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THE CONTRIBUTION OF SERVICES LIBERALIZATION TO POVERTY REDUCTION: WHAT ROLE FOR THE GATS?

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There are various conceivable links between services liberalization and poverty reduction, including the efficiency effects associated with increased competition in intermediate (infrastructural) services, income transfers generated by workers moving abroad, or the mobilization of private investment for social policy purposes. Arguably the most promising option for interested governments, regardless of complementary moves by trading partners, is the opening of, and creation of favourable investment conditions in, core infrastructural services. However, apart from basic telecommunications, both the Uruguay Round schedules and the offers submitted in the Doha Round to date have remained disappointing in this respect. Effective services liberalization, as measured by the share of phase-in commitments in total commitments, has occurred mainly in the context of WTO accessions and Preferential Trade Agreements. Given the apparent lack of political impetus in broader-based trade rounds, this article discusses options, in particular from the viewpoint of smaller and poorer participants, how the submission of more meaningful offers could be encouraged.

I. INTRODUCTION

Income inequality, both within and between nations, is one of the most pressing policy concerns of our time. It has inspired a lot of economic research, from different perspectives and using different approaches. Trade economists have sought, *inter alia*, to explore a perceived relationship between liberal access regimes, economic growth and income distribution. While a number of studies confirm a positive link between openness and growth, however weak, the link with income distribution and/or poverty reduction appears even more uncertain. Recent research seems to corroborate its existence, but relevant correlations are fragile at best, with significant variations across economic sectors, regions and so on.[1] Moreover, the focus is on developments in merchandise trade, reflecting the data situation and, possibly, a still prevailing tendency among economists to equate 'trade' with cross-border exchanges of goods. Thus, while there are sector-specific studies for individual services, there is no comparable body of research looking specifically into the

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[1] See, for example, Martin Ravallion, "Looking Beyond Averages in the Trade and Poverty Debate", in Machiko Nissanke and Erik Thorbecke (eds), *The Impact of Globalization on the World's Poor* (New York: United Nations University, Palgrave, 2007) p. 118-144. A comprehensive presentation of the state of research, the conceptual and methodological problems involved, is provided by L. Alan Winters, Neil McCulloch and Andrew McKay, *Trade Liberalization and Poverty: The Evidence So Far*, 42 Journal of Economic Literature 1 (2004) pp. 72-115.

distributional implications of broad-based liberalization within the framework of the General Agreement on Trade in Services (GATS).[2]

At the outset, it might be expected that the (potential) contribution of trade liberalization to poverty reduction is weaker in services than in merchandise trade. While representing about two-thirds of world production and employment, the share of services in total world trade, as reflected in Balance-of-Payments statistics, is in the order of one-fifth only. However, this ignores the broader coverage of the GATS, as compared to the General Agreement on Tariffs and Trade (GATT), which extends to consumer and factor movements as well.[3] The activities of foreign invested companies, captured by mode 3 (commercial presence) of the GATS, alone account for about one-half of all transactions falling under the Agreement.[4] More importantly, however, liberalization impacts are likely to be stronger in services where many markets are still more heavily protected than in merchandise trade. Whenever services are used as production inputs ('intermediate' or 'producer services'), these impacts spread immediately across, and may provide a boost to, many related sectors. At the same time, liberalization-induced losses in government revenue, if any, tend to be limited since services protection is not generally based on tariffs, but on numerical restrictions. (However, as noted below, the need for complementary investments in legal, institutional, and physical infrastructures may have significant resource implications.) Finally, it is important to bear in mind that the targeted provision of a range of socially-oriented services, including health, education and some other 'consumer services', can directly contribute to poverty alleviation.

The following discussion briefly traces various (potential) links between services liberalization and poverty alleviation. These may consist of the potential economic impact on poor countries and, more specifically, vulnerable population segments; the possibility of generating international income transfers in the form of workers' remittances; and, thirdly, the targeted provision of (liberalized) services to disadvantaged regions and persons within a country. The overview of potential liberalization impacts almost necessarily leads to the question what role the GATS could play in opening services markets and/or securing liberal access regimes. At the current juncture, this also begs the question why the ongoing services negotiations, launched in 2000, have not yet lived up to the expectations that, at least in some quarters, have been associated with this first trade liberalizing round under the GATS, and what could be done to encourage Members, including especially developing and least-developed countries, to participate more actively.[5]

II. CONTRIBUTION TO OVERALL ECONOMIC EFFICIENCY AND GROWTH

This section starts from the assumption that the policies, which contribute to overall economic expansion of poor countries, can also help to reduce poverty. Two main strands may be distinguished

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[2] An overview of available studies on the broader developmental implications of services liberalization is provided by Bernard Hoekman, *Liberalizing Trade in Services: A Survey*, Word Bank Research Working Paper 4030 (Washington D.C., 2006); John Whalley, *Developing Countries: Liberalisation in Services*, 27 The World Economy 8 (2004) pp. 1223-1253; as well as Matthias Lücke and Dean Spinanger, *Liberalizing International Trade in Services: Challenges and Opportunities for Developing Countries*, Kieler Diskussions-beiträge 412 (Kiel Institute for the World Economy, 2004).

[3] A Member's trade commitments under the GATS relate to measures affecting cross-border imports (cross-border trade: mode 1), the consumption of services in another Member's territory (consumption abroad: mode 2), as well as the services-related activities of foreign established suppliers (commercial presence: mode 3) and foreign natural persons (presence of natural persons: mode 4) in the Member's domestic market. See Rudolf Adlung et al, "The GATS: Key Features and Sectors", in Bernhard Hoekman, Aaditya Mattoo and Philip English (eds), *Development, Trade, and the WTO* (Washington D.C.: The World Bank, 2002) pp. 259-279.

[4] WTO, *International Trade Statistics* (Geneva: WTO, 2005) p. 8.

[5] Note that Article XIX:1 of the GATS commits WTO Members, subject to certain flexibilities for developing countries, "to enter into successive rounds of negotiations ... with a view to achieving a progressively higher level of liberalization".

in this context: deeper integration of developing countries' goods and services producers into international markets, and improved competitiveness through more cheaply and abundantly available domestic services inputs.

A. SERVICES AS A CONDUIT OF TRADE

Transport and communication services are the conduits through which individual economies interact. Their efficiency is a core determinant of domestic producers' ability to compete on, and receive inputs from, international markets. Equipped with better transport and communication links, companies are able to respond more immediately to locational differences in factor prices and technologies. Previously integrated processing chains may dissolve, with the fragments being spread over multiple locations.[6] This process is commonly referred to as outsourcing, and may take place at both the national and international levels. It is likely to provide an economic push in particular to (relatively) immobile resources, including low-skilled workers, in peripheral locations.

In addition, of course, cost decreases in transport and communication help to promote the international integration of more traditional producers in farming or basic manufacturing (e.g., horticulture, leather and textiles). The same is certainly true for tourism, whose contribution to poverty alleviation, including through knock-on effects in related sectors, is all too evident. (International tourist receipts, as a percentage of exports, are as important to Tanzania, a least-developed country, as they are to Spain or Greece; and tourism is significantly more labour-intensive than other non-agricultural sectors.)[7] Tourist flows are highly price-sensitive; a doubling of travel costs has been estimated to reduce tourism demand by as much as eight-fold.[8]

Empirical research suggests that <u>shipping costs</u> are the most binding (and biting) trade barrier in many countries. For about three-quarters of the United States' trading partners, transport costs reportedly exceed the relevant tariffs.[9] Based on a cross-section of countries, it has been suggested that a doubling of such costs is associated with slower annual economic growth of more than one-half of a percentage point.[10] Of course, only parts of these effects are policy-made or, rather, policy-inflicted: geography and exogenous economic factors, such as traffic density and competition in international markets, play a significant role as well. Nevertheless, country-internal transport needs and other, predominantly administrative requirements are not even taken into account in these estimates, although the ensuing costs and delays may prove very significant as well, with huge variations within and between regions. For example, the travel time for merchandise exports from factory gate to ship loading has been estimated to average 49 days in Sub-Saharan Africa and 34 days in South Asia, as compared to 13 days in high-income OECD countries.[11]

<u>Telecommunications</u> has possibly experienced the most dramatic changes among all infrastructurally relevant sectors in recent years, owing to rapid technical progress and, in many countries, regulatory reform. As a result, the average retail price of an international call is estimated to

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[6] Deardorff has developed a theoretical framework illustrating how liberalization of 'trade services' may increase the gains from trade in goods. See Alan V. Deardorff, *International Provision of Trade Services, Trade, and Fragmentation* (The University of Michigan: Research Paper No. 463, 2000). In a similar vein, Jones and Kierzkowski associate the emergence of increasingly fragmented production processes, not necessarily stable over time, with more easily available service links (transport, communication and coordination) whose provision is subject to scale economies. Ronald W. Jones and Henryk Kierzkowski, *International fragmentation and the new economic geography*, 16 The North American Journal of Economics and Finance 1 (2005) pp. 1-10.

[7] For an overview of relevant studies see ODI Briefing Paper, *Can Tourism Help Reduce Poverty in Africa?* (London: Oversees Development Institute, 2006, available at www.odi.org.uk).

[8] World Bank, *Economic Prospects 2002* (Washington D.C.: The World Bank, 2001) p. 100.

[9] Ibid, p. 99.

[10] Ibid, p. 97.

[11] Hildegunn Kyvik Nordås, Enrico Pinali and Massimo Geloso Grosso, *Logistics and Time as a Trade Barrier*, OECD Trade Policy Working Paper No. 35, TD/TC/WP(2006)3/FINAL (Paris, 2006) p. 13.

have dropped from US$1.57 in 1983 to US$0.42 per minute in 2001. Again, however, the locational impact has varied widely. The share of global outgoing traffic, which originates from competitive markets has increased from 35 to some 75 per cent over the past decade, with the remaining 25 per cent being accounted for almost exclusively by developing countries. In 2003, about three-quarters of developing countries still retained restrictions on telecom access, and these have left obvious traces.[12] For example, in 2006, the ratio of international to local telecom tariffs was less than 10 to 1 in a number of EC Member States (EC 12), in some cases as low as 4 to 1, as compared to 50 to 1 in a least-developed country such as Zambia.[13] Another LDC, Mauritania, which underwent significant telecom reforms in recent years, saw this ratio fall from 60 to 1 in 1999 to 6 to 1 by 2004.[14]

The link between telecom reform and poverty reduction may appear less immediately evident than the contribution of infrastructural improvements and/or regulatory reform in road, air or maritime transport. Nevertheless, the telecom sector deserves particular attention:

First, the efficiency of external transport links is partly beyond national control and may depend, for example, on the cooperation of large neighbouring countries, which cannot always be taken for granted. For example, regularly available quantities of perishable exports (flowers, fruit, vegetables) of a small landlocked country may not suffice to fill a large-body aircraft. Efficient supplies to developed country markets would depend on the granting of fifth freedom rights, entailing the ability to load and unload freight en route, by strategically located countries.[15] These may hesitate, however, since the extension of such rights could undermine the profitability of their own exporters and carriers. In contrast, there is no need for cooperation should a country decide to liberalize international telecommunication links with a view, for example, to improving export conditions for call center, transcription and other telecom-based services.[16]

Second, unlike maritime and air transport services, which are not yet fully integrated into the GATS (maritime transport) or even completely exempt from coverage (measures affecting air traffic rights), telecommunications squarely falls under the Agreement (see Annex Table). There are only a few other services that WTO Members have inscribed as frequently in their GATS schedules and, possibly apart from financial services, in which they have granted as many commercially meaningful commitments as in telecommunications.[17] This has certainly been done with a view to adding credibility to domestic reform efforts, overcoming risk-related hesitations of potential investors and, thus, increasing the reform premium in terms of lower cost, broader coverage and better quality.[18] Tellingly, telecommunications is the only

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[12] The above estimates are taken from Carlo Maria Rossotto et al, *Competition in International Voice Communications*, World Bank Working Paper 42 (Washington D.C., 2004).

[13] Jens Arnold, Boutheina Guermazi and Aaditya Mattoo, "Telecommunications: The Persistence of Monopoly", in Aaditya Mattoo and Lucy Payton (eds), *Services Trade and Development - The Experience of Zambia* (Washington D.C.: Palgrave and the World Bank, 2007) pp. 119 and 124.

[14] Ibid.

[15] See, for example, Charles Schlumberger, "Air Transport: Revitalizing Yamoussoukro", in Aaditya Mattoo and Lucy Payton (eds), as note 13 above, p. 201. Similar problems related to cabotage rights may arise in land and maritime transport.

[16] For example, least-developed countries such as Bangladesh or Zimbabwe provide medical transcription services to international clients whose health records and patient interviews are digitally transcribed. See UNCTAD, *World Investment Report 2004 - The Shift Towards Services* (New York and Geneva: United Nations, 2004) p. 150.

[17] See Rudolf Adlung and Martin Roy, *Turning Hills into Mountains? Current Commitments under the General Agreement on Trade in Services and Prospects for Change*, 39 Journal of World Trade 6 (2005) p. 1168f, and Aaditya Mattoo, "Negotiating Improved Market Access Commitments", in Bernhard Hoekman, Aaditya Mattoo and Philip English (eds), as note 3 above, pp. 280-289.

[18] An empirical study found that, if geographical region and income levels were controlled for, countries with GATS commitments in basic telecommunications tended to outperform others that had not made

sector where several WTO Members even volunteered to undertake commitments that locked in reforms carried out after the formal conclusion of the relevant negotiations in early 1997. (The most recent cases were Egypt in 2002 and Honduras in 2005.) In turn, the high number of countries that implemented deep regulatory changes, paralleled by bindings under the GATS, and the availability of frequently tested templates might have motivated initially reluctant governments to follow suit.

From the perspective of poverty reduction, another potentially promising link may deserve attention. The expansion of e-trade, capitalizing on telecom liberalization, could help to reduce bottlenecks in labour market segments that are relatively skills and technology intensive. Electronic supplies, provided online from abroad, might serve as a partial substitute for locally scarce resources (trained labour) and, by implication, contribute to improving the productivity of complementary, more abundantly available supplies of lower-skilled labour. Inbound electronic transmissions could thus moderate, within limits, the economic incentive for the latter group to leave and seek employment abroad. Moreover, there are longer-term dynamic factors at play. In particular, more intensive telecom exchanges provide an avenue for ongoing human-capital transfers, including through access to online courses, data hosts and so on, which help to lift economies on a permanently higher growth path.

B. SERVICES AS PRODUCTION INPUTS (GOODS AND SERVICES PRODUCERS)

The use of intermediate services by downstream industries may vary widely among countries and over time. A comparison of Germany with an economically advanced developing country, Malaysia, reveals striking differences. In Germany, the share of such services in the inputs of typical manufacturing industries (food, textiles and leather, chemicals, metal products, machinery, etc.) ranges between 20 and 33 per cent as compared to between 2 and 8 per cent in the case of Malaysia.[19] These differences may be attributable not only to income- or technology-related factors, but to policy intervention as well. Tellingly, a study on the Indian economy suggests that, in tandem with liberalization policies in services, the use of services as inputs in manufacturing production expanded at an annual rate of some 16 per cent, at constant prices, over the 1990s, up from less than 1 per cent in the 1980s. The contribution of services to the growth of Indian manufacturing output is estimated to have increased concurrently from about 1 per cent to 25 per cent.[20]

A number of studies in recent years have sought to explore more closely the efficiency gains associated with the liberalization of intermediate services. The following - tentative - summary of research findings may prove relevant for development-related policy strategies:[21] First, developing

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commitments with respect to fixed and mobile penetration as well as sector revenues (as a percentage of GDP). Kent Bressie, Michael Kende and Howard Williams, *Telecommunications trade liberalization and the WTO*, 7 info 2 (2005) p. 20.

[19] Rolf Langhammer, *Service Trade Liberalization as a Handmaiden of Competitiveness in Manufacturing: An Industrialized or Developing Country Issue?*, 41 Journal of World Trade 5 (2007) forthcoming (preliminary version available as Kiel Working Paper 1293).

[20] Rashmi Banga and Bishwanath Goldar, *Contribution of Services to Output Growth and Productivity in Indian Manufacturing*, Indian Council for Research on International Economic Relations (ICRIER), Working Paper No. 139 (2004). In contrast, a recent study for 12 developing countries suggests that the costs associated with protected intermediate services, as compared to other protected inputs, are relatively moderate. (The author signals, however, the possibility of underestimates due to information gaps.) Nevertheless, the combined effects of restricted services and non-services inputs were sufficiently serious in a number of cases to offset the tariff protection granted to final user industries. Their effective rates of assistance turned negative, reflecting the net tax burden caused by over-priced inputs. See OECD, *Impact of Services Barriers on Effective Rates of Protection in Agriculture and Manufacturing*, TD/TC/WP(2004)49/REV1 (Paris, 2006) p. 12f.

[21] Langhammer, as note 19 above. These findings are necessarily subject to various methodological and statistical problems which are attributable, *inter alia*, to the modal structure of services trade under the GATS; the intangibility of many services transactions; and the difficulties of identifying the wide range of possible and permissible (non-tariff) barriers to services trade and relating them to performance indicators.

countries tend to tax their downstream user industries by protecting intermediate services; second, other services sectors seem to suffer more from this protection than the manufacturing industry; within the latter, however, labour-intensive segments appear to be more disadvantaged than others; and, finally, although developed countries can capitalize on a generally vibrant services industry, they might benefit from removing discriminations against particular modes of supply, not least mode 4 (presence of natural persons).

A recent study suggests that the gains from unilateral services liberalization, mostly consisting of productivity effects in user industries (goods and services producers), are larger than those associated with liberalization of manufacturing or agricultural trade.[22] These effects seem to be due mostly to the removal of non-discriminatory barriers to market access, rather than to the abolition of national treatment restrictions. Also, the case for multilaterally agreed trade liberalization, where own adjustments are reciprocated by trading partners, appears weaker in services than in agriculture or manufacturing, since terms-of-trade effects are less relevant. Of course, this does not diminish the domestic <u>policy</u> rationale militating in favour of international 'burden sharing'.

Policy reforms come at a cost, however. There are, first and foremost, the resources that might be lost in the case of failure.[23] A full assessment would also need to consider the costs of regulatory and institutional changes, such as the creation of necessary licensing mechanisms, service standards and competition regimes, which might be required to ensure a smooth transition to, and operation of, more open systems. Additional funds may be absorbed by complementary infrastructural investments. In such cases, however, a lot depends on the availability of international support as well as on governments' own ability to provide scope for and mobilize private investment into new ports, roads, electricity grids, telecom facilities and so on. Available evidence suggests that, for the telecom sector at least, full liberalization requires less public involvement than partial opening, thus arguably reducing the administrative burden and the costs for governments and operators.[24]

III. CONTRIBUTION TO INCOME TRANSFERS (WORKERS' REMITTANCES)

A discussion of the services contribution to poverty alleviation must necessarily include the role of worker remittances. Cross-border movements of natural persons, as independent service suppliers or employees of foreign-owned companies, are covered by the GATS.[25] The composition and the number of the persons involved - and, by implication, their ability to generate international income transfers - is thus partly governed by commitments undertaken in services negotiations.

Overall, the economic stakes are high. Worker remittances to developing countries exceed development assistance by a significant margin; and they tend to be more stable over time, if the Asian financial crisis is of any guidance, than international capital flows.[26] In least-developed

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[22] Philippa Dee, "The Economy-Wide Effects of Services Trade Barriers", in OECD (ed), *Enhancing the Performance of the Services Sector* (Paris: OECD, 2005). The study concerned focuses on seven sectors - air passenger transport, maritime transport, banking, distribution, electricity generation, engineering services, and telecommunications - in six developing countries, two from Africa, Asia, and Latin America.

[23] The risks of reform are not equally distributed across sectors. For example, they may prove lower in telecommunications, where more universally valid templates are possibly available, than in financial services where country-specific institutional and economic conditions tend to play a stronger role.

[24] See Rossotto, as note 12 above, p. 7.

[25] The (non-)application of the GATS to foreign employees of <u>domestic</u> service companies has given rise to doubts. These have been fuelled in particular by the - somewhat opaque - language in an Annex that deals with the movement of natural persons. However, while this Annex seeks to outline governments' scope for operating <u>measures</u> that affect mode 4 suppliers, it does not modify the definition of services trade contained in Article I:2 of the GATS. Accordingly, mode 4 consists of the supply of a service "by a supplier of <u>one Member</u>, through presence of natural persons of <u>a Member</u> in the territory of <u>any other(!) Member.</u>" Obviously, in order to be covered, both the supplying company and its employees must operate in foreign territory.

[26] World Bank, *Global Economic Prospects 2004* (Washington D.C.: The World Bank, 2003) p. 148.

countries remittances currently amount to some 2 per cent of GDP. Nevertheless, a large potential has remained untapped to date. Available estimates suggest that worker inflows that would increase OECD countries' total work force by 3 per cent could boost world income by close to US$160 billion or 0.6 per cent.[27] The benefits would be shared almost equally by the home and host regions.

Relevant GATS commitments are disappointing on two counts, however: the scheduled levels of access are very modest in general and do not even match the regimes provided for under current laws and regulations;[28] and the focus is on better-paid employees transferred within company networks and, thus, closely related to mode 3 (commercial presence). Only 17 per cent of all entries inscribed under mode 4 may cover low-skilled workers as well.[29] Interestingly, there are no significant differences in the level of commitments scheduled by developed and developing countries.[30]

In view of current access conditions, it is not surprising that the contribution of mode 4 to total services trade under the GATS is minimal, available estimates are in the order of 1 or 2 per cent.[31] Although it might be tempting to establish a link between (hypothetical) improvements in scheduled access conditions and possible trade effects, there are possibly too many imponderables involved. For example, to what extent would any negotiated changes go beyond the actually applied regimes? If so, how can it be ensured that they would not come at the expense of categories of workers that do not fall under mode 4 of the GATS? Or could there be new constraints ensuing from 'internal barriers', such as regulatory requirements related to professional competence and expertise that are not reflected in schedules? And what about the role of wage parity requirements, which are relatively frequently used, it appears, in potential target countries?[32] Such requirements certainly affect the employment opportunities of foreigners that are less familiar with local professional practices and equipment, working conditions, possibly even language, but must be paid the same wages as their domestic counterparts.[33] On the other hand, however, if collectively negotiated wages were undercut by temporary workers, what would be the impact on income distribution and, more generally, on social peace in the host countries?

Of course, there are many more issues surrounding the economic implications of temporary movements of services professionals - questions related to brain drain or, conversely, the skills transferred on return; productivity and growth effects arising from structural adjustments in home and host countries; trade-generating or -replacing effects under other modes; the use of remittances for

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[27] L. Alan Winters et al, *Liberalising Temporary Movement of Natural Persons: An Agenda for the Development Round*, 26 The World Economy 8 (2003), pp. 1137-61. The authors explicitly qualify their estimates as "quantitative experiments to suggest possible orders of magnitude" rather than as unconditional predictions of future policy impacts (p. 1143). In the context of the current discussion, it needs to be kept in mind that the GATS only covers natural persons supplying services or working for service suppliers, and that the latter need to be foreign owned (see note 25 above). The exclusion of persons employed by domestic suppliers may disproportionately effect sectors such as health or social services, which are potentially attractive targets for foreign professionals (doctors, nurses), but not necessarily for foreign investors.

[28] Ibid, p. 144, and Sumanta Chaudhuri, Aaditya Mattoo and Richard Self, *Moving People to Deliver Services: How can the WTO help?*, 38 Journal of World Trade 3 (2004) p. 371.

[29] Antonia Carzaniga, "The GATS, Mode 4, and Pattern of Commitments", in Aaditya Mattoo and Antonia Carzaniga (eds), *Moving People to Deliver Services* (Washington D.C.: The World Bank and Oxford University Press, 2003) p. 24f.

[30] Chaudhuri et al, as note 28 above, p. 371.

[31] WTO (2005), as note 4 above, p. 8.

[32] Tellingly, the status of host-country's social and labour law, including that of collective agreements, proved one of the most sensitive issues in completing the European Community's recent Directive on Services in the Internal Market. The revised version, adopted as Directive 2006/123/EC in December 2006, explicitly excludes from coverage "any contractual provision concerning employment conditions, working conditions... , which Member States apply in accordance with national law which respects Community law" (Article 1:6).

[33] Note that a footnote to Article XVII of the GATS (National Treatment) provides that Members are not required under specific commitments "to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers".

either savings, investments or consumption; etc.[34] However, there is little point in deepening this discussion in the current context. The mode 4-related offers submitted to date do not certainly suggest that many WTO Members are ready to liberalize their regimes significantly beyond existing conditions. Nevertheless, they should be expected at least to heed the collective objectives they subscribed to in Annex C of the Hong Kong Ministerial Declaration. These include the undertaking of new or improved commitments on independent professionals and other categories, de-linked from commercial presence, whereby economic needs tests ought to be removed or substantially reduced.

In any event, mode 4 might be viewed by a range of developing countries, in particular LDCs, as a litmus test on whether and to what extent other Members are prepared to honour obligations or expectations(?) contained in the GATS and the so-called 'LDC Modalities'.[35] In particular, Article IV:1(c) of the Agreement urges Members to facilitate "the increasing participation of developing country Members in world trade ... through negotiated specific commitments" relating, *inter alia*, to "the liberalization of market access and modes of supply of export interest to them". In this context, special priority is to be given to LDCs (Article IV:3). The only area of export interest that has been identified since by LDC Members collectively is the movement of natural persons, with a focus on independent professionals, business visitors and contractual service suppliers.[36] Concurrently, the Hong Kong Ministerial Declaration refers to these interests as a priority issue (paragraph 47).

IV. DIRECT PROVISION OF SOCIALLY RELEVANT SERVICES

The most immediate contribution of basic social services - health, education, and so on - to poverty reduction certainly lies in their targeted supply to the poor. However, what role could trade liberalization play in this context?

On the one hand, it can credibly be argued that the growth and efficiency effects associated with liberalization increase the scope for pro-poor policies. Authorization to supply a service, even in sectors fully liberalized under the GATS, can be combined with universal service obligations requiring the licensee to cater for disadvantaged regions or population groups at non-commercial terms and conditions.[37] There are many variants of such policy schemes.[38] Alternatively, governments could operate universal service funds or organize minimum subsidy auctions which, in turn, might be financed from service charges imposed on operator revenues.[39]

On the other hand, not all governments are aware of the need to pursue such policies and equipped with necessary information and resources. For example, a report on Zambia notes that despite a significant degree of liberalization, access to services such as finance and telecom "remains low and highly unequal - being available at affordable price only to the affluent in urban areas and to

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[34] For an overview of relevant considerations see World Bank, as note 26 above, pp. 143-176.

[35] As of mid-2007, 32 of the 150 WTO Members were LDCs. The 'LDC Modalities', adopted by the Council for Trade in Services (Special Session) in September 2003, are contained in WTO document TN/S/13.

[36] See, for example, the discussion in the Council for Trade in Services (Special Session) in May 2006 (WTO document TN/S/M/20).

[37] See Rudolf Adlung, *Public Services and the GATS*, 9 Journal of International Economic Law 2 (2006) pp. 470-482.

[38] For example, various policy initiatives in India require higher education institutions to reserve a certain share of seats for disadvantaged students. See Pawan Agarwal (2006), "Higher Education Services in India and Trade Liberalization", in Rupa Chanda (ed), *Trade in Services & India – Prospects and Strategies* (New Delhi: Centre for Trade and Development, 2006) pp. 305-307. Other countries oblige licensed telecom companies to install payphones in all villages, banks to operate branches in the capitals of all provinces, and so on.

[39] Minimum subsidy auctions have been held, for example, in Chile, the Dominican Republic, Nepal, Peru and Uganda. See Arnold et al, as note 13 above, p. 134.

the larger firms."[40] In a similar vein, while almost one-half of all hospital beds in India are in privately-owned institutions and the government pursues an open policy *vis-à-vis* foreign investors, a recent study points out the absence of technology transfer requirements and, possibly more importantly, of policies to reduce rural-urban gaps in supply. Nor are there mandatory regulations to ensure the quality of healthcare in private hospitals.[41]

Obviously, a distinction has to be made between governments' right to regulate, including the right to impose universal service obligations, which is not constrained under the GATS, and their ability to actually devise, implement and enforce relevant policies. In turn, this ability may vary with countries' level of development and their endowment of human and financial resources. The situation in a public monopoly environment might not be less challenging, however. If governments are unable to regulate private hospitals (schools or universities), doubts are justified as well whether public institutions face tighter reins and whether effective policies are in place with a view, for example, to preventing absenteeism and otherwise protecting the interests of the patients (students) concerned. The regulatory burden in such environments, largely devoid of market disciplines, may be even higher than in open systems (see also Section II.B above).

However, liberalization and privatization policies can accentuate existing income and wealth disparities within the same territory. The admission of private hospitals (universities) might result in well-off residents no longer travelling abroad for treatment (education), possibly awaited there by qualified compatriots (nurses, doctors, teachers), but consuming these services in their home country. A dual regime, previously veiled by geographic distance, could now emerge within the same jurisdiction.[42] In such circumstances, regulatory abstinence might not only be a missed opportunity for poverty reduction, but discredit the liberalization move *per se*. The combination of liberalization policies with redistributive regulation could prove not only a social imperative, but a condition for political sustainability as well.

V. WHAT ROLE FOR THE GATS (OR OTHER AGREEMENTS)?

A. SECURING LIBERAL TRADE AND INVESTMENT CONDITIONS

The foregoing discussion sought to trace conceivable links between services liberalization and poverty reduction. However, not all of them are immediately available to the governments concerned; some may require cooperation by trading partners (e.g., boosting remittances via mode 4 or liberalization of air traffic rights) and/or careful preparation in a number of related policy areas (e.g., regulatory institution building). Possibly the most promising area for <u>autonomous</u> policy action, regardless of external responses, consists of liberalizing and/or binding access conditions under mode 3 (commercial presence) with a view to promoting foreign direct participation in capital-intensive sectors. Focal areas could be intermediate services like telecommunications, finance, and internal transport that may produce economy-wide growth and efficiency effects. Of course, there may be room for investment and trade expansion - and related skills and technology transfers - in other

[40] Aaditya Mattoo and Lucy Payton, "Services Trade for Zambia's Development", *idem*, as note 13 above, p. 16.

[41] See K.M. Gopakumar and Nirmalya Syam, "Health Services Liberalization in India", in Rupa Chanda (ed), as note 38 above, pp. 250-264.

[42] Of course, the pools of wealthy private patients (students) that would now seek treatment (education) in their home country as well as the staff absorbed domestically tend to be larger than those flocking abroad under more restrictive domestic regimes. New policy challenges might ensue (prevention of 'internal brain drain' between public and private institutions and the 'crowding out' of poorer patients, etc.). See, for example, the discussion in Chantal Blouin, Nick Drager and Richard Smith (eds), *International Trade in Health Services and the GATS* (Washington D.C.: The World Bank, 2006).

sectors as well. Countries that already rely on, and are confident with, large-scale private participation in socially relevant services, such as education or health, may consider possibilities for (further) foreign investment as well.

Investment-related measures can be effective at any time, regardless of reciprocal moves by trading partners. The latter may prove difficult to obtain in any event. Given the diversity of the services universe and of the ministries and agencies involved, the scope for negotiated liberalization is certainly more limited than in merchandise trade. (Why would a transport ministry expose its 'stakeholders', e.g. road freight carriers, to more competition for the sake of the country's banks being able to branch cross-border?) The modal dimension of the GATS, combined with its wide array of permissible trade restrictions, from numerical quotas to discriminatory taxation or regulation, adds a further element of complexity. There is no common denominator, comparable to ad valorem tariffs, which could be applied relatively easily across sectors or modes of supply.[43] If reciprocity plays a role, this is in a broader political context - indicating, for example, similar levels of (dis-)satisfaction among governments that pursue diverging sector interests (agriculture, non-agricultural market access, and services) - rather than as a technically operational negotiating approach.

It might thus be misleading to view the GATS predominantly as a <u>negotiating</u> forum intended to promote "the interests of all participants on a mutually advantageous basis" (Preamble). In fact, there is very little evidence to date of services liberalization having been achieved in trade rounds, with the notable exception of the Uruguay Round extension in basic telecommunications (Section V.C). The liberalizing content of most schedules submitted in the Uruguay Round itself, in 1993/94, and of the offers tabled in the Doha Round since 2003 is almost negligible.[44] If there has been negotiated liberalization in services, it mainly occurred in other frameworks: WTO accessions and Preferential Trade Agreements (PTAs).[45] In a similar vein, while existing GATS commitments have been overtaken by autonomous reforms over the past 10 or 12 years, other instruments automatically provided for bindings: Bilateral Investment Treaties (BITs). However, their scope has remained confined essentially to one mode, commercial presence, and to one parameter of access, national treatment; and the extension to other WTO Members has come through a backdoor, the MFN obligation under Article II of the GATS, which did not exist at the time most Treaties were signed. Very few WTO Members have sought MFN exemptions under the GATS for relevant obligations.[46]

In total, there are some 2'500 BITs at present, of which about 1'900 have been ratified. For example, the United States has signed and put into effect Treaties with over 40 countries, including four least-developed countries: Bangladesh, Democratic Republic of Congo, Mozambique, and Senegal.[47] The Treaties with the latter countries were negotiated in the 1980s, except in the case of Mozambique (1998). They essentially provide for full national treatment, pre- and post-establishment, and are significantly broader in sector coverage than the GATS commitments scheduled by the four LDCs.[48] While BITs proliferated very rapidly in the 1990s, at two-digit annual growth rates, services-

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[43] Rudolf Adlung, *Services Negotiations in the Doha Round: Lost in Flexibility?*, 9 Journal of International Economic Law 4 (2006) p. 892.

[44] See also Adlung and Roy, as note 17 above.

[45] See Martin Roy, Juan Marchetti and Hoe Lim, *Services Liberalization in the New Generation of Preferential Trade Agreements (PTAs): How Much Further than the GATS?*, WTO Staff Working Paper ERSD-2006-07 (Geneva, 2006).

[46] See Rudolf Adlung, *Negotiations on Safeguards and Subsidies in Services: A Never-ending Story?*, 10 Journal of International Economic Law 2 (2007), p. 253.

[47] The most frequent signatories of BITs are Germany and China, with some 130 and 115 Treaties, respectively, followed by Switzerland with over 100. Unlike the BITs concluded by the US and Canada, these Treaties are generally confined to guaranteeing national treatment <u>post</u>-establishment. See M. Sornarajah, *The International Law on Foreign Investment* (Cambridge: Cambridge University Press, 2004) p. 215.

[48] Mozambique has not listed any sectoral or horizontal exemptions in its BIT with the US. The other Treaties contain exemptions for small- and medium-sized enterprises (Senegal); telecommunications, insurance and various other services (Bangladesh); postal, telecommunications, radio and television, banking and

related PTAs are a more recent phenomenon. By end-2006, 36 PTAs had been notified under the relevant GATS provision, Article V:7, of which three-quarters date from after the start of the current services round in January 2000.[49]

Has the GATS been rendered irrelevant? Not really. There are several features that could not, or not easily, be replicated in other contexts. First, the Agreement provides an opportunity for policy coordination between ministries and agencies, which never before might have contemplated the wider economic implications of what they do in their areas of competence. Such coordination processes, free of direct political interference, tend to offer more room for careful analysis than may exist in the context of Preferential Trade Agreements or Investment Treaties whose *raison d'être* and basic outlines have already been agreed upon at higher political level. Further, the GATS offers an opportunity to secure domestic policy reforms, once decided, against the resistance of vested interests in affected sectors, regions and/or government departments. Like any other obligations under the Agreement, relevant bindings are protected by impartial, non-politicized dispute settlement. In turn, this is likely to positively affect the risk perception of potential market entrants, domestic and foreign, and promote private capital participation.[50] Such effects are particularly relevant in sectors like telecommunications and financial services where large upfront investments are necessary to gain a foothold in a new market. Members may even commit, and guarantee, the implementation of multi-annual reform programmes before these have been launched.

The absence or, at least, the weakness of reciprocity concepts as stimulants of ("mutually advantageous") services liberalization is not equally problematic in all sectors and countries. There are domestic policy constellations, which can help to produce the necessary momentum for reform: the existence of a significant range of internationally-oriented user industries. Tougher competition on their markets, due to new transport or communication technologies and/or tariff liberalization under the GATT, necessarily increases the dependence on, and sparks requests for, competitively priced inputs, from business services (including logistics and computer services) to telecommunications, banking, transport or energy. Once such requests are heeded, even economically strong industries, which are used to articulating their concerns in the political arena, have an interest in securing the new regimes against slippages and reversals. Tellingly, tourism aside, the sector pattern of current GATS commitments is dominated by widely-used intermediate services, such as financial services, of which at least one sub-sector is contained in over 80 per cent of all services schedules, followed by business services (78 per cent), telecommunications (71 per cent) and construction (58 per cent).[51] As noted

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insurance services, and infrastructure-related projects in areas such as water, energy, health, roads, railways and ports (Congo). Among the exemptions listed by the US in all four cases are air and maritime transport, banking and insurance services. The Treaties are available at www.unctadxi.org/templates/DocSearch.aspx?id=779.

[49] See Roy et al, as note 45 above, p. 7.

[50] There is some empirical evidence of the benefits of policy bindings, whether under the GATS or elsewhere. As regards GATS commitments on basic telecommunications, see Bressie et al, as note 18 above, pp. 3-24. The existence of a link between BITs and investment flows has been explored and confirmed, subject to certain qualifications, by Rashmi Banga, *Do Investment Agreements Matter?*, 21 Journal of Economic Integration 1 (2006) pp. 40-63, and Eric Neumayer and Laura Spess, *Do Bilateral Investment Treaties Increase Foreign Direct Investment to Developing Countries?*, 33 World Development 10 (2005) pp. 1567-1585. Other studies could not corroborate the existence of strong links, however: Zachary Elkins, Andrew T. Guzman and Beth A. Simmons, *Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000*, 60 International Organization (Fall 2006) pp. 811-846; Jennifer Tobin and Susan Rose-Ackerman, *Foreign Direct Investment and the Business Environment in Developing Countries: The Impact of Bilateral Investment Treaties*, Yale Law School Research Paper No. 293 (2005); and Mary Hallward-Driemeier, *Do Bilateral Investment Treaties Attract Foreign Direct Investment?*, World Bank Policy Research Paper 3121 (Washington D.C., 2003). In a similar vein, a recent study on the impact of the agreements signed with the United States could not establish a significant link with investment flows; see Kevin P. Gallagher and Melissa B.L. Birch, *Do Investment Agreements Attract Investment? – Evidence from Latin America*, 7 Journal of World Investment and Trade (2006), pp. 961-974.

[51] The above percentages provide a first approximation of scheduling preferences. They do not reflect, however, the number of the sub-sectors actually covered within these large areas, their economic importance, or

before, a handful of Members undertook their commitments on telecommunications only after the conclusion of the extended negotiations in 1997, in which they had not participated. It is virtually impossible to find similar cases of autonomous (self-)bindings in the history of the GATT/WTO system.

The political gravity field, in which economic reforms may be considered, differs significantly between WTO Members, however. Economically advanced countries, which are more internationally integrated, may find it easier to (self-)generate internal liberalization pressure than poorer, more autarkic countries. External openness, once achieved in a significant number of sectors, is likely to produce knock-on effects in other parts of the economic system. Thus, while the emergence of international activities, whether in mining, tourism, or basic manufacturing, may have benefited from open services regimes (transport, telecommunications, etc.), they also create a constituency for further liberalization. However, what has the GATS to offer to low-income countries that have remained largely on the sidelines? For example, what has been done to encourage and support experimental liberalization or bindings of past sector reforms that have proven resilient in practice?

As far as the Hong Kong Ministerial Declaration is concerned, there is little guidance. On the one hand, the Declaration contains various commitments to assist supply-related capacity building in various contexts and, specifically in services, to support initiatives geared to enable developing and least-developed countries to participate effectively in the negotiations. On the other hand, referring to their "particular economic situation" and "the difficulties they face", paragraph 26 of the Declaration exempts LDCs from the expectation to undertake new commitments.[52] However, is abstinence the most appropriate approach to address such - not further specified - difficulties? On average, the countries concerned had assumed commitments in 24 out of close to 160 service sectors in their Uruguay Round schedules, which is slightly less than half the average for developing and transition economies and one-quarter of the average for developed countries.[53] In contrast, the two LDCs that joined the WTO in 2004, Cambodia and Nepal, were expected to commit 94 and 77 sectors, respectively.[54] Naïve observers might thus wonder whether, in the view of current Members, LDCs' ability to benefit from commitments is inversely related to the duration of their WTO membership.

B. MULTILATERAL BINDINGS: PROS AND CONS

In addition to traditional reciprocity-driven instincts, the reluctance of governments to undertake GATS commitments may be attributed to factors such as risk aversion, given the possibility of over-ambitious or ill-specified commitments, and negotiators' traditional preference for prudence. There seems to be a widespread perception that "... after binding the autonomous level, a country may not be able to easily revise of modify its policy to address its development concerns. Further,

the depth of the commitments taken under individual modes. For more details see Adlung and Roy, as note 17 above, p. 1168f.

[52] This wording is inspired by Article IV:3 of the GATS ("Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs") and the 'LDC Modalities' referred to in above n 35. The latter Modalities, however, urge Members to take into account "the serious difficulty of LDCs in undertaking negotiated specific commitments in view of their special economic situation, and therefore ... exercise restraint in seeking commitments from LDCs" (emphasis added).

[53] Adlung and Roy, as note 17 above, p. 1168f.

[54] WTO, *Trade Profiles* (Geneva: WTO Publications, 2006) pp. 31 and 119. A General Council Decision of 2 December 2002 expressly calls on WTO Members to "exercise restraint in seeking concessions and commitments .... from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDCs' Members".

negotiations are governed by the rule of give and take. Hence, since the autonomous level of liberalization is committed, there is likely to be pressure to liberalize further."[55]

Concerns about 'over-commitments' are understandable in socially relevant sectors, including health, where many governments have repeatedly sought in the past to redefine and redraw the borderline between private involvement and public sector responsibility. Such concerns appear less justified, however, in the case of infrastructure-related services, not least telecommunications, which have already been opened successfully by very many countries, at all levels of development, and where reasonably detailed blueprints exist. And, finally, there is a rapidly increasing number of cases where further-reaching obligations are being assumed at bilateral or regional level.

In a similar vein, the likelihood of small developing countries being pushed by large trading partners in the WTO appears rather remote. From the 'elephants' perspective, the cost/benefit balance of a GATS-centred approach tends to be less attractive than that of regional preferential initiatives, with the possibility of affording own exporters a head start into previously closed markets. (The exemption of current LDC Members, in the Hong Kong Declaration, from the expectation to undertake new commitments might thus be attributed to economic indifference as well.) And what would be the instruments, in a WTO context, to exert pressure on developing or least-developed countries once they have joined the system?

The downsides of premature or over-ambitious commitments would need to be balanced with another type of risk, however: the erosion of a country's locational attractiveness vis-à-vis others that undertake broader and deeper trade and investment obligations - whether under BITs, PTAs or in the WTO accession process.

C. LEARNING FROM WTO ACCESSIONS?

It is not easy to the compare the economic substance of the trade commitments assumed in various contexts. One possibility is to count the number of sectors committed or offered by different groups of countries (e.g., least-developed, developing, developed) in different frameworks (Uruguay Round, WTO accession, Doha Round).[56] However, while this might provide a first approximation of governments' approach to services liberalization, individually or collectively, it says relatively little about the commercial substance implied. Do commitments actually provide for new market opportunities, or do they secure at least current levels of access? Hypothetically, a country could schedule all 160-odd sectors contained in the relevant classification list without offering any commercial substance.[57]

A more plausible indicator of negotiated liberalization, or at least of effective bindings of autonomously decided reform paths, is the existence of phase-in commitments that guarantee, at pre-defined future dates, the entry into force of specified measures. Table 1 provides an overview such commitments scheduled or offered by WTO Members on different occasions; the relevant periods tend to vary between one and some ten or 15 years. Barring minor exceptions, all cases refer to market access restrictions under mode 3 (commercial presence) and some related limitations on cross-

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[55] Gopakumar and Syam, as note 41 above, p. 274.

[56] Adlung and Roy, as note 17 above, p. 1170.

[57] For example, the commitments could be made subject to (i) non-specified or only vaguely defined economic needs tests; (ii) remain confined to modes that offer little opportunities for trade, e.g. cross-border imports of hotel or restaurant services; or (iii) 'liberalize' transactions that cannot be prevented in any event, especially those falling under mode 2, when the consumer has left the country.

border trade (modes 1 and 2).[58] This particular focus of phase-in commitments reflects not only the economic dimensions at stake, given that commercial presence represents about one-half of all services trade covered by the GATS, but also the nature of the (investment) barriers implied in many cases. Investment regimes cannot normally be modified as quickly and easily as, say, subsidies or tax rates, but often require basic legislative changes or need to await the expiry of long-term arrangements with exclusive suppliers.

Table 1
Phase-in commitments to services liberalization: Negotiating context, number of cases, sector coverage[a]

Phase-in Commitments (Number of countries concerned / % of all participants)	**Sector Coverage** (Number of countries concerned)
I. Uruguay Round, 1994 17 / 13% [5 / 4%][b]	Construction (2) Financial services (1) Rental services (1) Road transport (13 / 1[b])
II. Extended Uruguay Round negotiations, 1997 A. Financial Services: 2 / 3% B. Basic Telecommunications: 42 / 60% [38 / 54%][b]	 Insurance (2) Banking (1) Basic Telecommunications (42 / 38 [b])
III. Preferential Trade Agreements, 2001 - 2006[c] 21 / 67%	Insurance (12) Telecommunications (6) Banking (5) Business Services (5) Other (7)
IV. WTO Accessions, 1996 – 2007[d] 19 / 86 %	Telecommunications (19) Insurance (11) Banking (9) Distribution (6) Business Service (5) Postal and Courier Services (5) Construction (4) Air Transport Auxiliary Services (4) Other (21)
V. Doha Round offers, 2003 – 2007 13 / 9% [5 / 4%][b]	Telecommunications (2) Postal and Courier Services (1) Tourism (1) Horizontal – Mode 4 (9 / 1[b])

a Excluding 'soft' commitments that are couched, for example, in best-efforts language. EC Member States are counted individually.
b Excluding phase-in commitments by EC Member States that seem motivated mainly by the need to establish a common Community regime.
c Source: Roy et al, as note 45 above. In the context of the US-CAFTA Agreement, the CAFTA Members (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua) are counted individually.
d Not covering obligations that might have been inscribed in the reports of the relevant Working Parties.

Members' propensity to negotiate phase-in commitments apparently depends on the forum concerned. The Uruguay Round final schedules (including the extended negotiations on financial services) and the offers received to date in the Doha Round are least impressive in this regard. Not only has the number of phase-in cases remained low, but the depth of the obligations assumed comparatively modest. In contrast, over half of all WTO Members that participated in the extended negotiations on basic telecommunications undertook phase-in commitments, often involving profound

[58] Only four of the 22 Members that have acceded since 1995 undertook phase-in commitments on cross-border trade that were not related to restrictions scheduled under mode 3. The sub-sectors concerned are insurance services (three cases), franchising and commission agents' services.

changes to long-established monopoly regimes.[59] Preferential Trade Agreements have prompted an even higher number of participants to commit on future liberalization measures, especially in financial services (insurance!). This particular focus may be attributed mainly to US negotiating interests; only two of the 12 PTAs that contain phase-in provisions for insurance do not involve the United States. In virtually all cases, developing countries are concerned.

The most sweeping phase-in commitments have been assumed in the context of WTO accessions, however. They have been used in 19 out of the 22 accession cases since 1995 and tend to be particularly broad in sector coverage. For example, about two-thirds of the sub-sectors scheduled by Vietnam on accession are subject to phase-in commitments; China, Nepal and Oman follow with shares in the order of 60, 50 and 40 per cent, respectively.[60] (This does not even include phase-in obligations that might be contained in the reports of the Working Parties concerned.) From a sector perspective, telecommunications, banking and insurance services are the main candidates. Earlier accession schedules, completed in the second half of the 1990s, are not only smaller in sector coverage, but also contain fewer such commitments.

Interestingly, the implementation periods tend to be shorter in accession schedules than in the schedules submitted after the extended negotiations on basic telecommunications.[61] Two factors might have been at play: First, many accession processes have proven particularly time consuming, up to ten or even 15 years in some cases (China), thus leaving more room for domestic preparation and, second, current Members' expectations might be higher, given the applicants' stated interest in joining the WTO, the focus on one single schedule, and the one-directional nature of these negotiations.[62]

D. PROMOTING PHASE-IN COMMITMENTS IN BROADER TRADE ROUNDS

Members' propensity to undertake phase-in commitments in different contexts, as reflected in Table 1, might be attributed to at least six factors.

Positive:

(i) Concurrence of a negotiating opportunity (e.g., Uruguay Round) with longer-term, widely accepted reform needs (basic telecommunications);

(ii) political push to contribute to, or complete negotiations (e.g., on PTAs or WTO accession) before relevant liberalization projects have been fully implemented; and/or

(iii) intention to bolster the credibility of staged reforms and protect them, once decided, from interference of vested interests (sectors or regions).

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[59] For an account of these negotiations see, for example, Laura B. Sherman, '*Wildly Enthusiastic' About the First Multilateral Agreement on Trade in Telecommunications Services*, 51 Federal Communications Law Journal 1 (1999) pp. 61-110. An overview of the commitments assumed is provided by Aaditya Mattoo, as note 17 above, pp. 284f.

[60] If horizontal phase-in provisions related to foreign equity ceilings (mode 3) are taken into account, the relevant shares for Vietnam and Oman would rise to 100 per cent.

[61] For example, the longest implementation period foreseen in China's schedule, completed in 2001, is six years, while some phase-in commitments assumed in the extended negotiations on basic telecommunications are subject to timeframes of up to nine (Thailand), ten (India) or 14 years (Indonesia).

[62] For more information on the accession process see Constantine Michalopoulos, "WTO Accession", in Bernhard Hoekman, Aaditya Mattoo and Philip English (eds), as note 3 above, pp. 61-70.

Negative:

(iv) Absence of suitable, widely used templates (e.g., model schedules or understandings on the scope of the limitations implied);

(v) concerns about non-anticipated implementation problems at later stages resulting, for example, from delays in the legislative process, lack of funds for complementary investments (regulator, infrastructure, etc.) or broader economic or political disturbances; and/or

(vi) the costs and uncertainties associated with modifications of an over-ambitious reform path that has been bound prematurely in an international context.

Against this background, it is understandable that the contribution to date of 'mainstream' WTO Members, including smaller and poorer countries, to the Doha Round services negotiations has remained modest. The pace of the negotiations has been dictated to a significant degree by developments in other areas, mainly agriculture and non-agricultural market access (NAMA), without providing clear orientation for government-internal preparations in services. Moreover, unlike in the context of PTAs and, possibly, WTO accessions, there is no overriding political purpose that could help the coordinating entities in capitals to bring reticent ministries and their 'stakeholders' into line. Nor is it necessarily clear, in the case of resource-strapped countries, how the shift from certain monopoly regimes, which might have contributed fiscal revenue (probably at the expense of efficiency), to a more competitive environment can be managed. For example, who is going to meet the up-front investment and training needs of a new sector regulator?

As long as the negotiations on agriculture and NAMA remain in a limbo, not many governments may be able and willing to muster the energy needed for preparing a comprehensive, well-conceived services package. Yet, once results have been achieved in the former areas, time will be running short in services, where deeper legal and institutional adjustments might be required and a broader range of government entities involved. The shorter the timeframe available, the larger the number of sectors included, and the higher the level of ambition, however, the more evident the need for divorcing the date of entry into force of a new schedule from the dates by which additional banks or insurance companies must have been licensed, the immigration and labour laws been extended to new categories of services professionals, reciprocity requirements for road freight cabotage been eliminated, and so on.

It is evident that the deterrent factors listed under (iv) to (vi) above are particularly relevant for small and poor countries. The administrations concerned, short of legal and technical expertise, are more dependent than their developed-country counterparts on models or templates that could guide the scheduling of sector commitments, reduce negotiating costs and frictions, and contain the risks of misspecifications. The option of plurilateral request-offer negotiations, introduced in Annex C of the Hong Kong Declaration to complement the hitherto dominant bilateral approach, certainly was a useful innovation in that regard. At the time of writing, however, the results - in the form of revised offers, scheduling models, etc. - had not materialized.

Further, as noted before, the Hong Kong Declaration contains various pledges to strengthen the WTO Secretariat's involvement in trade-related capacity building, consider ways of mobilizing additional funds to ease LDCs' supply side constraints, and so forth. What seems to be lacking in this context, however, is a credible link between any new commitments to liberalization, on the one hand, and the availability of external funding for, and effective progress in, domestic capacity building on the other hand. (A newly liberalized telecommunications or banking sector is unlikely to function properly in the absence of well-trained and well-equipped regulators.) In turn, such a link could also help to harness support in (potential) donor countries for full and timely implementation of relevant assistance programmes. At the same time, templates for phase-in commitments might be developed that connect the entry into force of an obligation - legally binding and enforceable under WTO dispute settlement provisions - to the existence of an adequate domestic framework for effective application. An independent body could be tasked to assess the state of regulatory and institutional reform, and also to provide recommendations on the allocation of assistance, including in terms of sector priorities, and on competent advisory teams not linked to the donor governments involved. The Aid-for-Trade initiative as endorsed in the Hong Kong Ministerial Declaration (paragraph 57) could serve as a starting point, drawing on inputs from an already existing monitoring system, the WTO's Trade Policy Review Mechanism.[63]

Finally, the question remains whether and how the 'burden' of phase-in commitments could be eased should governments run into implementation problems beyond their control. A well-defined suspension clause in the event of sudden frictions, political, economic or otherwise, might encourage a broader range of Members to follow the example of recently acceded countries and undertake commitments that go beyond simple status-quo bindings. When the Albanian government was confronted with various (exogenous) problems in 2003, three years after the country's accession, it sought and obtained a waiver under Article IX:3 of the WTO Agreement, which postponed a phase-in commitment's implementation by one year. The whole process took about six months and seemed to have worked smoothly. However, there is no guarantee that the next case, regardless of the economic stakes involved, could be solved as easily, without counter-concessions, within a similar timeframe. It might thus be reassuring for potentially interested governments if there was a clearly defined possibility, in specified circumstances, to suspend multi-annual liberalization projects. Invocation of the relevant provisions could be made subject to multilateral monitoring. If the underlying problem persists at the end of the suspension period, Article XXI of the GATS could be triggered and the commitment be renegotiated against compensation.[64]

VI. CONCLUSION

There are several channels through which the GATS could promote trade and investment, and help reduce income disparities within and between countries: efficiency effects associated with trade liberalization in intermediate (infrastructural) services, income transfers generated by workers moving abroad, or the mobilization of private investment for social policy purposes. As suggested before, the most immediately available approach, from an individual government's perspective, is the creation of favourable and predictable investment conditions in basic infrastructural sectors. It needs to be acknowledged, however, that the GATS' role in this context has remained modest. The commitments assumed under the Agreement are normally confined to securing the levels of access, in a limited number of sectors, that existed at the time of the Uruguay Round, except for the extended negotiations on basic telecommunications, concluded in 1997, and some 20 WTO accession cases completed since the late 1990s. Similarly, the offers submitted to date in the context of the Doha Round do not justify high expectations. In the absence of a fresh boost, the mandate in Article XIX:1 of the GATS - to achieve “a progressively higher level of liberalization" in successive trade rounds - will be missed collectively by virtually all Members.

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[63] Bernard Hoekman and Aaditya Mattoo, *Services, Economic Development and the Doha Round: Exploiting the Comparative Advantage of the WTO* (mimeo, 2006), and WTO document WT/AFT/W/26, 29 May 2007.

[64] The relevant provisions would differ in several respects from the safeguards clause proposed by ASEAN members (except Singapore) in the context of the Working Party on GATS Rules. In particular, invocation would not be related to actual surges in trade, but to political, institutional or economic developments that might impede the scheduled implementation of commitments. Also, the relevant measures would not discriminate between foreign established and domestic suppliers under mode 3. See also Adlung, as note 46 above.

The services segment of the Round has been overshadowed to date by (non-)events in other areas, in particular agriculture and NAMA. The concept of a single undertaking has not necessarily helped to generate progress in services, keeping in mind that the time and resource requirements of individual negotiating stages - domestic consultation and coordination, interaction with other Members, preparation for implementation, and so on - differ significantly between the three areas. This is due not only to the complexity of the GATS or the novelty of some of the concepts involved, but also to the fact that services-related competencies are scattered far more widely across ministries, agencies and sub-federal entities as is normally the case in 'conventional' merchandise trade. An additional drag factor is the possible need for institutional reform: the implementation of liberalization moves in services, in particular under mode 3 (commercial presence), tends to require more time and resources than, for example, changes in tariff regimes. Governments might need to await the expiry of exclusivity arrangements with private suppliers, persuade parliaments of necessary legislative changes, wind down or transform current incumbents, and set up and train new regulatory or supervisory agencies. Such changes must be planned well in advance and cannot wait until the prospects in agriculture or NAMA have improved. Otherwise, the only realistic chance of making headway in services lies in decoupling the negotiating process, and the entry into force of the new schedules, from the dates at which individual elements are to be implemented.

As noted before, phase-in commitments to future liberalization are not new in the GATS context. In particular, they have been scheduled by over 40 Members in the negotiation on basic telecommunications and by an additional 19 Members in the context of WTO accession. The obligations assumed might have been motivated by governments' self-interest in timely mobilizing new investors in key infrastructural sectors and/or accommodating negotiating requests that, for whatever institutional, legal or economic reasons, could not be met immediately. The latter factor appears more relevant in the accession process than in negotiations among existing Members whose propensity to pre-commit depends even more strongly on economic self-interest. This is true especially for small and poor countries which, given their limited market potential, might never be seriously approached by other Members.

The risks associated with phase-in commitments are largely the same, however, regardless of the circumstances in which they are offered or sought: non-anticipated political or economic disturbances and the resulting need to postpone or otherwise modify the implementation process, possibly against compensation, and/or popular pressure to come to the help of faltering suppliers and their staff. Apparently, there is sufficient political momentum behind WTO accessions and many Preferential Trade Agreements to overcome the ensuing hesitations. (The sector-specific negotiations on basic telecommunications may be considered a special case, given their coincidence with a worldwide move, if not race, towards establishing more competitive and efficient regimes for these services.) Yet in the absence of a particular policy boost, the only promising way of encouraging more ambitious offers in the Doha Round would consist of reducing the associated costs and risks.

More specifically, in the Doha Round context, a two-pronged approach might be required. First, there is the challenge of promoting domestic institution-building, including the initial staffing and training of new sector regulators. Long-term assistance from international donors, related to the implementation of an obligation and monitored by an independent entity, might be needed. The entry into force of the commitment(s) concerned would then depend not only on the passage of time, but on the availability of donor funding and, possibly, concrete progress in meeting specified institutional targets. Second, there is the risk of sudden political or economic disturbances. It could be allayed by a suspension clause, with clearly specified parameters, that would allow governments to interrupt or slow down an implementation process, without compensation, for periods of between, say, one and three years. If insufficient to address the problem, Article XXI (Modification of Schedules) would come into play.

Both approaches could be equipped with special preferences or flexibilities for LDCs. Otherwise, the chances are remote, not least in the light of the Hong Kong Ministerial Declaration (paragraph 26), that the current Round could help to promote the integration of existing LDC Members into the GATS and, concurrently, the international services economy. However, the relevant decisions and templates would need to be prepared in time.

ANNEX

Relevance of the General Agreement on Trade in Services for the supply of individual services

	Sectors without specific commitments	**Sectors subject to specific commitments**
A. <u>All services</u> (except B. and C.)	*<u>Unconditional obligations</u>:* Most-favoured-nation treatment (Art. II)[a] Transparency (Art. III:1 & 4, Art. VII:4) Availability of legal remedies (Art. VI:2) Monopoly control (Art. VIII:1)[b] Consultations in the event of - certain restrictive business practices (Art. IX:1) - subsidies with adverse effects (Art. XV:2)	*<u>Unconditional obligations</u> (see 2nd column)* *<u>Conditional obligations</u>:* Additional transparency obligations (Art. III:3 & 4)[c] Domestic regulation (Art. VI:1, VI:3, VI:5, VI:6)[d] Additional obligations concerning monopolies (Art. VIII:1, 2 & 4)[e] Unrestricted capital transfers and payments (Art. XI, fn 8 of Art. XVI) Non-discriminatory access to and use of public telecom networks and services (Annex on Telecommunications) *<u>Specific commitments as inscribed in schedules</u>:* Market Access (Art. XVI) and National Treatment (Art. XVII)[f] Additional Commitments (optional) (Art. XVIII)
B. <u>Special cases</u> (i) Maritime transport (Decision on Neg. on Maritime Transport Services) -- (ii) Government procurement (Art. XIII:1)	See above, except for most-favoured-nation treatment	(i) Like all other scheduled services (see above)[g] -- (ii) Non-application of market access and national treatment commitments (Art. XVI & XVII) and related conditional obligations
C. <u>Excluded sectors/measures</u>	(i) Services provided in the exercise of governmental authority (Art. I:3) (ii) Air transport (measures affecting traffic rights and directly related services, barring three exceptions)	

[a] Permissible departures: (a) MFN exemptions (Art. II:2); (b) Economic Integration or Labour Market Integration Agreements (Art. V & V*bis*); (c) recognition measures (Art. VII); (d) General Exceptions (Art. XIV); and (e) prudential measures in financial services (Annex on Financial Services).

[b] Purpose: Ensure compliance with MFN principle.

[c] More comprehensive transparency obligations, including notification requirements, than in sectors not subject to specific commitments.

[d] Purpose: Prevent excessive regulatory activities and/or particularly burdensome requirements from undermining the economic value of specific commitments.

[e] Purpose: Prevent market distortions (e.g. through anti-competitive cross-subsidization) in areas where specific commitments have been undertaken.

[f] Market access and national treatment may be made subject to limitations.

[g] Negotiations in this sector were suspended in 1996. Commitments that have been undertaken nevertheless may be withdrawn without compensation at the conclusion of the current round.

Source: Rudolf Adlung, as note 37 above, p. 459.