95-1169 E
December 5, 1995

Services Trade and the Uruguay Round: An Issue Overview[1]

Arlene Wilson
Specialist in International Trade and Finance
Economics Division

Summary

The General Agreement on Trade in Services (GATS), which went into effect on January 1, 1995, is a significant achievement, but only a first step on the road to liberalization of services barriers. For the first time, legally enforceable multilateral rules and principles for services trade are part of the international trading system. At the same time, the immediate elimination or reduction of barriers to services transactions was much less than desired by many. The GATS, however, includes provisions for future negotiations to liberalize trade. The Congress will have an important consultation role in these negotiations. If agreements are achieved, legislation may be necessary to implement them.

Background to Services Negotiations

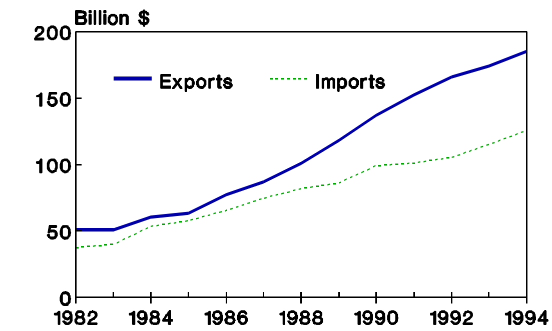
Services encompass a wide variety of activities that are often characterized as being "intangible, invisible and unstorable." In recent years, worldwide trade in services has been growing faster than merchandise trade, but is still only one-fifth as large as merchandise trade.

The United States is the largest exporter and importer of services. Travel and tourism have historically been, and still are, the most heavily traded services. However, trade in services such as financial, legal, medical, education, accounting, consulting, engineering, computer data processing, while still relatively small, is growing rapidly. Over the past ten years, U.S. services exports have been growing faster than services imports (see figure 1), raising U.S. interest in removing foreign barriers to U.S. services exports.

[1] This report provides an overview of the issues discussed in: U.S. Library of Congress. Congressional Research Service. *Services Trade and the Uruguay Round*, by Arlene Wilson. CRS Report 95-1051. Washington, 1995. 21 p.

Unlike merchandise trade (which is generally shipped across the border), services can be delivered in four main ways: by suppliers traveling abroad, consumers traveling abroad, mail or electronic transfer of information, or establishment of a branch, subsidiary, or joint venture. Barriers facing foreign service suppliers often take the form of domestic regulations and foreign exchange restrictions, not tariffs, as in the case of merchandise trade.

Figure 1. U.S. Cross-Border Services Transactions



Source: U.S. Department of Commerce.

The U.S. Government was the main proponent of liberalizing trade in services. The developing countries had many reservations, and some at first vigorously opposed the inclusion of services. After considerable debate and compromise, the Punta del Este Declaration in September 1986 launched the Uruguay Round, which included negotiations on services.

Negotiations on services were not easy. The lack of empirical estimates on the extent and economic impact of trade barriers made it difficult to establish priorities for liberalization.[2] Since tariffs are not relevant to services trade, it was not possible to make them the centerpiece of negotiations, as occurred with early General Agreement on Tariffs and Trade (GATT) negotiations on merchandise trade. An important issue was whether or not a services agreement would apply to all or some modes of delivery. Foreign direct investment and movement of persons, even if it is only temporary, are sensitive political issues.

The General Agreement on Trade in Services (GATS)

The GATS is a complex document to read and interpret.[3] It can be thought of as having three main components: a multilateral system of rules and principles, specific commitments, and further negotiations to liberalize services trade.

In general, the coverage of the GATS is quite broad. It covers all four modes of delivery (cross-border trade, movement of suppliers abroad, movement of consumers abroad, and foreign direct investment). The GATS applies to measures taken by central, regional and local governments except those supplied in the exercise of governmental authority.

---

[2] Bernard M. Hoekman. Conceptual and Political Economy Issues in Liberalizing International Transactions in Services. In *Analytical and Negotiating Issues in the Global Trading System*. Alan V. Deardorff and Robert M. Stern, eds. Ann Arbor, The University of Michigan Press. 1994. p. 520.

[3] The full text of the GATS can be found in U.S. Congress. House. *Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements*. 103rd Cong., 2d Sess., Sept. 27, 1994, House Doc. 103-316, Vol. 1. pp. 1586-1620.

Multilateral Rules and Principles. As in the GATT, the most-favored-nation (MFN) obligation is the cornerstone of the GATS. With unconditional MFN, each country is obligated not to discriminate among countries. A service or service supplier from one country must be treated no less favorably than any service or service supplier from another country.

Unlike the GATT, however, the MFN provision in the GATS allowed countries to temporarily avoid this obligation with respect to particular sectors (see box on page 4). Stated another way, the MFN provision in the GATS applies generally, except where a country listed an exemption. This was permitted because some industries in countries with relatively open markets were concerned that similar industries in countries with restrictive markets would get a "free ride." That is, service firms in countries with closed markets would continue to get access to countries with open markets, while those in countries with open markets would not gain access to the closed markets. MFN exemptions provided a way to force sectoral reciprocity.

In addition, the provisions on domestic regulation and transfer of international payments apply only to sectors in which countries have scheduled commitments (see next section). Domestic regulations and restrictions on international payments have, at times, been serious barriers to services trade.

Multilateral Rules and Principles

Most Favored-Nation (MFN) Treatment. Each country agrees to treat services and service providers from one member country in a mannner no less favorable than it treats services and service providers from any other member country. One-time exceptions to MFN treatment can be taken.

Transparency. Domestic measures that affect services trade shall be published promptly.

Regulations. Domestic rules and regulations shall be administered in an objective and impartial manner in sectors where specific commitments are made.

Recognition. A country recognizing the education, experience, licenses or certifications of professionals in a particular country shall provide an opportunity for the same criteria in other countries to be recognized.

Transfer of International Payments. Countries shall not restrict transfer of international payments relating to its specific commitments, except for balance-of-payments purposes.

General Exceptions. Members can adopt or enforce any measures to protect public morals; maintain public order; protect human, animal or plant life; ensure safety; prevent fraud; or protect privacy as long as the measures do not discriminate among countries or are not disguised barriers to trade.

Developing Countries. Liberalization of services trade would be more flexible for developing countries and technical assistance will be provided to strengthen their service sectors.

Monopolies and Exclusive Service Providers. Members shall ensure that the behavior of any firms they designate as sole providers in a particular services market is consistent with the MFN rule and their government's commitments under the GATS.

Regional Trade Agreements. Members may participate in a regional trade agreement liberalizing services trade as long as the agreement has substantial sectoral coverage and does not increase barriers against nonmembers of the regional trade agreement.

Nevertheless, agreement on a system of legally enforceable multilateral rules and principles was a significant achievement. Rules such as the one on transparency (domestic measures that affect services trade shall be published promptly) encourage services trade.

Specific Commitments. Importantly, national treatment and market access are *not* included in the multilateral rules and principles of the GATS, but instead only apply if a country commits to providing national treatment and/or market access in its schedules of commitments.[4]

The schedules of specific commitments are what is known as a "positive list" approach. Each country decided which service sectors will be subject to the GATS market access and/or national treatment provisions. The commitments, like tariff negotiations in goods, resulted from bilateral "request and offer" negotiations. If a country did not submit a schedule for a sector, market access and national treatment automatically do not apply to that sector. Commitments were bound (no new restrictions may be applied without compensating other WTO members who are affected), unless otherwise noted in the country's schedule.

For those sectors in which a commitment was made, each country then decided what measures that violate market access or national treatment would be kept in place for that sector. These restrictions were scheduled by mode of delivery. This part is, in effect, a negative list. The schedules of specific country commitments (and the exceptions) were annexed to, and are an integral part of, the GATS.

The design of the specific commitments resulted in a lack of transparency. By using a positive list combined with specified exceptions, it is difficult to determine exactly what liberalization took place. Additionally, information on sectors which did not schedule commitments is not available. Service barriers may be especially prevalent in sectors or in modes of supply in which no commitments were scheduled. A negative list in which schedules are submitted only where trade barriers are retained (as in the North American Free Trade Agreement) is much more transparent.

---

[4] National treatment is the obligation to treat foreign services and service suppliers no less favorably than like domestic services and service suppliers.

Developing countries submitted schedules for about one-fifth of their services sector, while industrialized countries' schedules accounted for about two-thirds of their services.[5] In general, the amount of liberalization was small. Almost all the commitments reflect a standstill, or ceiling, on existing measures, not a reduction of barriers.[6] By providing more secure market access, the obligation not to impose new restrictions can be important to foreign firms. Nevertheless, more reductions in existing barriers would have been preferable.

The commitments, which varied considerably by sector, were probably the most extensive for business and professional services. For example, 65 of the 95 national schedules included commitments on business and professional services.[7] On the other hand, only 13 countries made commitments in audiovisual services.[8]

Future Liberalization. The GATS provides that, no later than five years after the date of entry into force of the WTO, and periodically thereafter, members will enter into successive rounds of negotiations. The goal of such negotiations is to liberalize trade further by increasing the level of specific commitments already undertaken. In addition, negotiations are required on specific issues within certain deadlines (see box below).

Future Negotiations on Specific Issues

Government procurement in services within two years from the date of entry into force of the WTO.

Emergency safeguard measures, with the results to enter into effect no later than three years from the date of entry into force of the WTO.

Subsidies, with no deadline specified.

Movement of natural persons, with negotiations to be concluded six months after entry into force of the WTO.

Financial services, with negotiations to be concluded six months after entry into force of the WTO.

Maritime transport services, with negotiations to be concluded by June 1996.

---

[5] Pierre Sauve. Assessing the General Agreement on Trade in Services: Half-Full or Half-Empty? *Journal of World Trade*. Vol. 29, Aug. 1995. p. 143.

[6] Jeffrey J. Schott. *The Uruguay Round: An Assessment*. Washington, D.C., Institute for International Economics. November 1994. p. 100.

[7] *Liberalization of Trade in Professional Services*. OECD Documents. Paris. Organization for Economic Co-operation and Development. 1995. p. 48.

[8] Norman S. Fieleke. The Uruguay Round of Trade Negotiations: An Overview. *New England Economic Review*. Federal Reserve Bank of Boston. May/June 1995. pp. 8-9.

Basic telecommunications, with negotiations to be concluded by 30 April 1996.

Negotiations on financial services, maritime transport services and basic telecommunications require further explanation. As the GATS negotiations came to a close, it became clear that the United States and perhaps other countries with relatively open markets might take an MFN exemption in these areas. The United States claimed that other countries, with fairly closed markets, were not making adequate commitments to liberalize markets and would have no incentive to liberalize after the agreement took effect. With an MFN exemption, the United States would have leverage to gain access to foreign markets that were closed. In order to forestall MFN exemptions, it was decided to continue negotiations in all three areas, with deadlines as noted in the box.

The fairly broad set of multilateral rules bodes well for future trade liberalization. The framework is in place to facilitate further trade negotiations, even though MFN and national treatment do not apply across-the-board. However, the positive list approach of the specific commitments tends to inhibit future trade liberalization. As new services are traded, barriers will automatically stay in place in those sectors. In contrast, in a negative list approach, any new sectors that emerge would automatically enjoy the agreement's benefits.

The several provisions in the GATS requiring further negotiations may provide momentum for trade liberalization. In the final analysis, though, future liberalization depends on the political will of the WTO members.