

# Approaches to Liberalizing Services

*Sherry M. Stephenson*

Liberalization of services at the subregional level has followed two broad approaches — the GATS model and the NAFTA model — neither of which automatically guarantees the full liberalization of trade in services. The question that participants in integration efforts at both the subregional and the broader regional level must ask is what kind of approach to liberalizing services offers both maximum transparency and the greatest degree of nondiscrimination for service suppliers.



## Summary findings

Only since completion of the Uruguay Round have developing countries in East Asia and the Western Hemisphere shown interest in liberalizing services. Ambitious efforts are now being made to incorporate services in liberalization objectives of both subregional and regional integration efforts, including in the Asia-Pacific region under APEC and in the Western Hemisphere under the Free Trade Area of the Americas (FTAA) process.

At the subregional level, member countries of both ASEAN (in East Asia) and MERCOSUR (in Latin America) have chosen to follow the liberalization model set forth in the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS), and to open their services markets gradually and piecemeal.

In the Western Hemisphere, Mexico has successfully promoted the NAFTA model of a more comprehensive liberalization of services markets — and several Latin American countries have adopted the same approach.

Regionally, APEC has chosen a concerted voluntary approach to liberalizing services markets.

Within the Western Hemisphere, participants are defining which approach they will use in the negotiations on services launched as part of the FTAA in April 1998.

In all these efforts, a stated desire to promote more efficient services markets is often hindered by reluctance to open services markets rapidly or comprehensively because of historically entrenched protectionism in the sector and ignorance of the regulatory measures that impede trade in services.

Presumably it would be easier to liberalize services at the subregional level, among countries at similar stages of development (although liberalization's economic value there might be questioned). Liberalizing services at the broader regional level is a difficult and ambitious goal, given the diversity of countries involved in such efforts. Thus liberalization will probably move more slowly at the regional than at the subregional level — perhaps even more slowly than at the multilateral level. It is possible that the new round of multilateral talks on services scheduled to begin under the WTO in 2000 may well eclipse the recently begun regional efforts.

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## **APPROACHES TO LIBERALIZING SERVICES**

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## *Contents*

Abstract.....	1
I. Recent interest in services liberalization by developing countries.....	3
II. Characteristics of services transactions.....	5
III. Contribution of services to economic development.....	7
IV. Growth of service markets.....	9
A. Opportunities for services exports by developing countries.....	11
B. Importance of services in output and trade of developing regions.....	12
V. Importance of services liberalization for developing countries.....	15
A. Cost of restrictions on services trade and investment.....	15
B. Potential gains from liberalization of service transactions.....	17
VI. The challenges of liberalizing trade in services.....	19
VII. Services liberalization at the multilateral level .....	22
A. Scheduling commitments under the GATS.....	22
B. Limited liberalization by developing countries under GATS.....	25
VIII. Services liberalization at the sub-regional level.....	28
A. Services liberalization in the Western Hemisphere.....	28
A.1 Group of Three Free Trade Agreement.....	32
A.2 Mexico Bilateral Free Trade Agreements with Bolivia, Costa Rica, Chile and Nicaragua.....	33
A.3 MERCOSUR Protocol on Services.....	35
A.4 Andean Community Decision on Services.....	38
A.5 Central America/ Dominican Republic Free Trade Agreement.....	40
B. Services liberalization in Asia: ASEAN Framework Agreement on Services.....	36
IX. Comparing approaches to liberalization of services at the sub-regional level.....	39
A. Principles on trade in services.....	39
B. Provisions and disciplines.....	40
C. Market access.....	43
D. Negotiating modality.....	44
E. Exclusions.....	44

X.	Relationship of regional liberalization on services to multilateral disciplines.....	46
XI.	Services liberalization within the Western Hemisphere and the Asia Pacific.....	50
	A. The FTAA process.....	50
	B. FTAA work on services.....	54
	C. The APEC process.....	57
	D. APEC work on services.....	61
XII.	Prospects for future progress on services liberalization .....	65
	Appendices.....	68
	Bibliography.....	80

### *Tables and Annexes*

#### Tables

- Table 1: World Exports of Goods and Services
- Table 2: Share of Services Trade in Total Trade and in GDP for Developing Regions
- Table 3: Commitments on Services at end of Uruguay Round

#### Annexes

- Annex 1: Service Sectors under GATS Commitments by Developing Countries in the Western Hemisphere and East Asia
- Annex 2: Comparison of Service Provisions in Sub-regional Integration Arrangements with Developing Country Membership
- Annex 3: Summary of the Key Elements in the San Jose Ministerial Declaration
- Annex 4: Work Program on Services under the FTAA and APEC
- Annex 5: Market Opening Measures on Services Area by APEC Developing Economies

## *Abstract*

Interest in the area of services liberalization is a very recent one on the part of developing countries, both in Southeast Asia and in the Western Hemisphere, and has been manifested only since the completion of the Uruguay Round. However, ambitious efforts are underway at present to incorporate services within the scope of many of the sub-regional arrangements to which developing countries are parties. This is also occurring at the broader regional level; both the APEC grouping and the Free Trade Area of the Americas (FTAA) process in the Western Hemisphere have included services among their wide-ranging liberalization objectives.

At the sub-regional level, both the ASEAN members countries of Southeast Asia and the MERCOSUR member countries of Latin America have chosen to follow the liberalizing modality of the WTO General Agreement on Trade in Services (GATS) and to open their services markets on what would appear to be a piecemeal, gradual basis. However, within the Western Hemisphere the NAFTA model of comprehensive liberalization for services and investment has been successfully promoted by Mexico and adopted by several Latin American countries. This latter approach appears to be a more promising one for significant expansion of trade in services than the GATS-type approach. At the broader regional level, the modality for liberalizing services markets chosen by APEC is a voluntary, concerted one, and is proceeding slowly. Within the FTAA, participants are in the process of defining the modality under which they will carry out liberalization of services.

Common to all of these efforts is the stated desire by developing countries to promote more efficient services markets. Yet this desire is placed alongside a hesitation to open such markets rapidly or comprehensively due to historically strong and entrenched protectionism in this sectors and to a lack of knowledge regarding the regulatory measures in place which impede services trade. While it might be presumed that liberalization of services would be easier on a sub-regional basis, among countries at similar stages of development (though its economic value might be questioned), liberalization of services at the broad regional level is an ambitious and difficult goal that will most likely move slower than liberalization of services at the sub-regional level and possibly even slower than that at the multilateral level under the WTO where a new round of services talks scheduled to begin in the year 2000 may well eclipse the recently-begun regional efforts.

## ***I. Recent interest in services liberalization by developing countries***

The area of services is rapidly becoming as important in economic terms for developing countries as it is for developed ones. It is by now well accepted that services play a critical role in determining both the quality and speed of the process of economic development, and that a competitive economy cannot exist without an efficient and technologically advanced service sector. Despite this realization, many service sectors remain fairly closed for the majority of developing countries.

Since the mid-1990s, however, an interest has arisen in services liberalization on the part of many developing countries. This liberalization has not manifested itself so much at the multilateral level, as at the national and sub-regional levels. Several countries, particularly in Latin America, have moved to privatize their telecommunications sector and to open their utilities sectors to foreign competition. But the most ambitious market-opening undertakings have been carried out on the sub-regional level, among a restricted number of partners of geographical proximity.

The liberalization of services has become a part of the considerable revival and renewal of interest in regional integration in all parts of the world. In Southeast Asia ASEAN has moved during the 1990s from what it had previously been -- a predominantly political organization -- into the active construction of a free trade area. Since 1995 the ASEAN Free Trade Area (AFTA) has been extended to cover liberalization of trade in services as well. In the Western Hemisphere all of the recently-concluded integration treaties of the 1990s include provisions on trade in services, some of which are very far-reaching in their liberalization objectives. In December 1997 MERCOSUR members signed an agreement to extend liberalization to the services area, as did members of the Andean Community in June 1998. Since the free trade agreement containing comprehensive, NAFTA-type provisions was put in place by Mexico with Colombia and Venezuela in 1995 (as the Group of Three), Mexico has negotiated similar free trade agreements bilaterally with Bolivia, Chile, Costa Rica, and Nicaragua. As of October 1998, Mexico was also carrying out negotiations for comprehensive trade liberalization, including services, with Guatemala, Honduras and El Salvador (as the northern "triangle" of Central America), as well as with Panama, Ecuador, Peru, Belize, and Trinidad and Tobago. Within Central America, the five members of the Central American Common

Market have recently signed a free trade agreement with the Dominican Republic, and are jointly negotiating other agreements with Panama and Chile. The Central American countries are also considering at present a draft agreement for the liberalization of services within their own region, as are members of the Caribbean Common Market. These interesting and ambitious undertakings by developing countries in the Western Hemisphere and East Asia to incorporate an ever-growing area of trade that had remained outside trade rules and disciplines before 1995 are notable and deserve attention.<sup>1</sup>

At the broader regional level, efforts to liberalize services are ongoing within the Asia Pacific through the APEC process, and in the Western Hemisphere through the Free Trade Area of the Americas (FTAA) process. In both cases these groupings have defined ambitious goals of complete removal of barriers to trade (goods and services) and investment for the region by a date certain. In both cases the groupings involve a large number of countries, both developing and developed. However, services is an area which has met with limited success to present in APEC's voluntary liberalization program, and has been the object of considerable controversy within the FTAA. Thus both may prove to be protracted processes.

This study sets out to analyze the various approaches to the liberalization of trade in services that have been adopted by developing countries at the sub-regional level and regional levels, and to determine in what ways these may (or may not) go beyond the multilateral disciplines and liberalization under the WTO General Agreement on Trade in Services (GATS). In this context the study examines the similarities and differences that exist in the approaches to services liberalization not only within the sub-regions, but also as between the treatment of services within the two broader integration movements in Asia-Pacific (APEC) and the Western Hemisphere (FTAA). The study then speculates as to which forum -- regional, sub-regional, or multilateral -- may prove to be the most propitious for promoting liberalization of trade in services among developing countries.

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<sup>1</sup>It does not appear that a similar tendency to incorporate liberalization of trade in services has as yet become manifest in the existing sub-regional integration arrangements between developing countries in South Asia or in sub-Saharan Africa.



## *II. Characteristics of services transactions*

Services are ubiquitous in a modern society; they are multidimensional, and they play a crucial role in economic development. Services encompass many different economic activities. They can be defined as activities that add value either directly to another person or to a good belonging to another person.<sup>2</sup> Services possess three main characteristics that make them very different from goods; they are intangible, though often incorporated in tangible products; they are non-storable; and they involve a simultaneous action between the service provider and the service consumer. Unlike goods production, ownership of a service is not transferred during the process of service provision. Thus services cannot be stored; rather, the service supplier stores instead the capacity to provide the service at the point in time where he/she will have access to a service demander. This inability to be stored means that services are produced and consumed simultaneously.

With respect to trade, the simultaneous nature of service transactions impacts upon how international transactions in services are conducted. If a service producer in one country possesses a desired service, then he must somehow interact with service consumers in other countries to provide it. Services have in fact often been characterized as “non-tradable” in the sense that provision of services to foreign markets often necessitates the movement of capital (economic activities set up through foreign direct investment) or labor (personnel to manage such activities or to provide different types of expertise, including basic labor). In the case of services, the few that cross borders do so incorporated into products, as computer programs in diskettes, or air transport through aircraft, or films in videotapes. Or they may be transmitted via the telecommunications networks. Most services, however, are supplied directly by their providers in a foreign market, and for this reason cannot be dissociated from international movement of capital or labor, as well as accompanying knowledge and technology.

International transactions in services have been defined according to four

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<sup>2</sup>Tony Warren (1995), *The Political Economy of Trade in Services Policy: An Examination of the GATS Schedules of Commitment*, paper written for the Australia-Japan Research Centre, Australian National University, page 2.

modalities first outlined by Sampson and Snape (1985). These are : (1) through cross-border flows in which neither the supplier nor the producer move physically but instead rely upon an intermediate service such as a telecommunications network; (2) through the movement of a consumer to a supplier's country (such as through tourism); (3) through the movement of a commercial organization to the consumer's country, which equates with foreign direct investment; and (4) through the movement of an individual service supplier to the consumer's country.<sup>3</sup> This typology was agreed upon by participants during the Uruguay Round, and is set out in Article I of the General Agreement on Trade in Services, as will be discussed in the following section. There is some evidence to suggest that the dominant mode of international service supply is through foreign direct investment, which is estimated to constitute well over half of the total output of trade in services.<sup>4</sup>

It is clear from the categories of international service transactions in the agreed typology above, that trade in services cannot be promoted without a willingness on the part of governments to contemplate multiple modes of delivery, including the movement across national borders of the services themselves, or of producers of services, or of consumers of services.<sup>5</sup>

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<sup>3</sup>Gary Sampson and Richard Snape (1985), "Identifying Issues in Trade in Services," *The World Economy*, vol. 8, no. 2, pages 171-182.

<sup>4</sup>Christopher Findlay (1990), "Trade in Services in the Asia-Pacific Region," in *Asian-Pacific Economic Literature*, vol. 4, no. 2, pages 3-20. As of 1995, fully half of the stock of foreign direct investment worldwide was in the services sector. There has been some debate over whether or not this mode of supply should be included within the definition of trade in services, but it was nonetheless retained in the GATS, thus blurring the traditional separation between trade and foreign direct investment.

<sup>5</sup>Patrick Low (1995), "Impact of the Uruguay Round on Asia: Trade in Services and Trade-related Investment Measures," paper written for a conference on *Emerging Global Trading Environment and Developing Asia*, Manila: Asian Development Bank.

### ***III. Contribution of services to economic development***

While in the past the growth of services was perceived as a by-product of development in the primary and secondary sectors and the slow growth of productivity in the service sector was thought to be a drag on long-term economic growth, today this perception of the service sector has changed dramatically. Services have taken center front on the stage of economic development. This is due to the so-called “services revolution” characterized by the rapid expansion of knowledge-based services and the growing tradability of services. Information technology has transformed service industries to the point where the development of services is regarded not as a consequence but as a precondition of economic growth.<sup>6</sup> Knowledge-based industries, including professional and technical services, information technology services, banking and insurance, and education, are the driving forces behind the transformation of the service sector.

Rapid technological change is allowing services to be provided in different forms and with greater speed than ever before. Many services which were considered non-tradable only recently are now being actively traded through the application of information technology and advances in telecommunications. The expansion of electronic networks has opened possibilities for trade in long-distance services. It has also allowed for the unbundling of production and consumption of information-intensive services activities such as research and development, computing, inventory management, quality control, accounting, secretarial, marketing, advertising, distribution, and legal services.<sup>7</sup> Data entry, development of computer software, and processing of financial products are activities that are now being “out-sourced,” that is provided by economic agents in other countries and re-transmitted electronically to the demander. Developing countries are participating intensively in the provision of such services.

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<sup>6</sup>Carlos A. Primo Braga (1996), “The Impact of the Internationalization of Services on Developing Countries,” in *Finance and Development*, March, page 35; and World Bank (1995), *Global Economic Prospects and the Developing Countries*, Washington D.C., chapter 3.

<sup>7</sup>World Bank (1995), *Global Economic Prospects and the Developing Countries*, op.cit., page 44.

Dramatically declining costs of information technology are permitting the development of the service sector to effectively bridge the income gap through “leapfrogging” various stages of economic development. Efficient and competitive service suppliers from developing countries can foster economic convergence with high-income countries. These bold statements are based on the remarkable changes that have taken place in the world economy in the service sector over the past two decades. For example, the cost of information technology, called the cutting edge of the services revolution, has fallen dramatically, allowing developing countries to exploit their relative cost advantage and to supply certain services such as data processing and software programming on a long-distance basis through electronic transmission.<sup>8</sup> Demand for these activities is expected to continue to expand in the future, reflecting the continuous fall in communication costs. Thus information or knowledge-based services are both a promoter and a result of the process of globalization.

Efficient producer services are important for developing countries as they pursue outward-oriented strategies of development. Efficient services allow for more competitive production and export of goods. Access to global networks in communications and transport helps promote competitiveness in manufacturing industries, especially time sensitive products. Efficient producer services allow firms to improve their responsiveness to changing consumer demands. Lastly, access to information technology-based international services is also essential in raising the quality of domestic social services, of the type that are characterized by slower productivity growth, namely health, government services, and education.

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<sup>8</sup>The cost of information processing on a computer has fallen from an index of 100 in 1975 to 0.01 in 1995, due to the application of pentium-chip processors, and the cost of a three-minute telephone call from New York to London dropped from approximately \$25 to around \$3 during the same period. The convergence of computer and communications technologies is fostering the development of electronic networks, such as the Internet, whose growth has been explosive (around 20 percent a month since 1986). Moreover, the cost of communication is also becoming independent of distance, as networks are becoming more international. See World Bank (1995), *Global Economic Prospects and the Developing Countries*, op.cit, pages 45-46.

#### IV. Growth of service markets

Services have been the most dynamic component of the world economy over the past two decades. In both trade and foreign direct investment (FDI), services are the fastest-growing component, displacing trade in merchandise. The share of commercial services in world trade (that is, services provided under the first, second, and fourth modalities, but excluding the third) grew from 17 percent in 1980 to 21.4 percent in 1993 and 22 percent in 1995, before dropping to 19.2 percent in 1996. Thus commercial services accounted for nearly one-fifth of world trade or \$1.26 billion (U.S.) in 1996, and an estimated three-fifths of FDI flows.<sup>9</sup> The WTO reports that service exports increased by 8.4 percent on average between 1980 and 1995, while merchandise exports increased by 5.2 percent, as shown in Table 1 which sets out the value, share and growth of world exports of merchandise goods and commercial services between 1980 and 1996.

	<u>Value</u>			<u>Share</u>			<u>Growth</u>
	<u>1980</u>	<u>1990</u>	<u>1996</u>	<u>1980</u>	<u>1990</u>	<u>1996</u>	<u>1980-1996</u>
Merchandise Goods	1.97	3.51	5.15	83.0	80.2	80.8	5.2
Commercial Services	358	933	1.26	17.0	19.8	19.2	8.4

Source: WTO *Annual Report*, various years.

The quality of service statistics is notoriously poor, so that the importance of service transactions in world trade is considered to be quite under-stated. Data on trade

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<sup>9</sup>WTO (1997), *International Trade*, Volume I, Geneva: WTO.

in services are not as comprehensive, detailed, timely, or internationally comparable as data on trade in merchandise.<sup>10</sup> Service transactions are recorded in national balance of payments accounts in extremely aggregated categories, and inconsistencies exist in the methodologies used to report certain items, some being reported on a net and some on a gross basis. All of these factors contribute to a downward bias in the value of commercial services trade as reported in the *IMF Balance of Payments Manual*.<sup>11</sup> The three very broad categories of commercial service transactions recorded in national balance of payments accounts include the following : transportation; travel; and other private services and income. Of the three, the category which has experienced the most rapid growth is that of trade in “other private services,” an amalgamation of very different activities including finance and brokerage, communications, non-merchandise insurance, leasing and rental of equipment, technical and professional services, income generated by the temporary movement of labor, and property income. This category grew at an average annual rate of 10 percent over the period 1980-92. Due to this rapid growth, the share of this category now comprises nearly half of commercial services trade.<sup>12</sup>

It should be noted that statistics on trade in commercial services do not include sales from foreign affiliates engaged in service activities, or in other words, the earnings

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<sup>10</sup>See Bernard Ascher and Obie G. Whichard (1989), *Developing a Data System for International Trade in Services: Progress, Problems, and Prospects*, paper written for the National Bureau of Economic Research---; and Bernard Hoekman (1993), “International Transactions in Services: Issues and Data Availability,” in R. Stern (ed), *The Multilateral Trading System: Analysis and Options for Change*, Ann Arbor: University of Michigan Press.

<sup>11</sup>A new classification of trade in commercial services was introduced by the IMF in 1993 with the fifth edition of its *Balance of Payments Manual*. This new classification allows for a more detailed breakdown of service activities, but does not include more than 20 separate categories. Countries are only now beginning to report service statistics on this more disaggregated basis, and it will take several years before comparable statistics are available for all countries. The new classification system does not solve the problem of underestimation of service data, however, and the picture will remain partial at best for many years in the future.

<sup>12</sup>World Trade Organization (1997), *Annual Report*, Vol. II, Geneva: WTO. Long-distance services are typically recorded in balance-of-payments statistics under “other private services.”

from foreign direct investment (that is, services provided through establishment of service firms in foreign markets, under modality three). Nor do they capture cross-border intra-firm service transactions. Consequently, service statistics are not only of dubious quality and highly aggregated, but are also severely underestimated, since intra-firm sales are increasing rapidly, and since foreign direct investment in services is estimated to represent more than one-half of all international service transactions.<sup>13</sup>

The rapid growth of services has been associated with the diversification of products and the greater specialization of output derived from an increasingly globalized market. Other factors which have been important in this regard are the revolution in information technology as discussed above, and the organizational transformation in the production of goods, as well as massive urbanization. At the end of the 20th century, the competitiveness of a firm is determined as much by its ability to design and market its products as by its ability to manufacture them.

#### ***A. Opportunities for services exports by developing countries***

Technological innovation in the process of economic growth places the service sector in a strategic position. To an ever greater extent, the quality of a country's services represents the measure of its economic and social development. Realization of these facts has heightened the interest of developing countries in looking towards the service sector for its potential contribution to spur more rapid growth and development.

In the area of international trade, services are contributing on a larger scale than ever before to enhance foreign exchange earnings by developing countries. The application of new technologies in the telecommunications and computer-related areas has created major new opportunities for developing countries to provide commercial service exports at long distance, possibly doubling the present value of such exports (now around \$180 billion) within a few years. Some developing countries have traditionally shown a revealed comparative advantage in service exports (including Egypt, India, Malaysia, Mexico, Thailand, and Panama, among others). Areas of comparative advantage vary as between construction services (Republic of Korea), personal services

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<sup>13</sup>World Bank (1995), *Global Economic Prospects and the Developing Countries*, op.cit., page 43.

(southeast Asian economies), transport (Singapore), finance (Hong Kong and Panama), and tourism (many smaller developing economies). Exports of computer-related and various forms of data processing activities provided on a long-distance basis by developing countries are growing at remarkable rates (India, various Caribbean countries).<sup>14</sup> Besides long-distance services, there remains much scope for expansion in other areas of traditional service exports by developing countries, particularly tourism, which remains the largest single source of foreign exchange earnings from services for these countries. Certain niches in industrial country markets are also being created by suppliers in areas such as advertising and film production.

### ***B. Importance of services in output and trade of developing regions***

The services sector constitutes a growing share in both the output and trade of many developing countries. The size of the service sector in Latin America has grown on average from 48 percent of total GDP in 1980 to 56 percent in 1995. In East Asia a similar situation has occurred: the size of the service sector for SouthEast Asian economies has increased from 43 percent of total GDP to 48 percent over the same period. This can be compared with most industrialized economies which now have service sectors constituting over two-thirds of their GDP. Developing economies are rapidly moving

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<sup>14</sup>The computer software programming industry has grown phenomenally in southern India. Many leading international computer and software companies have set up joint ventures based in Bangalore, India, where subsidiaries develop software for computer-aided designs of integrated circuits, along with program development, systems testing, and quality control, and transmit the results electronically back to the parent firms in developed countries. The Indian software industry has experienced an annual growth rate of 70 percent over the past few years, and has generated revenues of more than \$500 million in 1994, two-thirds of which came from exports. Several data processing centers have been set up in Caribbean countries as well. For example, several information processing firms have set up in the Montego Bay area of Jamaica, where approximately 3,500 people work at present. These office parks are linked by satellite dishes to the United States. The same is true of information processing activities in Barbados, where the Caribbean Data Services (CDS) firm has become the largest private employer in the country. See World Bank (1995), *Global Economics Prospects and the Developing Countries*, *op.cit.*, page 55.



towards a similar, heavily service-intensive structure of output, though this varies according to the country concerned, with smaller and more open economies (such as Singapore, Hong Kong, and the Caribbean island states) tending to display a greater degree of service intensity.

The service sector has also become an increasingly important employer in developing economies. In Latin American and Caribbean countries, the proportion of services in employment rose from 31 percent in 1960 to 42 percent in 1980 and now stands at more than 50 percent on average. A similar situation holds for East Asia, where the service sector accounts for more than 50 percent of total employment on average and over 80 percent for some economies (Hong Kong, Singapore).<sup>15</sup>

With respect to trade in services, it is interesting that exports of services have not been as important as one might have expected over the past decade for some of the most dynamic developing exporters in the world. In fact, in Southeast Asia the share of services in total trade has remained flat, at around 17 percent, and this share actually declined for Latin American countries and for Central American and Caribbean countries between 1985 and 1995 (see Table 2).

While the value of trade in goods nearly tripled between 1985 and 1995 for the Western Hemisphere and the Asia Pacific regions, the value of trade in services only doubled. However, and what may seem to be paradoxically, for all developing regions except Latin America, the share of services trade in GDP rose over the decade, indicating that the weight of services output has been increasing in national economies. Thus it is possible to qualify the services sector as relatively dynamic with respect to its importance in output, but less dynamic with respect to trade for the four developing regions. The likely explanation for this situation is tied to the very considerable unilateral liberalization in the form of lowered tariff and non-tariff barriers by countries in these regions since 1985 (with duty rates falling from around 40 percent on average in 1985 to around 12 percent in 1995 in Latin America) which has engendered a rapid expansion of merchandise trade, combined with the still relatively high degree of restrictiveness found in the access to service markets. It is also a result of the poor quality of service statistics.

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<sup>15</sup>CEPAL (1996), *El Acuerdo General sobre el Comercio de Servicios: Retos y Oportunidades para America Latina y el Caribe*, Santiago de Chile, page 5, and World Bank (1996 and 1997), *World Development Report*, Washington D.C.

Many traded services are simply not captured at all, while others are embodied in goods, with the impossibility at present of separating out the services component.

These broad figures mask the picture for individual countries. Within the sub-regions, traded services are considerably more important for some economies than for others.<sup>16</sup> And a few economies in each region showed an increase in the share of services out of their total trade over the decade 1985-1995 (namely Brazil, Paraguay, Venezuela, Costa Rica, Guatemala, and Honduras in the Western Hemisphere, and Malaysia, Thailand, the Philippines, Singapore, and the Republic of Korea in East Asia).

	<u>Total Trade</u>		<u>Gross Domestic Product</u>	
	<u>1985</u>	<u>1995</u>	<u>1985</u>	<u>1995</u>
Latin America	22	17	5.2	4.4
Central America & The Caribbean	28	26	15.1	21.2
SouthEast Asia	17.1	17.3	12.9	21.6
NorthEast Asia	14.9	19.1	3.8	8.5

Source: IMF, *International Financial Statistics*, various issues and World Bank, *World Development Report*, various issues.

<sup>16</sup>This is especially true for Bolivia, Colombia, Paraguay, Uruguay, Costa Rica, Guatemala, Jamaica, and all of the Caribbean nations, as well as for Indonesia, the Republic of Korea, Thailand, and the Republic of China, all of which displayed ratios of trade in services to total trade greater than 20 percent in 1995. See Tony Warren (1997), *Issues and Priorities in the Liberalization of Services in the APEC Region*, Paper prepared for the APEC CTI meeting, Quebec City, May 1997, and figures for the Western Hemisphere calculated from the IMF (1997), *International Financial Statistics*.

## ***V. Importance of services liberalization for developing countries***

The importance of liberalizing trade in services for developing countries springs from several factors. These include: the potential contribution that an efficient service sector can make to economic development; the cost of restricting international service transactions; the growing weight of services in both the output and trade of most developing countries; the growing dynamism of service markets; and lastly, the limited degree of market openness achieved for services during the Uruguay Round.

### ***A. Cost of restrictions on services trade and investment***

Services are usually highly regulated economic activities, with a large degree of government involvement in either their ownership or their provision. Some services such as postal services, air transport, or telecommunications have been considered natural monopolies, and governments have been reluctant to devolve any control over these activities. This heavy regulatory control has made the service sector much more closed than the goods sector and less accessible to foreign service suppliers. The domestic regulatory environment can create barriers to international competition in the form of state monopolies, legal barriers to entry, or restrictions on foreign direct investment (local content requirements, obligation for joint ventures, limitations on foreign personnel, etc).

It is important to point out that deregulation in the services sector is not necessarily correlated with liberalization. Efforts at deregulation may bring about changes in ownership patterns of domestic service providers and may reduce bureaucratic delays and red tape, but do not necessarily imply the opening of the domestic market to foreign service providers. This also implies that deregulation may not necessarily be beneficial, if its end result does not enhance the contestability of markets.<sup>17</sup> However, domestic deregulation is often a necessary complement to the opening up of a country's foreign trade and investment regime. A central issue in the liberalization of international service transactions concerns the best way to combine regulatory measures with

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<sup>17</sup>See Bernard Hoekman (1995), *Focal Points and Multilateral Negotiations on the Contestability of Market*, paper written for a conference "Quiet Pioneer: Robert M. Stern and his International Economic Legacy," University of Michigan.

competition, as liberalization does not imply the absence of all regulation. On the contrary, certain service sectors require efficient regulatory principles and measures in order to guarantee consumer welfare and avoid market abuse. This is particularly the case for the financial sector, as the banking crises in the United States in the 1980s, and in Japan and East Asia in the 1990s have aptly illustrated. However, differences in regulatory measures for service industries across countries, even when applied in a non-discriminatory manner, may restrict access on a *de facto* basis, and to minimize this, governments may encourage the harmonization of regulatory practices.

Access to efficient services will be an increasingly important determinant of competitiveness and economic growth. Certain service sectors are critical to the health and efficient functioning of an economy as they provide vital inputs into the production process and international trade. This is particularly the case for the three service sectors considered to provide the critical infrastructure for economic growth, namely financial services, telecommunications, and transport.<sup>18</sup>

The pursuit by governments of restricted access to domestic service markets can be very costly. In the maritime transport sector, for example, prohibitions by the United States on cabotage by foreign shippers are estimated to increase shipping prices by 100 to 300 percent above the average world price. Similar percentages likely apply to the cost of air transport in many countries who maintain monopolies in the form of state-owned airlines. Closed and highly regulated telecommunications sectors can likewise impose a high cost on producers and exporters. A study of the long-distance service export prospects of Eastern Caribbean countries found that the noncompetitive pricing practices of these countries for telecommunications services put these countries at a competitive disadvantage compared to others in the hemisphere.<sup>19</sup> The use of alternative means of telecommunications (such as low-cost satellite stations) was inhibited by the monopolistic practices of the basic telecommunications providers.

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<sup>18</sup>In an address at end 1997, the Director-General of the WTO cited these three sectors as the pillars of infrastructure which facilitate the adjustment of older and declining industries and the development of new industries. See speech by Renato Ruggiero "Services for the workplace in the 21st century" given at the Second Conference on Services, Berlin, October 1997.

<sup>19</sup>The Services Group (1994), "Opening the Information Industry Marketplace Opportunities for Eastern Caribbean Exports," Arlington VA: TSG.

Often overlooked is the fact that services are usually not produced and consumed in a void, or by themselves. “Intermediate” services, such as financial services, telecommunications, and transport, are often critical elements in the international competitiveness of other sectors of the economy, including those producing goods for export. Permitting such intermediary services to be inefficient raises the cost of final goods, and can lead to increased protectionist pressures by these less efficient domestic producers.

### ***B. Potential gains from liberalization of service transactions***

Relaxation of restrictions on service transactions can provide substantial gains to consumers and producers. It is estimated that the introduction of competition in the provision of port services led to a 5 percent reduction in operating costs in Chile and a 30 percent reduction in Mexico (port of Veracruz).<sup>20</sup> Singapore has developed very efficient air express services which provide significant savings in costs and time to Singapore exporters (as much as seven days in delivery time and 15 percent in distribution costs per unit of product). Through a paperless system of customs clearance implemented in 1990, average cargo clearing time in Singapore now stands at approximately thirty minutes, compared with more than one day in the past, allowing managers to adopt “just-in-time” management strategies.<sup>21</sup>

The combination of deregulation and liberalization in the telecommunications sector by many Latin American countries has led to a substantial improvement of service, combined with a reduction in the cost of its provision. For example, initial deregulation has already led to significant improvement in Peru’s telecommunications network, historically one of the least developed in Latin America. Since the break-up of the 25-year state monopoly in 1994, the number of pay phones has increased by more than three-fold (from 7,990 to 32,300 in 1996), while mobile phones in operation have soared from less than 5,000 in 1990 to approximately 150,000 in 1996. After four years of

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<sup>20</sup>Bernard Hoekman (1997), “The New GATT and the WTO,” Notes for training program at the World Bank, Washington D.C.

<sup>21</sup>World Bank (1995), *Global Economic Prospects and the Developing Countries*, *op.cit.*, page 50.

privatization, telephones have been introduced in over a half a million new homes in Peru and waiting time for installation has fallen from more than ten years to less than two months. The telecommunications infrastructure has also dramatically improved.

Also following deregulation, Venezuela's teledensity increased from 8.7 phone lines per 100 inhabitants in 1991 to 13.1 lines per 100 in 1995, and continues to rise. Aggressive efforts have brought overall digitalization up to almost 50 percent of the network in 1995, while fiber optic links to all major towns are almost complete.<sup>22</sup>

Liberalization combined with privatization and reform, poses new opportunities for progress in the telecommunications area throughout South America. In many countries, formerly state-owned monopolies are being replaced by private firms in an environment where regulatory barriers to entry to new companies are being gradually lowered. Competition has been introduced in value-added services and all other types of telecommunications services, except basic services, in Chile, Brazil, Argentina, Bolivia, Peru and Venezuela.

In Indonesia deregulation and liberalization were introduced for value-added telecommunications in 1992 and have already produced significant changes in the quality of telecommunications service. Basic telecommunications are to be liberalized in a phased-in manner as of 2006.<sup>23</sup> In most ASEAN economies, value-added telecommunications services are now fully contestable, while basic telecom services in certain cases have been deregulated but not yet opened to foreign suppliers. Commitments to do so at a future date are contained in certain of the schedules of these economies in the telecommunication negotiations concluded under the WTO in February 1997.

Reducing the costs of service inputs through deregulation and opening to foreign competition on a non-discriminatory basis allows small and medium-sized firms that would otherwise be marginal to expand their output and exports, and permits larger firms

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<sup>22</sup>Carlos Primo Braga, Volker Ziegler and Li-Gang Liu (1997), "Telecommunications in the Andean Countries: The Role of Foreign Capital," paper written for a conference on *U.S.-Andean Trade and Investment Relations*, Washington, D.C., pages 5-11.

<sup>23</sup>Article by Jonathan Parapak, Head of Intelsat, Jakarta, on "Managing the Telecommunications Sector in Indonesia: Post Privatization," paper written for a conference at Georgetown University on *Telecommunications*, April 1998.

to specialize further and to rely on third-party suppliers. Inefficient and high cost service sectors impose a tax on manufacturing output which can often be very high and which serves to distort the pattern of effective protection. Thus the lowered costs resulting from improving efficiency of basic services are transmitted throughout the entire economy in a general equilibrium fashion.

## *VI. The challenges of liberalizing trade in services*

The intensity of regulation present in many service activities contributes to the complexities of liberalization of international service transactions. Again, trade liberalization in the services area does not always equate with deregulation, as a country can deregulate a services activity without inviting foreign competition.

Liberalization of international service transactions poses considerable challenges which are quite different from those in the goods area. The fact that barriers to trade in services are present in national economies in the form of legislation and administrative practices and not found at the border, make them less transparent than tariffs and quotas, and more difficult to assess their restrictive impact. Moreover, there is not always a clear line between a “measure affecting trade in services” and a “barrier affecting trade in services.” What one government may feel is a necessary regulatory measure, applied in a non-discriminatory manner, may in fact constitute a *de facto* trade barrier to a foreign service supplier. It is clear, however, that all regulatory measures which are applied to foreign service providers in a discriminatory manner constitute barriers to trade.

Barriers to international service transactions are by definition non-tariff in nature. This is due to the intangible and non-storable nature of service transactions, so that any barrier must be applied to either the service consumer or to the service supplier as they interact across borders. Three broad categories of non-tariff barriers that distort international service transactions have been identified.<sup>24</sup> These are:

- (i) instruments relating to market access which regulate the entry of foreign service providers into a host country (such as prohibition on foreign investment, or visa restrictions and quotas);
- (ii) instruments which effectively provide discriminatory treatment to foreign service providers as compared with domestic service providers (such as exclusion from investment incentives, differential treatment of non-residents, taxes on cross-border supply through higher international telecommunication charges and taxes on foreign tourists);

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<sup>24</sup>UNCTAD and World Bank (1994), *Liberalizing International Transactions in Services: A Handbook*, New York: United Nations.



(iii) other measures that are not intended to affect market access or to discriminate against foreign service providers, but do so in practice (such as some consumer protection laws, cultural barriers, and government procurement practices).

Measuring such non-tariff barriers in the services area poses formidable challenges, and very few systematic attempts to do so have been undertaken. This is because of the specific problems encountered when trying to quantify aspects of the services sector. Measures attempting to quantify the impact of service barriers face the severe limitations on data on trade in services described in section III.D, in particular the lack of bilateral services trade data and the highly aggregated nature of the current account data.

Calculating price-based impact measures for impediments to trade in services has been seen as nearly impossible to do on the grounds that a world price for a service is indeterminate. Economists have written on the extreme difficulty of determining in what physical units most services should be quantified. Setting a price for a given service is felt to be without meaning unless the physical unit to which it refers can be specified. Without a reference price, such impact calculations cannot be carried out.

Work is ongoing at present within the OECD, the U.S. International Trade Commission, and at Australian National University to develop price-based indicators of the relative restrictiveness of barriers to international transactions of services, by specific sector.<sup>25</sup> However, this work is still very much in its initial stages.

An alternative to price-based measures is that of frequency measures. Survey data on barriers to services trade have also been scarce, and prevented the development of such measures. Most governments do not have a good grasp of all the measures in place in their national economy which affect services trade. Without this, it is impossible to determine which of these might constitute barriers to such trade. Since the conclusion of the Uruguay Round, a listing of impediments to services is now available in the form of

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<sup>25</sup>The Trade Directorate of the OECD is working on the development of price-based indicators for various types of barriers to service providers by specific sectors, though this work is still in the initial stages. Such measures are also being developed by the Pacific Economic Cooperation Council (PECC) for the APEC grouping in order to evaluate the extent of openness or barriers to service providers in member economies of the region.

the various commitments on services included in the obligatory national schedules, as described in section VII below. Such commitments have been used by various researchers to give an indication of the extent to which service markets were opened through multilateral negotiations, and conversely, of the extent of remaining restrictions. However, the use of frequency indicators to measure service sector openness is imperfect for several reasons. First, the method does not take account of the importance of certain service activities in international trade, as it assumes that all indicators are of equal value. Such indicators should be weighted by GDP to obtain a more accurate picture of relative restrictiveness. Second, the method runs into difficulties taking account of the relative importance of differing modes of supply, again due to data limitations. Third, many developing countries in the Uruguay Round bound their measures with respect to services at a more restrictive level than that of actual practice, and in these circumstances frequency indices will not reflect real market openness.

For all of the above reasons, governments have felt that liberalizing trade in services without a clear understanding of the economic impact of the cost of restricted market access to the domestic economy and potential welfare to be gained from liberalization was a particularly difficult task. Governments have traditionally approached trade negotiations (in a regional or multilateral context) on the basis of reciprocity considerations. Such considerations are difficult to realize if the extent of the potential liberalization as well as the “concessions” cannot be measured due to data and methodological limitations. This was indeed one of the reasons for the reluctance of countries to undertake liberalizing commitments on services at the time of the conclusion of the Uruguay Round.

## ***VII. Services liberalization at the multilateral level***

The World Trade Organization (WTO) came into being on 1 January 1995, bringing with it multilateral rules and disciplines on services for the first time under the General Agreement on Trade in Services (GATS). All developing countries in the Western Hemisphere (with the sole exception of the Bahamas) and most of those in East Asia are members of the WTO, and thus are bound by GATS disciplines. In fact, the WTO as of mid-1998 counted a membership of 132 countries and trading entities, with 100 of these developing members.

The GATS was a landmark achievement in many respects, extending the coverage of the multilateral trading system to trade in services, or approximately one-fifth of world trade. However, in terms of liberalization, the GATS provided only a modest step in ensuring access to service markets. This was due to the gradual approach to liberalization adopted by Uruguay Round participants, their initial reluctance to offer significant commitments for trade liberalization, and to structural weaknesses in the Agreement.<sup>26</sup>

### ***A. Scheduling commitments under the GATS***

The GATS is primarily a framework agreement consisting of three main elements, namely (i) a set of general concepts, principles and rules applying to measures affecting trade in services; (ii) specific commitments undertaken by WTO members on national treatment and market access; and (iii) several sector-specific annexes of both a substantive and non-substantive nature. The liberalizing component of the GATS is found in the specific commitments; these apply, however, only to service activities that are listed in national schedules, reflecting the so-called "positive list approach." Moreover, generic rules under the GATS are quite limited, especially as compared with the GATT. Two of the fundamental principles of the GATT -- most-favoured nation (MFN) treatment and national treatment -- can both be made subject to qualification under the GATS through

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<sup>26</sup>Hoekman, Bernard, "Assessing the General Agreement on Trade in Services," in Will Martin and L. Alan Winters, eds., *The Uruguay Round and the Developing Countries* (1995), Washington: World Bank 1995, and Pierre Sauve, "Assessing the General Agreement on Trade in Services--Half Full or Half Empty?" *Journal of World Trade*, Vol. 29, No. 4, 1995, pages 125-145.

exemptions or exceptions.<sup>27</sup> This is also the case of “market access,” a term that is found in the GATS but does not appear in the GATT.

Under the GATS specific commitments are set out in national schedules. These commitments are made by sector and within sectors, under four modes of supply : cross border (corresponding to trade in services similar to trade in goods); through establishment or commercial presence (corresponding to foreign direct investment); through consumer movement (such as tourism); or via the temporary presence of foreign service providers (through movement of natural persons). There is, however, no obligation to include all four or any number of the four modes of supply when considering specific sectors for binding commitments. This approach has led to an emphasis on negotiations by sector, and to a concern with achieving “sectoral reciprocity.”

The GATS thus allows for a “menu” of scheduled measures, with each specific commitment corresponding to a particular sector and particular mode of supply. Commitments may also be made on a horizontal basis (that is, across all sectors). Each specific commitment may also be subject to qualification as to MFN treatment, market access or national treatment.<sup>28</sup> Full liberalization is guaranteed only when the term “none” is listed in a schedule against a specific commitment, indicating that no reservation is placed on that particular measure with respect to market access or national treatment limitations. However, the ability to effectively schedule “restrictions” as opposed to “liberalization,” means, as Hoekman (1995) has pointed out, that rather than locking-in a liberal situation if it exists, the GATS allows for the future imposition of

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<sup>27</sup>In the case of MFN treatment the GATS permits exemptions for specified sectoral measures, so long as these were scheduled by 1 January 1995, or unless the relevant sectors were subject to ongoing negotiations. Such exemptions are to be reviewed after five years and in principle should not exceed ten years. They are to be subject to negotiation. In the case of national treatment exemptions are not limited in time and may, or may not be, subject to negotiation.

<sup>28</sup>Thus negotiations under the GATS result in a schedule of commitments in a matrix of four (modes of supply) by two (conditions of access) by 155 (non-overlapping service sectors, defined at the most detailed level of the GATS classification list). This yields a maximum number of 1,240 possible service commitments by each participant (620 for national treatment and 620 for market access, which are set out separately) and makes any attempt to review schedules of service commitments quite difficult, due to their inherently complex and non-transparent nature.

restrictions or the creation of “negotiating chips.” This possibility, along with the non-generality of national treatment, and the sector-specificity of market access commitments, is felt by many to have reduced the value of GATS as a liberalizing instrument.<sup>29</sup>

Analysis by various trade economists of the commitments made under GATS has shown that the extent of liberalization achieved during the Uruguay Round was modest.<sup>30</sup> Developing countries in particular were reluctant to commit themselves to anything other than basic standstill commitments, as discussed in the section below.

Since the completion of the Uruguay Round, however, two sectoral negotiations which were outstanding have been successfully concluded, namely on basic telecommunications (February 1997) and on financial services (December 1997). The results of these negotiations have added significantly to the national schedules of commitments, and have increased the initial liberalization of the GATS considerably, at least as concerns these two sectors.<sup>31</sup>

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<sup>29</sup>Richard H. Snape and Malcolm Bosworth (1996), “Advancing Services Negotiations” in Jeffrey J. Schott, editor, *The World Trading System: Challenges Ahead*, Washington D.C., Institute for International Economics, and Bernard Hoekman (1995), “Assessing the General Agreement on Trade in Services,” in L. Alan Winters and Will Martin, editors, *The Uruguay Round and the Developing Economies*, Washington D.C.: World Bank, *op.cit.*, chapter 10.

<sup>30</sup>Bernard Hoekman (1995), “Tentative First Steps: An Assessment of the Uruguay Round Agreement on Services,” *op.cit.* Hoekman finds that at the time of signature of the GATS, only 25 percent of the universe of services was scheduled by high-income countries without any reservations or exemptions to national treatment or market access obligations. For developing countries as a group, the figure was a mere 7 percent. For other references on the evaluation of the outcome of the Uruguay Round with respect to services, refer to footnote 34.

<sup>31</sup>On 15 February 1997, the WTO successfully concluded nearly three years of extended negotiations on market access for basic telecommunications services. A total of 70 offers were scheduled, representing over 95 percent of world telecommunications revenue. The agreement will enter into force on 1 January 1998. Additionally, 65 countries adopted procompetitive regulatory principles in the area of basic telecommunications, covering such matters as competition safeguards, interconnection guarantees, transparent licensing processes, and the independence of regulators. With respect to financial services, on 12 December 1997, the WTO successfully concluded more than three years of negotiations on market access for financial services, improving upon the commitments made on 30 June 1995. A total of 32 offers were scheduled,

A new round of negotiations to expand the schedules of commitments for all WTO members and for all service sectors is to take place as of the year 2000. Prior to the initiation of such negotiations, discussions are being held among members of the GATS Council as to how the existing approach to services liberalization under the GATS might be improved upon and the disciplines under the GATS Framework strengthened. Thus negotiations may encompass changes to rules as well as further exchange of commitments. In particular, several normative issues outstanding from the completion of the Uruguay Round, remain open to elaboration or agreement. These include, among others: the treatment of subsidies in the provision of traded services; the possibility of safeguard action and the elaboration of rules for this; and disciplines covering government procurement for services. Certain WTO members would also like to see a greater clarification drawn with respect to the scheduling of national treatment and market access limitations, while others would like to eliminate the provision for MFN exemptions.

### ***B. Limited liberalization by developing countries under GATS***

The need to liberalize services market in developing countries is highlighted against the limited number of commitments which were undertaken by these countries in the Uruguay Round in the services area. It is estimated that the welfare gains which arose from the Uruguay Round stemming from the reduction in tariffs on industrial products could have been as much as three times higher if only one-fourth of the existing barriers to trade in services had been eliminated.<sup>32</sup>

Developing countries included fewer sectors in their schedules of commitments than did developed countries, and also tabled fewer measures with respect to these sectors. Many of the commitments were qualified through reservations and exemptions with respect to market access or national treatment. Developing countries scheduled only 17.2 percent of maximum possible commitments on services, as compared with 53.8 percent for industrialized countries, as shown in Table 3. The percentage was even lower

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representing over 95 percent of global revenues in the areas of banking, securities, insurance and financial data. The agreement will enter into force on 1 March 1999.

<sup>32</sup>Bernard Hoekman (1998), *Notes on the New GATT and the WTO*, World Bank: Washington D.C.

than this average for Latin America, Africa, and the Middle East.

According to a study carried out by Hoekman attempting to quantify the results of the commitments set out in national schedules, developing countries made the greatest number of commitments to open their service markets to foreign suppliers in the areas of hotels and restaurants (68.3 percent), computer-related services (21.4 percent) and financial services (19.5 percent).<sup>33</sup> The only two sectors in which the majority of

	Number of Service commitments	Commitments as share of maximum possible (%)
Industrialized countries	2,423	53.8
Developing countries:	2,159	17.2
--Latin America	738	15.3
--Africa	396	9.8
--Middle East	106	16.5
--Asia	796	26.0

Source: GATT Secretariat (1994), *The Results of the Uruguay Round of Multilateral Trade Negotiations*; and World Bank (1995), *Global Economic Prospects and the Developing Countries*.

developing countries during the Uruguay Round made a substantial number of commitments were tourism and travel-related services and business services. However, subsequent to the completion of the Uruguay Round many developing countries

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<sup>33</sup>Bernard Hoekman (1995), "Tentative First Steps: An Assessment of the Uruguay Round Agreement on Services," CEPR Discussion Paper 1150. London: CEPR. Also see Hoekman (1995), "Assessing the General Agreement on Trade in Services," in World Bank, *The Uruguay Round and the Developing Economies*, Washington D.C.: *op.cit.*, chapter 10.

undertook commitments in the sectors of basic telecommunications and financial services as well.<sup>34</sup>

The charts in *Annex I* set out the various service sectors covered by the schedules of developing countries in the Western Hemisphere and in East Asia, as of July 1998, and bear witness to the lack of wide sectoral coverage in these commitments. The majority of commitments are concentrated in five service sectors, namely : financial services, telecommunications, business services, travel and tourism, and transport. There is almost a total absence of commitments, however, in the sectors of construction and engineering, distribution services, educational services, environmental services, health and social services, and recreational and cultural services. It should be noted that several of these latter sectors have traditionally been felt to be under the exclusive purview of the state (namely education, health, and the environment), although this conception is gradually evolving towards the application of a more contestable approach to these services.

Other studies which have been carried out to analyze the results of the Uruguay Round with respect to services have come to similar conclusions as regards the limited sectoral scope, and the limited degree of liberalization contained in the schedules of commitments of most developing countries.<sup>35</sup> Many schedules submitted by developing

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<sup>34</sup>A total of 71 governments tabled offers by the end of the basic telecommunications negotiations on 15 February 1997, including among these offers by 40 developing countries. In the area of financial services, a total of 56 offers (representing 70 governments) were submitted by the negotiating deadline of 12 December 1997 and annexed to the Fifth Protocol to the GATS. Of these, 38 offers were submitted by developing countries, either new submissions (6 countries), or improvements upon their original 1995 schedules.

<sup>35</sup>See in addition to the studies by Hoekman, the following : Bernard Hoekman and Carlos Primo Braga (1995), *Trade in Services, the GATS and Asia*, paper prepared for the conference on "International Trade in Services," Australia, July; and Tony Warren (1995), *The Political Economy of Trade in Services Policy: An Examination of the GATS Schedules of Commitment*, paper written for the Australia-Japan Research Centre, Australian National University; USITC (1996), *General Agreement on Trade in Services: An Examination of South American Trading Partners' Schedules of Commitments*, and *An Examination of the Schedules of Commitments submitted by Asia Pacific Trading Partners*, Publications No. 3007 and 3053, Washington D.C.; and OAS Trade Unit (1997), *Evaluation of Uruguay Round Service Commitments under GATS for Countries of the Western Hemisphere*, unpublished study.



countries contain commitments which are simply reflections of binding the status quo, or of binding an access level which is more restricted than that of actual practice. This has led to a similar situation in the services area, as that which has been noted in the goods area, with tariff bindings by developing countries set at considerably higher levels than those of applied tariffs. This makes it difficult for services providers, in an analogous fashion to that of goods exporters, to enjoy any certainty with respect to future access conditions to foreign markets.

### *VIII. Services liberalization at the sub-regional level*

While services liberalization at the multilateral level has achieved rather limited progress to date, particularly as regards developing countries, services liberalization at the regional and sub-regional levels has been moving forward rapidly.<sup>36</sup> Liberalization in the services area which goes well beyond that agreed at the multilateral level has been agreed under several sub-regional integration arrangements negotiated since the mid-1990s. In addition to these agreements, ongoing work at the broader regional level continues for the purpose of liberalizing trade in services.

In this study, 'sub-regional' will be used to designate all agreements within the envelopes of the Asia-Pacific and the Western Hemisphere regions, while 'regional' will be used to refer to the latter two broad geographical areas. This section examines sub-regional integration agreements encompassing a set of rules and disciplines for trade in services, as well as provisions for the liberalization of services, and whose membership is entirely composed of developing countries. Section XI examines the ongoing work on services liberalization at the broad regional level, within the Western Hemisphere and the Asia-Pacific regions.

All of the sub-regional integration agreements reviewed in this section have been agreed or implemented following the conclusion of the Uruguay Round, and all date from 1995 onwards. In the Western Hemisphere, these include (as of October 1998) the Group of Three Treaty, the four bilateral treaties concluded by Mexico, the bilateral treaty between Chile and Canada, the MERCOSUR Protocol on Services, the Decision on Services of the Andean Community, and the treaty between Central America and the Dominican Republic. In Southeast Asia members of ASEAN have signed an Framework Agreement on Services.

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<sup>36</sup>This statement must be qualified by the agreements reached at the multilateral level under the WTO in the areas of financial services, telecommunications and basic telecommunications, subsequent to the completion of the Uruguay Round. Several developing countries in the Western Hemisphere and in East Asia made significant commitments in these service sectors, which have considerably improved the nature of their original Uruguay Round schedules to the GATS.

### *A. Services liberalization in the Western Hemisphere*

Within the Western Hemisphere developing countries have been actively pursuing integration efforts at the sub-regional level. Presently more than 25 different preferential trading arrangements of various types exist within the Western Hemisphere, a fact which distinguishes this region from East Asia.<sup>37</sup> Integration agreements in the Western Hemisphere can be broadly divided between those that have as their objective the establishment of free trade areas (like the Group of Three) and those that aspire to higher economic integration objectives (like MERCOSUR). Several of the earlier integration arrangements of the 1960s still exist (the Andean Group, now the Andean Community, the Caribbean Common Market, and the Central American Common Market), and these are currently being revitalized through efforts to deepen integration. However, many of the free trade agreements are very recent in character. Among the most prominent arrangements involving solely developing countries of the Western Hemisphere can be mentioned the:

- Latin American Integration Association (established 1960 as LAFTA)
- Central American Common Market (established 1961)
- Caribbean Community (established 1967 as CARIFTA)
- the Andean Community (established 1969 as the Andean Pact)
- MERCOSUR (established 1991)
- the Group of Three (came into existence in January 1995)
- Free Trade Agreements signed by Mexico with Bolivia/ Costa Rica  
(both came into existence in January 1995)
- Free Trade Area created by MERCOSUR with Chile/ and Bolivia  
(came into existence in July 1997)
- Free Trade Agreements signed by Mexico with Chile and Nicaragua  
(to be brought into existence in January 1999)
- Free Trade Agreement signed by Central America with the Dominican Republic  
(to be brought into existence in January 1999)

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<sup>37</sup>OAS Trade Unit (1997), *Trade and Integration in the Americas: Analytical Compendium*, Washington D.C.

The Andean Community, like MERCOSUR, has recently broadened its scope of liberalization to include trade in services (June 1998 and December 1997, respectively). The other two early regional integration groupings of the 1960s - the Central American and the Caribbean Common Markets - have not yet gone beyond the traditional trade issues of tariff reduction to cover market access more widely through services and investment provisions, though members of both groupings are presently considering doing so. Services liberalization, however, is a component of all the free trade agreements of the 1990s, which have been inspired by the comprehensive trade agenda of the Uruguay Round and by the North America Free Trade Agreement (NAFTA), between Canada, Mexico and the United States, implemented as of January 1994.

Within the Western Hemisphere, two approaches to services liberalization which have surfaced since the mid-1990s can be clearly discerned. On the one hand, a "NAFTA-type approach of comprehensive liberalization with respect to trade in services and investment based on a "top down" or a "negative list" approach to liberalization has been followed by a large number of countries. Under this approach trade in services (cross-border trade) as well as services supplied through establishment (foreign direct investment) are to be free of restraint for all sectors unless specified otherwise in lists of exceptions. Provisions on trade in services are accompanied by those on investment which likewise specify freedom for investment decisions and establish important investor guarantees. This approach does not require the negotiation of schedules of commitments since liberalization is to be guaranteed for all sectors and for all service suppliers under unrestricted provisions on MFN and national treatment.

Since 1995 Mexico has played a pivotal role in extending the "NAFTA-type" liberalizing approach towards services to other countries in Latin and Central America. The members of the Group of Three Treaty - Mexico, Colombia, and Venezuela - put into effect a strikingly similar free trade agreement with a broad-based liberalization of services in January 1995, as did Mexico in bilateral free trade agreements negotiated with Bolivia and Costa Rica (both effective as of January 1995) and with Chile and Nicaragua (both to be brought into effect as of January 1999). These treaties all contain similar, and often identical, provisions and disciplines for services and investment as those in

NAFTA.<sup>38</sup> Additionally, in June 1997, Chile and Canada brought into effect a similar free trade agreement in the absence of promised negotiations for the extension of NAFTA to Chile. Most recently, the five members of the Andean Community opted for a negative list approach in their group's Decision to liberalize trade in services at the sub-regional level. Thus, under the impetus of Mexico, the "NAFTA-type" approach to services liberalization has now been adopted by twelve developing countries of the Hemisphere under seven formal free trade agreements.<sup>39</sup>

The second approach which has been adopted in the Western Hemisphere at the sub-regional level for services liberalization is one based on the WTO GATS. Very much like ASEAN, a Protocol on Services in the form of a framework agreement was completed by MERCOSUR members in September 1997 and signed by Trade Ministers and Heads of State in December 1997. The Protocol sets out a liberalizing modality identical to that of the GATS with gradual liberalization to open service markets, carried out through incremental rounds of negotiated commitments, the results of which are to be subscribed in schedules annexed to the Protocol. Unlike the GATS, however, MERCOSUR members have committed to achieving full and complete liberalization of all traded services within a ten-year period (that is, by end 2007). The first round of negotiations for the scheduling of such commitments was completed by the four members in July 1998.

Several sector-specific agreements on services have however been concluded between countries of the Hemisphere. Examples of these include those on air and land transport between members of the Andean Community and between the countries of Central America, and the treaties concluded between MERCOSUR members, Bolivia, Chile and Peru on land transport, or between MERCOSUR members, Bolivia and Chile on air services, as well as the treaty on telecommunications between Nicaragua, El Salvador, Guatemala and Honduras. Several bilateral sectoral agreements on services

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<sup>38</sup>OAS Trade Unit (1997), *Provisions on Trade in Services in Trade and Integration Agreements of the Western Hemisphere*, Washington D.C.

<sup>39</sup>This number will soon rise on both accounts, as it is understood that Mexico is actively negotiating a similar -type treaty with the three remaining countries of Central America (Honduras, El Salvador, and Guatemala), and is close to completion of an agreement with Panama. These future free trade agreements should contain similar provisions for liberalization of trade in services.

have also been signed in the Western Hemisphere. At the sub-regional level, 34 sectoral agreements on services have been identified, and 48 sectoral agreements on services (excluding civil aviation) have been identified at the bilateral level.<sup>40</sup> The majority of these sectoral agreements set out the intention for cooperation between signatories, but do not contain binding commitments.

These sector-specific agreements on services in the Western Hemisphere are limited in scope and effect. Neither these, nor the twelve partial scope agreements on services concluded under ALADI, contain general rules and/or disciplines with respect to the treatment of services; nor do most such agreements provide for dispute settlement procedures. Therefore they cannot be considered in the same way as those integration arrangements which comprise comprehensive provisions, rules, and disciplines with respect to services. Moreover, the legal status of such agreements with respect to the requirements of the multilateral trading system is open to serious question since it is fairly clear that these sectoral stand-alone agreements do not fulfill the obligations contained in GATS Article V (see discussion in Section X).<sup>41</sup>

#### ***A.1 Group of Three Free Trade Agreement***

The Group of Three arrangement, whose legal name is the Treaty on Free Trade Between the Republic of Colombia, the Republic of Venezuela, and the United Mexican States, came into effect on 1 January 1995. As part of its objective, the treaty sets out to “eliminate barriers to trade and facilitate the movement of goods and services among the Parties.” Its provisions on services are comprehensive, and the treaty reads almost

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<sup>40</sup>OAS Trade Unit (1998), *Sectoral Agreements on Services in the Western Hemisphere*, Washington D.C.

<sup>41</sup>This would imply, therefore, that such sectoral agreements would be “GATS-illegal” unless they had been listed in the schedule of MFN exemptions of the participating WTO members at the time the Uruguay Round was concluded. By logical extension, this would also mean that any sector-specific type of services agreement concluded *after* the GATS came into existence, would not be GATS-compatible, as it could not be listed in the MFN exemption list, and would not meet the requirements of GATS Article V. The fate of those sectoral agreements which were not scheduled has not, to the author’s knowledge, been discussed to date within the WTO.

identically in structure and text to that of NAFTA. This similarity is due to the pivotal role played by Mexico, as emphasized earlier, in extending NAFTA-type obligations to other countries in Latin America.

Under the Group of Three treaty, as under NAFTA, services are treated in a broad, integrated manner, and thus several chapters of the agreement must be read together in order to understand the treatment of services. The principles of most-favoured-nation treatment and national treatment are set out as unconditional elements of the agreement. The Group of Three treaty contains a chapter on cross-border trade in services, with guarantee of the right of non-establishment for service providers. It also contains a chapter on investment, with extensive disciplines and guarantees for investor rights, thus guaranteeing as well the right of establishment to service providers. Like NAFTA, the agreement also contains provisions for protection for intellectual property-intensive goods and services. Importantly, it is the only agreement among developing countries that includes disciplines on government procurement of services, as well as provisions for the future liberalization of the latter. Given the importance of procurement activities in most developing countries, this provision is of considerable significance. The harmonization of standards for land transportation and for the recognition of professional diplomas is encouraged, and provisions are included to facilitate the temporary entry of business people.

Liberalization under the Group of Three treaty applies to all measures affecting trade in services and to all sectors (with the exception of government services and air transport services, although services of aircraft repair and maintenance and specialty air services are included within the scope of the treaty), unless otherwise specified in annexes. This “negative list” approach obliges the parties to list all non-conforming measures at both the national and sub-national levels within a specified period of time, under a “list or lose” clause. Failure to list non-conforming measures within these time limits should result in their automatic liberalization. Thus the element of transparency in the agreement is very strong, with the obligation of the parties to provide detailed information on regulatory barriers to trade and investment in services in place which affect the provision of services from member service providers.

A separate annex to the Group of Three treaty contains exceptions (of a permanent nature) to the liberalization commitments on investment in services and cross-border trade. Exceptions may be lodged with respect to national treatment, MFN treatment,

cross-border trade in services, or performance requirements. The members of the Group of Three completed the negotiations on their list of exceptions and non-conforming measures in December 1996, and should soon make these publically known.

The Group of Three treaty, like NAFTA, contains a commitment to future liberalization of the services sector, including through negotiations on non-discriminatory quantitative restrictions and through expanding the scope of government procurement activities for services. Separate chapters on transportation, telecommunications, and financial services have been written into the agreement, with the aim of deepening disciplines in these areas.

### ***A.2 Mexico Bilateral Free Trade Agreements with Bolivia, Costa Rica, Chile, and Nicaragua***

Bilateral free trade agreements have been negotiated by Mexico with the four countries of Bolivia, Costa Rica, Nicaragua, and Chile. The agreements with Bolivia and Costa Rica came into effect in January 1995, and those signed by Mexico with Nicaragua and Chile are to come into effect as of January 1999. These are all NAFTA-type agreements, and their content reads almost identically to that described above for the Group of Three treaty. These treaties cover all traded services within their scope and provide for unconditional most-favoured-nation and national treatment, as well as for the guarantee of service provision either through cross-border trade or through establishment (local presence). Non-conforming measures and general exceptions are to be set out in annexes to the treaties and such measures must be listed, or are considered subject to liberalization.

Differences between these bilateral free trade agreements and the Group of Three or NAFTA treaties are slight. The bilateral treaties do not include provisions for the regulation of monopoly practices. Nor do they include provisions and disciplines on government procurement for services. They differ as well from the NAFTA and the Group of Three agreements in providing for the possibility of carrying out safeguard action, although the provisions for such action still remain to be defined. The bilateral treaties also reflect a different emphasis on specific service sectors. While the treaties between Mexico with Bolivia and Chile include separate chapters on financial services and telecommunications, the treaties with Costa Rica and Nicaragua omit these.



However, all four include an annex on professional services as well as a chapter on the temporary entry of business people. The four agreements also contain the commitment (as does the Group of Three treaty) to establish a system of technical cooperation with the purpose of facilitating the exchange of technology and the provision of information on service providers among signatories.

With respect to future liberalization, these bilateral free trade agreements go significantly further than their NAFTA precedent. Like the Group of Three agreement, the bilateral treaties signed by Mexico contain strong and time-bound commitments for future liberalization of trade in services. Whereas NAFTA only sets out the requirement to consult on reservations and quantitative restrictions “with a view to further liberalization,” the more recent free trade agreements negotiated by Mexico contain an obligation to liberalize through “future negotiations” (Article 10-09 of the Group of Three and Article 9.08 of the bilateral treaties), with the objective of “eliminating the remaining restrictions set out in the list of non-conforming measures”. These negotiations are to be convened by the Commissions in charge of overseeing the respective agreements. Moreover, the treaties specify that member parties shall constitute a list of commitments to liberalize non-discriminatory quantitative restrictions.

### *A.3 MERCOSUR Protocol on Services*

After tightening their liberalization in the area of trade in goods and concluding various additional Protocols including those on investment, competition policy, intellectual property protection, and dispute settlement in the first half of the 1990s, MERCOSUR members proceeded to further deepen their regional integration efforts through including trade in services within their scope of liberalization. For this purpose an Ad Hoc Group on Services was established in August 1995 and was given the mandate to carry out work for the drafting of a Protocol on Trade in Services. This Protocol, in the form of a Framework Agreement, was completed a little more than two years later, and signed by the MERCOSUR Common Market Council on 15 December 1997 as the Protocol of Montevideo on Trade in Services for MERCOSUR. The Protocol is to be supplemented through the addition of sector-specific chapters, as well as through annexes in the form of national schedules of commitments (the first round of which was finalized in July 1998). The Protocol will come into effect as soon as at least three of the four

member governments have ratified it. Negotiations on the national schedules of commitments are to be undertaken by the Common Market Group, which is named as an independent body in the Protocol and given specified functions.

The basic approach adopted by MERCOSUR members to liberalization of trade in services is similar to that of the GATS, namely a gradual market opening based on the negotiation of specific commitments to liberalize either market access or national treatment practices for specific service sectors. However, the MERCOSUR Protocol departs significantly from that of the GATS in objective it sets to achieve full liberalization of traded services within a ten-year period, culminating in an open regional market for services no later than end 2007. This goal is explicitly stated in Part III, under the "Program for Liberalization." It is to be achieved through the annual rounds of negotiations, meant to progressively incorporate additional sectors and modes of supply within the orbit of liberalization, through augmenting the number of commitments in national schedules.

The MERCOSUR Protocol contains many articles which are very similar to those of the GATS, including those on MFN treatment, market access and national treatment. The provisions indicate the specificity of the latter two principles and their application to scheduled measures or commitments only. Detailed articles on transparency, confidential information, domestic regulation, recognition, denial of benefits, and exceptions (both general and for security purposes) follow the GATS very closely. The article on competition policy makes reference to the provisions contained in MERCOSUR's Protocol for the Defense of Competition Policy. The articles on government procurement and subsidies make reference to provisions which will be negotiated in these areas in the future. The possibility for the modification of schedules is foreseen in the Protocol, but the withdrawing or alteration of any commitments cannot be made retroactive. The provisions on dispute settlement specify that conflicts in the area of trade in services will be settled under existing MERCOSUR mechanisms.

The MERCOSUR approach to liberalization of trade in services is an ambitious one; although based on the GATS framework and negotiating modality, the members of this integration arrangement have committed to a specific timetable (ten years) for the complete elimination of restrictions to trade carried out by member services providers. MERCOSUR members have thus agreed in principle to go far beyond the scope of liberalization at the multilateral level, in order to realize a common market, much along

the lines of the European Union. The feasibility of this ambitious objective will only become apparent over the coming decade.

#### *A.4 Andean Community Decision 439 on Services*

The five Andean member countries (Bolivia, Colombia, Ecuador, Peru, and Venezuela) took a major step forward towards deepened integration in June 1997 when the Andean Group metamorphosed into the Andean Community through the signing of the Trujillo Protocol. Although the original Cartagena Agreement, signed in 1969, envisaged the establishment of a customs union within a decade, this deadline was not reached. The objective has only been recently approached for the Andean members through the reforms and policy coordination brought about by a concerted move to strengthen the internal cohesion, as well as the scope, of the Andean integration process. The Trujillo Protocol was instrumental in introducing some important institutional changes in the structure of the Andean Community. It also set the stage for the adoption of several decisions setting out common policies for many of the newer, non-tariff trade issues, including investment, standards and technical regulations, competition policy, and intellectual property rights.<sup>42</sup>

On services, the Andean Community adopted a general Framework of Rules and Principles for the Liberalization of Trade in Services, in the form of Decision 439, which came into effect for all members on 11 June 1998. Like the MERCOSUR Protocol, the Andean Decision 439 sets out the objective of achieving full liberalization of services

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<sup>42</sup>See Miguel Rodriguez Mendoza (1998), *The Andean Community in Motion: A Progress Report*, paper written for the II Annual Conference on Trade and Investment in the Americas, Washington D.C., September 1998. This paper discusses the recent progress achieved towards the deepening of integration by the Andean Community, and emphasizes in particular the institutional aspects of this process. Notably, the Andean Community is alone among all the sub-regional arrangements in the Western Hemisphere in endowing its institutions with supranational powers, so that all Decisions adopted by the Commission (which has competence on trade and investment matters) are directly enforceable in all member countries. Moreover, the Andean Court of Justice has the power to interpret all Andean decisions -- in particular those taken by the Commission -- and acts as a dispute settlement mechanism to deal with differences regarding the implementation of these decisions by the member countries.

trade among the member countries. This is to be completed, however, over a five-year rather than a ten-year period. A whole section of the Decision is devoted to a detailed explanation of the modality to be followed for achieving this liberalization, which is to be carried out through a negative list approach. An inventory of measures restricting trade in services (elaborated by each member country with the assistance of the Andean General Secretariat) is to be adopted by the Andean Commission, following which the member countries are to carry out annual negotiations, beginning in the year 2000, aimed at the gradual and progressive removal of all such restrictions by the year 2005.<sup>43</sup> During the process the Decision makes allowance for the possibility of two or more countries proceeding faster towards liberalization than others in certain sectors or sub-sectors.

The Andean Community's Decision on Services adopts a comprehensive sectoral approach (excluding only air transport and governmental services), unconditional m.f.n. and national treatment articles, provisions on transparency, and the recognition of titles and diplomas. It also contains three provisions which are uncommon in the agreements covering services in the Western Hemisphere, due to the fact that the other agreements are not applicable to customs union entities, but only to free trade agreements. These include a provision to facilitate the transit and temporary stay of natural or physical services providers from other member countries, and a provision to forbid the imposition of restrictions on payments or international capital flows. Another provision sets out the requirement to avoid double taxation (a policy usually reserved to national tax authorities and not found in service agreements). The Decision sets out the possibility of applying safeguard measures to restrict services trade for balance-of-payments reasons or serious financial problems, under certain conditions and guidelines.

Lastly, the Andean Secretariat is tasked with the elaboration of separate sectoral decisions with more comprehensive rules and disciplines for the areas of financial services and telecommunications. With respect to professional services, the Secretariat is to draft a common regime for the recognition of licences, professional titles and diplomas, for any service area that may request this.

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<sup>43</sup>Such a list would be the equivalent, effectively, of all of the non-conforming measures contained in the various annexes to NAFTA or to the bilateral free trade agreements signed by Mexico or Chile with other trading partners in the Hemisphere.

### *A.5 Free Trade Agreement between Central America and Dominican Republic*

Central America has had provisions for integration in place for attaining a customs union since 1960, even longer than the former Andean Group. In the face of little progress towards this goal after more than thirty years, members acted to revive the integration process through adoption of the Protocol of Guatemala (1993), and the Protocol of Tegucigalpa (1995). The latter set out integration goals similar to those of the Maastricht Treaty, and created new institutional arrangements, also similar to those of Western Europe. Competence over trade and investment issues is held by SIECA, or the Central American System for Economic Integration.

The two Protocols have to date not resulted in a deepening of Central American integration, though proposals for common policies in various areas, including standards and technical regulations, intellectual property rights, safeguards, and investment, are presently under consideration by member governments. The same is true for services. No agreement setting out commonly-adopted rules and disciplines for trade in services has yet been adopted at the regional level, though a draft decision is also under consideration.

In spite of the lack of a common regional policy, the Central American countries have negotiated jointly with the Dominican Republic, and concluded a free trade agreement in mid-1998, which is to come into effect as of 1 January 1999. One of the striking aspects of this agreement is the fact that it is to be applied not jointly, as between the five Central American members and the Dominican Republic, but rather individually, as between each Central American signatory and the Dominican Republic. Though a single document, Article I of the treaty seems to specify that the agreement should be read as five separate legal texts. This is clearly an unprecedented step, by which a regional grouping negotiates rules and disciplines, as well as trade liberalization, which are to be applied to a third party, before similar treatment is granted among themselves.<sup>44</sup>

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<sup>44</sup>It would appear that the legal and economic ramifications of such a treaty have not yet been analyzed by trade economists. Nor is it clear what this step will imply for the progress of future Central American integration. It may possibly, but not necessarily, provide a catalyst for adopting a unified regional approach to trade issues. The Central American countries have since entered into negotiations jointly with both Panama and Chile, for the conclusion of similar free trade agreements.

The provisions in the services chapter of the Central American treaty with the Dominican Republic are largely modeled on the NAFTA-type approach, as carried forward in the various bilateral treaties negotiated by Mexico. The agreement provides for universal coverage of service sectors (with the exception of air transport and government services), contains unconditional m.f.n. and national treatment articles, as well as transparency provisions and an article on non-obligation of local presence for the provision of a service. Disciplines on government procurement are to extend to services as well as goods. Future disciplines are to be established with respect to safeguard actions and to subsidies for service activities. The agreement specifies that, in the case of the incompatibility of the agreement's provisions with multilateral rules and disciplines on services (in GATS), the former will prevail.

With respect to liberalization, the agreement adopts a negative list approach whereby the parties are to exchange their lists of non-conforming measures no later than six months after the treaty enters into effect (presumably each of the five countries on a separate bilateral basis with the Dominican Republic). Non-discriminatory quantitative restrictions are also to be set out in a separate list within six months, and the two lists are to be the object of future and periodic negotiations, the aim of which is the elimination of both types of restrictions. Thus, the treaty carries on the strong degree of liberalization contained in the Mexican-inspired free trade agreements of the Hemisphere.

### ***B. Services Liberalization in Asia: ASEAN Framework Agreement on Services***

The ASEAN Declaration of 1967 did not commit member countries to regional economic integration. However, this aspect of ASEAN was added at the Fourth ASEAN Summit of 1992 in Singapore, when member governments decided to liberalize intra-regional trade through the establishment of an ASEAN Free Trade Area (AFTA).<sup>45</sup> This is being carried out by gradual tariff reduction under a two-track process through the medium of the Common Effective Preferential Tariff (CEPT). The process was

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<sup>45</sup>Stephenson, Sherry (1994), "ASEAN and the Multilateral Trading System," *Law and Policy in International Business*, Georgetown University Law Center, Vol. 25, No. 2, pages 439-448.

accelerated by governments in 1994, and again at the Bangkok Summit of December 1995. Agreed reduction of tariffs should bring duty rates to between 0 and 5 percent for most items traded among ASEAN members by the year 2000, and to these levels for the few remaining items by 2003.

Importantly, ASEAN economic integration has been both broadened and deepened over the past two years. Its membership has been expanded from six in 1994 to nine by mid-1997.<sup>46</sup> This broadening of membership, however, has been accompanied by a deepening of the integration effort as well to include areas other than tariff reduction, including in particular investment, services, and intellectual property protection.

A decision was made by ASEAN Economic Ministers in 1994 to include services in the grouping's liberalization effort. This decision resulted in the elaboration of an ASEAN Framework Agreement on Services, signed two years ago at the Bangkok Summit (15 December 1995). The approach of ASEAN to services liberalization in the Framework Agreement has been patterned after that of the WTO GATS, with liberalization to be undertaken on a gradual basis through rounds of commitments negotiated bilaterally or trilaterally, and then extended to other members within ASEAN on an m.f.n. basis.

The Framework Agreement on Services of 1995 is an agreement of an enabling nature (similar to the Framework Agreement on Enhancing ASEAN Economic Cooperation of 1992 which allowed for subsequent agreement on the CEPT to carry out tariff reduction), its main purposes being to set out a liberalizing modality for trade in services and to allow for the start of negotiations on specific commitments. A Protocol on Services Liberalization was recently signed on 15 December 1997 which is the culmination of the first round of such negotiations. The Protocol is binding on all nine ASEAN governments and carries with it a package of commitments. These commitments cover four sectors, namely maritime transport, telecommunications, tourism, and business services. Most ASEAN members made commitments in all four sectors, though the

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<sup>46</sup>From an original membership of five, ASEAN expanded to encompass Brunei in 1984. A decade later (1995) it welcomed VietNam. In 1997, for its 30th anniversary year, ASEAN expanded to include Laos and Myanmar, and has stated its firm intention to incorporate Cambodia as well once political stability is restored in the country. Once realized, this will complete the goal of bringing all nations of Southeast Asia within one community.

nature of these commitments is not yet known since the schedules have not been officially approved by governments and made public.<sup>47</sup>

The package should have become effective as of 1 April 1998, when all governments should have signed it and begun its implementation. ASEAN members have agreed to negotiate a further package of commitments by the end of December 1998, which will cover all the seven major service sectors.<sup>48</sup> While the recently-signed Protocol represents a marginal improvement on the commitments in the national schedules of the ASEAN WTO members under the GATS, it is expected that the next package (end 1998) will represent a more significant liberalization. In the light of the financial and exchange rate crises that have beset East Asia since September 1997, however, progress on liberalization in the services area can be expected to be much slower than expected.

At the ASEAN Summit of November 1997, the Heads of Government defined a specific goal for services liberalization, namely to achieve the “free flow of trade in services within ASEAN by 2020.” This mirrors the general APEC commitment to achieve “free and open trade in goods and services in the region by the year 2010 and 2020,” as set out in the Bogor Declaration of November 1994. The extent of services liberalization has yet to be defined, but it is understood that this should be as comprehensive as possible.

Due to the need to progress towards this liberalization target and given the modest nature of the GATS commitments scheduled, ASEAN members are considering at present an alternative modality for liberalization to that set out in the ASEAN Framework Agreement on Services of 1995. Under discussion is the creation of two or three tracks for the attainment of this target (as under the CEPT scheme), to be carried out on either an accelerated or a normal basis. Once the finality is agreed, members would be expected to proceed with their market-opening efforts unilaterally, under the intention of meeting the agreed target within the agreed time. Such an approach would mirror the form of liberalization adopted under the CEPT, and would avoid negotiation of bilateral

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<sup>47</sup>Due to their lower level of development, Laos and Myanmar made commitments on tourism only. Vietnam made commitments on tourism and telecommunications.

<sup>48</sup>Information obtained in discussions with the ASEAN Secretariat, Unit on Services, which the author would like to acknowledge with gratitude. Also, useful is the web site for the ASEAN Secretariat, namely [www.aseansec.org](http://www.aseansec.org).



commitments among members, along the GATS style. The extent to which this approach will actually result in opening service markets will depend very much upon how extensively the sectoral coverage and liberalization objective are defined.

## ***IX. Comparing approaches to liberalization of services at the sub-regional level***

Developing countries have opted for two broadly distinct approaches to services liberalization at the sub-regional level. While the MERCOSUR and the ASEAN sub-regional groupings have adopted a GATS-type gradual approach to opening services markets, other sub-regional groupings have adopted instead a more immediate NAFTA-type approach to services liberalization. This section draws a comparison between these two approaches with respect to five categories relevant to services liberalization, namely : (i) principles; (ii) provisions and disciplines; (iii) negotiating modality; (iv) market access; and (v) exceptions. Included in the comparison are the following sub-regional agreements composed exclusively of developing-country membership for which legal texts are available: the ASEAN Framework Agreement on Services; the MERCOSUR Framework Agreement on Services; The Group of Three treaty; and four bilateral free trade agreements signed by Mexico with Bolivia, Chile, Costa Rica and Nicaragua; the Decision on Services of the Andean Community; and the free trade agreement signed between Central America and the Dominican Republic. A comparative framework for examining these sub-regional integration agreements in these five areas discussed below can be found in the table in *Annex 2*.

### ***A. Principles on trade in services***

Comprehensive principles governing liberalization of trade in services have been adopted by the recent free trade agreements of the Western Hemisphere under the NAFTFA-type approach and include : unconditional MFN treatment, national treatment, transparency, and freedom over modes of supply for provision of services. All of the free trade agreements, as well as the Decision of the Andean Community, set out these four basic principles in an unconditional manner. In the NAFTA-type agreements, the non-conforming measures (exceptions to MFN and national treatment) are to be specified at the federal, state or provincial level either at the time of coming into force of the agreement or within a certain specified period of time thereafter.

Under the GATS approach adopted by ASEAN and MERCOSUR, only two of the same basic principles apply on an unconditional basis, namely transparency and MFN treatment, although the latter can be restricted through exemptions with respect to

particular measures affecting services for a limited period of time. Such exemptions are then made subject to periodic review and future negotiation. In this context, MFN treatment does not imply liberal or restrictive conditions of market access; it simply requires that the most favourable treatment allowed be accorded to all foreign service suppliers, at the given level of bound access (which may be restricted access). Both national treatment and freedom over modes of provision of services are subject to specific, negotiated commitments as under the GATS.

### ***B. Provisions and disciplines***

Areas in which the provisions and disciplines on services contained in the various sub-regional integration agreements cited above are fundamentally the same are those relating to: definitions; domestic regulation; recognition (of licenses or certifications obtained in a particular country); general exceptions; denial of benefits; and dispute settlement. All arrangements refer disputes to a specific process of consultations and dispute settlement procedures, as well as rules of origin. Such agreements merely require that service providers, regardless of nationality, either carry out substantial business operations (cross-border trade in services) or be incorporated in a member country (investment) in order to receive preferential treatment. There are few cases of industry-specific rules of origin for producers of services.

In a number of other key areas, however, the Mexico-initiated free trade agreements of the Western Hemisphere (following the NAFTA model) go further than the GATS-type agreements. These areas are set out below.

(i) Provision of services through the right of non-establishment is clearly specified in the free trade area agreements of the Western Hemisphere as well as in the Decision of the Andean Community, whereas this right is subject to specific market access commitments under ASEAN and under MERCOSUR, taken as one of the four modes of delivery (i.e. cross-border trade in services as set out in GATS Article I). This is an important difference between the two approaches, as the right to non-establishment is the most direct means of promoting the cross-border delivery of services. Linked to this is the differing treatment with respect to the interplay between services and investment. The free trade area agreements contain separate chapters on investment which set out basic

disciplines governing investment and guarantee right of establishment. For members of the Andean Community, investment rights and guarantees are subject to a separate Decision, which is to be read jointly with the Decision on services. Under the ASEAN and MERCOSUR Framework Agreements, investment is incorporated as one of the four modes of service delivery, to which obligations apply only as they cover those measures scheduled under specific commitments.<sup>49</sup>

(ii) Mutual recognition of regulatory regimes pertaining to licensing and certification of providers of professional services is encouraged in all of the agreements, although not mandated under either approach. The free trade agreements of the Western Hemisphere, however, go further than the GATS approach (set out in Article VII) in this respect, as they all contain an obligation to abolish nationality or permanent residency requirements in effect for the recognition of diplomas and the granting of licences for the foreign providers of professional services within two years of entry into force of the respective agreements. These agreements also set out as well the obligation to develop a generic blueprint aimed at defining procedures for assisting all professions to achieve mutual recognition of licenses and certifications. The Secretariat of the Andean Community, under the Decision on Services, is to actually elaborate a common regional regime for the recognition of professional licenses and diplomas, for whatever sector will request this. In the ASEAN Framework Agreement, mutual recognition is dealt with in Article V, which encourages, but does not mandate, members to promote the recognition, by the appropriate bodies, of the “education or experience obtained, requirements met, or licenses or certifications granted in another Member State.” And in the MERCOSUR Protocol mutual recognition is the object of Article XI which reads along the same lines.

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This is a significant difference, as neither the GATS nor the GATT 94 contains a comprehensive body of disciplines aimed at protecting investors. This differing coverage also has considerable economic implications, as it has been estimated that nearly three-fourths of foreign service imports into national economies are provided through establishment or direct investment, with only around one-fourth of services provided under the other three modes of supply. See Richard H. Snape and Malcolm Bosworth, “Advancing Services Negotiations,” in Jeffrey J. Schott, editor (1996), *The World Trading System: Challenges Ahead*, Washington DC: Institute for International Economics, pages 185-203.

(iii) Quantitative restrictions (QRs) are dealt with under the GATS approach through the prohibition on introduction of new nondiscriminatory measures on any scheduled commitment and sector (Article XVI). This effectively amounts to a standstill approach, which is duplicated in the ASEAN Framework Agreement under Article III (b) and in the MERCOSUR Protocol under Article IV.2 (a) and (b), although these restrictions are to be lifted through progressive liberalizing commitments up to the year 2007. In contrast, the approach adopted in all of the free trade agreements of the Western Hemisphere (those signed by Mexico as well as the agreement between Central America and the Dominican Republic) subjects quantitative restrictions to greater transparency through requiring these to be set out in annexes to the respective agreements. Such restrictions are then to be subject to negotiation with a view to liberalization at least every two years.

(iv) Disciplines over monopoly practices and exclusive service suppliers are present in the GATS in Article VIII but are not mentioned in either the ASEAN Framework Agreement on Services or the MERCOSUR Protocol. However, similar, but strengthened and more elaborate rules and disciplines are set out in the Group of Three treaty, and extended as well to state enterprises. The bilateral treaties between Mexico and Bolivia, and Mexico and Chile, set out disciplines over monopoly practices for telecommunications services only, while the treaties between Mexico and Costa Rica, and Mexico and Nicaragua do not contain references to monopoly disciplines. The Decision on Services of the Andean Community does contain an article relative to the development of common competition policies with respect to service activities, and especially to the use of subsidies. The agreement between Central America and the Dominican Republic specifies that in order to combat anticompetitive practices, each party should apply its national competition policy laws.

(v) With respect to subsidies, Article XV of the GATS, while it does not set out any actual disciplines over the use of subsidies for service activities, specifies that future negotiations should take place to develop the necessary multilateral disciplines to avoid the trade distortive effects of such subsidies, as well as to address the appropriateness of countervailing procedures. The free trade agreements of the Western Hemisphere do not

contain provisions on subsidies. Neither does the ASEAN Framework Agreement on Services. The MERCOSUR Protocol, however, specifies in Article XVI that subsidy disciplines in the services area will be applied once they are developed. Both the Decision of the Andean Community and the agreement between Central America and the Dominican Republic do specify that future disciplines are to be established for the use of subsidies, particularly as they distort competition in the services area.

(vi) The GATS contains two articles pertinent to safeguard action, namely Article X (Emergency Safeguard Measures) and Article XII (Restrictions to Safeguard the Balance of Payments), both of which are inspired by similar articles in the GATT. The possibility of establishing disciplines for the imposition of safeguards is also foreseen in the bilateral treaties signed by Mexico with Bolivia and Costa Rica. This is also the case for both the Andean Community Decision on Services, and the agreement between Central America and the Dominican Republic (where the language is taken almost identically from Article XII of the GATS). However, in the Group of Three treaty and in the Mexico/Chile treaty, the possibility of safeguard action exists only with respect to the financial services sector. Provisions on safeguard action do not appear in either the ASEAN Framework Agreement on Services or in the MERCOSUR Protocol.

(vii) Government procurement provisions figure in Article XVIII of the GATS, whose state intent is to negotiate future disciplines in this area by WTO members. These discussions are still ongoing. In the Western Hemisphere, the Mexico-initiated free trade agreements have followed NAFTA in breaking new ground to include government procurement of services and construction under the scope of the respective treaties. These require all federal agencies and a number of state enterprises to open public contracts to other members of the agreement (under a positive list for entity coverage and a negative list approach for services coverage). In the case of the free trade agreement between Mexico and Costa Rica, government procurement will be covered once the list of reservations is finalized. While the ASEAN Framework Agreement on Services makes no reference to government procurement, the MERCOSUR Protocol in Article XV states that services are to be subject to future disciplines on procurement, once these are elaborated. Services are also included in the scope of government procurement practices in the agreement between Central America and the Dominican Republic.

(viii) The possibility of modification of schedules is present in the GATS (Article XXI), and allows any GATS member to modify or withdraw a commitment, subject to negotiating compensation after three years. This is stated in a similar fashion in the ASEAN Framework Agreement in Article X, where a compensatory adjustment is foreseen. In Article XX of the MERCOSUR Protocol, modification of schedules is to be carried out only in exceptional cases (which must be justified), but no compensation is included in the article as an obligation arising from such an action. Modification of schedules is not found in the free trade agreements of the Western Hemisphere nor in the Decision on Services of the Andean Community, since no schedules of commitments are established under these agreements.

### ***C. Market access***

Under the GATS, market access, like national treatment, is listed under the heading of “Specific Commitments”, and is thus binding only when specified for each individual sector and mode of supply. Article XVI of the GATS specifies those measures which are not to be adopted in sectors where market access commitments are undertaken, unless limitations are specified with respect to the commitment, and the Article defines six types of possible limitations. Thus nothing under the GATS specifies the extent of sectoral coverage for the undertaking of commitments. Both the ASEAN Framework Agreement and the MERCOSUR Protocol follow this approach. In contrast, the concept of “market access” as such is not present in the free trade agreements of the Western Hemisphere. Thus, subject to negotiated exceptions, coverage of both sectors and traded services is universal, although all of the agreements do exclude air transport and all government services provided on a non-competitive basis. This is also the case of the Andean Community Decision on Services.

### ***D. Negotiating modality***

The negotiating modality adopted under the GATS approach adopted by the ASEAN and MERCOSUR sub-regional groupings is based upon a “positive list” approach, which obliges signatories to list national treatment and market access commitments - for liberalized access or for a given level of restriction - in scheduled

sectors. The negotiating modality adopted by all of the free trade agreements in the Western Hemisphere, as well as by the members of the Andean Community, is based upon a “negative list” approach, whereby all sectors are included in the liberalization undertaking unless otherwise specified in an annex as exceptions (i.e. falling outside the disciplines of the agreement), or as non-conforming measures (i.e. falling in principle within the disciplines of the agreement, but in fact excluded from these). While in principle either negotiating modality can lead to the same liberalization outcome, the difficulties attached to each approach are different. In the case of a positive list approach, negotiators must attempt to determine an “equivalency” of commitments to be listed (difficult to do in the services area where a mechanism for determining a price-based equivalency of regulatory restrictions has not yet been developed). In the case of a negative list approach, negotiators must have clearly in mind all of the regulatory measures in their national economies which may act in a discriminatory fashion towards foreign service suppliers in order to determine which of these measures to set out as exceptions in the annexes.

#### *E. Exclusions*

To better envisage the potential and challenges of future liberalization in the services area, it is instructive to look at those sectors where commitments were made (and not made) under the GATS, and to compare this with the sectoral exclusions from the coverage of services liberalization under the various sub-regional trading arrangements. It is also useful to examine those sectors to which reservations have been attached.

Commitments in the national schedules under the GATS were not evenly spread as between sectors. Those six sectors which showed the largest number of commitments at the conclusion of the Uruguay Round in descending order are the following : business services; financial services; value-added telecom; computer-related services; construction services; and land transport. Those sectors which showed the smallest number of commitments are the following: postal services; motor vehicle repair; retail trade; hotel/restaurants; and maritime transport.<sup>50</sup> In terms of excluded sectors, air transport

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PECC, “Impediments to Trade and Investment in Services,” in *Survey of Impediments to Trade and Investment in the APEC Region: A Report by the PECC*



(routing) and the provision of basic government services have been excluded from the GATS, as well as from all of the sub-regional arrangements.

With respect to the sub-regional agreements, the list of excluded sectors as well as the reservations (non-conforming measures) for the Group of Three and the bilateral treaties signed by Mexico have not yet been made officially available for examination (although these were attached as annexes to the bilateral free trade agreement signed between Chile and Canada in 1997). The list of reservations for the agreement between Central America and the Dominican Republic should be finalized no later than six months after the agreement enters in effect in January 1999. Neither ASEAN nor MERCOSUR members have as yet made their decisions clear with respect to the question of sectoral coverage in the initial stages of their negotiations.

With respect to those service sectors signaled out for special attention, the commonality between the sectors figuring in the annexes to the GATS and in the separate chapters of the free trade agreements is striking. The sectors which figure predominantly in both are the following : telecommunications; financial services; professional services (does not appear as an annex to GATS but is prominent as an Annex in all of the free trade agreements of the Western Hemisphere); and temporary entry for business persons (under GATS this area is slightly different and refers more broadly to the movement of natural persons).

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*for APEC*, Singapore, APEC Secretariat, 1995; also Bernard Hoekman (1995), "Assessing the General Agreement on Trade in Services," *op.cit.*

## **X. Relationship of regional liberalization on services to multilateral disciplines**

The question of the nature of the relationship between the various types of sub-regional agreements on services which have been concluded and the multilateral trading system under the GATS is an important one. Article V of the GATS set out the conditions that must be satisfied by economic integration agreements involving WTO members that allow for preferential access to members' service markets in order to be considered consistent with the multilateral trading system. This article is entitled "Economic Integration" rather than "Free Trade Areas and Customs Unions," as in Article XXIV of the GATT, reflecting the fact that the GATS is broader than the GATT and covers not only cross-border trade but also other 'modes of supply' including establishment. The three main conditions imposed by GATS Article V on economic integration agreements are that such agreements should :

- 1: (a) have substantial sectoral coverage (understood in terms of the number of sectors, volume of trade affected and modes of supply included. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply); and
- 1: (b) provide for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under the subparagraph above through :
  - (i) elimination of existing discriminatory measures, *and/or*
  - (ii) prohibition of new or more discriminatory measures, and
- 4: not raise the *overall* level of barriers to trade in services originating in other GATS members *within the respective sectors or sub-sectors* compared to the level applicable prior to such an agreement.

Thus, with respect to any preferential integration agreement containing services provisions, GATS Article V disciplines mandate coverage of *a substantial number* of service sectors, and the elimination of *substantially all discrimination* in the use of measures affecting trade in services. This can be compared to Article XXIV of the GATT which contains a criterion with respect to "substantially all trade" as concerns preferential trading arrangements for trade in goods. However, the strength of Article V of the GATS

relative to Article XXIV of the GATT is not yet clear, as *substantial sectoral coverage* may be interpreted to be less encompassing than *substantially all sectors*. Moreover, the GATS appears to allow for a standstill in the area of measures affecting services as a sufficient condition for liberalization (Article V:1(b)) since the requirement to eliminate *substantially all* discrimination (defined as measures violating national treatment) can be met through either the elimination of existing discriminatory measures, *and/or* the prohibition to impose new discriminatory measures. Interpreted in this manner, the GATS may appear weaker than the GATT. Lastly, preferential integration agreements on services should not result in higher trade and investment barriers against third countries than those presently in effect. This requirement is set out in terms of *overall* or average levels of protection, rather than specifically indicated levels, making such a determination quite difficult.

It is interesting that no distinction is made in GATS Article V between customs unions and free trade areas, as is done in GATT Article XXIV. Hoekman and Sauve (1994) argue that this fact, combined with the prescription on average levels of protection set out in GATS Article V.4, may make it possible for countries participating in a free trade area to raise some barriers against non-members, as long as the overall level of barriers of all the members of the agreement vis-a-vis non-members does not increase.<sup>51</sup>

In the GATS (like in the GATT), compensation of non-members can be undertaken in the case of an increase in explicit discrimination (a rise in the level of overall protection). If members of an integration arrangement do withdraw or modify specific market access or national treatment commitments they have previously made in the area of services, then procedures under GATS Article XXI provides for consultations and negotiations with affected parties regarding compensation.

The disciplines of GATS Article V clearly apply to all of the sub-regional trade and integration arrangements and bilateral free trade agreements containing provisions

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<sup>51</sup>Bernard Hoekman and Pierre Sauve (1994), *Liberalizing Trade in Services*, World Bank Discussion Papers number 243, Washington D.C.: World Bank, section IX. The authors suggest that this apparent possibility under the GATS is quite significant, as it may permit a “rebalancing” for members of a free trade area, in terms of increasing protection in one sector by one member through offsetting by a decrease for that same sector on the part of another member. This possibility is not allowed under the GATT for free trade areas, but such issues may arise for customs unions.

on services which have been discussed in the preceding section. However, none of the agreements concluded exclusively among developing countries which cover services liberalization (as analyzed in the preceding section) have notified their relevant provisions to the WTO for examination under Article V. Furthermore, it is not clear when or whether they intend to do so. The WTO Committee on Regional Trading Arrangements which began functioning in 1996 has therefore received a mandate to examine only the NAFTA provisions on services, as well as those contained in the agreement signed between Chile and Canada. The Committee has as yet not come to any conclusion on the question of the compatibility of these latter two integration agreements with Article V of the GATS.<sup>52</sup>

It should be noted that the “margin of preference” in services which is potentially present for developing countries in Southeast Asia and in the Western Hemisphere under preferential trading arrangements is very large at present, since the number and extent of the GATS commitments undertaken by developing members of the WTO were quite modest (with the exception of those by certain countries in the area of telecommunications and basic telecommunications, many of which still have to be phased in at a future date), and have had a limited liberalizing effect on services markets. Therefore compliance with the requirements of GATS Article V will be extremely important.

In the implementation of GATS obligations, developing countries may be able to call upon provisions which would give members to an integration agreement flexibility regarding the realization of the internal liberalization requirements through placing the agreement in a long-term perspective, against the end process of economic integration, which might thus allow for a less broad sectoral coverage than otherwise would be expected (see Articles V:2 and V:3(a) of the GATS which discuss regional agreements in a wider process of economic integration). This aspect might be particularly applicable

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<sup>52</sup>According to the WTO Secretariat, the Working Party created to examine the service provisions of NAFTA with respect to Article V compatibility has met several times, but to present has come to no agreement on these conclusions. The case of NAFTA, along with the pronouncement of the Working Party on the provisions on services contained in the treaty of the European Communities will be the first instances of such a decision and should provide important precedents in this still uncharted area. If the earlier history of examinations under Article XXIV is any indication for the significant delay in these results, then this may forebode poorly for the respect of WTO disciplines in this area.

to the MERCOSUR Protocol, if its members decide to exclude certain sectors on a permanent basis. However, such a request would have to be interpreted by the Committee on Regional Trading Arrangements following notification.

What of the next layer of service agreements? Are the sectoral, “stand-alone” agreements on services which have been concluded by developing countries (and other countries as well) subject to the disciplines of Article V of the GATS? If not, what is their relationship to the multilateral trading system? The existence of a large number of sector-specific, stand-alone agreements has not yet been discussed at the multilateral level within the GATS Council. However, it would seem from the drafting of the articles that specific sectoral agreements which have an impact on trade through their preferential opening of service markets would be “GATS-illegal.” Therefore, the situation of existing agreements, and their coherence with multilateral rules and disciplines, poses a question. For those sectoral agreements that were not scheduled by WTO members in their list of MFN exemptions at the time of the conclusion of the Uruguay Round, their legal status would appear questionable at best, and would probably be declared “GATS-illegal” if challenged by a non-member to such an agreement. Whether and how these non-scheduled sectoral agreements (which are effectively “grey-area” restraints to services trade at present) are ultimately integrated into the multilateral system will have implications for the legitimacy of the rules and disciplines covering trade in services.

With respect to the conclusion of any future sector-specific services agreement, it would appear that the only option for legal coverage would be through the request for a waiver by members of such an agreement to the GATS Council.<sup>53</sup> Whether such a waiver would be granted by other WTO members is unclear, especially on a permanent basis (as waivers, by their nature, are meant to be temporary measures of non-compliance). Such a request has not been submitted to date.

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<sup>53</sup>Members of CITELE (the Inter-American Commission on Telecommunications, created as part of the Summit of the Americas process within the Western Hemisphere in early 1995) have concluded a stand-alone, sectoral agreement in the telecommunications area entitled “Inter-American Draft Convention on the Provision of Value-Added Services for Telecommunications Equipment.” They are considering whether or not to notify this agreement to the WTO Committee on Trade in Services for its consideration and a possible waiver request, or to fold the agreement into the services negotiating component of the FTAA (Free Trade Area of the Americas) process.

## ***XI. Services liberalization within the Western Hemisphere and the Asia Pacific***

The area of services is also encompassed within the two major regional integration processes presently ongoing in the Western Hemisphere and in the Asia Pacific. These processes have defined ambitious goals for the liberalization of services by participating economies, the majority of which in both instances are developing countries. Such is the case for the Free Trade Area of the Americas (FTAA) and for the Asia Pacific Economic Cooperation (APEC), both integration initiatives of the mid-1990s. Although still fairly insipient processes, a review and comparison of their objectives, approach, mandates, and progress to date in carrying these out in the services area is important, given the ambitious character of both integration processes, and the large number of participating developing economies. Work towards the liberalization of services was first initiated in the Western Hemisphere in 1996, a year before such work was begun in the APEC context.

### **A. The FTAA process**

The major regional integration movement in the Western Hemisphere which encompasses 34 of the 35 countries of the region (Cuba excepted), is the Free Trade Area of the Americas (FTAA). The FTAA process was initiated in December 1994 at the Summit of the Americas meeting of Heads of State of the region in Miami. At that time the leaders approved a Declaration of Principles of a “Partnership for Development and Prosperity: Democracy, Free Trade and Sustainable Development in the Americas,” with an accompanying Plan of Action for the hemispheric integration process.<sup>54</sup> The trade component has become the centerpiece of this initiative, and in the Declaration of Principles agreement was set out to complete negotiations for a regional free trade area by the year 2005, with substantial progress to be achieved by the year 2000.

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<sup>54</sup>See the *Declaration of the Miami Summit*, December 1994, which contains a broad range of issues to be tackled for the Western Hemisphere including the promotion of democracy, exchanges of science and technology, promotion of environmental cleanliness through sustainable development, improvement of hemispheric education, efforts to combat corruption and illicit drug trade, as well as illicit arms dealing, among others. However, among this very broad and ambitious agenda, the creation of the Free Trade Area of the Americas is the centerpiece of hemispheric action and has received the most attention from both policy makers and the press.

The effort to construct the FTAA has been divided into two phases : the first, or preparatory, phase lasted for just over three years (from January 1995 through March 1998) and is now completed. During this phase intensive work was carried out by twelve different working groups, supported by the three institutions of the Tripartite Committee (the Organization of American States, the Inter-American Development Bank, and the U.N. Economic Commission for Latin America and the Caribbean).<sup>55</sup> This work included the gathering, compiling and analyzing of information on the status of trading relations in the Hemisphere and the convergence and divergence present in the approaches that sub-regional integration arrangements have adopted towards trade liberalization.

The FTAA process was carried forward at three levels during the preparatory period: Trade Ministers met on four occasions during the three-year period (Denver, USA - July 1995; Cartagena, Colombia - March 1996; Belo Horizonte, Brazil - May 1997; and San Jose, Costa Rica - March 1998) and who were charged with developing the overall work plan for the FTAA. Vice Ministers of Trade met more frequently (at least four times a year) to coordinate the efforts of the FTAA groups at the working level and to make policy recommendations to the Trade Ministers. At the working level, 12 Workings Groups carried out the actual preparatory work in order to launch the negotiations. These groups were asked by Vice Ministers to complete a report in October of 1997 setting out the “different technical alternatives for possible issues and negotiating approaches” in their respective disciplines. These reports served as the basis for the preparation of the San Jose Ministerial Declaration (March 1998).

At the outset of the FTAA process, hemispheric Trade Ministers agreed in their July 1995 meeting that the FTAA should:

- build on existing subregional and bilateral arrangements;
- maximize market openness through high levels of disciplines;

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<sup>55</sup>These working groups included the following : market access; customs procedures and rules of origin; investment; services; government procurement; intellectual property rights; subsidies and anti-dumping; competition policy; standards and technical barriers to trade; sanitary and phytosanitary measures; smaller economies; and dispute settlement. Each of the working groups was headed by a country participating in the FTAA process. Most of these working groups were subsequently transformed into negotiating groups after the Second Summit of the Americas and the formal launching of the negotiations.

- be fully consistent with the provisions of the World Trade Organization;
- be balanced and comprehensive in scope;
- not raise barriers to other countries; and
- represent a single undertaking comprising mutual rights and obligations.

The preparatory phase of the FTAA process has been followed by the negotiating phase. At the Second Summit of the Americas in Santiago, Chile (April 1998), the FTAA negotiations were formally launched by Heads of State when they adopted the San Jose Ministerial Declaration. Negotiations began in September 1998 with the first round of meetings of the various negotiating groups, and will last for more than six years (until end 2004). The goal to create a free trade area figures as part of the broader “Declaration of Santiago” which builds upon the first Summit Declaration of Miami and sets out both objectives and targets, as well as action steps to be taken in all of the areas under the summit agenda.<sup>56</sup>

The earlier principles agreed by Hemispheric Trade Ministers in 1995 have been reaffirmed and further elaborated in the San Jose Ministerial Declaration, which can be compared to that which launched the Uruguay Round of multilateral trade negotiations over a decade ago.<sup>57</sup> However, the breadth of the negotiations which have been launched in the Western Hemisphere is unprecedented even by the Uruguay Round. These negotiations will encompass all of those areas previously negotiated and which fall within the ambit of the World Trade Organization, with the goal of going beyond previously agreed multilateral liberalization. Importantly, however, the FTAA negotiations also include areas not presently under WTO disciplines (and not certain to figure into a new

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<sup>56</sup>See “Declaration of Santiago” as well as the accompanying “Plan of Action,” both adopted by Heads of State of the Western Hemisphere on 19 April 1998. These, along with other official FTAA documents, can be found on the FTAA home page at the following address : [www.ftaa-alca.org](http://www.ftaa-alca.org), as well as on the OAS Foreign Trade Information Systems (SICE) site at the following address : [www.sice.oas.org](http://www.sice.oas.org). Both sites provide basic information on the FTAA overview, FTAA Ministerial meetings, FTAA Working Groups (the FTAA Negotiating Groups since May 1998), and FTAA officially approved publications and data bases. In addition, the SICE site provides the texts of all of the trade and integration arrangements which have been concluded in the Hemisphere.

<sup>57</sup>See *Ministerial Declaration of San Jose*, Fourth Trade Ministerial Meeting of the Western Hemisphere, Costa Rica, 19 March 1998.



WTO round of negotiations, if one is to be launched as of the year 2000). These include investment, government procurement and competition policy. A summary of the key elements contained in the San Jose Ministerial Declaration, along with the negotiating structure for the FTAA, is set out in *Annex 3*.

While the FTAA negotiations will not include specific negotiations on the relationship between trade and the environment and trade and labor issues, a committee on civil society has been established (the first such group in any regional or multilateral trade negotiation) which will provide the channel through which interested sectors of society, including academics, business representatives, and non-governmental organizations, will be able to make their views known to Trade Ministers on these and other issues of concern.

The FTAA negotiations will innovate in another equally important area, which is the examination of the interrelationship between certain key negotiating areas as mandated by Trade Ministers, including in particular that existing between : agriculture and market access; services and investment; competition policy and subsidies; and antidumping and countervailing duties, so as to ensure that the outcome of negotiations are both consistent and as liberalizing as possible.

In order to ensure the consistency between the ultimate FTAA Agreement and the multilateral trading system on the one hand, and the myriad of existing sub-regional integration arrangements on the other, the San Jose Ministerial Declaration sets out two important principles.<sup>58</sup> The FTAA Agreement must be consistent with the rules and disciplines of the WTO and, in particular, must comply with Article XXIV of GATT 1994 and Article V of the GATS in the first instance. In the second, the FTAA can co-exist

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<sup>58</sup>One particularly interesting aspect of the FTAA negotiations is the possibility set out in the San Jose Ministerial Declaration for sub-regional integration groups to negotiate as a unit, and to accept the obligations of the FTAA individually or as members of such a sub-regional group negotiating as a unit. However, all countries are to ensure at the national level that their laws, regulations and administrative procedures conform to their obligations under the FTAA Agreement. MERCOSUR, the Andean Community, and the Caribbean countries have already indicated that they will negotiate with a single voice and common positions. This means that rather than a negotiation between 34 countries, the actual FTAA negotiations will proceed between as few as nine entities, including : Canada, Mexico, the United States, Chile, Panama, the Andean Community, MERCOSUR, the Caribbean Common Market, and the Central American Common Market (which is still considering developing common negotiating stances).

with bilateral and sub-regional agreements, “to the extent that the rights and obligations under these agreements are not covered by or go beyond the rights and obligations of the FTAA.” Thus the most liberalizing agreement should be that which will prevail, at either the regional or sub-regional level, for its members. This element is also unique in the history of trade negotiations.

## **B. FTAA work on services**

The FTAA Working Group on Services was established by Trade Ministers of the Western Hemisphere at their meeting in Cartagena, Colombia in March 1996, as one of the 12 Working Groups of the preparatory phase. The Group was chaired by Chile and met on six occasions. Extensive preparatory work was carried out during this two-year period which has contributed to enhanced transparency around the practices and agreements existing on services within the Western Hemisphere at the national and sub-regional levels. Discussions among participants in the Working Group also served to identify three possibilities for the adoption of a negotiating modality. The mandates which were given to the Working Group by Trade Ministers are set out in *Annex 4*.

As part of its work program, the Working Group surveyed existing work on services by researchers and by international institutions and on the concepts involved in the area of liberalization of trade in services. Equally, the provisions on services agreed within the relevant sub-regional trade and integration arrangements were identified and catalogued for the Working Group, and set alongside the existing multilateral disciplines of the WTO GATS, so as to permit an analysis of the points of convergence and divergence among the approaches being followed in the Western Hemisphere with respect to the treatment of services. An inventory of stand-alone, sectoral agreements on services was also elaborated. These three documents were approved for publication by FTAA participants and have been made publicly available.<sup>59</sup> This extensive preparatory work

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<sup>59</sup>See *A Bibliographical Note on Trade in Services: Concepts and Liberalization Principles*, ECLAC, Santiago de Chile, April 1997; *Provisions on Trade in Services in the Trade and Integration Arrangements of the Western Hemisphere*, OAS Trade Unit, Washington D.C., April 1997; and *Sectoral Agreements on Services in the Western Hemisphere*, OAS Trade Unit, Washington D.C., December 1997. All three documents are available as well on the FTAA web site at the address : [www.alca-ftaa.org](http://www.alca-ftaa.org)

will provide the basis for departure in the negotiations, as government negotiators (as well as the private sector) now have available extensive information available on rules, disciplines and practices with respect to services which exist at the multilateral level (under the WTO GATS), the sub-regional level in the form of integration arrangements and bilateral free trade agreements, and the individual sectoral level. Members of the Working Group have also discussed the various negotiating modalities adopted by the sub-regional arrangements and the associated benefits to be derived from them.

The Working Group was also mandated to create an inventory of measures affecting trade in services for all FTAA participants at the national level. A certain number of governments have compiled such information, and others are presently in the process of doing so. For the conduct of negotiations on services, it would be highly desirable to have this information available, as one of the difficulties of the Uruguay Round negotiations was the lack of knowledge by negotiators of the actual situation with respect to the measures in place in national markets affecting trade in services.

Another mandate of the Working Group on Services was improvement of knowledge by FTAA participants on service statistics, and in particular on the implementation of the new classification for collection of services data under the IMF's Fifth Edition of the Balance of Payments Manual. In this context a Workshop on Service Statistics was held in early 1998, to discuss the classification of services, the collection of service statistics and their possible improvement.

Besides its analytical work and efforts at enhancing transparency in the services area the Working Group on Services also began an interaction with the private sector. The Camara de Comercio de Santiago sponsored the first private sector Services Workshop in September 1997 where government officials from the FTAA participating countries and private sector representatives met together to discuss recommendations emanating from seven sectoral committees. The conclusions of the Services Workshop have been widely disseminated within the Western Hemisphere.

Now in the negotiating phase, the first meeting of the FTAA Negotiating Group on Services, as well as the other negotiating groups, took place in September 1998, as per the instructions set out in the San Jose Ministerial Declaration. The Negotiating Group on Services will be initially presided by Nicaragua, and will have a rotating chairmanship thereafter on an 18-month basis. Mandates for this group and other negotiating groups are to be set out by Vice Ministers at their first meeting as the FTAA Trade Negotiations Committee (TNC) in June 1998. These mandates build on the existing work described

above and include : the update of existing documents and compendia for the purpose of continued transparency; deepening the exchange of information with respect to the practices of sub-regional arrangements on services; completing the inventory of measures affecting trade in services; improving knowledge in the area of service statistics; and importantly, selecting a negotiating modality and defining elements of a future FTAA Agreement on Services, including examination of all of the possible issues that may form part of such a framework agreement (no less than 25 such issues were identified for discussion in the Working Group's report of October 1997).

Reaching consensus on a negotiating modality for services is likely to be one of the most politically sensitive and challenging aspects of the entire FTAA negotiations, given the growing importance of this area and the strong dichotomy that exists within the Western Hemisphere in terms of the very divergent approaches to services liberalization that have been adopted at the sub-regional level (as described in section VIII of this study). Choices in front of the Negotiating Group in this regard have already been specified in the report of the FTAA Working Group prepared for Vice Ministers in October 1997. In this report all participants agreed that the objective of negotiations in the services area is to "establish disciplines to progressively liberalize trade in services, so as to permit the achievement of a hemispheric free trade area under conditions of certainty and transparency." All participants also agreed that the finality of such negotiations is the elaboration of a normative framework of disciplines on trade in services. However, participants did not agree on the choice of a negotiating modality for the liberalization of trade in services and instead set out three options in this regard. These options include :

i) a GATS-type approach, with negotiations to be gradual and liberalization to be carried out progressively, based on the identification of positive lists of sectors or subsectors and lists of commitments;

ii) a NAFTA-type approach, following a "negative list" or "top down" approach, with obligations of general application to be agreed and exceptions and reservations to such obligations specified in negotiated lists with, as appropriate, commitments to remove non-conforming measures within an agreed time frame;

iii) a third alternative attempting to mix the two, with negotiations to be gradual and to follow a mechanism for progressive liberalization. Two lists would be established, the first including initial liberalizing or *status quo* commitments, and the second to include those measures and sectors not yet covered in such lists, with an agreement on the

time frame and the mechanism through which the latter will be integrated into the first list and subsequently liberalized. Both lists should cover the entire universe of service sectors, a requirement not specified in the other two options.

The choice of a negotiating modality for the liberalization of trade in services (and its relationship to the area of investment) will be one of the most critical decisions taken during the early stages of the FTAA negotiations. What happens at the regional level in the Western Hemisphere may also impact upon the conduct of negotiations at the multilateral level under GATS, which will take place simultaneously as of the year 2000.

### **C. The APEC process**

Although the Asia Pacific Economic Cooperation (APEC) grouping was established in 1989 and has been working on issues of trade liberalization and facilitation since 1990, particularly through its Committee on Trade and Investment (CTI), the APEC economies did not turn their attention to the area of services liberalization for several years. This was in large part due to the three reasons : the fact that the Uruguay Round of Multilateral Trade Negotiations was not put into effect before January 1995, the reluctance of some APEC members to discuss this idea due to sensitivities regarding services liberalization, and the growth of the APEC agenda in a rather piecemeal fashion.

APEC's membership presently includes a total of 20 very diverse economies, 15 of which are developing, and among the latter, seven of the nine ASEAN members.<sup>60</sup> In contrast to all other regional integration arrangements, the guiding vision for the APEC

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<sup>60</sup>APEC's founding members were Australia, Brunei, Canada, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines, Thailand and the United States. Subsequently both the People's Republic of China, Hong Kong, and Taipei Province of China were admitted in 1991, followed by Mexico and Papua New Guinea in 1993. Chile was admitted in 1994, at which time a three-year moratorium on new members was adopted. At the APEC Leaders Meeting in Subic Bay, Philippines (November 1996), it was decided to admit Peru and Vietnam, who will become full APEC members at end 1998. It is not clear when the remaining members of ASEAN, not yet in APEC (namely Laos and Myanmar) may be admitted. Membership into APEC has been requested by several other countries as well, including Russia, India, and Colombia. There is no formal membership policy for APEC nor publically available criteria, and such decisions are based very much on political considerations.

grouping is “open regionalism” which translates into reduced trade and investment barriers in the Asia Pacific that are extended equally to APEC economies and non-APEC economies. In APEC the Leaders clarified their interpretation of “open regionalism” at their meeting in November 1996, clearing stating that they did not intend to form a preferential trading area among members. Thus, adherence to the principle of open regionalism by APEC members means that all agreed trade liberalization is to be carried out on an MFN basis, in conformity with the basic principles of the GATT/WTO. Due to this principle of open regionalism, APEC economies have eschewed formal negotiations in order to proceed through “concerted unilateralism,” or trade liberalization carried forth through both voluntary collective and unilateral market opening measures, agreed among members and extended to all other economies.

In the absence of a structure and an agenda for negotiations, APEC’s momentum has been sustained through the series of annual meetings of leaders or heads of state. Each meeting has attempted to make its mark on the APEC process. The goals of the APEC grouping were defined in the APEC Leaders Meeting in Bogor, Indonesia in November 1994 where APEC members committed to achieving free and open trade for the region by 2010 for developed member economies and 2020 for developing member economies.<sup>61</sup> The Leaders Meeting in Osaka, Japan in November 1995 set out a very comprehensive Action Agenda as a first step towards realizing these goals. And the Leaders Meeting in Subic Bay, Philippines in November 1996 followed up on this in a concrete manner, as did the Leaders Meeting in Vancouver, Canada, in November 1997.<sup>62</sup>

In Subic Bay, Philippines (1996), APEC Leaders adopted a Manila Action Plan for APEC (MAPA) in which the first steps towards achieving the Action Agenda are set out in the form of detailed individual action plans (IAPs). These represent the liberalizing, market-opening and/or trade facilitating actions that APEC economies have

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<sup>61</sup>The Bogor Declaration of November 1994 specified steps towards achieving the goal of free and open trade for the region by the year 2020. These included : accelerating implementation of the Uruguay Round commitments, liberalizing trade, and eliminating trade barriers. See *APEC Leader’s Declaration of Common Resolve*, Bogor, Indonesia, 15 November 1994.

<sup>62</sup>See *The Osaka Action Agenda: Implementation of the Bogor Declaration*, Osaka, Japan, 19 November 1995, as well as *The Manila Action Plan for APEC*, Subic Bay, Philippines, 18 November 1996 and *The Leader’s Declaration of Vancouver*, Canada, 19 November 1997.

taken or intend to take in all of the specified areas of trade and investment during the recent period. These IAPs are accompanied by collective action plans (CAPs) which represent similar undertakings for all APEC economies for the same areas. Taken together, these actions constitute the concrete manifestation of steps to realize the commitments set out in the Bogor Declaration.

In Vancouver, Canada (1997), APEC Leaders agreed to push trade liberalization forward at a faster pace than the timetable of 2010/2020 through a program of Early Voluntary Sectoral Liberalization (EVSL). For this purpose nine sectors were selected by consensus as those which APEC member economies would liberalize by no later than end June 1998. Among these nine figure the area of environmental services. However, although trade liberalization with respect to the eight other product sectors has been specified to mean the elimination of all import duties, what is meant by the liberalization of environmental services is less evident and is still under discussion. The criteria for selection of sectors which form the object of consensus for EVSL is being presently considered by APEC economies within the CTI.<sup>63</sup> This area has been signaled as a medium-term priority and should figure as one of the most prominent subjects of debate in the APEC agenda over the next few years.

From the beginning there was a commitment among members to keep APEC as an informal group without official trappings other than annual meetings. However, in spite of this, the institutionalization of APEC has evolved a great deal and now includes a fairly elaborate structure of annual meetings, committees and working groups. The APEC process is led by the annual Leaders' summit which takes place every November

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<sup>63</sup>Various criteria have been put forth as the basis for which such selections would be made. These include: the identification of products with the greatest trade intensities among APEC member economies; those products/sectors which were proposed for 'zero-for-zero' tariff reduction during the Uruguay Round; and those products/sectors which show the highest tariff rates at present. The choice of the latter would ensure that the greatest degree of economic efficiency is achieved, as the disparities in rates of protection, along with the rates of effective protection, are reduced. Selection of either of the other two approaches would yield sub-optimal economic outcomes by resulting in low tariff sectors being principally chosen for early liberalization. However, this is very much a political as well as an economic question, and no agreement has yet been reached on the adoption of a selection criterion. See paper by PECC (1998), "Information Resource Study on APEC Voluntary Sector Liberalisation: PECC Progress Report," presented to the APEC CTI meeting in Penang, Malaysia, February.

in a designated host country. Underneath the summit there are periodic Ministerial meetings in several different areas covered by APEC including environment, transportation, finance, telecommunications, trade, manpower, small and medium enterprises, and industrial science and technology. APEC trade ministers have met three times to present; in Jakarta, Indonesia in October 1994, in Christchurch, New Zealand in July 1996, and in Montreal, Canada in May 1997. They are to meet again in Kuala Lumpur, Malaysia, in June 1998. Advising APEC Ministers and the Leaders are three different groups. Policy input and advice continues to be provided by the tripartite predecessor to APEC, the Pacific Economic Cooperation Council (PECC) and by the private-sector under the Pacific Business Forum (prior to 1996) and presently under the APEC Business Advisory Council (or ABAC).<sup>64</sup> The ABAC group was tasked to provide an annual report to APEC Senior Officials and Leaders in order to private sector input to government policy decisions. A permanent secretariat was established for APEC in Singapore in January 1993. The secretariat primarily carries out work of an administrative and public relations nature, and keeps the APEC documents. Most of the substantive work of APEC is carried out or directed by the chairs or convenors of each of the various working groups, committees, and subcommittees, constituted by APEC member countries, who volunteer to act as leader on a particular policy issue, and may often be provided by the PECC.

Responsibility for policy implementation in APEC resides in a group of high-level government representatives who meet regularly in senior officials meetings (SOMs). At these SOMs, detailed plans for discussion at APEC ministerials and leaders' meetings are elaborated. The policy agenda of APEC is carried out under three different bodies : several Working Groups have been constituted to consider different issues of interest to

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<sup>64</sup>Formed in 1980, nearly a decade earlier than APEC, the Pacific Economic Cooperation Council (PECC) is a tripartite grouping of business, academic and government representatives from all APEC members economies plus Colombia and Russia. The PECC carried out studies upon the request of APEC on trade and investment issues, and is the only official observer allowed at the APEC Committee on Trade and Investment (CTI) and Senior Officials meetings. PECC groundwork was instrumental, for example, in obtaining APEC endorsement of the Non-binding Multilateral Investment Principles, agreed in Jakarta in 1994. In 1993, APEC initiated a second business forum, the Pacific Business Forum (PBF), which provides industry input to APEC discussions, in the form of an annual report with recommendations, much like the annual report from ABAC.



APEC members which report directly to senior officials.<sup>65</sup> The Economic Committee considers macroeconomic and exchange rate issues and forecasts for APEC member countries. The Committee on Trade and Investment (CTI) oversees 15 different areas of trade policy concern, most of which result from the Uruguay Round Agenda and the WTO implementation requirements, but which also encompass business facilitation issues, government procurement, and competition policy.

#### **D. APEC work on services**

In the services area, APEC began work in specific services sectors fairly early on. Sectoral Working Groups on transportation, finance, telecommunications and tourism were established the early 1990s. These groups, however, reported to the SOM, and there was little, if no, coordination between them in their consideration of the issue of liberalization, and no oversight committee for such efforts. Realizing this gap, in May 1997 the CTI established a Group on Services for the first time, to deal in a comprehensive manner with the issue of services liberalization within APEC. The Group on Services is chaired by Chile (the Convenor) and has met on five occasions during its first year of existence (prior to June 1998).

The work program of the APEC Group on Services was developed by the members of the Group on a consensus basis at its first meeting in May 1997 rather than dictated by a higher APEC authority. It includes the following elements :

- i) review and exchange of information on trade and investment in services arrangements within the APEC region and study common elements;
- ii) identification of measures affecting trade in services for APEC member economies, all service sectors;
- iii) compilation of information on services trade statistics;
- iv) analysis of the information on services contained in Individual Action Plans;

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<sup>65</sup>These Working Groups include the following: energy, fisheries, agriculture, tourism, trade promotion, telecommunications, transportation, marine resources conservation, human resources development, trade and investment data review, and industrial science and technology. These groups have been created over the years in an ad-hoc manner, reflecting the priorities which APEC member economies have expressed.

- v) assessment of the impact of liberalization on specific service sectors;
- vi) enhancement of transparency through establishment of focal points for disseminating information on laws and/or regulations related to trade in services and the publication of documents used by the Group on Services

It is interesting to note that the first three elements of the work program of the APEC Group on Services are identical to the mandates given to the FTAA Working Group on Services.<sup>66</sup> The latter three, however, are specific to the APEC context.

Since its initial work program, the APEC Group on Services has expanded its areas of work and added more elements. These additional areas of work include:

- study and carry out work concerning the development and adoption of common professional standards, in conjunction with professional accreditation bodies and needed legislative measures;
- assist in identifying sectors for early voluntary sectoral liberalization of services;
- discuss issues related to possible APEC principles or guidelines that may be necessary to achieve free and open trade and investment in the services area;
- monitor and contribute, where possible and appropriate, to WTO work on services.

These four additional elements of the work program of the Group on Services, along with the earlier ones, were incorporated into a commonly-agreed set of Collective Actions on Services at the Group's meeting of October 1997. These are reproduced in *Annex 4*. These actions, however, apply to only the telecommunications, transportation, energy and tourism sectors. Some of the actions are characterized as short-to-medium term (1997-2005), while many others are characterized as ongoing (indefinite). This list of Collective Actions, along with each APEC member economy's Individual Action Plan (which sets out in annual updates the steps towards voluntary liberalization of the service sector that each APEC member intends to carry out), form the basis of APEC's approach to the liberalization of trade in services.

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<sup>66</sup>In this context it is perhaps not inconsequential that four of the APEC economies are also participants in the FTAA process, namely Canada, Chile, Mexico and the United States. The same delegates from these four countries attend the meetings on services in both regions. They will soon be joined by Peru with joint membership.

Clearly the APEC approach towards liberalization of services is quite distinct from that of a traditional trade negotiation, along the lines of the Uruguay Round or the FTAA negotiations being undertaken in the Western Hemisphere. The viability of APEC's "unilateral and collective consensus" approach to liberalization through the dual action plans depends upon the good faith of countries to voluntarily open their markets, in the absence of reciprocally negotiated concessions or commitments. The difficulty of this approach in the services area has been indicated over the past year with the decision of Heads of State at the Leaders Meeting in Subic Bay (November 1997) to accelerate APEC liberalization through "early voluntary" measures. In the services area, the Group on Services has yet to identify any sectors for this purpose and as of June 1998, no suggestions had been put forward by member economies in this regard. Moreover, none of the sectoral Working Groups within APEC with a much longer history of existence (Working Groups on Telecommunication, Transportation, Tourism, and Energy) have submitted any commonly-agreed suggestions as to measures within their respective sectors for early liberalization. As earlier stated, the only area of services included in the ESVL exercise for 1998 is that of environmental services, a suggestion agreed at the level of Leaders. This means that for APEC the problem of credibility will be continuously present, if no progress is made with respect to liberalization.

The content of the Individual Action Plans on services during the first year of this exercise (1996) did not go very much further, on the whole, than the commitments of APEC members under the WTO, although there were significant exceptions to this.<sup>67</sup> Reform initiatives and future liberalization were committed to by a few developing economies in the following areas, among others : shipping services (Republic of Korea, Philippines), insurance and finance companies (China, Philippines, Chinese Taipei, Thailand), and distribution services (Republic of Korea). The market opening measures in the services area found in the Individual Action Plans of developing APEC economies are set out in the table in *Annex 5*. A similar analysis is not yet available for the IAPs for the 1997 APEC liberalization exercise. However, in the present context of the severe adjustments imposed upon many economies in East Asia following the financial and exchange rate crises of fall 1997, voluntary liberalization in the services area will certainly be even more difficult to carry forward.

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<sup>67</sup>See PECC (1996), *Perspectives on the Manila Action Plan for APEC*, Manila: Philippine Institute for Development Studies, pages 20-26.

APEC's contribution at the regional level may be maintained, however, through its work on trade facilitation and enhanced transparency in the services area. The inventory which the APEC Group on Services is undertaking for the identification of measures affecting trade in services (on the basis of a questionnaire which should be agreed during 1998) could prove extremely useful in the context of the coming multilateral negotiations on services under the GATS in order to provide APEC economies with better information which would allow them to amplify the scope of their commitments, both in terms of measures and sectors.

The development of possible principles or guidelines by the APEC Group on Services that might help towards the achievement of free and open trade and investment in the services area should serve to generate useful discussion, including on the relative merits and drawbacks of various negotiating modalities for liberalization of trade in services. Though these guidelines would logically remain voluntary in the APEC context, nonetheless they might serve to improve the quality of participation of APEC developing economies in the GATS negotiations. The project undertaken by the Group of Services to gather data on barriers to mobility of professional services (under the leadership of Australia and Hong Kong), focusing in particular on accounting, engineering and architectural services, should prove useful in the development of mutual recognition agreements of professional qualifications in these areas. Thus there are many areas in which the APEC Group on Services could make useful contributions to an increased understanding of the benefits of services liberalization, even if the actual commitments for such liberalization are undertaken at the sub-regional or multilateral levels.

## ***XII. Prospects for future progress on services liberalization***

In order to capture the significant opportunities offered by the internationalization of services, developing countries must both reform their regulatory environments and move towards a greater opening of their domestic service markets to foreign competition. This may occur either at the multilateral level, the regional level, or the sub-regional level, as disciplines and modalities to cover the liberalization of trade in services are being pursued at all three levels. Since the mid-1990s the dynamism in the area of services liberalization has definitely been at the sub-regional level, with many arrangements involving developing countries deciding to open their service markets among members on a preferential basis. Two broad approaches to services liberalization have been manifested at the sub-regional level during the second half of the 1990s in this process. One approach patterns itself on the GATS model which was put into effect at the multilateral level as of 1995, and the other patterns itself on the NAFTA model put into effect as of 1994 (or the Australia/New Zealand Closer Economic Relations Agreement). In comparing the two, several important divergences can be identified which pertain to the treatment of foreign service providers, the content of certain provisions and disciplines, sectoral coverage, and negotiating modality.

The free trade agreements of the Western Hemisphere go beyond multilateral disciplines in several key areas, effectively constituting “GATS-plus” agreements. The fundamental differences lie in the guarantee of non-discriminatory national treatment and guaranteed market access for foreign service providers through freedom for both cross-border trade and establishment trade, as well as in the more coherent treatment of investment in relation to services, the inclusion of government procurement under disciplines (very important for the services area), and the introduction of elements of competition policy.

However, neither of the two approaches necessarily guarantees the full liberalization of trade in services. The NAFTA-type agreements provide a great deal of information in a transparent form on the existing barriers to trade (non-conforming measures). In the GATS-type agreements the sectoral coverage of commitments may vary significantly as between the parties, and the stated limitations to market access and national treatment found in the schedules of commitments do not necessarily reflect existing access conditions. The distinction between the GATS and the NAFTA-type

approaches is more relevant when no full liberalization deadline is set by an agreement for the entire range of service sectors. In reality, either approach may yield a similar degree of liberalization depending upon the length of list of exemptions taken out by members of a NAFTA-type agreement and the number of sectors not included in a GATS-type agreement. Neither approach necessarily specifies obligations for reaching a certain level of liberalization within a given period of time, unless this is explicitly agreed by members to a given arrangement.

The question inevitably raised by such a comparative analysis is which of the two approaches might best serve the purpose of advancing the liberalization of service markets in developing countries. The answer to this question, of course, will partly depend upon the ultimate objectives of the participating countries and the degree of liberalization that is sought. It will also be constrained by the necessity of a given approach at the sub-regional or regional level to conform to the obligations of the multilateral trading system under GATS Article V, in order to be deemed WTO-compatible.

One of the major benefits for service providers arising from the approach to service liberalization adopted by the developing-country agreements in the Western Hemisphere patterned on the NAFTA approach would appear to be, besides the strengthened rules and disciplines over trade in services, their contribution in two important areas : increased transparency (particularly through the obligation of governments to identify which discriminatory regulatory measures are in place for service transactions and to rationalize these if necessary); and increased stability of rules and provisions for service activities.

Factors which will push the liberalizing process forward at the sub-regional level are well known. These include the growing realization of the importance of an open and efficient service sector (particularly financial services, telecommunications and transport) in the development and growth of a modern economy, which makes policy-makers more willing than in the past to entertain liberalization. Also, the greater ease of concluding agreements between a small number of (generally) geographically contiguous countries rather than among a large number of countries at the multilateral, or even at the broader regional level, will continue to advantage liberalization at this level.

From an economic point of view, however, sub-regional liberalization of services may make little sense, if the members of an integration grouping are all developing economies at roughly the same level of development, and all net service importers for

most services (with the exception of tourism). In such situations, these countries would benefit the most from an opening of their service markets on a wider basis, in order to attract needed foreign direct investment from the most efficient service suppliers (most often based in developed economies). Also, the trade-offs needed for a real liberalization to take place in the services area are less obvious at the sub-regional level among more similar economies than at a broader level among more diversified economies.

Looking into the future, both regional and sub-regional efforts at liberalizing trade in services will be undertaken in parallel to the new round of service negotiations which will begin under the WTO GATS as of the year 2000. These multilateral negotiations are to encompass all service sectors, and may deal as well with the review and strengthening of the GATS Framework.

Prospects for services liberalization at the broad regional level under APEC or the FTAA are potentially important complements to the multilateral effort under GATS, but appear quite distant as of end 1998. Though the stated goal of both integration processes is extremely ambitious, and though both are striving to develop a process or a formal agreement through which trade in services will be progressively liberalized, it is not clear in either case how this will actually proceed nor how successful such efforts may be. Under APEC the inclusion of the services sector into the "early voluntary sectoral liberalization" effort is proving to be problematic, particularly in light of the financial and exchange rate crises in East Asia. Under the FTAA, negotiators will have to agree upon a liberalizing modality before an agreement can be elaborated on accompanying rules and disciplines. Moreover, a future agreement would only be brought into effect subsequent to 2005. In spite of the protracted time framework, efforts by governments working on services within APEC and the FTAA to enhance transparency around practices in the services area and to attempt to generate consensus on the elements and structure of a liberalizing agreement in the services area would definitely be of benefit to the cause of services liberalization at all levels, provided that such market-opening efforts at the regional and sub-regional levels are structured and implemented in a manner compatible with the rules and obligations of the WTO. In this way, such efforts will not only promote the overall goal of trade expansion, but may provide emphasis for a greater liberalization at the multilateral level as well.

*Annex 1 - A*

**Service Sectors Under GATS Commitments by Developing Countries in the Western Hemisphere**

	Financial	Telecommunications	Business	Construction and Engineering Related	Distribution	Educational	Environmental	Health and Social Services	Travel & Tourism	Transport	Recreational, Cultural/Sport
Argentina	x	x	x	x	x					x	
Barbados	x	x	x								x
Bolivia	x	x						x	x		x
Brazil	x	x	x	x	x				x	x	
Chile	x	x	x						x	x	
Colombia	x	x	x	x					x		
Costa Rica	x		x			x		x	x		
Dominican Republic	x	x	x	x				x	x	x	
El Salvador	x	x	x				x		x	x	
Guatemala	x	x	x						x	x	
Honduras	x		x						x	x	
Jamaica	x	x	x			x		x	x	x	x
Mexico	x	x	x	x	x	x		x	x	x	
Nicaragua	x	x	x						x	x	
Paraguay	x								x		
Peru	x	x	x		x				x	x	x
Trinidad & Tobago	x	x	x			x		x	x	x	x
Uruguay	x	x	x						x	x	x
Venezuela	x	x	x	x					x	x	



*Annex 1- B*

**Service Sectors Under GATS Commitments by Developing Countries in East Asia**

	Financial	Telecommunications	Advertising	Construction and Engineering	Distribution	Educational	Legal	Courier	Accounting	Travel/ Tourism	Health care	Transport	Audiovisual
Hong Kong	x	x	x	x	x			x	x	x			x
Indonesia	x	x		x						x			
Korea	x	x	x	x	x				x	x		x	x
Malaysia	x	x	x	x			x		x	x	x		x
Philippines	x	x						x		x		x	
Singapore	x	x	x	x				x	x	x	x		x
Thailand	x	x	x	x	x	x	x		x	x		x	x

Source: Compiled by the staff of the U.S. International Trade Commission.

*Annex 2*

**Comparison of Service Provisions in Sub-regional Integration Arrangements with Developing Country Membership**

	<b>ASEAN</b>	<b>MERCOSUR</b>	<b>ANDEAN COMMUNITY</b>
<b>TITLE:</b>	ASEAN Framework Agreement on Services under the Association of South East Asian Nations Free Trade Area	Protocol on Services under Southern Cone Common Market Agreement	Decision 439: General Framework of Principles and Standards for Liberalization of Trade in Services in the Andean Community
<b>MEMBERS:</b>	Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam	Argentina, Brazil, Paraguay, and Uruguay	Bolivia, Colombia, Ecuador, Peru and Venezuela,
<b>ENTERED INTO FORCE:</b>	1967	1991	June 1998
<b>OBJECTIVE:</b>	To eliminate substantially restrictions to trade in services among member states (by expanding the depth and scope of liberalisation beyond the GATS) with the aim to realising a free trade area in services	To achieve free trade in services in the MERCOSUR region within a period of 10 years.	To establish common principles and standards for the progressive liberalization of intraregional trade in services for the purpose of creating an Andean Common Market for Services, through the elimination of the restrictive measures to the inside the Andean group.
<b>SECTORAL COVERAGE:</b>	Sectors covered according to scheduled commitments	Sectors covered according to scheduled commitments. All sectors to be covered within a 10-year period	Universal coverage.
<b>NEGOTIATING MODALITY:</b>	Liberalisation to be gradual, and carried out through rounds of negotiated commitments, the results to be made available to all members under a "positive list" approach	Liberalisation to be gradual, and carried out through rounds of negotiated commitments, the results to be made available to all members under a "positive list" approach	Liberalisation guaranteed for all sectors and for all service suppliers under a "negative list" approach.

*Annex 2 (continued)*

**Comparison of Service Provisions in Sub-regional Integration  
Arrangements with Developing Country Membership**

	<b>GROUP OF THREE</b>	<b>MEXICO with BOLIVIA; CHILE; COSTA RICA NICARAGUA</b>	<b>CENTRAL AMERICA/ DOMINICAN REPUBLIC</b>
<b>TITLE:</b>	Free Trade Agreement between:	Bilateral Free Trade Agreements	Free Trade Agreement between
<b>MEMBERS:</b>	Colombia, Venezuela, and Mexico	Mexico and Bolivia Mexico and Costa Rica Mexico and Nicaragua Mexico and Chile	Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Dominican Republic
<b>ENTERED INTO FORCE:</b>	1 January 1995	Bolivia: 1 January 1995 Costa Rica: January 1995 Nicaragua: 1 July, 1998 Chile: 1 October, 1998	1 January 1999
<b>OBJECTIVE:</b>	To stimulate the expansion and diversification of trade among the Parties; and to eliminate barriers to trade and facilitate the movement of goods and services among the Parties.	To stimulate the expansion and diversification of trade among the Parties; and to eliminate barriers to trade and facilitate the movement of goods and services among the Parties.	To stimulate the expansion and diversification of trade among the Parties; and to eliminate barriers to trade and facilitate the movement of goods and services among the Parties.
<b>SECTORAL COVERAGE:</b>	Universal coverage, except for air transport and government services	Universal coverage, except for air transport and government services	Universal coverage, except for air transport and government services.
<b>NEGOTIATING MODALITY:</b>	Liberalization guaranteed for all sectors and for all service suppliers under a "negative list" approach.	Liberalization guaranteed for all sectors and for all service suppliers under a "negative list" approach.	Liberalization guaranteed for all sectors and for all service suppliers under a "negative list" approach.

*Annex 2 (continued)*

**Comparison of Service Provisions in Sub-regional Integration Arrangements with Developing Country Membership**

**PRINCIPLES**

	<b>ASEAN</b>	<b>MERCOSUR</b>	<b>ANDEAN COMMUNITY</b>
1. MOST-FAVOURED NATION	May be made subject to sectoral exemptions	May be made subject to sectoral exemptions	Unconditional for members.
2. NATIONAL TREATMENT	Covers only scheduled sectors subject to bound commitments	Covers only scheduled sectors subject to bound commitments	General obligation.
3. TRANSPARENCY	Not in Treaty	Each Party shall publish all measures effecting the application of the protocol or its function. Each Party shall inform, at least annually to the MERCOSUR Trade Commission, the adoption of new laws or amendments to regulations, or administrative directives that affect significantly trade in services	Each Party will promptly publish all measures of general application affecting the operation of the Framework, including international agreements subscribed with third parties and the recognition of the General Secretariat of the Andean Group.
4. MARKET ACCESS	Provisions of services on cross-border basis and on establishment basis must be scheduled	Provisions of services on cross-border basis and on establishment basis must be scheduled	Provisions of services on cross-border trade and on establishment basis must be scheduled.
5. TREATMENT OF INVESTMENT	Commercial presence covered by specific sectoral commitments; separate investment disciplines	Commercial presence covered by specific sectoral commitments; separate investment disciplines	Right of establishment guaranteed for service providers; separate investment disciplines.
6. SAFEGUARDS	Provisions exist for Emergency Safeguard Measures for Article XII and Restrictions to Safeguard the Balance of Payments	Provisions exist for Emergency Safeguard Measures and Restrictions to Safeguard the Balance of Payments	Provisions exist for Restrictions to Safeguard the Balance of Payments.

*Annex 2 (continued)*

**Comparison of Service Provisions in Sub-regional Integration Arrangements with Developing Country Membership**

**PRINCIPLES**

	<b>GROUP OF THREE</b>	<b>MEXICO with BOLIVIA; CHILE; COSTA RICA; NICARAGUA</b>	<b>CENTRAL AMERICA/ DOMINICAN REPUBLIC</b>
1. MOST-FAVOURED NATION	Unconditional for members	Unconditional for members	Unconditional for members.
2. NATIONAL TREATMENT	General obligation.	General obligation.	General obligation.
3. TRANSPARENCY	Each Party will promptly inform the other Parties, at least annually, the introduction of new laws, regulations, or administrative guidelines, or modifications which affect trade in services.	The Parties will establish procedures for a Party to notify state or provincial measures and all modifications to these; non-discriminatory quantitative restrictions; commitments relative to future liberalization of non-discriminatory measures.	Each Party will promptly publish all measures affecting operation, including international agreements, and notify the rest of Parties all modification to laws, regulations, or administrative guidelines.
4. MARKET ACCESS	Access guaranteed for service providers through both cross-border trade and establishment trade (no schedules)	Access guaranteed for service providers through both cross-border trade and establishment trade (no schedules)	Access guaranteed for service providers through both cross-border trade and establishment trade (no schedules).
5. TREATMENT OF INVESTMENT	Right of establishment guaranteed for service providers. (Disciplines contained in a separate chapter)	Right of establishment guaranteed for service providers. (Disciplines contained in a separate chapter)	Right of establishment guaranteed for service providers. (Disciplines contained in a separate chapter)
6. SAFEGUARDS	Only with respect to the financial service sector	Possibility of establishing disciplines for the imposition of safeguards is foreseen in Mexico/Bolivia and Mexico/Costa Rica	Provisions exist for Restrictions to Safeguard the Balance of Payment. Possibility of establishing disciplines for the imposition of safeguard.

*Annex 2 (continued)*

**Comparison of Service Provisions in Sub-regional Integration Arrangements with Developing Country Membership**

**PROVISIONS**

	<b>ASEAN</b>	<b>MERCOSUR</b>	<b>ANDEAN COMMUNITY</b>
7. MONOPOLY PRACTICES	Not covered.	Disciplines to be developed for monopoly practices and exclusive service suppliers	Disciplines to be developed for monopoly practices and exclusive service suppliers
8. RECOGNITION OF TITLES	Each Member State may recognize the education or experience obtained, requirements met, or licenses or certifications granted in another Member State. Such recognition may be based upon an agreement or arrangement with the Member State concerned or may be accorded autonomously	Each state shall be encouraged its competent authorities to develop together with those of the other Parties mutually acceptable standards or criteria regarding the exercise of professional activities related to trade in services	Each Party shall recognize the licenses, certifications, titles of professions, and diplomas, accorded by other Member Country, in which activity of services requires of such instruments, according to the established criteria in a Decision dealing with the matter.
9. RULES OF ORIGIN (Denial of Benefits)	Benefits are denied to a service supplier who is a natural person of a non-Member State or a juridical person owned or controlled by persons of a non-Member State constituted under the laws of a Member State, but not engaged in substantive business operations in the territory of Member State(s)	Benefits of the protocol can be denied to a service provider from another member party, given notification and consultation, when this party demonstrates that the services provided by a person or country not part of Mercosur.	Benefits are denied to a service supplier who is a natural person of a non-Member Country or a juridical person owned or controlled by persons of a non-Member Country constituted under the laws of a Member Country, but not engaged in substantive business operations in the territory of Member Country(s).
10. GOVERNMENT PROCUREMENT	No provisions	Government Procurement disciplines to be applied to services, once developed	No provisions
11. MOVEMENT OF NATURAL PERSONS	Not in Treaty	Not in Treaty	Freedom of Temporary movement guaranteed.

**Annex 2 (continued)**

**Comparison of Service Provisions in Sub-regional Integration  
Arrangements with Developing Country Membership**

**PROVISIONS**

	<b>GROUP OF THREE</b>	<b>MEXICO with BOLIVIA; CHILE; COSTA RICA; NICARAGUA</b>	<b>CENTRAL AMERICA/ DOMINICAN REPUBLIC</b>
7. MONOPOLY PRACTICES	Elaborate disciplines over monopoly practices for government monopolies and state enterprises.	Mexico/Bolivia and Mexico/Chile: Disciplines over monopoly practice exist only for telecommunications services  Mexico/Costa Rica: No disciplines over monopolies	Disciplines to be developed for monopoly practices and exclusive service suppliers
8. RECOGNITION OF TITLES	Recognition between Parties, unilaterally, or based upon an agreement, the education experience, licenses or certifications obtained in the territory of the other Party	Recognition between Parties, unilaterally, or based upon an agreement, the education experience, licenses or certifications obtained in the territory of the other Party	Recognition between Parties, unilaterally, or based upon an agreement, the education , licenses or certifications obtained in the territory of the other Party or any non-Party.
9. RULES OF ORIGIN (Denial of Benefits)	Requires that service providers, regardless of nationality, either carry out substantial business operations (cross-border trade in services) or be incorporated in a member country (investment) in order to receive preferential treatment	Require that service providers, regardless of nationality, either carry out substantial business operations (cross-border trade in services) or be incorporated in a member country (investment) in order to receive preferential treatment	Require that service providers, regardless of nationality, either carry out substantial business operations (cross-border trade in services) or be incorporated in a member country (investment) in order to receive preferential treatment.
10. GOVERNMENT PROCUREMENT	Government Procurement of services and construction included	Government Procurement of services and construction included	Government procurement of services and construction included.
11. MOVEMENT OF NATURAL PERSONS	Disciplines on temporary entry of business people and providers of professional services	Disciplines on temporary entry of business people and providers of professional services	Disciplines on temporary entry of business people and provision of professional services.

*Annex 2 (continued)*

**Comparison of Service Provisions in Sub-regional Integration  
Arrangements with Developing Country Membership**

**PROVISIONS**

	<b>ASEAN</b>	<b>MERCOSUR</b>	<b>ANDEAN COMMUNITY</b>
12. DISPUTE SETTLEMENT	A specific dispute settlement mechanism may be established for the purposes of this Framework Agreement which shall form an integral part of this Framework Agreement	Disputes regarding the application, interpretation or non-compliance with the obligations of the protocol are to be settled according to the dispute mechanisms of <i>MERCOSUR</i>	Provisions provide for procedures in the case of rules of origin dispute, including consultation.
13. EXCEPTIONS	Not in Agreement	Provisions are included for exceptions of both a general and a security nature.	Provisions are included for exceptions of a general nature.
14. NON-CONFORMING MEASURES	Not in Treaty	Not in Treaty	No Party will increase the number of existing non-conforming measures. Lists of federal and provincial non-conforming measures to be elaborated.
15. SPECIAL PROVISIONS	Financial services, basic telecommunications, maritime transport, movement of natural persons, and audio-visual	Financial services, basic telecommunications, maritime transport, movement of natural persons, and audio-visual	Financial services, basic telecommunications, and professional services will be elaborated in a near future.
16. FUTURE LIBERALIZATION	Gradual liberalization through exchange of lists commitments.	Progressive liberalization of a list of commitments through negotiations within a period of 10 years (by 2007).	Progressive liberalization of a list of commitments through negotiations within a period of 5 years (by 2005).



**Annex 2 (continued)**

**Comparison of Service Provisions in Sub-regional Integration Arrangements with Developing Country Membership**

**PROVISIONS**

	<b>GROUP OF THREE</b>	<b>MEXICO with BOLIVIA; CHILE; COSTA RICA; NICARAGUA</b>	<b>CENTRAL AMERICA/ DOMINICAN REPUBLIC</b>
12. DISPUTE SETTLEMENT	Agreement provides for consultations to take place in writing, regarding any controversy over an applied or proposed measure on services relating to the implementation of the Treaty. If the matter is not resolved within 45 days, any Party may request in writing the establishment of an arbitral panel which will make a final decision on the matter.	Specific chapters in all Agreements provide for procedures in the case of a commercial dispute relating to the implementation of the provisions of the Treaty, including consultation and a possible arbitral panel. The Parties may choose to resolve their disputes either under the GATT/WTO provisions or under the Treaty provisions, without preference.	Specific chapter provides for procedures in the case of a commercial dispute relating to the implementation of the provisions of the Treaty, including consultation and a possible arbitral panel. The Parties may choose to resolve their disputes either under the GATT/WTO provisions or under the Treaty provisions, without preference, at the choice of the requesting Party.
13. EXCEPTIONS	Completed negotiations in December 1996 on lists of excluded service sectors as well as on reservations to be set out in annexes to the treaty, but these exceptions have not yet officially been published	Lists of exceptions are in process of being negotiated, for arrangements between Mexico and Bolivia and Costa Rica. Lists of exceptions finalized for Mexico- Chile	Provisions are included for exceptions of a general nature.
14. NON-CONFORMING MEASURES	No Party will increase the number of existing non-conforming measures. Lists of federal and provincial non-conforming measures to be elaborated.	Neither Party will increase the number of existing non-conforming measures. Lists of federal and provincial non-conforming measures to be elaborated.	Neither Party will increase the number of existing non-conforming measures. Lists of non-conforming measures to be elaborated.
15. SPECIAL PROVISIONS	Maritime transport, financial services, basic telecommunications, and movement of natural persons	Sectors vary by treaty	Movement of natural persons.
16. FUTURE LIBERALIZATION	The Parties will establish procedures for the carrying out of future negotiations aimed at increasing the overall liberalization of services between the two Parties. Removal of quantitative restrictions to be negotiated every two years.	The Parties will establish procedures for the carrying out of future negotiations aimed at increasing the overall liberalization of services between the two Parties. Removal of quantitative restrictions to be negotiated every two years.	The Parties will establish procedures for the carrying out of future negotiations aimed at increasing the overall liberalization of services between the two Parties. Removal of quantitative restrictions to be negotiated every two years.

## *Annex 3*

### **Summary of the Key Elements in the San José Ministerial Declaration**

San José, Costa Rica

19 March 1998

#### **I. Time Frame**

The FTAA negotiations will be initiated during the Second Summit of the Americas, on April 18th and 19th, in Santiago de Chile. They will be concluded no later than 2005. Concrete progress in the form of agreement on specific business facilitation measures is to be reached by the year 2000.

The Trade Negotiations Committee is to meet for the first time no later than end June 1998, and the nine negotiating groups are to begin their work no later than end September 1998.

#### **II. Structure of the Negotiations**

The FTAA negotiations will be carried forward under a structure agreed through the year 2004, which is both flexible and ensures wide geographical representation by the participating countries through a rotation of both the Chairmanship of the process, the site of the negotiations themselves, and the responsibility for the various negotiating groups. Negotiations will be structured in the following manner:

*Chairmanship of the Negotiations* : will rotate every 18 months, or at the conclusion of each Ministerial Meeting. Those countries which have been designated to exercise the function of Chair of the FTAA process for successive 18-month periods include : Canada; Argentina; Ecuador; and Brazil and the United States (jointly).

*Trade Negotiations Committee (TNC)* : will be responsible for the oversight of the negotiations. This Committee will be composed of Vice-Ministers for Trade. The Committee will meet for the first time in June 1998 and subsequently no less than twice a year. The Chairmanship of the TNC will be held by the Chair of the FTAA process.

*The Negotiating Groups* : are nine in number and include the following:  
(1) market access (chaired by Colombia); (2) investment (Costa Rica); (3) services (Nicaragua); (4) dispute settlement (Chile); (5) government procurement (United States); (6) agriculture (Argentina); (7) intellectual property rights (Venezuela); (8) subsidies, antidumping and countervailing duties (Brazil); and (9) competition policy (Peru). The Chairman and Vice-Chairman of each group have been selected for an initial 18-month period, and subsequent chairs will be selected after this time, with the aim of ensuring geographic balance during each period of responsibility.

*Consultative Group on Smaller Economies* : has been created, open to the participation of all the FTAA countries. This group will report to the TNC and will have rotating chairmanship.

*Venue of the Negotiations* : established on a rotating basis. Three countries will serve as hosts to the negotiations, namely : Miami for three years; Panama City for two years; and Mexico City for two and a half years, or until the conclusion of negotiations.

### III. Administrative and Analytical Support

The negotiations will be supported administratively through the creation of an Administrative Secretariat, located in the same site as the meetings of the negotiating groups. The Secretariat will be funded by a combination of local resources and the Tripartite Committee institutions.

Technical and analytical support for the negotiations will be provided by the three institutions of the Tripartite Committee, namely the OAS, the IDB, and ECLAC. These institutions will also provide technical assistance related to FTAA issues, particularly for the smaller economies of the Hemisphere.

### IV. Input by Civil Society

Governments in the Western Hemisphere have committed to transparency in the negotiating process. For this purpose they have agreed to create a Committee on Civil Society, in order to facilitate the input of the business community, labor, environmental, and academic groups, who wish to present their views on the issues under negotiation and on trade matters in a constructive manner. The FTAA is the first major trade negotiation where such a group has been established at the outset of the negotiations, and this is therefore a unique feature of the FTAA process.

## *Annex 4 - A*

### **Work on Services within the FTAA**

#### *Work Program of the FTAA Negotiating Group on Services*

- i)* Identify the scope and coverage of negotiations.
  
- ii)* Determine the approach for the negotiations.
  
- iii)* Develop a framework incorporating comprehensive rights and obligations in services, taking into consideration the substantive elements already identified in the FTAA Working Group on Services.
  
- iv)* Identify, where appropriate, possible supplementary standards for specific sectors (Sector Annexes)

**Ministerial Declaration of San José Summit of  
the Americas Fourth Trade Ministerial Meeting  
San José, Costa Rica  
March 19th 1998**

#### *Negotiating Objective for Services*

- i)* Establish disciplines to progressively liberalize trade in services, so as to permit the achievement of a hemispheric free trade area under conditions of certainty and transparency.
  
- ii)* Ensure the integration of smaller economies into the FTAA process.

## *Annex 4 - B*

### **Work on Services within APEC**

#### *Elements of the Collective Action Plan on Services by APEC\**

<i>Collective Action</i>	<i>Time Frame</i>
<i>i) Review and exchange information on all trade and investment in services arrangements within APEC and study common elements.</i>	Short term (1997-2000) and ongoing
<i>ii) Gather and analyse information on the services section contained within the Individual Action Plans.</i>	Ongoing
<i>iii) Identification of measures affecting trade and investment in all service sectors.</i>	Short term (1997-2000)
<i>iv) Compile information on services trade statistics.</i>	Short to medium term (1997-2005) and ongoing
<i>v) To improve the understanding of the impact of liberalisation of services.</i>	Short term (1997-2000)
<i>vi) Study and carry out work concerning the development and adoption of common professional standards, in conjunction with professional accreditation bodies and needed legislative measures.</i>	Short to medium term (1997-2005)
<i>vii) Assist in identifying sectors for early voluntary sectoral liberalisation of services</i>	Short-term (1997-2000)
<i>viii) Enhance transparency in service sectors.</i>	Short to medium term (1997- 2005)
<i>ix) Continue discussion of issues related to possible APEC principles or guidelines that may be necessary to achieve free and open trade and investment in this area.</i>	Ongoing
<i>x) Monitor, and where possible and appropriate, contribute to, the WTO's work on services.</i>	Short term (1997-2000)

\*These collective actions on services will apply to the telecommunications, transportation, energy, and tourism sectors. APEC economies will continue to develop collective actions in other service sectors.

## Annex 5

### Market Opening Measures in the Services Area by APEC Developing Economies, 1996/1997

Economies	Undertakings
China	<ul style="list-style-type: none"> <li>• Number of operational foreign branches in banking, insurance and securities will be increased between 1997 and 2000</li> </ul>
Korea	<ul style="list-style-type: none"> <li>• Remaining limits on foreign investment in distribution (except wholesale meat) will be removed by 2000</li> <li>• Air freight handling services will be liberalized by 1997</li> <li>• Foreign equity ration in air transport will be allowed up to 50% by 2000</li> <li>• Limits on foreign investment in ocean-going cargo transport will be lifted by 1999</li> <li>• Cargo reservation system in favor of domestic vessels will be removed by 1998</li> <li>• Petroleum refining industry and legal services will be opened to foreign investment by 1999 and 1997, respectively</li> </ul>
Malaysia	<ul style="list-style-type: none"> <li>• Foreign brokerage firms will be allowed to acquire up to 49% equity in domestic firms</li> <li>• Foreign equity in domestic funds management firms will be raised to 70%</li> </ul>
Philippines	<ul style="list-style-type: none"> <li>• Management of multi-modal operations and auxiliary services to shipping will be opened up</li> <li>• Liberalization of finance companies, underwriting of securities and management of mutual funds will be considered between 1997 and 2000</li> </ul>
Chinese Taipei	<ul style="list-style-type: none"> <li>• Foreign lawyers will be permitted to establish offices and supply a number of services by 2000. The scope for partnership with local lawyers will be reviewed</li> <li>• Foreign firms will be permitted to set up travel agencies</li> <li>• Banking, insurance and securities services will be opened up between 1997 and 2000</li> </ul>
Thailand	<ul style="list-style-type: none"> <li>• Up to 25% foreign equity will be allowed in insurance. Beyond 2000, lifting this cap will be considered</li> </ul>

Source: *Perspectives on the Manila Action Plan for APEC*, Philippine Institute for Development Studies, Manila, 1996

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