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SPECIAL AND DIFFERENTIAL TREATMENT UNDER THE GATS

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ABSTRACT

This report sets out the particular approach to special and differential treatment (SDT) in the General Agreement on Trade in Services (GATS). In particular, the report explores how the degree of flexibility afforded to all Members under the GATS shapes its approach to SDT. Further, the report analyses the current proposals for improving SDT provisions in the context of the GATS. Finally, some initial empirical evidence on the use and effectiveness of SDT provisions in the GATS is presented, both in terms of market access in sectors of export interest to developing countries and services-related technical assistance.

Keywords: Special and differential treatment, services, GATS, WTO, developing countries, trade policy.

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EXECUTIVE SUMMARY

This report sets out the particular approach to Special and Differential Treatment (SDT) in the General Agreement on Trade in Services (GATS). It presents some initial empirical evidence on the use and effectiveness of SDT provisions in the GATS, both in terms of market access in sectors of export interest to developing countries and services-related technical assistance.

The GATS is an unusually flexible agreement, which gives Members of the World Trade Organisation (WTO) wide scope to choose the most appropriate form and pace of liberalisation on a relatively disaggregated basis. The degree of flexibility afforded to all Members under the GATS shapes its approach to SDT. While the words “special and differential treatment” do not appear in the GATS, the particular challenges facing developing and least-developed countries (LDCs) are acknowledged by the granting of market access in their favour and the freedom to make fewer market opening commitments; special treatment in relation to the rules, including transition periods for implementation; and the provision of technical assistance.

Given the flexibility built into the agreement, the GATS relies much less than other WTO agreements on treating developing countries as a group and establishing special treatment for them. The key additional flexibilities afforded to developing countries in the agreement are to be exercised by individual countries and via negotiation. The fact that the agreement does not *require* liberalisation or implementation of resource-intensive obligations is matched by its limited requirements on technical assistance and the absence of an obligation for Members to provide technical assistance to other Members.

A number of developing countries have argued that SDT provisions in the GATS have not been observed, notably the requirement in Article IV.1 (c) for market access to be granted in sectors and modes of export interest to developing countries. While the effectiveness of SDT provisions in the GATS is hard to assess, an initial attempt is made by examining the commitments and initial offers tabled in the current round of negotiations.

Despite methodological problems, this paper identifies six services sectors of particular export interest to developing countries: maritime services, health and social services, distribution services, computer and related services, audiovisual services, and construction and engineering services. Moreover, the paper notes that developing countries and LDCs have often highlighted the need for further liberalisation of Mode 4, while from an economic perspective, research has consistently highlighted the importance of Mode 3. An analysis of the existing commitments reveals that developed countries have committed more than developing countries – but generally less than post-Uruguay Round accession countries – in all of the services sectors except for audiovisual services. In addition, WTO Members as a group have made minimal commitments on Mode 4, and developed, transition and least-developed countries have made comparable commitments in Mode 3, whereas developing countries are somewhat less committed in this mode.

The paper also presents recent examples of services-related technical assistance. While data may be incomplete, the WTO-OECD Trade Capacity Building Database indicates that such technical assistance, carried out by a series of international organisations and bilateral donors, has in recent years represented quite a small share (6.5% of all technical assistance dollars in 2002) of total trade-related capacity building

activities. Further, a study of inquiry and contact points – which also represent a form of technical assistance in the WTO architecture – reveals that these mechanisms have not been frequently used by developing country Members.

Notwithstanding the positive aspects of the flexibility in the GATS, the agreement has to date only delivered relatively limited market opening. This is against the backdrop of considerable unilateral liberalisation and progress taking place at the regional level. In view of the significant contribution of services to economic growth and well-being, the objective of SDT to promote development should be viewed more broadly than the high degree of flexibility offered by the GATS. Scope exists for greater progress on market access in areas where clear developing country interests have been identified, and for the greater provision of technical assistance where the needs of developing – and most particularly least-developed – countries are increasingly recognised.

SPECIAL AND DIFFERENTIAL TREATMENT UNDER THE GATS

I. Introduction

1. Strengthening the participation of developing countries in the multilateral trading system has emerged as a key priority for the Doha Round of trade negotiations. There are potentially significant gains for developing countries from enhanced services trade liberalisation. This is so both because current levels of protection are high in these countries and because liberalisation is a precondition for enhancing economic performance.

2. Services account for about half of gross domestic product (GDP) in developing countries and provide essential inputs (such as telecoms, financial, energy, transport and business services) in the production of virtually all other goods and services (World Bank Development Indicators, 2005). Moreover, producers depend on services to deliver their output to end users. Therefore, high costs or low quality of services constitute a serious competitive disadvantage for all sectors in the economy. Competition is a key element of improving the performance of these services sectors. Domestic reforms that ensure competition, such as privatisation and regulation, are important in this respect, while international liberalisation often further enhances competition and anchors domestic reforms.

3. The OECD has recently estimated the welfare effects of services liberalisation in a range of developing countries and sectors, including air transport, telecoms, banking, distribution and professional services (OECD, 2005c). The results suggest that with the exception of one country (Morocco), the gains to each country from unilateral services liberalisation far exceed those from unilateral reform in agriculture and manufacturing. For Morocco, the gains from services trade reform are projected to be about equal to those from eliminating agricultural protection. The study also indicates that the gains from unilateral liberalisation are significant, implying that countries should not wait for progress in multilateral fora. Of course, policymakers must bear in mind the other benefits from liberalising multilaterally as well as the political economy that characterises the process.

4. Another recent OECD study (OECD, 2005d) sought to determine how the protection of services affects the effective rate of protection (ERP) of the agricultural and manufacturing sectors using the most recent estimates of services barriers in several sectors such as telecoms, transport, banking, distribution and professional services¹. The study finds that once the protection of services is factored into the analysis, the ERP diminishes significantly and even becomes negative in some countries, assuming that full liberalisation would eliminate differences between domestic and world market prices². This result highlights the important costs associated with services restrictions.

5. In addition, the production of many services is labour-intensive and therefore a potential source of comparative advantage for developing countries. A recent study shows that several developing countries are already significant exporters of a number of services to both industrialised and other developing

¹ The ERP is a measure of protection provided to an industry by the tariff structure, taking into account inputs and outputs.

² While this is a strong assumption, given that even within large countries such as the United States the price of services differs between states and regions, it nevertheless serves as a useful benchmark.

countries (OECD, 2003). These include, in addition to tourism, audiovisual services; construction services; distribution services; health-related and social services; maritime services; and professional and computer related services.

6. In the short-to-medium run, however, the adjustment costs associated with removing barriers and re-regulation may be more visible than the gains. This is because while gains are large, they are also widely shared throughout the economy and they take some time to materialise. In contrast, adjustment costs are moderate, but impact the economy immediately and directly affect a smaller group, for instance workers in the liberalised industry and subsidised consumers. In this context, attention to the nature, pace and sequencing of liberalisation will be key to both managing adjustment costs and ensuring that sound regulatory frameworks underpin liberalisation. Against this background, attention has focused on the utility and value of existing Special and Differential Treatment (SDT) provisions and the options for how they may be strengthened.³

7. This paper examines the operability and effectiveness of the flexibility found in the General Agreement on Trade in Services (GATS) – both the general provisions applying to all members as well as provisions aimed at developing countries. Three features of the GATS make it an interesting subject for consideration of issues related to SDT. First, the GATS is a very flexible agreement. Its “bottom up” approach affords *all* Members of the World Trade Organisation (WTO) a wide degree of latitude in choosing the extent of liberalisation they undertake. Second, the type of SDT afforded by the GATS reflects this basic structure and differs in some respects from that offered in other agreements. Third, the agreement deals with liberalisation involving complex regulatory issues in which the supporting mechanisms that underpin liberalisation are resource intensive.

8. The next section outlines the existing flexibility in the GATS and the particular approach taken to SDT in the agreement. It concludes with a brief summary of proposals from the African Group and least developed countries (LDCs) tabled in the context of the SDT discussions in the Doha Round. Section III provides some initial empirical evidence on the use of SDT provisions in the GATS. The last section offers some concluding observations.

II. The GATS

General flexibility in the agreement

9. The GATS is a very flexible agreement, providing broad scope for WTO Members to choose the sectors in which they will make market opening commitments and the extent and type of market opening they will grant. This flexibility is inherent in the architecture of the agreement itself and is thus extended to all Members.

10. This architectural flexibility is one of the reasons why the GATS has been described by some as one of the most “development friendly” WTO agreements, although others have argued that flexibility alone cannot guarantee the appropriate level of SDT for developing countries and LDCs. An important question to keep in mind in evaluating the flexibility of the GATS (e.g. the possibility of undertaking more limited commitments) from a development point of view is whether it represents the most useful or appropriate form of SDT. Given the economy-wide benefits of services liberalisation in general, including the importance of efficient infrastructure services in economic development already noted, an important question to consider is whether a high degree of flexibility is in the best interests of development.

³ Under paragraph 44 of the work programme set out in the Doha Ministerial Declaration [WT/MIN(01)/DEC/1, dated 20 November 2001], all SDT provisions in the WTO Agreements shall be revised with a view to strengthening them and making them more precise, effective and operational.

11. Under the GATS, WTO Members remain free to decide not to open certain sectors to foreign competition. This is what is referred to as the “bottom up” or “positive list” approach of the GATS; only those sectors which a WTO Member chooses to list in its schedule of commitments are subject to market opening. In the absence of specific commitments in a given sector, limited general obligations apply. They include the most favoured nation (MFN) obligation (i.e. treatment offered to one country must be offered to all WTO Members) and some basic transparency obligations. The MFN obligation *per se* does not open a market to foreign supply. For example, excluding all foreign suppliers is still consistent with MFN. But MFN obliges countries choosing to make market access openings to treat all similar foreign providers alike.

12. Further, WTO Members are free to place limitations or conditions on access granted, and to discriminate against foreign suppliers, provided they list any such measures in their schedule of commitments. That is, WTO Members can maintain measures that do not conform to market access (Article XVI) or national treatment (Article XVII) if they list them in their schedules. This flexibility represents a major difference between the General Agreement on Tariffs and Trade (GATT) and the GATS.

13. Like the GATT, the GATS provides a general exception to the MFN obligation for regional integration agreements.⁴ Under the GATS, WTO Members have a one-time opportunity to claim exemptions from MFN at the time they join the agreement. In principle, these exemptions should not last for more than 10 years.⁵

14. There is no obligation under the GATS to commit to providing the *status quo* in terms of market opening. Indeed, many GATS commitments represented less than the *status quo* even at the time of the Uruguay Round, let alone the significant unilateral liberalisation subsequently undertaken by many countries across a range of sectors.

15. Another feature of the GATS is that it allows Members to commit to liberalising in the future (Article XX.1(d)). Countries may make commitments to open their market in a given sector at a future date with a specified deadline. These “pre-commitments” can be used to give the domestic industry time to adjust while making it clear that competition will be introduced, or to provide time for the necessary regulatory frameworks and institutions to be put in place. Pre-commitments were widely used in the telecommunications sector by developing countries, examples of which are provided in the next section.

16. The flexibility afforded to all WTO Members in making GATS commitments is summarised in Box 1.

⁴ GATS Article V (Regional Integration Agreements) requires that these agreements have substantial sectoral coverage; do not *a priori* exclude any mode of supply; and provide for the elimination of substantially all discrimination between the parties by removal of existing discriminatory measures and/or prohibition of new or more discriminatory measures.

⁵ As of 2002, some 424 MFN exemptions had been taken. The majority of these exemptions are in transport (151 exemptions, or 35% of the total) and communications (104, or 25% of the total, of which 85 are for audiovisual services). However, a number of Members have listed the duration of their exemptions as “indefinite”. Exemptions of longer than five years are subject to review to examine whether the conditions which created the need for the exemption still prevail. Exemptions are subject to negotiation in subsequent rounds.

Box 1: Summary of flexibility for market opening under the GATS

In making commitments for trade in services under the GATS, WTO Members have a number of choices:

- They may exclude an entire sector or parts of a sector from their commitments. WTO Members are free to define the sector as they wish — they may refer to a list developed for the GATS negotiations, or the United Nations Central Product Classification to which the GATS list refers, or they may use their own definitions.
- They may exclude some modes of supply, or apply special conditions to particular modes of supply across all sectors in their schedules.
- They may place limits on the market access they offer provided they list them in their schedules.
- They may discriminate against foreign providers in favour of nationals provided that they list any such measures in their schedules.
- They may discriminate among foreign suppliers if they have a MFN exemption for the relevant service or are party to a regional trade agreement notified under Article V.
- They may commit to providing less access than they currently provide in their market.
- They may commit to liberalising at a chosen future date, rather than immediately.

Main features of “special and differential treatment” in the GATS

17. The words “special and differential treatment” do not appear anywhere in the GATS. This is perhaps related to the level of general flexibility afforded under the agreement to all WTO Members to choose the nature and pace of liberalisation and the limited obligations that apply in the absence of specific commitments.

18. Nevertheless, the Preamble to the agreement includes as one of its objectives the promotion of the development of developing countries, the facilitation of their increasing participation in trade in services, and the expansion of their services exports including through the strengthening of their domestic services capacity and its efficiency and competitiveness. Further, the Preamble notes that given the asymmetries that exist with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise the right to regulate and to introduce new regulations on the supply of services to meet national policy objectives. Additionally, the Preamble and Article IV.3 state that the agreement takes particular account of the serious difficulties faced by LDCs in accepting negotiated specific commitments.

19. Given that the GATS already provides the flexibility for all Members to choose the nature and pace of liberalisation, SDT provisions in the area of market access are essentially related to the number and type of commitments expected of developing countries and LDCs and those which developed countries may make in their favour.

20. The GATS affords developing countries additional flexibility in terms of making market opening commitments. GATS Article XIX (Progressive Liberalisation) states that, “There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalising fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV”.

21. In addition to SDT allowing developing countries to undertake more limited commitments, the GATS also includes SDT in the form of positive market opening in favour of developing countries. GATS Article IV.1 (Increasing Participation of Developing Countries) states that increasing the participation of developing countries in world trade shall be facilitated through negotiated specific commitments by different Members. The Article provides some further specification of what this entails. The commitments are to relate to (a) strengthening their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis; (b) the improvement of their access to distribution channels and information networks; and (c) the liberalisation of market access in sectors and modes of supply of export interest to them.

22. A number of these concepts are also repeated in the Guidelines and Procedures for the services negotiations agreed by the Council for Trade in Services in Special Session (March 2001) and in the Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (September 2003). The key provisions concerning developing countries are reproduced in Annex 1.

23. These SDT provisions also appear to provide a form of monitoring mechanism. For the purpose of establishing the guidelines and procedures for successive rounds of services negotiations, the Council for Trade in Services is required to conduct an assessment of trade in services in overall terms and on a sectoral basis. This assessment is to be carried out with reference to the objectives of the agreement, including those set out in Article IV.1 (i.e. the facilitation of increasing developing country participation in trade in services via negotiated specific commitments).

24. Two features of these provisions are worth noting. First, because GATS commitments are made on an individual country basis and not by a formula, the flexibility regarding commitments refers to *individual* developing countries, rather than expressing a set level for developing countries as a group. Similarly, developed countries are to provide access via *negotiated* specific commitments, rather than by an automatic grant of access.

25. LDCs receive further flexibility and are treated more as a group. GATS Article IV.3 states that LDCs shall receive special priority in relation to the implementation of Article IV. Equally, the negotiating guidelines to be developed for each successive round of negotiations are to provide for the special treatment of LDCs (Article XIX.3).

26. A further example of flexibility is found in Article V of the GATS, which governs economic integration agreements in trade in services. Unlike its counterpart, Article XXIV of GATT 1994, which does not take into account developmental aspects of regional trade agreements (RTAs), the GATS explicitly provides for flexibility and more favourable treatment to developing countries in regional groupings between both developed and developing countries (Article V 3(a)) and those involving only developing countries (Article V 3(b)).

Technical assistance

27. In contrast to the other Agreements negotiated during the Uruguay Round in the field of goods trade⁶, all of which contain requirements for technical assistance, the GATS does not include any general requirement for developed country Members to provide technical assistance to developing country Members. However, several more targeted technical assistance-related provisions exist.

⁶ For example, the Agreement on Trade Related Aspects of Intellectual property Rights (TRIPS), the Agreement on Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT).

28. Article XXV (Technical Co-operation) consists of two provisions. The first refers to *service suppliers* (rather than WTO Members) and is confined to noting that those which need technical assistance shall have access to the services of the contact points established under Article IV. Article IV.2 requires developed country Members to establish contact points to facilitate the access of developing country service suppliers to information on their respective markets concerning (a) commercial and technical aspects of the supply of services; (b) registration, recognition and acquisition of professional qualifications and (c) the availability of services technology. It is worth noting that this obligation also applies, albeit only to the extent possible, to developing country Members. By January 2005, 111 countries had notified the Council for Trade in Services on inquiry and contact points.⁷

29. The second provision, which relates to WTO Members directly, states that technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services. This obligation is neither bilateral nor automatic, as it is subject to agreement by the Council.

30. The Annex on Telecommunications also contains two provisions related to technical assistance. Provision 6(c) states that all Members shall co-operate with the pertinent international organisations to provide telecommunications-related knowledge – including information concerning recent developments, new technologies, and other essential information regarding telecommunications services – to help developing countries improve their domestic telecommunications industry.

31. The other provision in the Annex on Telecommunications notes Members' obligation to take into account the special needs of LDCs. Provision 6(d) states that Members shall give special consideration to those opportunities in which LDCs can encourage foreign suppliers of telecommunications services to promote technology transfer, training and other activities that support the improvement of the telecommunications infrastructure and growth of telecommunications services trade in LDCs.

Suggestions for introducing explicit SDT into the GATS by the African Group and LDCs

32. At the Doha Ministerial, Ministers declared that “all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational” (Paragraph 44 of the Doha work program). Following this declaration, Members have tabled a large number of proposals, both cross-cutting and agreement-specific, to improve the current SDT provisions in the WTO. In June 2002, both the African Group and the LDCs tabled communications that included, among many others, proposals to strengthen provisions in the GATS. The relevant parts of these proposals are reproduced in Annex 2.

33. While including the broad concepts contained in Article IV, the Joint Communication from the African Group in the WTO proposes to significantly improve the scope of its obligations (WTO, 2002a). For instance, the proposal explicitly mentions that developed country Members shall set “benchmarks” on financial and technical co-operation designed to strengthen the capacity of developing countries' domestic suppliers and to facilitate technology transfer. In addition, the proposal calls for developed country Members to reserve quotas for the supply of services by developing country Members, not to impose horizontal limitations on Mode 4 and phase out in a two-year period the limitations currently in place. The Council for Trade in Services would regularly monitor implementation of the obligations. Moreover, commitments under the GATS should, under this proposal, reflect a proportion of at least 40 for developing countries and not more than 60 for developed countries in terms of short-term actual gains.

⁷ The 111 notifications include each individual EU member and the Commission of the European Communities. It appears that the contact point of the Commission has not been frequently used. See WTO (2005).

34. The African Group's proposal also suggests modifications to Article XXV (i.e. the article addressing technical assistance). The proposal adds an obligation for the WTO Secretariat to co-ordinate with relevant international and regional institutions to devise services-related frameworks that address the infrastructure and supply-side constraints, as well as development needs, of both developing countries and LDCs.

35. The Joint Least-Developed Countries Proposal on Special and Differential Treatment notes that, given the lack of negotiation capacity of LDCs, special priorities shall be granted to LDCs at the sectoral level during the negotiations (WTO, 2002b). The proposal states that LDCs should indicate the priority sectors and modes of interest to them, so that WTO Members can take these priorities into account during the negotiations. The proposal also calls for the scheduling of specific measures by WTO Members as additional specific commitments, sectoral annexes or reference papers to enhance their participation in sectors of export interest to LDCs. Additionally, the proposal suggests that multilaterally agreed upon criteria should be established to give priority to sectors of export interest to LDCs when developing further GATS disciplines.

36. Further, the proposal states that developed country Members shall notify the Council for Trade in Services of the ways in which they have implemented the technical assistance measures contained in provisions 6(a) through 6(d) in the Annex on Telecommunications. That is, the proposal introduces a new requirement for developed country Members to identify in writing how they have provided new, key information concerning telecommunications services to developing countries. The most radical parts of these proposals, notably the idea of allocating quotas or specific commitments to LDCs, were met with opposition both from developed and more advanced developing countries (Marchetti, 2004).

III. Assessing SDT in the GATS commitments

37. A number of developing countries have argued that the SDT provisions in the GATS have not been observed, notably the requirement in Article IV.1(c) for market access to be granted in sectors and modes of export interest to developing countries. But how can such a general formulation be operationalised in an agreement of individually negotiated specific commitments?

38. A first issue may be whether there is such a thing as "sectors and modes of interest to developing countries", given the range and variety of their trade interests in services. Almost all sectors and modes could be of interest to an individual developing country in the context of request-offer negotiations. Second, it might be difficult to assess the extent to which this provision has actually been implemented. The fact that the GATS deals with regulatory measures means that comparing degrees of liberalisation across different sectors and modes is more difficult than a comparison of import tariff levels for goods. Therefore, assessments of services liberalisation achieved are somewhat subjective.

Initial evidence on the use of SDT provisions in the GATS: Sectors of export interest

39. If appropriately regulated, the opening of services sectors, such as producer-related or infrastructure services can generate positive, development-friendly effects throughout the economy (e.g. improved export competitiveness). Thus, despite the fact that methodological and data problems exist, it is nonetheless useful to identify several sectors of export interest to developing countries. This exercise, while examining only one side of the services trade coin, represents a concrete first step in the assessment of the extent of SDT implemented by developed countries.

40. Overall, tourism is the most important services sector of export interest for many developing countries. At the same time, it also by far the most committed of all sectors and the one that features fewest restrictions. Beyond tourism, a review of the literature reveals that the following sectors repeatedly emerge

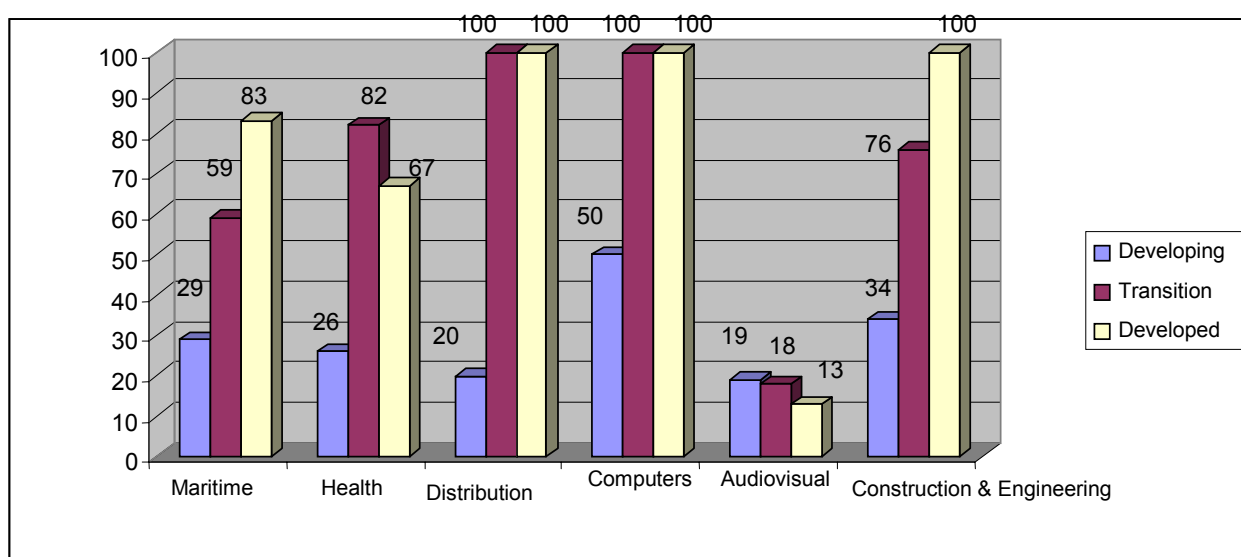
as important for many developing countries (see IMF and World Bank, 2001; OECD, 2003; Marchetti, 2004; Inside U.S. Trade, 2005).

- *Maritime services.* Developing countries are becoming increasingly important players in both port and shipping services. In fact, four out of the top five busiest port terminals in the world are located in developing countries (Hong Kong, China; Singapore; Kaohsiung, Chinese Taipei; and Busan, Republic of Korea). Developing countries have also made real strides in the shipping industry, both globally and on a regional basis. China, Chinese Taipei, Malaysia, Kuwait, Singapore, the Republic of Korea, Chile, Mexico and Colombia all boast competitive, home-grown shipping firms (OECD, 2003). Moreover, labour from developing countries makes up the majority of shipping crews, so exports of Mode 4 maritime services is of particular interest to developing countries (Chaitoo and Remy, 2004).
- *Health-related and social services.* The provision of health care represents one of the fastest growing services sectors world-wide. Due to rapidly decreasing transportation and communication costs, trade in modes unrelated to the movement of trained specialists has become economically feasible. Recently, the provision of health care services via Mode 1 has particularly caused a stir as various news outlets have noted the increase in exports of Indian x-ray analysis services. Other health care-related services have also become increasingly tradable, and a number of developing countries – from China to Bangladesh to Mexico – are budding exporters (OECD 2003). A rich analysis of the ways in which policymakers can consider SDT in the GATS is provided in the health-related services section in a recent OECD publication on trade and structural adjustment (see OECD, 2005b).
- *Distribution services.* Retailers, wholesalers, franchisors and commission agents all provide services under the distribution category (Kalirajan, 2000). These services link manufacturers to end consumers – and since manufacturing plants are often located in the developing world – developing country firms often sell many forms of distribution services (Kalirajan, 2000). And while on balance developing country retailers have not made significant in-roads in export markets to date, the Mode 4 component of distribution services is generally acknowledged as critical for developing countries.
- *Computer-related services.* Firms in the developing world have also become increasingly competitive in computer-related services, including data processing; consulting; maintenance and repair services; and software development. The rise of the Indian software industry, for instance, is a well-documented example. But other developing countries – particularly those with a cadre of well-educated workers – have also begun to emerge as strong competitors. Today, Asian, Latin American, and Eastern European countries boast competitive firms that export computer-related services.
- *Audiovisual services.* The provision of audiovisual services includes film and video tape production and distribution; sound recording services; and television and radio creation and transmission, among others. Several developing countries play host to exporters of audiovisual services. Hong Kong, China, for example, exports the largest number of films world-wide (OECD, 2003). Likewise, several Latin American countries, including Mexico, Brazil and Argentina have become strong exporters of dramatic soap operas. Egypt has also emerged as an important exporter of television content in the Arab world. Further, India is the most prolific producer of films (as measured by volume) as well as a significant creator of television programs (OECD, 2003).
- *Construction services.* In 2002, the OECD notes that a full one-third of the top 150 construction companies – as measured by their 2001 revenue earned abroad – were from developing countries

(OECD, 2003). Middle Eastern construction firms have become particularly competitive internationally (e.g. Kazema Engineering Projects and Osman A. Osman & Co.). Yet, in the last few years, firms from other regions have also become important players. Singapore, Indonesia, Mexico, China, Brazil, Turkey and the Philippines have all served as a breeding ground for successful exporters of construction services (OECD, 2003).

41. While GATS commitments do not reveal the actual degree of liberalisation that exists in a given country, they often reflect a country's attitude toward liberalisation in the various services sectors, and it is useful to analyse the commitments with respect to GATS Article IV. This paper draws primarily upon research by Marchetti (2004) to determine if developed countries have indeed made significant GATS commitments in the identified areas of export interest to developing countries. Marchetti considers the GATS schedules of 146 WTO Member countries as of March 2004.⁸ Marchetti groups the WTO Members into three categories: 105 Developing and least-developed countries; 17 transition economies; and 24 developed countries.⁹ For data collection purposes, if a country scheduled a particular sub-sector, then the sub-sector was considered "committed", regardless of the nature of that commitment (i.e. the relative liberalisation it embodies). Thus, the 'quality' of commitments is not fully captured by this methodology.

**Chart 1. GATS commitments in selected sectors, March 2004
(as a percentage of each country group)**



Source: Marchetti 2004.

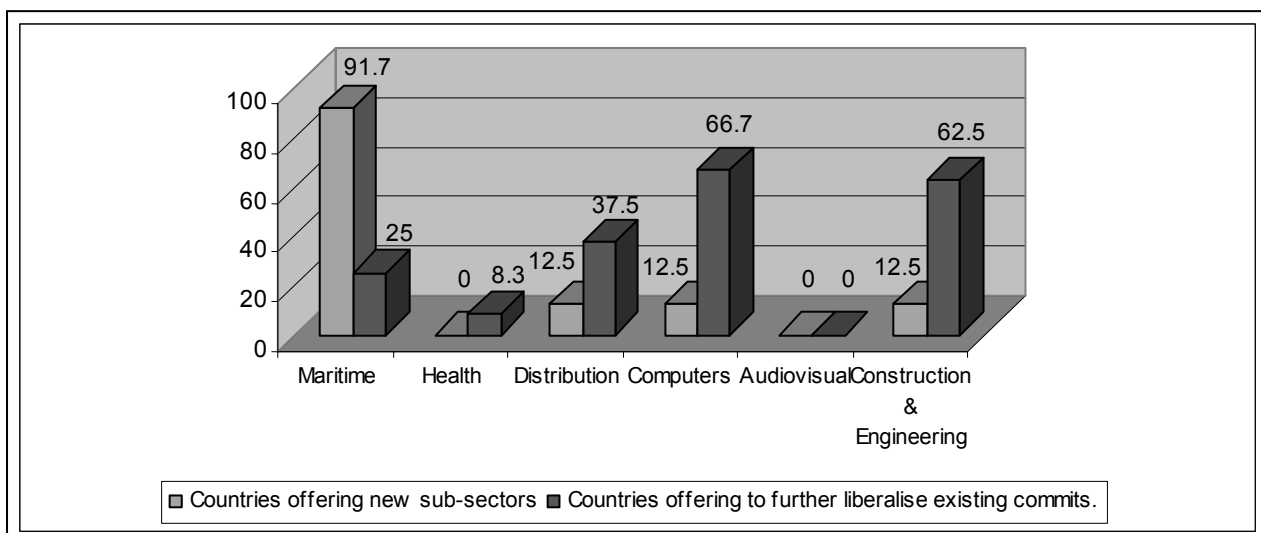
42. On balance, Chart 1 shows that developed countries have committed more than developing countries in the services sectors identified in this report as important for developing country exports. Similarly, transition economies have also made more GATS commitments than developing countries in these sectors. The one exception concerns audiovisual services. Developing countries have committed more than both transition and developed countries in the audiovisual services sector.

⁸ Nepal (23 April 2004) and Cambodia (13 October 2004) are excluded because they acceded to the WTO after the research was carried out.

⁹ Developed countries include: Australia, Austria, Canada, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, New Zealand, Norway, the Netherlands, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

43. In which direction is services liberalisation heading in the Doha round? While it's hard to know for certain, the initial offers provide some indication. Marchetti's methodology is used to analyse the initial offers of the developed countries thus far.

Chart 2. Percentage of developed country initial offers that liberalise services sectors of export interest to developing countries, as of 1 September 2005



Source: OECD Secretariat 2005.

44. As of 1 September 2005, the developed country initial offers reveal that there has not been much progress in opening up audiovisual services, the only sector identified in which developed countries have not made more GATS commitments than developing countries. However, future progress on the liberalisation of audiovisual services will be challenging. Often governments publicly support the audiovisual sector because it embodies many characteristics of a country's culture, and thus governments are sensitive to liberalisation. Similarly, there appears to be very limited progress on opening up health-related and social services. Some countries find it difficult to liberalise health-related and social services because of domestic resistance and the need to put in place a strong regulatory framework to ensure that public policy objectives are met.

45. Developed countries have made an effort to open up the computer and construction and engineering services sectors. However, it should be noted that some initial offers make only small changes to existing commitments. Out of all of the service sectors identified in this paper, the maritime service sector appears to be the area in which developed country Members have shown the most substantive liberalisation in their initial offers. In part, this could be a consequence of preparations made during the aborted post-Uruguay Round negotiations on maritime services.

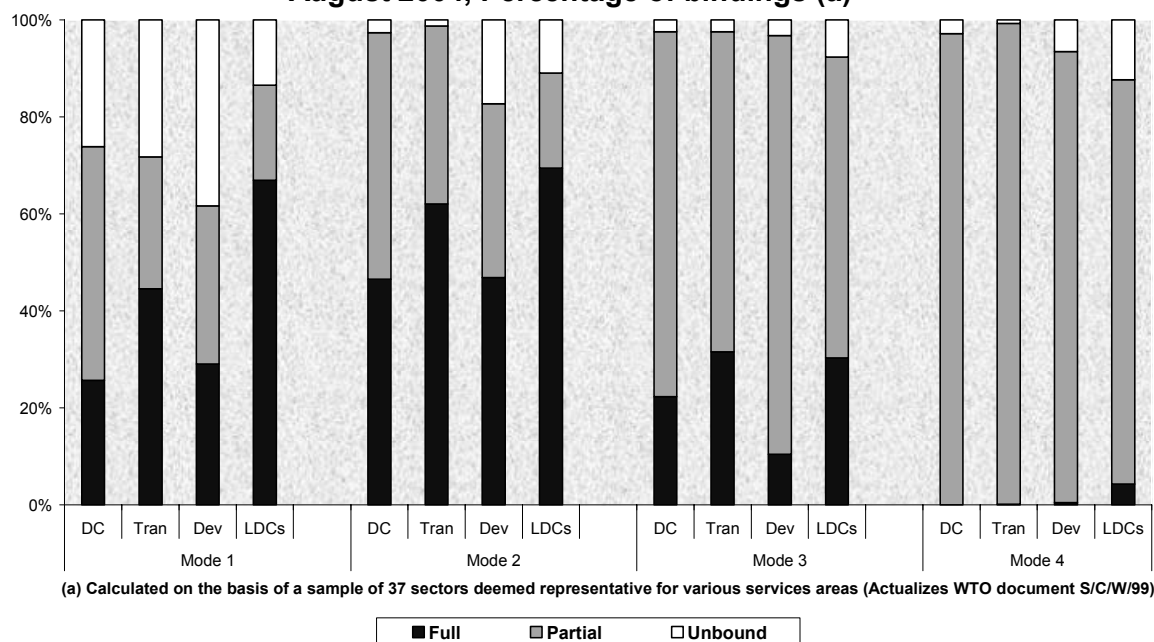
46. It is worth remembering, however, that offers do not necessarily translate into commitments, and GATS commitments do not necessarily gauge the depth or quality of liberalisation in a given sector. In fact, economic conditions on the ground often differ from the legal rules set forth in the GATS. But Chart 2 indicates that developed countries have committed more in at least some services sectors of export interest to developing countries.

Initial evidence on the use of SDT provisions in the GATS: Modes of interest to developing countries

47. It is also difficult to make generalisations about modes of interest to developing countries. Indeed, the importance of each mode of supply can most accurately be assessed only in the context of specific services sectors. Moreover, modes can complement each other (for instance, Mode 4 is often, but not always, a complement to Mode 3), which can complicate a straight forward mode assessment. That said, in economic terms the WTO calculates that Mode 3 services trade represents over 50% of all trade under the auspices of the GATS (Adlung and Roy, 2005). But many developing countries have repeatedly indicated that Mode 4 (temporary movement of natural persons to supply services) is a key interest in the current GATS negotiations and have pointed to the relatively limited commitments undertaken on this mode as evidence of the failure to implement SDT.¹⁰

48. Using the same sample of 146 WTO Members, Marchetti (2004) analyses the pattern of market access commitments (by mode) for those countries that have made at least one commitment in a particular sector. Chart 3 reproduces this analysis.

Chart 3. Structure of market access commitments by mode, August 2004, Percentage of bindings (a)



Source: Marchetti 2004.

Note: DC (Developed Countries); Tran (Transition Economies); Dev (Developing Countries); LDCs (Least-Developed Countries).

49. Regardless of the level of economic development, Chart 3 shows that WTO Members have made the most commitments in Mode 2. Interestingly, LDCs have made the most liberal Mode 1 commitments. The data also reveals that of the four groups studied, developed, transition, and least-developed countries have committed very similarly in Mode 3 (25-30% fully bound and almost 95% partially bound), while developing countries are about 10% fully bound. Commitments in Mode 4 are the most minimal for all WTO Members, including developing countries. This suggests that across sectors, countries at all levels of development find Mode 4 the most sensitive mode to liberalise.

¹⁰ See, for example, WTO (2004).

50. Indeed, based on evidence from the schedules, commitments on Mode 4 are not only the fewest of any of the modes but also the most restrictive. They tend to be horizontal (i.e. covering all sectors listed in the schedule, rather than sector-specific) and commitments limited to the highly skilled (executives, managers and specialists). Only 17% cover lower skilled personnel and only 10 countries have allowed some form of restricted entry to "other level" personnel. Around half of all Mode 4 commitments relate explicitly to people being transferred within companies (intra-corporate transferees), thus indicating that they are linked to commercial presence via Mode 3. There are also 38 exemptions to MFN treatment relevant to Mode 4, of which 32 are taken pursuant to Members commitments in preferential agreements, such as RTAs.

51. This would tend to suggest that the effectiveness of this SDT provision in creating pressure for greater commitments in areas of developing country interest has been relatively limited to date. But it may be too early to tell; a greater engagement by an increasing number of developing countries in the current GATS negotiations might yet yield more progress on Mode 4 in sectors of interest to developing countries. It should also be noted that this obligation is not confined to developed countries, as neither developed nor developing countries have been particularly forthcoming in their commitments for Mode 4 access to date. While developed country markets may be the prime targets in the current round, the regional character of some Mode 4 trade means that intra-developing country liberalisation is also of some importance.

Initial evidence on the use of SDT provisions in the GATS: Developing country commitments

52. Similar issues may arise in assessing the implementation of the flexibility for developing countries to open fewer sectors and liberalise fewer types of transactions. In an agreement in which all countries can choose the extent of their market opening, does the provision granting additional flexibility to developing countries really add value? And how is its implementation to be assessed in terms of quantifiable evidence?

53. Again, the benefit of this provision is arguably to assist developing countries in resisting pressure in the context of request-offer negotiations. In certain cases, there is some evidence to suggest that this may have occurred. Adlung (2005), following the same methodology as Marchetti (2004), presents an interesting pattern of GATS commitments by country group; these results are reproduced in Chart 4.

Chart 4. GATS Commitments by country group, March 2005

| | Average number of sub-sectors committed per country | Range (Lowest/highest number of scheduled sub-sectors) |
|-----------------------------------|---|--|
| Least-developed economies | 24 | 1 – 111 |
| Developing & transition economies | 52 (104)* | 1 – 147 (58-147)* |
| Developed countries | 105 | 86 – 115 |
| Accessions since 1995 | 102 | 37 – 147 |
| ALL MEMBERS | 50 | 1-147 |

* Transition economies only.

Notes: Total number of sub-sectors: 160; Total number of Members: 148, including the EC Member States.

Source: Adlung 2005.

54. In general, developing countries, and particularly LDCs, have made commitments in fewer sub-sectors than developed countries. Yet, there is a wide range in the liberalisation among developing

countries. Chart 4 shows that while the average country in the “developing and transition economy” category committed in 52 sub-sectors, at least one country committed in only one sub-sector, while another country committed in 147 sub-sectors. In addition, of the 99 WTO Members that have made commitments in 80 sectors or fewer from the total 160 in the Services Sectoral Classification List, 98 are developing countries.¹¹ However, while this is a general pattern, in certain sectors (e.g. cross-border trade in financial services and audiovisual services) developing, or least-developed, countries have undertaken more liberal commitments than developed countries.¹² It is not clear whether this pattern can be attributed to the additional flexibility granted to developing countries or the general flexibility afforded to all Members under the agreement.

55. The post-Uruguay Round accession countries have also committed in many more sub-sectors than the averages for the “least-developed” (24) and “developing and transition economy” (104) categories.¹³ Further, the results of recent econometric research suggest that, at a highly disaggregated level, Post-Uruguay accession countries¹⁴ have on average made two and half times more commitments than existing Members (Grynberg, Ognivtsev, and Razzaque, 2002). This pattern of commitments could suggest that this particular form of SDT – that is, the flexibility for developing countries to open fewer sectors and liberalise fewer types of transactions – has not been as prevalent in the accession process to date.¹⁵

Pre-commitments as a form of SDT in the GATS

56. Some also argue that the use of pre-commitments, which allow a country more time to implement reforms, represents another form of SDT in the GATS. Thus, it is interesting to study whether developing countries have made use of this tool.

57. A review of the GATS schedules reveals that the use of pre-commitments emerged after the completion of the Uruguay Round. In particular, pre-commitments were used extensively in the negotiations on telecommunications services. Countries from disparate regions¹⁶ all made unique pre-commitments to ensure a transition period from the existing monopoly or duopoly situation to a more liberal telecommunications regime. For instance, Ghana’s GATS schedule states that for all modes in all scheduled sectors, “The duopoly operators are granted exclusivity for a period of five years. At the expiration of this period, the Government will conduct a review of its policy to determine whether to license additional suppliers of such services”.

58. Other developing countries used pre-commitments in alternative ways. Senegal’s GATS schedule indicates that for all modes in all scheduled sectors, “By 31 December 1997 at the latest the authorities will set up a regulatory structure aimed at fostering sound and fair competition among operators”. In addition,

¹¹ See WTO Council for Trade in Services, “Structure of Commitments for Modes 1, 2 and 3: Background Note by the Secretariat”, S/C/W/99, dated 3 March 1999.

¹² See World Bank (2002).

¹³ Post-Uruguay Round Accession Countries: Ecuador (1996), Bulgaria (1996), Mongolia (1997), Panama (1997), Kyrgyz Republic (1998), Latvia (1999), Estonia (1999), Jordan (2000), Georgia (2000), Albania (2000), Oman (2000), Croatia (2000), Lithuania (2001), Moldova (2001), China (2001), Chinese Taipei (2002), Armenia (2003), FYR Macedonia (2003), Nepal (2004), Cambodia (2004).

¹⁴ Post-Uruguay Round Accession Countries noted above except: Armenia, FYR Macedonia, Nepal and Cambodia.

¹⁵ Various explanations for the larger number of commitments by acceding countries are discussed in Marchetti (2004) and Braga and Evenett (2005).

¹⁶ Bulgaria, Papua New Guinea, Ghana, Uganda, Peru, Argentina, Venezuela and Bolivia.

several Latin American countries used pre-commitments as an effective ‘signal’ of future telecommunications liberalisation. In this context, pre-commitments allow domestic firms the time to adapt to liberalisation, while at the same time providing a clear guarantee to foreign firms that liberalisation is imminent.

59. Curiously, pre-commitments were not used in the financial services negotiations that occurred during approximately the same time period. Yet, pre-commitments were common in the GATS schedules of post-Uruguay Round accession countries. Both Jordan and Oman included pre-commitments in courier services. Jordan, for instance, states that Mode 3 market access is, “Subject to 51% foreign equity limitation. Starting no later than 1 January 2004, 100% foreign equity will be permitted”. Similarly, Albania incorporated a pre-commitment regarding certain lending-related financial services in its GATS schedule that states that there are no restrictions, “Except for capital controls as specified in the Horizontal Commitments, which will be removed no later than 2010”. Cambodia also integrated a pre-commitment for business services that indicates, “Cambodia will undertake commitment no later than 1 January 2009”.

60. So, are pre-commitments a form of SDT? On one hand, pre-commitments reflect credible market opening disciplines that recognise a developing country’s need for an individually negotiated transition period. And indeed, most of the pre-commitments in services are found in developing country schedules. On the other hand, developed countries have also made use of pre-commitments. Australia, for example, included a pre-commitment in its telecommunications services schedule. In sum, pre-commitments likely represent both a concerted effort to provide SDT for developing countries as well as one of the forms of general flexibility provided for in the GATS.

Technical assistance in the GATS: Evidence on the ground

61. The WTO and the OECD jointly established the Doha Development Agenda Trade Capacity Building Database (TCBDB) a few years ago to provide qualitative and quantitative data on trade-related capacity building projects, including the provision of technical assistance. The TCBDB tracks assistance in several services areas, such as identifying markets, sectors and modes of export interest; assessing the impact of services trade generally; and helping countries to effectively participate in the Doha Round negotiations by providing support in the formulation of request/offers and scheduling, among others areas.

62. Since 2001, the first year in which the TCBDB provides data, an interesting pattern of technical assistance emerges. The number of individual technical assistance projects/programmes and the value of those projects baselines at 26 activities worth USD 4,687,000 in 2001, but then rapidly rises.¹⁷ In 2002, developed to developing country technical assistance grew markedly (54 activities amounting to USD 17,990,000), with only a small decrease the following year. More recently, however, the numbers have declined precipitously, although it is unclear whether the decline is the result of missing data, as noted by the TCBDB, or a lack of interest in providing technical assistance on the part of developed countries. Moreover, it appears that technical assistance in services is a relatively small part of the overall technical assistance effort. In 2002, for example, services represented only 0.03% of all technical assistance activities and were allocated about 6.5% of all technical assistance dollars.

63. Recent examples of services-related technical assistance illustrate that the type of activity varies a great deal.

- Canada provided financial support to the International Trade Centre (ITC) in 2003 for two phases of the ITC’s six-part programme designed to help developing countries and LDCs identify their domestic services capacity. The second phase of the programme focussed on particular tools to

¹⁷ TCBDB data includes grants and concessional loans only.

help countries identify concentrations of services firms and analyse these firms' level and composition of trade. The programme assisted these countries in building capacity to more fully participate in the current round of GATS negotiations. Countries that participated in the event include: Barbados, Jamaica, Jordan, Panama, Paraguay, Peru, St. Lucia, Senegal and Trinidad and Tobago.

- Through financial support of the United States, Booz-Allen Hamilton provided technical assistance to the FYR Macedonia in 2002. The programme focussed on helping the FYR Macedonia in its GATS accession negotiations in the WTO. Key assistance was provided in the following areas: preparing the FYR Macedonia to begin WTO accession negotiations; formulating strategies to respond to WTO Members' questions; identifying the ways in which the FYR Macedonia could go about harmonising its current services-related laws and policies with GATS commitments; and drafting an initial services offer.
- The OECD also offered services-related technical assistance to developing countries in 2003-2004. Under the auspices of the Project on Trade in Services in South Eastern Europe, the OECD held several seminars in South East European countries to help train both government officials and business leaders in crafting more effective trade policies and negotiation strategies, both multilaterally and at the regional level. Key topics discussed include identifying countries' trade interests; liberalising the provision of services via Mode 3 (commercial presence) and Mode 4 (temporary movement of natural persons); increasing the transparency and predictability of laws and policies related to trade in services; and promoting services exports.
- The OECD and UNCTAD have provided technical assistance through a joint project on "Managing Request-Offer Negotiations under the GATS". Under this project, several generic and sector-specific negotiating checklists have been prepared to assist WTO members in identifying the key issues to consider in the negotiations, particularly with regard to formulating requests and offers. Services sectors include: insurance, energy, legal, environmental and construction services. The material is being used *inter alia* in regional technical assistance seminars in the developing world.
- In 2004, UNCTAD, through German financial support, provided technical assistance to several developing countries in Asia, Africa and Latin America, as well as certain economies in transition. The UNCTAD project served to help countries assess trade in services through the lens of social and equity considerations. The project assisted countries in gauging their capacity to quantitatively and qualitatively evaluate different options in the current WTO GATS negotiations, as well as regional and bilateral trade negotiations. A key focus of the programme was on the ways in which countries can effectively integrate policies on trade in services – including sensitive sectors such as electricity, health, education and water distribution – with developmental and social goals.
- In line with the exigencies of the ongoing request-offer process in services, technical assistance provided by the WTO Secretariat has strengthened its focus on national, rather than regional, seminars and workshops. The programmes for these events, normally covering three days, are developed in co-ordination with the authorities involved in order to accommodate country- and sector-specific objectives and constraints. In 2004, experts from the Trade in Services Division conducted 25 national services seminars and about 10 regional seminars on the GATS. In addition, they explained the GATS in the context of broader-based WTO training courses and contributed to numerous conferences organised by specialised international organisations such as the International Monetary Fund, International Organisation for Migration, International

Telecommunication Union, World Health Organisation, World Tourism Organization, and Asia-Pacific Telecommunity.

- The World Bank Institute has developed a week-long training course on trade in services that focuses on the economics of services reforms, the rules of international agreements and the institutional challenges of trade negotiations in services. Key GATS issues are discussed and analysed in the course. The World Bank Institute launched the course in April 2004 in Washington, DC, and it has since been delivered in Latin America, Europe and East Asia.

64. These examples reveal that technical assistance in services is being provided both at the national level, through government agencies, as well as via international organisations. Private firms have also been contracted to help countries increase their capacity to analyse services-related issues. Yet, the data also show that much more can be done to help developing and least-developed countries, as well as economies in transition, to increase their capacity to understand the complexities of trade in services. Technical assistance can be particularly useful in helping developing countries and LDCs to formulate regulation in particular services sectors prior to liberalisation.

IV. Concluding remarks

65. The unique characteristics of the GATS architecture compels policymakers to think about SDT in the GATS more broadly than in other WTO agreements. In fact, the words “special and differential treatment” do not appear in the agreement. But, the flexibility afforded to Members—including the ability for developing countries and LDCs to commit in fewer sectors and modes—can be considered one form of SDT in the agreement, especially when viewed in conjunction with the negotiation modalities adopted by the Council for Trade in Services (see Annex 1(c)). The notion of SDT also emerges in the form of pre-commitments, the provision of contact points, and certain provisions concerning targeted technical assistance. Thus, the SDT landscape in the GATS is distinct from other WTO agreements.

66. Increasing the participation of developing countries in the Doha Round services negotiations is so important because notwithstanding the positive aspects of the flexibility in the GATS, the agreement has to date (with the possible exception of the sectoral negotiations on basic telecommunications and financial services) only delivered relatively limited market opening. In addition, offers submitted during the current round of negotiations remain limited. This is against the backdrop of considerable unilateral liberalisation that has taken place in services, as more and more countries realise the economy-wide gains from efficient and competitive services sectors. One important question to keep in mind in assessing this limited progress is whether the flexibility in the GATS is one of the main reasons for the lack of progress.

67. In addition, more progress seems to be taking place at the regional level. Several RTAs, for instance, have adopted a negative list approach to liberalisation (all sectors are subject to market opening unless explicitly excluded). Although this approach may not represent enhanced liberalisation, it greatly increases the degree of transparency, as all non-conforming measures across all sectors must be scheduled. Given the importance of regulation in services, the contribution of this transparency to facilitating business operations should not be dismissed. Furthermore, several RTAs have gone beyond the GATS in the areas of investment and domestic regulation.

68. If countries are liberalising unilaterally and regionally, why are the multilateral negotiations on services in the WTO proceeding at such a slow pace? In particular, why does developing countries’ participation remain limited? Several arguments are noteworthy. First, a number of developing countries may refrain from tabling offers until significant progress is made in other areas of interest in the negotiations (e.g. agriculture). Second, limited commitments and offers on Mode 4 or in sectors of interest

to developing countries may significantly impact these countries' willingness to submit (meaningful) offers.

69. Moreover, the complexity of liberalising services under the GATS should not be underestimated, particularly in light of the limited administrative and negotiating capacity of many developing countries. To submit sensible requests and offers requires an in-depth knowledge of a country's economy, including an understanding of the opportunities and challenges for exporters (i.e. who is exporting, what are the priority markets and barriers to trade); the import needs to build domestic capacity; the potential impact of liberalisation on economic and social objectives (impact on domestic suppliers and public policy objectives); and how to negotiate and schedule commitments (the GATS, while flexible, is not always particularly user-friendly and can be difficult to navigate).

70. Preparing for the negotiations thus requires a multi-stakeholder approach involving all relevant governmental agencies, negotiators, legislators, regulators, business and civil society. Mechanisms for co-ordination and consultation are critical to put forward a coherent, representative view of the best possible national position. This is particularly true in the services field, in light of the wide variety of sectors, modes of supply and regulatory spheres involved. Such mechanisms for multi-stakeholder consultations are often lacking in many developing countries, although experience at the regional level can prove very useful in preparing for GATS negotiations.

71. In an effort to move forward, new approaches are being considered to complement requests and offers in the current GATS negotiations – especially given that the current request-offer approach has so far resulted in the tabling of quite modest offers. However, as noted recently by the Chairman of the Council for Trade in Services at the WTO, such approaches have raised concerns among some WTO Members and, as a result, countries are considering the application of several complementary efforts in bilateral, plurilateral and multilateral negotiations within the parameters of Article XIX. The outcome of the negotiations will ultimately depend both on the political will of all WTO Members and their constituents, including the business community, as well as the capacity of developing countries to participate appropriately in the negotiations. The latter, despite all the flexibilities built into GATS, is a longer-term task.

72. Most services sectors are direct inputs into other services activities, as well as agriculture and manufacturing. As inputs, barriers to competition and trade tend to have negative economy-wide effects, including a drag on export competitiveness. Thus, the objective of SDT to promote development should be viewed more broadly than the high degree of flexibility offered by the GATS. Developing countries that are undertaking services liberalisation unilaterally and through regional arrangements can resist entrenched interests and protectionist pressures to roll-back their reforms by making commitments under the GATS. And developed countries, as well as regional and international organisations, can do more to support the complex process of reforming domestic regulations in services sectors to ensure that the liberalisation process contributes positively to development.

ANNEX 1: KEY PROVISIONS IN THE GATS AND IN THE GUIDELINES AND PROCEDURES FOR THE NEGOTIATIONS ON TRADE IN SERVICES CONCERNING FLEXIBILITY FOR ADDRESSING DEVELOPING COUNTRY INTERESTS

A) GATS Provisions

GATS Preamble

Members, . . .

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

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

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

GATS Article IV

Increasing Participation of Developing Countries

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

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

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

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

(c) the availability of services technology.

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

GATS Article XIX

Negotiation of Specific Commitments

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

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

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

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

B) Key provisions on flexibility for developing countries from the *Guidelines and procedures for the negotiations on trade in services (March 2001)*

I. Objectives and principles

2. The negotiations shall aim to increase the participation of developing countries in trade in services. There shall be appropriate flexibility for individual developing country Members, as provided for by Article XIX:2. Special priority shall be granted to least-developed country Members as stipulated in Article IV:3.

3. The process of liberalization shall take place with due respect for national policy objectives, the level of development and the size of economies of individual Members, both overall and in individual sectors. Due consideration should be given to the needs of small and medium-sized service suppliers, particularly those of developing countries.

II. Scope

5. There shall be no *a priori* exclusion of any service sector or mode of supply. Special attention shall be given to sectors and modes of supply of export interest to developing countries.

6. MFN Exemptions shall be subject to negotiation according to paragraph 6 of the Annex on Article II (MFN) Exemptions. In such negotiations, appropriate flexibility shall be accorded to individual developing country Members.

III. Modalities and procedures

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

14. The Council for Trade in Services in Special Sessions shall continue to carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and of Article IV in particular. This shall be an ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment. In accordance with Article XXV of the GATS, technical assistance shall be provided to developing country Members, on request, in order to carry out national/regional assessments.

15. To ensure the effective implementation of Articles IV and XIX:2, the Council for Trade in Services in Special Session, when reviewing progress in negotiations, shall consider the extent to which Article IV is being implemented and suggest ways and means of promoting the goals established therein. In implementing Article IV consideration shall also be given to the needs of small service suppliers of developing countries. It shall also conduct an evaluation, before the completion of the negotiations, of the results attained in terms of the objectives of Article IV.

C) Key provisions concerning the Doha Round negotiating modalities for LDCs from the *Modalities for the special treatment for least-developed country members in the negotiations on trade in services* (September 2003)

II. Scope

4. Members shall take into account the serious difficulty of LDCs in undertaking negotiated specific commitments in view of their special economic situation, and therefore shall exercise restraint in seeking commitments from LDCs. In particular, they shall generally not seek the removal of conditions which LDCs may attach when making access to their markets available to foreign service suppliers to the extent that those conditions are aimed at achieving the objectives of Article IV of the GATS.

5. There shall be flexibility for LDCs for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation. LDCs shall not be expected to offer full national treatment, nor are they expected to undertake additional commitments under Article XVIII of the GATS on regulatory issues which may go beyond their institutional, regulatory, and administrative capacities. In response to requests, LDCs may make commitments compatible with their development, trade and financial needs and which are limited in terms of sectors, modes of supply and scope.

6. Members shall, as provided for in Articles IV and XIX of the GATS, give special priority to providing effective market access in sectors and modes of supply of export interest to LDCs, through negotiated specific commitments pursuant to Parts III and IV of the GATS. LDCs should indicate those sectors and modes of supply that represent priority in their development policies, so that Members take these priorities into account in the negotiations.

7. Members shall work to develop appropriate mechanisms with a view to achieving full implementation of Article IV:3 of the GATS and facilitating effective access of LDCs' services and service suppliers to foreign markets.

8. Members shall take measures, in accordance with their individual capacities, aimed at increasing the participation of LDCs in trade in services. Such measures could include:

- strengthening programmes to promote investment in LDCs, with a view to building their domestic services capacity and enhancing their efficiency and export competitiveness;
- reinforcing export/import promotion programmes;
- promoting the development of LDCs' infrastructure and services exports through training, technology transfer, enterprise level actions and schemes, intergovernmental cooperation programmes, and where feasible, financial resources; and
- improving the access of LDCs' services and service suppliers to distribution channels and information networks, especially in sectors and modes of supply of interest to LDCs.

9. It is recognized that the temporary movement of natural persons supplying services (Mode 4) provides potential benefits to the sending and recipient Members. LDCs have indicated that this is one of the most important means of supplying services internationally. Members shall to the extent possible, and consistently with Article XIX of the GATS, consider undertaking commitments to provide access in mode 4, taking into account all categories of natural persons identified by LDCs in their requests.

10. LDCs shall be granted appropriate credit for their autonomous trade liberalization. In addition, Members shall refrain from requesting credits from LDCs.

11. In developing any multilateral rules and disciplines, including under GATS Articles VI:4 (Domestic regulation), X (Emergency safeguard measures), XIII (Government procurement) and XV (Subsidies), Members shall take into account the specific interests and difficulties of LDCs.

III. Principles for the provision of technical assistance with regard to trade in services

12. Targeted and coordinated technical assistance and capacity building programmes shall continue to be provided to LDCs in order to strengthen their domestic services capacity, build institutional and human capacity, and enable them to undertake appropriate regulatory reforms. In pursuance of Paragraph 14 of the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93), technical assistance shall also be provided to LDCs to carry out national assessments of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and Article IV in particular.

ANNEX 2: GATS-SPECIFIC PROPOSALS ON SDT TABLED BY THE AFRICAN GROUP AND THE LEAST-DEVELOPED COUNTRIES

A) AFRICAN GROUP — Excerpts from TN/CTD/W/3/Rev.2 of 17 July 2002

General Agreement on Trade in Services

Article IV

Proposal

79. (a) The Committee on Trade and Development shall set periodic benchmarks on financial and technical cooperation and other mutual arrangements under which developed country Members shall accord to developing country Members treatment and concessions designed to ensure:
- (i) the strengthening of the capacity, efficiency and competitiveness of domestic services of developing country Members and designed to effect technology transfer to developing country Members;
 - (ii) access by domestic services of developing country Members to distribution channels and information networks for developed country markets; and
 - (iii) liberalisation of market access in sectors and modes of supply of export interest to developing country Members.
- (b) It is agreed that developed country Members shall reserve quotas for supply of services by developing country suppliers in sectors that developing country suppliers have interests, and that developed country Members shall not adopt horizontal limitations with respect to movement of natural persons and shall over a period of 2 years phase out the limitations they maintain at the adoption of this decision.
- (c) It is agreed that developed country Members shall twice every 12 months:
- (i) report to the Council for Trade in Services on how they are implementing and complying with targets set by the Committee on Trade and Development for the operationalisation of Article IV;
 - (ii) the Council for Trade in Services and the Committee on Trade and Development shall make recommendations to developed country Members to ensure the implementation of Article IV.
- (d) It is agreed that the commitments or concessions under the General Agreement on Trade in Services, shall reflect a proportion of, at least 40 for developing country Members, and not more than 60 for developed country Members in short-term actual gains, provided that special attention shall be demonstrably accorded to the interests of developing and least-developed country Members.

Article V: 3

Proposal

80. The references to "flexibility" and "more favourable treatment" with respect to agreements for liberalisation of trade in services among developing country Members, shall be understood to mean that the agreements shall not be required to comply with the rules set out in Article V provided that the agreements are entered into within the framework of or form part of wider economic liberalisation or regional integration programmes.

Article XXV

Proposal

81. It is agreed that technical co-operation for developing and least-developed country Members requires the WTO to conclude arrangements with relevant international and regional institutions or organisations to provide frameworks for addressing the supply side and infrastructural constraints of developing and least-developed country Members, and their development needs, in services sectors.

B) Least-Developed Countries' Proposals -- Excerpts from TN/CTD/W/4/Add.1 from 1 July 2002**IX. HOW TO MAKE THE PROVISIONS IN FAVOUR OF THE LDCS IN THE GENERAL AGREEMENT IN TRADE AND SERVICES (GATS) MORE EFFECTIVE****Issue(s): Article IV.1**

47. Due to the imbalances in negotiating strength LDCs may not be able to achieve the desired outcome through negotiated specific commitments as foreseen in Paragraph 1 of Article IV of GATS, which would ensure that special priority is given to the least-developed country Members.

Proposal

48. Therefore special priority to LDCs should be granted at a sectoral level where sector-specific measures could be agreed upon by all Members in terms of the development, trade and financial needs of LDCs aimed at ensuring their increasing participation in the multilateral trading system. At the beginning of the negotiations on the offers/requests in sectoral services, the LDCs should be asked to indicate the sectors and modes of supply that represent a priority in their development policies, so that the WTO members can take these priorities into account in the negotiations.

Proposed addition under IV.2:

49. "(d) Measures taken in favour of the least-developed countries in the implementation of paragraph 1".

Issue(s) and proposal(s): Article IV.3

50. To achieve effective implementation and operationalize the provisions of the GATS Article IV.3 additional measures ensuring the increasing participation of the LDCs have to be established in the *sectors*

of their trade interest. These measures could be inscribed as additional specific commitments by the WTO members in favour of the LDCs, which could be drafted as sectoral annexes for LDCs or included into the additional sectoral specific commitments or attached as the reference papers. Where such additional measures are already in place or will be negotiated by all Members, special mandatory provisions aimed at addressing the trade concerns of the LDCs should be included.

Proposed addition under Article IV.3, after the first sentence:

51. "In sectors of their export interest multilaterally agreed criteria for giving priority to the least-developed country Members shall be established, and when developing further disciplines and general obligations under the agreement".

Paragraph 6 of the annex of telecommunications:

Proposed addition, as 6(e):

52. "Developed country Members will promptly notify the Council for Trade in Services of any measures they have taken with regard to implementation of subparagraphs (a), (b), (c), (d) under this paragraph".

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