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# **GATS and its implications for developing countries: Key issues and concerns**

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## Abstract

This paper discusses the General Agreement on Trade in Services or GATS and assesses some of the key issues and concerns that have been voiced about this agreement, particularly with regard to its implications for policymaking in important social service sectors. The paper provides an overview of the GATS in terms of its key features, structural characteristics, and negotiating modalities. It also assesses the nature of liberalization that has been realized under the GATS during the Uruguay Round of multilateral trade negotiations. The background discussion provides the context for discussing the various criticisms leveled at the GATS. The paper then provides a critical assessment of these criticisms and distinguishes between those that are based on misapprehensions and incorrect information or lack of understanding about the GATS, from those which are genuine concerns and where future negotiations can play an important role. The discussion indicates that while the GATS may generate benefits in the form of efficiency and resource gains, it may also hurt the realization of equity and developmental objectives and could pose challenges to governmental autonomy in the delivery and provision of various social services. However, an important point highlighted in the paper is that underlying domestic conditions and informed domestic policies and regulations can play an important role in facilitating the gains and mitigating the adverse consequences of the GATS. The paper concludes by highlighting the position developing countries could take in the ongoing service sector negotiations at the WTO, and notes the specific GATS provisions on which they need to focus in these discussions.

## Introduction

The service sector encompasses a wide range of areas and activities, ranging from traditional areas such as transport, communication, and tourism to new and dynamic areas such as software, environmental, and educational services. Over the past two decades, the service sector has expanded rapidly and has come to play an increasingly important role in national economies and in the international economy.<sup>1</sup> In 1997, service sector output was valued at \$6.6 trillion or about 60 per cent of global output of goods and services. The developed countries have dominated this expansion, accounting for three-quarters of world services output. The sector constitutes close to 70 per cent of production and employment in the OECD countries.<sup>2</sup> Services output and employment have also witnessed rapid growth in developing countries during the past two decades. In some developing countries, services today constitute over 50 per cent of economic activity, significantly more than traditional sectors such as agriculture.

In addition to output and employment, there has also been considerable expansion in service sector trade and investment flows. World exports of services are substantial at an estimated \$1.4 trillion in 2000, or about one-quarter of global merchandise exports. The developed countries account for the bulk of trade in services. Between 1990-2000, world exports of commercial services kept pace with the growth in merchandise exports, at an average rate of 6 per cent per year. Recent estimates indicate that the service sector accounts for some 40 per cent of the global annual stock of foreign direct investment (FDI), at about \$30 billion, and for 50 per cent of world annual FDI flows, with the developed countries again accounting for the majority of this FDI.<sup>3</sup>

Several developing countries have participated in the globalization of services. For example, India and the Philippines have carved a niche for themselves in the global market and have emerged as leading exporters of software services. In several service sectors, including for instance, construction and engineering, health, and education services, developing countries have considerable export potential, due mainly to their availability of skilled and abundant labour. In services like insurance, transport, and telecommunications, many developing countries are increasingly becoming important

destination markets for investment, due mainly to their huge capital and technology requirements in these areas. Since many developing countries have embarked on ambitious reform and privatisation programs in various service sectors, the importance of services trade and FDI is bound to increase further.

The Uruguay Round broadened the scope of multilateral trade negotiations to include services for the first time in the history of trade negotiations. This was due to pressure from the service sector lobby in developed countries to liberalize services trade and investment. The inclusion of services in the Uruguay Round negotiations also reflected the growing recognition among developed and developing countries of the service sector's important role in the global and national economy. A Group on Negotiations for Services, separate from the Group on Negotiations for Goods, was established to carry out discussions on services. The aim was to establish a multilateral framework that would promote "orderly" and "transparent" trade and investment liberalization in services. The outcome of these negotiations was the General Agreement on Trade in Services, or GATS, which entered into force on January 1, 1995, with a set of binding rules and disciplines to govern services trade.

By the end of this initial round of discussions on services, countries had made commitments on market access and on national treatment commitments in service sectors that they were prepared to table for the negotiations and horizontally across sectors. These commitments were made for different modes of supply. However, for the most part, countries made commitments, which basically either bound their existing regulations on services trade and investment or committed to less than the prevailing trade and investment regime.<sup>4</sup> The negotiations were more successful in establishing the framework for liberalizing services. The tasks of strengthening GATS rules and disciplines, developing new guidelines, and promoting further liberalization in services through deeper and more meaningful commitments was largely left to future rounds of multilateral negotiations on services, starting with the GATS 2000 round.

Given the importance of services in promoting economic development, competitiveness, and

productivity, the GATS is of great significance, however incipient it may be in terms of its framework and provisions. Trade liberalization in services can result in increased competition, lower prices, more innovation, technology transfer, employment creation, and greater transparency and predictability in trade and investment flows. For instance, producer services such as transport, finance, and communication play a vital infrastructure role in the economy and can have major spillover effects on competitiveness in both goods and services. With rapid advances in information technology, knowledge-based services have become increasingly important for international competitiveness and a country's ability to adopt, acquire, and use new technologies. To the extent that GATS promotes greater predictability and transparency in service sector trade and investment flows, it can play an important role in facilitating such processes, with beneficial implications for long run economic growth and development.

However, in addition to promoting efficiency goals, trade liberalization in services (and in general as well) must also be conducive to the realization of other legitimate goals, including social, developmental and equity objectives. As stated in the Copenhagen Declaration of the 1995 World Summit for Social Development, and as agreed at the Geneva special session of the General Assembly in June 2000, social development cannot be separated from the economic environment. Market forces, including those of globalization and trade liberalization, must be appropriately complemented by public policies that address market failures and provide an enabling environment that is conducive to both efficiency and social development.<sup>5</sup> Individual national governments must choose for themselves the balance between these goals, which may at times conflict and at times be complementary in nature. One of the major issues concerning the GATS is how it may affect this balance and the interface between market mechanisms and public policies in shaping this balance. While the GATS may contribute to increased competitiveness and efficiency, there are concerns about its implications for equity, costs, distribution, and availability of services, human development, and the sovereignty of governments in defining and pursuing their national objectives and priorities in the service sector. These concerns are predominant in social services such as health and

education where there are recognized market failures and governments are heavily involved as regulators, providers, and distributors of such services. The lack of liberalization commitments in social services and the limited coverage of these sectors in the last round of negotiations no doubt reflect such concerns.

The debate on GATS takes on two extreme views. On one hand are the proponents of the agreement who recognize only its static and dynamic efficiency enhancing implications and ignore the market failures, which exist in many services. On the other hand are the opponents who see only threats to national sovereignty and negative consequences for equity and social development, and who interpret many of the GATS provisions out of context and in a biased way. The reality, however, lies somewhere in between these two extremes. There are both potential benefits and areas of concern associated with the agreement. There is thus an urgent need for a comprehensive and balanced appraisal of the GATS and its implications for economic and social policy-making in developing countries.

### **Objectives**

The main objective of the paper is to promote an informed understanding about the GATS. In particular, it is hoped that the discussion in this paper will help developing country governments to participate more effectively in future services negotiations and in shaping the interpretation, development and extension of key GATS provisions and guidelines, in keeping with their own needs and interests. At a broader level, it is hoped that the analysis in this paper will also contribute to better integration of economic and social policies and a more rigorous evaluation of the social and developmental impact of economic policies and multilateral agreements such as the GATS.

### **Outline**

The paper is structured as follows. The first two sections "Overview of the GATS" and "Assessing the GATS commitments" provide a background to the GATS: The former section highlights the main features, structural aspects, and negotiating modalities of the GATS, while the latter section assesses the extent and nature of liberalization realized in the first round, the

main shortcomings and achievements of that round, and issues raised by the commitments made. These background sections are aimed at clarifying many of the misunderstandings and misconceptions about the agreement. The next three sections of the paper critically assess the implications of GATS for economic and social policymaking in developing countries. The section “Concerns about the GATS” discusses the flexibility provisions and voluntary aspects of the negotiating process under the GATS which give developing countries considerable discretion in liberalizing services and thus in many respects undermine some of the views advanced by the critics. The next section “Assessing the validity of concerns about GATS” points out the aspects of the GATS which are of genuine concern, the nature of these concerns, and the fact that the outcomes in many of these areas will really depend on the course of future discussions. The penultimate section discusses the potential costs and benefits to opening up social services and the extent to which underlying domestic conditions may shape the cost-benefit outcome. This section also highlights the need for informed domestic policies and regulations to realize the gains from liberalization and mitigate the adverse effects. The final section discusses the stand developing countries should take in the ongoing services negotiations at the WTO and the specific GATS provisions on which they need to focus in these discussions.

### **Overview of the GATS**

The Uruguay Round of negotiations, which took place between 1986-1994, broadened the scope of world trade rules to cover services. The discussions on services were conducted amidst considerable resistance from influential developing countries such as Brazil and India and also some developed countries. The basis for this opposition was that services is an area best left to domestic regulation and that they did not naturally fall under the purview of the global trading system. There was also a strong feeling among many countries that the establishment of multilateral rules and disciplines for services would hurt their pursuit of development goals and public policy objectives by forcing them to open up and deregulate their service sectors. There was also concern that the inclusion of services would enable developed countries to leverage across sectors, by making

their concessions in traditional areas like textiles and agriculture, where developing countries had a comparative advantage, conditional upon concessions by developing countries in the service sector. Notwithstanding such a divide, however, the sector was included in the trade negotiation agenda. The main impetus came from the United States of America, which had a major interest in opening up services. A separate Group for Negotiations on Services was established for conducting the negotiations in this sector, so as to prevent cross-sectoral linking of concessions across goods and services and to allay some of the concerns expressed by the developing countries.

The major thrust of this first round was to establish a legal framework of rules and disciplines to cover services trade. In addition, since countries were in a learning mode on services, the agenda for liberalization was not too ambitious. The objective was to commit governments to, at the least, preserve the degree of market access provided by current regulations. The negotiations also provided considerable flexibility to countries in choosing the service sectors they wished to liberalize and the limitations they wanted to maintain on specific subsectors, activities, and modes of supply.<sup>6</sup>

What emerged finally both in terms of the structure and provisions of the overall agreement, the modalities for negotiation, and the actual liberalization undertaken was, not surprisingly, quite limited and preliminary in nature. The agreement and the commitments under it left a lot of room for discretion and regulatory precaution. This was perhaps expected given that countries were grappling for the first time with a complex set of regulatory issues ranging from investment policies to immigration to professional licensing. The difficult part of reducing barriers to trade and investment and modifying government regulations on services was largely left to future rounds of negotiations. Also, due to incomplete negotiations in sectors such as telecommunication, financial, and maritime services, and insignificant commitments in other areas such as cross-border movement of labour, talks were slated to continue beyond the conclusion of the Uruguay Round in specific sectors and on certain issues. Further, a new round of service sector negotiations was mandated for 2000 and every five years thereafter.

### ***GATS: Structure, key features, and provisions***<sup>7</sup>

The GATS is a comprehensive legal framework of rules and disciplines covering 161 service activities across 12 classified sectors. These include activities as wide ranging as telecommunications, financial, maritime, energy, business, education, environmental, and distribution services. As per Article I which defines the scope of the agreement and defines the nature of services trade, the GATS applies to measures taken by members at the central, regional, and local government levels as well as by non-governmental bodies to whom powers have been delegated by governments or authorities. However, it excludes services which are supplied in the “exercise of governmental authority”, the latter being defined as services which are supplied neither on a “commercial basis nor in competition with one or more service suppliers”. This carve-out clause is, however, not well defined in the agreement.<sup>8</sup>

There are several distinguishing features of GATS. One of the most striking features of GATS is the way in which it defines services trade. GATS defines services trade as occurring through four possible modes of supply, namely:

Mode 1 - cross border supply which is defined as the supply of a service from the territory of one member into the territory of any other member, analogous to trade in goods; Mode 2 - consumption abroad which is defined as the supply of a service in the territory of one member to the service consumer of any other member, such as in the case of tourism services; Mode 3 - commercial presence which is defined as the supply of a service by a service supplier of one member, through commercial presence in the territory of any other member, i.e., the establishment of offices, branches, and subsidiaries in overseas markets, analogous to foreign direct investment; and Mode 4 - movement of natural persons which is defined as the temporary cross-border movement of service providers in an individual capacity or as part of an establishment to provide the service overseas.

This classification of services trade into four modes of supply reflects a novel approach. It addresses the complex nature of international transactions in services and the diverse forms in which services are embodied, in consumption, production, and distribution-related activities and in the form of goods, human capital, and information. This modal definition of services trade also

brings into the purview of GATS, regulatory issues concerning investment policies and immigration and labour market legislation, hitherto outside the domain of the multilateral trading system.

The GATS architecture consists of three main elements, namely: general rules and principles; commitments in specific sectors and across sectors; and sectoral annexes and various attachments to the agreement. Each of these elements is outlined in the following discussion.

#### ***General provisions***

The first important feature of the GATS architecture is a set of general concepts, principles, and rules that are largely applicable across the board to measures affecting trade in services. The main GATS provisions relevant to the discussion in this paper include those on:<sup>9</sup>

Most-Favoured Nation (MFN) treatment (Article II); Transparency (Article III); Domestic Regulation (Article VI); Monopolies and Exclusive Service Suppliers (Article VIII); Emergency Safeguard Measures (Article X); Balance of Payments Safeguards (Article XII); Government Procurement (Article XIII); General Exceptions (Article XIV); and Subsidies (Article XV).

The most generally applicable provisions are those of MFN and transparency. Countries are required to accord MFN treatment to other member countries, i.e., not discriminate among member countries of the WTO in terms of their treatment of foreign services and service suppliers. There is, however, a provision to take an MFN exemption for a period of 10 years, subject to meeting specified conditions in the GATS Annex on MFN exemptions, making the MFN obligation a less than general one. Under the transparency provision, countries are required to provide information on all relevant rules and measures with bearing on the agreement and on their commitments under the GATS. There is also a requirement for establishing enquiry points to provide specific information to other member countries and to respond promptly to any requests for information on relevant rules and regulations affecting trade in services.

Several of the other GATS provisions are not really general, as their applicability is conditional upon the commitments filed by member countries. For instance, the article on domestic regulation is applicable only to sectors where specific commitments have been taken. Similarly, the market access and national treatment

commitments under Articles XVI and XVII, respectively, are also subject to the limitations specified in the individual schedules of commitments by member countries and thus not generally applicable. Moreover, there are exceptions to the applicability of MFN, market access, and national treatment provisions in the case of government procurement under specified conditions. There are also exceptions to the market access, national treatment, and MFN provisions for measures taken to protect public order, human, animal, or plant life, or for national security reasons and the like. Such exceptions and condition-based application of the articles make the GATS a much less general and much less binding agreement in terms of its basic guidelines and disciplines.

Many of the other GATS provisions are very loosely defined and broad in terminology so that the nature and extent of their applicability is subject to discretionary interpretation. For instance, the provision on subsidies recognizes that subsidies may have trade distorting effects but it does not specify any particular measures to regulate their use, calling only for consultations on this matter and for countries to furnish information when requested by another member country. Similarly, in the provision on domestic regulation, there are many ambiguities concerning what constitutes a “reasonable, objective, and impartial” manner of administering domestic regulations, what are acceptable “objective and transparent criteria”, and what would constitute as “unnecessarily restrictive” and “burdensome” measures. Given such broad terminology, interpretation takes on discretionary scope and is likely to be influenced by the course of future discussions and by influential interest groups.

In short, the key GATS provisions are not broadly applicable disciplines. There are many exceptions and ambiguities in their application. Thus, the GATS is a much weaker agreement in terms of its architecture than the GATT.

### *Commitments*

The second element of GATS is the process by which countries commit themselves to liberalizing services. These commitments have a distinctive structure given the mode-wise approach to services trade highlighted above. Countries make commitments on market access and national treatment in specific sectors under what are known as sectoral schedules of commitments. They also make market access and national treatment commitments

across sectors in what are known as horizontal schedules of commitments. The former are applicable to the particular sectors which are tabled for negotiation by a country while the latter relate to all sectors scheduled by a country and could compliment, override, or qualify the sectoral commitments. Four important aspects characterize the commitment process.

The first important feature of the commitment process is that countries are free to decide which service sectors they wish to subject to market access and national treatment disciplines. The latter has also been termed as a positive list approach to liberalization. Hence, if countries are unwilling or unprepared to open up a particular service sector, they have the discretion to do so. Countries have made use of this flexibility provision by limiting their commitments in sensitive and heavily government regulated and monopoly type service sectors. This voluntary approach to the commitment process is an important feature to recognize as it has a bearing on many of the challenges posed by the GATS.

A second important feature of the commitment structure is that countries can specify in their schedules, the limitations and exceptions they wish to maintain on market access and national treatment. Limitations listed in the horizontal schedules typically include general laws and policies, which restrict the use of a mode of supply by foreign suppliers, independent of the sector concerned. Countries may also choose to inscribe additional limitations or qualifying conditions to their commitments. Under the market access obligation, a country cannot impose market access barriers that are more restrictive than those specified under its limitations in the market access commitments. There are six types of market access restrictions which, though prohibited in principle, can be applied if specified in the schedule. These include limitations on: the number of foreign service suppliers; the value of transactions or assets; the total quantity of services output; the number of natural persons who may be employed; the type of legal entity; and the extent of foreign capital participation. Typical conditions specified in the commitments on market access include foreign equity limits, requirements for licensing or approval, quantitative restrictions, and limits on the value of transactions. Similarly, under the national treatment obligation, a country cannot treat foreign service suppliers in a more discriminatory manner than that specified in its limitations under the national treatment

commitments. Typical limitations on national treatment include differential treatment of foreign service providers relative to domestic service providers in the form of subsidies, taxes, government procurement policies, and provision of various benefits.

A third feature of the commitment structure is that the market access and national treatment commitments are made for each of the four modes of supply. Thus, in all, there are eight commitments per subsector or activity in both the sectoral and the horizontal schedules. Limitations and conditions can be inscribed in the schedules for individual modes of supply. Table 1 below illustrates the typical format of the horizontal and sectoral schedules of commitments.

An entry of “none” in the above schedule means that a member binds himself to not having any measures which violate market access and national treatment for a specific sector and mode of supply. This is also termed as a “full commitment”. Unbound implies that no commitment is made for a particular mode of supply. This is also termed as “no commitment”. The rest of the entries, which include specification of some conditions and limitations, are known as “partial commitments”. This characterization of commitments as full, partial, and none is important for assessing the nature and extent of liberalization in various services. The commitment structure presented in Table 1 below clearly illustrates that countries have a lot of discretion in choosing the extent of liberalization as well as the modal distribution of their commitments, in addition to the aforementioned discretion in choosing which sectors they wish to commit in.

Thus, a striking feature of the GATS commitment structure is its voluntary and flexible nature. There is no compulsion on member countries to open up a particular sector or subsector/activity or a particular mode of supply if there are sensitivities and concerns involved about the potential impact. In this regard, the GATS commitment structure tries to strike a balance between commercial interests on one hand and regulatory concerns and public policy objectives on the other. Moreover, as noted earlier, there is also scope to limit the applicability of other general provisions such as MFN treatment and government procurement. However, notwithstanding this flexibility feature, there are several problems with the GATS commitment structure, which are worth noting. There is a problem of overlap between market access and

national treatment commitments. For instance, limitations on national treatment such as preferential treatment of domestic service suppliers via taxes or subsidies or government procurement policies also affect market access conditions for foreign service suppliers. Hence, this distinction between the two is not really clear in the case of many limitations and can dilute the value of commitments made in either. Another problem is that given the choice in selecting sectors for commitment, specific sectoral interests and modal preferences are likely to dominate the negotiating process. Hence, the outcome is likely to be biased towards certain sectors and modes of supply. In addition, the possibility of inscribing limitations in the horizontal schedule of commitments implies that the latter can undermine the sector-specific commitments made, and introduce ambiguities in interpretation.

#### *Sectoral and issue-based annexes and attachments*

The third important element of GATS is a series of annexes and attachments to the agreement. The annexes pertain to regulatory principles agreed upon in specific sectors and decisions on specific issues. These include Annexes on MFN exemptions, movement of natural persons, air transport services, financial services, maritime transport services, and basic telecommunications. The attachments consist of a series of Ministerial Declarations concerning the implementation of GATS. These include Decisions on: Institutional Arrangements; Dispute Settlement Procedures; Services Trade and the Environment; Movement of Natural Persons; and Professional services, among others. The thrust of these annexes and attachments is to outline procedural and implementation issues in these various areas and to establish a timeframe for future discussions on specific issues. Most are rather non-committal and general in wording and intent, again suggesting the importance of future discussions in shaping guidelines under the GATS. Overall, the GATS three-tier structure reflects the need to have: General principles applicable to all services to advance overall liberalization in services; National schedules to enable countries to proceed at their own pace in liberalizing services; and Sectoral agreements to ensure that trade liberalization in some sectors is supported by the

Table 1. Sample schedule of GATS Commitments

<i>Commitments</i>	<i>Mode of supply</i>	<i>Conditions and limitations on market access</i>	<i>Conditions and qualifications on national treatment</i>
Horizontal commitments (i.e., across all sectors)	Cross-border supply	“None”	e.g. “None” other than tax measures that result in differences in treatment with respect to R&D services.
	Consumption abroad	“None”	“Unbound” for subsidies, tax incentives, and tax credits
	Commercial presence	e.g. “Maximum foreign equity stake of 49 per cent”	e.g. “Unbound” for subsidies. Approval required for equity stake over 25 per cent.
	Temporary entry of natural persons	e.g. “Unbound” except for the following: Intra-corporate transferees of executives and senior managers; specialist personnel subject to economic needs test for stays longer than one year; service sellers for upto three months	e.g. “Unbound” except for categories of natural persons referred to in the market access column.
Specific commitment	Cross-border supply	e.g. “Commercial presence is required”	e.g. “Unbound”
e.g. Architectural services	Consumption abroad	e.g. “None”	e.g. “None”
	Commercial presence	e.g. “25 per cent of senior management should be nationals	e.g. “Unbound”
	Temporary entry of natural persons	e.g. “Unbound, except as indicated in Horizontal Commitments	e.g. “Unbound, except as indicated in Horizontal Commitments”

*Source:* Hoekman (1995).

establishment of compatible regulatory regimes or modification of existing regimes.

The GATS architecture is thus a mixture of a positive and a negative list approach to liberalization, whereby scheduled sectors are positively listed while the limitations to the commitments made in these scheduled sectors are negatively listed. Overall, the GATS is a much less “general” and a much weaker agreement than the GATT. Hence, it presents both opportunities as well as challenges to developing countries in future negotiations.

## Assessing the GATS Commitments

It is important to discuss the extent and nature of liberalization commitments made in the last round of

negotiations to point out the main achievements and shortcomings of that round and to highlight common concerns and interests. In the Uruguay Round, a total of 96 countries made commitments in services. However, a close analysis of these commitment schedules indicates that most countries have committed to very limited liberalization. For the most part, they have only bound the status quo or in some cases even backtracked on the status quo. Sectoral coverage of the commitments has also been poor. Hoekman estimates that high-income countries (HICs) have scheduled 45 per cent of their service sectors and low and middle-income countries (LMICs) have scheduled only 12 per cent of service sectors. Even when commitments have been made, the coverage of commitments in terms of liberalizing obligations is very low with many limitations on market

access and national treatment. Only an estimated 25 per cent of all possible services have been scheduled without exceptions by developed countries, while this coverage is as low as 7 per cent in the case of developing countries.<sup>10</sup> Table 2 summarizes the country-wise structure of commitments. As Table 2 indicates, of the 155 service sector activities which could be scheduled, one-third of all GATS members have scheduled 20 services or less, another one-third have scheduled between 21-80 services, and the rest have scheduled up to 145 sectors.

There is also a lot of variation in the commitments across sectors. In service sectors such as tourism, many countries have scheduled commitments and made quite liberal offers. In other services, agreement has been possible only after extended negotiations and moderate offers have been made, albeit with derogations and conditions. Yet in other service sectors, negotiations have failed to make any progress at all as fundamental differences in views and perceptions across member countries have not been resolved. Overall, the commitments are biased towards sectors which are relatively open while government monopoly and social service type sectors are either not scheduled by most countries, or when scheduled, have unbound or partial commitments for most of the modes.

Table 3 illustrates the low sectoral coverage of commitments and the uneven distribution of these commitments across services and across developed and developing countries.

It is evident from these figures that certain services have been subject to significantly more liberalization than others. The one sector where there is uniformly high coverage is in hotels/restaurant, i.e. tourism and related services, with 70 per cent of the sector being subject to commitments across both developed and developing countries. Sectors which have been subject to the least commitments (less than 40 per cent) across both groups of countries include a variety of public services such as health, education, transport, postal, and basic telecom services. This indicates that commitments have been forthcoming in the most open sectors and least forthcoming in public goods type of sectors where there are important social and economic considerations and where regulatory intervention and government monopoly are prevalent, both in developed as well as developing

countries. Sectors where there is wide variation in developed and developing country commitments are typically those falling under infrastructure services and selected business services. In the latter sectors, commercial lobbies in the developed countries have pushed for greater market access in developing country markets. However, in the developing countries, these tend to be services where liberalization is politically sensitive and difficult and involves major domestic regulatory reforms and measures. Moreover, countries have also taken MFN exemptions in many of the sensitive sectors, including financial services, basic telecommunication services, maritime, air transport, and audiovisual services, further limiting their commitments. Thus the sectoral distribution of the commitments closely reflects the regulatory characteristics of individual services, the political economy constraints in scheduling them, and the commercial interests and advantages or disadvantages of different countries.

Chart 1 shows the structure of commitments by sector. Indicators of the incidence of market access and national treatment restrictions calculated by some experts clearly highlight the fact that most offers are unbound or partial in nature, particularly in the case of developing countries, and that many countries have scheduled few sectors.<sup>11</sup> In fact, many developing countries have scheduled only a handful of sectors and in addition have inscribed many limitations or left entries unbound in these schedules. Such factors have greatly reduced the extent and significance of liberalization under the GATS.

There is also a major asymmetry in the distribution of both horizontal and specific commitments across the different modes of supply. Commitments are particularly limited in modes where restrictions are prevalent. They are clearly biased towards the modes, which are less contentious, and politically less sensitive. Some 50 per cent of unrestricted commitments are concentrated in consumption abroad, about 30 per cent in cross-border supply, 20 per cent in commercial presence, and 0 per cent in movement of natural persons.<sup>12</sup> The absence of bound commitments in mode 4 clearly reflects the sensitive nature of this mode of supply since it impinges upon domestic immigration and labour market regulations.

Table 2. Structure of Commitments by Members

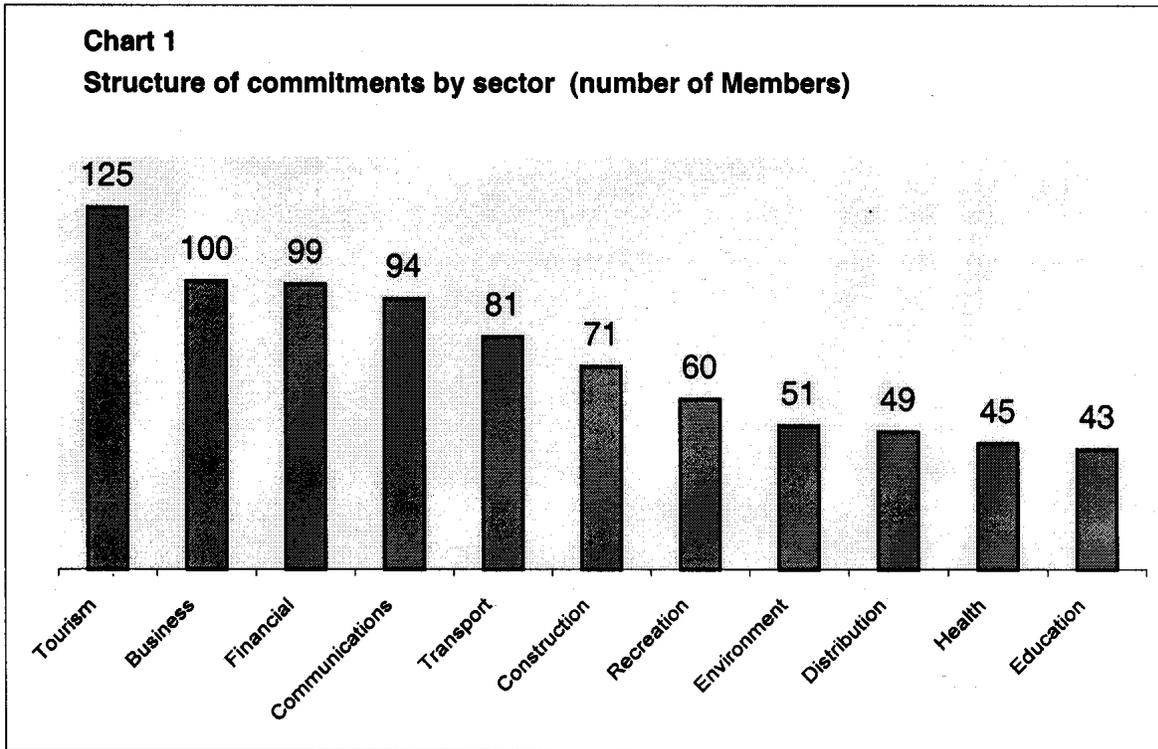
<i>Sectors committed</i>	<i>Number of members</i>	<i>WTO members</i>
20 or less	44	Angola, Bahrain, Barbados, Benin, Botswana, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Republic of Congo, Costa Rica, Cyprus, Fiji, Gabon, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mozambique, Myanmar, Namibia, Niger, Paraguay, Rwanda, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Solomon Islands, Sri Lanka, Suriname, Swaziland, Tanzania, Togo, Uganda, Zambia
21-40	23	Bangladesh, Bolivia, Brunei Darussalam, Burundi, Cote D'Ivoire, Djibouti, Dominica, El Salvador, Ghana, Grenada, Guatemala, Kenya, Macao, Mongolia, Nigeria, Papua New Guinea, Peru, Qatar, Senegal, Sierra Leone, Tunisia, Uruguay, Zimbabwe
41-60	10	Antigua and Barbuda, Belize, Cuba, India, Morocco, Netherlands Antilles, Nicaragua, Pakistan, Trinidad and Tobago, UAE
61-80	12	Brazil, Ecuador, Egypt, Hong Kong (China), Israel, Jamaica, Kuwait, Leichtenstein, Poland, Romania, Singapore, Venezuela
81-100	12	Argentina, Chile Czech Republic, Dominican Republic, Indonesia, Lesotho, New Zealand, Panama, Slovak Republic, Slovenia, South Africa, Turkey
101-120	8	Australia, Bulgaria, Canada, Gambia, Latvia, Philippines, Switzerland, Thailand
121 and more	25	Colombia, EC (15), Hungary, Iceland, Japan, Korea, Kyrgyz Republic, Malaysia, Mexico, Norway, United States

Source: Adlung, R. (1999) Table 1, pp.3-4.

Chart 2 shows the structure of commitments by mode. A close analysis of the schedules further indicates that the commitments tend to be more restrictive for the modes, which are most relevant in a particular sector. For instance, in sectors such as basic telecom and financial services, most commitments are subject to foreign equity ceilings and discriminatory treatment of foreign and domestic suppliers. In professional services sectors, limitations such as quantitative barriers to entry, licensing restrictions, nationality and residency conditions, and establishment restrictions are common. Since commercial presence and labour mobility are the main modes of trade in such services, these limitations greatly reduce the significance of the commitments made in the last round.

The limitations also tend to be common across modes. Commitments in cross border supply are unbound in several sectors mostly for reasons of technical unfeasibility, reflecting the uncertainty about electronic delivery of many services and the scope for e-commerce at the time of the Uruguay Round negotiations. Commitments in consumption abroad are mostly unrestricted, and where limited, are mostly subject to

mobility-related foreign exchange, immigration, and other regulatory restrictions imposed on consumers. Commitments in commercial presence are mostly subject to foreign equity restrictions, various kinds of needs-based tests, and regulations which discriminate between domestic and foreign service suppliers following entry into the host country's market. Finally, specific commitments on movement of natural persons are virtually non-existent. Almost all countries have refrained from making sectoral commitments in this mode, relying instead on horizontal commitments. Moreover, even these horizontal commitments cover only a small subset of service provider categories, usually linked to commercial presence. They are also subject to limitations such as quantitative restrictions on entry and other immigration regulations, licensing and qualification requirements, citizenship and residency conditions, needs-based tests, and discriminatory treatment with respect to taxes and subsidies, among others. Mode 4 commitments are particularly restrictive in sectors where developing countries have a comparative advantage, particularly in



Source: WTO document S/C/W/95, 9 February 1999, p.12.

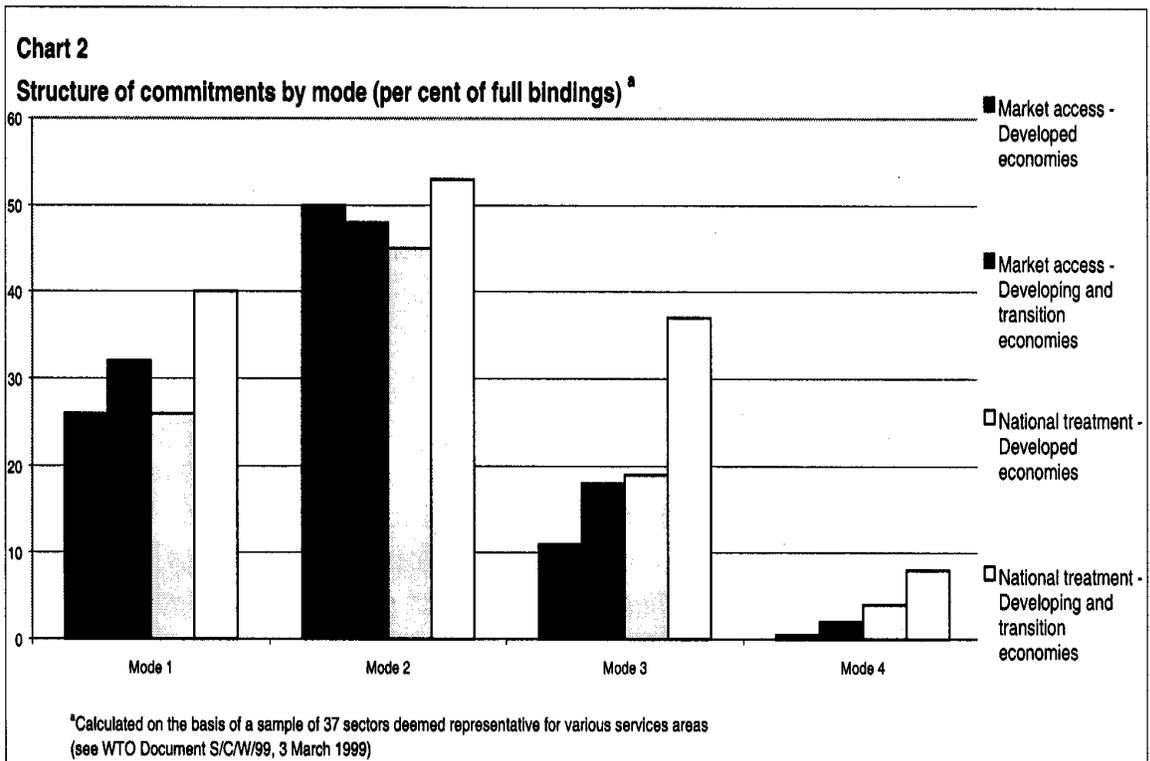


Table 3. Community by Sectors

<i>Sector (No. of sub-sectors)</i>	<i>Number of GATS Sectors * 4 modes of Supply</i>	<i>Average Number of Commitments</i>		<i>Percentage of sector committed (%)</i>	
		<i>HIC</i>	<i>LMIC</i>	<i>HIC</i>	<i>LMIC</i>
Construction (5)	20	11.2	3.3	56.0	16.5
Motor Vehicle Repair (1)	4	1.8	0.3	45.0	7.5
Wholesale Trade (2)	8	4.6	0.5	57.5	6.3
Retail Trade (2)	8	4.4	0.8	55.0	10.0
Hotel/ Restaurants (1)	4	2.8	2.8	70.0	70.0
Land Transport (10)	40	9.4	2.3	23.5	5.8
Water Transport (12)	48	4.4	3.0	9.2	6.3
Air Transport (5)	20	3.7	1.5	18.5	7.5
Auxiliary Transport (5)	20	5.1	1.3	25.5	6.5
Postal Services (1)	4	1.3	0.6	32.5	15.0
Basic Telecom (7)	28	1.5	1.3	5.4	4.6
Value Added Telecom (7)	28	18.7	5.0	66.8	7.8
Financial Services (15)	60	31.3	12.4	52.2	20.6
Real Estate Services (2)	8	3.5	0.3	43.8	3.8
Rental Services (5)	20	9.5	1.3	47.5	6.5
Computer Related Services (5)	20	15.5	4.2	77.5	21.0
R&D Services (3)	12	4.1	1.0	34.2	0.3
Business Services (27)	108	56.5	12.2	47.9	11.3
Refuse Disposal (4)	16	8.8	1.0	55.0	6.3
Education (5)	20	4.7	1.3	23.5	6.5
Health and Social (6)	24	5.0	1.9	20.2	7.9
Recreation/Culture (12)	48	13.3	4.6	27.9	9.6

*Source:* Hoekman, B. (1995), Table 8, p. 345.

high and low skill intensive sectors, greatly limiting the significance of the liberalization realized so far for developing countries.

Overall, as already noted, the first round of services negotiations has not gone beyond establishing the basic framework of rules and disciplines. The commitments made so far are neither deep nor extensive. For most developing countries and even for developed countries, there is a wedge between the existing degree of openness to services trade and investment and the level of binding made by countries. Clear divisions are also evident across developed and developing countries, with the latter

making far fewer commitments across almost all services.

The limited nature of liberalization under the GATS thus far raises several questions. Why have developing countries made far fewer commitments than developed countries? Is it merely that they do not perceive themselves as having a comparative advantage in services or does it reflect a deeper concern about the implications of opening up services? Or does it reflect ambiguities about the future reach and scope of the GATS and thus reluctance on their part to table certain services for negotiation? Why is it that services like health, education, and environment have had the least amount of

commitments? Is it simply due to the fact that there may be increased difficulties for governments in meeting their obligation for universal provision of services or does it again reflect a deeper concern about the effects of liberalizing these areas on aspects other than efficiency, such as equity? These are questions, which deserve serious consideration, especially since services negotiations have restarted from February 2000 and because the success of these discussions in furthering liberalization will greatly depend on the answers to the above questions. In order to understand these questions and to arrive at objective answers, it is first important to know the root concerns from which they stem. The following section outlines several of the criticisms and concerns that have been voiced about the GATS.

## Concerns about the GATS

There are several criticisms that have been leveled at the GATS, mostly by non-governmental organizations and consumer and public interest groups. These concerns are highly interrelated and mostly center around issues of national autonomy and sovereignty, the likely adverse effects of liberalizing services, and the tradeoff between commercial interests and efficiency type considerations on one hand and social, developmental, and equity goals on the other. Some of the main criticisms are highlighted below. These are by no means exhaustive but are illustrative of the key issues and concerns raised about the GATS.

### *“Corporate takeover” of services*

The most commonly voiced criticism is that the GATS would force countries to open up their services to trade and investment due to pressures from lobbies in developed countries. This would result in a “corporate takeover” of their services by foreign multinationals and forced privatization of their service sector. This concern is greatest in the case of public services such as environmental, water supply, health care, transport, education, and various municipal services where governments have important public policy objectives such as equity, universal service obligations, and consumer protection. There is apprehension about the potential consequences of opening up services, especially public services, to foreign competition, in terms of the

impact on the availability, quality, and costs of such services and on the realization of domestic policy objectives.

### *Extensive coverage of domestic regulations*

A second related concern pertains to the wide reach of the GATS in terms of its coverage of domestic regulations and government measures. For instance, the GATS covers regulations as wide ranging as domestic laws, guidelines, unwritten practices, subsidies and grants, licensing standards and qualifications, and economic needs tests. Hence, in principle, no governmental measure, including measures for the purpose of environmental and consumer protection or universal service obligation is beyond the reach of the GATS. Moreover, the GATS applies to governments at all levels, including central, state, provincial, local, and municipal levels. Such a broad scope raises questions about the extent to which governments at all levels would be able to retain sovereignty over domestic regulations under the GATS and if so, under what conditions. It is feared that progressive liberalization under the GATS would undermine the authority of governments at various levels in setting and pursuing their national interests and public policy goals and force them to deregulate their service sectors.

In this context, there is also some concern about recent proposals to introduce “necessity tests” under which governments would be required to show that laws and regulations in place are not more burdensome than required to address stated public policy objectives, as per Article VI on domestic regulation. The apprehension is that such a legal requirement with the burden of proof falling on the government would affect the latter’s ability to keep or create environmental, health, consumer protection, and public interest related regulations, again undermining national sovereignty and pursuit of non economic objectives.

Some concerns have also been expressed about the development of disciplines in the accountancy sector by the Working Party on Professional Services. There is concern that the extension of these disciplines to other professional services such as health and legal services would undermine governments’ ability to regulate for objectives such as consumer protection, standards, ethical

conduct, and professional integrity.

### ***Extensive coverage of services and ambiguities in scope***

Another issue of concern pertains to the range of services covered by the GATS and certain ambiguities involved in interpreting the scope of this coverage. Article I of the GATS states that “services provided in the exercise of governmental authority” are excluded from the agreement. The latter is further defined as those services, which are neither provided on a commercial basis nor in competition with other suppliers. The main problem lies in the interpretation of this carve-out clause. Critics claim that this exclusion has limited value as there is co-existence of government and private suppliers in many services and that the agreement does not clarify the conditions which would make this coexistence “non-commercial” and “not in competition”. Are only those services, which are provided by completely non-commercial entities and by absolute public monopolies, excluded from the reach of the GATS? How narrowly are public services defined? How is competitive presence in government provided services to be interpreted under the GATS? Such questions are highly relevant to sectors such as energy, water, health, and education services where government involvement is extensive.

### ***Alternative to Multilateral Agreement on Investment***

Critics have also voiced concerns that the GATS is an indirect way of introducing the multilateral agreement on investment (which was rejected), since one of the modes of supply is commercial presence. Commitments in this mode would mean opening up services to foreign investment. So, the GATS would be a means for commercial interests in the developed countries to access developing country service markets in areas such as insurance, banking, and telecommunications through foreign direct investment.

### ***Curbs on public subsidies, government procurement, and delivery systems***

Another concern that has been raised is the implication of GATS for public funding and use of

mechanisms such as cross-subsidization, government procurement, and non-market systems to address various non-economic objectives. There is apprehension that curbs imposed by the GATS on such practices would have adverse effects on costs, availability, and equitable distribution of services.

### ***Asymmetric liberalization***

There is a strong feeling among critics that the GATS negotiations would serve the interests of the industry lobbies in developed countries. Given the apparent imbalance in supply capacity between developed and developing countries in the service sector, the thrust of liberalization and market opening measures is likely to be on the developing countries, thereby serving the export interests of the developed countries. In addition, given the modalities of the commitment process, there is concern that the modal preferences of developing countries are not likely to be reflected in the commitments made. Critics note that the present asymmetry and bias in market access commitments towards capital mobility as opposed to labour mobility (mode 3 as opposed to mode 4) works in the interests of developed rather than developing countries. In their view, it reflects a basic imbalance in negotiating position and lobbying power between the two sides.

Various other aspects of the GATS have also been criticized. These include ambiguities in classification of services, problems with nomenclature, overlap in market access and national treatment commitments, lack of uniformity in the use of and criteria for limitations, and problems of non-transparency and discretionary scope in the interpretation of the commitment schedules. Some of these issues were also discussed in the preceding sections when assessing the GATS architecture and nature of commitments realized thus far.

## **Assessing the validity of concerns about the GATS**

An objective assessment of the GATS requires one to address a central question- to what extent are the above concerns justified and valid and, if so, in what way and with what kinds of implications for economic and social policies. Will the GATS really result in privatization and deregulation of services and represent only the interests

of the developed world? Will it altogether undermine the sovereignty of national and local governments in choosing domestic regulations and addressing their own interests and concerns and bring almost all services and almost all domestic measures under its ambit? Will it undermine the pursuit of non-economic objectives? A closer look at these criticisms against the background of the GATS architecture and commitment structure indicates that there are two groups into which these concerns can be classified. The first consists of concerns, which are really not well founded and are based on misconceptions/insufficient understanding of the GATS framework. The second consists of concerns that are genuine and merit further analysis and call for actions to modify the existing GATS framework and provisions to further the realization of both equity and efficiency objectives in the service sector.

### **Misapprehensions about GATS**

Perhaps the single biggest misapprehension about the GATS is that it will force developing countries to open up all service sectors to foreign competition and compel them to privatize and deregulate services. The World Development Movement has said, for instance, that the GATS aims “to remove any restrictions and international governmental regulations in the area of services delivery that are considered barriers to trade.”<sup>13</sup>

However, such an outcome is unlikely given the voluntary and flexible nature of the commitment process, the non-specificity of most of the GATS provisions, and the discretion of imposing limitations in the commitment schedules, discussed earlier. There is no obligation for any country to schedule a sector which it is not prepared to open to foreign competition or to guarantee domestic competition. Countries have the right to retain public or private monopoly in any service sector. Moreover, even if a country chooses to schedule a sector, it can be selective about the activities and sub-sectors it commits. Even for these chosen activities/sub-sectors it can be selective about the modes it wishes to commit on, the form in which it makes these commitments, and the kinds of limitations/conditions to which it subjects these commitments, along with retaining the discretion of taking MFN exemptions.

In short, there is no rule on how extensive national commitment schedules must be. The latter is evident from

the wide variation in coverage of the national schedules, reflecting different national policy objectives and levels of economic development. None of the GATS provisions are applicable in the non-scheduled sectors. Also, conditions can be imposed on foreign service suppliers when making commitments to address domestic concerns. These include conditions to protect the position of domestic private and/or public suppliers, and conditions such as technology transfer and local employment creation to benefit the domestic market. Thus, governments have a lot of discretion in the scheduling process based on their assessment of the potential costs and benefits of granting more liberal market access and national treatment in any sector. Moreover, countries can also renegotiate their commitments by withdrawing or modifying them. Exceptions can also be invoked under Article XIV of the GATS to protect public interests and for maintaining moral or public order. A temporary waiver can also be obtained for balance of payments reasons. Under the Emergency Safeguard Mechanism, commitments can be suspended if there is a threat to domestic industry.

In the same vein, it is incorrect to equate the GATS with the multilateral agreement on investment simply because commercial presence is included as one of the 4 modes of supply. Countries are free to leave this mode unbound in their schedules or to limit any commitments made under this mode via foreign equity restrictions, stipulations on the type of legal entity, quantitative limits, and discriminatory conditions concerning employment, subsidies, and taxes. There is no automatic right of establishment under the GATS. Thus, once again, the flexible nature of the commitment structure and the specificity of the provisions only to sectors that are scheduled imply that governments need not fear being overtaken by foreign investors in the domestic market. They have the discretion to decide whether or not to open up to foreign direct investment, if so, in which areas, to what extent, and under what conditions. A commitment on commercial presence only implies predictability of the market access and national treatment conditions to foreign investors, at whatever level this commitment is bound.

An important point to note in this context is that the existing GATS commitments mostly bind the status quo or less. In fact, unilaterally, many developing country governments have done far more to liberalize conditions

of competition in their service sectors, especially in the case of commercial presence, given their desire to upgrade, modernize, and improve capacity in various services. For instance, countries such as India have bound 51 per cent foreign equity under commercial presence in the telecommunications sector under the GATS although in reality up to 74 per cent foreign equity is permitted. Similarly, India permits up to 100 per cent foreign equity in the computer and related services sector although it has left its commercial presence commitment unbound in this sector. Thus, there is no obligation on governments to use the GATS to bind in their existing regulatory regime and policies. Commitments may remain restrictive, although autonomously, governments may pursue their own pace of regulatory reform and service sector liberalization.

It is also incorrect to say that the GATS prohibits the use of subsidies and government procurement to address domestic objectives and priorities. As of now, there are no specific rules on subsidies under the GATS. Article XV on subsidies stops at recognizing the potential trade distorting effects of subsidies and calls for negotiations on the use of such measures. Similarly, Article XIII on government procurement is quite a weak and general type of provision and does not prohibit the use of such policies. In fact, disciplines on government procurement are currently governed by the Government Procurement Agreement, a plurilateral agreement that applies only to its signatories. It is also important to note that services provided in the exercise of governmental authority, where subsidy and government procurement type practices are likely to be most common, are outside the scope of the GATS. Finally, there is always the scope to put national treatment limitations in the commitment schedules to allow for the continuation of such policies.

It must be pointed out, however, that disciplines on subsidies and government procurement will be taken up in future discussions. Hence, the future implications of the GATS for the use of such practices are yet to be determined (an issue discussed at length later in this paper). But as of now, there is no threat to sovereignty in these areas. Governments are free to provide subsidies in areas such as public health and education on a discriminatory basis and are not obliged to open up public procurement markets at any level.

There has also been some criticism about the work on accountancy standards by the Working Party on Professional Services. The concern here is that the rules

and standards developed for the accountancy profession may be extended to other professional services, which could undermine the right of member countries in setting their own standards, professional codes of conduct, and regulatory objectives in professional services. However, the draft disciplines developed for the accountancy sector do not focus on the substantive content of qualification and licensing requirements but rather seek to ensure transparent procedures in this regard. This would in fact benefit developing countries with an interest in exporting professional services since currently, many of the procedural aspects of qualification and licensing requirements are highly non-transparent and discretionary in nature, effectively limiting market access to developed country markets by service providers in the developing countries.

The fears about GATS being a one-sided agreement representing only the export interests of the developed countries may be overdone. While it is true that there would be pressure on developing countries to open up certain service sectors to foreign investment and technology, developing country interests in the service sector are not solely limited to imports. There are several service sectors where developing countries have comparative advantage and considerable export potential interest, and where increasingly, there is growing import need on the part of developed countries. For instance, due to supply shortages in developed countries in many labour-based services such as software, health, and engineering, there is growing interest in attracting foreign service providers from developing countries to fill these supply gaps. This provides an opportunity to some developing countries such as India, the Philippines, Brazil, and Mexico, which are in a position to meet these supply gaps, to negotiate across sectors and modes and take advantage of the agreement. These developing countries can offer to open up in areas where they have import needs in return for greater market access in areas where they have export interests. Thus, the negotiating outcome need not be unbalanced as long as countries recognize their own export potential in services and negotiate accordingly. Of course, the smaller and least developed countries would have little to gain on the export side from the agreement, and here the argument of an unbalanced and biased outcome may be valid, although even here, the latter countries need not schedule any commitments if they do not wish to.

Overall, the criticisms about governments losing their autonomy under the GATS are exaggerated, at least in the way they are normally presented. The preamble to the GATS states that members have the right to “regulate and to introduce new regulations on the supply of services within their territories in order to meet their national policy objectives.” Countries only have to agree to not make their regulatory regime more restrictive in future. The decisions of market access and national treatment are sovereign ones and the prerogative of individual countries. There are no compromises required to regulatory standards, especially where protection of public concerns and universal access conditions are in question. Given the generally flexible structure of the GATS, there is sufficient scope for governments to retain their sovereignty over domestic regulation and to determine the pace and extent of liberalization in the service sector.

### ***Genuine concerns about the GATS***

Notwithstanding such misplaced and at times exaggerated criticisms of the GATS, there are several issues, which raise cause for genuine concern. The main basis for these concerns is the weak nature of the current GATS text. The latter not only creates ambiguities in the interpretation of key GATS provisions, but may also result in increased political, commercial, and other pressures to adopt specific provisions that put efficiency concerns above other objectives.

The root of the problem is the lack of clarity about the scope of the GATS. In particular, there is ambiguity about how to interpret the carve-out clause for governmental services, as was noted earlier. What do the exclusion clause for publicly provided services and the conditions of “non-commercial” and “not in competition with other suppliers” mean? These conditions are difficult to interpret. When do public services fall within the scope of the GATS disciplines and when do they not? For instance, many government services include fees. If one interprets the exclusion clause narrowly, then this would classify such government services as being provided on a commercial basis and thus falling within the scope of the GATS and the negotiation of commitments under Articles XVI and XVII. Under a broader interpretation of the exclusion clause, such government services could be deemed as being non-commercial, subject to criteria such

as their being provided for reasons other than profit, for containing some element of subsidization or cross-subsidization within the sector, and for meeting non-economic objectives. Such criteria for distinguishing between commercial and non-commercial conditions have not been laid out in the GATS and create uncertainty about how the agreement would affect the autonomy of governments at various levels in delivering such services.

A second ambiguity regarding the exclusion clause under the GATS pertains to the co-existence of public and private service suppliers. Institutional arrangements vary from full government ownership to full market orientation. In between, there are many arrangements where both private and public suppliers coexist. Under the GATS carve-out clause, the two are not to be in competition with one another if the service is to be deemed as being provided in the exercise of governmental authority. This is again a difficult condition to interpret since most services today involve some public-private mix in terms of their delivery, ownership, or organization. For instance, when the government contracts out services to local private entities, and private firms receive payment from the government rather than from individual users of these services, then how should one interpret such services under the GATS? Are these being supplied in the exercise of governmental authority or are these to be treated as private services which are procured by the government? Again, it all depends on how narrowly or broadly public services are defined under the GATS. In the narrowest sense, only absolute public monopolies would be excluded. In a broader sense, even such an arrangement could be excluded. Since few if any government services are exclusive monopolies, the main issue is how to interpret competitive presence of government provided services.

This problem with interpreting the carve-out clause under Article I:3 of the GATS affects sectors such as health, education, and environmental services. There is a lot of contracting out of service operations like sewage and refuse disposal by local, regional, and central governments in many countries. Would such core environmental services fit within the scope of the exclusion clause or would they be subject to GATS disciplines? Similarly, when medical and hospital services are provided directly by the government and free of charge, the exclusion is unambiguous. However, how would one interpret health services which the government

provides on a fee basis and where there are private practitioners and hospitals to provide the same treatment? How is the co-existence of public and private hospitals and the competitive relationship between the two to be addressed under the GATS? Do public hospitals fall under Article I:3 and under what conditions would they be excluded? In the case of education services, would higher education services in fields such as engineering and medicine which are provided by developing country governments at subsidized rates alongside private engineering and medical training institutes qualify under the GATS exclusion clause for governmental services? Even private education institutions may be highly subsidized and may provide services, which are like or close substitutes to those offered by the public sector. Similarly, the legal status of private and public partnerships and cooperative arrangements under the GATS is unclear. How would build-operate-and transfer type arrangements between the public and private sector, which are becoming increasingly used in many service sectors, be deemed under the GATS?

The main issue to be resolved in all such cases is the separation of the public and private domain under the GATS and the establishment of clear criteria for this purpose. Would the mere co-existence of public and private suppliers constitute as competition? Would the presence of some form of commercial orientation by the public supplier, such as charging of fees be sufficient to bring a service into the purview of GATS disciplines or would this inclusion be subject to additional criteria and conditions? What form should these criteria and conditions take? For instance, these additional criteria could include equivalence and likeness of the private and public services in terms of the fees charged, quality, standards, and characteristics of the service provided. Public services in health care may be provided on a fee basis but they could be deemed as not competing with private health care services due to differences in rates charged or differences in waiting time, infrastructure, and facilities available, as is often the case. The lack of specificity and detail in the current GATS provision regarding the agreement's scope and coverage, is a major drawback. Thus, fears that national sovereignty and autonomy over government policies in social service sectors would be undermined, may be justified to the extent that the GATS carve-out provision lacks clarity, although this threat will always be limited by the

flexibility involved in scheduling and in the commitment process.

One must recognize, however, that this very ambiguity and looseness of the GATS terminology in Article I:3 also gives governments room for discretion. The establishment of very elaborate criteria to clarify the meaning of Article I:3 could itself create problems by pinning down the government's role in certain services with too much precision, and reducing the scope for discretionary use of government measures and flexible institutional arrangements for delivery and organization of various services. Thus, a balance is required between improving clarity and maintaining room for discretion. As of now, the carve-out clause does not exempt private health services which exist alongside the public sector and the public provision of such services is unaffected. There are no proposals as yet to change the carve-out provision of public services under the agreement or to interpret it very restrictively. The existence of monopoly or mixed regimes is compatible with the GATS. But a lot will depend on the course of future discussions in this regard.

A related issue concerns the implication of the GATS for provision of public subsidies and use of government procurement policies. Although the current GATS provisions in these areas are very general and do not prohibit either measure, also allowing such measures to be inscribed as limitations in the commitment schedules (as noted earlier), the interpretation of the carve-out provision could affect the use of these policies in future. For instance, in the case where the government pays private contractors for providing waste disposal and sanitation services, would the latter be subject to the GATS government procurement disciplines, whatever shape they may take in future? Governments may need to guard against this possibility in their current commitment schedules to retain the right to use such policies, especially in services where government procurement plays an important role in addressing equity and distribution objectives. Likewise, government subsidies are provided in education, health, water supply, transport, and various social and infrastructure services, at different levels. Again, the interpretation of what constitute services in the exercise of governmental authority could affect the provision of such subsidies, depending again on the course of future discussions on subsidies and how disciplines evolve in this area. Governments again need to

be aware of this possibility and accordingly frame their commitments, inscribing national treatment limitations to retain the right to use such policies where poverty alleviation, equity, and other social and developmental goals would warrant the use of subsidies. Hence, to some extent the fears about loss of government autonomy over such domestic measures are valid given uncertainty about the GATS scope and uncertainty about the nature of future GATS guidelines to regulate such measures. So, if stronger disciplines were indeed evolved for subsidies and government procurement, there would be a need to clarify their application to government services.

There is also ambiguity about the interpretation of Article VI on domestic regulation. Under this Article, countries have a specific obligation to regulate those services where they have filed a commitment, in a reasonable, objective, and impartial manner. Article VI also requires countries to establish more transparent domestic regulations and calls for the development of any necessary new GATS disciplines to ensure that measures related to licensing and qualification requirements, procedures, and technical standards do not constitute unnecessary trade barriers.

There are several ambiguities in the provision as it currently stands. The meaning of the terms “impartial”, “objective”, and “reasonable” are not clarified anywhere in the agreement. Moreover, it is not clear what constitute “unnecessary trade barriers”. In a bid to strengthen the application of this provision, a necessity test has been proposed, under which governments would be able to pursue their own regulatory objectives and define the appropriate level of health, environmental, consumer, and other protection, subject to fulfilling two conditions. They would have to demonstrate that the regulation in place is nondiscriminatory-unless a national treatment limitation has been filed for that measure in the commitment schedules. They would also have to show that there is no less commercially restrictive measure possible to attain the stated public policy objective and that the regulation is not more burdensome than required for the stated purpose.

There are several concerns, which arise in this context. Firstly, to what extent will governments retain their autonomy to choose regulatory objectives, given the legal requirement to demonstrate that the measure is not unnecessarily restrictive, and given the lack of clarity in the key terms noted above? Secondly, what criteria would

be used to determine what is or is not a valid objective? Thirdly, would a necessity test unduly restrict the choice of regulatory tools available to governments and compromise regulatory capacity even when the objective is valid? Also, how would such a test be administered, and on what criteria? In this regard, the EU has suggested the concept of “proportionality to necessity test” whereby the regulatory measure would not be seen as more trade restrictive than needed if it is not deemed disproportionate to the objective being pursued. However, once again, what criteria would be used to determine what is or is not proportionate to the objective? Given such ambiguity and discretionary scope in interpreting key terms and conditions under Article VI, and given the fact that guidelines for the necessity test are not yet established, future discussions will be important in shaping the extent and nature of autonomy governments retain over domestic regulatory objectives and tools. Thus, concerns in this regard are justified. How well the provision on domestic regulation would enable governments to balance public interests and commercial considerations is not clear and will depend on future negotiations on services. However, one must note once again that the flexibility involved in the commitment structure, discussed earlier, would limit threats to autonomy arising from such uncertainties about future outcomes, provided governments are well informed about their own interests and accordingly schedule sectors and file commitments with the required discretion.

There is also reason to believe that the GATS will not address the export interests of many developing countries in one important area, i.e. cross-border mobility of labour or mode 4. In the schedules so far, this is the mode on which countries have made the most restrictive commitments. There are virtually no sector-specific commitments in this mode and the horizontal commitments on mode 4 are highly biased towards higher level service providers such as executives, managers, and intracorporate transferees, whose movement are usually linked to commercial presence. There are almost no sectoral or horizontal commitments on service providers in an individual capacity or on a contractual basis, which is where developing country export interests would lie. Moreover, even the limited commitments that have been made in this mode are subject to numerous market access and national treatment conditions, including: quantitative restrictions on entry; specification of the duration, nature,

and terms of employment; economic needs, local needs and other tests to determine grounds for entry; licensing, certification, and other qualification requirements; and discrimination on nationality and residency grounds. Moreover, the limitations are often vaguely worded and unclear in terms of the criteria for their application. There is also considerable asymmetry in the current commitments on labour mobility compared to those on capital mobility, with far more liberal commitments being made by developed and developing countries on foreign equity participation. Such asymmetry in mode-wise commitments is one of the reasons why many developing countries do not see the GATS as helping them to tap their export potential in labour-based services and why the GATS has been perceived as furthering only the interests of the developed countries.

## Implications of liberalizing social services

The preceding discussion indicates that given the incipient nature of the agreement and the standstill nature of the commitments thus far under it, much will depend on future discussions. Hence, developing country governments need to be well prepared to address any important issues in the ongoing round as well as future discussions on services, and to shape the agreement's provisions and any modifications to its structure, in line with their own interests and concerns. It is thus important for them to understand the potential costs and benefits of liberalizing services trade and investment, especially in social sectors like health and education, in view of the progressive liberalization that is likely to result in services. Such an understanding would not only enable developing country governments to negotiate better under the GATS but also to undertake necessary domestic measures to counter the potential adverse consequences of liberalization. It is important to note that such an understanding of the costs and benefits of liberalizing social services and the tradeoffs involved, although discussed here mainly from the perspective of developing countries, is also relevant to many developed countries which give social goals a high priority.

The following discussion highlights the likely benefits and adverse effects of liberalization in health, education, and water supply services as illustrative of the

kinds of issues involved in general for liberalization of social services. Three important points emerge from this discussion. The first is that the key tension concerning liberalization of social services is between efficiency and equity, i.e. whether the efficiency gains arising from liberalization are at the cost of equity and other non-economic goals. The second point is that the implications of liberalization in the service sector are highly context-specific. They are shaped by the existing policies, the regulatory environment, and the supporting infrastructure in a particular service sector or in related sectors. Hence, the cost-benefit outcome is rooted in domestic structural and policy-related conditions. One needs to go beyond the question of whether liberalization under the GATS will be beneficial or harmful and ask whether this liberalization is likely to aggravate the structural and other shortcomings and distortions that are present in developing country service sectors. The third important point highlighted by the discussion is the need for social impact assessment of trade liberalization and more generally of economic policies, and the importance of having an integrated approach to formulating and implementing economic and social policies.<sup>14</sup>

### *Liberalizing health services*<sup>15</sup>

Health services is one of the sectors which has received the fewest market access and national treatment commitments. Less than 40 per cent of members have committed on health services. This is mainly due to the high degree of government involvement in this area and concerns about compromising basic quality and social objectives if the sector were opened up. However, it is also increasingly being recognized by many developing countries that there are potential gains from opening up health services and that they can also be important exporters of health services. Thus, the question is how to take advantage of trade and investment liberalization in health services while also balancing competing concerns.

Taking the GATS mode-wise approach to understanding trade in health services, one finds that liberalization under each mode has associated benefits and problems. Moreover, there are problems associated with both import liberalization and export promotion in this sector. For instance, *cross-border exports of health services* through telemedicine can enable health care providers to cater to remote and under-served segments of

the population, enable more cost-effective surveillance of diseases, and can help upgrade skills through interactive electronic means. Countries such as Nepal and Bangladesh import telepathology, teleradiology, and teleconsulting services from India. However, given the absence of requisite telecommunications and power sector infrastructure in many developing countries, telemedicine may not be cost-effective for exporting or importing countries. In such cases, public sector resources for telemedicine may be better invested in improving basic health care facilities for disease prevention and cure, and in areas where there is a direct impact on the poor. There is a risk that telemedicine will channel revenues away from rural and primary health care and lead to concentration of technologies which address the needs of the affluent few in developing countries.

Similarly, trade in health services via *consumption abroad* also has mixed implications. On the positive side, it may enable exporting countries such as India and Jordan to improve their national health systems by generating foreign exchange and additional resources for investment in health care. It can also help importing countries such as Bangladesh and Bolivia in overcoming shortages of physical and human resources, especially for specialized health services. However, it may aggravate the dual-market structure which characterizes the health care system of many developing countries, by creating a higher-quality, expensive segment that caters to wealthy nationals and foreigners, and a much lower-quality, resource-constrained segment catering to the poor in the exporting country. This may also result in a crowding out of the local population, hurting equity. Privatization of health insurance may result in “cream skimming” by private health insurers, whereby the low income and high-risk persons are dumped onto the public health system.

*Commercial presence* in health services similarly can benefit developing countries by generating additional resources for investment in and upgrading of health care infrastructure and technologies, generating opportunities for employment, reducing underemployment of health personnel, and by providing expensive and specialized medical services. The availability of private capital could reduce the total burden on government resources, helping to reallocate government expenditure towards the public health care sector. Affiliations and partnerships with reputed health-service institutions in industrialized countries can also help to improve service facilities in

developing countries, reverse brain drain in the health sector, and introduce superior management techniques and information systems. However, these gains may be offset by the huge initial public investments that may be required to attract foreign direct investment into the health sector. Furthermore, if speciality corporate hospitals were established using public funds and subsidies, this would divert resources from the public health system and aggravate dualistic tendencies in the national health care system. Such two-tiering could also aggravate the problem of internal “brain drain”, as better-quality health care professionals flow from the public health care segment to the corporate segment, with its better pay and superior infrastructure. There may also be “cream skimming,” whereby persons whose health care needs are not as serious but can pay more, are served at the expense of the poor and more deserving. These problems have occurred in countries such as Thailand, where there has been an increased outflow of service providers from the public to the private health sector, partly due to the emergence of joint-venture private hospitals formed by local and foreign companies. The latter in turn has aggravated the shortage of health personnel in the public segment and worsened the already inequitable distribution of health care resources within the country.

Finally, the implications of liberalizing health services trade under *movement of natural persons*, or mode 4, are far from being clear-cut. From the source country’s perspective, increased mobility of health care providers can generate remittances and transfers, help promote exchange of clinical knowledge among professionals, and help upgrade skills and standards in the country. For the host country, movement of health personnel provides an important means to meet the shortage of health care providers, improve the quality and accessibility of health care services, and contain cost pressures. In Mozambique, for instance, foreign specialists from Portugal and South Africa are used to staff large hospitals and fill public health positions. Similarly, Mauritania, depends on qualified physicians and specialists from France, Morocco, and Tunisia. If these outflows are permanent, however, there are likely to be adverse implications for equity, quality, and availability of health services in the source countries, and indeed the bulk of cross-border flows of health care professionals take the form of permanent migration. An

estimated 10,000 health professionals emigrated from South Africa between 1989 and 1997, for example. An estimated one-third to one-half of the health-profession graduates in South Africa emigrates each year, mainly to the United Kingdom and the USA. Similarly, it has been estimated that over 10,000 medical and biotechnology experts from Egypt have emigrated from that country and out of 1,200 physicians trained in Zimbabwe during the 1990s, only 360 were practicing in the country in 2001. A large number of nurses also emigrated from Zimbabwe to Australia, New Zealand, and the United Kingdom, mainly due to low wages, poor working conditions and political instability in their home country. In Ghana, between 1985 and 1990, some 60 per cent of locally trained physicians left the country. In the Sudan, an estimated 17 per cent of physicians and dentists left the country between 1985 and 1990.<sup>16</sup>

Permanent outflows of health-service providers impose significant costs on the source country. They lead to shortages of highly trained personnel, and loss of public resources invested in their training. One study estimated that South Africa lost 67.8 billion Rand in human capital investment in the health-care sector in 1997 (calculated from the training cost of R600,000 per physician), a loss only partly offset by the remittances arising from such outflows.<sup>17</sup> Moreover, there are also income distribution and reallocation consequences, since remittances and transfers are private and do not flow directly to the public sector, unlike the direct benefits from retaining domestic health professionals. (One must recognize, however, that in an increasingly globalized and interconnected world, there are more possibilities for tapping overseas expatriate networks of technical expertise and for exchange of information and resources).

Also, more generally, developing countries which promote exports of health services, such as through inflows of foreign patients under consumption abroad or outflows of health care professionals under movement of natural persons, may also be affected by higher prices of health services domestically, as neoclassical theory would predict. This rise in domestic prices of health services would certainly have a negative impact on the poor, unless there are policies to redistribute the income gains from exports to the affected sections, or policies to augment resources in the public health system.

In short, liberalization of health services under the GATS or even in the context of autonomous reforms and

policy measures, can yield benefits in the form of resource generation, employment creation, and upgrading of infrastructure and standards. However, it can also impose costs by worsening inequities in the distribution and quality of health care services and through higher prices. This strongly argues the need for public policy intervention in the health services sector, not to prevent liberalization, but to regulate these services and to create the supporting infrastructure and policy environment in these services.

The role of the regulatory, policy, and infrastructure conditions is particularly important since, as highlighted above, many of the adverse implications of liberalization are due primarily to internal factors, rather than liberalization per se. For example, the root cause of the health care brain drain from developing countries is low wages, poor working conditions and infrastructure, and social and political factors. Similarly, crowding out of nationals from the health-care system due to consumption by foreign patients is mainly due to inadequate human and physical resources in the health sector. Often, failure to enforce minimum standards as well as inadequate monitoring of and gross under-investment in the public health system are among the root causes of the negative effects of liberalization in health services.

It is, however, important to recognize that while liberalization may aggravate underlying distortions and problems, as discussed earlier, it could also provide opportunities for correcting these conditions. Opening up the health care sector to foreign direct investment and collaboration with foreign medical establishments could help in raising standards and wages within the country and thus help in retaining and attracting health professionals back to the source country. Liberalization need not aggravate inequities if governments introduce safeguards to prevent the adverse consequences. For instance, governments can promote linkages between the public and private health care systems through cross-subsidization, reserving beds for the needy in private hospitals along with effective monitoring, and promoting professional collaboration and exchange between the public and private segments. Thus, supporting policies and measures can play an important role in mitigating the negative effects and facilitating the gains that are possible from liberalization.

It is thus clear that the impact of trade in health services on equity, access, costs, and quality of health

services is largely dependent on the existing conditions in the sector. This means that the public-private balance lies in the hands of the government, such as through appropriate regulations, resource transfers to the health sector, greater efficiency in the deployment of resources, and establishment of public-private linkages. As of now, the GATS does not prevent governments from retaining such policies and inscribing these as market access and national treatment limitations in their commitment schedules or even requiring foreign suppliers from meeting prescribed public service obligations. Countries may also choose not to schedule this sector at all. The only real source of concern relates to the interpretation of the GATS carve-out clause and the evolution of GATS guidelines on subsidy and government procurement policies in future discussions, although nothing in the negotiating proposals so far raises cause for much alarm on even these issues.

### ***Liberalizing education services***

The education services sector, like the health services sector, has received very few commitments in the past round, mainly due to concerns about the impact of liberalization on quality, availability, and costs in this sector and the equity implications. As with health services, developing countries are both important exporters and importers of education services. Exports are mainly in the form of consumption abroad and movement of natural persons, although some developing countries are also entering into cross-border electronic delivery of education services. Imports are mainly in the form of consumption abroad and increasingly via commercial presence. There has been growing commercial involvement and foreign collaboration in higher education services through twinning, franchising, and other networking arrangements among institutions in developing countries and across developing and developed countries, in recent years.

There are benefits and costs associated both with export promotion and import liberalization in education services, very similar to those discussed for health services. For instance, exports via consumption abroad could help generate resources, create employment, expand facilities, and raise standards in the education sector. However, it could also put pressure on already scarce resources in the education sector and crowd out

domestic consumers. Exports via outflows of teachers and trainers could generate foreign exchange and remittances for the country but if permanent (as is usually the case), could aggravate the existing shortage of human capital and drive down the quality of education services. Exports in general may also raise the cost of education services to the detriment of the poorer sections of the population. Imports of education services via commercial presence can help augment resources for investment and expansion of facilities in the education sector. However, it may also cause two-tiering into a private corporate segment which caters to the affluent and provides higher quality and standards and a public segment which is under-invested, under-staffed, and resource-constrained which caters to the middle and lower income groups.

Again, as with health services, the benefits from trade and investment liberalization in education services can be enhanced while the negative effects can be countered. For instance, foreign investment in education services need not aggravate dualism in the education sector if the government introduces measures to channel resources generated in the private segment (via taxes, requiring reserving of seats for the needy, public-private collaborative arrangements) towards the public education system. Higher prices of education services need not affect the poor if the government can use policies of cross-subsidization and introduce safeguards to ensure equitable access for all. Thus, the public-private balance, the equity-efficiency balance again lies in government hands. As of now, the GATS does not take away the sovereignty of national governments in maintaining this balance, or in introducing limitations in the commitment schedules to realize this balance, or in not scheduling a sector at all.

The communication from the United States on higher education under the GATS 2000 proposals raises no cause for concern. While it stresses the importance of removing barriers to trade and investment in education services and the need for improved disciplines to address sector-specific regulatory issues, it also explicitly recognizes that education is to a large extent a government function. It notes that governments will continue to play an important role as suppliers of such services, and that the disciplines developed must not conflict with governments' right to regulate the sector to meet domestic policy objectives. The note clearly envisions co-existence between private and public

education services, with the former supplementing rather than displacing public education systems.

### ***Liberalizing water supply and sanitation services***

The conflict between equity and public service goals and efficiency and profit objectives also appears in the case of other services such as water supply and sanitation. In this sector, the main concern is about the impact of opening up to foreign direct investment on costs, quality, and availability of such basic services. While opening up water supply and sanitation services to private suppliers may improve efficiency and quality, there may also be negative effects on equity. Privatization or contracting out of water supply and sanitation services could result in segmentation of the user market into a profitable and a non-profitable segment, thus leading to cream skimming among users, as in the case of health services. It may result in higher prices and user charges (for cost recovery purposes), thus forcing the poor and marginalized sections to buy water at much higher rates or leave them to be provided for by the state (being dumped upon the state as in the case of health services). Hence, liberalization may result in inequitable and discriminatory access to basic services and may also reduce the government's scope for cross subsidization between rich and poor groups by segmenting the market.

One must note, however, that currently, water distribution services are not listed in the GATS sectoral classification list. Even if it were included, governments would have the right not to schedule this sector or to put limitations in their commitment schedules to address public service and other obligations in this area. Although the United States has called for greater market access in environmental services in its GATS 2000 communication for this sector, it has also explicitly stated that liberalization must not impair the ability of governments to impose performance and quality controls on environmental services and service providers.

## **GATS 2000: Issues for Negotiation by Developing Countries**

The preceding discussion clearly indicates that the costs and benefits of future economic, social, and political adjustments associated with liberalization of services will

influence the outcome of the current as well as future rounds of GATS negotiations. Developing countries need to assess their strengths and weaknesses in the service sector, the potential benefits and costs of liberalizing these services, and the role of domestic regulations and conditions in shaping these costs and benefits. Accordingly, they must then decide on their negotiating stance under the GATS in specific sectors of interest and concern and on various cross-cutting issues. In particular, they need to shape the discussions on key GATS provisions. The most important among these, as was also highlighted in the preceding analysis, include:

Clarifying the scope of GATS, in particular, clarifying and strengthening Article I:3 to provide broad protection to public services;

Clarifying the scope for providing state subsidies and other economic benefits under the GATS and whether governments are required to extend such policies and benefits under Article XVII in a nondiscriminatory manner to the private sector, if they have scheduled the concerned sector and not taken any specific limitations; and

Clarifying and shaping the criteria for what constitute "unnecessary" barriers and for establishing the least restrictive trade measure under Article VI on domestic regulation, and initiating discussions to ensure the primacy of public policy objectives, equity, and distribution issues under Article VI so as to prevent conflict between the regulatory requirements and national objectives.

Of the above, the most difficult area for negotiation would be Article VI. The challenge in this area will be to balance the need for transparency in domestic regulation without sacrificing public policy concerns. One of the most difficult issues to be resolved here will be to determine whether horizontal disciplines should be established on domestic regulation (based for instance on the market failure argument that is commonly used in regulating most service sectors), or whether sector-specific disciplines should be developed. Should the necessity test, if introduced, be generalized or should it be subject to sector-specific principles on domestic regulation? It has been argued that a purely sectoral approach (as taken thus far under the GATS, such as with the Reference Paper on Telecommunications), does not economize on negotiating effort, tends to focus on the politically more important sectors, and leads to the

capturing of the negotiations by sectoral interest groups. But in view of the diversity of service sectors and the fact that multilateral trade rules are designed to ensure market access rather than to promote welfare, equity, and other such concerns which are particularly important in social services, there is also a need for sector-specific regulatory principles. The issue is whether one or the other of these approaches or a joint use of both these approaches is better for ensuring that domestic regulations achieve their objectives and remedy market failures, without necessarily sacrificing economic efficiency

In addition to the above issues, developing countries also need to seek greater transparency and stronger disciplines in the context of various GATS provisions and improved commitments in certain modes. These include:

Article VIII on monopolies and exclusive services providers- to prevent abuse of monopoly power;

Article IX on business practices- to control abuse of dominant position by developed country service suppliers and ensure effective access for developing country suppliers;

Article X on emergency safeguard measures- to give developing country service firms time to adjust to international competition;

Article XIII on government procurement- to establish the modalities for commitments in this area and to have the freedom to give preference to national suppliers;

Article XV on subsidies- to be exempted from the application of national treatment; and

Mode 4 on movement of natural persons- to push for greater symmetry between capital and labour in future commitments and for greater transparency in the criteria and application of limitations imposed on this mode.

Thus far, the draft guidelines and procedures for the GATS 2000 negotiations provide special and differential treatment to developing countries. The guidelines call for flexibility for developing countries in view of their national policy objectives and their level of development, with special treatment to least developed country members. This includes flexibility in terms of “opening up fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation...”<sup>18</sup> The guidelines also call for special attention to be given to sectors and modes of supply which are of export interest to developing countries.

Overall, developing countries have scope to guide the

GATS 2000 negotiations by focusing on specific modes, sectors, multilateral provisions, cross-sectoral issues, and regulatory principles so as to shape the impact of service sector liberalization. The need of the hour for their governments to understand the agreement and its features well, to separate out areas of genuine concern, and to identify the issues, which need to be discussed further. The main challenge for all countries is to balance the scope for increasing competition under the GATS with the legitimate role and need for governments to intervene to offset market failures and address social objectives. Liberalization under the GATS should not be equated with de-regulation. In fact, liberalization of services will need to be supported by re-regulation, and often, stronger regulation in many services. Liberalization that occurs in the presence of inadequate or inappropriate domestic regulation may only aggravate internal distortions and can have adverse social ramifications, as has been highlighted in this paper. Hence, there is need for an integrated approach to social and economic policy making, as noted earlier, and for rigorous social impact assessment of the GATS to help shape future discussions on this agreement.

## Notes

<sup>1</sup> This expansion is due to the growing presence of transnational corporations and the internationalization of production and consumption, rising demand for services around the world, the rapid development of information and communication technology, and the deregulation and liberalization of many service sector activities.

<sup>2</sup> WTO Annual Report (1999).

<sup>3</sup> WTO Annual Report (1999-2001).

<sup>4</sup> See Section “Overview of the GATS” of this paper for details.

<sup>5</sup> For instance, the 1995 Declaration states that effective policies will be implemented that “establish a favourable climate for social development, trade and investments, giving priority to human resource development...” and that actions will be taken to improve, broaden, and regulate the “functioning of markets to promote sustained economic growth and sustainable development, stability and long-term investment,...equitable distribution of the benefits of growth and protect crucial social services...” See Declaration of the 1995 World Summit for Social Development for details.

<sup>6</sup> During the course of the discussions, it was decided, however, that services would be part of a single legal undertaking, the WTO, and would be subject to the same principles, i.e. those of Most-Favoured Nation treatment, national treatment, and transparency.

<sup>7</sup> The discussion in this section is based on a close analysis of the GATS text and an assessment of the GATS in Hoekman (1995).

<sup>8</sup> This carve-out clause would apply to sectors such as health and education services which are typically in the public sector domain.

However, due to lack of clear terminology in this carve-out provision and given the growing role of private delivery in even such sectors, it is often difficult to determine which activities can be covered by GATS and which are excluded. This issue is discussed at length later in this paper.

<sup>9</sup> See the General Agreement on Trade in Services and Related Instruments (April 1994) for details on each of these provisions.

<sup>10</sup> See Hoekman (1995).

<sup>11</sup> Ibid.

<sup>12</sup> Adlung (1999), p.10.

<sup>13</sup> See "GATS-Fact and Fiction", WTO (2001).

<sup>14</sup> See Report of the Secretary General, "Integration of Social and Policy", United Nations Economic and Social Council, December 4, 2001.

<sup>15</sup> The discussion in this section is drawn from Chanda (2001).

<sup>16</sup> Chanda (2001).

<sup>17</sup> Ibid.

<sup>18</sup> WTO, Council for Trade in Services (January 23, 2001).

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