues, such as whether the rules on goods or services should apply, and how one might distinguish between a book of architectural drawings and an architectural service. It has been suggested that a product is an off-the-shelf item sold as a commodity, while a service is customized information supplied to a specific customer. But again, this only raises different questions.

Disciplines concerning the treatment of enterprises, as separate from the goods and services they produce, create even more complex issues because increasingly the same enterprises are engaged in both. An investment code that resulted in rights for the producer of a good would immediately raise the question of whether a particular enterprise that produces both goods and services should be treated as one or the other (where different investment rules apply).

The second reason for developing a common set of disciplines is that, over time, trade in goods is increasingly taking on the characteristics of trade in services. As that happens, the need for different disciplines in goods and services will gradually disappear, making it possible progressively to integrate the disciplines in the two areas into a common regime. By splitting off individual disciplines that can apply equally to both goods and services, the transition could be managed as a step-by-step process.

The gradual erosion of the distinction between goods and services is due to both the effects of globalization and the increasing technological complexity of many goods. The contractual provision of individual manufacturing operations looks very much like services inputs acquired by manufacturing firms (e.g., sewing on shirt buttons), and many sophisticated goods are bundled with accompanying services. Manufacturing companies—as is true of services companies—must increasingly establish themselves in import markets and move technical, managerial, and marketing personnel in and out of such markets. The need for disciplines on investment and the movement of natural persons thus is increasingly valid for both types of activities.

However, the more important impact of globalization is on the entire structure of traditional trade measures, which are based on the assumption that products have a clear national identity. Trade measures such as tariffs, safeguards, antidumping duties, and countervailing duties are imposed on the full value of a product entering a market, regardless of the national origin of its components and parts and even if most of the value originated in the importing country. Countries have tried to circumvent this increasingly illogical practice with various devices such as duty drawbacks and free trade zones, but each of these devices are complex and difficult to administer. The alternative response has been to eliminate duties altogether through sectoral free trade agreements or across-the-board regional free trade agreements. Once border measures on goods are eliminated, there is little reason to treat goods and services differently. The provisions in the GATT that are unique to merchandise trade deal exclusively with border measures.

Conclusion

The liberalization of barriers to international trade and investment in services can contribute to growth in two ways. First, negotiations on international trade in services can spur the removal of barriers to internal competition within individual countries, thus removing both infrastructure bottlenecks and internal constraints to increasing economic efficiency in the production of services. Second, negotiations can lead to the removal of barriers to external competition in services, thereby

capturing the gains from increased trade. The expected gains include the creation of expanded markets for competitively produced services, domestic gains in productivity (as domestic producers respond to the foreign competition), and lower prices for consumers. These gains will benefit both business users of services, as well as household consumers.

Regulatory reform and a search for increased international cooperation on regulatory issues will likely be a central issue for government policymakers in the years ahead. The recent Asian financial crisis has been a powerful reminder that reform is needed. In considering how collective reform efforts at the international level can promote liberalizing trade in services, it will be important to focus on the domestic economic benefits of such reforms.

Domestic political support for such reform efforts can be bolstered by focusing on the needs and interests of the users of services and on the contribution that the right reforms can make to good governance—namely improving the quality, objectivity, and professionalism of government regulatory bodies and reducing the opportunities for bribery and corruption.

Appendix: Possible Sectoral Negotiations

Transportation

Negotiations on all forms of transportation are likely to make more progress if the negotiations are reorganized in different user communities. The current approach, which is to organize negotiations on the basis of sea, air, and land transportation, strengthens the hand of suppliers and regulators who would like to keep these sectors protected by restrictive national regulations.

A user-oriented approach to negotiations on trade in transportation services would focus the negotiations around the four user communities: global corporations who need to ship parts, components, and assembled goods among their various facilities; tour operators who provide organized leisure travel; business users of express parcel and courier services; and users of scheduled public transport services. Organizing the negotiations along these lines would make it easier to identify user requirements and to come up with provisions that will meet their needs. This arrangement would also force transportation companies to address the needs of their customers. It would change the politics of the negotiations by making it easier for the different user communities to identify their common interests and to organize themselves politically in order to break down national regulatory barriers to international competition.

The global corporation has special requirements for assuring reliability and control over the transportation of parts and components between facilities located around the world. Depending on its needs, the corporation may need to exercise control to ensure timely delivery to meet just-in-time inventory control requirements or to ensure customized handling of particular types of cargo. They may also wish to track the shipment of individual parts and components in order to reroute them if particular routes are blocked by strikes or natural disasters. In effect, these corporations need to be able to set up virtual transportation networks or to entrust their management to a global transportation manager. In either case, the corporation must have leeway to construct a network by linking together owned or leased facilities and modes of transport.

These corporations need control over their telecommunications just as they do with their various global facilities. Recognizing their telecommunications needs led to the negotiation of the user-oriented GATS Telecommunications Annex, which gives corporations the ability to lease and interconnect lines and to use these lines freely for the transfer of information. A similar approach covering various modes of transport and warehousing facilities would generate similar benefits.

The second major and politically powerful user community is represented by leisure travel. This community not only involves consumers of organized travel services but also travel operators and the extensive network of travel agents. Charter services are already relatively free of many of the regulatory controls on scheduled public transportation; negotiating an agreement providing for international competition in this area of transportation should not pose major difficulties. Such an agreement would appeal to the public at large and could be sold by each country as a measure to promote tourism—a financially attractive industry for most developing as well as developed countries.

The third group comprises business users of express package delivery and courier services. This highly competitive, international industry has developed in response to user needs. Resistance to the growth of the industry has come largely from the postal monopolies, and most regulatory restrictions are designed to protect them. An across-the-board approach to the problems faced by competitive providers of these services might prove more productive than the current piecemeal approach and might enable these companies to better serve consumer needs.

Negotiations to liberalize international competition in scheduled public transportation will be the most difficult. Nevertheless, events in the market place are reshaping the industry. National airlines are reconstituting themselves into transnational transport companies through mergers, alliances, interlining agreements, and other forms of cooperation. At some point the need for a new set of ground-rules for international competition among these mega companies will become obvious.

Professional Services

Efforts to create sectoral guidelines for the liberalization of trade in professional services have focused on developing a model agreement for accounting services. These negotiations were scheduled to conclude by December 1997 but were extended and continue as of September 1998. The basic goal of these negotiations is to expand the provisions contained in Article VI:4 of the GATS. In particular, negotiators are focusing on three criteria built into this provision: regulations must be based on objective and transparent criteria; they must not be more burdensome than necessary to ensure the quality of the service; and any licensing procedure in itself must not restrict the supply of the service.

The basic issues for governments in accounting, as in other professional services, are to ensure the professional competence of the individual service provider, to monitor professional performance, and to discipline unprofessional conduct. From a trade point of view the key issues are whether the standards and procedures adopted by individual governments constitute unreasonable barriers to trade. This can occur if the standards or procedures established for evaluating a provider's qualifications unnecessarily discriminate against foreign practitioners or unnecessarily restrict entry by both domestic and foreign applicants.

In most cases the qualifications, regulations, and procedures established for the licensing of a country's own professionals cannot be directly transferred to the licensing of foreign professionals. Foreigners do not necessarily enter as apprentices, they may not have acquired a local educational degree, their professional experience abroad may or may not be directly relevant, and they may not permanently reside within the country. Establishing separate set of regulations and procedures for qualifying and licensing foreign professionals may thus actually facilitate trade. In fact, Article VI:6 directs members to establish procedures to verify the competence of professionals from other member countries. Thus GATS implicitly recognizes the need for a specific procedure to license foreign practitioners.

The issue from a trade point of view is whether the qualifications, regulations, and procedures established for foreign professionals are equivalent in their regulatory effect and not more burdensome than the procedures and standards imposed on a country's own professionals. Any rules negotiated under the GATS need to establish basic principles concerning the objectivity and equivalence of both qualifications and procedures for licensing foreign professionals. These rules should not be too specific; such details would be better addressed through bilateral agreements (as provided for in Article VII of the GATS) or international standards developed through appropriate international professional associations (as provided for in Article VI:5b of the GATS).

Nondiscriminatory standards and procedures for ensuring both the

professional competence and performance of accountants can become barriers if they are used to limit entry into the profession and thereby raise the income of current members. Therefore, the second issue is whether a country's regulations for licensing professionals are an appropriate means for achieving legitimate social objectives and whether they are not more cumbersome or restrictive than necessary to achieve that objective.

The best method of ensuring that professional licensing and qualification standards and procedures are not hidden devices to restrict competition is to require full transparency of both the regulations and their objectives. The rules should also stipulate that regulations achieve their stated objectives in the least burdensome manner. Transparency will test the legitimacy of the objectives and check whether the regulations provide the least burdensome and least trade distorting method of accomplishing these objectives. It may also be helpful to set up a link to established international standards in the field by encouraging members to use applicable international standards. In most fields, international professional bodies have emerged for the development of model standards or norms. The GATT Code on Technical Barriers to Trade embraces a similar approach by encouraging countries to adopt international standards where they meet the desired level of performance.

Retail Distribution

Although many countries have made market access commitments in this sector, retail distribution has not been targeted for sectoral negotiations. Nevertheless, it might be useful to initiate discussions in this area and develop a sectoral annex because it is strategically important to the operation of the international trading system as a whole. Commitments on market access are not meaningful if goods are not distributed at the retail level; in highly concentrated industries, new foreign suppliers may find it difficult to distribute their goods through retail channels dominated by the domestic industry. At the same time, many countries have laws that make it difficult to establish large retail outlets as a means of protecting small retailers in an area. Yet it is precisely the large outlets that are most likely to be a channel for distributing foreign competitive products. An agreement that clearly establishes the rights of outside suppliers to build and invest in retail outlets will likely be a critical component of a well-functioning trading system.

Electronic Commerce

The internet is rapidly becoming not only a new medium for exchanging messages and sharing information but also a global channel for selling and buying information-based products and services. Both businesses

and individual households are getting connected to the internet and using it for everything from electronic banking to electronic shopping.

The potential opportunities created by the commercialization of the internet are enormous. It empowers small entrepreneurs located in out-of-the-way places from the Arctic Circle to Patagonia to offer information products for sale to a worldwide group of consumers. It establishes the basis for a highly competitive market in which small producers can reach distant customers at relatively low cost. The regulatory challenges posed by the internet are equally large because it transcends the limitations of geographic space and territorial jurisdictions.

The Telecommunications Annex to the GATS and the subsequent agreement on Basic Telecommunication Services provide a solid foundation for developing a stable trade regime for electronic commerce. The internet clearly falls within the definition of telecommunications services covered by the GATS Annex. However, some countries might challenge this interpretation because the internet was not widely used when the annex was adopted and its subsequent widespread use has now created an essentially new service. To remove that uncertainty, it would be useful to explicitly recognize that the annex does indeed apply to the internet.

The provisions of the Telecommunications Annex could be enhanced by adding a neutrality principle, which would specify that using the internet for transactions would not alter the regulations or taxes that would apply if the transaction were carried out by other means (e.g., orally or in writing) or if the information product that is purchased or sold were transferred in another format (e.g., in the form of a book, a tape, or a disk). This specification would extend the coverage of the principle already contained in the annex, which is that member countries place no condition on access to and use of public telecommunications by service suppliers in so far as such services are covered by commitments in the country's national schedule.

A third provision might confirm the status in which tariffs are not applied to information products and services traded over the internet. Under current agreement and practice, no duty is assessed on the intellectual content of information products. Where duties are imposed on books or tapes, the duty is generally assessed on the value of the physical medium, but not the value of the content. Application of the neutrality principle would maintain that practice, despite the absence of a dutiable physical medium.

Beyond these basic principles, governments will need to address numerous regulatory issues concerning the recognition of electronic contracts and digital signatures, and payment mechanisms, as well as the allocation of liability, privacy, and content issues. For the most part, these issues will be best handled outside the trade area in other private and governmental institutions.

Financial Services

The GATS agreement contains an Annex on Financial Services, which primarily deals with prudential issues. Member countries also successfully concluded a subsequent agreement that significantly expanded national commitments in financial services, though few of these commitments involved a real liberalization of existing practices.

The Agreement on Financial Services, while significant, still only represents the beginning, rather than the end, of negotiations in this sector. In order to achieve the ultimate objective of open international trade and competition in financial services, two things must occur. First, most developing countries, and many developed countries, will have to reform their domestic regulations. Second, the financial authorities in these countries will need to expand their international cooperation on issues related to the prudential supervision of financial institutions under their jurisdiction.

In general, the challenge is to shift the nature of regulation from a system under which the financial authorities supervise by authorizing specific transactions by financial institutions to a system under which they supervise by monitoring the overall financial condition of financial institutions. Short of an overhaul of regulatory systems, the liberalization of trade involves a negotiation over the number of licenses issued to foreign financial institutions and the volume of activity under such licenses. Member countries must negotiate more comprehensive financial reforms and expand international cooperation on fiduciary issues in order to have an effective agreement.

Cooperation on fiduciary issues is increasingly necessary because of the high degree of international integration of financial markets. Financial markets have become more global, which has led countries to hesitate from fully opening up their financial systems to international market forces. The Annex on Financial Services recognizes that the treatment accorded to financial services from another member can take into account the degree to which the prudential measures taken in that country satisfy its own prudential standards. The annex also explicitly provides for the negotiation of bilateral and plurilateral agreements on the recognition of another country's prudential measures for internationally traded financial services.

More in-depth negotiations are likely to arise earlier rather than later because the internet provides an increasingly functional vehicle for supplying financial services across-the-border and directly to individual consumers. Until the recent commercialization of the internet, cross-border trade in financial services was a practical reality only for large corporations with an extensive international presence. However, the commercialization of the internet promises to change that and make it feasible for small businesses and households to buy foreign securities, borrow or deposit money in foreign banks, and purchase insurance policies. While

most governments have mechanisms for exercising control over some of these transactions (e.g., by stating that only insurance policies obtained from authorized firms will satisfy compulsory insurance requirements), many of these transactions will be beyond the governments' control.

Progress on the liberalization of trade in financial services may also depend on a better understanding of the domestic advantages of liberalization by some of the more advanced developing countries.[6] Examples could include: improved access by national firms to international capital markets, thus reducing their cost of capital and expanding their potential pool of capital; improved rates of return on funds invested by pension funds, thus reducing future claims on government funding; and diversification of risk insured by domestic insurance carriers. Beyond an analysis of the advantages of regulatory reform in financial services, a dialogue on domestic reform might also focus on the appropriate regulatory tools for discharging the fiduciary responsibilities of government. Contrary to widespread claims in the public media, regulatory reform and trade liberalization in financial services need not cause unsound financial conditions.

References

Dobson, Wendy, and Pierre Jacquet. 1998. *Financial Services Liberalization in the WTO*. Washington: Institute for International Economics.

Feketekuty, Geza, and Robert Rogowsky. 1996. The Scope, Implication and Economic Rationale of a Competition-Oriented Approach to Future Multilateral Trade Negotiations. *The World Economy* (supplement), (Fall): 167-81.

Feketekuty, Geza. 1998. Defining Subsidiarity in the Global System: Economic, Legal and Political Criteria. In *Subsidiarity in the Governance of the Global Economy*, ed. by Steve Woolcock. New York: Oxford University Press. Forthcoming.

Hoekman, Bernard. 1995. Tentative First Steps: An Assessment of the Uruguay Round Agreement on Services. In *The Uruguay Round and the Developing Economies*, ed. by Will Martin and L. Alan Winters. Washington: World Bank.

Hoekman, Bernard, and Michel Kostecki. 1995. *The Political Economy of the World Trading System*. New York: Oxford University Press. Organization for Economic Cooperation and Development (OECD). 1997. *The OECD Report on Regulatory Reform*, vols. I and II. Paris: OECD.

Sauvé, Pierre. 1994. A First Look at Investment in the Final Act of the Uruguay Round. *Journal of World Trade* 28, no. 5 (October).

Sauvé, Pierre. 1997. Preparing for Services 2000: Buy Ten Commandments, Get One Free. In *CSI Reports: The Service Economy*. Washington: Coalition of Service Industries.

Snape, Richard H., and Malcolm Bosworth. 1996. Advancing Services Negotiations. In *The World Trading System: Challenges Ahead*, ed. by Jeffrey J. Schott. Washington: Institute for International Economics.

World Trade Organization (WTO). 1994. The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts.

6. For an expanded discussion of domestic regulatory reform in financial services and the liberalization of trade in financial services, see Dobson and Jacquet (1998).