

Services at WTO: a Bumpy Road*

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This paper reviews the status of service negotiations, from a Latin American and Caribbean (LAC) perspective, in the context of the Doha Development Agenda (DDA). It describes the development content of the DDA, in general as well as in services.

Considering that developing countries have regarded GATS as an agreement with «development friendly» architecture, they had high expectations concerning the trade opportunities that this Agreement would offer. These expectations have not been met. LAC countries have experienced growing deficits in their services trade and their export performance has been weaker than their corresponding performance in goods.

Part of the explanation lies on the limited range of services with export potential these countries have. It is also linked to the poor commercial value found in developed countries concessions. These were specially limited in sectors and subsectors of interest to developing countries and with respect to Mode 4. Furthermore, the Special and Differential treatment provisions, in particular those included in GATS Art. IV have proved to have little operational value. Most developing countries have not made use of these provisions.

Finally, some considerations are made regarding the type of reforms needed at the domestic level in order to build a strong, competitive service export sector.

INTRODUCTION

This paper reviews the status of services, mainly from a Latin American perspective, in the con-

text of the Doha Development Agenda (DDA) adopted at the World Trade Organization (WTO) Ministerial meeting in 2001.

The first section describes the develop-

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ment content of the DDA, both overall as well as in its specific reference to services.

The following section explains the inherent complexities of dealing with services trade negotiations and the perceptions and expectations of developing countries at the conclusion of the Uruguay Round (UR).

According to developing countries, GATS has a «development friendly» architecture.

The third section argues that developing countries have regarded the General Agreement on Trade in Services (GATS) as an agreement with a «development friendly» architecture. In this context, they had high expectations concerning the trade opportunities that this Agreement would offer them at the end of the Uruguay Round. This section also reviews in brief country experiences in implementing the reform of key service industries and the trade results achieved by LA in the years following the end of the UR. Not all trade expectations of developing countries have been met. Latin American and Caribbean countries have experienced growing deficits in their services trade and their service export performance has been weaker than their corresponding performance in trade in goods.

Part of the explanation seems to lie in these countries' limited range of services with export potential. Also, the poor export performance appears to be related to the low commercial value found in devel-

oped countries concessions. These concessions were specially limited regarding sectors and subsectors of special interest to developing countries and with respect to the provision of services through the movement of natural persons (Mode 4). Finally, the Special and Differential treatment provisions contained in GATS, in particular those included in Art. IV, have proved of little operational value. Most developing countries have not made proper use of these provisions.

The paper ends with some concluding remarks regarding institutional and regulatory matters and the need for international cooperation.

1. THE DOHA DEVELOPMENT AGENDA

The Doha Ministerial Conference was the fourth WTO Ministerial Meeting after Singapore (1996), Geneva (1998) and Seattle (1999) and took place in Qatar in November 2001. In Para 2 of the Doha Declaration –known as Doha Development Agenda (DDA)– the Ministers agreed on the following: «International trade can play a major role in the promotion of economic development and the alleviation of poverty». It recognized that the majority of WTO members are developing countries and decided «to place their needs and interests at the heart of the Work Programme adopted in this Declaration». It also reaffirms that «we shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of

world trade commensurate with the needs of their economic development»¹.

Te Doha Declaration reaffirms the right of members under GATS to regulate the supply of services.

In reference to services, the Declaration reaffirms the right of members under the General Agreement on Trade in Services (GATS) to regulate, and introduce new regulations on the supply of services.

The Ministers adopted a Work Programme which includes, *inter alia*, issues such as: implementation-related issues and concerns²; services; trade, debt and finance; trade and transfer of technology, technical cooperation and capacity building; and special and differential treatment. The negotiations were to conclude no later than 1 January 2005³.

Services negotiations began in 2000, five years after the entry into force of the GATS in 1995. In March 2001, the Council for Trade in Services established the Negotiating Guidelines and Procedures⁴. Later, the DDA set up a timetable as follows:

Requests for Market Access: 30 June 2002

Initial offers on Market Access: 31 March, 2003

Stocktaking: Fifth Ministerial Conference, 2003

Deadline: 1 January 2005, as part of single undertaking

The Work Programme also reaffirms the commitment to conduct the negotiations with a view to promoting economic growth of all trading partners and the development of developing and least developed countries. The Programme recognizes the work already undertaken and the large number of proposals (a total of 110, 47 of which were made by developing countries) on a wide range of sectoral and horizontal issues⁵ and reaffirms the Guidelines and Negotiating Procedures as basis for the continuing negotiations, with a view to achieving the GATS objectives stipulated in its Preamble and Articles IV and XIX.

In another section of the Declaration, the Ministers reaffirm the provisions for Special and Differential Treatment (S&D) as an integral part of the WTO Agree-

¹ The same text appears in the preamble of the Marrakesh Agreement which established the WTO.

² Developing countries problems in implementing the current WTO agreements (Uruguay Round Agreements). It also describes problems faced by developed countries, as in the case of textiles.

³ In Para 47 of the Declaration, the Ministers agreed that «the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking», which will be adopted and implemented at a Special Session of the Ministerial Conference. At the Fifth Session of the Ministerial Conference, the Ministers agreed to take stock of the progress in the negotiations and to provide any necessary political guidance and to take decisions as necessary.

⁴ World Trade Organization (WTO) Document S/L/93.

⁵ Report by the Chairman to the Trade Negotiating Committee. Council for Trade in Services. WTO Document TN/S/10, 11 July, 2003.

ments and agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. The S&D treatment in WTO agreements give developing countries special rights such as longer time periods for the implementation of agreements and commitments or measures to increase their trading opportunities. The Declaration also endorsed S&D treatment in the context of the Decision on Implementation-Related Issues and Concerns.

To put this last aspect of the Declaration into perspective, Annex 1 summarizes the S&D provisions included in the existing GATS. Not all of them are explicitly mentioned in the DDA on Services. S&D provisions contained in Articles III, V, XII and XV are omitted from the DDA despite the fact that they all reflect legitimate developmental concerns.

Regarding the question of «Implementation related issues and concerns» –a highly sensitive area for developing countries– the implementation decision instructs the Trade and Development Committee to examine additional ways in which special and differential treatment provisions can be made more effective, and how developing countries may be assisted to make best use of these provisions. The decision mandates the committee to consider how special and differential treatment may be incorporated in the new negotiations.

In a General Council Chairman's proposal on this issue⁶, three categories of proposals are identified. Category I contain proposals on which members have agreed upon in principle and are not for discussion. Category II contains proposals made in areas on which there are either on going mandated negotiations or are being considered in the respective WTO bodies. There are no service proposals on Category III. (See proposals in *Annex II*).

The deadlines for the revision of TRIPS have generally not been met.

Although these proposals seem particularly relevant, no progress has been made on the arrangements to put «development» into the Round through making operational and giving more content to issues already agreed upon at Qatar. Most of the deadlines have not been met. The Trade Related Intellectual Property Rights (TRIP's) agreement was supposed to be reviewed by December 2002, in the light of the «Trips and Public Health» paragraph of the Doha Declaration⁷. Yet this deadline and those that followed have been missed.

In agriculture, developing countries are pressing the European Union and the United States to reduce their massive subsidies and other trade distorting measures in order to get better market access con-

⁶ WTO Document JOB903/68, 7 April 2003.

⁷ On the question of TRIPs and Public Health, members reached an agreement with the adoption by the General Council of the Decision on the Implementation of Paragraph 6 of the Doha Declaration. This event took place on 30 August, 2003.

ditions into developed countries markets. But at their last meeting, the US and the EU only agreed to continue their talks with no commitments on the range of products to be dealt with, the amounts for the reduction in subsidies or other trade barriers.

No advance has been made either in areas related to solving the implementation problems of the Uruguay Round Agreements which developing countries face and in giving more substance to the special and differential treatment.

Under the «single undertaking» approach, developing countries fear that they will be pressed to make concessions in areas of little interest to them, such as the Singapore issues (investment, competition policy, trade facilitation, transparency in government procurement) and services with very little or nothing to gain in areas such as agriculture or in the TRIPS/health issues.

Dealing with service trade liberalization is more complex than dealing with merchandise trade.

2. THE COMPLEXITIES OF SERVICES NEGOTIATIONS: LIBERALIZATION *VIS-À-VIS* REGULATORY REFORM

It is widely recognized that dealing with services trade liberalization is con-

siderably more complex than dealing with merchandise trade. Trade in services has to confront a variety of concerns that are normally not found in the area of merchandise trade. In this sense, service negotiators have to deal with a number of considerations for which factual information is either not available or the time elapsed since the reform is not enough to make a definitive assessment. This situation has been particularly serious in the case of most Latin America and Caribbean (LAC) countries. Their participation in GATS negotiations has coincided with the implementation of deep unilateral reforms in many of these countries. No time was available for long-term assessments. In addition, «the complicated domestic rules and regulations that affect services trade come under the purview of many departments and ministries. Sector-specific regulations are the responsibility of the respective ministries. With the multitude of government authorities involved, co-ordination of a national position for negotiations as well as for the implementation of negotiated agreements is indeed extremely challenging»⁸.

Mismanagement, lack of financial resources to modernize and expand, undue pressures on the public budget coming from public service industries deficits, all gave rise to strong arguments from the business community and other social actors to dismantle regulations and privatize those operations. Privatization should open up new opportunities for the private sec-

⁸ Findlay Christopher, Stephenson Sherry and Prieto Francisco Javier, «Services in Regional Trading Arrangements», Paper presented to the *Australian Conference of Economists*, Adelaide, October 2002.

tor to engage in businesses within and beyond their national borders.

However, since the establishment of WTO, many governments and civil society groups in developing countries have been increasingly disappointed both in terms of market access payoffs for their service industries and the implementation of certain WTO agreements⁹. At the same time, GATS has also raised fears that it would force privatization and market oriented reforms in areas such as public health and public education thus generating some opposition from civil society groups to advance in the adoption of further commitments specially in the area of social services.

The business community strongly argued in favor of dismantling regulations.

Many of the concerns *vis-à-vis* services regulatory reform and GATS are related to the multifunctional nature of services. Services support the socio-economic tissue of countries (transport, financial services, education, health, distribution), serve as infrastructure for transporting and delivering services and as services in themselves (telecommunications), are contributors to value added (business services), act as environmental protectors (environmental services) and they are also eco-

nomie activities on their own. As such, they demand labor, capital and technology and generate employment, revenues and foreign exchange. This multifunctional nature of services explains why services have traditionally been so heavily regulated. Regulation of services was seen as a means of achieving those public policy objectives that were associated with a particular service industry. More often than not, limiting private ownership and restricting competition—specially from abroad—in key service industries, was perceived as an easier way to meet public policy objectives.

On the other hand, the multimodality of services trade is a concern for policymakers. Due to the immaterial nature of services, international transactions often involve the temporary movement of people, either to buy or to sell services. GATS and some FTA's also include transactions between residents of the same country in cases when there is foreign ownership on the seller's side. This is the case of services that require a more permanent relationship between buyer and seller. This multimodality requires improved international mobility of labor and capital, among others. Mobility that most agreements would define as «temporary» in the case of labor, and «permanent» in the case of capital. International services transactions also require international mobility of consumers.

⁹ Hoekman B., «Strengthening the Global Trade Architecture for Development», The World Bank Development Research Group. Working Paper 2757, Washington, DC January 2001.

¹⁰ De Ferranti, D., G. E. Perry, D. Lederman and W. Maloney, «From Natural Resources to the Knowledge Economy», The World Bank, Washington, D.C. 2002.

The new trade theory allows for increased international factor mobility.

This special characteristic of service trade departs from classical trade theory where trade patterns depend on comparative advantages and this, in turn depends upon endowments of labor, land, capital and natural resources, all of which are not internationally mobile. The new trade theory allows for increased international factor mobility while incorporating other «new endowments» such as technical knowledge, quality of human capital, availability of infrastructure, geographical location, quality of institutions and regulations, managerial skills, all of which¹⁰ would determine where and how, in the global production function of goods and services, countries would integrate. Other things been equal, countries with abundant labor would export labor-intensive services and countries with abundant capital would export capital-intensive services and in doing so, labor and capital should move across international borders. However, this has not happened quite like that and it is unlikely to happen in the near future.

With regard to modes of supply of particular interest to developing countries, it is useful to recall the structure of GATS

commitments on mode 4 (Presence of Natural Persons) for all countries. Out of 328 aggregate entries, 41% correspond to intra-company transferees, 32% to executive, managers and specialists, 32% to business visitors and only 5.8% of all entries by all members correspond to independent contractors and other not specified individual service providers. These entries were heavily qualified by a number of entry conditions and discriminatory treatment, including numerical limits, duration of stay restrictions, application of an Economic Needs Test, work permits and pre-employment, links to mode, minimum wage, etc.¹¹. No concessions have been made to facilitate exports of services supplied by less skilled persons¹².

It has been estimated that globally removing obstacles to labor mobility for both, skill and unskilled workers would generate worldwide efficiency gains of considerable magnitude¹³. Increasingly countries welcome foreign capital but are more reluctant to accept foreign labor. This is true in both, developed and developing countries, but with a caveat: highly trained human capital is welcomed under strictly controlled circumstances, normally to compensate scarcities in local labor markets. In fact, global contestability is valid when it increases competition at the corporate level, yet its usefulness appears to be less

¹¹ Kluwer Law International, *Guide to the GATS*, WTO, 2002.

¹² This aspect was partially dealt with in the agreement reached by members on modalities for the special treatment of LDC members in the negotiations on trade in services.

¹³ Iregui A. M., «Efficiency Gains from the Elimination of Global Restrictions on Labor Mobility», World Institute for Economic Development Research, Working Paper N° 2003/27, United Nations University, March 2003.

obvious when natural persons of low levels of skill supply services.

Thus, two of the four modes of supply face considerable obstacles due to countries reluctance to accept freer international mobility for people. Even those entering as tourists, are considered either potential illegal aliens or, in some countries, a threat to national security.

Countries increasingly welcome foreign capital but are more reluctant to accept foreign labor.

Temporary foreign service providers also face similar concerns. For instance, the US H1B visa program, which allows a limited number of visas for highly trained foreign workers was amended by the House Judiciary Committee on 10 July 2003, with endorsement of the USTR office. The amendment will reduce the statutory cap from 195.000 visas this year to 65.000 visas for the next year. This is in addition to the US\$1.000 per worker fee, to be paid by companies applying for visas¹⁴. It is interesting to note that this reduction in the statutory cap brings it down to the level of the US quota, which was bound, in the US GATS's mode 4 commitments. Therefore, hopes for any improvement of the bound quota are nil. In developing countries the situation is not better. Countries that are slightly more prosperous also feel threatened by foreign-

ers wanting to enter their countries and are reluctant to make concessions in this area.

While the above is the case of labor factor mobility and commitments on Presence of Natural Persons, capital mobility and commitments on Commercial Presence faces the opposite situation. All countries –both developed and developing– struggle to obtain an increasing share of international capital, everyone competing to create the most foreign investment-friendly environment possible. Courting foreign investors has become a priority for governments in Latin America and the Caribbean¹⁵, even in countries that appear as contestants of the current international paradigm. As a result of the Uruguay Round, a total of 1128 aggregate entries were made for Mode 3 (commercial presence), 18% of Market Access commitments were Full (with no limitations) and 37% of National Treatment Commitments were Full (with no qualifications)¹⁶. This is almost three times as many Mode 4 commitments, none of which was made without some sort of limitation or qualification to Market Access or National Treatment.

It has been estimated that, if developing countries' interest in opening up Mode 4 (especially for less skilled service providers) were to be satisfied and developed countries were to allow an increase of temporary access by service suppliers equivalent to 5% of the OECD popula-

¹⁴ Inside US Trade, July 11, 2003.

¹⁵ O'Grady M. A., «Gringos, come home», *America Economía*, June 20-July 3, 2003

¹⁶ Kluwer Law International, *op. cit.*

tion, it would generate additional revenues of US\$300 billion¹⁷.

Elimination of quotas for temporary entry of service suppliers could contribute to a better balance of trade opportunities within the multilateral system.

It is clear that the disappointing results achieved by LAC countries in their attempt to benefit from the implementation of GATS commitments is partly due to the inadequate and insufficient liberalization which has taken place in developed countries' markets, in sectors and modes of supply of special interest to them. In other words, the provisions of Art. IV of GATS are not been given due consideration among the developed members of WTO. And this is also the reason why this aspect has been brought into the implementation-related issues and concerns within the current Round of Negotiations.

Unfortunately, the pattern of request-offer, which is currently being exchanged in the GATS negotiations, is indicative that these perceptions are still at the heart of Governments and negotiators.

Nevertheless, the current round of GATS negotiations offers a good opportunity for developed countries to advance meaningful commitments on market access for developing countries in sectors and modes of supply of special interest to them. In the spirit of the DDA, more and

fuller commitments in sectors such as those identified above would be a positive starting point. Non-reciprocal, immediate elimination of nationality or permanent residency requirements for the provision of any service in developed countries' markets would be a significant step forward in this regard. Also, full elimination of numerical quotas for the temporary entry of service suppliers from developing countries and the elimination of labor certification tests and minimum wages requirements are commitments that could indeed contribute to better balance of trade opportunities within the multilateral system.

3. THE PERCEPTION OF GATS AMONG DEVELOPING COUNTRIES

In spite of all these difficulties, developing countries have regarded GATS architecture as «development friendly». We will identify those aspects and review how much of these expectations have been met in the first eight years of GATS. The rather limited number of proposals in services compared to S&D implementation issues in other negotiating areas should be noted. And perhaps this is explained by the fact that after an initial skepticism, expectations about GATS have been rather high in the case of many developing countries.

First, the Agreement gave them the opportunity to lock domestic reforms in an international treaty. This would remove

¹⁷ Winters L.A., «Harnessing Trade for Development», quoted in B. Hoekman, *op. cit.*

some controversial issues from the local political debate. Due to the multifunctional nature of some service industries and to its multimodality, which introduces FDI and movement of natural persons issues, many of these reforms were highly sensitive from the political and social perspective.

Second, in light of all the provisions dealing with S&D treatment contained in the Agreement, they felt the GATS was specially friendly and development sensitive, giving them the possibility of making fewer concessions than their developed counterparts. This would allow for a progressive adoption of commitments, which would advance *pari passu* with their confidence in the results of the domestic reform. At the same time the positive list approach was also seen as flexible enough to allow for «ceiling bindings» through the listing of more restrictive measures than those in force. This would provide for a safety net in case these more restrictive measures may be needed in the future. Also, they were entitled to attach certain conditions to their granting of concessions. Such concessions were to be made conditional to concrete actions towards the strengthening of their domestic service capacity, efficiency and competitiveness through access to technology on a commercial basis as well as improved access to distribution channels and information networks.

Thirdly, GATS would also help developing countries in making their domestic reforms more visible in the eyes of the international business community. This would assist them in their efforts to attract badly needed FDI and technologies

from abroad. Investment and technology, which was deemed essential to consolidate the reform and to secure its expected benefits.

Last but not least, they could also expect to gain from their increased participation in the world services trade through the liberalization of sectors and modes of supply of special interest to them in developed-country markets. Developing countries were confident that some of their service industries could do well in international markets when those markets provide them with adequate access in the right modes of supply.

**Deregulation became the
yardstick to assess the
intensity of trade liberalization.**

a) A brief review of regulatory reform processes and trade results of the Uruguay Round

Deregulation became the yardstick to assess the intensity of trade liberalization, especially if accompanied by privatization of State owned utilities, social security funds, postal services and other important service industries that had been State run or operated under heavily regulated monopolies. In fact, services deregulation was equated with privatization and non-discriminatory access of foreign nationals to the property an/or supply of services. National markets were to become «globally contestable». Global contestability

requires new domestic regulation fostering domestic and global competition in service industries that have long been subject to regulations that inhibit domestic as well as international competition¹⁸. Contestability would provide welfare improvements for all—specially consumers—bringing savings to consumers through lower rates or prices, improving the quality and coverage of services provided, expanding choices for consumers, fostering innovation and when appropriate improving safety (air transport) and consumer rights protection. All of this would improve the efficiency and competitiveness of all productive sectors within the economy. Services contribution to GDP and to employment generation was to be reinforced in developed and developing countries.

Available evidence points to mixed results in services reform.

Available evidence provides for mixed results in service reform. While some evidence supports the idea that services reform and especially services liberalization has brought substantial benefits in many countries, there is also evidence that in certain cases the outcome has worsened the original situation. It is very likely that these contradictory results are closely linked with the quality of the resulting regulatory framework as well as with the power and independence of the supervi-

sory/implementing authorities. In fact, results differ for the same industry in different countries as well as between industries within the same country.

Let us review some literature on the experiences of privatization, deregulation and liberalization in various industries and countries.

The case of the US provides us with some interesting contradictory experiences with deregulation. Banking deregulation turned out to be a failure. After substantial deregulation in the early 80's, by the beginning of the 90's, a total of 1600 financial institutions had failed in the biggest banking crisis since the Great Depression.

Californians suspended deregulation of electricity after blackouts and bankruptcies which had cost taxpayers US\$10 billion in bailouts. Telephone services (equipment and long distance services were deregulated in 1984, local calls in 1996) show a better performance. Rates have fallen drastically, customer satisfaction has improved, choice has exploded in long distance services and innovation brought optic fiber lines and digital subscriber lines¹⁹. However, telephone services have been exposed to strong competition from alternative modes of communication, like Internet and cellular phones, which was not the case in electricity or banking services.

In Chile, a pioneer of reforms, the privatized electric sector poses some ques-

¹⁸ Feketuky, Geza, «Towards globally contestable services markets», Director, Monterey Institute of International Studies.

¹⁹ Consumer Report, 2002.

tion, as some experts are anticipating blackouts in the next couple of years. In the area of telecommunications, the vast expansion of fixed lines and the strong penetration of cellular services have coexisted with local and cellular phone bills at relatively high levels and the quality of service from its dominant provider is deteriorating. The banking system, which in the early 1990's was 80% Chilean owned, is now only 60% national and is one of the most efficient in the region. Water supply and treatment has been largely privatized but water bills have risen drastically in some low income, distant communities. Furthermore, cases of undue influence by dominant providers in the regulatory bodies are bringing them under scrutiny of the public eye.

Consumers regard low prices for electricity and water as a right and not as a privilege.

A Latinbarómetro poll, conducted in 17 Latin American countries during 2001, showed that 63% of the sample thought privatization *had not been* beneficial to consumers, up from 43% three years earlier. Consumers increasingly associate privatization with higher rates for services and higher revenues and profits for foreign companies and corrupt government officials. Disappointment is greater in areas such as electricity and water, since

they are relatively more prone to monopoly than competition. Violent protests over water concessions in Bolivia and private electricity projects in Peru took place in reaction to increases in utility rates. Consumers usually regard low prices for electricity and water as well as universal service as a right and not as a privilege. Such change in perceptions has led the World Bank to reassess its views on privatization of public utilities, giving less weight to the question of whether property is private or public while emphasizing managerial aspects and efficiency considerations²⁰. Michael Klein, vice-president of the World Bank, acknowledged the mistake of interpreting the Bank's strategy as a mandate to «privatize everything that moves».

Another study by the World Bank shows privatization in a more positive perspective. Between 1990 and 1999, the privatization process brought some US\$290 billion in private capital to the region, roughly half of all FDI going to infrastructure in the developing world. It generated some US\$174 billion in extra revenue for Governments (about 40% of the 1990 regional public debt) and allowed a 50% real increment in public social spending. It recognizes a generalized improvement in telecom services, which increased the penetration of telephone services (either fix or cellular) by 300% to 500%, admitting that water and electricity have been less successful, especially in terms of service rates in poor and distant areas²¹.

²⁰ Phillips, Michael M., The Wall Street Journal, quoted in *El Mercurio*, Chile 21/07/03.

²¹ De Ferranti, Leipziger D. and Foster V., «Privatizaciones en América Latina», World Bank study, quoted in *La Tercera*, Chile 9/09/2002.

As the case of postal services liberalization illustrates, in Annex 3, there seems to be room for the introduction of new regulations, which are perfectly compatible with the non-discrimination obligations of GATS.

New regulations in postal services are compatible with non-discrimination obligations of GATS.

Services regulations are of great importance to correct market failures and for the achievement of other public policy objectives. Regulation is needed to promote competition, protect consumers, reduce negative externalities, compensate asymmetries of information plus a myriad of other equity, cultural, environmental, national security objectives. This been the reason why all countries favor the existence of regulations as well as the right to introduce new regulations.

This should be indicative of the great need for capacity building activities on the part of both WTO and the international financial institutions. Assistance is needed for the identification of regulatory best practices, along the lines of the Reference paper on Basic telecommunication services as well as in the area of institutional development. Independent and efficient supervisory bodies are essential to turn the regulatory framework into an operational tool for the development of better, more efficient service industries.

b) LA Service Trade Performance

As already mentioned, not all trade expectations of developing countries have been met. Latin American and Caribbean countries have experienced growing deficits in their services trade and their service export performance has been weaker than their corresponding performance in trade in goods.

The GATS new round was to be preceded by an assessment of services trade liberalization. So far 145 submissions have been made and the process is to continue throughout the negotiations in the Council on Trade in Services. The submissions provide information on overall terms and on a sectoral basis. The evidence is not concluding with regard to the impact of services liberalization on the development process.

Most analysts would agree that GATS has not produced trade liberalization in a manner similar to that achieved in merchandise trade. It is clear that whatever liberalization commitments have been inscribed in GATS is not so much the result of the request-offer mechanism (based on reciprocity) but simply the product of previous unilateral liberalization that was later partially bound in GATS negotiations. Binding was made in sectors where countries felt comfortable with the existing level of protection or simply made a ceiling binding that reflected a higher level of protection than the existing one.

Available information on the current level of protection suggest an equivalent *ad valorem* tariff rate ranging from 50% to 100% for large service sectors and can

reach 300% in maritime transport as a result of the protectionist provisions of the US Jones Act.²² So in fact, little liberalization was achieved and a partial status quo prevailed in both developed and developing countries commitments.

In addition, GATS remains largely unknown and misunderstood by large segments of the population even when that involves segments of the most internationally oriented business community within developing countries.

For different reasons, very few –if any– developing countries have managed to make operational the provisions contained in Art. IV²³. Practically no developing country has been able to make their market access concessions conditional to obtaining increased access to technology or to improved and meaningful access to distribution channels and information networks.

The development of better service industries requires independent and efficient supervisory bodies.

This lack of capacity for setting up appropriate conditions to grant trade concessions gives even greater relevance to the proposals made in the context of the «implementation-related issues» for the establishment of concrete benchmarks for the technical and financial assistance available to the strengthening of their domestic service industries, their efficiency and their competitiveness.

Service trade performance in Latin America has been weak and disappointing during most of the period in which global trade in services expanded more rapidly than merchandise trade. While the value of trade in goods nearly tripled between 1985 and 1995 for the Western Hemisphere, the value of trade in services only doubled. Furthermore, for all developing regions except Latin America, the share of services trade in GDP rose over that decade²⁴.

Trade results obtained by Latin American and Caribbean countries (LAC) out of the Uruguay Round agreements are not very satisfactory either. In fact, while the accumulated merchandise trade deficit between 1996-2002 reached US\$15.398 million, the equivalent accumulated services

²² Hoekman, B. and Messerlin P., «Liberalizing Trade in Services: Reciprocal negotiations and Regulatory Reform», mimeo 1999. Paper presented at the Conference *Services 2000: New directions in services trade liberalization*, Washington, DC.

²³ Art. IV of GATS was incorporated into the Agreement in order to respond to many of the concerns of developing countries and to tackle the problems they faced in achieving greater and increased participation in world services trade. Among others, this article considers the possibility that developing countries' concessions be made conditional to concrete actions towards, *inter alia*, the strengthening of their domestic service capacity, efficiency and competitiveness through access to technology on a commercial basis, as well as improved access to distribution channels and information networks.

²⁴ Stephenson, Sherry, «Approaches to Services Liberalization by Developing Countries», OAS-Trade Unit Publication, Washington D.C., February 1999.

deficit amounted to US\$ 137.797 million. While LAC countries had a merchandise surplus in four out of the eight years in 1995-2002, their services balance was consistently and increasingly negative up to 2001 with a fall in 2002 due to the severe contraction of overall imports in the Region. With the exception of 2002, LAC countries evidenced a substantial deficit in their goods and services trade in the rest of the period 1995-2002. It is important to note that 90% of the overall trade deficit between 1995 and 2002 was due to services²⁵. This was in part due to the moderate service export growth rates compared to rather strong merchandise export growth with almost no impact on their economic growth and equity²⁶. On the other hand, LAC countries' service imports expanded rapidly in most years since the establishment of WTO.

The situation described in the previous paragraph reflects that of most of ALADI member countries (except Paraguay and Uruguay) as well as most of Central American countries (except Costa Rica and Panama). Caribbean countries have traditionally shown a much stronger position in their services trade, yet no special improvements can be associated to their participation in GATS.

LAC countries are the only region in

the world where merchandise exports have tended to grow more rapidly than service exports since the early 90's and this is reflected in the fact that it is the only developing region showing negative values for their «relative export performance» in services (REP)²⁷ between 1990 and 1997: -2 for the Region, -5 and -9 for Brazil and Mexico respectively. The corresponding figures for some Asian countries were +5 for Rep. of Korea, +6 for China and +12 for Hong Kong, China, although it was 0 for all developed countries in North America and Western Europe.

**While the value of trade in goods
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that of trade in services only doubled.**

The cases of Chile and Mexico are worth noting. Chile is one of the most open service economies in the Region and one of the least affected by the Asian crisis. Nevertheless, its services trade deficit increased ten fold between 1996 and 2002 (from US\$92 mill in 1996 to US\$957 mill. in 2002). The case of Mexico is even more extreme. The country underwent important service liberalization reforms in the second half of the 90's²⁸ and its services

²⁵ Data compiled from various official sources by: The Division on International Trade and Integration, ECLAC.

²⁶ Latin American exports grew at 9% per year in the 1990's, 50% faster than world trade, yet between 1990 and 2002 GDP grew scarcely by 2.4%. French-Davis Ricardo, «Reforming the Reforms in Latin America: Macroeconomics», Trade, Finance, St. Antony's Series, Nueva York, St. Martin's Press, 2003.

²⁷ REP: difference between growth rates in service exports and merchandise exports. In WTO Secretariat Job, «The developmental impact of trade liberalization under GATS». No 2748/rev, 1 Geneva 7/06/99.

²⁸ In fact, Mexico's opening of its economy began in 1994 as a result of NAFTA, though actual liberalization and deregulation was implemented between 1996 and 1999, specially in the banking sector. UNCTAD-United Nations, *World Investment Report 2002*, New York and Geneva, 2002.

trade balance went from a surplus of US\$371 millions in 1996 to a deficit of US\$4.048 millions in 2002. It is also interesting to note that both countries openness in the area of services became even more «visible» to service exporters from all over the world through the FTA's they have signed during the 90's and early 2000's with various countries from within the Americas as well as from other regions. It should also be noted that the situation described is unique for this two countries. The rest of LAC countries showed a far more stable situation in the magnitude of their service trade balance.

It can be argued that some of the service import upsurges in Chile and Mexico has facilitated their performance in merchandise trade and helped to turn those countries more competitive in the world markets. In the Chilean case, the greatest deficit increases took place in the «Other Services» category, particularly in «Business Services» and «Royalties and other License Fees», both items which could be associated with the introduction of more advanced business practices and improved competitiveness for Chilean firms.

On the other hand, although Chile has successfully attracted export oriented FDI for a number of years (Chile is the 4th largest recipient of FDI among the LAC countries and was first in FDI inward stock per capita) there is no evidence that the substantial FDI flows going into Service industries (51% of the accumulated investment 1974-2002)²⁹ has developed new

service exports for the country (as opposed to FDI going into mining, fishing, agro industry and forestry which did expand exports from those sectors).

Trade results obtained from Uruguay Round agreements by LAC countries are not very satisfactory.

On the question of the opportunities arising from developed countries commitments in GATS a number of elements should be brought into consideration. In dealing with the lack of effective market access for sectors of special interest to developing countries, there seems to be agreement that most developing countries have a limited range of services industries with export potential, especially towards developed country's markets. It is also true that the business communities in many LAC countries are not fully aware of the opportunities offered by services trade agreements, much less by the multilateral trading system. This is partly due to the kind of trade information contained in GATS. It also must be recognized that members schedules on specific commitments and their lists of MFN exceptions are drafted in a most obscure, unfriendly manner, which makes them very difficult to decode not only for the business community but for government officials and trade negotiators as well. Unfortunately, we are far from exploring alternatives that would better reflect the level of protec-

²⁹ Chile's Foreign Investment Committee: FDI(D.L.600)-Materialized FDI by Sector: 1974-2002 (in nominal US\$ million).

tion which remains in place in services trade. Proposals such as the tariffication of services –in a manner similar to the exercise made in agricultural trade (expressing quotas and other non tariff barriers in its tariff equivalent)– are still confined to university research centers and far from government officials³⁰.

Among the industries that most obviously could offer opportunities for LAC and other developing countries exporters are: tourism, health services, construction, air and maritime services and software and data processing services³¹. Let us quickly review their situation in GATS and its trade potential for LAC.

**Although it is one of the
most open service economies
in the region, the Chilean
services trade deficit increased
tenfold between 1996 and 2002.**

- There is evidence that the *tourism industry* has a very high imported component (international hotel and tour operators chains). This limits the actual benefits accrued to the exporting country from the large number of full GATS commitments (65 for mode 2) in this sector. Furthermore, tourism competitive advantage is largely associated with natural beauties,

location and weather conditions. These characteristics are not evenly distributed among developing countries. Also, to be able to take full advantage of its potential, much inefficiency in support services, especially those associated to air transport protectionism must be remedied.

- In *health services*, commitments are less numerous (49 for medical and dental services and 39 for hospital services) although most with no limitations on Mode 2. But the lack of health insurance portability is a severe constraint to the trade potential of these commitments. Moreover, not all LAC countries can expect commercial benefits from such commitments. Location is also very relevant in terms of positioning a country in the area of health services. To be located in the vicinity of «export markets» (ideally developed countries) increases the ability to benefit from mode 2 commitments. However, there are also «brain drain» concerns. This has been defined as a major risk with respect to trade in services that are embodied in highly trained professionals. Commitments on opening trade in health services could enhance the drain of skilled people. Remittances rarely cover the lost skills and capacities for the exporting country³².

- In spite of a relatively large number of commitments in *construction services* (69 members in at least one of the sub

³⁰ Deardorff, Alan, «Tariffication in Services» In Robert M. Stern, (ed), *Issues and Options for U.S.-Japan Trade Policies*, Ann Arbor, University of Michigan Press, pp. 107-121, 2002.

³¹ «The Developmental Impact of Trade liberalization under GATS», *op. cit.*, pp. 3-4.

³² Koivusalo, M., «The impact of WTO Agreements on *Health and Development Policies*, Globalism and Social Policy Program (GASPP), Finland, January 2003.

sectors), most of them relate to mode 3 and require a commercial presence with nil commitments on mode 4. This mode of supply appears to be particularly attractive for developing countries' providers. In addition, most commitments made are qualified by limitations or conditions on licensing requirements, discriminatory financial bonds, mandatory association with local companies, impediments to move machinery and equipments, etc.

**In developing countries,
competitive advantages in tourism
are not evenly distributed.**

- In *maritime services* commitments, especially from developed countries, are very limited. There are only 6 commitments by developed countries, all of them with numerous limitations and qualifications to market access and national treatment. The importance of maritime transport for overall trade is considerable yet global contestability in this industry as in the case for air transport (which is excluded from GATS) does not seem relevant nor useful in the eyes of many developed countries. For instance, legislation that exempts col-lusive agreements in maritime transport from national competition laws in the EU, the US and other countries, not only protects inefficient industries in their home countries but also clearly damages the opportunities of other countries to trade in

the sector³³. Both industries offer considerable export potential for many developing countries but the lack of market access opportunities severely limits their possibilities for benefiting of this trade.

- In *software and data processing*, commitments are also limited (only 70 members) but actual beneficiaries from developing countries may prove very limited. In fact, India's success in this regard has not been replicated at the same scale by other developing countries. Trade in software is also affected by the compliance with international standards. The unparalleled extension of CMM level 5 certified firms in the case of India seems to be a determining factor in its international success. Something that, again, is not easily replicable in other developing countries. Also, there is increasing concern related to the «brain drain» effect associated to international trade in Information Technologies (IT). On the other hand, there are also growing protectionist pressures in develop countries to limit the amount of international outsourcing for this and other types of business services associated to IT's³⁴.

The limited market access commitments made by developed countries in areas of interest to developing countries are in striking contrast with the commitments made by developing countries in the subsequent negotiations on Financial Services (Fifth Protocol, entered into force March 1999) and Basic Telecommunica-

³³ Mattooo, Aaditya, «Shaping future GATS rules for Trade in Services», NBR Conference on Trade in Services, Seoul, June 2000.

³⁴ Business Week, «A world of outsourcing», 23 February, 2003.

tion Services (Fourth Protocol, entered into force Feb. 1998), two sectors of special interest to developed countries. As both these negotiations were concluded after the Uruguay Round came into force, there was no room for exchanging concessions and bargaining with other issues of commercial interest to developing countries. After Tourism, Financial and Basic Telecom Services are the sectors with the highest number of Members with commitments³⁵.

4. CONCLUDING REMARKS

Consideration should be given to the fact that many of the failures of services reform and the liberalization of service industries are related to the inadequacy of the regulatory framework and/or the weakness of institutions devoted to their implementation

It should also be acknowledged that in the current international context there are some developing countries that have managed to expand their service exports in several areas. For instance, the Republic of Korea has been for many years a successful exporter of construction services while India and more recently the Republic of China have become important exporters of software, data processing and back office services. Singapore is an important exporter of a wide range of services, including trading, distribution, financial and air and maritime transport serv-

ices. For many years' Cuba has been successfully exporting health services while tourism is definitely the most important service export for many developing countries. This would indicate that these countries are succeeding in developing competitive advantages through the right mix of macro economic policies, government efficiency, adequate infrastructure and business efficacy.

The development of such advantages is giving them an edge in penetrating markets of developed countries, even in the absence of specific trade commitments within GATS. In its World Competitiveness Yearbook 2003 the Swiss Institute for Management Development (IMD) ranks 59 developed and developing countries using a total of 321 criteria that are grouped under four headings for each of the elements of the mix.

For many developed countries global contestability in maritime transport is neither relevant nor useful.

Under these elements, it is interesting to note that both, India and China have managed to create highly competitive regions within their territory. This is the case of Maharashtra in India (19 in the overall IMD ranking of countries with population over 20 million) and Zhejiang in China (position 14 of the IMD ranking)³⁶. Out of LAC countries, the region of Sao Paulo is

³⁵ 83 for Financial and 69 for Telecom Services, «Guide to the GATS», op. cit. pp. 366 and 560-561

³⁶ IMD World Competitiveness Yearbook 2003.

placed as the most competitive in the Region (position 13 in the IMD ranking). Chile appears in position 16 of the countries with population under 20 million. The country shares this position with Colombia, and is followed by Brazil (21), Mexico (24), Argentina (29) and Venezuela (30).

In this regard, implementing macro economic reforms, with fiscal and monetary discipline plus adequate liberalization and privatization processes, as advanced by the Washington Consensus, is clearly not enough. Reforms to the economic reforms are required. This includes, *inter alia*: a) macroeconomic reforms to achieve sustainable equilibrium by discouraging excessive borrowing, control of the external deficit and avoidance of exchange rate appreciation and b) to complete factor markets to make long term capital available to small and medium firms and national programs of labor and entrepreneurial training and technological spreading³⁷.

Reforms at the micro level (or second generation reforms), specially labor and tax reform, incentives for R&D and educational investment, public bureaucracy improvement, and reform and increased penetration of the financial sector and new financial products like venture capital are also necessary. In the case of services, fostering the productive transformation and development of the sector is key to any export promotion effort.

In an open environment, strong serv-

ice industries at the domestic level can successfully compete in the international marketplace. Building a strong service sector requires a better integration of service firms, including small and medium, into the value-added chain within the economy and into international production networks, through the development of strong backward and forward linkages.

**Trade in software is affected
by compliance with
international standards.**

Improvements in the telecommunication infrastructure and the incorporation of the widest range of service firms into the digital economy can develop highly efficient and well-integrated service clusters around more traditional export activities. Efforts to expand international certification of services firms and processes will provide assurance on the quality of the services that are brought into the international markets³⁸.

Ideally these micro level reforms should be complemented with a number of trade facilitation initiatives on the part of Governments and private sector representatives. Double taxation agreements are essential to improve the profit margins of services internationally transacted, facilitation of the international mobility of business persons will clearly facilitate the development of business in foreign coun-

³⁷ French-Davis, Ricardo, *op. cit.*

³⁸ Prieto, Francisco, «Fomento y diversificación de las exportaciones de servicios», 2003 ECLAC (in print).

tries as well as the provision of services through modes 3 and 4, mutual recognition agreements will reduce the negative trade effects of heterogeneous licensing, accreditation requirements and procedures.

These are all actions that can definitely assist exporters in the right direction. The role of international financial institutions can

be particularly important in this area. Trade facilitation measures will not only reduce anti export bias caused by taxation but also will reduce transaction costs and assist exporters in their efforts to overcome other, non-discriminatory obstacles imbedded in domestic regulation in the importing countries.

ANNEX I

ARTICLE	S&D PROVISIONS FOR DEVELOPING COUNTRIES	S&D PROVISIONS FOR LDC'S
Preamble	Recognizes their particular needs to exercise right to regulate or introduce new regulations to meet developmental objectives and to facilitate increased participation in trade in services and expansion of their service exports, <i>inter alia</i> , through strengthening domestic capacity	
III:4	Appropriate flexibility with respect to time limits for establishment of enquiry points may be agreed for individual countries.	
IV:1	Increased participation in services trade to be facilitated by negotiating specific commitments relating to strengthening domestic service capacity, efficiency and competitiveness through access to technology on commercial basis, improvement in access to distribution channels and information networks, liberalization of access in sectors and modes of supply of export interest.	See against IV:3 below
IV:2	Members to facilitate access to market information with regard to: commercial and technical aspects of service supply; registration, recognition and accreditation of professionals and availability of services technology through the establishment of contact points.	
IV:3		Special priority to LDC's in implementation of IV:1 and IV:2; "particular account" of difficulties in accepting specific commitments owing to their special economic situation and their development, trade and financial needs

V:3	Flexibility in application of V:1's requirement for substantial coverage and elimination of discrimination among Members in the context of an Integration Agreement entered into by Members.	
XV:1	Provision for flexibility in use of subsidies in development programmes.	
XII:1	Flexibility in the use of BoP restrictions in case of BoP pressures for, <i>inter alia</i> , preservation of a given level of international reserves required for the application of their development program or economic transition	
XIX:2	Flexibility to commit fewer sectors,	

Source: Edited version of «The role of «S&D treatment» at the trade, competition and development interface», OECD Doc. COM/TD/DAFFE/CLP (2001).

ANNEX II

IMPLEMENTATION RELATED ISSUES AND CONCERNS

The nearly 100 implementation issues raised at the Doha Conference were placed under 14 headings. Over 40 of them were settled at or before the Doha conference, for immediate delivery; and the vast majority of the remaining items are subject to negotiations. The implementation decision (Decision of 14 November 2001³⁹) contains 12 subject headings plus two catch-all headings for outstanding issues and final provisions. The only references to services found in the Decision fall under the heading «Cross-cutting issues»⁴⁰.

CATEGORY I

This category contains several proposals on various GATS articles. On Art. IV.3 paragraphs 1 and 2 a proposal is made to give priority to the establishment of contact points for providing information of particular interest to services suppliers from least developed country members. On Art. XXV, it is proposed to instruct the WTO Secretariat to conclude arrangements with international financial institutions for the provision of technical assistance to developing and least developed countries in addressing their supply side and infrastructural constraints as well as their development needs in the services sector. On Art. IV.3, the proposal calls for the development of special services negotiations modalities to allow the priorities of least developed country members to be submitted and duly taken into account.

CATEGORY II

This category includes proposals on implementation of Art. IV. This provision calls for establishing periodic benchmarks for the assessment of developed countries treatment and concessions aimed at ensuring the achievement of objectives set out in art. IV.1 a), b) and c). These objectives were: the strengthening of domestic services capacity, efficiency and competitiveness through access to technology on a commercial basis, the improvement of access to distribution channels and information net-

³⁹ WTO document WT/MN(01)/17 contains «Decision on implementation-Related issues and Concerns».

⁴⁰ The Declaration's work program, <www.wto.org>.

works, liberalization of access in sectors and modes of supply of export interest. It also requests that developed countries reserve quotas for the supply of services by developing countries' service providers and for phasing out horizontal limitations to the movement of individuals.

ANNEX III

Postal Services Liberalization

With regard to postal services, an OECD study found that the former reliance on state control and regulation is giving way to greater reliance on competition and market forces, leading to more efficiency, innovation and better satisfaction for consumers. Postal services have been completely liberalized in Finland, Sweden and New Zealand, while Australia and the Netherlands have introduced greater competition through corporatisation of their Postal service or substantial reductions in the reserved areas. The erosion of monopoly is caused by electronic communications and express carriers who are capturing the 'higher end' market for fast delivery of documents and packages, while leaving the less profitable universal service obligation to the incumbent postal service as well as the obligation to meet certain level of quality at a price that is not economically justifiable, such as the requirement to provide a given frequency of deliveries and collections or limit the maximum distance to the nearest post office. This has required imaginative solutions in developing adequate regulation to simultaneously sustain the postal service capacity to provide those services and at the same time stimulate competition from alternative services such as express delivery. As traditional cross subsidies in postal services are increasingly opposed by the express delivery industry, two solutions are available: one, accepting geographic differences in pricing of postal services (Spain and New Zealand have implemented a two tier system) and second, introducing cross subsidies which are neutral to competition funded by charges to all postal and courier operators.

OECD, Regulatory Reform and Market Openness. Promoting Competition in the Postal Sector. www.oecd.org.