29 March 2006 (3776.4)

THE GENERAL AGREEMENT ON TRADE IN SERVICES

AN INTRODUCTION

The General Agreement on Trade in Services (GATS) is a relatively new agreement. It entered into force in January 1995 as a result of the Uruguay Round negotiations to provide for the extension of the multilateral trading system to services. With a view to achieving a progressively higher level of liberalization, pursuant to Article XIX of the GATS, WTO Members are committed to entering into further rounds of services negotiations. The first such Round started in January 2000.

All Members of the World Trade Organization are signatories to the GATS and have to assume the resulting obligations. So, regardless of their countries' policy stances, trade officials need to be familiar with this Agreement and its implications for trade and development. These implications may be far more significant than available trade data suggest.

Hopefully, this introduction will contribute to a better understanding of the GATS and the challenges and opportunities of the ongoing negotiations. For users who are familiar with the General Agreement on Tariffs and Trade (GATT), similarities and differences will be pointed out where relevant. Likewise, for users who are familiar with the balance-of-payments definition of 'trade', departures from the Agreement's coverage will be explained.

The following text is based on a more comprehensive training module on the GATS which is available on the WTO website (www.wto.org).

1. BASIC PURPOSE AND CONCEPTS

1.1 Historical Background

The General Agreement on Trade in Services (GATS) is the first multilateral trade agreement to cover trade in services. Its creation was one of the major achievements of the Uruguay Round of trade negotiations, from 1986 to 1993. This was almost half a century after the entry into force of the General Agreement on Tariffs and Trade (GATT) of 1947, the GATS' counterpart in merchandise trade.

The need for a trade agreement in services has long been questioned. Large segments of the services economy, from hotels and restaurants to personal services, have traditionally been considered as domestic activities that do not lend themselves to the application of trade policy concepts and instruments. Other sectors, from rail transport to telecommunications, have been viewed as classical domains of government ownership and control, given their infrastructural importance and the perceived existence, in some cases, of natural monopoly situations. A third important group of sectors, including health, education and basic insurance services, are considered in many countries as governmental responsibilities, given their importance for social integration and regional cohesion, which should be tightly regulated and not be left to the rough and tumble of markets.

Nevertheless, some services sectors, in particular international finance and maritime transport, have been largely open for centuries - as the natural complements to merchandise trade. Other large sectors have undergone fundamental technical and regulatory changes in recent decades, opening them to private commercial participation and reducing, even eliminating, existing barriers to entry. The emergence of the Internet has helped to create a range of internationally tradeable product variants - from e-banking to tele-health and distance learning - that were unknown only two decades ago, and has removed distance-related barriers to trade that had disadvantaged suppliers and users in remote locations (relevant areas include professional services such as software development, consultancy and advisory services, etc.). A growing number of governments has gradually exposed previous monopoly domains to competition; telecommunication is a case in point.

This reflects a basic change in attitudes. The traditional framework of public service increasingly proved inappropriate for operating some of the most dynamic and innovative segments of the economy, and governments apparently lacked the entrepreneurial spirit and financial resources to exploit fully existing growth potential.

Services have recently become the most dynamic segment of international trade. Since 1980, world services trade has grown faster, albeit from a relatively modest basis, than merchandise flows. Defying wide-spread misconceptions, developing countries have strongly participated in that growth. Whereas in 1980 their share of world services exports amounted to 20%, in 2004 it was 24% on a Balance of Payment (BOP) basis.

Given the continued momentum of world services trade, the need for internationally recognized rules became increasingly pressing.

1.2 Basic Purpose

As stated in its Preamble, the GATS is intended to contribute to trade expansion "under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries". Trade expansion is thus not seen as an end in itself, as some critical voices allege, but as an instrument to promote growth and development. The link with development is further reinforced by explicit references in the Preamble to the objective of increasing participation of

developing countries in services trade and to the special economic situation and the development, trade and financial needs of the least-developed countries.

The GATS' contribution to world services trade rests on two main pillars: (a) ensuring increased transparency and predictability of relevant rules and regulations, and (b) promoting progressive liberalization through successive rounds of negotiations. Within the framework of the Agreement, the latter concept is tantamount to improving market access and extending national treatment to foreign services and service suppliers across an increasing range of sectors. It does not, however, entail deregulation. Rather, the Agreement explicitly recognizes governments' right to regulate, and introduce new regulations, to meet national policy objectives and the particular need of developing countries to exercise this right.

1.3 Definition of Services Trade and Modes of Supply

The definition of services trade under the GATS is four-pronged, depending on the territorial presence of the supplier and the consumer at the time of the transaction. Pursuant to Article I:2, the GATS covers services supplied

(a) from the territory of one Member into the territory of any other Member (Mode 1 - Cross-border trade);

(b) in the territory of one Member to the service consumer of any other Member (Mode 2 – Consumption abroad);

(c) by a service supplier of one Member, through commercial presence, in the territory of any other Member (Mode 3 - Commercial presence); and

(d) by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (Mode 4 - Presence of natural persons).

Box A gives examples of the four modes of supply.

The above definition is significantly broader than the balance of payments (BOP) concept of services trade. While the BOP focuses on residency rather than nationality – i.e. a service is being exported if it is traded between residents and non-residents – certain transactions falling under the GATS, in particular in the case of mode 3, typically involve only residents of the country concerned.

Commercial linkages may exist among all four modes of supply. For example, a foreign company established under mode 3 in country A may employ nationals from country B (mode 4) to export services cross-border into countries B, C etc. Similarly, business visits into A (mode 4) may prove necessary to complement cross-border supplies into that country (mode 1) or to upgrade the capacity of a locally established office (mode 3).

Box A: Examples of the four Modes of Supply (from the perspective of an "importing" country A)

Mode 1: Cross-border

A user in country A receives services from abroad through its telecommunications or postal infrastructure. Such supplies may include consultancy or market research reports, tele-medical advice, distance training, or architectural drawings.

Mode 2: Consumption abroad

Nationals of A have moved abroad as tourists, students, or patients to consume the respective services.

Mode 3: Commercial presence

The service is provided within A by a locally-established affiliate, subsidiary, or representative office of a foreign-owned and – controlled company (bank, hotel group, construction company, etc.)

Mode 4: Movement of natural persons

A foreign national provides a service within A as an independent supplier (e.g., consultant, health worker) or employee of a service supplier (e.g. consultancy firm, hospital, construction company).

1.4 Scope and Application

Article I:1 stipulates that the GATS applies to measures by Members affecting trade in services. It does not matter in this context whether a measure is taken at central, regional or local government level, or by non-governmental bodies exercising delegated powers. The relevant definition covers any measure, "whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, ... in respect of:

- the purchase, payment or use of a service;
- the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;
- the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member".

This definition is significantly broader than what governmental officials in trade-related areas may expect. It is thus important to familiarize staff at all levels with basic concepts of the GATS to prevent them from acting, unintentionally, in contravention of obligations under the Agreement and enable them to negotiate effectively with trading partners.

For purposes of structuring their commitments, WTO Member have generally used a classification system comprised of 12 core service sectors (document MTN.GNS/W/120):

- Business services (including professional services and computer services)
- Communication services
- Construction and related engineering services
- Distribution services
- Educational services
- Environmental services
- Financial services (including insurance and banking)
- Health-related and social services
- Tourism and travel-related services
- Recreational, cultural and sporting services

- Transport services
- Other services not included elsewhere

These sectors are further subdivided into a total of some 160 sub-sectors. Under this classification system, any service sector may be included in a Member's schedule of commitments with specific market access and national treatment obligations. Each WTO Member has submitted such a schedule under the GATS.

There is only one sector-specific exception to the Agreement's otherwise comprehensive coverage. Under the GATS Annex on Air Transport Services, only measures affecting aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation system (CRS) services have been included. Measures affecting air traffic rights and directly-related services are excluded. This exclusion is subject to periodic review.

Another blanket exemption applies to "services supplied in the exercise of governmental authority" (Article I:3b). The relevant definition specifies that these services are "supplied neither on a commercial basis, nor in competition with one or more service suppliers" (Article I:3c). Typical examples may include police, fire protection, monetary policy operations, mandatory social security, and tax and customs administration.

1.5 General Transparency and Other "Good Governance" Obligations

Sufficient information about potentially relevant rules and regulations is critical to the effective implementation of an Agreement. Article III ensures that Members publish promptly all measures pertaining to or affecting the operation of the GATS. Moreover, there is an obligation to notify the Council for Trade in Services at least annually of all legal or regulatory changes that significantly affect trade in sectors where specific commitments have been made. Members are also required to establish enquiry points which provide specific information to other Members upon request. However, there is no requirement to disclose confidential information (Article III*bis*).

Given strong government involvement in many service markets – for various reasons, including social policy objectives or the existence of natural monopolies – the Agreement seeks to ensure that relevant measures do not undermine general obligations, such as MFN treatment or specific commitments in individual sectors. Thus, each Member is required to ensure, in sectors where commitments exist, that measures of general application are administered impartially and in a reasonable and objective manner (Article VI:1). Service suppliers in all sectors must be able to use national tribunals or procedures in order to challenge administrative decisions affecting services trade (Article VI:2a).

1.6 Most-Favoured-Nation Treatment

The most-favoured-nation (MFN) principle is a cornerstone of the multilateral trading system conceived after World War II. It seeks to replace the frictions and distortions of power-based (bilateral) policies with the guarantees of a rules-based framework where trading rights do not depend on the individual participants' economic or political clout. Rather, the best access conditions that have been conceded to one country must automatically be extended to all other participants in the system. This allows everybody to benefit, without additional negotiating effort, from concessions that may have been agreed between large trading partners with much negotiating leverage.

In the context of the GATS, the MFN obligation (Article II) is applicable to any measure that affects trade in services in any sector falling under the Agreement, whether specific commitments have been made or not. Exemptions could have been sought at the time of the

acceptance of the Agreement (for acceding countries: date of accession). They are contained in country-specific lists, and their duration must not exceed ten years in principle.

1.7 Conditional Granting of Market Access and National Treatment

The GATS is a very flexible agreement that allows each Member to adjust the conditions of market entry and participation to its sector-specific objectives and constraints. Two sets of legal obligations - governing, respectively, Market Access and National Treatment - are relevant in this context. As already noted, Members are free to designate the sectors, and list them in their schedules of commitments, in which they assume such obligations with regard to the four modes of supply. Moreover, limitations may be attached to commitments in order to reserve the right to operate measures inconsistent with full market access and/or national treatment.

The market access provisions of GATS, laid down in Article XVI, cover six types of restrictions that must not be maintained in the absence of limitations. The restrictions relate to

(a) the number of service suppliers

(b) the value of service transactions or assets

(c) the number of operations or quantity of output

(d) the number of natural persons supplying a service

(e) the type of legal entity or joint venture

(f) the participation of foreign capital

These measures, except for (e) and (f), are not necessarily discriminatory, i.e. they may affect national as well as foreign services or service suppliers.

National treatment (Article XVII) implies the absence of all discriminatory measures that may modify the conditions of competition to the detriment of foreign services or service suppliers. Again, limitations may be listed to provide cover for inconsistent measures, such as discriminatory subsidies and tax measures, residency requirements, etc. It is for the individual Member to ensure that all potentially relevant measures are listed; Article XVII does not contain a typology comparable to Article XVI. (Examples of frequently scheduled national treatment restrictions are given in Attachment 1 to document S/L/92.) The national treatment obligation applies regardless of whether or not foreign services and suppliers are treated in a formally identical way to their national counterpart. What matters is that they are granted equal opportunities to compete.

The purpose of commitments, comparable to tariff concessions under GATT, is to ensure stability and predictability of trading conditions. However, commitments are not a straitjacket. They may be renegotiated against compensation of affected trading partners (Article XXI); and there are special provisions that allow for flexible responses, despite existing commitments, in specified circumstances. Under Article XIV, for example, Members may take measures necessary for certain overriding policy concerns, including the protection of public morals or the protection of human, animal or plant life or health. However, such measures must not lead to arbitrary or unjustifiable discrimination or constitute a disguised restriction to trade. If essential security interests are at stake, Article XIV*bis* provides cover. Article XII allows for the introduction of temporary restrictions to safeguard the balance-of-payments; and a so-called prudential carve-out in financial services permits Members to take

measures in order, *inter alia*, to ensure the integrity and stability of their financial system (Annex on Financial Services, para.2).

Commitments must not necessarily be complied with from the date of entry into force of a schedule. Rather, Members may specify in relevant part(s) of their schedule a timeframe for implementation. Such "pre-commitments" are as legally valid as any other commitment.

2. MAIN BUILDING BLOCKS: AGREEMENT, ANNEXES AND SCHEDULES

2.1 Unconditional General Obligations

Each Member has to respect certain general obligations that apply regardless of the existence of specific commitments. These include MFN treatment (Article II), some basic transparency provisions (Article III), the availability of legal remedies (Article VI:2), compliance of monopolies and exclusive providers with the MFN obligation (Article VIII:1), consultations on business practices (Article IX), and consultations on subsidies that affect trade (Article XV:2). In several cases, the same Article contains both unconditional and conditional obligations.

Most-Favoured-Nation Treatment

As already mentioned in Chapter 1.5, the MFN principle applies across all sectors and all Members. However, under the Annex on Article II Exemptions, there is a possibility for Members, at the time of entry into force of the Agreement (or date of accession), to seek exemptions not exceeding a period of ten years in principle. More than 80 Members currently maintain such exemptions, which are mostly intended to cover trade preferences on a regional basis. The sectors predominantly concerned are road transport and audiovisual services, followed by maritime transport and banking services.

Transparency

Under Article III, each Member is required to publish promptly "all relevant measures of general application" that affect operation of the Agreement. Members must also notify the Council for Trade in Services of new or changed laws, regulations or administrative guidelines that significantly affect trade in sectors subject to Specific Commitments. These transparency obligations are particularly relevant in the services area where the role of regulation – as a trade protective instrument and/or as a domestic policy tool – tends to feature more prominently than in most other segments of the economy.

Members also have a general obligation to establish an enquiry point to respond to requests from other Members. Moreover, pursuant to Article IV:2, developed countries (and other Members to the extent possible) are to establish contact points to which developing country service suppliers can turn for relevant information.

Domestic Regulation

Under Article VI:2, Members are committed to operating domestic mechanisms (“judicial, arbitral or administrative tribunals or procedures") where individual service suppliers may seek legal redress. At the request of an affected supplier, these mechanisms should provide for the "prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in service”.

Monopolies

Article VIII:1 requires Members to ensure that monopolies or exclusive service providers do not act in a manner inconsistent with the MFN obligation and commitments. Article XXVIII(h) specifies, in turn, that a "monopoly supplier" is an entity that has been established by the Member concerned, formally or in effect, as the sole supplier of a service.

Business Practices

Article IX refers to business practices other than those falling under the monopoly-related provisions of Article VIII that restrain competition and thereby restrict trade. The Article requires each Member to consult with any other Member, upon request, with a view to eliminating such practices.

Subsidies

Members that consider themselves adversely affected by subsidies granted by another Member may request consultations under Article XV:2. The latter Member is called upon to give sympathetic consideration to such requests.

2.2 Conditional General Obligations

A second type of general obligations applies only to sectors listed in a Member's schedule of commitments.

Domestic Regulation

Pursuant to Article VI:1, measures of general application are to be administered "in a reasonable, objective and impartial manner". If the supply of a scheduled service is subject to authorization, Members are required to decide on applications within a reasonable period of time (Article VI:3).

Article VI:5 seeks to ensure that specific commitments are not nullified or impaired through regulatory requirements (licensing and qualification requirements, and technical standards) that are not based on objective and transparent criteria or are more burdensome than necessary to ensure quality. The scope of these provisions is limited, however, to the protection of reasonable expectations at the time of the commitment. Article VI:4 mandates negotiations to be conducted on any necessary disciplines that, taking account the above considerations, would prevent domestic regulations from constituting unnecessary barriers to trade.

Article VI:6 requires Members that have undertaken commitments on professional services to establish procedures to verify the competence of professionals of other Members.

Monopolies

The GATS does not forbid the existence of monopolies or exclusive service suppliers *per se* (Article VIII) but, as noted above, subjects them to the unconditional MFN obligation. Moreover, under Article VIII:2, Members are held to prevent such suppliers, if these are also active in sectors that are beyond the scope of their monopoly rights and covered by specific commitments, from abusing their position and act inconsistently with these commitments.

In addition, Article VIII:4 requires Members to report the formation of new monopolies to the Council for Trade in Services if the relevant sector is subject to specific commitments. The provisions of Article XXI (Modification of Schedules, see following section) apply.

Payments and Transfers

GATS Article XI requires that Members allow international transfers and payments for current transactions relating to specific commitments. It also provides that the rights and obligations of IMF Members, under the Articles of Agreement of the Fund, shall not be affected. This is subject to the proviso that capital transactions are not restricted inconsistently with specific commitments, except under Article XII (see below) or at the request of the Fund. Footnote 8 to Article XVI further circumscribes Members' ability to restrict capital movements in sectors where they have undertaken specific commitments on cross-border trade and commercial presence.

2.3 Other General Provisions

Economic Integration Agreements

Like GATT (Article XXIV) in merchandise trade, the GATS also has special provisions to exempt countries participating in integration agreements from the MFN requirement. Article V permits any WTO Member to enter into agreements to further liberalize trade in services on a bilateral or plurilateral basis, provided the agreement has "substantial sectoral coverage" and removes substantially all discrimination between participants. Recognizing that such agreements may form part of a wider process of economic integration well beyond services trade, the Article allows the above conditions to be considered in this perspective. It also provides for their flexible application in the event of developing countries being parties to such agreements.

While Economic Integration Agreements must be designed to facilitate trade among participants, Article V also requires that the overall level of barriers is not raised vis-à-vis non-participants in the sectors covered. Otherwise, should an agreement lead to the withdrawal of commitments, appropriate compensation must be negotiated with the Members affected. Such situations may arise, for example, if the new common regime in a sector is modelled on the previous regime of a more restrictive participating country.

Article V*bis* relates to, and provides similar legal cover for, agreements on labour markets integration. The main condition is that citizens of the countries involved are exempt from residency and work permit requirements.

Recognition

Notwithstanding the MFN requirement, Article VII of the GATS provides scope for Members, when applying standards or granting licenses, certificates, etc., to recognize education and other qualifications a supplier has obtained abroad. This may be done on an autonomous basis or through agreement with the country concerned. However, recognition must not be exclusive, i.e. other Members are to be afforded an opportunity to negotiate their accession to agreements or, in the event of autonomous recognition, to demonstrate that their requirements should be recognized as well. Article VII:3 requires that recognition not be applied as a means of discrimination between trading partners or as a disguised trade restriction.

Exceptions

Part II of the GATS (General Obligations and Disciplines) further contains exception clauses for particular circumstances. Regardless of relevant GATS obligations, Members are allowed in specified circumstances to restrict trade in the event of serious balance-of-payments

difficulties (Article XII) or of health and other public policy concerns (Article XIV), or to pursue essential security interests (ArticleXIV*bis*).

2.4 Specific Commitments

In addition to respecting the general obligations referred to above, each Member is required to assume specific commitments relating to market access (Article XVI) and national treatment (Article XVII) in designated sectors. The relevant sectors as well as any departures from the relevant obligations of Articles XVI and XVII are to be specified in the country's Schedule of Commitments.

Article XVI (Market Access) and XVII (National Treatment) commit Members to giving no less favourable treatment to foreign services and service suppliers than provided for in the relevant columns of their Schedule. Commitments thus guarantee minimum levels of treatment, but do not prevent Members from being more open (or less discriminatory) in practice.

At first sight, it may be difficult to understand why the national treatment principle under the GATS is far more limited in scope - confined to scheduled services and subject to possible limitations – than under the GATT where it applies across the board. The reason lies in the particular nature of services trade. Universal national treatment for goods does not necessarily imply free trade. Imports can still be controlled by tariffs which, in turn, may be bound in the country's tariff schedule. By contrast, given the impossibility of operating tariff-type measures across large segments of services trade, the general extension of national treatment in services could in practice be tantamount to guaranteeing free access.

Additional Commitments

Members may also undertake additional commitments with respect to measures not falling under the market access and national treatment provisions of the Agreement. Such commitments may relate to the use of standards, qualifications or licenses (Article XVIII). Additional commitments are particularly frequent in the telecommunications sector where they have been used by some 60 Members to incorporate into their schedules certain competition and regulatory (self-)disciplines. These disciplines are laid out in a so-called Reference Paper, which an informal grouping of Members had developed during the extended negotiations in this sector.

Content of Schedules

Article XX requires each Member to submit a schedule of commitments, but does not prescribe the sector scope or level of liberalization. Thus, while some Members have limited their commitments to less than a handful of sectors, others have listed several dozens.

Further, the Article specifies some core elements to be covered in each Member's schedule. It also provides that the schedules form "an integral part" of the GATS itself.

Modification of Schedules

Article XXI provides a framework of rules for modifying or withdrawing specific commitments. The relevant provisions may be invoked at any time after three years have lapsed from the date of entry into force of a commitment. (In the absence of emergency safeguard measures, which are still under negotiation, this waiting period is reduced to one year under certain conditions). It is thus possible for Members, subject to compensation, to adjust their commitments to new circumstances or policy considerations. At least three months' notice must be given of the proposed change. The compensation to be negotiated with

affected Members consists of more liberal bindings elsewhere that "endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade" than what existed before.

Application must be on an MFN basis. If the negotiations fail, Article XXI allows for arbitration. If the arbitrator finds that compensation is due, the proposed changes in commitments must not be put into effect until the compensatory adjustments are made. Should the modifying country ignore the arbitrator's findings, affected countries have the right to retaliate by withdrawing commitments.

In 1999, the Council for Trade in Services enacted detailed procedures for the modification of schedules pursuant to Article XXI (document S/L/80). Improvements to schedules, i.e. inscription of new sectors or removal of existing limitations, are subject to more streamlined procedures, laid down in document S/L/84.

2.5 How Schedules are Structured

As noted above, the obligations of any WTO Member under GATS consist of the provisions of the Agreement and its Annexes as well as the specific commitments contained in the national schedule. The schedule is a relatively complex document, more difficult to read than a tariff schedule under GATT. While a tariff schedule, in its simplest form, lists one tariff rate per product, a schedule of commitments contains at least eight entries per sector: the commitments on each market access and national treatment with regard to the four modes of supply.

The services schedule of "Arcadia", an imaginary WTO Member, displays the normal four-column format (Box F). While the first column specifies the sector or sub-sector concerned, the second column sets out any limitations on market access that fall within the six types of restrictions mentioned in Article XVI:2. The third column contains any limitations that Arcadia may want to place, in accordance with Article XVII, on national treatment. A final column provides the opportunity to undertake additional commitments as envisaged in Article XVIII; it is empty in this case.

Any of the entries under market access or national treatment may vary within a spectrum whose opposing ends are full commitments without limitation ("none") and full discretion to apply any measure falling under the relevant Article ("unbound"). The schedule is divided into two parts. While Part I lists "horizontal commitments", i.e. entries that apply across all sectors that have been scheduled, Part II sets out commitments on a sector-by-sector basis.

Arcadia's horizontal commitments under mode 3, national treatment, reserve the right to deny foreign land ownership. Under mode 4, Arcadia would be able to prevent any foreigner from entering its territory to supply services, except for the specified groups of persons. Within the retailing sector, whose definitional scope is further clarified by reference to the United Nations provisional Central Product Classification (CPC), commitments vary widely across modes. Most liberal are those for mode 2 (consumption abroad) where Arcadia is bound not to take any measure under either Article XVI or XVII that would prevent or discourage its residents from shopping abroad.

Entries into schedules should remain confined to measures incompatible with either the market access or national treatment provisions of the GATS and to any additional commitments a Member may want to undertake under Article XVIII. Schedules would not provide legal cover for measures inconsistent with other provisions of the Agreement, including the MFN requirement under Article II or the obligation under Article VI:1 to reasonable, objective and impartial administration of measures of general application. MFN-inconsistent measures, that have not been included in the relevant list, need to be rescinded

and the same applies to any inconsistencies with Article VI. The trade-impeding effects associated with non-discriminatory domestic regulation - qualification requirements for teachers, lawyers, or accountants; minimum capital requirements for banks; mandatory liability insurance for doctors; etc. – do not call for scheduling *per se*. As noted before, the Agreement clearly distinguishes between, on the one hand, trade liberalization under specific commitments and, on the other hand, domestic regulation for quality and other legitimate policy purposes. By the same token, there is no need to schedule access restrictions, such as sales bans on arms or pornographic material and the like, that fall under the General Exceptions of Article XIV or prudential measures aimed to ensure the stability and integrity of the financial services sector.

Box F: Sample Schedule of Commitments: Arcadia

Modes of supply: (1) Cross-border supply; (2) Consumption supply; (3) Commercial presence; (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	(4) Unbound, other than for (a) temporary presence, as intra-corporate transferees, of essential senior executives and specialists and (b) presence for up to 90 days of representatives of a service provider to negotiate sales of services.	(3) Authorization is required for acquisition of land by foreigners.	
II. SECTOR-SPECIFIC COMMITMENTS			
4. DISTRIBUTION SERVICES C. Retailing services (CPC 631, 632)	(1) Unbound (except for mail order: none). (2) None. (3) Foreign equity participation limited to 51 per cent. (4) Unbound, except as indicated in horizontal section.	(1) Unbound (except for mail order: none). (2) None. (3) Investment grants are available only to companies controlled by Arcadian nationals. (4) Unbound.	

3. A CLOSER LOOK AT DOMESTIC REGULATION

3.1 Purpose and Effects of Regulation

As noted before, the GATS makes a clear distinction between domestic regulation and measures subject to trade liberalization. On the one hand, it explicitly recognizes the continued right (and, possibly, the need) of Members to enforce domestic policy objectives through regulation. On the other hand, it promotes the objective of progressive liberalization, consisting of expanding and/or improving existing commitments on market access and national treatment.

Effective regulation – or re-regulation – can be a pre-condition for liberalization to produce the expected efficiency gains without compromising on quality and other policy objectives. For example, the opening of a hitherto restricted market may need to be accompanied by the introduction of new licensing mechanisms and public service obligations for quality and social policy reasons. Since many services contracts involve customized, not yet existing products (medical intervention, legal advice, etc.), the need for regulatory protection is particularly evident.

By the same token, however, it may be necessary to ensure that the benefits from liberalization are not frustrated by ineffective or inconsistent regulation. Many regulatory regimes have evolved in response to immediate problems and challenges, without much thought being given to trade and efficiency considerations. Moreover, regulatory responsibilities tend to be spread across ministries and agencies (Finance, Justice, Construction, Transport, Health, Education, etc.) and levels of government without much communication, let alone co-ordination.

Examples of public policy objectives that might require regulatory support:

- Equitable access, regardless of income or location, to a given service
- Consumer protection (including through information and control)
- Job creation in disadvantaged regions
- Labor market integration of disadvantaged persons
- Reduction of environmental impacts and other externalities
- Macroeconomic stability
- Avoidance of market dominance and anti-competitive conduct
- Avoidance of tax evasion, fraud, etc.

Governments remain free under the GATS to pursue such policy objectives even in sectors where they have undertaken full commitments on market access and national treatment.

3.2 Disciplines for Domestic Regulation

Regulations that are not intended to serve protective purposes, under Articles XVI and XVII, may nevertheless severely restrict trade. Such restrictive effects may be justified in view of a prevailing policy objective, or they may be due to excessive and/or inefficient intervention.

Because of the importance of the domestic regulatory environment as a context for trade, the Council for Trade in Services has been given a particular negotiating mandate in Article VI:4. It allows the Council to develop, in appropriate bodies, any necessary disciplines to prevent domestic regulations (qualification requirements and procedures, technical standards, and licensing requirements) from constituting unnecessary barriers to trade. The Working Party on Domestic Regulation (WPDR) has been established for that purpose.

The disciplines envisaged under Article VI:4 are intended to ensure that domestic regulations are, *inter alia*:

a) based on objective and transparent criteria, such as competence and the ability to supply the service;

b) not more burdensome than necessary to ensure the quality of the service;

c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

While it is difficult to predict the outcome of current work, there is already some sort of precedent which may provide guidance: The Disciplines on Domestic Regulation in the Accountancy Sector (document S/L/64), approved by the Services Council in December 1998. The relevant Council Decision (document S/L/63) provides that the "accountancy disciplines" are applicable only to Members who have scheduled specific commitments on accountancy. The disciplines are to be integrated into the GATS, together with any new results the WPDR may achieve in the interim, at the end of the current Round. A core feature of the disciplines is their focus on (non-discriminatory) regulations that are not subject to scheduling under Articles XVI and XVII.

Measures relating to licensing, qualifications and technical standards which discriminate between foreign and domestic suppliers, whether formally or in fact, would need to be scheduled as national treatment limitation in the sectors where GATS commitments have been made.

Pending the entry into force of the disciplines under Article VI:4, Members are required not to apply their domestic regulation a way that would: nullify or impair specific commitments; be incompatible with the three above criteria; and could not have reasonably been expected at the time when the relevant commitments were made.

3.3 Potentially Relevant Principles

The WPDR has been reviewing principles that could form a framework for regulatory development:

a) Necessity

Domestic regulations should not be more trade restrictive or burdensome than necessary to achieve a specific, legitimate objective. Without a clear statement of purpose, it would be difficult to measure the effectiveness of a regulation after implementation.

b) Transparency

Information on regulatory principles and process should be accessible to all parties concerned. Relevant criteria include:

- Reasonable advance notice before implementation
- Public availability to service suppliers – easy to find, easy to read
- Specification of reasonable time periods for responding to applications
- Information provided as to why an application was declined
- Information provided on procedures for review of administrative decisions

c) Equivalence

Account should be taken of relevant qualifications and experience a supplier may have obtained abroad.

d) International Standards

Acceptance of international standards could facilitate the evaluation of qualifications obtained abroad.

Other principles that have been raised for discussion include: impartial application; proportionality (any penalties for non-performance should bear a reasonable relationship to the risks involved); regular review process; minimization of the administrative burden involved; and objective criteria, linked to international standards.

3.4 Developing New Regulations – How to Proceed

In the process of regulatory review and development, the ministries and agencies involved may need to address four categories of issues:

1. Purpose of the regulation?

   The national policy objective and the requirement for new regulation should be clear.

2. How to ensure effectiveness?

   Check the principles listed in Section 3.3.

3. Criteria for implementation and administration

   - Transparent and impartial procedures.
   - Timely information of applicants on status of processing.
   - Proper training and supervision of officials involved.
   - Permanent monitoring for compliance with underlying objectives.

4. Recourse possibilities for adversely affected suppliers

   The relevant process should be clearly delineated, reasonably timely and not unduly burdensome.

   One of the barriers to trade expansion for service suppliers is multiple licensing and certification requirements in export markets. Such requirements may prove costly not only from both the suppliers' perspective, but could unnecessarily restrict competition – and, thus, have unwarranted price effects – for potential users. To help solve such problems, Members have concluded mutual recognition agreements (MRAs) in appropriate cases or autonomously recognized education and training obtained in other jurisdictions. While potentially in conflict with the MFN obligation under Article II, GATS Article VII allows for such measures as long as there are adequate provisions for other Members to negotiate accession and/or achieve recognition of their requirements and certificates, and the measures do not constitute a means of discrimination or a disguised restriction on trade.

4. THE CHALLENGES AHEAD

4.1 The Doha Development Agenda

The Uruguay Round marked only a first step in a longer-term process of services liberalization within a multilateral framework. The importance of the Round lay less in its improving actual market conditions, but in creating a completely new system of rules and disciplines for future trade liberalization. This may also explain why the GATS, in Article XIX:1, already provides for a new round of services negotiations to start not later than five years from the date of entry into force of the Agreement.

Consequently, a new services Round was launched in January 2000. It aims to achieve a progressively higher level of liberalization of services trade while "promoting the interests of all participants on a mutually advantageous basis and … securing an overall balance of rights and obligations" (Article XIX:1). Although the Seattle Ministerial Conference in late November 1999 failed to agree on launching a larger trade round, the mandate to negotiate on services was never put into doubt. Contrasting from preparatory stages of the Uruguay Round, Members' focus was no longer on whether, but on how to promote services liberalization within the multilateral system.

As a first step in 1998, and as part of an information exchange programme mandated at the Singapore Ministerial Conference, the WTO Secretariat prepared a series of background

papers on major services sectors (available on the WTO Website) to stimulate policy discussion and promote dissemination of relevant information among Members. In March 2001, the Council for Trade in Services adopted Guidelines and Procedures for the Services Negotiations (document S/L/93) as provided for in Article XIX:3. Major elements include a reaffirmation of the right to regulate and to introduce new regulations on the supply of services; the objective of increasing participation of developing countries in services trade; and the preservation of the existing structure and principles of the GATS, including the listing of sectors in which commitments are made and the four modes of supply. Certain new elements have been added, such as explicit recognition of the needs of small and medium-sized service suppliers; reference to the request-offer approach as the main method of negotiation; and continuation of the assessment of trade in services, mandated under Article XIX:3, as an ongoing activity of the Council for Trade in Services.

The Negotiating Guidelines further provide that the rule-making negotiations inherited from the Uruguay Round ('built-in agenda') in the areas of subsidies, government procurement and domestic regulation be concluded prior to the completion of the negotiations on specific commitments. The negotiations on safeguards under Article X were made subject to an earlier deadline (15 March 2002), which has since been revised. A Decision by the Council for Trade in Services of March 2004 now provides that, subject to the outcome of the negotiating mandate in Article X:1, the results shall enter into force not later than the results of the current Round of services negotiations.

In keeping with another mandate under Article XIX:3, the Negotiating Guidelines were complemented in 2003 by the "Modalities for the Special Treatment for Least-Developed Country Members". The Modalities are intended to ensure "maximum flexibility" for LDCs in the negotiations.

In November 2001, the Ministerial Conference in Doha confirmed the Services Negotiating Guidelines of March 2001 and placed them into the overall timeframe of the Doha Development Agenda. Initial requests for new or improved services commitments were to be submitted by 30 June 2002, with initial offers being due by 31 March 2003. A later decision by the General Council, in the context of the so-called July Package of 2004 (document WT/L/579), set a target date of May 2005 for the submission of revised offers.

Nevertheless, the negotiations apparently failed to live up to the expectations of many participants. In 2005, the Chairman of the Special Session of the Council for Trade in Services summarized that, if current offers were put into effect, "few, if any, new commercial opportunities would ensue for service suppliers". Therefore, in his view, most Members felt that the negotiations were not progressing as they should (document TN/S/20).

The Hong Kong Ministerial Declaration of December 2005 is intended to provide new impetus. The negotiating objectives contained in its services-related sections, in particular Annex C, are far more detailed than those listed in any preceding declaration. New elements include a statement that least-developed countries are not expected to undertake new commitments, an obligation to develop methods for the implementation of LDC modalities, new provisions governing plurilateral request-offer negotiations (in addition to the bilateral approach), and mode-specific objectives for the continuation of these negotiations. Also, considerable emphasis is placed on achieving more clarity and certainty in the scheduling and classification of commitments. A second round of revised offers is due to be submitted by 31 July 2006, while the final draft schedules are to be tabled by 31 October 2006.

In March 2006, the Chairman of the Council for Trade in Services summarized a general sense amid Members that the "Hong Kong Ministerial Declaration, including Annex C, establishes a clear set of negotiating objectives for services and a timeline to achieve them, providing the essential guidance for the negotiations to conclude by the end of this year". It

was also recognised that "as the Hong Kong Declaration does not define or provide a formula for the outcome of the negotiations, much will depend on the early and intense engagement by Members, particularly in the request/offer process" (document TN/S/25).

4.2 Mandated Review of MFN Exemptions

Most-favoured-nation treatment is a fundamental principle of the multilateral trading system as it was conceived after World War II and reconfigured in the Uruguay Round (Chapter 1.5). Any departures should thus be limited to exceptional circumstances and, where possible, be phased-out over time.

The Annex on Article II Exemptions stipulates that MFN exemptions should not exceed ten years in principle, and provides for a review of all existing measures that had been granted for periods of more than five years. The latter review is destined to examine whether the conditions that led to the creation of the exemptions still prevail. More importantly, the Annex also requires that MFN exemptions be subject to negotiation in any subsequent trade round (Annex on Article II Exemptions).

The first review was concluded in May 2001, and a second one was conducted in 2004. Members decided to launch a third review not later than June 2010. Concerning the negotiation of these exemptions in the context of the current Round, the Hong Kong Declaration commits Members to removing or reducing them substantially and to clarifying the scope and duration of remaining measures.

4.3 Negotiations on GATS Rules

The GATS contains several negotiating mandates in rule-making areas which Member felt unable within the timeframe of the Uruguay Round to consider in detail. These negotiations are conducted in two Working Parties, one on Domestic Regulation and one on GATS Rules. The latter Working Party is charged with negotiations on emergency safeguards (Article X), government procurement (Article XIII), and subsidies (Article XV).

Emergency Safeguards

Emergency safeguards in services may be expected to allow for the temporary suspension of market access, national treatment and/or any additional commitments that Members may have assumed in individual sectors. Any such mechanism, should it be agreed to by Members, would need to be based on the principle of non-discrimination. It would complement existing provisions under the GATS that already allow for temporary or permanent departures from general obligations or specific commitments. Relevant provisions include Article XII if a Member experiences serious balance of payments and external financial difficulties; Article XIV if action is deemed necessary for overriding policy concerns such as protection of life and health or protection of public morals; and Article XXI if a Member intends to withdraw or modify a commitment on a permanent basis.

Contrasting with these provisions, a safeguards clause might be used to ease adjustment pressures in situations where a particular industry is threatened by a sudden increase in foreign supplies. If the Safeguards Agreement for goods is used as a precedent, the onus would be on a protection-seeking industry to demonstrate that a causal link exists between such increases in supplies and its suffering serious injury.

There are two main schools of thought among Members. One group is not convinced that such a mechanism is desirable, given the scheduling flexibility under the GATS and the risk of undermining the stability of existing commitments through new emergency provisions. There are also doubts whether a services safeguard would be workable in practice. Sceptical

Members point to the scarcity of reliable trade and production data in many sectors, and the technical complexities associated with the multi-modal structure of the GATS. Another group of Members feels that the availability of safeguards in the event of unforeseeable market disruptions, would encourage more liberal commitments in services negotiations. In their view, abuse could be avoided through strict procedural disciplines. Data problems should not be exaggerated, given the existence in many sectors of professional associations, regulators and licensing bodies that compile relevant information.

Government Procurement

The share of government purchases of services - from postal and communication services, to transport and financial services - is significant in many markets, and so are the trade effects that may result from access restrictions. The GATS imposes no effective disciplines, however, on governments' use of such restrictions, whether in the form of exclusions of foreign participation, or of preferential margins favouring domestic suppliers.

Article XIII provides that the MFN obligation (Article II) and any existing commitments on market access and national treatment (Articles XVI and XVII) do not apply to the procurement of services for governmental purposes. It is for the individual Members to balance the fiscal cost and structural inefficiencies that may be associated with purchasing restrictions and/or preferences with their expected contribution to employment, development and other policy objectives. However, Article XIII provides for negotiations to be conducted under the GATS. Although these negotiations started relatively soon after the Uruguay Round, together with those in the other rule-making areas, progress has been limited to date. It remains to be seen whether the new Round will give a boost.

The only current procurement disciplines under WTO provisions are those contained in the Plurilateral Agreement on Government Procurement, whose scope is confined to a limited number of mostly economically advanced Members. The Agreement applies to purchases of goods and services and provides for transparency and, in specifically listed sectors, non-discrimination in the award process among signatories.

Subsidies

Like other measures affecting trade in services, subsidies are already subject to the GATS. The unconditional general obligations, including MFN treatment, thus apply. In scheduled sectors, these are complemented by the national treatment obligation, subject to any limitations that may have been inscribed, and a variety of conditional obligations.

Article XV nevertheless provides for negotiations on disciplines that may be necessary to avoid trade-distortive effects. The appropriateness of countervailing measures shall also be addressed.

The WTO Agreement on Subsidies and Countervailing Measures Agreement was developed for goods trade, and it may not necessarily prove an appropriate model for services. Governments may want to retain broader scope for subsidization in the pursuit of social, cultural, and general development objectives. While Article XV:1 of the GATS also provides for an information exchange on subsidies among Members, very little information has been provided to date. This may reflect a certain lack of negotiating interest, but might also be attributed to definitional and data problems.

4.4 Assessment of Trade in Services

Article XIX:3 provides that prior to establishing the negotiating guidelines for a new round, "the Council for Trade in Services shall carry out an assessment of trade in services in overall

terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV." While discussed at virtually all Meetings of the Services Council since 1998/99, delegations have found it difficult to arrive at a common assessment. This may be due not only to natural divergences in policy objectives and negotiating interest, but also to problems of data availability and comparability across countries, sectors and modes. The commitments contained in schedules can hardly be considered to be meaningful reference points for an assessment, given that they cover only a limited number of sectors and that most entries remained confined to locking in status quo conditions in the early 1990s. In many cases, they have since been overtaken by autonomous policy reforms.

5. PREPARING REQUESTS AND OFFERS

5.1 Negotiating Approaches

In their Uruguay Round schedules, many Members confined commitments to binding status quo conditions in a limited range of sectors. The number of services included, and the levels of access bound, remained modest in general. This may have been due to a variety of factors: governments' preference to play it safe, i.e. to avoid tensions over the interpretation and application of a completely new set of rules; reticence on the part of services-related Ministries and agencies, which had no prior experience with international trade negotiations; difficulties of small administrations, short of resources, to keep pace with the negotiating process in Geneva; and the instincts of seasoned negotiators who, in the absence of requests from large trading partners, may have preferred to keep silent.

In order to benefit from GATS negotiations, however, it is necessary for governments to reconsider old habits. As noted above, unlike traditional trade agreements for goods, the GATS extends to consumer movements (mode 2) and the movement of production factors – in the form of investment flows intended to establish a commercial presence (mode 3) and of natural persons entering markets to supply a service (mode 4). Commitments under the relevant modes may enhance an economy's attractiveness for internationally mobile resources (human and/or physical capital) which, in turn, could help to overcome domestic supply shortages. It cannot be taken for granted that the requests received from trading partners, if any, coincide with an economy's developmental needs in attracting such resources.

The scope of GATS allows for broad-based interaction with, and integration into, international product and factor markets. Focal areas of interest, from a developmental perspective, might include infrastructural services, such as transport, distribution, finance and communication, that have economy-wide growth and efficiency implications. This implies, in turn, that in the definition of negotiating positions any defensive interests of sector incumbents, and the possible cost of adjustment, would need to be balanced with such wider economic benefits.

Liberalization strategies must be well conceived. For example, governments may need to think about the sequencing of individual reform steps within and between sectors, and the need for complementary regulatory change (definition of prudential standards, creation of supervisory bodies, etc.).

5.2 Technical Aspects of Requests

Requests may be addressed to a group of participants or to an individual Member. There are possibly four relevant targets, which are not mutually exclusive.

(i) Addition of sectors that are not included in the relevant schedule.

(ii) Removal of existing limitations or reductions in their restrictiveness (e.g. increases in the number of admitted suppliers or the levels of foreign equity participation). A request may also seek to transform an "unbound" into a commitment with or without limitations.
Such requests always relate to measures affecting market access (Article XVI) or national treatment (Article XVII).

(iii) Inscription of additional commitments (Article XVIII) relating to matters not falling within the scope of Articles XVI and XVII. A case in point is the Reference Paper on regulatory principles in basic telecommunications; a relatively high number of such requests were made, and implemented, during the extended negotiations under the Fourth Protocol.

(iv) Removal of MFN exemptions. Paragraph 6 of the Annex on MFN Exemptions provides that existing exemptions be subject to negotiations in successive rounds of negotiations.

A request may be presented in the format of a simple letter. Thus, if a participant seeks a full commitment under Articles XVI or XVII, it would simply request "none" be inscribed in its trading partner(s) schedule.

Additional commitments under Article XVIII may need to be technically more specific. The Article merely provides a framework for scheduling commitments on matters not falling under market access or national treatment. As evidenced by the telecommunications Reference Paper, such commitments may extend to areas not even addressed within the GATS itself, such as the establishment of an independent regulator. If a request is made to undertake such obligations not defined in the GATS, these must be described in accurate legal terms.

The process of exchanging requests is mostly bilateral in nature, but twenty or so plurilateral requests were also tabled in 2006 following the provisions agreed to in the Hong Kong Ministerial Declaration. The WTO Secretariat tends not to be involved in the process. There was a suggestion at one stage in the Uruguay Round that when a request was made, a copy should also be sent to the Secretariat for its records. However, that practice was followed only for a short period of time and has not been continued in the current negotiations.

5.3 Technical Aspects of Offers

Offers would normally address the same issues as listed above, i.e. the addition of new sectors; the removal of existing limitations or the binding of modes not currently committed; the undertaking of additional commitments under Article XVIII; and the termination of MFN Exemptions. Participants would take into account all requests received, after careful assessment of the growth, developmental and other relevant policy implications.

While requests are usually presented in the form of a letter, an offer normally consists of a draft schedule of commitments. Therefore, offers do require considerable technical preparation. In the Uruguay Round, in the absence of pre-existing schedules of commitments, participants started the negotiating process with the submission of offers. These were followed by requests, amended offers, and so forth.

In the new Round, offers have been submitted against the backdrop of existing schedules. Members have used, as a starting-point, consolidated schedules that incorporate not only the Uruguay Round outcome, but any later amendments and extensions, including those resulting from the negotiations on basic telecommunications and financial services. The modifications

offered in current negotiations have been indicated through strikeouts and bolded insertions, highlighted in the case of revised initial offers. Members have also used the offers to introduce technical clarifications to their existing commitments, which have been indicated in italics. The draft offers constitute negotiating documents with no legal status and have no binding effects on the participant concerned.

In the course of the negotiations, a succession of requests and offers takes place. Initial offers are subjected to revisions, in response mainly to new or renewed requests. Offers are circulated multilaterally. This is not only useful for transparency purposes, but also from a functional point of view. While offers reflect the requests received (and, possibly, autonomous policy choices), they need to be open to consultation and negotiation by all partners.

With the submission of offers, participants enter a decisive stage of the negotiating process. Many governments send delegations to Geneva to conduct a long schedule of discussions with other delegations. Less time will be spent in Council or Committee meetings.

As an off-shoot from the request-offer process, substantive issues of common interest might arise and require further multilateral discussion. For example, participants may want to address regulatory issues via Article XVIII, further clarify concepts and disciplines contained in the GATS, or improve existing sector classifications. The Reference Paper in basic telecommunications, inscribed under Article XVIII, may stimulate work in other sectors facing similar problems of network access and market dominance, such as rail transport or electricity distribution. Other regulatory issues, e.g. transparency requirements, may be addressed as well. The development of a reference paper should essentially be open to all participants. Of course, once adopted or agreed upon, the paper only takes legal effect if it is incorporated in a Member's schedule.

5.4 Complexity as a Challenge

The GATS is structurally more complex than the GATT. Among the most conspicuous differences are the existence of four modes of supply and of two distinct legal parameters, market access and national treatment, to determine conditions of market entry and participation. Thus, while a tariff schedule under GATT, in its simplest form, displays one tariff rate by sector, all specific commitments under the GATS consist of at least eight inscriptions, four under each market access and national treatment. This relatively complex structure of the Agreement is intended to enable Members to accommodate sector- or mode-specific constraints they may encounter in the scheduling process and to progressively liberalize their services trade in line with their national policy objectives and levels of development. Complexity can thus be viewed, in part, as a precondition for effectiveness and flexibility.

Nevertheless, national administrations, in particular in small developing countries, may harbour doubts. From their perspective, the complexity of the Agreement implies a formidable negotiating challenge. It not only complicates internal decision-making and consultation procedures with other Ministries and the private sector, but commands more attention (and resources) in the interpretation of requests received from, and the preparation of offers to be send to, trading partners.

The Agreement seeks to address such concerns. First, it expressly recognizes the situation of developing countries and provides individual Members with "appropriate flexibility" for opening fewer sectors and liberalizing fewer types of transactions in line with their development situation. While these provisions in Article XIX:2 may have been intended mainly to protect developing countries from overly ambitious commitments that, especially in the absence of appropriate regulatory frameworks, may cause excessive adjustment pains,

they also protect from undue negotiating pressure across too wide a range of sectors and policy areas. Moreover, Article XXV of the GATS expressly recognizes the need for the WTO Secretariat to provide technical assistance to developing countries. The Article needs to be read in conjunction with the emphasis placed on the role of technical cooperation and capacity building by the Negotiating Guidelines and Procedures of March 2001 and, even more importantly, the Doha and the Hong Kong Ministerial Declarations.