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**TURNING HILLS INTO MOUNTAINS?  
CURRENT COMMITMENTS UNDER THE GATS  
AND PROSPECTS FOR CHANGE**

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Abstract:

*Over the past months, it has become increasingly clear that the services negotiations under the Doha Development Agenda will not produce significant improvements on current commitments unless major new impetus is provided. In an introductory section, this paper discusses various impediments, from the perspective of participating governments, that may explain the lack of negotiating momentum to date. It then provides an overview of existing commitments under the GATS (by sector, mode of supply, and level of development) and of the initial offers that had been tabled by early 2005. Despite the substantial benefits that may be associated with the liberalization of services trade, the GATS has obviously not yet lived up to ambitious expectations. For example, on average across all WTO Members, only one-third of all services sectors have been included in current schedules of commitments; and many entries have been combined with significant limitations on market access and national treatment or with the complete exclusion of particular types of transactions (modes of supply) from coverage. While the ongoing services negotiations provide an opportunity to complement the rule-making efforts of the Uruguay Round with genuine market opening, many governments apparently have found it difficult, despite generally more restrictive access regimes and, thus, potentially higher gains from liberalization than in merchandise trade, to undertake or envisage economically significant bindings across a broad range of services. Five years after the inception of the services round, current negotiating arrangements, based mainly on (bilateral) exchanges of requests and offers, may need to be complemented by common points of reference to provide greater focus and guidance.*

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## I. INTRODUCTION

Studies discussing the scope for, and the economic implications of, more open services regimes have proliferated in recent years. As far as the potential contribution to growth and development is concerned, the message seems to be clear: liberalization of services trade is generally expected to be even more beneficial than (further) liberalization of merchandise trade.<sup>1</sup> This is based on at least three observations: first, with the possible exception of agriculture, access to many services markets has remained more heavily restricted than access to goods markets where eight GATT rounds have helped to reduce barriers since 1947; second, most of the restrictions applied are more economically dubious, often consisting of non-revenue generating quotas, than tariff-based protection in merchandise trade; and, third, given the role of many services as generally used inputs, barriers to access and use may stifle efficiency and growth throughout the economic system.<sup>2</sup>

The services commitments that resulted from the Uruguay Round (1986-1993/94), the first such round to cover trade in services as well, apparently have not had significant liberalization effects. Barring a few exceptions in basic telecommunications and financial services, where negotiations continued until February and December 1997, respectively, the commitments inscribed in Members' schedules remained essentially confined to binding existing regimes in a limited number of sectors.<sup>3</sup> Further, many commitments may have been overtaken by autonomous liberalization moves in individual countries. The main achievement of the Uruguay Round thus consisted of creating a multilateral system of trade rules and disciplines for services, the General Agreement on Trade in Services (GATS), which also provides a framework for future access liberalization in subsequent rounds (Articles IV and XIX of GATS).<sup>4</sup> The question remains, however, whether and to what extent this framework will be used effectively in the ongoing negotiations (Annex I), which formally started in January 2000 and have been integrated since into the wider context of the Doha Development Agenda (DDA).

This paper seeks to explore why commitments under the GATS have generally remained modest, given the key economic importance of many services, their growing role in international trade, and the potential to accrue sizable benefits from further market integration. What factors may encourage broader and deeper commitments in the current Round – and what are the impediments? After discussing the economic and political difficulties hampering international services negotiations, as compared to the liberalization of merchandise trade under the GATT (Part II), the paper summarizes the market access commitments undertaken thus far under the GATS across sectors, modes of supply, and groups of WTO Members (Part III). Part IV then provides an overview of the initial offers submitted in the ongoing negotiations (June 2002 to February 2004) and assesses the extent to which, if implemented, they would modify current patterns of commitments. Part V concludes by discussing possible modifications in the negotiating process that may help to produce more meaningful results than foreshadowed in the initial offers.

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<sup>1</sup> World Bank (2001), *Global Economic Prospects 2002*, Washington D.C. See also Bernard Hoekman et al (eds.) (2002), *Development, Trade, and the WTO*, Washington D.C.; Greg McGuire (2002), *Trade in Services: Market Opportunities and the Benefits of Liberalization for Developing Economies*, UNCTAD Policy Issues on International Trade in Commodities, no. 19, Geneva; Matthias Lücke and Dean Spinanger (2004), *Liberalizing International Trade in Services: Challenges and Opportunities for Developing Countries*, Kiel Discussion Papers, no. 412, Kiel; and WTO (2004), *World Trade Report: Exploring the linkage between the domestic policy environment and international trade*, Geneva.

<sup>2</sup> Telecommunications, financial and transport services are typical examples. For relevant sources see footnote above.

<sup>3</sup> Richard Snape, "Reaching Effective Agreements Covering Services", in Anne O. Krueger, ed., *The WTO as an International Organization* (The University of Chicago Press, 1998), pp. 287-289, Bernard Hoekman, "Assessing the General Agreement on Trade in Services," in Will Martin and L. Alan Winters, eds., *The Uruguay Round and the developing countries* (Cambridge University Press, 1996), p. 101.

<sup>4</sup> For a detailed discussion of the latter elements see, for example, WTO Secretariat (2001), *Market Access: Unfinished Business*, Special Studies No. 6, Geneva.

The following discussion focuses predominantly on commitments and offers relating to modes 1, 2 and 3 (cross-border trade, consumption abroad, and commercial presence), thus largely omitting mode 4 (presence of natural persons) and the particular challenges associated with this mode. These recently have been discussed in various articles on their own.<sup>5</sup>

## II. DIFFICULTIES IN SERVICES NEGOTIATIONS

The relatively shallow outcome of Uruguay Round in services, in terms of both sector coverage and liberalization effects of commitments undertaken, may be attributed to a combination of factors. These certainly include time pressure at the end of a lengthy and onerous negotiating process, which had already been delayed well beyond its initial four-year schedule. Progress in the services segment suffered not only from strong initial opposition by a number of developing countries against the envisaged extension of the multilateral system, but also from the novelty and technical complexity of the issues to be tackled. Numerous innovations were considered, including in particular the application of trade rules to "non-border" measures such as investment approvals or work permits. Decision-making in many countries required co-ordination with sub-federal entities or with ministries, agencies and business associations, which were neither experienced in trade negotiations nor necessarily supportive of the underlying objectives. Aversion to trade-related obligations in protected service sectors is likely to be at least as strong as in agricultural, mining or traditional manufacturing sectors and, for institutional reasons, making this aversion felt may be easier in services than in some of the latter areas. Access conditions in many sectors, not least professional services, are often determined in consultations with incumbent suppliers (doctors, architects, lawyers, notaries, accountants, etc.) who have their own views of the pros and, in particular, the cons of a more internationally open environment. Moreover, given widespread ignorance of the nature of the WTO and, in particular, of the structure of the GATS, the Agreement has become a convenient rallying point for dyed-in-the-wool sceptics to express their general frustration with market mechanisms, private ownership, globalization, and other perceived evils.<sup>6</sup>

### (a) Main Structural Features of the GATS and Ensuing Challenges

Reflecting the need for direct physical contact between services producer and consumer (tourist, patient, student, etc.) in many cases, the GATS is far comprehensive in coverage than the GATT (Annex II). Its extension has several dimensions, which are mutually related.

First, the definition of trade under the agreement reaches far beyond cross-border flows to include three additional types of transactions or 'modes of supply'. Second, the application of the GATS is not confined to product-related measures, as provided for under the GATT, but covers producer-related laws and regulations as well. Services contracts tend to specify the activity to be performed, often customized to individual needs (legal advice, medical intervention, etc.), rather than the final product or outcome. Relevant regulations thus focus on the ability of the supplier to provide the service, paying attention to factors such as education, solvency and professional integrity, as opposed to particular product characteristics. Third, rather than replicating the GATT's virtually exclusive reliance on tariff protection, the GATS embraces two different sets of negotiable trade obligations, 'market access' and 'national treatment', and does not prioritize, let alone prescribe, the use of price-based measures. Members are free to use virtually any conceivable instrument, from supply quotas to discriminatory subsidies in order to protect individual sectors. Fourth, the 'bottom-up' approach to the undertaking of sector-specific access obligations (nothing is bound that is not included) is likely to incite less commitments than a negative-list approach (everything is bound unless explicitly excluded). The scheduling flexibility of the Agreement, i.e., the possibility to leave a

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<sup>5</sup> See, for example, Sumanta Chaudari, Aaditya Mattoo and Richard Self (2004), *Moving People to Deliver Services: How Can the WTO Help?* *Journal of World Trade*, Vol. 38, No. 3., p. 363-393.

<sup>6</sup> Rudolf Adlung (2003), *The GATS Negotiations: Implications for Health and Social Services*, *Intereconomics*, Vol. 38, No. 3, pp. 147-154.

particular mode of supply unbound or to inscribe a broad range of limitations above and beyond existing market conditions, lessens transparency with regard to the restrictions actually in place and, hence, renders their removal in negotiations more difficult.

Counterbalancing its broader coverage in terms of economic transactions and permissible policy measures, the GATS offers Members far more flexibility in the assumption of trade obligations than the GATT. This is not without cost, however. Compared to traditional tariff negotiations under GATT, services negotiations tend to require more intensive domestic consultation and co-ordination. The consequent resource implications - compounded by the novelty of the Agreement and the lack of relevant jurisprudence - may prove particularly demanding for low-income economies with little administrative and negotiating experience.

The Agreement seeks to accommodate such handicaps. First, it explicitly confirms the need for, and right to, technical cooperation.<sup>7</sup> The relevant provisions are without counterpart in the GATT. Second, Article XIX:2 ensures, in general terms, that individual developing countries have "appropriate flexibility" with regard to the number of sectors they include in their services schedules and the levels of liberalization offered.<sup>8</sup> Yet these flexibility provisions not only may protect vulnerable economies from undue pressure, but also discourage other Members from closely examining market conditions, identifying barriers falling under relevant GATS provisions, and addressing these in specific requests that go beyond general statements of interest. Without external prodding, governments may refrain from properly assessing the pros and cons of services liberalization and external policy bindings.

Trade negotiations provide an opportunity to devise consistent trade and development strategies across sectors and modes. The ensuing adjustments may prove more costly and time-consuming in many services, however, than in manufacturing sectors. While a simple administrative decree could suffice to change a tariff, far-reaching legislative changes, even constitutional amendments, may be required to open an insurance or telecom monopoly to private commercial participation. The need to establish and fund new regulatory bodies may constitute an additional impediment. For example, the annual cost of a modestly-sized telecom authority is said to amount to some US\$2 million, equivalent to about 5 per cent of the government budget of a small WTO Member like Dominica.<sup>9</sup>

To bear fruit, the abolition of market access barriers and discriminations covered by Article XVI and XVII of the GATS may need to be complemented by a review of existing domestic rules governing the admission and operation of suppliers (e.g., requirements related to professional integrity, education, solvency and the like). The use of such requirements to verify competence and ensure quality is perfectly legitimate under the GATS even in areas where full market access and national treatment are granted. Nevertheless, the borderline between legitimate use and protectionist abuse is not easily drawn. It may become even more blurred over time since the competence to develop licensing standards and criteria continues to rest with the sectoral ministries concerned, which often closely coordinate with incumbent industries.

Access restrictions, operated in accordance with Articles XVI and XVII, are likely to impact disproportionately on factor flows under mode 4 (natural persons) as compared to mode 3 (commercial presence). Restrictions on mode 4 are generally easier to enforce, given the existence of

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<sup>7</sup> Article XXV:2 requires that technical cooperation be provided by the WTO Secretariat. The relevant provisions are reiterated and further specified in the Guidelines and Procedures for the Negotiations on Trade in Services (WTO document S/L/93 of 28 March 2001) and the Doha Ministerial Declaration.

<sup>8</sup> In general, accession schedules tend to be far more comprehensive and ambitious, both in terms of sector coverage and levels of commitments, than those of comparable Members. See WTO Secretariat (2001), *op. cit.*, and Rudolf Adlung (2004), *The GATS Turns Ten: A Preliminary Stocktaking*, WTO Staff Working Papers ERSD-2004-05.

<sup>9</sup> Aaditya Mattoo (2003), *Services in a Development Round*, *mimeo.*

strict immigration controls in most countries, than foreign investment controls, which may be evaded through indirect ownership chains and other mechanisms. Moreover, while natural persons may need to re-adjust to location-specific domestic regulations, investment flows are more flexible and do not carry a certification- or standard-related history with them. A foreign investor's purchase of a domestic company does not normally create additional regulatory obligations for this company, while a foreign worker may find it difficult to adjust to local rules. Finally, the political resistance to increased competition differs between the two modes. Once an initial monopoly has been abolished, resistance to additional liberalization under mode 3 may be counterbalanced by the expectation of increased inflows of capital and technology and the ensuing employment effects. In contrast, given the particular sensitivities involved, liberalization under mode 4 always tends to be an uphill battle, regardless of the overall economic benefits.

(b) Segmentation of Trade Policy Competencies

As noted above, services negotiations touch upon a far broader range of governmental responsibilities than tariff negotiations for goods. Additional factors have entered the equation; (i) the diversity - political, institutional, economic - of the sectors involved; (ii) the almost unlimited number trade measures that may legitimately be applied to protect markets; and (iii) the existence of additional modes of supply. The ministries and agencies that may be concerned - e.g., finance, labour, communication, transport, tourism, education, or health - are certainly as turf-conscious as the ministries of agriculture or industry, which the trade department might be required to consult in goods negotiations. Federal-provincial tensions may add an additional facet to inter-ministerial rivalries. In contrast to merchandise trade, which tends to be under central government competence, responsibilities in services may be spread across federal levels. This is typically the case in socially or culturally-sensitive areas.<sup>10</sup>

Access conditions under mode 4, in whatever sector, are usually governed by immigration laws and regulations, which are interpreted and applied by institutionally independent administrations. In countries operating capital controls, foreign exchange restrictions or investment approval requirements, the ministry of finance normally has a say across the sectors concerned. Similarly, the ministry may need to be involved in all reforms that have budgetary implications, regardless of sector or mode. What would be the common 'currency', even within the same sector, with which to compare the access benefits associated with the abolition of a joint-venture requirement and those associated with increases in the number of work permits? How could such 'concessions' be traded across sectors?

The segmentation of policy competencies among government agencies provides particular scope for the creation of defensive coalitions.<sup>11</sup> The trade department, often wooed by sector lobbies in goods negotiations, may now need to lobby sectoral departments for liberalization. This may prove a particularly challenging task if the addressees themselves are involved in the supply of services and, thus, have a direct stake in perpetuating their role as administrators, regulators, producers, and employers.

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<sup>10</sup> Examples exist in others service sectors as well. In Switzerland, for instance, fire and natural damage insurance is provided by public monopolies in a few cantons. It is hardly conceivable that the authorities concerned are ready to reconsider the country-internal allocation of policy competences in the context of trade negotiations.

<sup>11</sup>This aspect proved decisive in various instances. See Martin Roy (1997), *Sécurité nationale et politique commerciale: analyse comparée de décisions américaines dans l'industrie des machines-outils*, Etudes internationales, Décembre; I.M. Destler (1995), *American Trade Politics*, 3<sup>rd</sup> Edition, Institute for International Economics, Washington D.C.

(c) Lack of Information and Consumer/User Interest

National positions in trade negotiations tend to reflect the participating countries' internal balance of protection-seeking and liberalizing interests across sectors. In general, producers are better motivated and organized, and thus carry more political weight than consumer groups - if these exist at all.<sup>12</sup> The structure of border protection in many developed markets, with tariff peaks on basic consumer products such as food, textiles and shoes, testifies to this imbalance in the political process. Even tariff equivalents of several hundred percent, as estimated for certain farm products in OECD countries, apparently have not met tangible public resistance. Consumers seem to be not particularly concerned about, or have resigned to, higher retail prices and the ensuing welfare losses.

In service sectors such as health or education, however, such price effects may not even exist. There is not the faintest link in many countries between supply conditions for basic health or education services and the costs to users. The 'consumer-does-NOT-pay principle' prevails, with public transfers driving an economic wedge - for well-understandable social policy reasons - between supply and demand. Consequently, consumers have even less incentive to press for efficient resource use and, possibly, a review of long-entrenched patterns of supply. In the political process, consumer interests are typically voiced by suppliers (teachers, doctors, hospital operators, etc) who may find it easy, given the prevalence of non-economic objectives in a range of services sectors, to couch their positions in altruistic terms and denounce competition *per se* as a threat to basic policy objectives.

The complexity of the Agreement, in particular its broad modal structure, is difficult to grasp even for potential beneficiaries, including suppliers that could face lower access barriers to foreign markets. They may simply lack information about the concept of services trade under the GATS, the range of barriers that hamper export expansion, and opportunities to address them in trade negotiations. Many business associations, especially in sectors other than financial, communications or transport services, may not even be aware that their members 'export' services under the Agreement. This increases the burden on relevant ministries and agencies to provide information and support to dormant interest groups, even when government-internal coordination itself may be all but perfect. Lacking support from export industries would leave protection-seeking interests without counterbalance in the political process.

A lot might be gained for rational policy discussion (and decision), if estimates of the economic costs of alternative regimes were made available. In agriculture, it apparently proved possible to express the combined effects of many diverse policy interventions - import quotas, tariffs, producer subsidies, discriminatory marketing arrangements, etc. - in uniform indicators that can even be used for trade negotiating purposes. Are there similar indicators of services protection that could be compared across countries and sectors? Tariffication of existing trade barriers would ease domestic information and coordination needs, put the spotlight on particular 'pockets of protection' and, if employed as a negotiating tool, appeal to conventional concepts of fairness ('burden sharing'). This presupposes, however, the existence of international prices, for comparable products, that could be used as benchmarks to measure protection-induced cost increases in shielded markets.

The situation in many service sectors is not particularly promising, however. Even where relevant information on service prices/charges (telecom rates, interest margins, etc.) is available, cross-country variations may reflect a host of factors in addition to formal access barriers: (a) wages, land prices and other local cost differentials; (b) non-discriminatory regulation that may be maintained for quality and equity purposes (universal service obligations, etc.); and (c) various policy-induced distortions and uncertainties (preferential lending requirements on banks or inflation-related concerns). Moreover, it is difficult to see how certain measures falling under the market access provisions of GATS, e.g. sector-specific equity restrictions or limitations on the form of legal

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<sup>12</sup> The relevant arguments have long been developed by scholars interested in the economic rationale of social organizations. See e.g. Mancur Olson (1971), *The Logic of Collective Action: Public Interest and the Theory of Groups*, Cambridge, Mass.

incorporation, would be reflected in price- or cost-based indicators. Nevertheless, estimates in individual areas (telecom, finance) may prove useful for public information and education purposes, possibly even for the monitoring of adjustments in the wake of trade negotiations.

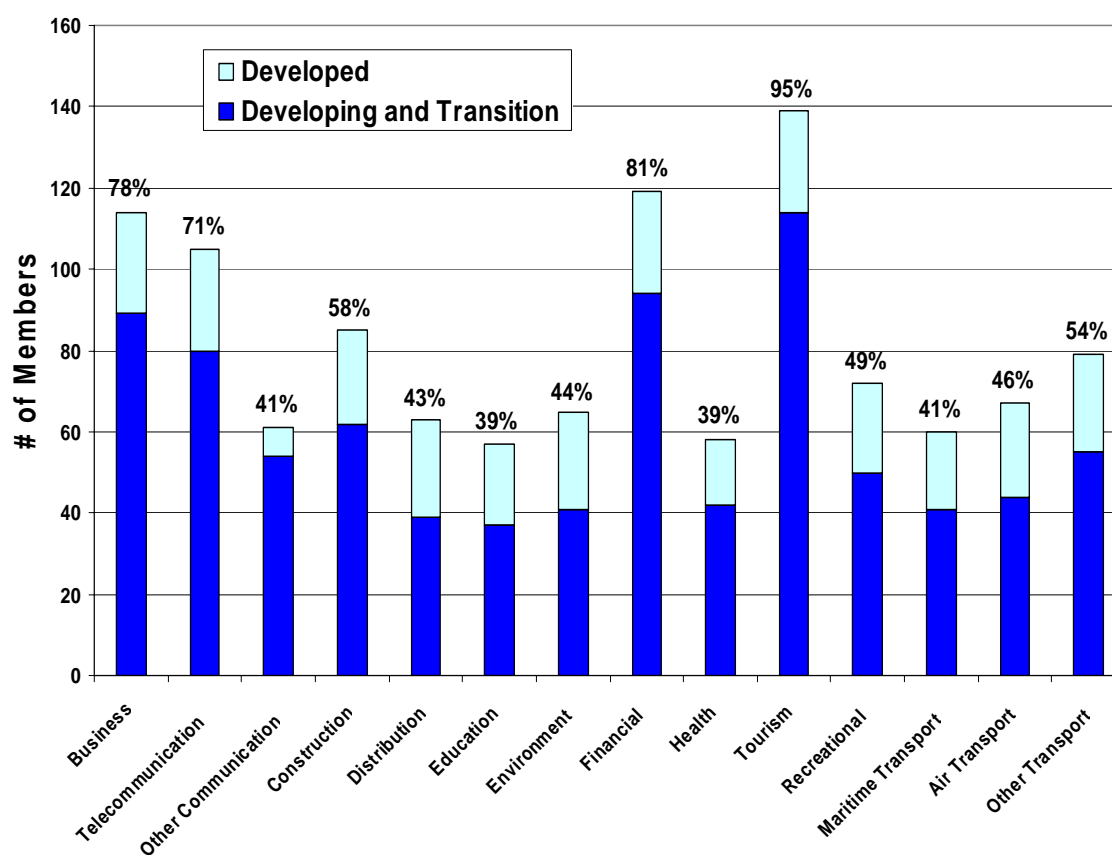
### III. OVERVIEW OF EXISTING COMMITMENTS

#### (a) Breadth of Coverage across Sectors and Members

Existing patterns of commitments may be viewed and analyzed from different perspectives. Since there is no legal obligation under the Agreement to schedule any particular service sector, one possibility is to look at the sectors which Members have actually chosen (i.e., the breadth of commitments). Chart 1 provides an overview of current sector patterns.<sup>13</sup>

**Chart 1: Sector pattern of commitments, March 2005**

(Number of WTO Members with at least one commitment in the relevant sector; percentage of total membership with commitments in the sector concerned)



With the exception of tourism, the focus tends to be on infrastructure-related sectors - financial services, a diverse range of business services, and telecommunications - which seem to display at least two common facets: their exposure to rapid technical change over the past decade(s) and their potential impact on efficiency and competitiveness across a wide range of user industries. Recent liberalization and privatization moves in these three areas have been inspired by technical

<sup>13</sup> The sectors listed in Chart 1 are based on the - non-mandatory - Sectoral Classification List developed by the WTO Secretariat in the early 1990s for scheduling purposes (MTN.GNS/W/120). Overall, this List consists of close to 160 sub-sectors, which have been aggregated to 14 sectors for the purposes of this paper. Whenever a Member has scheduled at least one sub-sector out of these 14 sectors, this commitment is counted, without further weighing, for the whole of the sector.



developments, governments' inability to accommodate them within traditional institutional structures and funding mechanisms, and user dissatisfaction with prices and quality. As noted before, the GATS has not apparently proven a decisive factor in itself. Nevertheless, there is some evidence that at least the extended negotiations on basic telecommunications and financial services helped to trigger or advance some market reforms in a number of participating countries.<sup>14</sup>

There are virtually no schedules that do not include at least one of the four tourism-related sub-sectors (hotels and restaurants, travel agencies and tour operators services, tourist guide services, and other). This is not particularly surprising since (i) large segments, in particular hotels, have traditionally been open to foreign investment (i.e., commercial presence) and (ii) restrictions on consumption abroad, which is important in this sector, are uncommon in very many countries. Education and health have obviously proven far less prominent in scheduling decisions, possibly reflecting the policy interests associated with these services and wide-spread aversion, for a variety of reasons, against private commercial provision. The absence of commitments in sectors such as distribution or maritime transport is certainly more puzzling, given their economic weight and cross-sectoral relevance for trade in goods. Is it the political influence of - normally well organized - incumbents in many countries that has protected these sectors from being scheduled?

Reflecting the composition of the WTO membership, sectoral scheduling patterns are determined mostly by developing countries. Overall, these have scheduled far less sectors than developed countries. The only sectors which have not been committed by a significant number of developed Members are other communication services (postal and courier services, and audiovisual services) as well as health and education services.

The most striking feature of current schedules is their generally low level of sector coverage. This is also reflected in Table 1, which provides information on the number of sub-sectors scheduled by various groups of Members.<sup>15</sup> On average, a WTO Member has currently included no more than one-third of the 160-odd sub-sectors. While the dearth of coverage may be attributed in part to the particular circumstances of the Uruguay Round, where relatively little attention was given to scheduling patterns, except for the extended negotiations, one indicator of progress in the current round is the extent to which the sectoral breadth of schedules - and, by implication, the predictability of trading conditions - will be increased.

Table 1 further highlights the diversity of commitments across groups of Members. Least developed countries have scheduled no more than some 15 per cent of all sub-sectors on average, with wide variations, however, between individual countries (some LDCs have committed one sector only, while a few others have included over 100). In contrast, transition economies - many of them are also included in the group of recently acceding Members - have committed even more sectors than developed Members as a group.<sup>16</sup> As discussed on other occasions, this may be due to a variety of factors, including in particular the special context of the accession process and the perceived political

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<sup>14</sup> For financial services, an analysis of the changes made by selected countries is contained in Wendy Dobson and Pierre Jacquet (1998), *Financial Services Liberalization in the WTO*, Institute for International Economics, Washington D.C.

<sup>15</sup> While looking at a dozen sectors or so provides an informative overview, the high level of sectoral aggregation tends to exaggerate the breadth of commitments. A count at the level of the approximately 160 sub-sectors making up the Services Sectoral Classification List (MTN.GNS/W/120) provides a more accurate picture of the extent to which services activities have been made subject to commitments.

<sup>16</sup> Up to 1 March 2005, 20 Members had joined the WTO pursuant to Article XII of the WTO Agreement (transition economies in italics, LDCs underlined): *Albania, Armenia, Bulgaria, Cambodia*, China, Chinese Taipei, *Croatia*, Ecuador, *Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, FYR of Macedonia, Moldova, Mongolia, Nepal*, Oman, and Panama. The following transition economies were original WTO Members: Czech Republic, Hungary, Poland, Slovak Republic, Romania, and Slovenia. Countries that have recently joined the European Union are still counted as transition economies in Table 1.

and economic costs of continued non-membership, as well as the absence of strong vested interests in countries that have just undergone profound institutional transformations.<sup>17</sup>

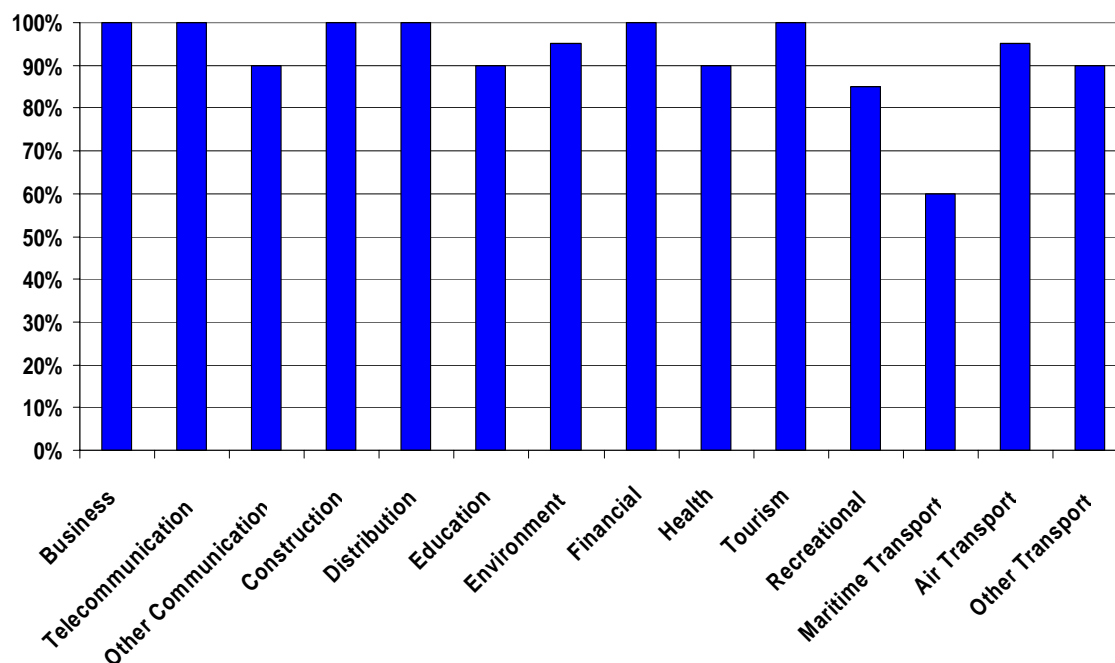
**Table 1: Distribution of commitments across groups of Members, March 2005**

Members	Average number of sub-sectors committed per Member*	Range (Lowest/highest number of sub-sectors per schedule)
Least-developed economies	24	1 – 111
Developing & transition economies	53	1 – 149
Transition economies only	105	58 – 149
Developing economies only	42	1 – 123
Developed economies	106	87 – 117
Accessions since 1995	103	37 – 149
ALL MEMBERS	52	1 – 149

\* Total number of sub-sectors: approximately 160.  
 Acceding countries are not only counted as a separate group, but are also included as members of other relevant groups (developing countries, least-developed countries and, mostly, transition economies).

As reflected in Chart 2, the 20 Members that acceded to the WTO between January 1995 and March 2005 undertook commitments in virtually all infrastructure-related service sectors, from business services and telecommunications to construction and finance. This even includes the distribution sector, which the majority of Members have not included in their schedules.

**CHART 2: Proportion of acceding Members with commitments in selected service sectors, March 2005**  
 (Per cent of all acceding Members)



<sup>17</sup> See, e.g., Adlung (2004).

(b) Depth of Commitments across Modes

The sector distribution of commitments (i.e., the number of sectors included in Members' schedules) is only one of several possibilities to describe the current state of bindings under the GATS. It does not, for example, reflect the economic importance of the sectors concerned, nor the levels of openness bound for individual modes (i.e., the existence of limitations or non-bindings).

To provide an overview of the depth of commitments, three categories have been distinguished for the purposes of this paper: full commitments (entry scheduled for a particular mode: "none" ), full discretion ("unbound"), and the intermediate case of "partial" commitments which are subject to limitations.<sup>18</sup> These may reduce the sectoral or geographic coverage of a commitment, postpone its implementation to a later date, or reserve the right to operate one or more of the six market access restrictions falling under Article XVI:2 and/or departures from national treatment within the meaning of Article XVII.

Reflecting the political sensitivities associated with the physical presence of foreign service suppliers, commitments for mode 4 differ in both structure and content from those scheduled under modes 1 to 3. Commitments in the latter cases are generally based on a 'top-down' approach: full liberalization is used as a starting point to which the limitations are added that are deemed necessary on whatever political, economic or social policy grounds. Virtually all commitments for mode 4, in contrast, are 'bottom-up' in nature: a horizontal section in the schedules provides for a general "unbound" across all sectors, subject to narrowly defined exceptions for individual groups of persons (e.g., senior executives or domestically not available specialists), movements (e.g., intra-corporate transfers), and duration of stays (e.g., up to three or four years). Many mode 4-commitments are contingent on some form of commercial presence, i.e. mode 3 trade, and confined to well qualified staff. Less than one-fifth of the entries examined in a WTO Secretariat study seemed to cover low-skilled persons as well.<sup>19</sup>

Chart 3 provides an overview of the distribution of full and partial commitments across all Members for modes 1 to 3. It is based on a sample of 37 sub-sectors deemed representative for the services concerned.<sup>20</sup> The focus is on market access commitments only, given their particular economic impact. In the absence of such commitments, Members retain the possibility of wholesale trade bans. Some general observations may be made:

- (i) While full commitments for modes 1 and 3 are more an exception than the rule, over one-half of the commitments scheduled under mode 2 are without limitations. This may reflect governments' recognition of the difficulties of controlling their nationals' consumption once they have physically left the country.<sup>21</sup>
- (ii) The high proportion of non-bindings under mode 1 (cross-border trade) may be attributed in part to the technical impossibility in some cases to deliver services cross-border (e.g., many hotel, hospital, education and environmental services). Also, some

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<sup>18</sup> In an attempt to produce an overview of the Uruguay Round results, Bernard Hoekman applied to any sector/mode contained in schedules, a standard measure of restrictiveness (set at 0, 0.5 or 1) that reflected three scenarios: no commitment, commitment subject to limitations, full commitment. See Bernard Hoekman (1996), *Assessing the General Agreement on Trade in Services*; in: Will Martin and L. Alan Winters (eds.), *The Uruguay Round and Developing Countries*, World Bank and Cambridge University Press, Cambridge.

<sup>19</sup> WTO document S/C/W/75, dated 8 December 1998; see also Chauduri, Mattoo and Self (2004).

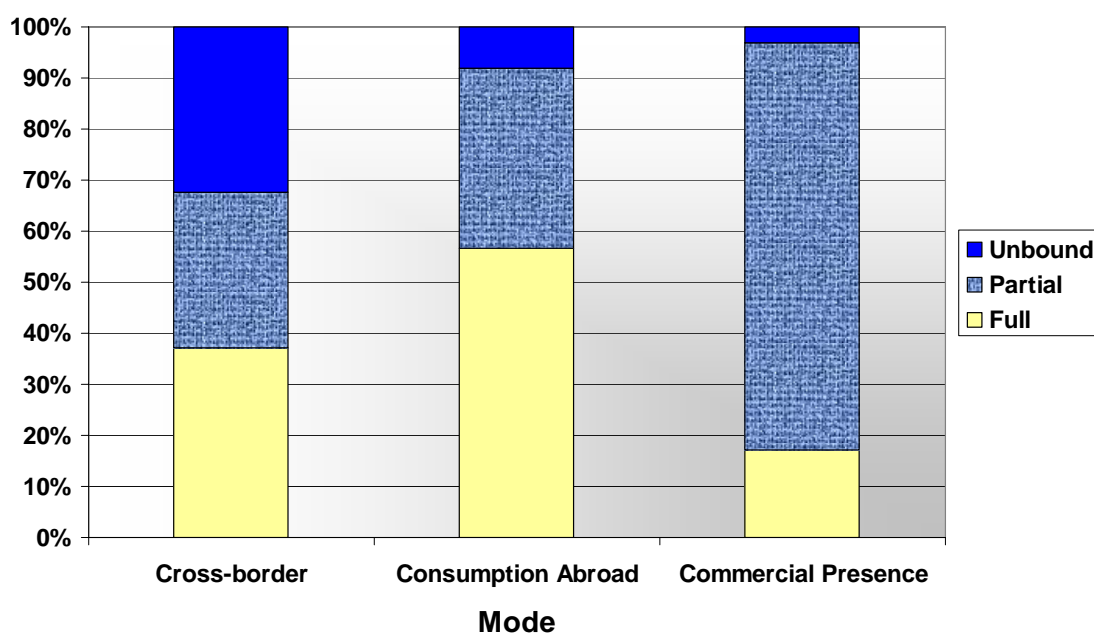
<sup>20</sup> The selection of representative sub-sectors was intended, *inter alia*, to avoid a bias towards business services, which accounts for 46 sub-sectors, to the detriment of sectors such as construction, distribution, tourism, health, or educational services, which each comprise no more than four or five sub-sectors. The selection of representative sub-sectors also explains some minor discrepancies between the information contained in Charts 4 to 6 and the full count of sector commitments presented in Table 1.

<sup>21</sup> As discussed below, however, there are continued uncertainties concerning the modal status of certain electronic transactions.

Members may have hesitated to undertake commitments under this mode out of uncertainty of the legal implications and perceived constraints on their ability to intervene later for regulatory purposes or employment-related and other strategic policy reasons. A further possible explanation is that the absence of access guarantees for cross-border trade may be expected to encourage trade under other modes, in particular mode 3 (commercial presence), with the associated inflows of foreign capital and expertise. Examples of the comparatively few market access limitations under mode 1 are citizenship requirements, obligations to operate a domestic subsidiary or representative office, approval requirements (often related to economic needs tests) and the like. The increased potential for cross-border trade, in the wake of new communication technologies, may be expected, however, to help promote mode 1 commitments in this round.

- (iii) The economic role of mode 3 (commercial presence), which is estimated to account for more than half of all trade covered by the GATS, is reflected, to a certain extent, in the virtual absence of non-bindings under this mode. Whenever a sector is scheduled, the relevant entry tends to include some access guarantees, however limited, on commercial presence. Mode-3 commitments may be viewed as a key element to attract investment, especially into smaller, less-known markets. They also may have been facilitated by the fact that significant shares of mode 3 trade are covered by the more than 2000 bilateral investment treaties that exist throughout the world. Existing limitations under this mode reflect the continued role of exclusivity provisions, foreign equity ceilings etc. in core service sectors such as telecommunications or financial services as well as political sensitivities related to the co-existence of private commercial and public supplies in areas such as education, health, environmental or audiovisual services. As highlighted in various studies, foreign direct investment in services is typically subject a broader array of restrictions than investment in the primary or manufacturing sectors.<sup>22</sup>

**CHART 3: Level of commitments in selected sectors (market access), all Members**



<sup>22</sup> See for example, UNCTAD (2004), World Investment Report 2004: The Shift Towards Services, Geneva.

The Charts reproduced in Annex 3 provide similar information for various categories of Members. They confirm the general patterns, noted before, of commitments across modes - many non-bindings under mode 1, high shares of full commitments for mode 2, and many partial commitments for mode 3. Where they have undertaken commitments, LDCs have opted for more liberal entries, in terms of full commitments, on modes 1 and 2 than other groups. One possible explanation is the focus on sectors such as tourism that generally display low levels of restrictions.

Charts 4, 5 and 6 provide a closer look at the structure of market access commitments, taking into account the absence of commitments as well. As already discernible in Table 1, the most striking feature is the high share of non-inclusions in schedules. The main differences between developing and developed country Members relate more to the breadth of sectoral coverage than to the type of commitments taken. Nevertheless, the latter group tends to have relatively more bindings, i.e., full and partial commitments, for modes 1 to 3.

The commitments assumed by acceding countries not only stand out in terms of sector coverage, as discussed before, but they are also 'deeper' (i.e., more liberal) than those assumed by other groups.<sup>23</sup> The share of full bindings for modes 1 to 3 is particularly large.

(c) Types of Limitations Scheduled under Mode 3

*Market Access*

As noted before, mode 3 is the most economically important mode, accounting for more than one-half of all service trade falling under GATS.<sup>24</sup> Its particular role is not least due to the fact that in a number of sectors cross-border supply is not easily feasible in any event and, moreover, that Members have displayed a tendency to relate access regimes under both modes 1 and 4 to some form of commercial presence. For example, there are instances where the cross-border supply of banking and insurance services is conditioned on the existence of domestically incorporated and capitalized subsidiaries, or cross-border telecommunication services may be offered only via a local monopoly supplier, or access of foreign natural persons is limited to intra-firm transfers.

Not surprisingly, given the multitude of political, economic and institutional factors at work, the conditions for commercial establishment differ significantly between sectors (Table 2). Typically, limitations are particularly frequent in areas of infrastructural importance – telecommunications, banking and insurance – which have traditionally been subject to significant government intervention and control, and where market structures may still be affected by the former exclusivity status of large incumbents. The ratio of limitations to commitments (fourth column in Table 2) confirms that these are the most "limitation-intensive" services.<sup>25</sup> Sectors such as audiovisual services, computer services, distribution services, and recreational services display comparatively few restrictions when controlled for the number of commitments. In the case of computer services, where many Members have undertaken commitments, this may reflect genuinely liberal trading conditions across a very large market segment. In contrast, in areas such as audiovisual or distribution services, which have been inscribed in relatively few schedules only, Members with restrictive regimes may have refrained from undertaking commitments altogether, rather than using the Agreement's scheduling flexibility which would have allowed them to bind at least a certain level of access.

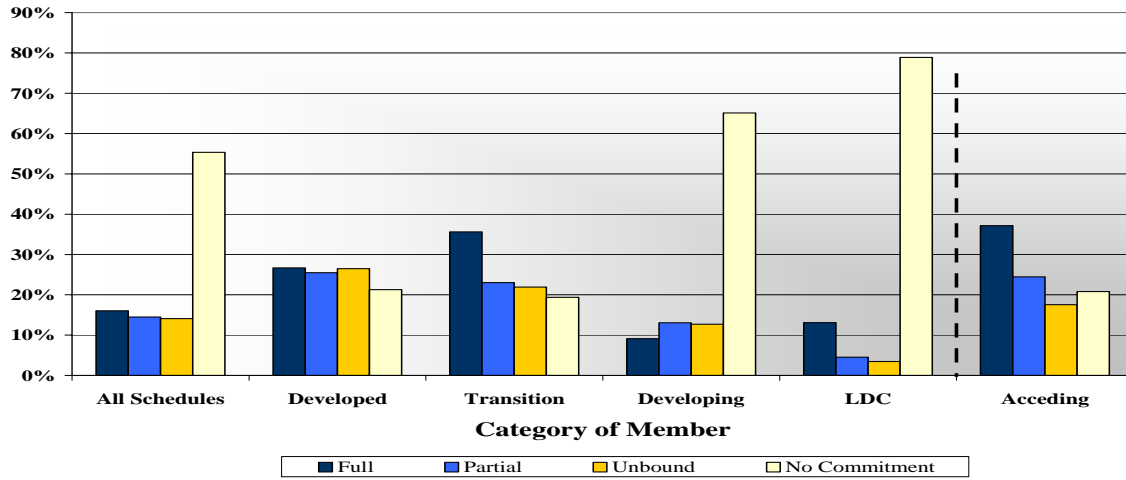
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<sup>23</sup> The acceding countries are listed in footnote 16 above. They consist of 11 transition economies, 7 developing countries and two LDCs (Nepal and Cambodia); they have also been counted as members of these groups.

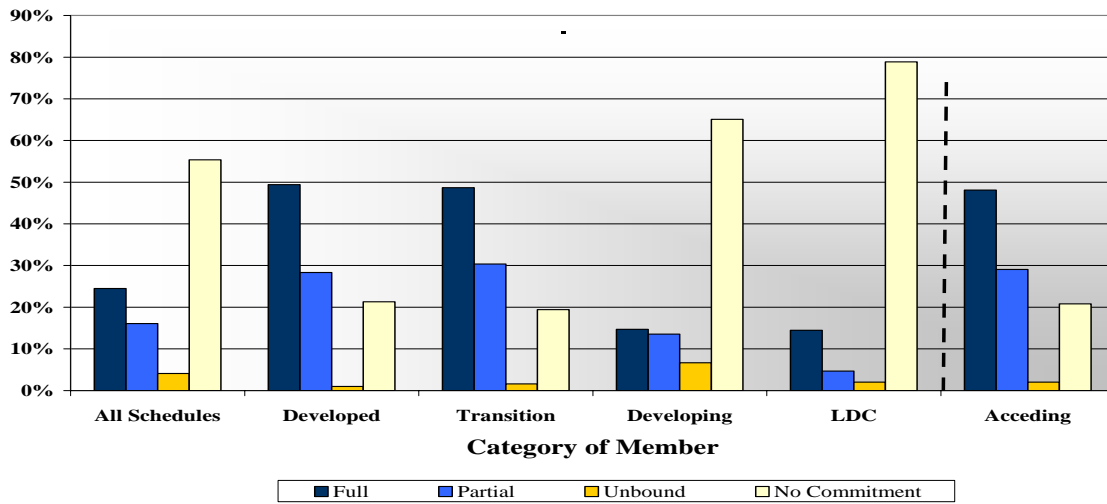
<sup>24</sup> Estimates by the Statistical Division of the WTO Secretariat.

<sup>25</sup> The total number of limitations listed for each of the sectors in Table 2 comprises the limitations inscribed for the relevant sub-sectors as defined in the Classification List MTN.GNS/W/120. Accordingly, sectors covering many sub-sectors (e.g., professional services, banking, transport) tend to have a higher number of limitations. The ratio of limitations to commitments (fourth column) is thus a more meaningful indicator.

**CHART 4: Type of commitment undertaken in selected sectors (market access), mode 1**



**CHART 5: Type of commitment undertaken in selected sectors (market access), mode 2**



**CHART 6: Type of commitment undertaken in selected sectors (market access), mode 3**

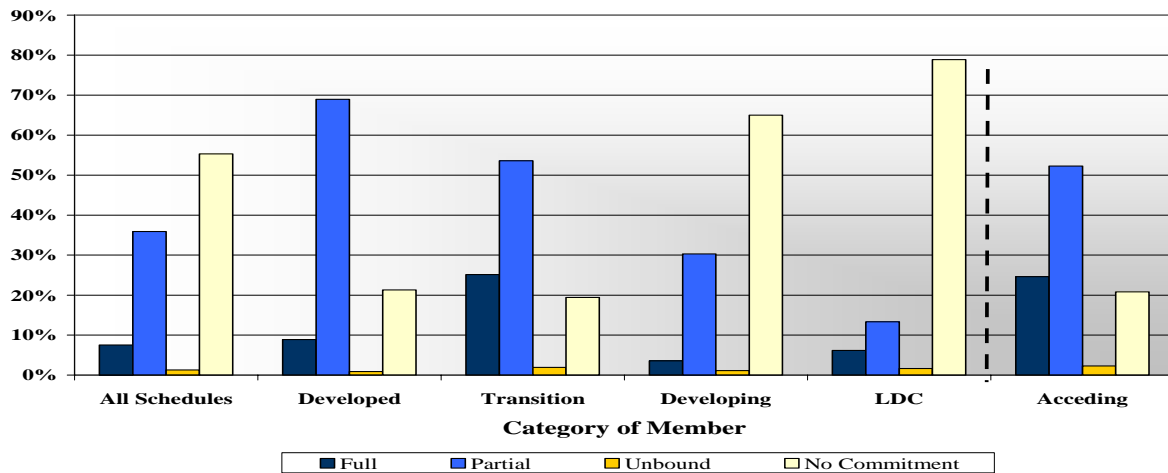


Table 2 distinguishes between four broad categories of entries that have been inscribed as market access limitations. The first category, recorded in columns A-D, corresponds to the quantitative restrictions falling under paragraphs 2(a) to 2(d) of Article XVI:2 (i.e., limiting the total number of suppliers, number of operations, value of transactions, and number of natural persons). The second category covers the limitations referred to in paragraphs 2(d) and 2(e) of Article XVI:2 (i.e., restricting the types of legal entity, joint venture requirements, and restrictions on foreign capital participation). It needs to be noted, however, that this categorization necessarily involves an element of judgment since, pursuant to Article XVI:1, Members are required only to specify the measures that are inconsistent with market access, but not their significance under one or more of the limitations listed in Article XVI:2(a) to (f).

In most sectors, limitations falling in the second category - restrictions on the types of legal entity, etc. - are more frequent. A major exception are telecommunication services (voice telephony), where many Members have maintained restrictions on the number of suppliers, often subject to gradual liberalization over time.

A striking feature of Table 2 is the relative importance of two additional groups of entries: other measures and misplaced national treatment limitations. Both have about the same weight as the 'standard limitations' clearly falling under Article XVI:2. Other measures include restrictions on the sectoral or geographic coverage of a commitment, whose application may have been confined to particular regions of a country or sub-segments of a sector, and references to unspecified licensing and qualification requirements.<sup>26</sup> Across the sectors listed in Table 2, slightly over 20 per cent of the market access limitations inscribed under mode 3 actually fall in the 'other' category, and close to 30 per cent are limitations that should rather appear in the national treatment column.

While indicative of widespread uncertainties related to scheduling, some flawed entries may prove legally insignificant in practice, however. For example, it appears reasonable to assume, in the absence of further legal guidance to date, that a particular measure might be protected from legal challenge if its inconsistency with either Article XVI or XVII Article has been properly specified, regardless of the column ultimately chosen by the Member concerned.<sup>27</sup>

Vague terminology may have been used deliberately in some cases with a view to safeguarding sector-specific interests. As trade ministries do not normally have a dominant influence on the domestic coordination process, they may have felt unable to resist. Accepting the language proposed (or imposed) by other ministries may have been a *sine qua non* for ensuring their cooperation in the whole exercise. In the event of disputes, this strategy may backfire, however.

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<sup>26</sup> There are basically two possibilities of interpreting the latter entries: they are either intended to provide legal cover for access limitations - including ceilings on the number of service suppliers in a sector or the number of branches per firm - which are implemented via licensing requirements, or the countries concerned envisage operating such requirements for domestic regulatory purposes with a view, for example to ensuring that basic quality criteria or prudential standards are met. However, in the former case, the Scheduling Guidelines (WTO document S/L/92) clearly commit Members to identifying the relevant restrictions rather than the implementation mechanisms. If these mechanisms themselves are unnecessarily trade-restrictive, they would need to be brought into conformity with the relevant GATS provisions governing domestic regulation (Article VI); scheduling might not protect them from legal challenges under the Agreement. By contrast, if licensing simply serves to ensure the quality of a service or ascertain the qualification of a supplier, the relevant requirements do not need to be scheduled at all; the list of market access limitations enumerated in Article XVI is exhaustive and does not contain any procedural obligations.

<sup>27</sup> A typical example of potentially insignificant 'errors' is the scheduling of composition requirements for a company's board, e.g., the requirement that the majority of members must be nationals, under Article XVI rather than Article XVII. The relevant provision in Article XVI:2(d) relates only to "limitations on the total number of natural persons ... who are necessary for, and directly related to, the supply of a specific service"; requirements regarding the composition of company boards by nationality thus do not seem to be covered. However, they may be considered to affect the "conditions of competition" between foreign- and nationally-owned companies within the meaning of Article XVII:3.

**Table 2: Types of limitations on Market Access in selected sectors, mode 3**

Sector	Commitments <sup>a</sup>	Number of limitations <sup>b</sup>	Ratio of limitations to commitments <sup>b</sup>	Type of limitation <sup>b</sup>			
				A-D	E-F	G	H
Professional Services	534	908 <sup>b</sup> (328) <sup>c</sup>	1.7 (0.6)	175 (26)	279 (143)	168 (63)	286 (96)
Computer & Related Services	322	462 (53)	1.4 (0.2)	96 (0)	139 (35)	85 (11)	462 (7)
Courier Services	49	74 (21)	1.5 (0.4)	18 (4)	24 (10)	15 (4)	17 (3)
Voice Telephony Services	85	237 (154)	2.8 (1.8)	74 (51)	64 (47)	50 (38)	49 (18)
Audiovisual Services	80	106 (35)	1.3 (0.4)	32 (4)	30 (20)	16 (3)	28 (8)
Construction & Related Engineering	292	433 (98)	1.5 (0.3)	104 (16)	144 (57)	60 (7)	125 (18)
Distribution Services	179	254 (40)	1.4 (0.2)	63 (9)	62 (20)	54 (9)	75 (2)
Educational Services	162	248 (82)	1.5 (0.5)	41 (4)	81 (42)	58 (19)	68 (17)
Environmental Services	176	259 (36)	1.5 (0.2)	62 (6)	74 (15)	53 (11)	70 (4)
All insurance Services	317	1065 (739)	3.4 (2.3)	227 (122)	326 (248)	266 (236)	246 (133)
Banking & Other Financial Services	959	4131 (3092)	4.3 (3.2)	1142 (768)	1189 (939)	978 (876)	822 (509)
Health and Social Services	88	147 (50)	1.7 (0.6)	39 (13)	46 (16)	30 (11)	32 (10)
Tourism and Travel Services	314	460 (147)	1.5 (0.5)	105 (30)	128 (45)	89 (48)	138 (24)
Recreational, Cultural & Sport. Services	133	171 (32)	1.3 (0.2)	42 (5)	41 (7)	37 (8)	51 (12)
Transport Services	666	973 (346)	1.5 (0.5)	186 (32)	313 (172)	208 (78)	266 (64)
TOTAL OF ABOVE	4356	9928 (5253)	2.2 (1.2)	2406 (1090)	2940 (1816)	2167 (1422)	2735 (925)

<sup>a</sup> Total number of entries across all Members and sub-sectors. EC counted as one.

<sup>b</sup> Upper line: Total number of limitations, including horizontal limitations applying across all sectors contained in the relevant schedule. Lower line: Sectoral limitations only.

A-D: Number of suppliers, value of transactions or assets, number of operations, number of natural persons.

E-F: Types of legal entity, participation of foreign capital

G: Other measures

H: National treatment limitations

Apart from two recent dispute cases, nevertheless, there is very little evidence to date of trade problems associated with controversial scheduling practices. There are at least possible explanations:

- (i) The general level of commitments has remained too low to justify legal battles about what may be considered peripheral issues;



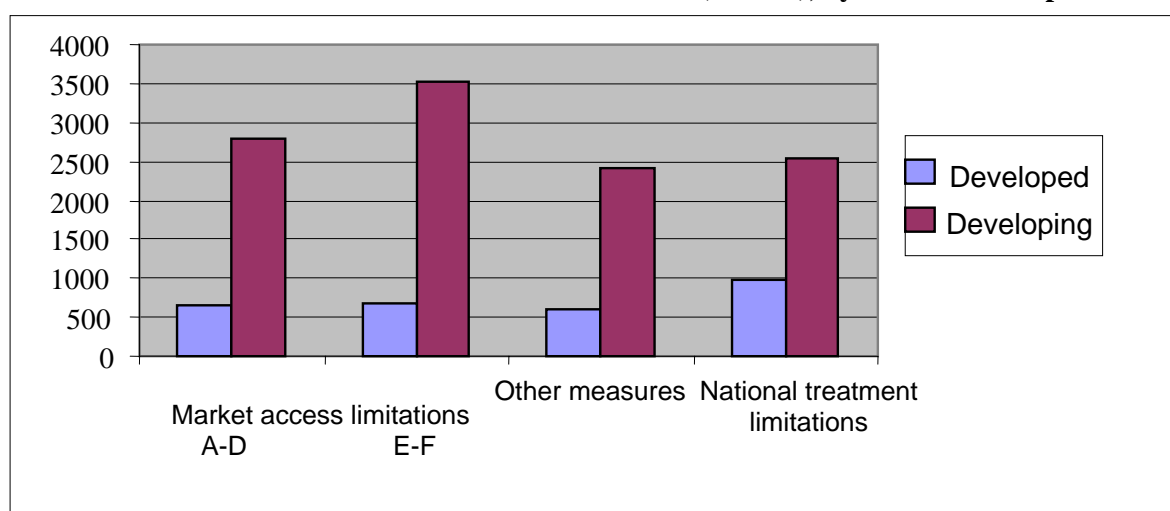
- (ii) potential beneficiaries may not be sufficiently informed of the access rights resulting from individual schedules; or
- (iii) national administrations may have been reticent to take the initiative, given potentially weak points in their own schedules which might prompt counter-attacks.

This situation may change over time as WTO Members commit to moving ahead in new services rounds. The mere existence of negotiations may draw attention to, and generate interest in, the business opportunities already involved in existing commitments. If there had been a tacit truce among administrations in the past, this truce may prove less resilient in future. By the same token, however, the ongoing negotiations also provide an opportunity to clarify or correct scheduling problems.

The general pattern of limitations identified above, taking into account the relationship between horizontal and sector-specific entries, does not bode ill for the ongoing services round. It appears that some of the more restrictive measures - in particular limitations on the number of services suppliers and nationality requirements - are sector-specific. They may thus prove more amenable to negotiated change than horizontal entries, which may reflect more deeply-rooted policy constraints.

The relative importance of various types of market access limitations does not seem to differ significantly between groups of Members. The only major exception is developing countries' stronger reliance on limitations concerning the admissible types of legal entity and foreign equity participation (Chart 7; horizontal and sectoral limitations are taken together). To some extent, these type of limitations are foreshadowed in Articles XIX:2 and IV of the GATS, which explicitly provide flexibility for developing countries for, *inter alia*, attaching access conditions aimed at increasing their participation in world services trade. Joint venture requirements and foreign equity ceilings may be viewed as measures, although possibly not the most economically efficient ones, to encourage skills and technology transfers and, thus, promote growth and trade.

**CHART 7: Total number of market access limitations (mode 3), by level of development**



A-D: Number of suppliers, value of transactions or assets, number of operations, number of natural persons.

E-F: Types of legal entity, participation of foreign capital.

*National Treatment*

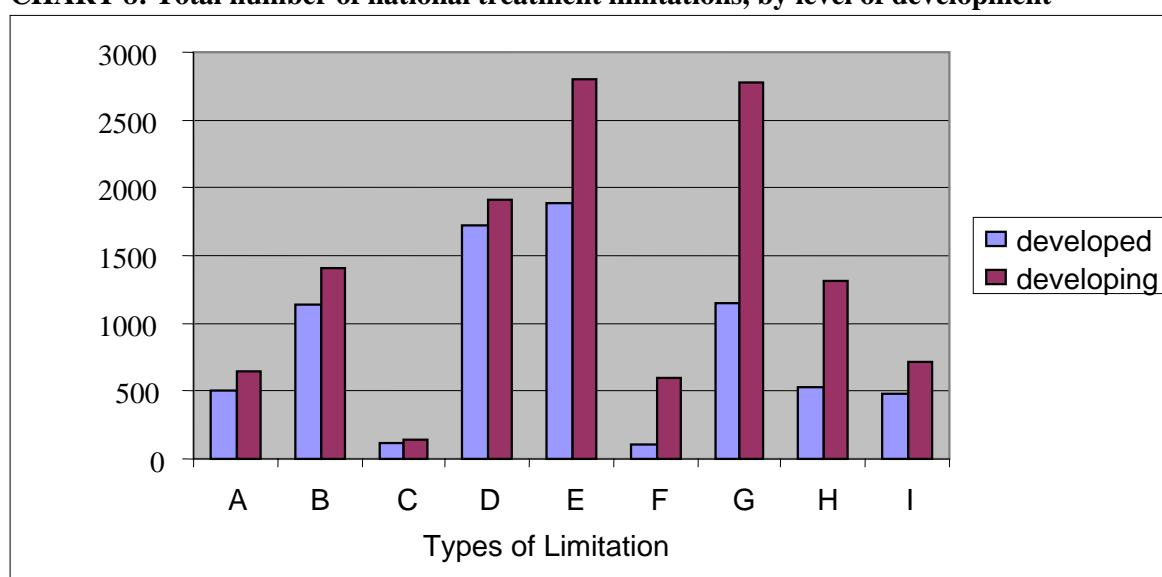
In the absence of a typology comparable to the types of limitations listed under Article XVI, it is more difficult to provide an overview of the national treatment limitations scheduled under Article XVII. Article XVII:3 merely establishes a definitional benchmark for national treatment - no modification of the conditions of competition in favour of services or service suppliers of the Member concerned - but does not provide a framework comparable to Article XVI:2. Any categorization of national treatment limitations thus needs to start from what has actually been inscribed in the relevant column. Table 3 shows different types of limitations on that basis. Again, interesting patterns emerge. Among individual types of measures, nationality and residency requirements for staff members stand out, followed by discriminatory licensing and qualification requirements, technical standards and the like. Horizontal limitations are generally more frequent than sector-specific entries; a comparison with Table 2 shows that the reliance on horizontal entries is even more pronounced than in the case of market access. In particular, limitations relating to subsidies, tax measures, land ownership or land use tend to be horizontal, while nationality and residency requirements as well as a residual category of other financial measures are often scheduled in a sector-specific context.

Financial services are, again, the most frequently targeted sector, followed by professional services.

As in the case of market access, developing and developed countries display similar patterns of limitations (Chart 8). A closer look reveals that developing countries tend to rely somewhat more strongly on land-related restrictions, but less so on discriminatory subsidies and nationality or residency requirements.

It may be argued that typical horizontal measures such as denial of land ownership or discriminatory subsidization are less trade-restrictive in practice, and thus less relevant for negotiations, than many sector-specific measures. For example, the economic disadvantages associated with land ownership restrictions tend to be limited in many cases as alternative forms of use, such as renting or leasing, are available. As far as subsidies are concerned, it appears safe to assume that these are especially relevant in sectors such as education, health and social services (nurseries, accommodation for disadvantaged groups, etc.) which are considered public sector domains in most countries. Negotiating pressures may continue to be comparatively low in such sectors.

**CHART 8: Total number of national treatment limitations, by level of development**



Legend: See Table 3.

#### IV. CHANGES CONTAINED IN INITIAL OFFERS

Services have proven a relatively non-controversial issue among WTO Members since the inception of the Agreement in 1995. They certainly have not been responsible for the failed Ministerial Meetings in Seattle and Cancun, nor have they generated a lot of trade disputes. If the absence of friction and controversy were taken as an indicator of success, there would be little about which to be worried. However, the verdict may be different if 'success' is measured in terms of active participation in, and contribution to, the ongoing negotiating process.

By mid-March 2005, almost two years after the relevant target date set in the Doha Ministerial Declaration (March 2003), 51 initial offers had been submitted.<sup>28</sup> In other words, about one-half of WTO membership had not lived up to the Ministerial mandate. Of the offers, 41 were from developing countries and 10 from developed countries (counting the EC as one entity). The shallow level of engagement compares badly with a current proliferation of regional and bilateral agreements; it is compounded by the absence of clear improvements in terms of substance and content. In particular, the sectoral breadth of most offers has remained surprisingly small.

Nevertheless, the overview given in this section is only a snapshot at a particular stage of the negotiating process. The General Council Decision of 1 August 2004, the "July Package", envisages that revised offers be tabled by May 2005. The game is thus still open – but are the players sufficiently motivated?

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<sup>28</sup> Excluding offers from countries that have since joined the European Communities. If the Communities' enlargement to EC 25 is taken into account, 75 WTO Members are covered.

**Table 3: Types of limitations on National Treatment in selected sectors, mode 3**

Sector	Commitments <sup>a</sup>	Number of limitations <sup>b</sup>	Ratio of limitations to commitments <sup>b</sup>	Type of limitation <sup>b</sup>								
				A	B	C	D	E	F	G	H	I
Professional Services	534	1623 <sup>b</sup> (274) <sup>c</sup>	3.0 (0.5)	77 (0)	208 (0)	8 (1)	285 (92)	463 (137)	64 (15)	301 (0)	138 (21)	79 (8)
Computer & Related Services	322	859 (32)	2.7 (0.1)	50 (1)	118 (0)	5 (0)	153 (9)	204 (15)	39 (0)	176 (0)	63 (3)	51 (4)
Courier Services	49	114 (8)	2.3 (0.2)	10 (2)	15 (0)	1 (0)	16 (2)	24 (0)	6 (0)	25 (2)	9 (2)	8 (0)
Voice Telephony Services	85	217 (30)	2.6 (0.4)	15 (1)	21 (0)	1 (0)	40 (15)	55 (5)	9 (1)	44 (2)	18 (3)	14 (3)
Audiovisual Services	80	183 (21)	2.3 (0.3)	14 (0)	20 (2)	0 (0)	32 (7)	44 (8)	3 (0)	38 (0)	17 (1)	15 (3)
Construction & Rel. Engineering	292	830 (68)	2.8 (0.2)	49 (0)	117 (0)	5 (0)	142 (32)	181 (19)	39 (9)	175 (0)	72 (3)	50 (5)
Distribution Services	179	495 (6)	2.8 (0.03)	25 (0)	90 (0)	5 (0)	83 (2)	110 (3)	13 (0)	111 (0)	34 (0)	24 (1)
Educational Services	162	385 (47)	2.4 (0.3)	13 (0)	61 (2)	5 (5)	72 (21)	91 (16)	3 (0)	96 (0)	24 (0)	20 (3)
Environmental Services	176	511 (6)	2.9 (0.03)	33 (0)	85 (0)	4 (0)	93 (1)	108 (1)	19 (0)	106 (0)	32 (0)	31 (4)
All insurance Services	317	1255 (477)	4.0 (1.5)	75 (28)	121 (10)	22 (17)	255 (160)	303 (108)	51 (15)	217 (25)	151 (105)	61 (9)
Banking & Other Financial Serv.	959	4513 (1933)	4.7 (2)	247 (85)	438 (38)	145 (128)	861 (587)	913 (358)	214 (69)	734 (69)	622 (485)	339 (114)
Health and Social Services	88	178 (22)	2.0 (0.3)	6 (0)	30 (3)	10 (0)	22 (3)	36 (14)	50 (0)	16 (0)	8 (1)	0 (0)
Tourism and Travel Services	314	704 (90)	2.2 (0.3)	44 (7)	72 (1)	5 (3)	115 (29)	186 (23)	32 (5)	142 (4)	64 (12)	44 (6)
Recreational, Cult. & Sport Ser.	133	313 (33)	2.4 (0.3)	18 (5)	54 (14)	0 (0)	51 (2)	84 (3)	3 (0)	71 (0)	20 (8)	12 (1)
Transport Services	666	1630 (165)	2.4 (0.2)	91 (7)	242 (0)	15 (2)	302 (81)	380 (42)	29 (2)	367 (0)	111 (13)	93 (18)
TOTAL OF ABOVE	4356	12187 (2938)	2.8 (0.7)	767 (136)	1692 (70)	216 (156)	2522 (1043)	3172 (752)	574 (116)	2619 (102)	1383 (657)	841 (179)

<sup>a</sup> Total number of entries across all Members and sub-sectors. EC counted as one.

<sup>b</sup> Upper line: Total number of limitations, including horizontal limitations applying across all sectors contained in the relevant schedule. Lower line: Sectoral limitations only.

<b>Legend:</b>		
A – Tax Measures	D – Nationality and Residency Requirements	G – Ownership of Property/Land
B – Subsidies and Grants	E – Licensing, Standards, Qualifications Requirements and Registration/Authorization Requirements	H – Other National Treatment Measures
C – Other Financial Measures	F – Performance Requirements (e.g., technology transfer, training)	I – Market Access Limitation

(a) Breadth of Coverage<sup>29</sup>

For both developing and developed-country Members, the sector focus of offers has so far been on business and financial services, and to a lesser extent, tourism and telecom services (Charts 9 and 10). Business and financial services are the only areas for which more than half of all offers received foresee some form of improvement. The share of offers proposing improvements in financial services is particularly high for developed countries (Chart 10). In contrast, core service sectors such as construction, distribution, environmental services or maritime transport have drawn relatively little attention. This also applies to a further range of sectors that, possibly reflecting social and cultural policy concerns, have already proven sensitive in the Uruguay Round, i.e., education, health, and other communication (postal, courier, audiovisual).<sup>30</sup>

**Chart 9: Sector focus of offers**

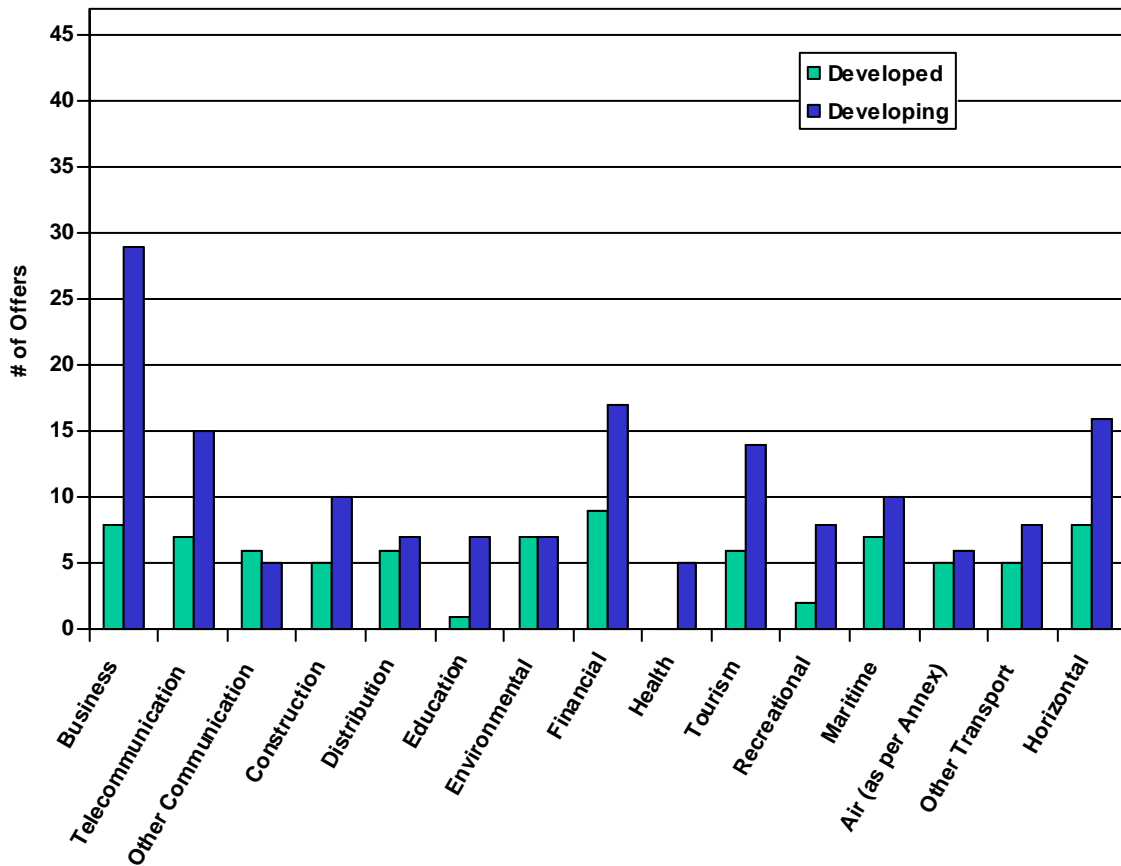
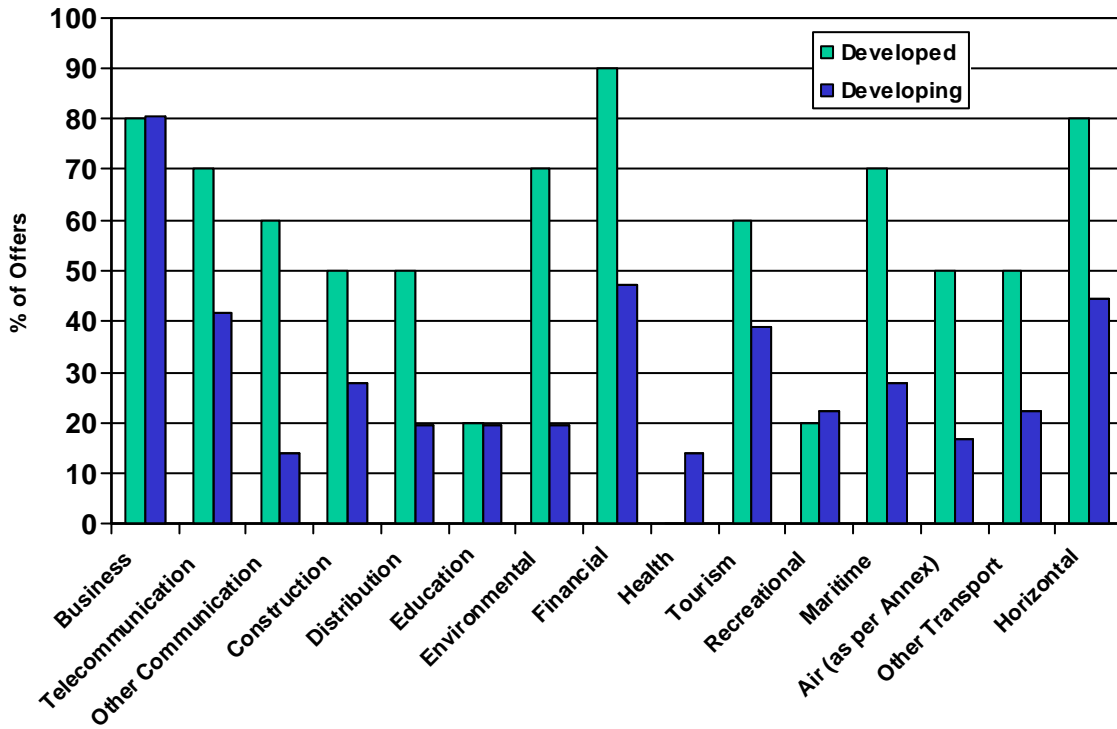


Chart 11 takes a closer look at the types of offers - inclusion of new sub-sectors or improvements of existing commitments - that have been submitted per sector. Not surprisingly, given the relatively high number of existing commitments in the two areas, many of the proposals made for telecommunication and financial services involve improvements on what had already been committed during the Uruguay Round or the extended negotiations.

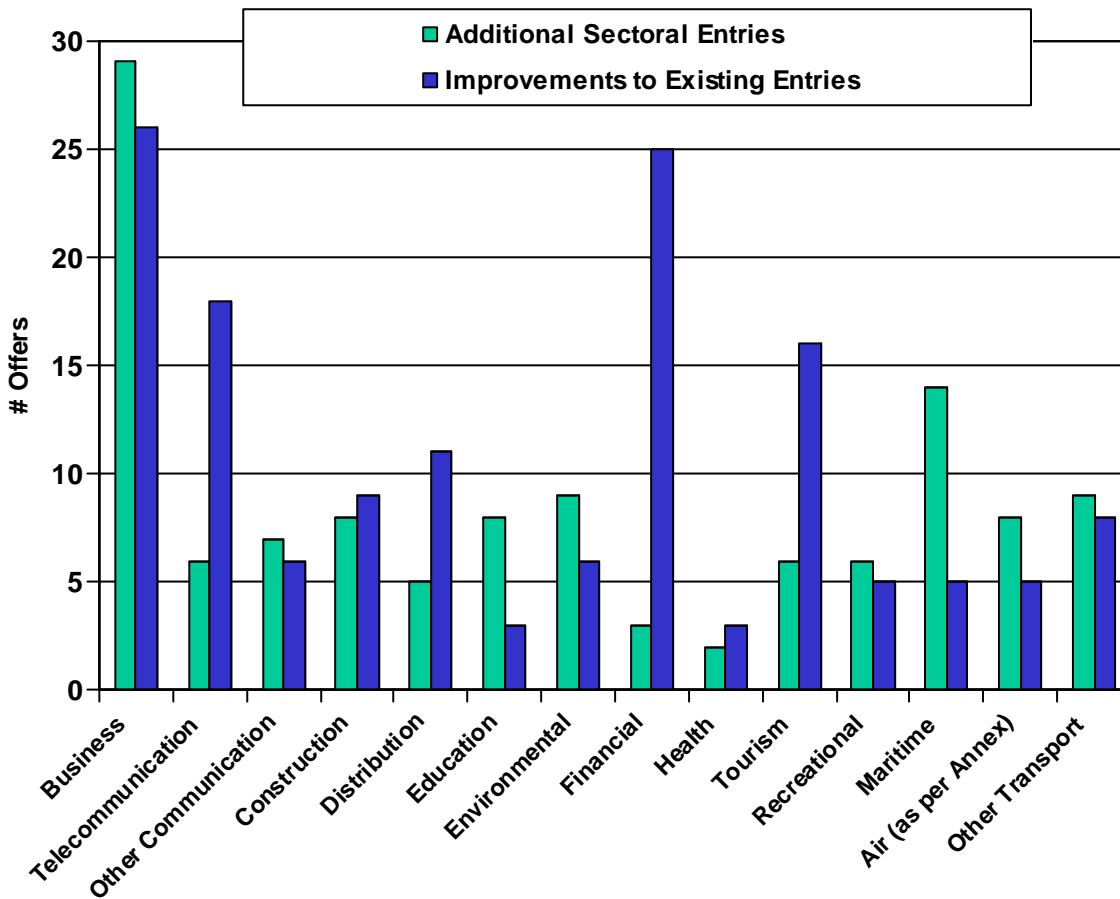
<sup>29</sup> The following presentation is based on 47 offers that had been submitted by mid-February 2005. In some cases, proposed changes in schedules have not been counted as improvements for the purpose of this paper, although indicated as such by the Member concerned, if it was not apparent that better access conditions would result.

<sup>30</sup> Again, it needs to be kept in mind that the relatively high level of sector aggregation tends to exaggerate the changes proposed; for example, a Member's minor amendment in one of the 46 sub-sectors of business services would not be counted differently from another Member's changes across all 46 sub-sectors.

**CHART 10: Percentage of developing and developed-country Members with offers in individual sectors (on basis of total offers submitted)**



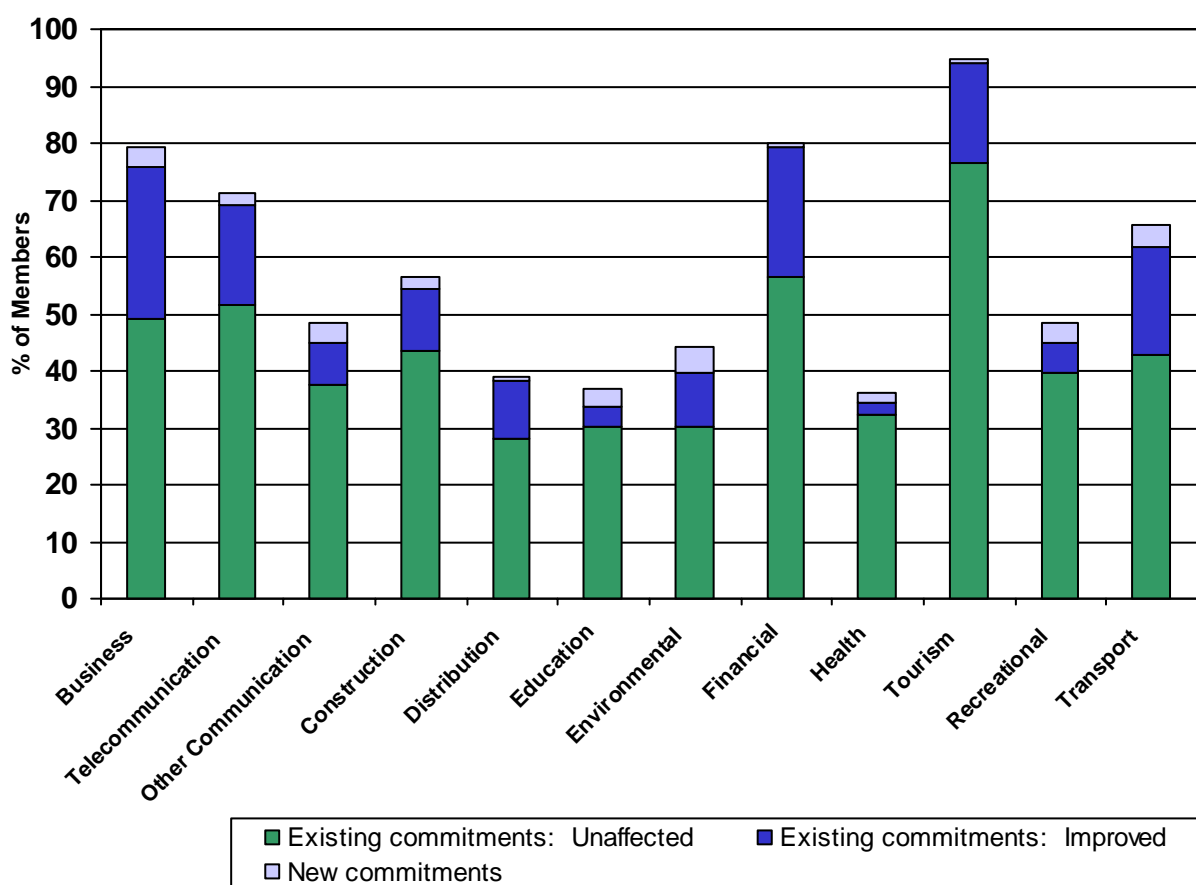
**CHART 11: Characteristics of offers (inclusion of additional sectoral entries versus improvements to existing entries)**



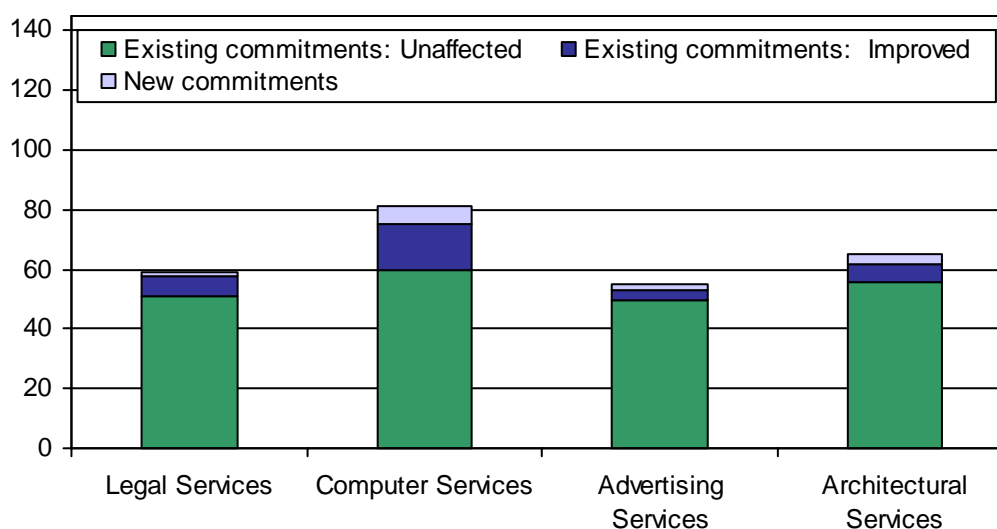
How would the offers, if put into effect, change the current structure of commitments? Chart 12 shows the percentage of Members with commitments in individual sectors before and after implementation. The darker sections of bars represent the share of Members that already had commitments in a given sector and that, through initial offers, propose improvements in this same sector. The small section on top of each bar reflects the Members that did not have any commitments and propose to include the sector through their offer. Obviously, there is very little change to the coverage of existing schedules. Even after implementation, less than one-half of the WTO membership would not have commitments, at whatever level of liberalization, in major service sectors such as distribution, education, environmental or recreational/cultural/sporting services. Chart 13 provides a more detailed picture at the level of four sub-sectors (legal, computer, advertising, and architectural services) within business services, the most diversified sector in the Classification List and the one that has attracted the greatest number of offers.

As pointed out before, another way of looking at the breadth of commitments, in terms of sector coverage, is to count the overall number of sub-sectors included in schedules. While not providing a sector-by-sector view, it gives a more accurate picture of the overall breadth of commitments. Again, the changes appear minor. While developed countries' current schedules contain about two-thirds of all sub-sectors on average, as compared to less than one-third for developing countries, the schedules' coverage would increase by about 5 and 2 per cent, respectively. Even two years after the target date for the submission of initial requests, the proportion of sub-sectors bound across all groups of Members would remain below 35 per cent on average.

**CHART 12: Offers in relation to existing commitments: Sector coverage**



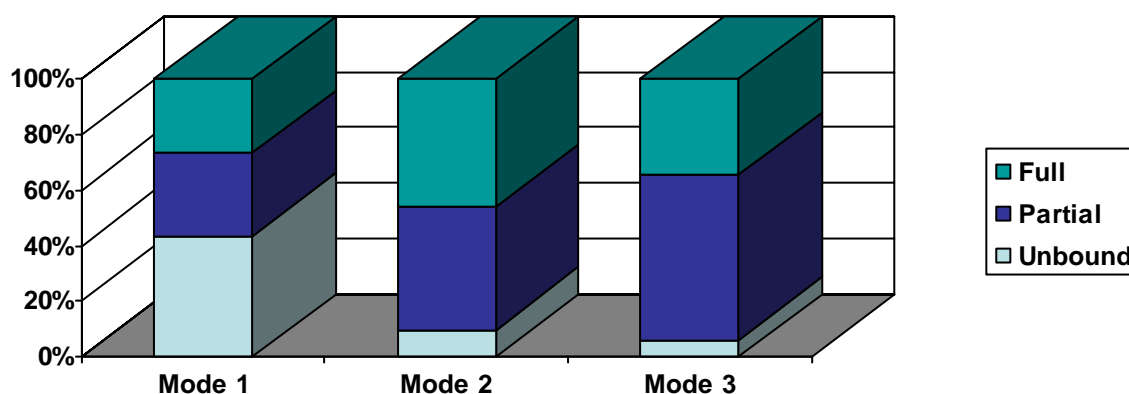
**CHART 13: A closer look at selected business services**



(b) Depth of Commitments across Modes

There is, of course, an additional dimension to the changes contained in initial offers: the envisaged levels of commitments. Chart 14 is organized along the same lines as Chart 3, distinguishing between full commitments, no bindings, and partial commitments (regardless of the restrictiveness of the limitations) for market access under modes 1 to 3.<sup>31</sup> Horizontal limitations, which would mostly affect mode 3 (commercial presence), are not taken into account. Overall, the Chart provides no basis to infer that the new commitments would be significantly deeper than currently existing entries. A particular striking feature is the low level of bindings proposed for mode 1, given ongoing discussions about new information and communication technologies and their impact on geographical patterns of services production and trade ("offshoring", etc.).<sup>32</sup> More than one-third of the envisaged commitments on cross-border trade are unbound.

**CHART 14: Level of treatment in new sector-specific commitments**



<sup>31</sup> As in previous sections, we do not here focus on sector-specific commitments in respect of mode 4, which tend by their very nature to be partial commitments and to refer to the horizontal section.

<sup>32</sup> See, for example, World Investment Report (2004), op.cit.



The changes proposed for the horizontal sections, at least in quantitative terms, have remained modest as well. No more than 13 offers contain improvements in relation to mode 3.

## V. THE ROAD AHEAD: OPPORTUNITIES AND PITFALLS

The fact that the initial offers have remained modest on virtually all counts - participation of Members, coverage of sectors, and levels of commitments - may have come as a surprise, despite modest expectations. While the political impediments outlined in Part II have been at work during the Uruguay Round and since, one might have counted on some counterbalancing forces which could have helped, at least, to narrow the gap between actual and GATS-bound access conditions.

- (i) Unlike in the Uruguay Round, WTO Members have been able to focus on access issues within a legal framework that has been tested for more than ten years. There certainly was sufficient time to explore the possibilities of undertaking broader and deeper commitments in the current negotiations.<sup>33</sup> The continued negotiations on four outstanding rule-making issues (domestic regulations, emergency safeguards, government procurement, and subsidies) might not be expected to absorb too many resources, compared to the situation during the Uruguay Round.
- (ii) The benefits of services liberalization (and the costs of protection) have become even more evident, through practical experience and ongoing research, than they were one or two decades ago. The range of studies to draw from has risen exponentially.<sup>34</sup> While services liberalization may, of course, continue to proceed without external bindings, commitments could add value in promoting transparency, preventing slippages and reversals, and ensuring coherent implementation by the competent administrations across federal levels. And, of course, own bindings may help to achieve and protect better access conditions abroad.
- (iii) Further technological advances have increased the propensity for many services to be traded cross-border through electronic means. The fact that some developing countries have strongly benefited from this trend should have helped to refute the myth of services trade being the preserve of developed countries and, at the same time, sparked additional negotiating interests across Members and modes (for example, the growing importance of exports via mode 1 may incite own commitments under mode 3 in order to promote, through inflows of capital and expertise, domestic capacity expansion).
- (iv) The recent proliferation of preferential trade agreements has created a parallel framework (or hotchpotch) of trade obligations. Contrasting with the situation at the time of the Uruguay Round, many such agreements now cover services.<sup>35</sup> The agreements are frequently based on a negative-list approach, and the reservations

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<sup>33</sup> Also, there have been strong increases in technical assistance through various channels, including the WTO Secretariat.

<sup>34</sup> See, for example, footnote 1.

<sup>35</sup> See Martin Roy (2003), Implications for the GATS of Negotiations on a Multilateral Investment Framework: Potential Synergies and Pitfalls, *Journal of World Investment*, Vol. 4, No. 6, pp. 963-986. The following Agreements, notified under the GATS, entered into force between January 2001 and December 2004: New Zealand-Singapore, Chile-Costa Rica, EC-Mexico, US-Jordan, Japan-Singapore, EFTA, EFTA-Singapore, Singapore-Australia, US-Chile, US-Singapore, China-Hong Kong, China, China-Macao, China, Chile-El Salvador, Korea-Chile, EFTA-Chile, US-Australia, Thailand-Australia. Many others are under negotiations or awaiting ratification (e.g., US with Central American and Andean countries, EC with Chile, ASEAN with New Zealand and Australia).

inscribed typically reflect restrictions that are actually in force. Since not all signatories, in particular developing countries, have assumed equivalent commitments under the GATS to date, there should be considerable room for manoeuvre. The flurry of preferential agreements also tends to invalidate complaints, at least from participating countries, about lack of negotiating or trade experience in services.

This is not the full picture, however. Members are also confronted with a variety of challenges during the negotiations, which might influence their readiness (or ability) to participate. For one, the rule-making aspects of the negotiations will need to be properly addressed. The possibly most difficult area - with the greatest risk of affecting negotiations on specific commitments - is emergency safeguard measures. After almost ten years of inconclusive negotiations, there may be time to explore options other than a mechanism modelled on the safeguard clause for goods under the GATT. Further, Members have to address the legal relationship between the existing schedules and those resulting from the negotiations on offers. While based on the principle that they are to improve upon commitments already in place, and cannot lessen the level of openness bound (i.e., no backtracking), some offers appear to suggest otherwise. The wide array of limitations that can be listed in a schedule, the absence of hierarchy of instruments of protection, and the Agreement's flexibility may blur the borderline between improvements, mere technical corrections, and backtracking on existing commitments. It may be necessary to clarify the legal status of questionable modifications before they are put into effect.

There are additional issues, concerning the structure of the negotiations, that may warrant discussion as well. These include, in particular, the negotiations' prime focus on the request-and-offer approach that was introduced through the Negotiating Guidelines and Procedures in 2001 (Annex 1). While presumably intended to shield small and weak economies from over-ambitious expectations, including in the form of sweeping liberalization formulae, reliance on request-and-offer procedures may have rendered the negotiations even more fragmented, devoid of benchmarks or reference points. For the reasons discussed before, it might not be feasible to apply common - tariffication-based - negotiating approaches to a reasonably broad range of services. Nevertheless, there may be better options than leaving the process without structure or clearer guidance.<sup>36</sup>

A listing of potential pitfalls also needs to include time constraints. The services negotiations may have been taken relatively lightly to date because they form part and parcel of a wider negotiating package. Other areas - agriculture, in particular, but also market access for non-agricultural products - have been considered stumbling blocks from the very beginning. In order to ensure negotiating leverage in these areas, some Members may have been tempted to force the services track into a strict common timeframe. This is not without risk, however, if the time and resource requirements of individual stages are different between sectors. For the reasons discussed before (Part II), access negotiations in services require more time, once they start in earnest, than, for example, the application of agreed negotiating modalities in agriculture. The prospects of successful services negotiations are dim, therefore, if governments continue to wait for hurdles to be cleared in areas where the remaining distance to the finishing line is shorter.

What could be done at present? One conceivable option is to introduce a stronger sector focus in the discussions, whether formal or informal. In turn, this may help to clarify common targets, in terms of breadth and quality of commitments; provide guidance on how best to organize liberalization processes (e.g., through appropriate regulation); and increase the level of confidence with respect to classification or scheduling issues. A possible outcome could be model schedules, reference papers or non-mandatory understandings on how to deal with particular sector- or policy-

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<sup>36</sup> Relevant benchmarks could include, for example, a minimum number of sector commitments expected from different groups of Members, reduction in the share of non-bindings currently scheduled under individual modes, a political undertaking to avoid quota-type restrictions, or the elimination of non-specified economic needs tests.

specific challenges. To a certain extent, this is what happened during the extended negotiations - on mode 4, maritime transport, telecommunications, and financial services - after the formal conclusion of the Uruguay Round. The latter two negotiations, at least, were widely considered successful, although they did not neatly fit the traditional (mercantilist) paradigm of exchanging 'concessions' across the largest possible number of areas. However, this paradigm may be of limited value in any event, given the diversity of sub-sectors, trade measures, political sensitivities, and institutional competencies involved in services.

Time is running short for any re-direction of the negotiating process. Without rapid adjustment, there is a serious possibility that the services negotiations will not only elude confrontation, but substantial results as well.

## ANNEX

### I. Services Negotiations in the context of the Doha Development Agenda

The concept of successive rounds of services negotiations, aimed at "achieving a progressively higher level" of liberalization, is already enshrined in the GATS itself. According to Article XIX:1, the first such round was to start not later than five years from the date of entry into force of the Agreement, i.e., 1 January 2000. The inconclusive outcome, in less diplomatic language: fiasco, of the Seattle Ministerial Meeting in October 1999 thus did not formally prevent the services negotiations from being launched. However, not only was political momentum lost, but negotiators were left without a specific mandate. The Seattle Draft Declaration, initially intended to provide the basis for a full-fledged round and containing a section on services, was defunct altogether. It was not until March 2001 that the Council for Trade in Services adopted a two-page document setting out Guidelines and Procedures for the Services Negotiations (document S/L/93).

The relatively smooth passage of the Guidelines, despite the post-Seattle hangover, is not least attributable to some large developing countries dropping their previous opposition, prior to and even during the Uruguay Round, to multilateral services negotiations. Agreement was also facilitated by the use of building blocks already contained in the GATS itself, e.g., the objective of increasing participation of developing countries in services trade and a related obligation to duly respect national policy objectives and to accord appropriate flexibility in the scheduling process. New elements include: (i) the need to give "due consideration to the needs of small and medium-sized service suppliers, particularly to those of developing countries"; (ii) conclusion of the negotiations on emergency safeguards by 15 March 2002 (meanwhile extended without a specific end-date) and of the negotiations in other rule-making areas under GATS - domestic regulation, government procurement, and subsidies - prior to concluding the negotiations on specific commitments; (iii) preference for the request-offer approach as the "main method of negotiation"; and (iv) the continuation of the assessment of trade in services, provided for under Article XIX:3, as an ongoing activity of the Services Council.

The assessment of trade was initially intended for the purpose of establishing the Negotiating Guidelines. The fact that it proved impossible to conclude it in time may be attributed in part to the dearth of trade data in services, in particular with regard to commercial presence. However, it also reflects uncertainties surrounding the underlying mandate: What should be the scope of such an assessment - trade covered by specific commitments or all services trade? The relevant timeframe - since the start or the conclusion of the Uruguay Round or any other date? The policy focus - only liberalization policies or all measures that affect trade? The issues or impacts to be considered - contribution of services policies to economic growth, efficiency, stability, equity or any other regional/social/health/environmental objectives? And, finally, should the assessment lead to common conclusions? If so, what could they entail? Members have never addressed these questions head on.

Groundwork for the new services round had already started in early 1998 with a so-called information exchange programme. To provide stimulus and guidance, the Secretariat prepared over 20 background papers in 1998 and 1999, most of them dealing with individual sectors and any legal, statistical or definitional problems that might warrant further attention.<sup>37</sup> The papers were dealt with in subsequent Council meetings and triggered a variety of oral and written contributions. The formal start of the services negotiations, in January 2000, prompted a shift of gears; Members started submitting negotiating proposals, individually or in groups. While such proposals may cover a wide range of issues - including mandates contained in the GATS such as the renegotiation of existing MFN exemptions; review of the current (highly limited) coverage of air transport; and modalities for the treatment of autonomous liberalization since previous negotiations - most of them were devoted

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<sup>37</sup> The Secretariat papers are reproduced in: WTO Secretariat (2001), Guide to the GATS - An Overview of Issues for Further Liberalization of Trade in Services, The Hague.

to explaining trade problems, policy concerns and negotiating intentions in sectors of national economic interest. While more proposals are still likely to be tabled, the number of new submissions declined rapidly in the aftermath of the Doha Ministerial Meeting and the start of the request-and-offer process for specific commitments.

Given the existence of relatively detailed negotiating guidelines for services, the Doha Declaration of November 2001 essentially confined itself to (i) reaffirming these guidelines as a basis for continuing the negotiations and (ii) integrating the services track into the general context of the negotiations. The target dates for the submission of initial request and initial offers were set to 30 June 2002 and 31 March 2003, respectively. The "July Package", adopted by WTO Members in 2004, provided that revised offers be tabled by May 2005.

## II. The Basic Structure of the GATS

The coverage of GATS extends in principle to all measures by Members affecting trade in services. The only exceptions are services provided in the exercise of governmental authority and measures affecting air traffic rights and directly related services. The Agreement takes a wide view of what constitutes trade and, in that context, defines four modes of supply. The distinction between these modes rests essentially on the territorial presence of supplier and user at the time when a service is provided. Mode 1 deals with the cross-border flows analogous to international trade in goods, covering situations in which products (services) cross national frontiers; mode 2 involves the movement abroad of a service user into the supplier's territory; mode 3 covers the supplier's right to establish and maintain a commercial presence in the relevant Member's territory; and mode 4, possibly capturing the most politically-sensitive transactions, relates to foreigners supplying services in the latter territory. Although rapid changes in communication technologies have increased the "tradability" of services across distance (and national borders), commercial presence has remained the most economically-important mode in many sectors; it is estimated to represent over one-half of the value of services trade falling under the four modes. The shares of modes 1 and 2 are in the order of 30 and 15 per cent, respectively, while mode 4 accounts for only a few percentage points only.<sup>38</sup>

The trade effects of GATS depend predominantly on the extent and nature of the specific commitments on market access (Article XVI) and national treatment (Article XVII) undertaken by WTO Members in individual sectors. Given the structure of the Agreement and scheduling practices, market-access commitments tend to be crucial. Article XVI enumerates six types of limitations – including numerical and value quotas, foreign equity ceilings, and restrictions on the legal form of establishment – whose use is prohibited unless they are inscribed in the schedule. Article XVII of GATS, mirroring GATT Article III:1, defines national treatment as treatment no less favourable than that accorded by the Member concerned to like domestic services or service suppliers. (Article XVII:3 further specifies that treatment would be considered to be less favourable if it modifies the conditions of competition in favour of the Member's services or service suppliers.) Contrasting with GATT, national treatment under any of the four modes of supply may also be made subject to limitations. Pursuant to Article XX:2, measures considered inconsistent with both Article XVI and Article XVII are to be scheduled in the market access column.

Most schedules are divided into two parts, one horizontal and one sector-specific section. Horizontal limitations apply across all sectors listed in the schedule. While their legal implications are the same, horizontal limitations are likely to reflect policy constraints of a general, economy-wide nature (e.g., prohibitions on foreign land ownership, limits on foreign equity participation, and restrictive work permit requirements for foreign services professionals). From the perspective of trading partners, it may prove more difficult to prompt a Member to modify its horizontal limitations, or to curtail their sector scope, than to achieve the inclusion of new sectors or the modification of existing sector-specific limitations.

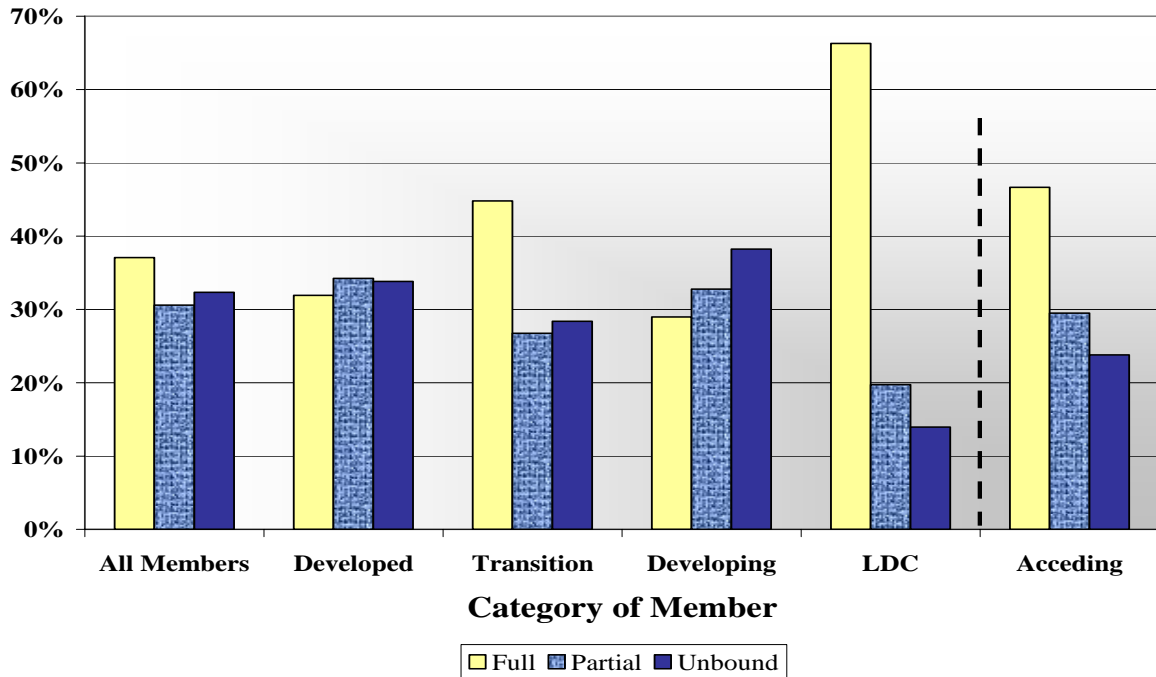
The binding effects of commitments under the GATS are comparable to tariff concessions under the GATT. The absence of commitments in a sector thus is not necessarily tantamount to denial of market access or national treatment in the relevant market. However, any access preferences are less predictable; trading partners are not protected from sudden policy changes as the Member retains the possibility to introduce any type of limitations or to ban trade altogether, at any time. Similarly, Members are free at any time to offer more liberal conditions than those laid down in their schedules, on condition that the basic MFN requirement be respected. The impact on trade and investment may be limited, however, by lack of predictability, stability and transparency. A key objective in the current negotiations is thus to increase the number of sectors inscribed in schedules, as well as to improve or guarantee the level of treatment bound.

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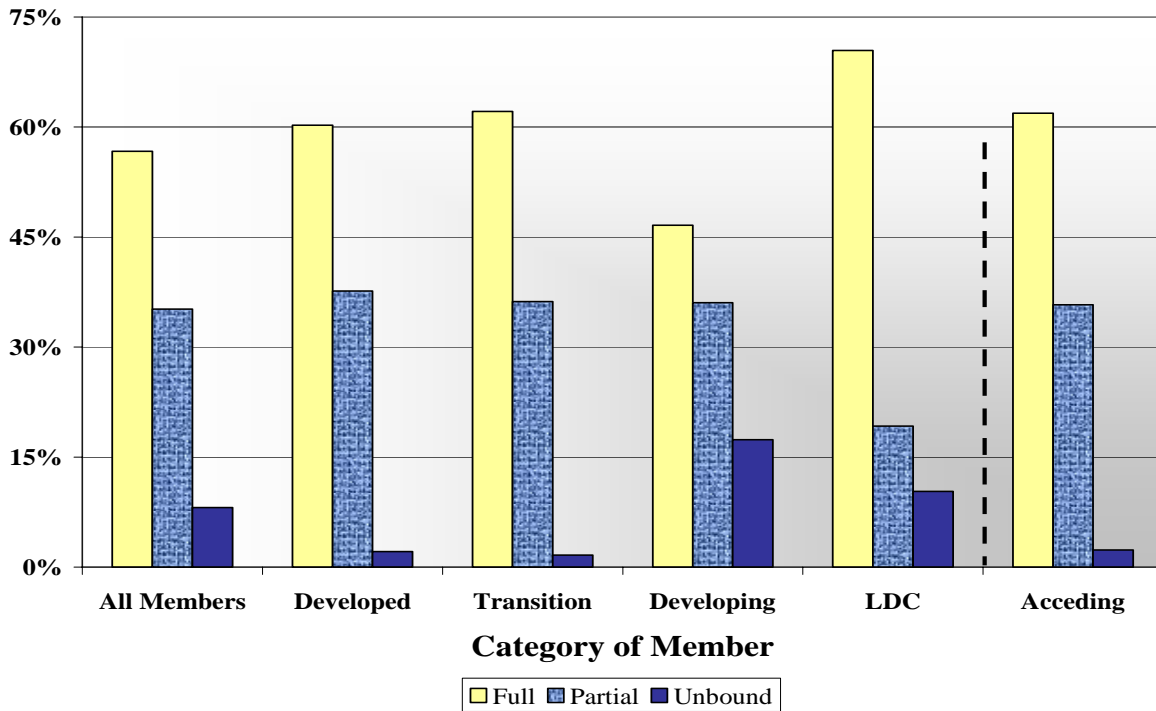
<sup>38</sup> Estimates by the Statistical Division of the WTO Secretariat.

III. Charts on Levels of Commitments (Unbound, Partial, Full).

(a) Type of commitment undertaken in selected sectors (market access), mode 1



(b) Type of commitment undertaken in selected sectors (market access), mode 2



(c) Type of commitment undertaken in selected sectors (market access), mode 3

