

# 1 | *New Directions in Services Trade Liberalization: An Overview*

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THE URUGUAY ROUND OF TRADE TALKS broke new ground by broadening the scope of world trade rules to cover trade areas never before subject to multilateral disciplines. Services, which encompass activities from banking, transportation, travel, telecommunications, and audio-visual services to professional services such as engineering and the law as well as the dizzying array of Internet-based service offerings, have been with little doubt where such broadening was most significant in economic terms.

Services account for more than 70 percent of production and employment in advanced industrial societies, levels that many of the developing world's emerging economies are today fast approaching. With the negotiation of the General Agreement on Trade in Services (GATS) the policies affecting access to and conditions of competition in service markets are today firmly rooted in the multilateral trading system. The pathbreaking rules established by GATS govern one of the world economy's most dynamic sectors, bringing much needed transparency and fairness to the \$2.2 trillion worth of services traded globally on an annual basis.

Despite the growing domestic and international importance of services and the increased worldwide recognition of that importance, efforts to reap the benefits of more open services markets had until recently lagged far behind efforts devoted to opening markets for manufactured goods. The

entry into force of GATS in 1995 marked a watershed by providing the first multilateral set of binding rules and disciplines with which to launch orderly trade and investment liberalization for services.

Although the Uruguay Round negotiations were generally more successful in developing trading rules than in increasing market access opportunities (whether for services or agriculture), they nonetheless laid a firm foundation for future negotiations. That future is already upon the international community as it intensifies preparations for a new round of GATS talks, which the Uruguay Round's built-in agenda has set for January 1, 2000 in Geneva.

The essays that make up this volume address the most pressing questions now arising in services trade. Some of these were in fact not addressed by the first generation of GATS negotiators. This volume is intended to help shape the policy choices that members of the World Trade Organization (WTO), whether from developed or developing countries, will need to make as they resume negotiations under GATS. It should also prove of interest to those involved in regional attempts at liberalizing trade and investment in services. The essays have been written with policymakers and practitioners in mind. They speak first to those in government, business, and nongovernmental circles who will deal directly with difficult policy challenges—old and new—in the next set of GATS talks.

The GATS 2000 negotiations will confront two central challenges: completing the incipient framework of GATS rules and disciplines so as to ensure the agreement's (and the WTO's) continued relevance in a globalizing environment, and achieving greater overall trade and investment liberalization than was possible during the Uruguay Round and in subsequent sectoral negotiations.<sup>1</sup>

What are the stakes of the next GATS round in terms of trade and investment liberalization? And what are the benefits associated with multilateral attempts to achieve such liberalization? Much of the analysis in this volume focuses on these two challenges. They are important, not least because, unlike in the Uruguay Round, negotiators will enter the GATS 2000 Round against the backdrop of a tested, if far from complete or fully satisfactory, framework of rules and disciplines and a machinery for negotiating liberalization commitments. The task of setting priorities on where scarce negotiating resources should best be spent in the GATS

1. The subsequent sectoral negotiations have covered basic telecommunications, financial services, maritime transport, and labor mobility issues (so-called temporary movement of service suppliers).

2000 talks should accordingly prove easier. In turn, this should help make a success of a negotiating cycle that many WTO members intend to keep relatively short.

Two reasons can be adduced to explain the greater ease that GATS members may experience in setting priorities for the next round. First, there has never been a lull in GATS negotiations, which have been going on since the inception of the Uruguay Round and the entry into force of the WTO in 1995. Second, and closely related, WTO members have been able to internalize a great deal of the learning by doing that has characterized the agreement's development. However, a critical ingredient to the success of the next round is that members heed some of the lessons they have learned, especially when it comes to proposals to amend the architecture of GATS rules or seek alternative routes to trade and investment liberalization under existing rules. WTO members must similarly keep an eye to the future by ensuring that GATS rules properly anticipate the development of new technologies and the greatly expanded scope they offer for new forms of service delivery within and across borders.

In keeping with the conference format in which the following essays were originally presented, the volume is organized into five parts. Parts I to IV address the challenge of how best to complete and refine the incipient framework of rules negotiated during the Uruguay Round, while part V is chiefly devoted to a discussion of various negotiating modalities for the new round.

### **Part I. The Benefits of Services Trade and Investment Liberalization**

The four chapters that make up the book's opening part provide a clearer sense of the economic and commercial significance of what is at stake in the GATS 2000 Round. Such stakes are considerable.

The opening chapter by Guy Karsenty attempts to measure the value of commercial transactions carried out globally under GATS's four modes of supply: (1) cross-border trade, (2) commercial presence (or investment), (3) consumption abroad, and (4) the movement of natural persons (service suppliers). Karsenty notes that although knowledge of the size and nature of internationally traded services remains sketchy, efforts undertaken during the last decade to improve trade statistics, including data on sales of

services by local affiliates of multinational firms (so-called establishment-related trade), have greatly improved our knowledge of the flows involved.

Karsenty estimates that total measurable trade in services as defined by GATS is \$2.2 trillion. This represents 7.6 percent of world GDP and close to a third of total trade. These are significant amounts, especially for a sector that was long regarded as nontradable. Although cross-border trade and commercial presence, GATS's two major modes of delivery, account for four-fifths of total trade in services, Karsenty shows that, on the basis of available statistics, "traditional" trade in services—defined to measure cross-border transactions—is today larger in absolute size than establishment-related trade in services. Such a finding interestingly contrasts with GATS's negotiating reality, which has seen most commercially meaningful liberalization commitments focused on establishment-related trade. Karsenty's findings draw attention to the untapped potential for cross-border liberalization that GATS members will undoubtedly pay closer attention to in the next negotiations, particularly in light of the explosive growth of electronic commerce.

Karsenty also documents the relative insignificance of trade involving the movement of service providers. Although data on this subject are notoriously poor, such a finding is broadly in line with the political sensitivities typically associated with this highly restricted mode of supply, one in which a number of developing-country GATS members enjoy a strong comparative advantage.

The lack of a clear statistical description of services did not prove a decisive issue in the Uruguay Round, given the attention that negotiators devoted to the development of rules and disciplines. However, to the extent that matters of trade and investment liberalization will loom more importantly in the GATS 2000 Round, Karsenty argues that the need for improved services statistics could become more pronounced, whether in setting quantitative negotiating objectives or in measuring the balance of concessions resulting from negotiations. Efforts to deepen the nascent dialogue between statisticians and GATS negotiators and greater research efforts in this often neglected area will be needed to ensure that statistical reporting systems take better account of negotiating needs. Improvements in services data may similarly allow political proponents of trade and investment liberalization to more credibly measure the resulting gains and to better document how economic adjustment operates in the sector.

Although there is little doubt that improved data on trade flows are needed to support services negotiations, it is arguably more important

from an economic perspective to gather data that shed light on barriers restricting competition in services markets. The chapters by Karsenty and by Tony Warren and Christopher Findlay illustrate how data on barriers affecting trade in services remain noticeably weaker and less comprehensive than those available for trade in goods. This is a matter of concern on several levels, not least of which is that a paucity of information on the extent and impact of impediments to services trade plays into the hands of those interested in limiting liberalization reform efforts. Warren and Findlay stress that transparency of policy affecting services trade and investment is critical for successful reform, whether it is enacted unilaterally or pursued through trade negotiations. Making the costs of protection as transparent as possible can go a long way toward building coalitions that support liberalization, particularly among user industries. It will also allow policymakers to have greater confidence in their chosen path of reform.

Like Karsenty, Warren and Findlay note that the need for a more complete inventory of barriers to trade and investment in services will likely be greater in the GATS 2000 Round given its heavier emphasis on liberalization-related matters. Gaining a clearer sense of existing barriers and establishing a more explicit hierarchy of their nature, importance, and sectoral incidence are critical to assessing the potential for trade expansion and the magnitude of the welfare gains that may be obtained by pursuing liberalization.

Warren and Findlay outline a methodology aimed at securing greater information about impediments to services trade that they developed as part of a research project funded by the Australian Research Council. This methodology involves three stages. First, available qualitative evidence that compares the way nations discriminate against potential entrants in various service industries is collected. This evidence is then transformed into a frequency index, coupled with an attempt to weigh discriminatory policies by their economic significance. Second, the impact of the policies as measured by the frequency indexes is assessed against national differences in domestic prices or domestic quantities, with the effect of other factors explaining national differences taken into account. And third, the measured impact of the frequency indexes (the coefficient) on prices or quantities is incorporated into a general equilibrium model to assess the economywide impacts of the policies at issue. Where possible, partial equilibrium modeling can also be undertaken to allow the specific impacts of liberalization to be more clearly understood.

Warren and Findlay show that despite the overall dearth of information it is still possible to develop weighting schemes by which policy measures affecting international services transactions can be compared. Measures of impediments to trade in services are becoming available that can legitimately be used as tools for the documentation and comparative assessment of reform efforts and liberalization commitments. The increased sophistication of their measurement techniques has several implications for the negotiating process: information may be more readily available to help set priorities at the national and international levels; liberalization commitments can be codified more easily, which should in turn facilitate cross-sectoral negotiations; and, perhaps more controversially, the adoption of a negative list approach (whereby all nonconforming measures are generated by the negotiations) to scheduling GATS commitments may be facilitated by the greater information disclosures that such techniques afford.

Warren and Findlay make a persuasive argument for giving priority attention to improving data and qualitative information on barriers to entry, trade, and investment that affect services. International organizations such as the World Bank, the UN Conference on Trade and Development (UNCTAD), and the Organization for Economic Cooperation and Development (OECD), all of which have recently begun work in this area, should cooperate more closely. Multinational businesses should also devote resources required to launch what the chapter by Pierre Sauvé and Christopher Wilkie calls an “operation transparency,” which would entail drawing up non-legally binding lists of nonconforming measures affecting trade and investment in services. At the WTO level, some progress was made in the Uruguay Round with the creation of the Trade Policy Review Mechanism. However, TPRM resources, and the wealth of information contained in country reports, have yet to be marshaled with a view to generating the type of comparative analytical work that could help underpin future negotiations.

The chapters by Geza Feketekuty and Rudolf Adlung move away from quantitative matters to focus on normative issues. Perhaps the greatest *acquis* of GATS is how it has allowed a fuller appreciation of the dual nature of services. That is, services are burgeoning economic activities but also, and most important from a political economy perspective, they provide the infrastructure that allows modern economies to function. This dual nature and how such duality has shaped the evolution of GATS rules and disciplines are much in evidence in both papers.

Feketekuty offers a comprehensive survey of some of the architectural shortcomings of GATS while advancing practical means to strengthen the agreement both as a system of rules and an instrument of liberalization. He contends that the five years that have elapsed since the adoption of GATS is too short a period to form any conclusive judgments. Empirical evidence from GATT and other agreements, and experience gained in the context of European integration, suggests that more than a decade may elapse before new institutional arrangements are actively used by governments and businesses in managing their affairs. Still, Feketekuty observes that beyond the results of negotiations carried out to date (which show significant variance across countries and sectors), GATS itself has had a major impact by triggering national debates on the optimality of national regulatory systems in important service sectors. This debate has led in many countries to significant liberalization of domestic and foreign trade through domestic regulatory reforms. Although such reforms may not always be bound in schedules of commitments, they offer a clear objective that negotiators should aim to lock in during the GATS 2000 Round.

Feketekuty argues that while the conceptual foundations of GATS are solid, negotiators could usefully revisit some of its structural deficiencies, many of which resulted from a hasty transfer of concepts borrowed from the GATT system. Efforts to overcome the lack of precision (and of user friendliness) of GATS's current approach to scheduling liberalization commitments need to rank high on the next round's agenda of structural reform. There is also a need to remedy the confusing overlap that characterizes the relationship between market access (Article XVI) and national treatment (Article XVII). He also sees merit in spelling out more clearly the hierarchy of precedence that flows from GATS's three-tiered architecture (framework, sectoral annexes, and schedules of commitments).

Like other contributors, Feketekuty does not advocate reopening the debate over the merits of positive and negative list approaches to liberalization. GATS members should concentrate instead on drafting clear guidelines for scheduling commitments, something that was not done in the Uruguay Round, and stand prepared for a detailed and labor-intensive peer review of national schedules. As is suggested by William Drake and Kalypto Nicolaïdis elsewhere in this volume, Feketekuty foresees the need to revisit the increasingly blurred lines of demarcation among modes of supply and regulatory jurisdictions arising from the advent of electronic commerce. Looking to the future, he encourages trade negotiators to think about ways to gradually integrate GATT and GATS disciplines under one

body of common rules. This challenge already arises in government procurement and is likely to surface as attention turns to the more inherently generic domains of investment and competition policy.

Rudolf Adlung's chapter focuses on the political economy of adjusting to services trade and investment liberalization, a subject that often receives insufficient attention in negotiating circles. The costs and benefits—economic, social, and political—of adjusting to the heightened competition that open markets bring will be important in determining WTO members' participation in and contribution to the GATS 2000 Round. Although the greater immediacy and concentrated costs of policy reform and trade liberalization tend to outweigh the longer-term and more widely diffused benefits associated with greater market openness, Adlung shows how forces have in recent years combined to facilitate reform efforts in services and encourage nonreciprocal forms of autonomous liberalization.

He notes that users of services have become increasingly vocal in opposing supplier inefficiencies, technological change poses an ever increasing challenge to maintaining traditional rents, and the adjustment costs associated with greater competition are more manageable in political and social terms to the extent that labor experiences less disruption from services trade liberalization. On the last point Adlung notes how barriers to intersectoral mobility are noticeably lower for services employees than for people involved in farming, mining, or steel production. What is more, unlike manufacturing or the production of primary commodities where adjustment often tends to proceed in a depressed sectoral environment, structural change in services frequently coincides with periods of economic expansion fueled by the pursuit of regulatory reform, privatization, and external trade and investment liberalization. An environment of liberalized trade and investment can more easily absorb the resources that adjustment releases, all the more so as additional sources of supply enter newly contestable markets.

Adlung notes that trade policy considerations have on the whole been of secondary importance as a source of services liberalization. To be sure, GATS did provide an opportunity to give greater permanency (so-called lock-in) and legitimacy to unilateral domestic policy undertakings, with positive implications for production and trade. But it has yet to prove a central reform stimulus per se. An important question, then, concerns the incentives that may have to be built into the GATS 2000 Round to encourage countries to more readily pursue reform efforts via GATS. According to Adlung, an important challenge will be to come up with



negotiating concepts ranging from formula-based approaches to liberalization to the development of an opt-out clause in the form of emergency safeguard provisions that could help translate reform efforts into bound commitments.

Adlung sees indications that the hitherto free-riding developing countries of GATS are increasingly aware that binding commitments signal that reforms are permanent and irreversible. The next round, he believes, particularly if it involves more comprehensive (rather than unduly sector-specific) negotiations, may generate some rebalancing of commitments across countries and sectors, particularly in user industries (finance, travel, IT-intensive manufacturing) that may be loath in a more competitive environment to carry the burden of services protection.

## **Part II. Completing the GATS Framework: The Built-in Agenda**

Negotiators will enter the GATS 2000 Round with much unfinished business from the Uruguay Round. More than a dozen years after the Uruguay Round's inception, the framework of GATS rules and disciplines is still very much under construction, with work outstanding on the five fronts that this and the following part of the volume focus on. These are emergency safeguards, subsidies, government procurement, movement of natural persons, and domestic regulation.

That GATS should be seen as a work in progress is hardly surprising considering the diversity of activities it encompasses and the rapid pace at which developments in technology and regulatory approaches affect policymaking and rulemaking. As the essays featured in part IV show, GATS negotiators are already confronted with policy choices on many fronts, ranging from more comprehensive rules on investment to the integration of generic competition policy that targets private anticompetitive conduct or the development of rules aimed at facilitating services trade through electronic means.

Before turning their attention to these challenges, GATS members must finish what the Uruguay Round left unfinished. Since 1994 little progress has been made on these leftover issues, some of which (for example, emergency safeguards against injurious and unanticipated import surges) had been earmarked for completion by mid-1997. In part, this reflects the fact that much attention was devoted during this period to

completing outstanding sectoral negotiations, particularly in telecommunications and financial services. But it also reflects other forces. In the case of emergency safeguards and subsidies, and quite apart from the fact that such issues divide the WTO membership along developmental (North-South) lines, problems have arisen from the sheer technical complexity inherent in developing disciplines in hitherto uncharted areas. In the case of government procurement, progress has doubtless been hampered by the manner in which WTO members have approached the subject, with calls for the development of multilateral disciplines for services procurement sitting alongside existing multilateral disciplines applying to services under the Government Procurement Agreement (GPA) as well as calls for non-binding rules to improve transparency and due process in public purchasing. Progress has also been slowed because each component, and none more so than rules governing the mobility of people, involves some North-South tension.

The chapter by Gilles Gauthier examines emergency safeguards and subsidies. It asks whether it is feasible and indeed desirable to extend such disciplines to services. Two core issues are addressed: whether the GATT model for goods would work for services and whether new rules would contribute to deepening and broadening the liberalization objectives of GATS.

Gauthier offers two conclusions on safeguards. First, the economic rationale for them is ambiguous: they are costly to consumers and producers and to economic efficiency in general. Second, for various practical and conceptual reasons flowing from the particularities of services trade and the architecture of GATS (multiple modes of supply, difficulty in determining product “likeness”), as well as the paucity of data required for credible injury determinations, a generic GATT-like safeguard clause is largely unworkable for services. Gauthier comments that the case for safeguards is further reduced by the fact that GATS already features many safeguard-like provisions, not least of which is the ability it affords countries to pursue a sequenced *à la carte* approach to trade and investment liberalization. Still, recognizing that “the art of trade policy strikes a balance between what policymakers practice and what economists preach,” he notes that one cannot easily dismiss the political economy imperative for developing safeguard disciplines. This is the insurance policy function they may perform by encouraging GATS members to undertake more liberal commitments. Should a consensus favoring the adoption of a GATS safeguard clause arise, Gauthier suggests that GATS members inscribe emergency safeguards in their schedules for individual sectors, with general disciplines

or criteria conditioning their use. He argues that sector-specific measures should be of limited duration so as to delay liberalization commitments only temporarily and should be triggered by transparent domestic procedures, applied on a most favored nation basis, and subject to appropriate notification, reporting, and surveillance requirements.

Gauthier notes that the subject of subsidy disciplines has not given rise to the same intensity of debate and discussion as that of safeguards. For this reason, deciding on the desirability or feasibility of introducing disciplines will require a more thorough identification phase to determine the extent to which subsidies exist in services industries and the circumstances in which they may result in adverse trade or investment effects. This process has only just begun among GATS members. There may well be valid reasons to temper expectations, as witnessed by the generally disappointing experience of attempts by the Industry Committee of the Organization for Economic Cooperation and Development to monitor industrial subsidies or the swiftness with which subsidy-related issues fell off the negotiating table in recently abandoned negotiations on the Multilateral Agreement on Investment.

As for safeguards, determining the feasibility of subsidy disciplines will need to factor in the specificities of services trade. Although Gauthier suggests that some guidance could come from the WTO's Agreement on Subsidies and Countervailing Measures, it is not a panacea. In particular, consideration of a countervailing mechanism would appear undesirable from the standpoint of both policy and concept. Export subsidies, which are prevalent in large infrastructure projects, and investment incentives, which have recently proliferated beyond the OECD area to a number of emerging economies, may deserve further consideration, particularly in the context of discussions on how best to improve GATS provisions relating to commercial presence.

The chapter by Simon Evenett and Bernard Hoekman examines the case for embedding disciplines on government procurement in GATS. It concludes forcefully that they may not be necessary and that the domestic and foreign welfare effects of discriminatory procurement regimes will likely be negligible and transient to the extent that domestic markets remain contestable. The authors draw attention to an important characteristic of procurement markets: the fact that many procured services may not be viably supplied across borders, commercial presence typically representing the preferred route in light of the natural advantages that flow from local establishments. For this reason a country's foreign investment regime

assumes crucial importance in maximizing the economic efficiency and domestic welfare gains from an open procurement regime. Market presence is indeed a precondition for foreign firms to contest procurement markets. If they are not permitted access to the market, which in practice means establishing a commercial presence, procurement regimes and possible multilateral disciplines are largely irrelevant.

Clear and practical policy implications flow from Evenett and Hoekman's analysis. Because the economic damage inflicted by discriminatory procurement policies depends on the contestability of markets, the optimal policy response should be to encourage open and competitive markets and vigorously enforce competition policy. This policy is one that many countries can easily pursue on their own. The authors emphasize the removal of barriers to entry and presence in markets, especially on commercial presence. Priority in the GATS 2000 Round should be devoted to easing market access and national treatment commitments under GATS and not on developing GATS-specific disciplines on government procurement.

While Evenett and Hoekman suggest that trade and investment liberalization may ultimately obviate the need for multilateral procurement disciplines applicable to both goods and services, they recognize the value of promoting transparency in procurement as a means of reducing corruption and rent seeking. They argue that although the case for the multilateral agreement on transparency and due process in public procurement currently being considered by WTO members is much stronger than the economic case for seeking to ban discrimination, any procurement disciplines in the WTO should apply to both goods and services.

The chapter by Allison Young focuses on the movement of service providers, a topic not commonly viewed as forming part of GATS's built-in agenda of unfinished business. Yet, built-in and unfinished are apposite terms to affix to the first attempt ever to contend with labor mobility within the multilateral trading system. Negotiated at the behest of developing countries with large pools of highly skilled (and competitively priced) labor and multinational companies, and drawing on the pioneering provisions developed in the 1987 Canada–United States Free Trade Agreement, the so-called mode 4 of GATS governing the movement of persons to provide services broke important new ground, affirming the conceptual equivalence between capital and labor under GATS.

Young's examination of the schedules of GATS commitments shows that a significant liberalization of mode 4 was not achieved in the Uruguay Round nor in the follow-up sectoral negotiations. The reasons are not hard

to come by. Attempting to liberalize the movement of natural persons as service suppliers raises complex and highly sensitive domestic regulatory issues concerning immigration and labor market policy. Faced with demands from developing countries and businesses for liberalizing such movement, immigration and labor ministries are being forced, somewhat reluctantly, to undertake the difficult technical and political task of figuring out how to respond to such demands as the trade policy community gives the subject renewed attention in the run-up to the GATS 2000 Round. The challenge of overcoming such reluctance and securing greater regulatory lock-in—indeed of getting the two policy communities to view the world similarly enough so that tensions can be mediated and progress made—remains formidable. How then can this be achieved?

As a first step, Young says that GATS members need to be clearer on what constitutes mode 4 trade. Greater clarity is all the more important in light of the general opaqueness of GATS's rules and scheduling guidelines. The absence of agreed definitions of employment categories or functions means that inconsistency and vagueness plague interpretation of GATS schedules. Such vagueness also means that immigration and labor ministries tend to retain excessive regulatory discretion. Such transparency problems need to be remedied to lend more certainty to scheduling and open new negotiating possibilities in future rounds. Young suggests that GATS members should be encouraged to submit to comprehensive peer reviews of their schedules where mode 4 commitments are concerned.

Also requiring attention are job and skill-level classifications, the absence of which has typically prompted regulatory authorities to maintain restrictive policies. Young's proposed solution is to underpin mode 4 commitments with nomenclature developed by the International Labor Organization in its International Standard Classification of Occupations (ISCO). There remains also the challenge of overcoming the restrictive effects that nondiscriminatory regulations in licensing, technical standards, or qualification procedures may pose to the cross-border deployment of service providers. Young recalls that Article VI:4 of GATS makes some effort to remedy this problem, adding that it could be useful to subject relevant aspects of immigration and labor market development policies to the article's tests of necessity or of least-trade-restrictiveness.

Addressing the interests of developing countries with respect to the movement of service providers represents another important challenge of the coming round. Young suggests that efforts be directed toward listing sectors and activities that could be excluded from an economic needs test,

particularly in areas where skill shortages are predicted to occur in the labor markets of developed countries. She cautions, however, that this might prove difficult in certain occupations, such as computer programming or software development, where professional regulation is largely absent, and comments on the crucial importance of encouraging feedback from business in negotiating and implementing mode 4 commitments. Finally, her analysis of restrictions maintained by the quadrilateral countries (Canada, the European Union, Japan, and the United States) suggests that scope does exist for making all of their mode 4 commitments more transparent and commercially meaningful.

### Part III. Domestic Regulation and GATS

There is general agreement that the subject of domestic regulation will lie at the heart of the GATS 2000 Round. Indeed, the three essays in this part of the volume tackle what will undoubtedly be one of the most difficult and challenging aspects of the coming talks: ensuring that worldwide regulatory reform remains a powerful means of securing effective market access conditions for services. That challenge is formidable not only because regulation is pervasive in virtually every service sector but also because of the weakness of current GATS disciplines governing domestic regulations.

Article VI (Domestic Regulation) of GATS is provisional and badly in need of clarification and strengthening. But how best to perform such strengthening without unduly curtailing national regulatory freedom? Of related interest are determining the extent to which government regulations can be based on principles of economic efficiency and good governance and the more narrowly GATS-specific extent to which such principles can, amidst considerable sectoral diversity, be pursued through the creation of meaningful horizontal (non-sector-specific) disciplines.

A critical additional challenge of the GATS 2000 Round will be to achieve greater lock-in vis-à-vis the broad and diverse community of domestic regulators. The sheer novelty, universality, and technical complexity of GATS, coupled with the lack of a proper culture of dialogue and consensus building between trade negotiators and domestic regulators, contributed to an outcome that saw most GATS members err on the side of regulatory caution. This was generally true for both agreed rules and liberalization undertakings. The fundamental changes in technology and

in recent approaches to regulation afford a more congenial setting for constructive and forward-looking dialogue between these two policy communities. More often than not, such a dialogue will need to involve competition policy officials.

GATS members have been grappling with domestic regulation and its qualitative bearing on market access ever since the conclusion of the Uruguay Round. Recognition of the weaknesses of framework provisions on this crucial issue has led to sectoral experimentation, most notably in accountancy and basic telecommunications where complementary disciplines were developed to ensure that trade and investment liberalization is properly underpinned by regulatory environments that are friendly to competition and market access.

Both experiments raise the still unresolved problem of the desirability and feasibility of horizontal versus sectoral approaches to the interface of domestic regulation and market access. The diversity of services sectors and the difficulty negotiators have experienced in making certain policy-relevant generalizations have imparted a strongly sector-specific approach to domestic regulation under GATS. Yet even though services sectors vary greatly, the underlying economic and social reasons for regulatory interventions—market failures arising from natural monopolies or oligopoly, asymmetric information about the quality of services or service providers, and externalities, as well as distributional considerations—typically do not differ. GATS negotiators will need to focus more resolutely on these reasons in the coming round to determine the scope that may or may not exist to create meaningful horizontal disciplines on domestic regulation.

Both the basic telecommunications and accountancy negotiations showed that Article VI is concerned only with nondiscriminatory regulatory measures. What this means in practice is that if a GATS member has not scheduled a national treatment commitment in a sector, there is little that Article VI can do to discipline regulatory behavior in that sector. The lesson for negotiators is important as they enter the GATS 2000 Round. That is, under the current GATS architecture, which is unlikely to undergo major surgery in the talks, improvements in market access and national treatment need to go hand in hand with efforts to strengthen GATS rules on domestic regulation.

The chapter by Geza Feketekuty provides an overview of the various regulatory principles that governments should follow to achieve greater economic efficiency and improve governance. It also outlines the practical ways GATS could be modified to better reflect such principles. These prin-

principles, which involve transparency of laws, regulations, and regulatory objectives; due process in the administration of laws and regulations; predictability; nondiscrimination; performance-based criteria; and the use of market mechanisms, aim not at imposing social objectives on governments but rather at ensuring that such objectives are achieved most efficiently.

In implementing such regulatory principles, Feketekuty advocates a three-pronged approach:

- strengthening the generic disciplines of Article VI of GATS, which he sees as particularly well suited to overcoming problems of burdensome nondiscriminatory regulations affecting more lightly regulated professions and services related to the information economy;

- negotiation of sectoral agreements in heavily regulated sectors along the lines of the pathbreaking Reference Paper on Basic Telecommunications or as was done in the Agreement on Accounting Services; and

- improvement of commitments incorporated in national schedules so as to better deal with differences in national legal systems, cultural practices, or institutions.

Feketekuty calls attention to the need for negotiators to apply the principle of subsidiarity to WTO negotiations on regulatory issues so as to ensure that efficient regulation is carried out at the lowest level of governance consistent with the achievement of various policy objectives. Noting that future negotiations on trade in services will inevitably become more intrusive of domestic regulatory sovereignty, he argues that the work of the WTO on regulatory issues will need to become increasingly transparent to allay public concerns about the multilateral trade body's perceived democratic deficit.

The chapter by Kalypso Nicolaïdis and Joel Trachtman explores the nature of domestic regulation and the factors that influence the negotiation of appropriate regulatory principles. It provides a vivid reminder of the extent to which nascent GATS provisions are still untested, weaker on balance than those pertaining to trade in goods, and subject to interpretation. The authors describe a range of options for policing domestic regulation under GATS, including an assessment of the kind of criteria that should guide the fundamental trade-off between trade and investment liberalization objectives and legitimate domestic constraints. The chapter usefully bridges the analysis contained in the Feketekuty and Beviglia Zampetti chapters by asking specifically how the objective of market access friendlier domestic regulation can be achieved by developing more precise commitments under Article VI:4 of GATS as well as by implementing



mutual recognition agreements under GATS Article VII. Nicolaïdis and Trachtman consider that gaining a clearer sense of the boundary between these two modes of liberalization represents an important challenge to the negotiating community.

They begin by describing existing constraints on domestic rule-making, including those imposed by national treatment obligations in scheduled sectors and the nullification and impairment standard of Article VI:5. They recall how the issue of regulatory jurisdiction—who regulates what?—is far more complex for trade in services than for trade in goods. Like Feketekuty, Nicolaïdis and Trachtman explore the potential for greater discipline under Article VI:4, including the possibility of increased general (horizontal) discipline through the establishment of more rigorous or intrusive standards such as proportionality or necessity. Such an adjudicated approach is then contrasted with a more political approach emphasizing the development of requirements of recognition or harmonization, either multilaterally under Article VI:4 or among a subset of members under Article VII.

Nicolaïdis and Trachtman take no general stand on generic versus sector-specific approaches to the domestic regulation–market access interface. They note that there is a choice between more general principles, such as national treatment, proportionality, or necessity, to be interpreted and applied as disciplines over time by panel rulings and more specifically sectoral rules requiring recognition or harmonization achieved through political agreement. As they comment, the choice “depends on particular factors capable of evaluation by negotiators.” In more sensitive sectors they believe that it may be premature to develop detailed rules of recognition and harmonization. Rather, depending on particular sectoral circumstances and state preferences, they think it may be preferable to allow experience to develop with the application of general standards by dispute resolution panels, while concurrently allowing the development of more spontaneous, politically driven recognition and harmonization agreements.

Nicolaïdis and Trachtman usefully remind would-be practitioners of what mutual recognition agreements (MRAs) entail in operational terms. As does Beviglia Zampetti, they note how effective MRAs require some prior harmonization, partial and reversible transfers of recognition powers, and credible verification procedures. They provide practical recommendations aimed at ensuring that MRAs better meet their stated liberalizing objectives, starting with the negotiation of a framework agreement setting out requirements for MRAs. Such an agreement could usefully contain

provisions encouraging parties to continue progress—indeed to keep negotiating—as well as transitivity clauses requiring recognition between all members of interlocking MRAs. It could also aim to set up a multilateral system of accreditors on the enforcement side; as well as guidelines on how and when to achieve some minimal degree of regulatory harmonization.

Americo Beviglia Zampetti focuses on recognition, governed by Article VII of GATS. He discusses the experience of MRAs as well as the challenges that need to be met in designing successful arrangements of this type. He recalls the difficulties of designing MRAs in the context of multilevel regulation, noting the generally sobering experience of attempts by federal states or economic unions to craft MRAs when the prime locus of regulatory jurisdiction stands removed from those entities undertaking contractual treaty obligations. Uncertainty over the feasibility of overcoming such a political constraint casts a potentially ominous shadow over the ultimate benefits flowing from MRAs. Such problems are compounded by the tendency, even in unitary states, toward regulatory regimes that contain a mix of legislation and self-regulation by independent (and typically private) bodies. Indeed, the increasing presence of nongovernmental voluntary bodies in rule-making and standard-setting poses special challenges of accountability when an MRA is being negotiated. This is so even while information and opinions from such expert bodies may serve an essential legitimizing function in the design, negotiation, and implementation of such arrangements. Beviglia Zampetti believes that MRAs concluded between professional bodies should be looked at as private contracts, implying that only agreements concluded between states can be legally enforced under world trade rules.

He also draws attention to the topic, also raised by Nicolaïdis and Trachtman, of the relationship between MRAs and MFN treatment. Noting that an important function of Article VII is to provide MFN cover to MRAs (to legitimize MRAs as agreed partial departures from MFN treatment), Beviglia Zampetti cautions that recognition agreements could increase discrimination in international trade. Although Article VII attempts to strike a delicate balance by allowing MRAs to proceed as long as third countries have the opportunity to accede or demonstrate equivalence, his worries may well be valid to the extent that many GATS members have chosen to notify MRAs under Article V of GATS, which deals with integration agreements, rather than Article VII.

The deficiencies in Article VII lead him to argue, like Nicolaïdis and Trachtman, in favor of a framework agreement on MRAs to clarify the meaning of “recognition,” defining it as a form of “equivalency”; spell out

the roles of subnational and voluntary bodies; and incorporate features for settling multilateral disputes. Such an agreement would also specify minimum requirements MRAs would need to meet so as to hem in the effects of the MFN exception and work to ensure that managed recognition does not in fact become a covert means for discriminatory managed trade. In so doing, a framework agreement would more firmly anchor the practice of MRAs within the multilateral trading system while encouraging their use by an increasing number of WTO members.

#### **Part IV: Investment, Competition, and the Electronic Commerce Revolution**

As if the task of prioritizing the long list of issues left over from the Uruguay Round were not daunting enough, GATS negotiators head into the next round of negotiations with a heavy menu of policy choices on several new rule-making fronts, all of which are germane to adapting GATS to the demands of a globalizing world economy. The three chapters contained in this part address those new policy areas that beckon with greatest force: investment, competition policy, and the electronic commerce revolution.

The chapters by Pierre Sauvé and Christopher Wilkie on investment and by Mark Warner on competition policy investigate closely related matters. The analysis and policy recommendations in both display considerable symmetry of tone and scope. They acknowledge the desirability of equipping the multilateral trading system with more comprehensive disciplines with which to govern conditions of entry and presence in markets and curtail private anticompetitive conduct. Both, however, believe that such an objective will continue to elude the WTO in the coming round. Accordingly, they suggest that the attention of trade negotiators be directed toward incremental steps anchored in existing WTO disciplines. Such an objective, as it happens, can be usefully pursued through GATS. Indeed, both suggest that GATS offers by far the most potent means by which to further what Sauvé and Wilkie call the “creeping multilateralization” of disciplines in both policy areas.

Sauvé and Wilkie recall how various forces—economic, political, and juridical—have recently dampened interest in an ambitious investment agenda at the WTO. They draw attention to the sobering, if ultimately useful, lessons emerging from the recent failure to conclude negotiations on an OECD-based Multilateral Agreement on Investment (MAI), all of

which are relevant to better understanding where the global investment agenda may be headed in the coming round.

Beyond adverse developments in international sentiment toward investment agreements, Sauvé and Wilkie suggest that there may well be more fundamental reasons to scale back rule-making ambitions on trade and investment in the WTO. Recalling the remarkable growth in foreign direct investment flows registered during the last two decades in the absence of multilateral rules, they draw attention to the political economy of liberalizing the investment regime, which has seen a strongly liberalizing dynamic of policy change take root around the world with little or no evidence of significant or durable policy reversal. Such a trend begs the larger question of the particular type of market or policy failure that multilateral investment rules could redress.

Sauvé and Wilkie's advocacy of a GATS-based focus on investment rule-making and liberalization stems from their belief that by far the greatest and most economically significant number of discriminatory and presence-impairing measures are maintained in services. To be sure, national investment policies continue to influence (and potentially distort) corporate decisions and investment flows in manufacturing and primary industries, most notably as a result of onerous performance requirements and wasteful spending on investment incentives. Yet just as the MAI negotiations revealed a limited appetite in OECD countries for potentially intrusive investment protection rules, the scope for curtailing spreading recourse to investment incentives or significantly broadening the list of measures prohibited under the Agreement on Trade-Related Investment Measures (TRIMs) shows little promise in their view. They advocate a "pragmatic way forward"—steps to improve the investment friendliness of GATS. These include

- clarifying the definition of commercial presence;
- strengthening the investment protection features of GATS;
- improving the clarity of GATS's scheduling technology;
- promoting greater transparency on investment incentives;
- ensuring that GATS commitments reflect the regulatory status quo;
- progressively reflecting unilateral liberalization measures in country schedules;
- devising formula-based approaches to liberalization; and
- increasing regulatory transparency by preparing nonbinding lists of nonconforming measures.

The chapter by Mark Warner begins with a discussion of the numerous

GATT provisions that deal with matters related to competition policy: Articles III (National Treatment), XI (Quantitative Restrictions), XVII (State Trading Enterprises), and XX(d) (Exceptions) as well as the safeguards code; the mandate to review the relationship between investment and competition policy in Article 9 of the TRIMs Agreement; GATS Articles VIII (Monopolies and Exclusive Service Providers) and IX (Business Practices); and the “Reference Paper on Regulatory Principles” appended to the Agreement on Basic Telecommunications (which a third of WTO members have accepted in whole or in part). He draws attention to the ways competition rules can be instrumental in promoting market access for services. This is particularly the case where public sector enterprises, state-owned enterprises, and companies with exclusive or special rights operate (sometimes in competition with privately owned firms, as is the case in energy, postal, and telecommunications services).

Warner suggests that incremental competition rule-making offers the best way forward for WTO members. This is particularly true for services, where negotiations on basic telecommunications have shown the way. He believes that the GATS 2000 Round offers a ready theater for further sectoral experimentation. Accordingly, an important challenge for negotiators is to ensure that, wherever feasible, trade and investment liberalization commitments be properly complemented (either in country schedules or through guidelines such as those developed in the “Reference Paper” for basic telecommunications). Warner suggests that only when a sufficient number of sectoral experiments have been satisfactorily conducted should GATS members try to derive lessons and develop generic disciplines, the breadth of which could subsequently extend to trade in goods. To the extent that GATS members hold true on their stated intention of keeping the GATS 2000 Round to three years, the task of developing and agreeing to WTO-bound competition disciplines may yet have to wait until another round.

In their chapter William Drake and Kalypso Nicolaïdis explore a topic that did not confront the first generation of GATS negotiators but is sure to figure prominently in the coming talks: the information revolution’s implications for global services trade rules. When GATS was designed during the Uruguay Round, cross-border trade in services generally involved transactions between organizations over private networks. But the rapid growth, globalization, and mass popularization of the Internet since GATS’s inception has dramatically broadened the potential scope of internationally traded services. Drake and Nicolaïdis note that new end-use services such as health care, education, and customized finance, or e-shop-

ping deliverable directly to consumers have now been added to the existing infrastructural services.

They examine some of the issues that global electronic commerce (GEC), especially Internet commerce, can be expected to raise for GATS in the coming round and beyond. They begin by recalling that GEC is not a sector. Nor is it confined to services. Agricultural, manufactured, and intangible goods are also traded electronically, so there are implications for the GATT as well. Further, the growth of GEC raises important questions with respect to the Agreement on Trade-Related Aspects of Intellectual Property Rights as well as for other WTO instruments and issues.

They believe that the Internet poses fundamental challenges that trade policy in general and GATS negotiations in particular cannot ignore. This is so not only because electronic commerce blurs the functional boundaries that used to exist between suppliers and customers, ways of delivering services across barriers, and goods and services, but also because it leads to a blurring of national borders and regulatory jurisdictions.

They caution, however, against conferring too large a role to trade policy in answering such challenges. Instead, their analysis suggests the need for WTO members to focus more modestly and pragmatically on how best to strengthen the open environment in which Internet commerce has so far flourished. Drake and Nicolaïdis discuss alternatives for addressing this objective in a WTO setting. These options include a horizontal approach straddling both goods and services and predicated on the idea of technological neutrality; common law reliance on jurisprudence arising from the results of WTO dispute settlements; revision of relevant GATS provisions, particularly those pertaining to the scheduling of liberalization commitments; and agreement on more specific rules set out in a basic telecommunications-like reference paper or an annex to GATS. Declaring themselves generally neutral about the optimal institutional path to pursue, they nonetheless believe that some rules specific to e-commerce are called for in light of the current architecture of GATS.

In arguing for reforming GATS the authors caution that from a technical standpoint it may be that not all gaps or ambiguities in coverage need to or can be resolved in the next trade round. Its explosive growth notwithstanding, Internet-based GEC is still a relatively new phenomenon. The technology is changing rapidly, and transactional dynamics, business models, and national policies are still in flux. Under these circumstances it will be difficult for WTO negotiators to devise rules that promote trade and will remain appropriate.

The authors remain unconvinced that a quick fix consisting of only the most minimal additions to or clarifications of GATS would be the best result of the coming round. Even if the round actually concludes in 2003, global economic commerce will have expanded dramatically, which will probably lead governments to adopt a variety of national policies to deal with emerging problems. Without a multilateral consensus on at least core principles during the 2000 Round, there may be a risk that such policies will impede global economic commerce or lead to conflicts that the WTO's dispute settlement system is not yet equipped to handle.

Thus although adopting detailed rules on some points may have to wait, the authors believe flexible guidelines that take into account the specificities of GEC should be established. Among the most pressing concerns are solving definitional and classification problems, strengthening the Telecommunications Annex, establishing permissible domestic regulatory objectives, including consumer protection (while also attempting to specify some criteria of permissibility), and banning customs duties on transmissions if developing countries can be convinced that it is in their interest. Drake and Nicolaïdis also suggest the usefulness of developing language clarifying the workings of GATS transparency, national treatment, and competition policy—related provisions in the GEC environment, or at least reaching an informal agreement on their interpretation. In addition, they argue that liberalization commitments need to be strengthened, including commitments on electronic transmission services (telecommunications and Internet access) and on sectors and modes of supply of particular interest to developing countries. Even if formal agreement cannot be reached on all these issues in the 2000 Round, working through them could yield greater consensus in some respects.

### **Part V. GATS 2000: Challenges Ahead**

The four chapters in the last section of this book offer perspectives on the GATS 2000 Round. The first three explore how best to increase liberalization of services. As it happens, there are many routes available to countries seeking expanded liberalization of services trade and investment. One route—that afforded by unilateral regulatory reform—is explored by Bernard Hoekman and Patrick Messerlin. Countries may seek to promote greater market contestability at the regional level, an option exercised frequently in recent years. The question arises then of how the WTO can best



discipline egregious regional discrimination and marshal regional interest in services trade liberalization into a force for subsequent multilateral lock-in, an issue taken up in the concluding chapter by Sherry Stephenson.

At the multilateral level, which saw the first round of liberalization negotiations conducted primarily on the exacting grounds of bilateral requests and offers, interest is high among GATS members in developing complementary negotiating modalities aimed at generating more bound commitments while economizing on time and negotiating effort. Considerable attention has been focused on so-called formula-based approaches to liberalization, a topic that figures prominently in the chapters by Patrick Low and Aaditya Mattoo and by Rachel Thompson. Low and Mattoo point to the importance of looking at liberalization through the perspective of improvements in the GATS rule-making apparatus. They emphasize that the next round's twin objectives of stricter disciplines and greater liberalization commitments cannot (and should not) be divorced from one another, as some business groups are prone to do. Rather, determined efforts need to ensure that GATS rules evolve in ways that lead to deeper, more transparent and commercially meaningful GATS bindings.

Low and Mattoo start from a simple yet powerful premise: if GATS rules do not impose unambiguous disciplines on the design and conduct of policy at the national level, they will not be enforceable internationally. Nor will they foster a strong commitment to continuing trade and investment liberalization. Their conclusion that "it is possible to make significant improvements to GATS and to make it a much more effective instrument of liberalization without fundamental structural changes that are, in any case, of doubtful political feasibility," is clear and compelling and will doubtless resonate loudly at the negotiating table.

Low and Mattoo's quest to improve GATS leads them to identify four means: improving the clarity of the agreement, using the existing structure to generate more effective liberalization, deepening the disciplines on domestic regulations, and improving the negotiating dynamic. Although their proposals build on an existing commitment to successive rounds of negotiations aimed at achieving progressively greater liberalization (Article XIX(1) of GATS) and on existing negotiating mandates to develop new rules, they believe that an explicit mandate is needed for work on improving the clarity of the agreement. They contend that some of the ambiguities in GATS are indeed fundamental, turning on questions of interpretation that make a significant difference to the nature of members' obligations and the extent of market access and rule-based certainty delivered by the agreement.



Areas for clarification include the relationship between market access and national treatment to specify precisely the scope of existing and future national treatment commitments. At present, credible alternative interpretations carry starkly different implications. Low and Mattoo also call for clarification of the relationship among modes of supply concerning commitments on given services, an issue of growing prominence with respect to mode 1 (cross-border trade) and mode 2 (consumption abroad) when it comes to electronic commerce. They also call on negotiators to confirm that the principle of technological neutrality applies within modes. In other words, within a mode of supply, a service is to be regarded as a “like” product independently of the means by which it is delivered. Once again, this subject is of potentially greatest importance in the electronic delivery of services.

Low and Mattoo recall that strengthening the domestic regulation provisions of GATS Article VI only makes sense where specific market-access commitments have been made. Otherwise the value of good regulation can simply be nullified by restrictions on access to the market. For this reason, they urge that work on domestic regulation and improving the quality of liberalization commitments proceed in tandem. Meaningful liberalization requires that the provisions on domestic regulations be strengthened. They suggest that the basic approach should be horizontal so as to take advantage of economies of scale in rule-making and lessen the risk of regulatory capture. Sector-specific regulatory provisions may sometimes be necessary to supplement the horizontal approach. They note that horizontally based regulation implies generalization of existing initiatives, depending on the source of market failure that the regulatory intervention is designed to address. Where a problem arises from monopolistic or oligopolistic control over essential facilities, the approach should be to develop regulatory principles along the lines of those negotiated in the basic telecommunications sector. Where other market failures are present, a “necessity test” should be applied, on the basis of economic efficiency criteria.

In considering the best means of promoting further liberalization, Low and Mattoo argue that GATS members should develop clearer negotiating guidelines in the 2000 Round. The absence of adequate nomenclature for scheduling purposes has made it difficult to interpret the true nature of commitments, and there is a critical need to gain a more precise understanding of discriminatory and access-impairing measures listed in country schedules.

They also urge GATS members to make greater use of phased-in commitments to liberalization, as a number of countries did in the telecommunications negotiations. They note how precommitment can be a valuable instrument for planning the opening of a market and guaranteeing adequate time to ensure that necessary conditions are in place when additional competition is introduced into the market.

Like Thompson, Low and Mattoo explore making greater use of various formulas that have been used in sectoral liberalization negotiations. They note that a model schedule can be helpful where ambiguity over sectoral definitions coexists with potential consensus on how much liberalization is achievable. Understandings such as those developed in financial services also make sense where some members are willing to undertake deeper commitments or accept stricter rules but need to develop a common understanding as to the content of such liberalization or rules. Similarly, the idea of developing standardized sets of additional commitments, such as the procompetitive regulations in the basic telecommunications reference paper, has significant appeal and may find a place in negotiations in other network-based industries.

The chapter by Bernard Hoekman and Patrick Messerlin develops rules of thumb aimed specifically at policymakers from developing countries to harness the negotiations on services to their domestic regulatory reform agendas. A corollary of their approach is that governments should seek to lock in regulatory reform policies at the national level. This prompts the authors to call for greater unilateralism in liberalization matters. Accordingly, they look at scheduled commitments under GATS as a useful complement to domestic regulatory reform efforts.

They recommend that policymakers attempt to reduce dispersion in the support given to service activities. Uniformity of protection across sectors should be primary. This in turn requires that information be compiled to allow decisionmakers to identify priorities and assess the effects of existing regulatory interventions across sectors.

Hoekman and Messerlin's emphasis on unilateral liberalization stems from their view that governments cannot easily rely on reciprocal exchange of concessions in services. First, protection in services takes the form of nontariff, behind-the-border measures, which are much more difficult to translate into tariff equivalents and thus do not offer ready-made ways to gauge the welfare-improving effects of bound concessions. The lesser scope for reciprocity-based negotiations also reflects the fact that services exporters typically play a smaller countervailing role than goods exporters do.

Indeed, in many developing countries, opposition to reform and liberalization cannot be counterbalanced by export interests seeking better access to foreign markets. Under such circumstances the authors believe it fair to assume that much of what is required to ensure that the WTO process is a facilitator of the adoption of policies supportive of economic development—promoting cheaper imports of intermediate inputs and maintaining an open policy toward foreign direct investment—will have to be undertaken unilaterally.

Reliance on the unilateral steps required to pursue a growth-enhancing domestic regulatory reform agenda and promote the greater contestability of services markets does not eliminate the benefits from multilateral cooperation. The authors note that a GATS-centered liberalization can be beneficial in moving the world closer to the ideal of free trade by helping remove regulatory barriers to entry in service industries and break the political deadlock that may occur when domestic vested interests are powerful enough to block welfare-enhancing reform. Hoekman and Messerlin also note that GATS negotiations are an important means of expanding the global information base regarding the height and impact of barriers to trade and investment that affect services. Future efforts to expand GATS disciplines should, they contend, center on expanding the sectoral coverage of the agreement and strengthening the transparency and information collection and dissemination functions of the WTO Secretariat.

The chapter by Rachel Thompson sets out some practical options for what can be described as cross-cutting or formula-based approaches to liberalizing services trade and investment. She discusses what a large number of WTO members already see as one of the most promising ways of ensuring that the GATS 2000 Round is conducted efficiently and produces meaningful outcomes.

Echoing Low and Mattoo, she notes that although formula-based approaches have featured more prominently in tariff negotiations on trade in goods, they are hardly newcomers to trade in services. Indeed, ingenious use was made of liberalization formulas in GATS negotiations on financial services and basic telecommunications. The challenge for the coming round is to devise a menu of options that could be pursued horizontally or could apply to clusters of sectors, individual modes of supply, or across particular types of measures (for example, foreign ownership restrictions or residency requirements as conditions of professional licensing).

She recalls the significant negotiating benefits that formula-based approaches may produce: greater economies of scale and effort in negotiating,

easier setting of liberalization targets against which progress and results can be measured, improved public understanding of negotiating objectives and outcomes, and improved consistency, clarity, and user friendliness of resulting schedules of commitments. Formulas may also facilitate precommitting to future liberalization, called for by Low and Mattoo, and contribute to achieving the uniform pattern of protection across countries and sectors that Hoekman and Messerlin advocate. Moreover, rather than a GATT-like focus on the reciprocal exchange of concessions, the “concerted unilateralism” inherent in the pursuit of formula-based liberalization promotes greater awareness of the economic benefits of open services markets and of bound commitments while affording GATS members the opportunity to determine for themselves how best to achieve a stated negotiating target.

Thompson usefully notes the particular benefits that developing countries may derive from formula-based approaches to liberalization. Indeed, formulas provide resource-poor countries an opportunity to shape a packaged approach to market access commitments into which their particular interests and negotiating priorities are integrated from the outset. In the case of services, where stand-alone negotiations on movement of natural persons and maritime transport have not succeeded and where developing countries’ other commercial interests are likely to be very specific, a formula package that includes specific liberalization in particular sectors could prove highly valuable.

Like Low and Mattoo, Thompson cautions against expecting too much from negotiating formulas. They are not a cure-all, but a means toward a larger end: that of using the WTO to promote economic efficiency and impart greater credibility and permanency to domestic reform efforts. What is more, and as several essays in this volume emphasize, the feasibility and ultimate effectiveness of formula approaches for services must go hand in hand with needed improvements in a number of framework provisions. These provisions pertain particularly to scheduling and the overlap between national treatment and market access, and the possible adoption of such new disciplines as emergency safeguards.

Thompson recalls that formulas provide a complementary route to liberalization. They are not about to replace bilateral request-offer procedures. Indeed, formulas offer a way of making request-offer procedures multilateral. They can reduce but not remove the need for requests and require that offers be more thoroughly scrutinized against a commonly agreed benchmark. Her concluding section provides a comprehensive list of liberalization formulas and informational requirements needed to test

their feasibility. Both are matters to which GATS negotiators are certain to pay close attention.

Article V of GATS allows WTO members to participate in regional trade agreements that discriminate against third-country services and service suppliers. It is the services equivalent of GATT's controversial Article 24 on free trade areas and customs unions. Sherry Stephenson's chapter addresses questions that have received scant attention in policy circles: the extent to which the pursuit of regional (preferential) liberalization of trade and investment in services contributes to liberalization at the multilateral level and is properly circumscribed and contained by multilateral rules. The recent proliferation of regional integration agreements (RIAs) containing provisions on trade and investment in services (many of which have yet to be notified to the WTO) and the inconclusive nature of RIA examinations conducted by the WTO's Committee on Regional Trading Arrangements give added urgency to these matters.

Stephenson recounts the tortured negotiating history that led to the adoption of Article V. Recalling Feketekuty's analysis, she points out how the decision to transpose to services the disciplines developed five decades ago for trade in goods resulted in rules that are weak and lack clarity. To some extent such deficiencies may be deliberate, reflecting the unwillingness of key GATS members, many of whom were involved in regional rule-making efforts when Article V discussions were proceeding, to be seriously constrained by multilateral disciplines.

To ensure that regional trading arrangements remain useful engines for multilateral trade liberalization, Stephenson contends that the nexus between regional and multilateral approaches to liberalization must be clarified. As things stand, Article V disciplines generate considerable uncertainty over the type of barriers to trade and investment in services that RIAs should be expected to eliminate. This is also true with regard to the meaning and measurement of the tests that RIAs should be required to meet to gain WTO approval (for instance, "substantial" sectoral coverage, removal of "substantially" all discriminatory measures, and no net rise in the overall protection affecting third-country services or service providers). She proposes that multilateral guidelines be developed that would clarify the application and interpretation of conditions under which RIAs can be deemed WTO-compatible in services.

Stephenson also draws attention to the multiplicity of RIAs to which some GATS members have recently adhered and the proliferation of stand-alone sectoral agreements, trends that are most acute in the Western

Hemisphere. Apart from the fact that such stand-alone agreements (none of which has been listed as an exception to the MFN provision of GATS) appear to exist in a legal gray area, Stephenson asks whether the treaty congestion resulting from overlapping disciplines and differing liberalization timetables may not defeat the purpose of closer regional ties by adding to transaction costs and fuelling juridical uncertainty. If the answer is affirmative, there may be grounds to argue that RIAs are not as a class conducive to multilateral liberalization.

### **Conclusion**

We have tried here to capture the essence of the analysis of each of the essays. No such attempt can ever do full justice to the richness of their content. Nor has an attempt been made to highlight the insights provided in the commentaries appended to the essays. Using the overview as a guide, readers are urged to read the chapters and comments that will be of greatest interest to them in identifying the most salient issues that will make up the agenda for the GATS 2000 negotiations.