

# Making Trade in Services Supportive of Development in Commonwealth Small and Low-income Countries

Patrick Macrory and  
Sherry Stephenson



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COMMONWEALTH SECRETARIAT

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## Abbreviations

AA	Administrative assistant
ACP	African, Caribbean and Pacific
ASEAN	Association of Southeast Asian Nations
BLA	Bilateral labour agreement
DDA	Doha Development Agenda
CAFTA	Central American Free Trade Agreement
CGE	Computable general equilibrium
CPC	Central Product Classification
CSS	Contractual service suppliers
DR	Dominican Republic
ECLAC	Economic Commission for Latin America and the Caribbean
ENT	Economic needs test
EU	European Union
FDI	Foreign direct investment
FTA	Free trade agreement
GATS	General Agreement on Trade in Services
GDP	Gross domestic product
GSP	Generalised system of preferences
IDB	Inter-American Development Bank
IP	Independent professional
ISIC	International Standard Industrial Classification
MFN	Most favoured nation
MRA	Mutual recognition agreement
NAFTA	North American Free Trade Agreement
OAS	Organization of American States
RTA	Regional trade agreement
RTPA	Regional trade policy advisors
SCM	Subsidies and countervailing measures
SDT	Special and differential treatment
SPS	Sanitary and phytosanitary
STRI	Services Trade Restrictiveness Indices
TA	Technical assistance
TBT	Technical barriers to trade
TCB	Trade capacity building
TFP	Total factor productivity
TPA	Trade policy analyst
TRIPS	Trade-related Aspects of Intellectual Property Rights
WTO	World Trade Organization

# Summary

## 1. Definition of special and differential treatment

Special and differential treatment (SDT) is applied rather differently in the General Agreement on Trade in Services (GATS) than in other World Trade Organization (WTO) agreements, in which it often takes the form of less rigorous obligations and/or additional time for implementation. The GATS, in contrast, imposes the same general obligations on all members, developed and developing, and gives no additional time to developing countries for implementation. Instead, the GATS provides extreme flexibility in terms of the number of market-opening commitments, the time for implementation of those commitments and the limitations that can be placed on them. Regional trade agreements (RTAs) also offer a great degree of flexibility. This can be viewed as a form of SDT.

In negotiating SDT outcomes in trade agreements, developing countries need a comprehensive national services strategy that has been developed within a coherent policy framework. Such a strategy and framework can serve as a basis for formulating negotiating positions that reflect national interests, including different types of SDT.

The categories of SDT analysed in this paper are: (1) The architecture of the agreements, which provide flexibility in commitments; (2) the acknowledgment that reciprocity is not required of developing countries; (3) the actual outcomes of the negotiations of the GATS and of RTAs; (4) the provision of technical assistance; (5) allowing additional time for implementation of commitments; and (6) ‘best endeavour’ type provisions that create no rights or obligations for members.

## 2. SDT commitments under the GATS, the Doha Development Round and regional trade agreements

The *architecture* of the GATS gives great flexibility to members by using the ‘positive list’ approach, under which each member decides which sectors to liberalise, and the extent and timing of the liberalisation. The Doha Development Agenda (DDA) follows the same approach, as do many RTAs. Other RTAs use the ‘negative list’ approach, under which all services sectors are fully opened except to the extent set out in a schedule of non-conforming measures. This also gives a good deal of flexibility, though arguably less than positive list agreements.

The GATS contains provisions acknowledging that developing countries are not expected to provide *reciprocity* in terms of the number of commitments, and various documents produced during the DDA reiterate this principle. LDCs were to be given even more flexibility, and the Hong Kong Ministerial Declaration clearly stated that they were not expected to make any new commitments. Few of the RTAs we have

examined contain provisions recognising the need to allow more flexibility to developing countries, although in practice developing country parties to RTAs have generally made many fewer commitments than developed country parties.

The *negotiated outcomes* of the GATS show that on average developing countries made many fewer commitments than developed countries. However, many of the Mode 1 (cross-border) and Mode 4 (temporary movement of natural persons) commitments by developed countries are linked to Mode 3 (commercial presence), which makes them of little value to smaller countries, which do not generally have service suppliers large enough to invest abroad. Besides, the Mode 4 commitments are mostly limited to highly skilled individuals, and not to lower skilled workers, where the smaller countries have a competitive advantage. Our RTA analysis showed a similar asymmetry of outcome, with developed countries making many more commitments in the case of positive list agreements, or scheduling fewer non-conforming measures in the case of negative list agreements than developing country members.

The GATS calls for *technical assistance* to be given to the developing countries but, unlike many WTO agreements, specifies that it should be provided not by the developed countries, but by the WTO itself. In practice, however, a good deal of assistance has been provided by members, as well as by the WTO and other international organisations. The amount of assistance given with respect to services has been relatively low. Various documents produced during the Doha Development Round reiterate the need for technical assistance to be given to the developing countries. Few RTAs contain provisions on the supply of technical assistance.

The GATS does not give members *additional time* for implementation of the general obligations, although the negotiating flexibility built into the agreement allows countries to delay implementation of their commitments. A significant number of such pre-commitments have been made by developing countries in the telecommunications sector. A few of the RTAs we examined allowed additional time for implementation to smaller countries, although in some cases these were limited to a few sub-sectors.

The GATS and various DDA documents contain a number of hortatory, 'best endeavour' type provisions. These of course are of little value to developing countries. A few of the RTAs that we examined contain similar statements.

It is difficult to assess the overall impact of SDT, and to the best of our knowledge no-one has attempted to measure its value as a whole to the developing countries. Certain types of SDT – technical assistance and additional time for implementation of commitments – clearly benefit the smaller, poorer countries. So does the aspect of non-reciprocity that allows greater access to developed country markets. However, the other side of non-reciprocity, allowing the developing countries to keep their service markets more closed, may in fact be harmful to them. There is a substantial body of work that demonstrates that barriers to trade in services can be extremely costly, and that removing them can raise GDP significantly. The positive effects are felt throughout the economy because increased competition results in lower intermediate costs for manufacturers and agricultural producers, as well as for service suppliers. Opening more

service sectors may benefit smaller and less developed countries, although this should be done with great care. In particular, it is essential to set up effective regulatory structures before liberalising, and time and technical assistance is needed to accomplish this.

### **3. Challenges faced by business in maximising export and investment opportunities from SDT Arrangements**

Small service suppliers in developing countries are primarily interested in Mode 1 and Mode 4 supply. However, as noted, Mode 1 and Mode 4 commitments are often linked to Mode 3, which puts access out of their reach. In any event, even where not linked to Mode 3, Mode 4 access is highly limited. Even where they do have formal access, small service suppliers may not have the resources to investigate foreign market opportunities, and they often lack government support. They may not have adequate human or technical resources, and they often pay high costs for basic services, such as financial credit and access to the internet.

### **4. Pro-development SDT arrangements and measures**

Our recommendations with respect to negotiated outcomes relate to Mode 1 and Mode 4 access, since these are the modes in which service suppliers in small countries are primarily interested. With respect to Mode 1, developing countries should seek to have the developed country partners bind all sectors on Mode 1, without being linked to Mode 3. This is important to ensure modal neutrality. For political and security reasons, it is unrealistic to expect the developed countries to grant broad Mode 4 access, so that our recommendations with respect to this mode simply call for incremental improvements. Mode 4 commitments should not be solely linked to commercial presence, but should be expanded to include contractual service suppliers, independent professionals and trainees. Technicians and semi-skilled workers should also be covered. Workers granted access should be allowed to bring their spouses, and the issue of pension portability should be considered. Elements from bilateral labour agreements (BLAs), such as those allowing entry of a limited number of low-skilled workers on a seasonal basis, could be incorporated into RTAs. More effective approaches to address measures inhibiting Mode 4 market openings for service suppliers from developing countries should be formulated, including ways to address economic needs test (ENT) measures more effectively. These could include the development of binding rules and conditions spelling out their use in services schedules, as well as mechanisms for periodic review. The negotiation of mutual recognition agreements (MRAs) should also be encouraged, though this is a challenging undertaking among countries of different levels of development. Other recommendations with respect to negotiated outcomes include longer timeframes for implementation of commitments and access to government procurement opportunities on a non-reciprocal basis.

Another recommendation relates to the sharing of information and expertise. Recent RTAs negotiated by the USA establish committees on trade capacity building

that are tasked with overseeing all aspects of technical assistance, including helping to prioritise projects, requesting assistance from international organisations and others, and monitoring and assessing trade capacity building projects. This seems to be a promising approach, but it is too early to assess how effective it has been. Another approach is exemplified by the ‘Hub and Spokes’ project of the Commonwealth Secretariat, which places experts in the trade ministries of the recipient countries. A mid-term review of the project found that it was efficient and practical, and had had a positive effect on capacity building in the recipient countries.

A third set of recommendations relates to the benchmarking of technical assistance, both for the implementation of commitments and for the setting up of the regulatory structures that should accompany liberalisation. The smaller countries should seek to link their liberalisation commitments to the provision of technical assistance and the establishment of regulatory structures, following the precedent of the DDA negotiations on trade facilitation. They should also seek to have offers of technical assistance transformed from hortatory to mandatory provisions, so that failure to supply the specified assistance would provide a basis for resorting to dispute settlement.

Technical assistance to help smaller and poorer countries reduce supply-side constraints to service exports is also desirable.

As stated at the outset, in negotiating SDT outcomes in trade agreements developing countries should have a comprehensive national services strategy developed within a coherent policy framework. Such a strategy and framework can serve as a basis for formulating negotiating positions that reflect national interests, including different types of special and different treatment.

## **5. Assessing the impact of services trade liberalisation**

Assessing the impact of services trade liberalisation is an important but difficult task for economic researchers. The methodologies are still being developed and the data are inadequate, particularly in small and low-income countries. In addition, services are highly heterogeneous in their characteristics, ranging from essential infrastructure, such as telecom services, to consumer services, such as tourism. However, considerable progress has been made over the past decade in modelling the impact of liberalisation on services trade. Economists have attempted to estimate these impacts through four different types of approaches. The first focuses on the level of the firm, to measure changes in total factor productivity (TFP). The second uses economy-wide computable general equilibrium (CGE) models to assess the overall impact of liberalisation on services trade through incorporating all of the channels through which services may impact on national economies. The third, ‘frequency’, approach involves the examination of restrictive policies applied to service sectors and a conversion of these into frequency indicators (i.e. the more measures applied, the higher the frequency), then used in impact regressions. Similarly, the fourth, ‘gravity’, approach relies on indirect methods through gravity regressions to estimate what trade flows should be in a certain services

sector and then estimates the tariff equivalent of policies from the difference between estimated and observed flows.

The results of these modelling approaches suggest that barriers to services trade appear to be substantial, especially for Modes 3 and 4. However, the approaches are still fraught with difficulties and drawbacks, such as the lack of availability of universally accepted measures of restrictions on services that can be converted into cost and price wedges in these various modelling frameworks. Despite their shortcomings, estimates from these modelling approaches indicate the relative magnitude of prevailing barriers, as well as the distribution of the gains to be realised from increasing competition in services markets on income and welfare. Across the board, the research suggests that potential gains from liberalisation may be quite large because of the numerous linkages between services and the rest of the economy

## **6. Approaches to advance SDT in a multilateral context**

While there is a great deal of hortatory language in the GATS and in various DDA documents about the importance of providing SDT to developing countries, it does not seem to have had the desired effect. We recommend the development of a reference paper, along the lines of the telecommunications reference paper that would be open to adoption by WTO members. It would create binding commitments to provide technical assistance and benchmark the provision of assistance by linking it to the implementation of commitments by developing countries.

Another approach that has considerable merit is the proposal under discussion in the Services committee that developed countries should be granted a waiver from the most favoured nation (MFN) obligations of the GATS to enable them to establish a generalised system of preferences (GSP)-type programme in favour of LDCs with respect to services. We also recommend following in the multilateral setting some of the approaches we have recommended in the RTA context: a collective decision by members to delink commitments on Mode I access from commercial presence; various incremental improvements to Mode 4 access; and the granting of non-reciprocal access to the government procurement markets of the developed countries.



# Introduction: Definition of Special and Differential Treatment

Special and differential treatment is generally viewed as an important means of assisting small and low-income countries to benefit from opportunities from international trade in services and to make trade in services supportive of economic development.<sup>1</sup> However, it is fraught with challenges of both a conceptual and practical nature. Devising arrangements and measures to make SDT an effective policy tool in reality is very challenging and one of the reasons that SDT has often remained in the realm of ‘best endeavours’ or exhortatory clauses.

Agreeing upon what constitutes special and differential treatment is the first challenge. There are different conceptions as to what it includes. For some, SDT implies only explicitly preferential and non-reciprocal trade measures. Others view SDT as including the asymmetrical outcome of negotiated trade agreements. For all, SDT usually implies some form of technical assistance, but what this assistance involves and whether or not it is compulsory or hortatory is usually left vague. Special and differential issues appear in different names and forms, including ‘preferential regimes’, ‘development dimension’, ‘policy spaces’, ‘flexibility’ and ‘development friendly’ rules, among others. In this paper most attention is on negotiating outcomes and technical assistance, because in reality these are the forms of SDT that smaller and poorer countries are most likely to receive.

What everyone seems to agree on is that SDT should result in improving the competitiveness of developing country suppliers of services and increasing their degree of participation in world markets. SDT should thus help reduce the gaps between developing and developed countries in terms of share of world trade, diversification of production, and institutional and human resource capacity by permitting certain policy measures and international rules that should partially compensate for these differences.

One of the key priorities of the Doha Development Round of trade negotiations is strengthening the participation of developing countries in the multilateral trading system. SDT can be instrumental in achieving this goal, when it is appropriately designed. SDT can also be useful for advancing the causes of greater competitiveness and heightened trade in the context of regional trade agreements, particularly for those between partners of unequal size and levels of development.

SDT is applied rather differently in the GATS than in other WTO Agreements,<sup>2</sup> in which it often takes the form of less rigorous obligations and/or longer time periods for implementation.<sup>3</sup> Under the GATS, by contrast, the general obligations – such as those relating to MFN treatment and domestic regulation – apply equally to all members, whether they are developed, developing or LDCs. No additional time was given to developing countries or LDCs for implementation of these obligations. The agreement does call for technical assistance, but without any binding commitments as to amount



or timing. It also contains some 'soft', best endeavour type statements concerning the needs of developing countries.

However, the architecture of the GATS does allow all WTO members an unparalleled degree of flexibility to choose the nature, extent and speed of their services liberalisation. In addition, the agreement specifically calls for more negotiating flexibility for developing countries, and this can be viewed as a form of SDT. Indeed, the freedom given by the GATS to members to undertake the number and type of commitments and thus the degree of liberalisation they desire has led the OECD to describe the GATS as one of the most 'development friendly' of the WTO agreements (OECD, 2006). RTAs offer a similar degree of flexibility.

SDT in this context should be seen somewhat differently from the way in which it is viewed in the case of goods, where different levels of (measurable) tariff reductions are easily understood and where introduction of these changes domestically does not require much technical expertise. In contrast, given the heavily regulated nature of most service industries, liberalisation requires regulatory and structural changes that pose considerable challenge and require appropriate expertise. Thus, much of the justification for calling for SDT in services in the form of technical assistance for regulatory reform stems from the intrinsic nature of service activities themselves. Too rapid or poorly sequenced services liberalisation, unaccompanied by appropriate regulatory reform, can be harmful and counterproductive. This is the case whether services liberalisation is being carried out for domestic reasons only or as part of a negotiated outcome in the context of the GATS or of RTAs.

In this paper we first analyse the provisions of the GATS, as well as the outcomes of the Uruguay Round negotiations relevant to special and differential treatment in services, the SDT elements in the DDA offers that are publicly available, and the provisions and outcomes of a number of RTAs.<sup>4</sup> The paper focuses on the two modes of supply where developing countries can most benefit from expanded trade in services for their exports: Mode 1, cross-border supply of services; and Mode 4, the movement of natural persons.<sup>5</sup> It then assesses the difficulties faced by firms in small and low-income countries in maximising export and investment opportunities from RTAs, and makes recommendations for devising pro-development SDT arrangements and measures that could be considered by Commonwealth developing countries that are negotiating RTAs liberalising trade in services. The paper discusses ways in which the benefits of services trade liberalisation for small, low-income countries might be measured. Finally, it advises on approaches through which SDT could be advanced in the WTO.

The categories of SDT that we have chosen for analysis are the following:

## **1. Architecture of the agreements**

As explained above, the GATS and regional trade agreements are designed in a way that gives countries a great deal of flexibility in term of what sectors they wish to liberalise, as well as the degree and speed of liberalisation. This gives developing countries and LDCs room to liberalise only to the extent and at the pace that they wish.

## **2. Flexibility in obligations and procedure**

This category covers the provisions recognising that developing countries are not expected to make as extensive market-opening commitments as are the developed countries. In addition, this category might include allowing developing countries to offer measures of assistance to their service providers to encourage exports or the application under more lenient conditions of safeguards and subsidy rules or in meeting procurement thresholds, should these disciplines be agreed upon.<sup>6</sup> The safeguards issue is discussed in more detail in Section 2.8.

## **3. Negotiating outcomes**

This part of our analysis examines the results of the negotiations in the GATS to determine whether the flexibility built in to the agreement has been realised in practice, in the form of fewer commitments on the part of developing countries. Although none of the North–South RTAs we have examined contain specific language calling for flexibility in the negotiations, we have analysed these agreements to determine whether they too have resulted in different levels of commitments by the developed and developing countries

## **4. Technical assistance**

This is a broad category that encompasses many different types of actions and measures in the services area and may include the furnishing of information as well as actual expertise for services promotion or regulatory reform. For example, the GATS requires developed countries to establish contact points to facilitate the access of developing countries' service suppliers to information related to their respective markets concerning commercial and technical aspects of the supply of services; registration, recognition and obtaining of professional qualifications; and the availability of services technology. Other forms of technical assistance can include help with regulatory reform for key infrastructure services or the training of experts in the services area.

## **5. Longer time periods for implementation**

This category of SDT gives developing countries more time to put into place agreed liberalisation. It is therefore legally binding, but does not allow variations in the disciplines themselves. Although the GATS itself and most of the RTAs we have examined contain no general provisions allowing developing countries more time to implement their obligations, it is possible in the negotiating process to undertake to liberalise a particular sector or mode at some point in the future, rather than immediately. However the effectiveness of the transition periods in achieving their objectives is not necessarily guaranteed or factored in. An UNCTAD report noted that:

Time-bound derogation from obligations also assumes the existence of both institutional and resource capacity of take maximum advantage of the relevant provisions. For most LDCs these capacities do not exist.<sup>7</sup>

The additional time often serves no function if appropriate technical assistance is not provided during that time.<sup>8</sup>

**6. 'Best endeavour' clauses.**

These provisions constitute the equivalent of promises to attempt to carry out agreed provisions, but they are not binding and are difficult to assess, as trade agreements usually contain no mechanisms for a monitoring process or any benchmarks to assess the actual implementation and effectiveness of such provisions.

# Special and Differential Treatment Commitments Provided to Developing Countries

## 2.1 Introduction

This paper examines special and differential treatment commitments and provisions in the GATS, the DDA offers, and key North–South and South–South regional trade agreements, as summarised in Table 2.1.

**Table 2.1. SDT aspects of the GATS, DDA and selected RTAs**

	<b>GATS</b>	<b>DDA</b>	<b>RTAs</b>
Architecture	Great flexibility	Same as GATS	Great flexibility
Recognition of non-reciprocity for developing countries	Yes	Yes	Recognised in a few RTAs
Negotiated outcomes	Many fewer commitments by developing countries	n/a	Many fewer commitments by developing countries
Technical assistance (TA)	To be provided by WTO rather than members; no commitments as to time or amount; in practice small amounts provided	Called for by negotiating documents	Very few RTAs call for TA and these contain no commitments as to time or amount
Longer time for implementation	None for general obligations; market-opening commitments can be delayed by making pre-commitments	n/a	A few RTAs allow additional time for implementation
‘Best endeavours’ clauses	Yes	Yes	Contained in a few RTAs

As mentioned in the introduction, asymmetry of outcome is viewed by some as a form of SDT that is built into the structure of the agreements, and it is potentially the most significant. We therefore begin our analysis with a discussion of the architecture of the GATS and services RTAs that allows for asymmetrical results, followed by a description of provisions that acknowledge that developing countries (and LDCs) are not expected to make as many commitments as developed countries. We next examine the *outcomes* of the negotiations, in terms of the number of commitments (in the case of positive list agreements) or the number of non-conforming measures (in the case of

negative list agreements) in order to determine the extent to which the developing country parties have in fact committed to a lesser degree of market opening than the developed country parties. We then describe other provisions in the agreements that provide SDT: technical assistance, time-limited derogations from obligations and ‘best endeavour’ clauses. Finally, this section provides a brief discussion of the pros and cons of STD.

## **2.2 Architecture of services trade agreements**

### **2.2.1 The GATS**

The GATS gives great flexibility to WTO members as to the extent to which they open their service markets to foreign competition. The ways in which they can exercise that flexibility include the following:

- The GATS uses the positive list or ‘bottom-up’ approach. Under this approach each member chooses for itself which service sectors and sub-sectors and which of the four modes of supply<sup>9</sup> on which to make market-opening commitments, and there is no minimum requirement as to the number of commitments that must be made.<sup>10</sup> This contrasts with the ‘negative list’ or ‘top-down’ approach used in some RTAs, under which all sectors and sub-sectors are opened, except with respect to scheduled non-conforming measures.
- Even where a member decides to open a particular sector, it can place market access limitations on foreign service suppliers with respect to the number of suppliers, the volume of trade, the number of natural persons who may enter, the legal form of the service supplier and the maximum percentage of foreign capital (GATS Article XVI).
- In contrast to the GATT and many of the Uruguay Round agreements on trade in goods, which require national treatment in all cases (except government procurement), under the GATS members can continue to discriminate against foreign service suppliers even in sectors and modes in which they have made market-opening commitments, provided that they list a national treatment exception in their schedules (GATS Article XVII).
- Members were not required to open scheduled sectors or sub-sectors immediately, but instead could undertake to open them at some future time (GATS Article XX.1 (d)).
- During the Uruguay Round negotiations members were permitted to take exceptions to the MFN principle, although ‘in principle’ these were not to exceed ten years (GATS Article II.2).
- Members were not required to make commitments that corresponded to their actual degree of market opening. Thus, in many cases service markets are considerably more open than reflected in the GATS commitments.

## **2.2.2 The Doha Development Round**

The services negotiations in the DDA follow the same positive list approach as in the Uruguay Round.

## **2.2.3 Regional trade agreements**

Many RTAs use the positive list approach described above. This is generally preferred by developing countries, since there is little danger of inadvertently including a sector or sub-sector which the country did not intend to schedule. Other RTAs, however, use the so-called negative list approach, under which all service sectors are presumed to be opened except to non-conforming measures that are scheduled. This is a more transparent procedure, since all barriers to service trade are scheduled, whereas in the case of the GATS-type, positive list approach, barriers are only scheduled with respect to sectors and sub-sectors in which commitments have been made. The USA and Canada, in particular, prefer the negative list design. It requires rigorous preparation, as every barrier to trade in services, not just those in the sectors where commitments are to be made, must be inventoried before negotiations begin. In the view of some, this approach is less flexible than the positive list approach because the exceptions, rather than the market-opening commitments, have to be negotiated.

## **2.3 Provisions acknowledging that reciprocity is not expected from developing countries**

### **2.3.1 The GATS<sup>11</sup>**

GATS Article XIX specifically acknowledges that developing country members are not expected to open their service markets to the same extent as developed country members:

There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalising fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

Even more flexibility was given to LDCs. Paragraph 3 of Article IV provides that:

Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs

As discussed in Section 2.4 below, the level of commitments made by developed coun-

tries in the Uruguay Round GATS negotiations was significantly higher than that for developing countries, reflecting the built-in asymmetry.

The GATS also gives greater flexibility to developing countries with respect to RTAs. GATS Article V.1 authorises WTO members to enter into agreements liberalising trade in services, provided that the agreements have ‘substantial sectoral coverage’ in terms of the number of sectors, the volume of trade affected and the modes of supply, and that they provide for the elimination of ‘substantially all discrimination’ in the sectors covered by the agreement. ‘Substantial sectoral coverage’ has not been interpreted by WTO panels or by the appellate body. The comparable term ‘substantially all of the trade’ in Article XXIV of the GATT (which authorises regional trade RTAs covering trade in goods) is generally considered by experts to mean somewhere in the order of 80 to 90 per cent (Sauvé and Ward, 2009; Scollay and Grynberg, 2005), and ‘substantial sectoral coverage’ in GATS Article V can reasonably be interpreted as falling within the same range.

However, Paragraph 3 (a) of Article V calls for flexibility with respect to the Article V.1 conditions (‘especially the elimination of substantially all discrimination’) where developing countries are ‘parties to’ a services trade agreement, ‘in accordance with the level of development of the countries concerned’.<sup>12</sup> Other than the reference to ‘the level of development’, the extent of this flexibility is not spelled out in the agreement, and it has not been discussed by WTO panels or by the appellate body.<sup>13</sup>

### **2.3.2 The Doha Development Round**

As part of the Doha Development Round, several documents have been agreed by WTO members that call for special treatment for developing countries.<sup>14</sup> With respect to asymmetry of outcome, the negotiating modalities agreed for the Doha Development Round contain the same emphasis on flexibility as does the GATS. The *Guidelines and Procedures for the Negotiation on Trade in Services* (S/L/93, adopted on 29 March 2001) and the ‘July 2004 Package’ (WT/L/579, 2 August 2004) recognise the need to provide flexibility for developing countries in negotiations in similar or identical terms as Article XIX.2 of the GATS. In addition, the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC, adopted on 22 December 2005), calls for special attention to be paid to sectors and modes of supply of export interest to developing countries. Finally, the ‘July 2008 Package’ stated that:

Commitments shall be commensurate with the levels of development, regulatory capacity and national policy objectives of individual developing countries.<sup>15</sup>

With respect to LDCs, the *Modalities for the Special Treatment for Least Developed Country Members in the Negotiations on Trade in Services* (TN/S/13, 5 September 2003) states that members should not seek the removal of conditions that LDCs impose on market access; that LDCs are to be given flexibility in terms of opening fewer sectors and liberalising fewer transactions; and that they are not expected to provide full national treatment. The document also calls upon members to take measures aimed at

increasing the participation of LDCs in trade in services. The Hong Kong Ministerial states clearly that LDCs 'are not expected to undertake new commitments' (WT/MIN(05)/DEC, 18 December 2005).

The DDA offers are in the form of proposed schedules, and therefore do not contain any specific proposals for SDT provisions, such as technical assistance. However, two developed country offers pay at least lip service to SDT. New Zealand's revised offer 'takes particular account of requests for liberalisation of market access in sectors and modes of supply of interest to developing countries, and includes new and improved commitments in Mode 4' (TN/S/O/NZL/Rev.1, 17 June 2005). The EC revised offer states that it was made in consideration of the requests that had been received, particularly those from developing countries (TN/S/O/EEC/Rev.1, 29 June 2005).

### **2.3.3 Regional trade agreements**

Few of the agreements we have examined contain provisions acknowledging that reciprocity is not expected from the poorer members. The Association of Southeast Asian Nations (ASEAN)–China and ASEAN–Korea free trade agreements call for flexibility for the newer ASEAN members (Cambodia, Laos, Myanmar and Vietnam) in terms of opening fewer sectors and liberalising fewer types of transactions. Four agreements, USA–Chile, USA–Peru, USA–Morocco and Canada–Peru, simply declare that transparency mechanisms for small agencies in the developing country party may have to take account of budget constraints. The Chile–Canada Free Trade Agreement (FTA) reserves for Chile the right to adopt currency measures to maintain currency stability.

## **2.4 Negotiated outcomes**

### **2.4.1 The GATS**

A number of studies have shown that the developing countries did indeed make significantly fewer commitments in the Uruguay Round than did the developed countries.<sup>16</sup> Simply comparing the number of commitments is a fairly crude way of measuring market opening. It reflects neither the volume of trade in a particular sector or sub-sector, nor the extent to which the commitments are subject to scheduled limitations. However, given the data inadequacies,<sup>17</sup> it is probably the only practical approach to this exercise.

#### ***Commitments by sector***

The available data can be analysed in various different ways, each of which shows that the developed countries have made a much higher level of commitments than the developing countries and LDCs.



In the Uruguay Round and the subsequent negotiations on financial services and telecommunications, the average number of sub-sectors in which developing countries made commitments was less than half of that for the developed countries, and the LDCs made only a quarter as many (Adlung and Roy, 2005).<sup>18</sup>

As shown in Table 2.2, all but one of the 24 developed countries made commitments in more than 80 sectors and sub-sectors, whereas the vast majority of the developing countries and transitional economies made commitments in 60 or fewer sectors and sub-sectors. Only 20 of the more than 100 developing countries and transitional economies made commitments in more than 80 sectors and sub-sectors, and 67 made commitments in 40 or less.

**Table 2.2. Number of commitments made by developed countries and by developing countries and LDCs**

Sectors committed	Developed	Developing and LDCs
≤20	0	44
21–40	0	23
41–60	0	10
61–80	1	11
81–100	1	11
101–120	3	4
≥121	19	5

Source: 'Recent Developments in Services Trade – Overview and Assessment', S/C/W/94, 9 February 1999

Marchetti (2007) analysed the service commitments made in 14 sectors and sub-sectors by developed countries, countries in transition and developing countries, including LDCs, in the Uruguay Round, based on WTO data. His analysis showed that in eight of the sectors/sub-sectors, more than 90 per cent of the developed countries made commitments, compared with only one sector in the case of developing countries and LDCs. In only three sectors/sub-sectors did less than half of the developed countries make commitments, whereas in eight sectors/sub-sectors fewer than 30 per cent of the developing countries and LDCs made commitments.

### ***Commitments by mode of supply***

Not much work has been done analysing GATS commitments in terms of modes of supply. Mode 1, cross-border supply, is an area that is of particular interest to developing countries, but is often conditioned upon commercial presence (Mode 3).<sup>19</sup> This generally puts it out of reach for the smaller developing countries, which often do not have service suppliers with the capacity to invest in other countries (Hoekman, 2009).

Marchetti (2007) has shown, based on an analysis of 37 sectors and sub-sectors, that the percentage of unrestricted commitments made by all groups of countries

(developed, transitional, developing and LDCs) is considerably higher for Mode 2 than for the other modes, and that they are negligible in the case of Mode 4, which is of course of most interest to the developing countries. According to a recent WTO paper, 60 per cent of Mode 4 commitments are limited to highly skilled personnel, such as executives, managers and specialists, and two-thirds of these only permit such entry as intra-corporate transferees in conjunction with Mode 3 entry,<sup>20</sup> which again generally puts it out of the reach of smaller countries. Twenty per cent cover business visitors negotiating the sale of services or setting up a commercial presence, making this again out of reach for most poor countries. Only 5 per cent cover other categories, none of them explicitly for lower skilled labour.

Interestingly, Marchetti also notes that a higher proportion of LDCs made unrestricted commitments in all four modes than the other groupings, perhaps because they did not understand the process.

#### **2.4.2 The Doha Development Round**

It is not possible within the scope of this study to compare the market-opening offers made by developed countries with respect to Mode 1 with those made by developing countries.<sup>21</sup> However, some analysis has been done of the extent to which the developed countries have improved Mode 4 access in the DDA offers.<sup>22</sup> The state of offers for Mode 4 in the Doha Round on the part of developed WTO members is mixed, with progress being shown by some countries and no progress at all by others.

Of the initial and revised services offers submitted by developed country WTO members in 2005, those for three countries – Australia, the USA, and Iceland – show no improvements in market access for Mode 4 over their Uruguay Round commitments. Japan's initial offer appears to be closely in line with existing conditions for admission of skilled professionals but these may be affected by economic needs tests which are retained in the offer. New Zealand's revised offer includes broad coverage of occupations of interest to developing countries but ties them to Mode 3, so that the categories only cover investment-related movement. Switzerland proposes to remove quotas on the overall number of work permits, but maintains its own interpretation of 'seeking employment', which excludes individual service providers.

Among the new and improved revised offers, that of Canada marks progress in Mode 4 in the area of transparency, proposing to indicate the exact conditions surrounding the entry and stay of the various categories of workers. The offers of the EC and Norway seem to go furthest in terms of market opening in Mode 4. The EC proposes to eliminate the economic needs test attached to most of the categories included in its schedule, and introduces a new category of graduate trainees, similar to what has been done in its EPA with CARIFORUM, which is of great interest to developing countries as a means of transfer of expertise (TN/S/O/EEC/Rev.1, June 2005). The EC entry for contractual service suppliers (CSS), which holds most potential for the export interests of developing countries, is improved in scope and duration in its

offer, and a new category of independent professionals (IPs) is included. These market-expanding proposals for Mode 4 in the offer for the 27 members of the EC represent very positive steps and should hopefully contribute toward creating momentum in Mode 4 liberalisation should the Doha Round be reinvigorated.

The revised offer of Norway (TN/S/O/NOR/Rev.1, June 2005) includes the additional category of specialists who would be authorised for temporary entry and work for up to two four-year periods, as well as a new category of ‘natural persons providing services without being employed by a juridical person who has a commercial presence in Norway’, which are effectively independent service suppliers. Economic needs tests are not required for these service suppliers, who can stay up to three months in any 12-month period, but must obtain a work permit and work within one of the scheduled sub-sectors.

### **2.4.3 Regional trade agreements**

As discussed above, the modes of supply of most interest to developing countries, particularly the small and low-income ones, are Modes 1 and 4. We therefore discuss each of these in turn.

#### ***Mode 1 – Cross-border***

We have compared the number of Mode 1 commitments made by the developing and developing country parties in the positive list agreements we have reviewed. Despite the limitations of this approach, as discussed in the review of the Uruguay Round GATS commitments in Section 2.4.1, the results, shown in Table 2.3, are quite striking, showing that on average the developed countries made more than three times as many commitments as the developing countries.

In the case of negative list agreements, of course, the fewer the scheduled non-conforming measures, the more open is the trade in services. Our analysis of a number of negative list service agreements, summarised in Table 2.4, shows that, as expected, the developed countries have on average scheduled significantly fewer non-conforming cross-border measures than the developing countries – 12 as opposed to 19.<sup>23</sup> There are, however, some anomalies. In the North American Free Trade Agreement (NAFTA), Canada and the USA scheduled more non-conforming cross-border measures than Mexico. In its free trade agreement with Mexico, Japan scheduled 32 measures, compared with only 22 by Mexico. As in the case of the analysis of the negotiated outcomes of the GATS negotiations and the positive list RTAs, a simple comparison of the number of scheduled non-conforming measures fails to take account of the volume of trade affected by the measures, and is therefore a rather crude means of measuring asymmetries of outcome.<sup>24</sup>

**Table 2.3. Number of Mode 1 commitments in GATS-type positive list service FTAs<sup>25</sup>**

<b>Agreement</b>	<b>Developed country member(s)</b>	<b>Developing country member(s)</b>
Japan–Indonesia	108	54
Japan–Brunei Darussalam	93	20
Japan–Malaysia	101	57
Japan–Philippines	99	25
ASEAN–Australia–New Zealand	Australia 99 New Zealand 93	Brunei Darussalam 20 Cambodia 67 Indonesia 56 Laos 22 Malaysia 53 Myanmar 18 Philippines 19 Singapore 49 Thailand 27 Vietnam 59
Australia–Thailand	80	16
<b>Average</b>	<b>96</b>	<b>31</b>

Source: Author's analysis

**Table 2.4. Number of non-conforming cross-border measures in services negative list FTAs**

<b>Agreement</b>	<b>Developed country member(s)</b>	<b>Developing country members(s)</b>
Strategic Economic Partnership Agreement	New Zealand 5	Chile 18 Singapore 33 <sup>26</sup>
NAFTA	Canada 16 United States 9	Mexico 6
US–Chile	6	11
US–Peru	6	10
US–Morocco	6	34
US–Colombia	5	33
Canada–Peru	15	20
Canada–Chile	17	13
Canada–Colombia	16	8
Japan–Mexico	32	22
<b>Average</b>	<b>12</b>	<b>19</b>

Source: Author's analysis

## **Mode 4 – Temporary Movement**

In contrast to the lack of progress in the WTO, there has been an increasing amount of activity in trade negotiations at the regional level, with the completion of numerous RTAs, a large number of which incorporate Mode 4 as part of the package. Interesting initiatives have been taken by some developed countries in the regional context. Here we provide an overview of these developments.<sup>27</sup> A more detailed discussion, on a country-by-country basis, is contained in Annex 5.

Many RTAs have gone much further than the GATS in the area of Mode 4 or temporary movement. Some developed countries have expanded the number of categories of skilled professionals covered, numbering more than 30 in agreements negotiated by the EU, Japan and Canada. Distinct progress has been made with respect to professional services. In addition, members of some RTAs have created innovative semi-skilled categories, such as technicians (Canada), nurses and care-workers (Japan), and installers (New Zealand). Moreover, in several agreements, the number of professionals (broadly defined) allowed to enter a country has been left uncapped, and these professionals have been guaranteed a longer length of stay and the possibility of long-term visa renewals.

The trading partners that have been the most willing to open their markets more widely for foreign workers from developing RTA partners have been countries that face labour shortages. Canada has shown itself the most generous in this respect, with Japan being selective and sector specific in responding to its labour market needs. The USA and the EU, who have both faced heavy inward migration flows from Latin America (in the case of the USA) and from North Africa and Eastern Europe (in the case of the EU), have been less willing to bind greater market openness for foreign workers. Nonetheless, the EU did expand its coverage of labour categories in its EPA with CARIFORUM members.

A final point is that the results are asymmetrical; developing countries have clearly not taken on as many commitments for labour categories or numbers from their partner countries.<sup>28</sup> These precedents should provide encouragement to Commonwealth small and low-income countries that some of their priorities for forward movement in Mode 4 can eventually be addressed in RTAs with developed country partners when they are well-defined and well-negotiated, although the current world economic situation makes this a more challenging prospect for the time being.

## **2.5 Technical assistance**

### **2.5.1 The GATS**

Unlike many of the WTO Agreements, the GATS does not call for developed country members to provide technical assistance to developing country members. Instead, GATS Article XXV.2 states that technical assistance at the multilateral level is to be provided by the WTO itself, although it contains no commitment as to the amount of technical

assistance to be provided or the time within which it is to be delivered.<sup>29</sup> In practice, of course, many individual WTO members, as well as international organisations besides the WTO, have provided technical assistance in the area of services.

However, the amount of such technical assistance has been quite limited compared with that given with regard to other trade fields. This no doubt reflects the fact that the GATS imposes very few obligations on its members other than their negotiated commitments, and that technical assistance is not seen to be as necessary as in other areas, particularly with respect to agreements that impose significant obligations on all members, developed and developing, such as those on technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures. An OECD report noted that ‘the fact that the agreement does not *require* liberalisation or implementation of resource-intensive obligations is matched by its limited requirements on technical assistance and the absence of an obligation for Members to provide technical assistance to other Members’ (OECD, 2006; emphasis in original).

The Doha Development Agenda Trade Capacity Building Database shows that even in 2002, when technical assistance with respect to services was far greater than in any other year between 2001 and 2007 (the last year reported), services represented only 0.03 per cent of all technical assistance activities, and only 6.5 per cent of all technical assistance dollars. The overall value of technical assistance dedicated to services between 2001 and 2007, US\$42 million, was dwarfed by the amounts provided in areas such as trade facilitation (US\$1.51 billion), regional trade agreements (US\$470 million), SPS (US\$405 million), and TBT (US\$250 million).<sup>30</sup>

## 2.5.2 The Doha Development Round

Article 14 of the *Guidelines and Procedures for the Negotiations on Trade in Services* (2001) (see Annex 4) calls for technical assistance to be provided on request in order to carry out national and regional assessments. In addition, the *Modalities for the Special Treatment for Least-Developed Countries in the Negotiations on Trade in Services* (2003), reproduced in Annex 4), specifically calls for technical assistance to continue to be provided to the LDCs in the following areas:

- Strengthening of domestic services capacity
- Building institutional and human capacity
- Undertaking appropriate regulatory reforms
- Carrying out national assessments of trade in services in overall and sectoral bases

Paragraph 10 of the Hong Kong Ministerial Declaration calls for targeted technical assistance to enable the developing countries and LDCs to participate effectively in the negotiations (WT/MIN(05)/DEC, 22 December 2005). This is reiterated in the ‘July 2008 Package’.<sup>31</sup>

### 2.5.3 Regional trade agreements

Few of the RTAs reviewed in this paper contain provisions relating to technical assistance in the area of services. The EC–CARIFORUM FTA states that the parties agree to provide technical assistance designed to, *inter alia*, improve the export capacity of service suppliers and to develop and implement regulatory regimes in the sectors where CARIFORUM states have made commitments. In addition, the ASEAN–China and ASEAN–Korea agreements specify that assistance should be given to the newer ASEAN members in terms of strengthening their service capacity. Like the technical assistance provisions in the GATS, these provisions impose no commitments in terms of amount or timing.

Recent FTAs negotiated by the USA contain more substantive provisions on technical assistance. These are discussed in section 4.2 of this paper.

## 2.6 Longer time periods for implementation

### 2.6.1 The GATS

As noted in the introduction, developing countries were not given additional time to implement the general obligations of the GATS. Of course, the negotiating flexibility built into the agreement allowed countries, if they wished, to delay the implementation of market-opening commitments. Most of the pre-commitments, i.e. commitments to liberalise in the future, in the Uruguay Round, were in fact made by developing countries (OECD, 2006). Many of them were made with respect to basic telecommunications (Mattoo, 2002), to allow time for the industries to move from monopoly or duopoly positions to a more competitive system.<sup>32</sup>

### 2.6.2 The Doha Development Round

As also explained above, we have not been able to examine the DDA offers in detail other than for Mode 4, so cannot say to what extent offers by developing countries are for future rather than present market-opening.<sup>33</sup>

### 2.6.3 Regional trade agreements

Six of the examined North–South RTAs provide additional time for implementation of commitments, but in four cases this only applied to one or two sub-sectors and may have been of limited value. The ASEAN–Australia–New Zealand FTA gives some ASEAN members additional time to implement certain commitments with respect to telecommunications.<sup>34</sup> The only one of the agreements examined here that provides additional implementation time for all sectors is the Trans-Pacific Strategic Economic Partnership Agreement (P4), which stipulates that the services chapter would not apply to Brunei Darussalam for two years.

Only two of the 12 South–South agreements reviewed here call for more time for

implementation of obligations, though without laying out specific timeframes. The CARICOM agreement provides that disadvantaged countries<sup>35</sup> are to be given more time to apply national treatment to services trade. And Decision 439 of the Andean Community, establishing a regime governing trade in services, provided that Bolivia and Peru were to be given preferential treatment with respect to deadlines and temporary exceptions from their obligations.

## 2.7 ‘Best endeavour’ provisions

### 2.7.1 The GATS

The other SDT provisions in the GATS are mostly ‘best endeavour’ type clauses, which impose no binding obligations on the WTO members. These include the following:

- **GATS Article IV** calls for the facilitation of increased participation in world trade by developing country members through negotiated commitments relating to the strengthening of their domestic services capacity, the improvement of their access to distribution channels and information networks, and the liberalisation of market access in sectors and modes of supply of export interest to them. In addition, developed country members (and other members as far as possible), are to establish contact points to facilitate the access of service suppliers in developing country members to information concerning commercial and technical aspects of services supply, recognition of professional qualifications and the availability of services technology.<sup>36</sup> Special priority is to be given to LDCs with respect to these requirements.
- **GATS Article XV** provides that negotiations with regard to subsidies are to recognise the role of subsidies in relation to the development programmes of developing countries and to take account of the needs of developing countries for flexibility in this area.
- **GATS Article XIX.3** provides that the negotiating guidelines for each successive round of negotiations are to provide special treatment for LDCs. It also provides that negotiating guidelines for each round ‘shall establish modalities for the treatment of liberalisation undertaken autonomously by members since previous negotiations.’<sup>37</sup>
- Paragraph 5 (g) of the **Annex on Telecommunications** recognises the right of developing countries to place reasonable conditions on access to and use of public telecommunications networks and services necessary to strengthen telecommunications infrastructure and service capacity.

### 2.7.2 Doha Development Round

The Modalities for the Treatment of Autonomous Liberalisation (TN/S/6), adopted by the Council on Trade in Services in 2003, provides details as to how members are to



claim credit for autonomous liberalisation in the course of the negotiations, including criteria for assessing the value of such liberalisation. They provide that the modalities are to be used, *inter alia*, ‘as a means of promoting the economic growth and development of developing countries’ (para. 13), and that in applying the modalities members are to take account of the flexibility given to developing country members as well as to their level of development (para. 14). We have classified this as a ‘best endeavours’ provision, since although it was considered a breakthrough in the services negotiations at the time, the Modalities create no obligation on members to grant credit for autonomous liberalisation.

The ‘Elements Required to Complete the Services Negotiations’, appended to the services group chairman’s report of 28 July 2008 (T/N/S/34), part of the ‘July 2008 Package’, contains several hortatory statements concerning developing countries:

The negotiations shall aim at a progressively higher level of liberalisation of trade in services with a view to promoting the economic growth of all trading partners, and the development of developing and least-developed countries. ... Responses [to requests] shall, where possible, substantially reflect current levels of market access and national treatment and provide new market access and national treatment in areas where significant impediments exist, in particular in sectors and modes of supply of export interest to developing countries, such as Modes 1 and 4, in accordance with Article IV of the GATS.

Members shall continue to give due consideration to proposals on trade-related concerns of small economies. In recognising their special situation, further liberalisation shall be in accordance with their development needs.

### **2.7.3 Regional trade agreements**

Few of the agreements examined here contain ‘best endeavour’ provisions. The ASEAN–Australia–New Zealand FTA declares that the parties recognise the importance of facilitating the participation of newer ASEAN members (defined in the agreement as Cambodia, Laos, Myanmar and Vietnam) through specific commitments relating to, *inter alia*, strengthened service capacity, improved access to distribution channels and networks, and commitments in areas of export interest to the new ASEAN members. The ASEAN–China and ASEAN–Korea agreements call for assistance to the newer ASEAN members in terms of improved access to distribution channels and networks, and liberalisation of sectors and modes of interest to them. The Revised Treaty of Chaguaramas of 2001, setting out the CARICOM Single Market and Economy, states that the special needs of LDCs are to be taken into account with respect to the removal of restrictions on services.

## **2.8 Pros and cons of special and differential treatment**

It is extremely difficult to assess the overall impact of SDT provisions. We are not aware of any studies that have been done to measure their overall value to developing

countries, and it is therefore only possible to evaluate them qualitatively rather than quantitatively. In doing so it is important to distinguish between different types of SDT. Certain types of SDT are clearly beneficial to developing countries. Improved access to the markets of the developed countries obviously assists service suppliers in the smaller and poorer countries. Technical assistance and the ability to delay implementation assist the developing countries in carrying out their market-opening commitments, as well as the challenging task of setting up the sound regulatory structures that should accompany liberalisation of service sectors. 'Best endeavour' type provisions clearly have little or no value to developing countries other than their hortatory value and the moral pressure that they place on developed countries to act on their promises.

What is more difficult to assess is the impact of non-reciprocity – the explicit (in the case of the GATS) or implicit (in the case of most RTAs) recognition that developing countries are not expected to make as many market-opening commitments as the developed countries.<sup>38</sup> As we have seen, this principle has been amply borne out in practice. The developed countries made more than twice as many commitments in the Uruguay Round as did the developing countries, and four times as many as the LDCs. The pattern for RTAs is similar. The key question is whether developing countries, particularly the poorer ones, benefit from providing a lower degree of market access in their commitments.<sup>39</sup>

As discussed in section 5 of this paper, assessing the cost of barriers to services trade and the impact of removing them is notoriously difficult. See, for example, Hoekman (2006) and Marchetti (2007). The basic data are poor, in part because, unlike in the case of goods, they are not collected at the border (with the exception of Mode 4). And each of the various ways in which experts have tried to measure the impact of liberalisation has serious conceptual problems. For example, determining the frequency of measures does not distinguish between those measures that actually have an impact on trade and those that are redundant, nor does it estimate the relative effect of different measures (Whalley, 2004). Differences in costs of services in different countries, also used in an attempt to measure the effect of liberalisation, can simply reflect differences in regulatory regimes or in the quality of services, rather than the impact of trade barriers (*ibid.*).

Nevertheless, there is a general consensus that protection against imports of trade in services can impose heavy costs on a country, since it imposes a tax not only on consumers, but also on producers in general. Marchetti (2004) has pointed out that:

Lack of storage capacity, poor stock management, unreliable transportation, expensive communications, poor product design, insufficient and costly financing, inadequate legal advice, or even outdated software products and processes are key determinants of firms' competitiveness and can even destroy otherwise favourable prospects for meeting domestic or export demand.

One study has concluded that Africa's poor trade performance is almost exclusively the result of poor infrastructure services (Hodge, 2002).

It is generally accepted, based on many studies, that liberalisation of trade in services produces welfare benefits, not just for the global economy as a whole through the more productive use of resources, but also for individual liberalising countries. Competition in the domestic market is increased, reducing prices and offering more choice to consumers. Inflationary pressures are reduced, and foreign direct investment (FDI) is likely to increase, generating local employment and technology transfer. Intermediate costs for service providers, as well as for manufacturing and agricultural producers, will decrease as a result of competition,<sup>40</sup> in turn making them more competitive. Thus, services liberalisation benefits all sectors of the economy, not just the services sector. Numerous studies have estimated that the gains from liberalisation of services trade would be far greater than liberalisation of trade in manufactured or agricultural goods.<sup>41</sup> Some of these studies estimate the global benefits of services trade liberalisation, without focusing on the impact specifically on developing countries. However, others show that developing countries (and not just the larger ones) do indeed benefit from liberalised services trade.<sup>42</sup> Konan and Maskus (2004) conclude that even using conservative assumptions, services liberalisation by one developing country, Tunisia, would increase welfare and GDP by more than 7 per cent, more than three times the benefit from liberalising trade in goods. Three-quarters of the gain would result from liberalisation of Mode 3 (FDI), which would increase real household income by 4 per cent. Liberalisation of Mode 1 (cross-border) would increase household income by 1 per cent.

If indeed developing countries benefit from liberalising trade in services under the right conditions and with appropriate regulatory structures in place, it could be argued that the principle of non-reciprocity actually harms developing countries by encouraging them to make fewer market-opening commitments and therefore obtaining fewer benefits from more open trade. The OECD has noted that 'given the economy-wide benefits of services liberalisation in general, including the importance of efficient infrastructure services in economic development, an important question to consider is whether a high degree of flexibility is in the best interests of development' (OECD, 2006). Of course, this principle may not be true, at least to the same extent, for the poorer countries. Countries such as India and Brazil, with their vast human and capital resources, are well equipped to deal with greater competition in the field of services. The poorer countries, however, feel that they will lose from services liberalisation because their industries are too small and inefficient to be able to compete with imported services. And they do not believe that they will gain from liberalisation of developed country service markets because their service suppliers are too small to compete there. The obvious mode of supply where they have a competitive advantage, Mode 4, is highly restricted by all countries.<sup>43</sup>

This is of course a large and complex subject, and it is beyond the scope of this paper to discuss it in detail. Most of the studies that demonstrate the benefits of opening services markets involve developed countries and more advanced developing countries, rather than LDCs.

Because the benefits from market opening, as discussed above, can be so substantial, we believe that it is important to explore this subject further. Three countries, The Gambia, Lesotho and Sierra Leone, are often cited as examples of LDCs that made extremely broad GATS commitments in the Uruguay Round. Lesotho, for example, made commitments in 85 sub-sectors in all but two sectors (health and recreational, cultural and sporting services).<sup>44</sup> As a result, there is substantial foreign investment, especially South African, in a number of key service sectors. For example, three of the four commercial banks are South African; one of the two mobile operators is South African and South African investors own part of the only fixed line operators; and the only passenger air service is South African. South African investors also hold significant stakes in the tourism and distribution industries.<sup>45</sup> It would be useful, we believe, to commission a study of one or more of these three countries to determine the impact of the broad commitments. Has the presence of foreign investment in key sectors in fact resulted in greater efficiency and lower costs? Were adequate regulatory systems put in place to ensure competition? Have welfare gains outweighed any possible losses as a result of the crowding out of local service suppliers?<sup>46</sup>

If studies show that even the poorer developing countries can benefit from opening their service sectors, they should be encouraged to do so, particularly in Mode 3. Care must be taken in deciding which sectors to liberalise. The greatest benefit is likely to come from opening network sectors, such as telecommunications and power transmission, as these are likely to produce benefits to all sectors of the economy more quickly, by improving infrastructure.<sup>47</sup> It must be recognised that they will need ample time to carry out this opening in order to prepare for the adjustment and in particular to establish sound regulatory structures. Measures will need to be put in place to ensure that foreign affiliates of multinational corporations do not crowd out local competitors, and that their consumers are protected from monopolistic practices by creating and maintaining a competitive environment for network services. Regulations will also need to be drafted (or strengthened where they already exist) to ensure adequate prudential supervision of financial services.<sup>48</sup> To achieve these necessary but complicated objectives, developing countries will need technical assistance, and this should be mandated. Indeed, as we suggest in Section 4.3.1 below, market opening might be made conditional on receipt of adequate technical assistance and the establishment of an appropriate regulatory system with adequately trained staff.

One way of protecting the poorer countries from excessive competition as a result of liberalising their service markets might be through a safeguard-type mechanism, although there are considerable difficulties with this. Article X of the GATS called for negotiations on emergency safeguard measures, the results of which were to go into effect within three years. In fact negotiations are still taking place, at least in theory, in the DDA, and reportedly have made little or no progress. The complexity of agreeing on a safeguard clause stems from the many difficult issues involved, which include the type of remedy to be applied (a freeze on existing commitments might not remedy the harm, but the mere possibility of a remedy that would require disinvestment would

be a strong disincentive to FDI); the definition of the domestic industry (whether or not it should include foreign investors); whether the safeguard should be applied only to the mode in which the commitment had been made or to all modes; and whether or not compensation or retaliation should be mandated and if so, how to measure the amount. These issues would, of course, also be present in any effort to negotiate a safeguard measure in an RTA, which is no doubt to why so few RTAs contain effective safeguards.<sup>49</sup>

## Challenges Faced by Business in Maximising Export and Investment Opportunities Derived from Special and Differential Treatment

Given the small size of their domestic markets, service industries in developing countries, especially small and low-income ones, often need to be able to export in order to be able to reap economies of scale. However, they face a number of obstacles in doing so. Target countries may simply not permit access to the relevant service markets in their GATS schedules, at least in the supply modes that are of most interest to small service suppliers. Even where access is allowed, service suppliers may be impeded in their efforts to export by factors such as lack of information about export opportunities, difficulties in building an international reputation, lack of government support and high costs. Negotiation of an RTA can help in this regard. It may provide market access in sectors of interest to the exporting country. And the private sector can learn a great deal about potential export markets in the other country or countries that are party to the agreement if, as is often the case, it is closely involved in the negotiation process.

Small service suppliers are primarily interested in gaining market access under Modes 1 and 4, since they are unlikely to have the resources to establish Mode 3 commercial presence in other countries (Hoekman, 2009).<sup>50</sup> Target countries may not have made any Mode 1 market access commitments in the relevant sectors in their GATS commitments, or they may have made market access conditional on commercial presence, which reduces or eliminates the value of the Mode 1 commitments. Negotiation of an RTA can provide Mode 1 access in more sectors and remove the commercial presence requirements.<sup>51</sup>

Mode 4 market access is highly restricted by all countries in their GATS schedules, and the majority of RTAs are also quite limited in this respect. As discussed in section 2.4.1, most countries limit Mode 4 entry to highly skilled individuals, and many only permit it when associated with Mode 3 entry. And even in the few cases where Mode 4 access includes independent service suppliers, there may be regulatory barriers to delivery of services or a refusal to recognise professional qualifications which make it impossible as a practical matter for individuals to enter the market.

Even where trade barriers do not exist, service suppliers in small countries may not have the resources to be able to investigate market opportunities in other countries on their own.<sup>52</sup> In larger economies, these functions are often carried out by specialised trade associations, but many small economies lack such organisations. (Riddle, 2002b). And even if a small service company has been able to identify market opportunities in other countries, it may lack the resources to devote time and effort to develop these opportunities, and to build up an international reputation.<sup>53</sup> It will need to send key

personnel to those countries to attend conferences where they may meet potential clients. It will also need to follow up on leads, and to negotiate contracts. This involves expense and time away from revenue-generating work on the part of senior personnel. As noted above, Mode 4 access may not be permitted for independent service suppliers, and even if it is, obtaining the necessary visas may be difficult and time-consuming, resulting in lost opportunities (Riddle, 2002b).

Another issue, particularly in small and low-income countries, is lack of government support. Governments are often unaware of the abilities of small service exporters, and therefore fail to promote them. This may be because export promotion has traditionally focused on goods rather than services, so that many service exporters have not used government support (Riddle, 2002a). For this reason, governments often do not have an accurate database of service suppliers, and are not in a position to promote them in other countries. Where service suppliers play a role in the negotiation of an RTA, this can educate the government as to their export potential.

Even where governments are aware of the capabilities of service exporters, capacity constraints in smaller economies can mean that there are no government officials responsible for service issues who can assist in identifying market opportunities and in dealing with obstacles to service exports in the target countries. Also, responsibility for service issues is often spread over as many as 20 different government agencies (Riddle, 2002b; te Velde *et al.*, 2004), and there may well be a lack of co-ordination between them. This is often true in developed as well as in developing countries, but developing countries tend to co-ordinate less well, and often do not have a services unit in their trade ministry.

Another problem is lack of human resources. There may simply not be enough workers in the country with the necessary skill sets. Even in Canada and the UK, small service suppliers have difficulty finding fully trained workers, especially in the areas of construction and business services (Riddle, 2002b). The problem will be exacerbated if foreign service suppliers have been allowed into the market, as they may have drained away the best talent, particularly if they offer higher compensation than local firms.

Service suppliers in small and low-income countries may face considerable disadvantages vis-a-vis local suppliers they are competing with in foreign markets. They may not have access to quick and flexible credit, and they may pay higher interest rates and bank charges (te Velde, 2005; te Velde *et al.*, 2004).<sup>54</sup> They may not have access to fast and inexpensive internet access or to the latest technology. The cost of office equipment and supplies, much of which may have to be imported, is likely to be higher than in higher-income countries.

Finally, it should be noted that small economies are particularly vulnerable to natural disasters, in part because many are located in hurricane or cyclone belts or in earthquake zones, and because their small size means that a natural disaster can effect an entire country, rather than simply a region of the country (Horscroft, 2006).

## Suggested Pro-development Special and Differential Treatment Arrangements and Measures

Devising pro-development special and differential treatment arrangements and measures to ensure that they make a difference in services competitiveness and result in increased exports of small and low-income countries is very challenging and one of the reasons that consideration of SDT has often remained in the realm of best endeavours or exhortatory clauses. To be effective, however, SDT arrangements and measures must have a concrete impact and help to improve either the competitiveness of developing country services exporters or their market access opportunities.

After having reviewed the suggestions and recommendations made in many papers by WTO members, academics and policy-makers,<sup>55</sup> we set out below proposals for ways in which SDT measures could be translated into real benefits for Commonwealth small and low-income countries negotiating RTAs covering trade in services. These measures could be discussed and implemented in the context of any type of trade agreement, whether at the WTO or in RTAs.

The pro-development SDT measures proposed below for the benefit of small and low-income countries include those that may be viewed as independent of the actual content of commitments made during the negotiations, as well as those that may form part of negotiated outcomes in trade agreements. Since negotiated outcomes in the services area always contain non-reciprocal elements, the SDT-related component of these outcomes would be important and is highlighted below (such as for Mode 4). Some negotiated outcomes, though important for parties at all levels of development (such as for Mode 1), may have a particular stimulus on developing country services exports and so these are also included.

### **4.1 Negotiated outcomes that are beneficial to developing country partners**

Given the smaller sizes and lower levels of development of developing countries, their services exporters have a comparative advantage particularly in two of the four modes of supply, namely Modes 1 and 4. We therefore recommend that an effort be made to reach negotiated outcomes in trade agreements that will allow for a favourable situation for their suppliers in both of these modes.

#### **4.1.1 Binding of Mode 1 in RTAs by developed countries for all services exports and removal of linkage with Mode 3**

A legally bound outcome of openness for cross-border supply of service exports into developed country markets serves the very important goal of modal neutrality so that



developing country exporters can market their services via the internet rather than through commercial establishment. This is important because the cost of exporting services cross-border for a given service should be less for the lower-cost producer. However, if the cross-border export is tied to a commercial presence through being linked to Mode 3, as it is in many developed countries' GATS schedules, this would put it out of reach of the majority of service suppliers in the smaller and poorer countries. The binding of Mode 1 is thus critical for Commonwealth countries for which virtually all exporting firms are micro, small and medium-sized enterprises, as well as for individual suppliers which have neither the critical mass of capital to invest abroad nor the ability to maintain an overseas commercial activity.<sup>56</sup> The guarantee of openness in Mode 1 can directly affect the competitiveness of these exporters from small and low-income countries and their ability to insert themselves into world markets. We therefore view this desirable negotiated outcome as a form of SDT, since it would be relatively more favourable for developing countries. The goal of across-the-board binding of cross-border services trade for all sectors by developed countries, without linkage to Mode 3, should therefore be a key objective for Commonwealth countries in their negotiations with RTA partners. The goal of modal neutrality was emphasised in the Hong Kong Ministerial Declaration, which advocates the 'delinking' of Modes 1 and 3 for service suppliers.<sup>57</sup>

Of course, in practice there are few restrictions on Mode 1 supply, even where there are no formal market-opening commitments. But bindings would 'lock-in' the current practice and ensure against back-sliding in the future.<sup>58</sup>

#### **4.1.2 Market access commitments for Mode 4 in categories of interest to developing countries**

The negotiated outcome of trade agreements with respect to Mode 4, the movement of natural persons, is of even more critical importance to small and low-income developing countries. A number of studies have predicted that enormous welfare gains would result from the developed countries opening Mode 4 even to a quite limited extent.<sup>59</sup> Though most of the small and low-income countries do not have large populations, nonetheless without exception they have people who would benefit from opportunities to work temporarily abroad.<sup>60</sup> And while the 'brain drain' aspect can be of concern and should not be overlooked, several studies have shown that remittances can more than offset this loss for the country as a whole, at least in financial terms.<sup>61</sup>

The guarantee of greater access in Mode 4 to a larger number of categories of workers can directly affect the competitiveness of small and low-income countries and their ability to penetrate world markets through the movement of their people. We view this as a highly desirable negotiated outcome in RTAs and suggest that this be pursued as another key objective for small and low-income Commonwealth countries in negotiations with their trading partners.<sup>62</sup> The authors acknowledge that for both political and security reasons the developed countries are not likely to commit to broad opening

of Mode 4 in the near future. Thus the most practical way of proceeding is to suggest gradual steps toward greater opening through incremental measures, i.e. expanding the numbers and time periods allowed for existing categories, facilitating movement of professional workers through agreements on the equivalency of qualifications and increasing the number of semi-skilled categories that are included in trade agreements.

More specifically, we consider the following as desirable outcomes for Mode 4:

***Inclusion in trade agreements of broader categories of workers, namely contractual service suppliers, independent professionals and trainees***

Commonwealth countries should focus on the guaranteed inclusion in RTAs of categories of greater interest and relevance to their workers, including those in particular that are not tied to a commercial presence abroad, namely: contractual service suppliers, independent professionals and trainees. These are the types of skilled workers that are most likely to benefit from expanded Mode 4 access for small and low-income countries. Additionally, as long a time period of stay as can be obtained should be requested for these categories (with a target of two to three years), with the possibility of renewal of the initial period.

***Inclusion of technicians***

In addition to the skilled categories of workers discussed in the preceding section, Commonwealth countries should request the inclusion of relevant categories of technicians or semi-skilled workers in Mode 4 commitments with their RTA partners, particularly those workers in which they would have a comparative advantage (for example construction workers, health care workers, masseurs, sports players, musicians and fashion models). If there is reluctance on the part of RTA partners to bind these categories without limits, then annual quotas should be sought.

***Agreement upon spouses and pension portability***

Issues that are related to the worker categories mentioned above and the temporary stay in RTA partners should be negotiated and included in the agreed commitments, as far as possible. These issues would include the guarantee of the right of spouses to accompany the worker in question and possibly also to work (as Australia has already done in two of its RTAs, with China and with ASEAN), as well as the issue of pension portability between home and host countries. It is easier to reach agreement on these issues in an RTA context than in a multilateral context.

***Incorporation of elements from bilateral labour agreements into RTAs***

Commonwealth countries could suggest the inclusion of elements from bilateral labour agreements into RTAs. This could cover various issues such as agreement to allow a specified number of low-skilled workers from Commonwealth countries access to the markets of their RTA partners on a seasonal basis. For implementation, this would involve creation of organised programmes through dedicated ministries on both

sides, annual agreement on quotas subject to the needs of the labour market and shared monitoring mechanisms.

### ***Establishment of a list of occupations with relevant criteria for undertaking development-oriented commitments***

In addition, we would support the suggestion made by the UNCTAD Secretariat in a 2003 study<sup>63</sup> to establish a list of occupations, and associated skill qualifications and experience that could be adapted to individual countries' needs and to propose these categories as first priority occupations linked to services for the undertaking of Mode 4 commitments. For these occupations and sectors, market access as provided for in national legislation should be bound at the level of current access for temporary-employment-based visas and work permits, or at expanded levels of access. Economic needs tests should not be applied to these occupations.<sup>64</sup>

### ***Obligation for pre-screening, verification and monitoring on the part of labour-sending countries***

Another possibility for promoting the greater movement of labour from Commonwealth small and low-income countries would be to place an obligation on source countries to carry out pre-screening and selection of workers within an agreed profession or skill level, thus absolving the recipient country from this burden. Additional obligations to verify the identity and background of temporary workers and to monitor the situation, together with the recipient country, while they are abroad, with a commitment to facilitate their return and combat illegal migration, would be useful steps, and might induce developed countries to grant greater access. This type of shared responsibility already exists in bilateral labour agreements, but has not yet been incorporated into regional trade agreements. The possibility of imposing fines upon the sending country for workers who overstay their stay or giving premiums to workers who comply with visa limits, with the possibility of rewarding them with future temporary stays in the recipient countries, would also be helpful.<sup>65</sup>

### ***Development of disciplines for the use of economics needs tests***

More effective approaches to address measures inhibiting Mode 4 market openings for service suppliers from developing countries could include ways to more effectively address ENT measures. These could involve the negotiation of binding rules spelling out the conditions for the application of ENTs included in services schedules, as well as mechanisms for their periodic review, in order to reduce the arbitrary and non-transparent nature of their application.

### ***Negotiation of mutual recognition agreements***

The negotiation of mutual recognition agreements should also be encouraged as a means of providing greater access for service suppliers under Mode 4, particularly to facilitate the movement of professional workers from developing countries to developed

country markets. Though this is a component of the GATS (Article VII), this objective could be strengthened under RTAs, while recognising that it is a particularly challenging undertaking among countries at different levels of development.

### ***Longer timeframes for implementation of obligations***

As part of the negotiated outcome of trade agreements, Commonwealth small and low-income countries should seek longer timeframes for implementation of obligations for their services commitments. However, it should be kept in mind that flexibility in these obligations can work both ways; it can be beneficial when taken advantage of appropriately, but on the other hand can delay necessary regulatory reform by allowing non-action. Thus the request for longer timeframes for implementation of liberalising obligations for service sectors within RTAs by Commonwealth countries should be pursued along with specific commitments to provide technical assistance for regulatory reform and the creation or strengthening of regulatory agencies in these sectors.

### **4.1.3 Government procurement**

A recent presentation by a member of the WTO Secretariat indicated that more than 70 per cent of the RTAs notified to the WTO contain provisions on government procurement (Muller, 2010). Some of these provisions cover services as well as goods.<sup>66</sup> To the best of our knowledge most, if not all, of these agreements provide reciprocal access, i.e. each party provides government procurement opportunities on a roughly balanced basis to the other parties. However, there is no reason why a poorer country negotiating an FTA should not request government procurement opportunities on a non-reciprocal basis, granting more limited access, or even none at all, to the developed country parties with respect to its own government procurement market. Of course it would be important to ensure that the thresholds for access were low enough for service suppliers in small countries to be able to take advantage of the opportunities.

## **4.2 Channels for sharing information and expertise**

Agreement on the creation of effective channels and programmes for the dissemination of information and sharing of expertise is another important way that SDT can help the medium- to long-term goal of stimulating services exports from small and low-income Commonwealth countries. The smaller countries that are members of the WTO have access to the contact and enquiry points established under Articles III.4 and IV.2 of the GATS.<sup>67</sup> Any non-members that are negotiating an RTA might request that the agreement give them the right of access to these points on behalf of themselves and their service suppliers.

Exchange programmes for trade officials are an excellent means of providing expertise through the building of human capital. This exchange of trade officials could include, *inter alia*, assistance with the analysis of statistical data on trade in services, assessment of the interests in and gains from services trade by the officials in the

countries where they are being hosted, and the identification of service sectors of export interest and negotiating priorities for the country in question, all of which are of crucial importance for the ability to participate effectively in trade negotiations and in promoting services competitiveness at home. However, there are not many examples of such programmes that include the provision of technical expertise along with funds for capacity-building.

One innovative approach is contained in recent RTAs concluded by the USA with the Dominican Republic and five Central American countries (DR–CAFTA) and with Peru, that include for the first time the requirement to provide capacity building as part of the implementation of the agreement. Article 19.4 of DR–CAFTA and Article 20.4 of USA–Peru recognise that ‘trade capacity building assistance is a catalyst for the reforms and investments necessary to foster trade-driven economic growth, poverty reduction and adjustment to liberalised trade’. To ensure that capacity building will be provided, the agreement establishes a committee on trade capacity building (TCB). The functions of the committee are to:

- (a) Seek the prioritisation of trade capacity building projects at the national or regional level, or both;
- (b) Invite appropriate international donor institutions, private sector entities and non-governmental organisations to assist in the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;
- (c) Work with other committees or working groups established under the agreement, including through joint meetings, in support of the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy;
- (d) Monitor and assess progress in implementing trade capacity building projects; and
- (e) Provide a report annually to the Commission describing the committee’s activities.

Technical assistance through capacity-building activities and technical experts is to be provided in response to needs identified by the recipient countries in their national action plans, to which donors are asked to respond with ideas and financing for projects.<sup>68</sup> The trade capacity building effort covers all aspects of trade policy, including services. Each developing country party to the agreement is required to periodically update and provide to the committee its national trade capacity building strategy in its national action plan. Meetings of the TCB committees are held on a regular basis, normally twice a year, and attended by representatives of each of the member countries and of the Inter-American Development Bank (IDB), the World Bank, the Organization of American States (OAS) and the Economic Commission for Latin America and the Caribbean (ECLAC), which allows for a review of updates of identified needs and priorities in the recipient members’ trade capacity building strategies as well as

responses to these needs through the activities of US donor agencies and international institutions. The USA provided over US\$80 million in TCB assistance through bilateral and regional assistance programmes to the CAFTA–DR countries in 2008 from a broad spectrum of US donor agencies (independently from the assistance given by the international institutions).<sup>69</sup> To our knowledge, no review has yet been undertaken to determine the effectiveness of this approach to trade capacity building.

The FTAs negotiated between the USA, on the one hand, and Colombia and Panama, on the other, contain similar provisions, but at the time of writing they had not been ratified by the US Congress.

A different approach that can also be cited as an example of trade capacity building is the ‘Hub and Spokes’ project of the Commonwealth Secretariat, which was proposed by the Secretariat and taken on by the EU as part of its assistance to the African, Caribbean and Pacific (ACP) countries. It is designed to strengthen capacity at the regional and national levels for all ACP regions and countries on WTO, EPA and general trade matters. The programme is funded mainly by the European Commission with contributions from the Commonwealth Secretariat and the Organisation Internationale de la Francophonie. Of the 79 ACP countries, 55 are within the area covered by the project and are eligible for project support, with the Secretariat having responsibility for the Pacific and Caribbean regions as well as East and Southern Africa, and the Organisation Internationale de la Francophonie for West and Central Africa.<sup>70</sup> The first, four-year, ‘Hub and Spokes’ project ran from 2004–2009 at a cost of €17 million. With widespread support for a successor programme, the Secretariat is working closely with project partners to design a Phase II programme, and the second component of this project should be underway in 2011.<sup>71</sup>

The primary purpose of the ‘Hub and Spokes’ project is to assist smaller and lower-income ACP countries in the following four areas so that they can better participate in and draw advantages from the multilateral trading system and regional agreements:

- Improvement of trade policy formulation skills;
- Development of trade analytical, negotiation and implementation skills;
- Broader knowledge of multilateral and regional trade policy issues;
- Greater involvement of stakeholders in discussions and policy formulation.

The project operates through the identification of expert regional trade policy advisors (RTPAs) and trade policy analysts (TPAs) as well as administrative assistants (AAs) from Commonwealth countries, proposed to recipient countries as resident experts. Once accepted, these experts are placed for a specific length of time – between one and three years – in the Ministry of Trade of the recipient ACP country that is in need of expert assistance. These experts may work in any area of trade policy, including services. During 2009, the project placed six RTPAs, 19 TPAs and six AAs in 25 countries as well as five in regional secretariats.

A mid-term review was carried out of the ‘Hub and Spokes’ project in 2007, which found the project to be efficient, practical and relevant, and to have a positive impact. It found that the experts had contributed to a wide range of capacity-building activities, working jointly with local policy officials, including preparation and drafting of technical papers and briefs, as well as informal papers and working documents; drafting national trade policy statements; conducting detailed research and cost-benefit analysis on negotiating approaches; backstopping for participation in trade negotiations; and contributing to preparations for implementing trade agreements through sensitising key stakeholders to trade policy issues. The review states that:

The smooth running of this project is illustrated by the successful recruitment, retention and achievement of the RTPAs/TPAs in the field. This would suggest that the hard work has been done and now the management committee’s roles and functions should be more geared to maintaining support to the project and its partners.<sup>72</sup>

We endorse these two approaches to capacity building for trade as concrete examples of what would be useful to replicate and incorporate into future trade agreements in the services area negotiated by Commonwealth small and low-income countries. In fact, we advocate a combination of elements from both approaches. Such capacity building programmes should be agreed as part of the overall outcome of any RTA. Key elements to underline as critical components of the success of these programmes are the definition of needs and priorities by the developing country partner, the creation of a committee on trade capacity building to monitor agreed efforts, the identification of experts acceptable to the partner country and their actual embedding into national ministries of trade for a sustained period of time, as well as the unconditional financing of the programme by either the partner country alone or in combination with international financial institutions.

### **4.3 Provision of effective technical assistance**

#### **4.3.1 The design and implementation of services regulatory systems**

Technical assistance in the context of services reform is critical. Developing countries, especially small and low-income ones, lack the necessary expertise to design appropriate regulatory instruments for their infrastructure services and the technical expertise to implement them. This makes the liberalisation of key service sectors such as telecoms, financial services, transport, distribution and energy highly problematic, despite the wishes of developing countries to move forward.<sup>73</sup> Building regulatory capacity, particularly for those infrastructure services sectors characterised by market failures such as those where imperfect competition is the norm and that tend to monopolies – the case of all network services, including telecommunications, transport and energy – or those where imperfect knowledge is the norm and where consumers need to be protected – such as financial and healthcare services – must be a critical component of services

liberalisation undertaken by developing countries. The draft of an appropriate regulatory framework with adequate laws and regulations is the first step in such a process. However, it is often necessary as well to create and/or strengthen regulatory agencies and train personnel. This building of regulatory capacity requires a more sustained effort than simply a few days of workshops or seminars. Effective technical assistance in this area would involve commitments on the part of developed trading partners in specific sectors to send an expert for several months or a year to draft or improve laws and help set up or strengthen the functioning of a regulatory agency.

One of the major weaknesses in the SDT area is the 'best endeavour' nature of most forms of SDT in the WTO documents and the RTAs. This is particularly the case for technical assistance. This lack of obligation to provide technical assistance by developed trading partners has meant that in practice nothing is usually done beyond a few informational and training seminars. There is no long-term, practical effort to make a difference on the ground where it really counts. One of the best ways to make technical assistance more effective would be to link it to market-opening measures or commitments agreed on the part of the developing countries. This would require a change in the way that technical assistance commitments are negotiated, converting them from 'best endeavours' to bound obligations and recording them on a sectoral basis as an integral part of all services commitments.

Under this approach, after careful assessment of domestic needs and requirements for liberalisation, a developing country would request technical assistance for a particular sector during trade negotiations with its major corresponding developed trading partner. If the response were positive, then the future liberalisation commitment would be incorporated by the developing country into the GATS schedule of commitments for that particular sector in the column under 'additional commitments', together with the agreement to provide technical assistance for specific regulatory reform. For negative list RTAs, this agreement would be included for the measure in question in the annex on non-conforming measures. The outcome of a negotiation for a particular sector would then be composed of the future liberalisation commitment, together with the promise of required technical assistance to make it a reality.

If effective technical assistance were not provided as promised by the developed country trading partner or an international organisation with competence for providing advice and expertise on regulatory reform (such as the World Bank or the International Telecommunications Union), then the developing country would not be required to carry out the specified future liberalisation commitment in that sector.

A precedent for such an approach exists in connection with the negotiations on trade facilitation. In the 'July 2004 Package', the Ministerial Council stated:

It is recognised that negotiations [on trade facilitation] could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed-country Members will make every effort to ensure support and assistance directly



related to the nature and scope of the commitments in order to allow implementation. It is understood, however, *that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required.*<sup>74</sup>

This proposal is reflected in bracketed language in Paragraph 1.4 of Section II of the current negotiating Draft of the Agreement on Trade Facilitation, which provides that:

Members agree that in cases where the required support and assistance is not forthcoming from developed country members and other donors, and where a developing or least-developed country member continues to lack the necessary capacity, implementation will not be required.<sup>75</sup>

If the commitments to provide technical assistance to developed and least-developed countries were transformed from a hortatory to a mandatory basis in the negotiations on services at the WTO and in RTAs, then there would be a legal basis for reverting to the dispute settlement provisions of the WTO in the case of non-compliance. This would be very much a last resort, undertaken only when discussions on an outstanding commitment had failed. However, putting technical assistance promises on the same level as bound commitments should provide the necessary incentive to encourage both sides to take these discussions seriously – the developing countries would have less justification to stall on liberalisation and the developed countries would be placed under the spotlight in order to demonstrate that their actions met the demands of the developing countries.

#### **4.3.2 Addressing supply-side constraints**

Technical assistance for the smaller and poorer countries could also be directed at the removal of supply-side constraints. Obviously service industries do not face many of the supply-side bottlenecks that inhibit exports of goods, such as lack of access to export financing, high-priced energy, poor roads, inadequate seaport and airport facilities, and slow and inefficient customs procedures. However, there are of course supply-side obstacles that restrict the ability of service industries to export their products. The time and expense of setting up a business is one, as is lack of capital. Poor tourism infrastructure and inadequate telecommunications and transportation are obstacles to growth in an area where many of the poorer countries have great potential. Technical assistance to improve these areas would be a useful goal for the smaller and poorer countries in negotiating RTAs.

#### **4.4 Recognising and facilitating inter-model linkages in services trade by developing Commonwealth countries**

The positive linkages that exist between the four defined modes of service supply are not recognised in RTA disciplines and commitments. However, the clear distinction

between the various modes is becoming increasingly blurred and it is clear that service suppliers do not usually avail themselves of only one mode to deliver a service and that often there exists an interdependence across all four GATS modes of supply. According to an OECD study, positive linkages take the form of: (i) complementarities across modes, where one or more mode is simultaneously used in supplying the service across borders; and (ii) facilitation across modes, where trade through one mode creates conditions that are conducive for trading through other modes.<sup>76</sup> Restrictions on one mode of service supply restrict the possibility for efficient intermodal linkages and can distort the way in which a service is traded.

Although the most common linkage is between Modes 3 and 4, for services exported by developing countries – in particular, information technology and business process outsourcing services and health services – the complementary relationship is between Modes 1 and 4. The recognition within RTAs of this intermodal linkage would allow for the negotiation of commitments that facilitated such linkages in key sectors of export interest to developing Commonwealth countries so that the central modal source of the positive linkage is identified and bound without restriction, and any associated intermodal distortions are minimised.

# How to Assess the Impact of Services Trade Liberalisation on Domestic vis-a-vis Foreign Service Suppliers

Assessing the impact of services trade liberalisation is a very important but extremely difficult task at present for a variety of reasons. Services face restrictions on trade that are in general greater than those on trade in goods and more complex to model and assess. Policies that restrict services trade and competition are not the same across all service sectors. The methodologies used in these attempts are still being developed, but more significantly, the data that are needed as inputs into these modelling techniques are woefully incomplete and inadequate. The difficulties are magnified for small and low-income countries where the lack of data is even more severe. This section discusses some of the complexities involved in the modelling effort, the main approaches and their limitations.<sup>77</sup>

## 5.1 What should be measured?

The output of the wide range of services (including government services) makes up between 50 and 80 per cent of the GDP of most countries. Services are heterogeneous in their characteristics: some are complex, some are highly regulated, some comprise essential infrastructure of modern economies, some are intermediate or business services, while others are consumer and government services. Some connect activities within or between economies.

Infrastructure services include transport and logistics (essential for agriculture, manufacturing and the extractive industries, and tourism), telecommunications and ICT, financial services and distribution, not only wholesale and retail, but also water and energy supplies. Intermediate services include legal, accounting, architecture and engineering, management consulting, advertising and a range of other specialties. This broad grouping includes very high value added and knowledge-intensive activities which are growing fast. Whereas it is common to think of globalisation as affecting, say, transport, telecoms, financial services and distribution, in recent times the intermediate business services have themselves in part become globalised and have their own cross-border production chains.

In addition to cross-border trade flows of these very diverse service activities, it is necessary to measure service flows arising from FDI in developing countries. These data do not exist at present for most developing countries.<sup>78</sup> However, leaving out the FDI component of services trade means that the gains from liberalising FDI, which can be realised through higher quality of products, more choice, greater dependability and lower prices (when an effective competition law is in place and enforced) will not be captured. The extent of private FDI depends on the size of the country market for the

particular service and often on whether one country in a particular region can serve as a hub for services exports to its neighbours, which would then make it more attractive as an investment destination.

When considering such services trade in Modes 1, 2 and 3, it is important also in assessing the impacts of liberalisation that services such as health, education and various social services are excluded from the scope of the agreement when provided exclusively by governments and should not enter the calculations. The treatment of Mode 4 in trade agreements is highly uneven, with many FTAs covering only very limited categories of natural persons, for which there are no reliable data.

## **5.2 What data should be used?**

The first and most obdurate hurdle to surmount is how to measure services. Initially, even conceptually we stumble on how to define what a unit of output is, how to assess its quality and how to determine the unit price for many services. Perhaps it is easier for transport services, where distance can be a quite reliable measure, or for telecommunications, where price per minute can be used, but even the latter does not cover the traffic that now uses the backbone internet cables. For some other services there may be proxies which must be used, even if they only crudely represent the underlying reality, but for business and professional services there are simply no adequate units to measure quality and price without proxies acting as a prop. During the initial stages of developing national accounts, many of these services were measured by labour input, which meant that by definition there could be no increase in productivity because output equalled input.

Accounting experts have revealed that their normal conceptual basic tools can fail them when producing financial statements for the operations of service sector corporations with certain characteristics. The three basic accounting principles of prudence, realised value, and matching income and expenditure no longer always work.

The notion of productivity being related to prices needs fundamental reassessment in the services area. The pricing of services products now often incorporates estimated future costs because increasingly prices reflect judgements on the probable future costs of product utilisation. Productivity as a notion of a past event is now modified in services pricing to take account of the management of risk and the evolution of the future, the source of two basic forms of uncertainties. The first refers to the duration of performance of the service in future time, and the second refers to the events which might alter the mode and quality of this performance to which risk management applies. The cost of materials and physical output of some of the most high tech services may only be a minor part of overall costs.

## **5.3 Modelling techniques**

Considerable progress has been made over the past decade in modelling the impact of liberalisation on services trade. However, the modelling effort is complicated by the

nature of services trade and the fact that several types of channels exist through which liberalisation of services can affect the domestic economy.<sup>79</sup> By serving as inputs into production of other goods and services, services can both increase the productivity of capital and labour inputs and affect total factor productivity, thus stimulating long-term growth effects. Services trade liberalisation can also alter a country's comparative advantage by affecting the composition of trade. For example, improvements in communications can help countries move up the value chain in international trade to export more sophisticated products. Spill-overs from foreign direct investment is a third channel through which liberalisation of services trade affects the domestic economy, since FDI involves the transfer not only of capital, but also technology and know-how. Increased international competition is another channel through which services trade liberalisation may promote gains within an economy. Lastly, 'network effects' or the effects of improved efficiency on other sectors of the economy may also be important.<sup>80</sup>

Assessing the impact of services trade liberalisation has been done through several approaches, each with its own relative weaknesses. These are summarised below.

### **5.3.1 Total factor productivity models**

At the firm or sectoral level, economists have attempted to examine the impact of services trade liberalisation by measuring changes in total factor productivity at the level of the firm to determine whether the performance of domestic manufacturing firms has indeed been improved through services trade liberalisation. This is an empirical approach that also takes into account downstream manufacturing and other industries affected by services liberalisation. Initial studies reveal the positive effects found for telecoms, electricity, financial services, transport and distribution. It stresses the high cost of delays in the logistics chain, whether at ports, during transport or at customs border controls. However, given the wide discrepancies in evaluated results, it is clear that the proxies selected are not yet adequate translators. Studies have been done under this TFP approach covering the impact of services liberalisation on domestic firms in the Czech Republic, Chile and sub-Saharan African countries, as well as on the performance of the transport, financial and communications sectors.<sup>81</sup> Fukui and McDaniel (2010) write that '... the results thus far have been less than robust, revealing wide ranges across research efforts within particular sectors'.

### **5.3.2 Computable general equilibrium modelling**

Another approach has been the use of economy-wide computable general equilibrium models to assess the impact of liberalisation on services trade, as this approach ideally encompasses the empirical effects of all of the various channels discussed above to obtain an impact of the economy-wide effects of such liberalisation. The estimates provided by such models are often more useful for policy deliberations than firm level results, but the CGE approach is fraught with data and modelling difficulties. The

most common way in which economists go about CGE modelling is to transform the barriers to services trade into tariff-equivalent price wedges, using ad valorem barriers that are often the result of guesswork.<sup>82</sup> Authors of the recent survey of advances in modelling of services trade liberalisation state that these estimates ‘involve at best a great deal of subjectivity and ... leave the interpretation of the CGE results open to question’.<sup>83</sup> However, at present this is the only approach for obtaining economy-wide results. The more complete of the CGE efforts explicitly take account of FDI in services; others look only at cross-border restrictions.

CGE modelling poses a number of challenges for its proponents that have still not been resolved and which may reduce the realistic value of such estimations without the incorporation or improvement of these elements. These include:

- CGE models are mainly of the comparative static type, examining alternative equilibria at one moment of time for what is in reality an ever-evolving disequilibrium, with extensive spill-overs affecting sectors other than those portrayed.
- The number of separate service sectors usually modelled is far fewer than the actual number of distinct service sectors in a given economy, and relatively less disaggregated than for agricultural and manufactured products.
- CGE modelling uses widely varying elasticities of demand for each of the hundreds of different service supplies – and those that vary between intermediate demand and consumer demand; often these elasticities are simply best guesses but their magnitude strongly influences the final results.
- The extent and nature of the informal economy (barter/exchange and unreported activities) is not captured.
- As with many service sectors, the classifications are inadequate in terms of the actual activities. In some cases the statistics are collected under the main ISIC activities and not as Central Product Classification (CPC) products.
- Economies of scope rather than scale, so important to some service activities, are not allowed for.
- Prices do not represent a past cost with an added profit margin, but include elements for future performance over time and thus some risk and uncertainty.
- The wide size scale of economic activities, whether of public or private suppliers, display wide and varying productivities.
- Wholesale distribution services may not be differentiated from retail services supplying household consumers.
- The differing structures of each service sector, where perfect and imperfect competition may not be taken sufficiently into account.

- Base year economic data on which the CGE models are calibrated can become quickly outdated, especially recently, because of the economic crisis.

In summary, as things currently stand, CGE econometric models are stronger for advanced economies that have more disaggregated statistical input on service sector activities than for developing countries, better for estimating impacts on agriculture and manufacturing than for services, and better in this regard for trade in goods rather than trade in services.

Most economists who have carried out relevant CGE studies of services trade liberalisation have focused on particular economies; various studies have examined this impact for India, Tunisia, Russia, Tanzania and Kenya. All these studies show, without exception, that large gains are obtained from reducing regulatory barriers against potential service providers (both foreign and domestic) through liberalising both discriminatory and non-discriminatory barriers to services trade. Welfare gains are estimated to be as high as 11 per cent of GDP, while real income effects from liberalisation are shown to be in the range of 2 to 25 per cent, with FDI a key channel of gain in both cases.<sup>84</sup> An earlier and more ambitious CGE study covered several economies, both developing and developed, and showed that the gains from services trade liberalisation would be much higher for developing economies than for developed economies (where, indeed, some of the latter are shown to lose from services liberalisation worldwide).<sup>85</sup>

### 5.3.3 Frequency and gravity models

Two other methods which economists have used to try and assess the impact of services trade liberalisation are through calculating cost-price margins for specific service sectors through a so-called frequency approach and a gravity approach. The former involves the collection of information on restrictive policies applied to service activities and a conversion of these into frequency indicators (i.e. the more measures are applied, the higher the frequency). These indicators are then used in regressions to explain the observed higher measures of prices or costs at the national level than at the world level. The second approach (i.e. gravity model) relies upon indirect methods through gravity regressions to estimate what trade flows should be in a certain sector and then estimate the tariff equivalent of policies from the difference between estimated and observed flows. Gravity models can be very convincing in their explanation of how distance, GDP per head, common language, colonialisation and so on affect past trade patterns. But they are an explanation of factors in the past and may not be considered desirable by politicians for forward-looking policy prescriptions. In addition, gravity models do not 'capture' the effect of new exporters expanding service flows.

Both of these efforts to measure the extent and impact of policy barriers on a sectoral and cross-country basis must make use of a policy index of some kind that is necessary to estimate the price, cost or quantity effects of restrictive policies (and therefore, indirectly, the benefits of removing them). However, the difficulty is that

there are no databases for the service sectors that provide information on restrictive measures applied in a comprehensive, comparative and accurate manner. The commitments in the WTO GATS schedules that are often used by researchers are not necessarily useful, as these measures can be misleading since they are frequently not scheduled at the level of regulatory application. Obtaining accurate information and assigning relative weights to their restrictiveness so as to be able to estimate their price and/or cost effects is a matter requiring a detailed level of sectoral investigation and expertise. The restrictiveness indices that have been constructed suggest that barriers to services trade appear to be substantial, especially for Modes 3 and 4.<sup>86</sup>

In summary, while attempts have been made to transform the regulatory restrictions on services, the essential input into all of the various modelling efforts, into more credible price wedges, the underlying data are not very good.<sup>87</sup> Estimates of the price wedges vary widely, and there is as yet no universally accepted measure of restrictions in services that can be converted so as to be usable in these various modelling frameworks.<sup>88</sup>

Two institutional efforts are underway to develop such estimates of such price wedges. Researchers at the World Bank (Mattoo, Borchert and Gootiz) have developed services restrictiveness indices for some of the Bank's member countries. The OECD Trade and Agriculture Directorate is currently undertaking a project to develop 'restrictive indices' of major barriers to services trade for OECD members which should allow for more accurate estimates of these price wedges or restrictive levels in the future for this subset of countries. However, these OECD Services Trade Restrictiveness Indices (STRI) and the robustness of the statistical techniques will need very careful assessment by independent analysts so that the path from economic and sectoral reality, as modified by the often multiple layers of regulations affecting a given service activity and that finally emerges into simplified indices, is captured as accurately as possible.

Though the quality of analysis still needs to be improved, CGE modelling, frequency modelling and gravity approach regression techniques are being used by researchers to obtain estimates of the impact of services trade liberalisation on firm-level, sector-level and economy-wide level variables. Despite their shortcomings, such estimates provide a sense of the relative magnitude of prevailing barriers and the relative magnitude and distribution of the gains that might be realised from increasing competition on services markets and on income and welfare. Across the board, the research suggests that potential gains from liberalisation may be substantial, or even very large, because of the numerous linkages between services and the rest of the economy. Hoekman's assessment of over a decade ago (2000) that 'the state of the data on barriers is such that, in the near term, policy-makers will have to continue to rely primarily on rules of thumb in determining negotiating priorities', is still largely true today, despite the more advanced modelling techniques that have been developed and the research carried out since then.



## Approaches to Advance Special and Differential Treatment in the Multilateral Context

### 6.1 Reference paper

The importance of providing SDT in services to developing countries in the multilateral context is discussed in several key WTO documents, reviewed in Chapter 2 of this paper and reproduced in the annexes. These include articles of the GATS legal text itself (Articles IV, V, XV, XIX and XXV, as well as paragraphs of the *Telecommunications Reference Paper*), the Doha Ministerial Declaration (WT/MIN01/DEC/1, 10 November 2001), the *Modalities for the Doha Development Round of Services Negotiations, Guidelines and Procedures for the Negotiations on Trade in Services* (S/L/93, 29 March 2001), the *Modalities for the Special Treatment for Least-developed Countries in the Negotiations on Trade in Services* (TN/S/13, 5 September 2003), the Hong Kong Ministerial Declaration, Annex C on Services (WT/MIN/DEC, 22 December 2005) and, most recently, the *Elements Required for the Completion of the Services Negotiations* (TN/S/34, 28 July 2008). There is no dearth of agreed texts that have included references to the need to offer SDT to developing and/or least developed countries to help promote their services trade, exempt them from the requirement of reciprocity expected in the Doha Round services negotiations and urge developed WTO members, as well as the WTO Secretariat, to provide the necessary technical assistance.

However, it is clear that the admonitions about SDT contained in these documents have so far not produced the desired results. It seems that a different approach is now needed. We suggest the elaboration of a reference paper on special and differential treatment in services for developing WTO members containing guidelines and commitments that, once adopted by individual developed country members, would be binding on them (much like the *Telecommunications Reference Paper*).<sup>89</sup>

Such a reference paper could be elaborated and proposed by a group of developing countries such as Commonwealth members and be open to voluntary adoption by developed and developing WTO members, either independently or as a part of the ongoing Doha Round services negotiations. The obligations of the reference paper relating to technical assistance would apply to all developing WTO members below a certain income level, as determined by the World Bank indicators, and would include the categories of least developed, low-income and low-middle-income countries. Special provisions in the reference paper would apply to LDCs.

The reference paper would set out the parameters for technical assistance by developed countries and benchmark this assistance by linking it to implementation of agreed liberalisation commitments by developing countries. Thus there would be a commitment on both sides, but developing countries would only be expected to give

the market access that had been negotiated after technical assistance had been provided to them in a given sector. As discussed in section 4.3 of this paper, a precedent for such an approach exists in a proposal by the Ministerial Council in the 'July 2004 Package' in connection with trade facilitation. This precedent could be built upon by the proposed reference paper. Developing countries might initially request this technical assistance from the WTO developed country trading partner with whom they have the greatest volume of trade, but they could also seek it from other sources.

As stated above, the reference paper would be binding on the individual WTO developed country members once they had accepted it. It could be made more attractive to WTO members by having an advocacy group of a large number of developing countries backing such an initiative. For example, the support of the Commonwealth group or all of the ACP group of countries would lend major backing for serious consideration of a reference paper. Although the guidelines would be general and apply to all developed WTO members who adhere to the document, the commitments could be elaborated with respect to the requests of individual WTO developing country members. Such a schedule of technical assistance commitments would be attached in an annex to the reference paper for each adhering member, and these commitments could be modified annually, depending on the requests made for specific technical assistance and their successful delivery. Thus the developing countries who would benefit most from the reference paper would be those who could articulate their needs and priorities in a convincing manner. The possibility of secretariats of regional groupings requesting commitments to giving technical assistance on behalf of their members should also be advocated, as this would save negotiating time and effort.

## **6.2 MFN waiver with respect to LDC service exports**

In March 2006, the LDC group submitted to the Council for Trade in Services a proposal calling upon the developed countries (and those developing countries in a position to do so) to grant non-reciprocal special access to services from LDCs (see TN/S/W/59, 28 March 2006). Paragraph 9 of the 'Elements Required for the Completion of the Services Negotiations', annexed to the 28 July 2008 report by the Chairman of the Council for Trade in Services (TN/S/34), states that of the various mechanisms identified to achieve this result:

Members are of the view that a waiver, available to all Members, from the obligations of Article II, paragraph 1 of the GATS [MFN] in respect of preferential treatment benefiting all LDC Members offers the most satisfactory outcome of this negotiation.

The Council has been working on this approach,<sup>90</sup> and it appears to be close to agreement on a draft decision for such a waiver, pending resolution of some outstanding issues. These include: whether the waiver should apply only to GATS Article XVI (market access) or to Article XVII (national treatment) as well; and the development

of rules of origin that would reduce the risk of circumvention.<sup>91</sup> WTO Director General Pascal Lamy included an MFN waiver on services on products from LDCs as part of a 'three-speed search' for an outcome to the Doha Round in December 2011, with a package of measures for LDCs (including the services waiver) as part of the fast-track priority or top speed, for an achievable outcome in the short term, with other issues to be taken up in a mid- to long-term perspective.<sup>92</sup>

A waiver from the MFN obligation, allowing developed country members to permit access to service imports from LDCs alone, with respect to particular service sectors and modes of supply, would clearly be of benefit to the LDCs. Of course, developed countries would be free to pick the sectors and modes of supply in which they granted preferential access, and it is possible that, as with the GSP applicable to trade in goods, products of particular interest to the LDCs would be excluded. Nevertheless, a programme that was limited to LDCs would be less threatening to domestic producers, and therefore less likely to generate protectionist pressure, than the GSP programme, which applies to developing countries generally (with individual country exclusions based on GDP and other factors). The developed countries might therefore be less inclined to exclude services of interest to LDCs.

In what modes of supply could LDCs take advantage of such a preference? Mode 1 is largely unrestricted, in practice even if not always scheduled, and Mode 2 is rarely restricted, so that they would offer little scope for preferential access. As we have noted, the poorer countries rarely have firms large enough to be able to invest abroad, so that they could not take advantage of preferential Mode 3 access. The focus would therefore be on Mode 4. This would raise a number of issues. Would the developed countries allow access only to higher skilled individuals from LDCs, or would they grant entry, perhaps subject to quota, to lower skilled workers, where the LDCs have comparative advantage?<sup>93</sup> Would minimum wage laws and regulations continue to apply, which might make it more difficult for workers from LDCs to compete in developed country markets?<sup>94</sup>

It would be useful to conduct analytical research to assist LDCs in the compilation of an illustrative list of measures that should be covered by the MFN waiver.

### **6.3 Other approaches**

Some of the approaches discussed with respect to RTAs in Chapter 4 of this paper could also be followed in the multilateral context. The most important of these are the delinking of Mode 1 commitments from commercial presence, as called for by Annex C to the Hong Kong Ministerial Declaration (WT/MIN(05)DEC, 22 December 2005) (see section 4.1.1); the various improvements to Mode 4 access discussed in section 4.1.2; and the granting of non-reciprocal access to the government procurement markets of the developed countries (section 4.4). The latter might be accomplished through amendment of the plurilateral Government Procurement Agreement. Additionally, sectors and modes might be identified where least developed countries

could benefit from making partial commitments in the plurilateral bargaining process, should this be taken up again in the Doha Round. Such areas might include joint venture and training requirements.

## Annex I

# SDT Provisions in Key North–South Regional Trade Agreements

	Time-limited derogation from obligations and longer periods for implementation	Flexibility in obligations and procedures	‘Best endeavour’ clauses	Technical assistance
North American Free Trade Agreement				
US–Chile		Article 11.7 (a) Transparency mechanisms for small Chilean agencies may need to take account of budget constraints		
US–Peru	Annex 12.5:1:3. For certain insurance, first of (a) two years (b) adoption by Peru of necessary legislation	Article 11.8 (a) Transparency mechanisms for small Peruvian agencies may need to take account of budget constraints		Establishes committee on trade capacity building to prioritise projects, invite assistance and monitor progress
US–Morocco	Annex 12–A:3 (a) Two years for certain insurance Article 13.4:3 Public access to telecom when Morocco has implemented pending regulations	Article 11.8:1 Transparency mechanisms for small Moroccan agencies may need to take account of budget constraints		

	<b>Time-limited derogation from obligations and longer periods for implementation</b>	<b>Flexibility in obligations and procedures</b>	<b>'Best endeavour' clauses</b>	<b>Technical assistance</b>
US–Colombia	Annex 12.5.1:3 for certain insurance, first of (a) four years, (b) adoption and implementation of legislation Annex 12.5:A.1 Four years for portfolio management			
Canada–Peru		Article 914.2(b), n.7. Transparency mechanisms for small Peruvian agencies may need to take account of budget constraints		
Canada–Chile				
Canada–Colombia	Annex 105:3. Four years for certain insurance risks	Annex 810:1. In relation to investment Columbia reserves right to adopt measures to maintain currency stability		
Japan–Indonesia				
Japan–Brunei				
Japan–Malaysia				
Japan–Mexico				
Japan–Philippines				

	<b>Time-limited derogation from obligations and longer periods for implementation</b>	<b>Flexibility in obligations and procedures</b>	<b>'Best endeavour' clauses</b>	<b>Technical assistance</b>
ASEAN–Australia–New Zealand	Appendix on transitional arrangements. Some ASEAN members given additional time to implement certain telecom commitments		<p>Article 20. Parties recognise importance of facilitating participation of newer ASEAN members<sup>8</sup> through specific commitments related to</p> <ul style="list-style-type: none"> <li>• Strengthened domestic services capacity through access to technology on a commercial basis</li> <li>• Improved access to distribution channels and information networks</li> <li>• Commitments in areas of export interest to newer ASEAN members</li> <li>• Recognising that commitments made by each newer ASEAN member may be made in accordance with its individual stage of development</li> </ul>	
Trans-Pacific Partnership	Article 20.5 Application of Trade in Services Chapter to Brunei delayed by up to two years			
Australia–Thailand				

Time-limited derogation from obligations and longer periods for implementation	Flexibility in obligations and procedures	'Best endeavour' clauses	Technical assistance
EC-CARIFORUM			<p>Article 117. Co-operation for advancement of CARIFORUM tourism sector through upgrading of national accounting system, capacity building for environmental management, development of Internet marketing strategies for SMEs, participation in standard-setting bodies, and tourism exchange programmes</p> <p>Art. 121. Parties agree to provide support for technical assistance, training, and capacity building with respect to, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>• Improving ability of CARIFORUM service suppliers to gather information on and meet regulations and standards of EC members</li> <li>• Improving export capacity of CARIFORUM service suppliers ,especially marketing of tourism and cultural services, needs of SMEs, franchising, and negotiation of MRAs</li> <li>• Facilitating interaction between EC and CARIFORUM service suppliers</li> <li>• Addressing quality and standards needs in sectors where CARIFORUM states have made commitments, including development and adoption of sustainable tourism standards</li> </ul>



Time-limited derogation from obligations and longer periods for implementation	Flexibility in obligations and procedures	'Best endeavour' clauses	Technical assistance
EC–Chile			<ul style="list-style-type: none"> <li>• Developing and implementing regulatory regimes for specific sectors where CARIFORUM states have made commitments</li> <li>• Establishing mechanisms for promoting investment and joint ventures between EC and CARIFORUM service suppliers</li> </ul>
			<p>Article 20. Co-operation, in particular to improve productivity and competitiveness in Chile's service sector and to facilitate SMEs' access to capital and market technology.</p>

<sup>a</sup>Cambodia, Laos, Myanmar, and Vietnam.

## Annex 2

# SDT Provisions in Key South–South Regional Trade Agreements

	<b>Time-limited derogation from obligations and longer periods for implementation</b>	<b>Flexibility in obligations and procedures</b>	<b>‘Best endeavour’ clauses</b>	<b>Technical assistance</b>
ASEAN–China		Article 18. Flexibility for Cambodia, Laos, Myanmar and Vietnam in opening fewer sectors, liberalising fewer types of transaction, etc.	Article 18. For Cambodia, Laos, Myanmar, and Vietnam: strengthening of domestic services capacity; improvement of access to distribution channels and networks; and liberalisation of sectors and modes of supply of interest to them	
ASEAN–Korea		Article 17. Flexibility for Cambodia, Laos, Myanmar and Vietnam in opening fewer sectors, liberalising fewer types of transaction, etc.	Article 17. For Cambodia, Laos, Myanmar and Vietnam: strengthening of domestic services capacity; improvement of access to distribution channels and networks; and liberalisation of sectors and modes of supply of interest to them	
CARICOM	Article 49. Disadvantaged countries to be given more time to apply national treatment		Article 148. Special needs and circumstances of LDCs to be taken into account with respect to removal of restrictions on services	

	<b>Time-limited derogation from obligations and longer periods for implementation</b>	<b>Flexibility in obligations and procedures</b>	<b>'Best endeavour' clauses</b>	<b>Technical assistance</b>
Chile–Korea				
China–Peru				
China–Singapore				
Korea–Singapore				
Singapore–Peru				
Andean Community	Decision 439, Article 22. Bolivia and Ecuador to be given temporary exceptions			
Chile–Mexico				
Chile–Colombia				

## Annex 3

# GATS Provisions on Special and Differential Treatment

### **Article IV: Increasing Participation of Developing Countries**

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:
  - (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;
  - (b) the improvement of their access to distribution channels and information networks; and
  - (c) the liberalisation of market access in sectors and modes of supply of export interest to them.
  
2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:
  - (a) commercial and technical aspects of the supply of services;
  - (b) registration, recognition and obtaining of professional qualifications; and
  - (c) the availability of services technology.
  
3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

### **Article V: Economic Integration**

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and sub-sectors.

- (b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

### **Article XV: Subsidies**

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects. The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

### **Article XIX: Negotiation of Specific Commitments**

2. The process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.
3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalisation undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

### **Article XXV: Technical Cooperation**

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.

2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

## **ANNEX ON TELECOMMUNICATIONS**

### **6. Technical Cooperation**

- (a) Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.
- (b) Members shall encourage and support telecommunications cooperation among developing countries at the international, regional and sub-regional levels.
- (c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.
- (d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support their development.

## Annex 4

# Doha Development Round Documents Calling for Special and Differential Treatment

### **A. DOHA DECLARATION<sup>95</sup>**

15. The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. ...

### **B. GUIDELINES AND PROCEDURES FOR THE NEGOTIATIONS ON TRADE IN SERVICES (2001)<sup>96</sup>**

#### **I. OBJECTIVES AND PRINCIPLES**

2. The negotiations shall aim to increase the participation of developing countries in trade in services. There shall be appropriate flexibility for individual developing country Members, as provided for by Article XIX:2. Special priority shall be granted to least-developed country Members as stipulated in Article IV:3.
3. The process of liberalisation shall take place with due respect for national policy objectives, the level of development and the size of economies of individual Members, both overall and in individual sectors. Due consideration should be given to the needs of small and medium-sized service suppliers, particularly those of developing countries.

#### **II. SCOPE**

4. There shall be no *a priori* exclusion of any service sector or mode of supply. Special attention shall be given to sectors and modes of supply of export interest to developing countries.
5. MFN Exemptions shall be subject to negotiation according to paragraph 6 of the Annex on Article II (MFN) Exemptions. In such negotiations, appropriate flexibility shall be accorded to individual developing country Members.

#### **III. MODALITIES AND PROCEDURES**

11. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

15. To ensure the effective implementation of Articles IV and XIX:2, the Council for Trade in Services in Special Session, when reviewing progress in negotiations, shall consider the extent to which Article IV is being implemented and suggest ways and means of promoting the goals established therein. In implementing Article IV consideration shall also be given to the needs of small service suppliers of developing countries. It shall also conduct an evaluation, before the completion of the negotiations, of the results attained in terms of the objectives of Article IV.

### **APPENDIX 3**

#### **C. MODALITIES FOR THE TREATMENT OF AUTONOMOUS liberalisation<sup>97</sup>**

14. In the application of these modalities, and in recognizing and granting credit pursuant to these modalities, Members shall take fully into account the flexibility provided for individual developing country Members under the provisions referred to in paragraph 13 above, as well as the level of development of developing country Members in relation to other Members. Special consideration shall be given to the least-developed country Members.

#### **D. MODALITIES FOR THE SPECIAL TREATMENT FOR LEAST-DEVELOPED COUNTRIES IN THE NEGOTIATIONS ON TRADE IN SERVICES<sup>98</sup>**

##### **I. OBJECTIVES AND PRINCIPLES**

1. In pursuance of the objectives of the GATS and as required by Article XIX:3 of the GATS special treatment for least-developed country Members (LDCs) shall be granted by providing special priority to LDCs in the implementation of paragraphs 1 and 2 of Article IV of the GATS. Particular account shall be taken of the serious difficulty of LDCs in undertaking negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.
2. The importance of trade in services for LDCs goes beyond pure economic significance due to the major role services play for achieving social and development objectives and as a means of addressing poverty, upgrading welfare, improving universal availability and access to basic services, and in ensuring sustainable development, including its social dimension. LDCs are facing serious difficulty in addressing a number of complex issues simultaneously, and lack institutional and human capacities to analyse and respond to offers and requests. This should be factored into the negotiating process in general and regarding the individual requests made to LDCs.



3. Together with the *Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93)*, the *Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services* shall ensure maximum flexibility for LDCs and shall form the basis for the negotiations.

## II. SCOPE

4. Members shall take into account the serious difficulty of LDCs in undertaking negotiated specific commitments in view of their special economic situation, and therefore shall exercise restraint in seeking commitments from LDCs. In particular, they shall generally not seek the removal of conditions which LDCs may attach when making access to their markets available to foreign service suppliers to the extent that those conditions are aimed at achieving the objectives of Article IV of the GATS.
5. There shall be flexibility for LDCs for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation. LDCs shall not be expected to offer full national treatment, nor are they expected to undertake additional commitments under Article XVIII of the GATS on regulatory issues which may go beyond their institutional, regulatory, and administrative capacities. In response to requests, LDCs may make commitments compatible with their development, trade and financial needs and which are limited in terms of sectors, modes of supply and scope.
6. Members shall, as provided for in Articles IV and XIX of the GATS, give special priority to providing effective market access in sectors and modes of supply of export interest to LDCs, through negotiated specific commitments pursuant to Parts III and IV of the GATS. LDCs should indicate those sectors and modes of supply that represent priority in their development policies, so that Members take these priorities into account in the negotiations.
7. Members shall work to develop appropriate mechanisms with a view to achieving full implementation of Article IV:3 of the GATS and facilitating effective access of LDCs' services and service suppliers to foreign markets.
8. Members shall take measures, in accordance with their individual capacities, aimed at increasing the participation of LDCs in trade in services. Such measures could include:
  - strengthening programmes to promote investment in LDCs, with a view to building their domestic services capacity and enhancing their efficiency and export competitiveness;
  - reinforcing export/import promotion programmes;

- promoting the development of LDCs' infrastructure and services exports through training, technology transfer, enterprise level actions and schemes, intergovernmental cooperation programmes, and where feasible, financial resources; and
  - improving the access of LDCs' services and service suppliers to distribution channels and information networks, especially in sectors and modes of supply of interest to LDCs.
9. It is recognized that the temporary movement of natural persons supplying services (Mode 4) provides potential benefits to the sending and recipient Members. LDCs have indicated that this is one of the most important means of supplying services internationally. Members shall to the extent possible, and consistently with Article XIX of the GATS, consider undertaking commitments to provide access in mode 4, taking into account all categories of natural persons identified by LDCs in their requests.
  10. LDCs shall be granted appropriate credit for their autonomous trade liberalisation. In addition, Members shall refrain from requesting credits from LDCs.
  11. In developing any multilateral rules and disciplines, including under GATS Articles VI:4 (Domestic regulation), X (Emergency safeguard measures), XIII (Government procurement) and XV (Subsidies), Members shall take into account the specific interests and difficulties of LDCs.

### **III. PRINCIPLES FOR THE PROVISION OF TECHNICAL ASSISTANCE WITH REGARD TO TRADE IN SERVICES**

12. Targeted and coordinated technical assistance and capacity building programmes shall continue to be provided to LDCs in order to strengthen their domestic services capacity, build institutional and human capacity, and enable them to undertake appropriate regulatory reforms. In pursuance of Paragraph 14 of the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93), technical assistance shall also be provided to LDCs to carry out national assessments of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and Article IV in particular.

### **IV. MECHANISMS AND PROCEDURES**

13. The Special Session of the Council for Trade in Services shall review, as necessary, the implementation of these modalities under the standing item on 'Review of Progress in the Negotiations'.

14. In his report to the Trade Negotiations Committee, the Chairman of the Special Session of the Council for Trade in Services will include the issues raised by Members with regard to these modalities.

## **E. DECISION ADOPTED BY THE GENERAL COUNCIL ON SERVICES<sup>99</sup>**

### **1 AUGUST 2004**

- (c) With a view to providing effective market access to all Members and in order to ensure a substantive outcome, Members shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to be given to least-developed countries.
- (d) Members shall aim to achieve progressively higher levels of liberalisation with no *a priori* exclusion of any service sector or mode of supply and shall give special attention to sectors and modes of supply of export interest to developing countries. Members note the interest of developing countries, as well as other Members, in Mode 4. ...
- (f) Targeted technical assistance should be provided with a view to enabling developing countries to participate effectively in the negotiations.

## **F. HONG KONG MINISTERIAL DECLARATION<sup>100</sup>**

26. We recognize the particular economic situation of LDCs, including the difficulties they face, and acknowledge that they are not expected to undertake new commitments.

## **Annex C: Services**

### **Objectives**

1. In order to achieve a progressively higher level of liberalisation of trade in services, with appropriate flexibility for individual developing country Members, we agree that Members should be guided, to the maximum extent possible, by the following objectives in making their new and improved commitments. ...
3. Members shall pursue full and effective implementation of the Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (LDC Modalities) adopted by the Special Session of the Council for Trade in Services on 3 September 2003, with a view to the beneficial and meaningful integration of LDCs into the multilateral trading system....
9. Members, in the course of negotiations, shall develop methods for the full and effective implementation of the LDC Modalities, including expeditiously:

- (a) Developing appropriate mechanisms for according special priority including to sectors and modes of supply of interest to LDCs in accordance with Article IV:3 of the GATS and paragraph 7 of the LDC Modalities.
  - (b) Undertaking commitments, to the extent possible, in such sectors and modes of supply identified, or to be identified, by LDCs that represent priority in their development policies in accordance with paragraphs 6 and 9 of the LDC Modalities.
  - (c) Assisting LDCs to enable them to identify sectors and modes of supply that represent development priorities.
  - (d) Providing targeted and effective technical assistance and capacity building for LDCs in accordance with the LDC Modalities, particularly paragraphs 8 and 12.
  - (e) Developing a reporting mechanism to facilitate the review requirement in paragraph 13 of the LDC Modalities.
10. Targeted technical assistance should be provided through, *inter alia*, the WTO Secretariat, with a view to enabling developing and least-developed countries to participate effectively in the negotiations. In particular and in accordance with paragraph 51 on Technical Cooperation of this Declaration, targeted technical assistance should be given to all developing countries allowing them to fully engage in the negotiation. In addition, such assistance should be provided on, *inter alia*, compiling and analyzing statistical data on trade in services, assessing interests in and gains from services trade, building regulatory capacity, particularly on those services sectors where liberalisation is being undertaken by developing countries.

## **G. ELEMENTS REQUIRED FOR THE COMPLETION OF THE SERVICES NEGOTIATIONS<sup>101</sup>**

- 4. ... Commitments shall be commensurate with the levels of development, regulatory capacity and national policy objectives of individual developing countries.
- 9. ... Members are of the view that a waiver, available to all Members, from the obligations of Article II, paragraph 1 of the GATS in respect of preferential treatment benefiting all LDC Members offers the most satisfactory outcome of this negotiation.
- 10. Members shall continue to give due consideration to proposals on trade-related concerns of small economies. In recognizing their special situation, further liberalisation shall be in accordance with their development needs.

13. Members recall and reaffirm that targeted technical assistance as agreed in paragraph 10 of Annex C of the Hong Kong Ministerial Declaration is intended to enable developing countries and LDCs to participate effectively in the negotiations. In this regard, Members request the WTO Secretariat to prepare, prior to the submission of revised offers, a comprehensive report of technical assistance activities it has carried out in services since the Hong Kong Ministerial Conference, to enable Members to identify further required activities, on the basis of which the Secretariat, in consultation with Members, could provide a roadmap for future efforts.

## Annex 5

# Mode 4 Commitments by Developed Countries in North–South Regional Trade Agreements

### **Regional trade agreements negotiated by the USA and Canada**

The North American Free Trade Agreement (1994) was the pioneer agreement and template for many subsequent RTAs. With respect to labour mobility, it contains a chapter entitled ‘Temporary Movement of Business Persons’, whose purpose is to facilitate temporary entry for business people, working in the area of both goods and services. NAFTA also contains an ‘Annex on Professionals’. The Annex is intended to promote the development of mutually acceptable standards for licensing and certification of professionals, based on factors such as educational background, qualifying examinations and experience. A qualifying list of 62 professions is set out in an Appendix to the agreement. The USA originally placed a quota on the number of professionals that could be admitted from Mexico at 5,500 per year, but that category is now uncapped, as it is by Canada, for professionals from Mexico.

Under the agreements between the USA and Chile and Singapore, both concluded in 2002, labour mobility was expanded slightly for professional workers and a specific path to an H-1B1 visa was created. An annual quota of 1,800 visas for professionals from Chile was granted and 5,400 for professionals from Singapore, in addition to the fixed total of H-1B visas from all countries.

Unfortunately, the opposition of the US Congress to these arrangements was loud and clear. Key congressmen objected that the trade agreements had stepped into the realm of immigration matters. As a consequence of this outcry, no free trade agreement negotiated by the USA since 2002 has contained a chapter to facilitate labour mobility. New agreements explicitly state that ‘No provision shall impose any obligation on a party regarding its immigration measures’.

In the case of Canada the situation has evolved in the opposite manner. Perhaps due to pressures from the private sector and apparent labour shortages in the Canadian market prior to the current financial crisis, the government has negotiated recent RTAs that go quite far toward providing increased access not only for professionals, but also for semi-skilled foreign workers. While the agreement that Canada negotiated with Chile in 1997 looks very much like the NAFTA, it is already notable in that no numerical limits were placed on 72 of these categories of professional labour.

Strikingly, the two recent RTAs negotiated by Canada with Colombia (2008) and Peru (2009) go much further. They cover all professional categories with no numerical limits and no specified length of stay, meaning that visas could in theory be renewed indefinitely. For the first time they also expand coverage of worker categories beyond

highly trained professionals to include ‘technicians’. In both the Colombia and Peru RTAs, Canada has listed 50 categories of technicians to be admitted into the Canadian market, again with no specified length of stay. Technician categories include, among others, mechanics, construction inspectors, food and beverage supervisors, chefs, plumbers, and oil and gas well drillers. This recent development constitutes a major step forward for the expansion of Mode 4 temporary entry in trade agreements.

## **Regional trade agreements negotiated by the European Union**

The EU has negotiated relatively few RTAs with developing countries that cover services. Although it has numerous association agreements in place with neighbouring Mediterranean countries (Morocco, Tunisia, Egypt, Jordan, Turkey, Syria and others), these agreements focus on goods and have not yet incorporated service provisions. However, the EU has negotiated association agreements with Mexico and Chile, and has finalised an economic partnership agreement with the countries of CARICOM and the Dominican Republic (CARIFORUM grouping), and more recently with Peru, Colombia, Ecuador and the countries of Central America.

While there are no in-depth services provisions in the earlier agreement with Mexico, which was concluded in March 2000 when the GATS negotiations were just beginning, the RTA with Chile and the EPA with the CARIFORUM countries are substantial. The EU specifies 33 categories of professional service providers that it will accept from Chile, and 29 from the CARIFORUM countries, without numerical limit but subject to the ‘necessary academic qualification and experience’. In addition, the EU expanded coverage of workers of the categories considered to be of great importance by Caribbean countries, namely: contractual service suppliers, independent professionals and graduate trainees, none of which have been assigned numerical limits. Interestingly, the agreements are very asymmetrical, as neither Chile nor the CARIFORUM countries commit reciprocally to accepting any professionals from the EU.

## **Regional trade agreements negotiated by Japan**

Japan has negotiated four RTAs that are of interest for labour mobility. Those with Mexico and Chile are very similar in form and content to the NAFTA-type approach and agreements. The two more recent agreements negotiated by Japan with countries in south-east Asia – Indonesia and the Philippines – go much further. Like the EU, Japan has expanded the categories of workers in the chapter on Mode 4 to include ‘professionals with personal contracts’ (essentially the same as independent professionals). Japan has also increased the number of professional categories covered in the Annex on Professionals in these two preferential trade agreements (to 14 in the case of Indonesia and 10 in the case of the Philippines), with no assigned numerical limits. But the main innovation in these agreements is to include for the first time the categories of nurses and care workers, under an annual quota, and subject to specific education, language and training requirements which can be provided partially in Japan.

## **Regional trade agreements negotiated by Australia and New Zealand**

Four RTAs have been negotiated by Australia and New Zealand that cover Mode 4, including one of them jointly with the ten ASEAN members. The P4, also known as the Trans-Pacific Strategic Economic Partnership Agreement (between New Zealand, Chile, Singapore and Brunei Darussalam), follows a NAFTA-type structure but with lighter content. The only category of workers specified in the labour mobility chapter is that of business persons, and no professional categories of service providers are covered. In the New Zealand–China RTA (2008) the ‘professionals’ category includes artisans with Chinese cultural characteristics such as theatre actors, Mandarin teachers, and Chinese medical specialists. This agreement also creates a new category of ‘installers’. Interestingly, the agreement is very asymmetrical, as China did not take on any commitment with regard to professional service providers. The Australia–Chile RTA (2009) follows a NAFTA-type structure with a lighter content (no commitment in the professional services category). The ASEAN–Australia–New Zealand RTA, signed in August 2008, goes further in terms of labour mobility. The additional category of ‘installers’ has been created (by New Zealand), and 58 categories of professionals are included in the agreement. It is of note that again, in an asymmetrical manner, the ten ASEAN members included fewer labour categories and committed to much less generous stays in terms of time than did their developed partners. In both agreements Australia innovates considerably in a positive manner regarding the treatment of spouses and accompanying family members, who are granted the right to join the worker after he/she has been in Australia for over one year.



## Annex 6

# WTO Proposals Relating to Special and Differential Treatment in Trade in Services

1. On 14 February 2003, the African Group in the WTO submitted a Joint Communication on SDT to the Committee on Trade and Development. With respect to trade in services, the Group recommended that:
  - The Committee on Trade and Development should set periodic benchmarks for the provision of financial and technical co-operation and other forms of SDT;
  - The developed countries should reserve quotas for the supply of services by developing country suppliers;
  - Developed countries should not adopt Mode 4 horizontal limitations, and should phase out existing limitations within two years;
  - Developed countries should report twice a year to the Council on Trade in Services on how they are implementing the targets set by the Committee on Trade and Development with respect to GATS Article IV;
  - Commitments under the GATS should reflect a proportion of at least 40:60 in short-term actual gains for developing and developed countries respectively;
  - The references to ‘flexibility’ and ‘more favourable treatment’ with respect to RTAs among developing countries should be taken to mean that the agreements are not required to comply with GATS Article V as long as they are entered into as part of wider economic liberalisation or regional integration programmes.<sup>102</sup>
  
2. On 7 May 2003, the LDC Group submitted a Communication to the Council on Trade in Services relating to draft modalities for the treatment of LDCs in the services negotiations.<sup>103</sup> Its recommendations included the following:
  - LDCs to retain maximum flexibility in undertaking commitments,<sup>104</sup> not to be required to offer national treatment, and not to be required to undertake regulatory reform beyond their capacities;
  - Members to grant full market access and national treatment to LDCs in the sectors and modes of supply of export of interest to them;
  - Members to assist LDCs in obtaining training and transfer of technology;

- Members to facilitate the improvement of access to services and service suppliers of LDCs to distribution channels and information networks, especially in tourism, transport, audiovisual, and construction services;
- Members to undertake commitments to provide access to all categories of natural persons from LDCs, particularly semi-skilled and unskilled persons, without economic needs tests;
- LDCs to be granted maximum credit for their autonomous liberalisation measures without scheduling them as binding commitments;
- LDCs to be provided with targeted and co-ordinated technical assistance designed to strengthen their services capacity and its efficiency and competitiveness, as well as building human capacity and assisting regulatory reform.

## Notes

- 1 However, there is a school of thought that holds that SDT provisions that allow developing countries to provide greater protection to their domestic industries than developed countries simply perpetuate the economic gap between the developed and the developing world by allowing the latter to refrain from taking measures of trade liberalisation and economic adjustment that would stimulate their economies to higher growth levels. Gibbs (1998) has observed that the 'earlier paradigm [favouring SDT] did not enjoy a consensus even among developing countries; it was viewed as ideological baggage from the past by some, or as a crutch which developing countries no longer needed and which was actually hindering their development'. See also Whalley (1999); Michaelopolis (2000). This paper is not the place for an in-depth analysis of this issue, but we discuss it briefly in the context of the pros and cons of SDT in section 2.8.
- 2 The term 'special and differential' does not appear anywhere in the GATS, although it does appear in a number of other WTO agreements. See, for example, Article 10 of the SPS Agreement, Part III of the Customs Valuation Agreement and Article 27 of the Subsidies and Countervailing Measures (SCM) Agreement.
- 3 For example, under the Agreement on Agriculture developing countries were subject to lower reduction commitments than developed countries with respect to tariffs and domestic subsidies, and were given more time to implement them. LDCs were completely exempt from the reduction commitments. To take another example, developing countries and LDCs were given longer periods of time to implement the TRIPS (Trade-related Aspects of Intellectual Property Rights) Agreement.
- 4 Matrices summarising the SDT provisions in these RTAs are provided in Annex 1 (North–South RTAs) and Annex 2 (South–South RTAs).
- 5 There are relatively few restrictions on Mode 2 supply, particularly on the part of the developed countries, with respect to the majority of service sectors and sub-sectors. Small and low-income countries are unlikely to have service industries that are large enough or competitive enough to consider investment (Mode 3 supply) in foreign countries (Hoekman, 2009).
- 6 The GATS, of course, contains no disciplines on the use of subsidies or safeguards. Articles X and XV call for future negotiations on these subjects, but they have made little or no progress in the DDA. Few RTAs contain effective safeguards provisions. Article 47 of the Revised Treaty of Chaguaramas (2001) (CARICOM) contains a general safeguard-type provision applicable to all obligations under the Treaty, including, presumably, services commitments. So far as we are aware, it has never been invoked, at least with regard to services. As discussed in section 2.8, note 49, some of the ASEAN FTAs contain safeguard provisions requiring consultations, but they do not permit unilateral action by the importing country. We are aware of no RTAs that impose substantive disciplines on subsidies on services.
- 7 Cited in Adhikari (2005).
- 8 Rubens Ricupero, former UNCTAD Secretary-General, has commented on this aspect of SDT, stating: 'The transitional periods for developing countries to implement the agreements have proved to be insufficient in light of the inadequacy of their administrative resources and access to financing. I have pointed out in several statements that the major developed countries have enjoyed 'transitional periods' approaching half a century to implement their GATT obligations. ...' (Ricupero, 2001: 51).
- 9 Services can be traded in four ways: Mode 1, Cross-border, when services are traded electronically or in some other way where the supplier and the consumer are in different countries; Mode 2, Consumption Abroad, where the consumer travels to another country to receive the service (e.g. tourism); Mode 3, Commercial Presence, i.e. a company establishes a presence in another country; and Mode 4, Temporary Movement of Natural Persons, where an individual travels to another country to provide a service.
- 10 In the Uruguay Round, Tanzania made only one commitment, covering hotels with four stars and above in the Travel and Tourism sector. See 'Tanzania – Draft Converted Schedule of Specific Commitments', S/DCS/W/TZA, 24 January 2003.
- 11 Relevant portions are reproduced in Annex 3.

- 12 The use of the term ‘parties to’ implies that developing countries are to be given more flexibility even where one or more developed countries are party to the agreement. This is in contrast to the case of RTAs covering trade in goods, where the relaxation of the strict requirements of GATT Article XXIV, including the coverage of ‘substantially all the trade’, only applies to RTAs ‘amongst developing countries’. See ‘Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries’, Decision of 28 November 1979 (L/4903) (the Enabling Clause), para. 2(c).
- 13 The EU has taken the position that Article V requires 80 per cent of total service trade between the parties to a free trade agreement to be covered in order to conform to Article V, but that the flexibility provision in paragraph 3 (a) means that the coverage does not have to be symmetrical. Thus, the EU believes that the CARIFORUM EPA is consistent with Article V because it covers 80 per cent of total trade between the parties, comprised of commitments with respect to 94 per cent of trade in the case of the EU itself, 65 per cent in the case of the developing CARIFORUM parties (90 per cent in the case of the Dominican Republic), and 55 per cent in the case of the LDC party, Haiti (Sauvé and Ward, 2009; Kelsey, 2010). According to Sauvé and Ward (2009), it is not clear whether the percentages refer to volume of trade or the central product classification, or a combination of both.
- 14 Relevant portions of these documents are reproduced in Annex 4.
- 15 ‘Elements Required to Complete the Services Negotiations’, appended to the Services Group Chairman’s Report of 28 July 2008 (T/N/S/34).
- 16 It has been suggested that use of pre-commitments, i.e. undertakings to liberalise a particular sector or mode at some point in the future, is a form of SDT, and most of the pre-commitments in the GATS schedules were in fact made by developing countries (OECD, 2006).
- 17 Statistics on trade in services are intrinsically unreliable, and in any event are not correlated with the WTO’s sector and sub-sector classifications (Kelsey, 2010).
- 18 The LDCs made commitments in an average of 24 sub-sectors, the developing countries in 41 and the developed countries 105. The average for all members was 50.
- 19 WTO (2009b).
- 20 WTO (2009a).
- 21 Even to analyse the offers that are publicly available would require a sector-by-sector comparison of each country’s existing schedule and its offer to determine what new had been placed on the table. In any event, only nine developed country and seven developing country offers (out of 71 initial offers and 31 revised offers that have been submitted) have been made public (see WTO website), so that any analysis would not be representative. It may be worth noting that a World Bank study has concluded that the offers made by the OECD countries, while an improvement over the existing GATS schedules, are still not as liberal as their applied policies (Gootiz and Mattoo, 2009).
- 22 The following summary of the Doha Round offers on Mode 4 is drawn from information in a study by the UNCTAD Secretariat (2003).
- 23 Parties to a negative list services agreement typically schedule not only existing non-conforming measures, but also possible future non-conforming measures, to provide themselves with some policy space. We have not included these in our analysis.
- 24 For example, one non-conforming measure scheduled by the USA in Annex I of all of the RTAs it has negotiated since NAFTA covers both cross-border trade in services and investment, and exempts all the measures taken at the level of states and local governments from any of the disciplines of the agreement, including MFN treatment, national treatment, no local presence requirement and other obligations.
- 25 We have not included Mode 1 commitments that are conditional on commercial presence, since these are meaningless for many developing countries, particularly smaller ones, which generally do not have service suppliers with the capacity to invest in foreign markets (Hoekman, 2009).
- 26 The original agreement did not contain a schedule of non-conforming measures for Brunei Darussalam because it was given two years to comply with the services portion of the Agreement. While Brunei Darussalam may have subsequently prepared a schedule, we have been unable to find it.
- 27 The discussion in this section draws on the studies by Stephenson and Delourme (2010) and by Stephenson and Hufbauer (2010).
- 28 The story of labour mobility within trade agreements is still being written. Currently several RTAs are under negotiation between developed economies and developing ones. The EU is negotiating

with the four members of MERCOSUR, India, ASEAN and South Korea. Canada is negotiating with CARICOM, four countries in Central America, the Dominican Republic, Jordan, Panama, Singapore and South Korea. Japan is negotiating with India and Peru. Australia is negotiating with China, the Gulf Cooperation Council, South Korea, and Malaysia. The USA is negotiating the Trans-Pacific Partnership with a number of Pacific Rim countries. Thus the sample for evaluating the treatment of labour mobility in RTAs will continue to expand in the coming years. Developing countries that are able to pro-actively define and push their interests with developed country trading partners should find opportunities that did not exist in the past.

29 Technical assistance is also called for by Paragraph 6 of the Annex on Telecommunications (reproduced in Annex 3), which provides in part that:

(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

(d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

As with Article XXV.2, there is no binding commitment as to the amount or timing of technical assistance.

30 See <http://tcdbd.wto.org>, which shows that the value of technical assistance with respect to trade in services between 2001 and 2007 (part-year) was as follows: US\$4.7m (2001); US\$17.9m (2002); US\$5.5m (2003); US\$4.4m (2004); US\$5.3m (2005); US\$3.5m (2006); US\$0.7m (2007). Te Velde (2005) provides details of the services-related technical assistance provided by the WTO and other international organisations.

31 See TN/S/34 (28 July 2008).

32 See, for example: (1) Grenada (exclusive supply until 2006, no restrictions thereafter); Tunisia (no restrictions on local calls after 2003).

33 Additionally, many of the offers submitted, particularly those by developing countries, have not been made public, so it would be impossible to examine them.

34 The additional time was calculated differently for each country. In the case of Brunei Darussalam, the obligations applied from a date certain, 1 January 2009. Cambodia's obligations were to apply three years after entry into force of the agreement. Laos was to apply its commitments at the earliest of (a) its accession to the WTO, and (b) the entry into force of domestic legislation implementing the obligations. Thailand was to implement its obligations after the expiration of its last concession contract. The date for Vietnam to assume its obligations was to be three years after they were reflected in domestic laws and regulations.

35 Defined as LDCs and member states that may require special support measures on a temporary basis.

36 As of October 2009, 83 WTO members had established contact points. See *Contact and Enquiry Points Notified to the Council for Trade in Services*, S/ENQ/78/Rev.11, 26 October 2009. GATS Article IV.2 specifies that service suppliers who need technical assistance are to be given access to the services of these contact points.

37 See Section 2.7.2 below.

38 As noted in the Introduction to this paper, there is a view that the provision of SDT has not benefited the developing countries.

39 Of course many countries, including developing countries, have unilaterally opened their service markets considerably more than required by their WTO commitments.

40 It has been estimated that a 10 per cent decrease in the cost of transport increases trade by 25 per cent (Hodge, 2002).

41 See, for example, Robinson, Wang and Martin (1999); Mattoo, Rathindran, and Subramanian (2001); Hoekman (2009). Hoekman (2006) summarises many of these studies. See also the studies referred to in Chapter 5 of this paper.

42 A study underlining the benefits of services liberalisation in general and in five different sectors

(financial services, business services, express delivery, audiovisual and telecommunication services) includes many examples of developing countries. See Coalition of Service Industries (2006). Various chapters in the recent volume published by the World Bank and edited by Cattaneo, Engman, Saez and Stern (2010), contain discussion and examples of various developing countries who have reaped benefits from services liberalisation in non-backbone service sectors, namely: health services, distribution services, construction services, information technology services, accounting services and engineering services. A discussion of the estimated quantitative benefits from services liberalisation is contained in Chapter 5 of this study.

- 43 Service suppliers in the poorer countries are of course better equipped to compete under Mode 1, which simply requires access to the internet, than Mode 4. Nevertheless, as discussed in the next section, they face significant obstacles with respect to this mode also.
- 44 Manduna (2005). The majority of LDCs that were members of the WTO made commitments in fewer than 20 sub-sectors.
- 45 Ibid.
- 46 According to Manduna (2005), it has been suggested that some South African service providers are not globally competitive, even though they may be the most efficient in the region. As a result of their proximity, as well as South Africa's close economic ties with Lesotho, they were often the 'first movers' in the Lesotho market. Other potential investors are inhibited by the small size of the market, so that Lesotho is locked in with service providers who may not be the most competitive. However, the key question is not whether Lesotho could have more competitive service providers, but whether the presence of South African firms has produced more welfare benefits than would exist without them.
- 47 In a study of 81 developing countries, Fink, Mattoo and Rathindran (2002) showed that there was a substantial increase in productivity and efficiency in countries that privatised incumbent telecommunications operators, added competitors and established independent regulators.
- 48 Zambia's experience illustrates the dangers of opening service markets without having the necessary regulatory structures in place. At the time of liberalisation of the banking sector, the absence of minimum prudential rules, such as proper loan classification and internal controls, led to a rapid growth of financial institutions. This created a credit boom which was followed by a series of bank failures. In the case of telecommunications, the government did open the mobile sector, which now has two independent providers, but the government-owned fixed line operator was left with a *de facto* monopoly. The mobile operators are charged an interconnection fee for outgoing international calls equal to 80 per cent of the fixed line operator's retail price. As a result, the price of international calls is much higher than the regional and global average (Mattoo and Payton, 2007). In some sectors, such as non-life insurance, liberalisation did result in lower prices. For example, motor vehicle premiums fell from between 10 and 16 per cent of the value of the car in 1992 to 6 per cent 15 years later (ibid.).
- 49 Only one of the RTAs we examined, the CARICOM Agreement, contains a safeguard-type clause which allows the importing party to impose restrictions unilaterally. See Chapter 1 of this paper. Several of the ASEAN FTAs contain safeguard provisions specifically relating to services, but these merely require consultations between the parties and measures can only be imposed by agreement among the parties. See, for example, ASEAN/Australia–New Zealand FTA, Article 19; ASEAN–China FTA, Article 17; ASEAN–Korea FTA, Article 18. However, it is significant that the agreements at least recognize the concept of and need for safeguards.
- 50 Mode 2 access is generally not restricted.
- 51 In practice, of course, few countries impose restrictions on Mode 1 supply, even if they have not formally opened it in the GATS or in an RTA.
- 52 Merely determining what regulatory barriers exist can be expensive and time-consuming. As noted above, potential service exporters can gain a good deal of useful information in this respect during the negotiation of an FTA.
- 53 Small service exporters in the Caribbean have reported that lack of international credibility is their greatest barrier to growth (Riddle, 2002b).
- 54 Even in developed countries small businesses are often charged higher interest rates than larger firms (Riddle, 2002b).
- 55 Proposals relating to SDT submitted to the WTO by the African Group and the LDC Group are reproduced in Annex 6.

- 56 Hoekman (2000) suggests that members to trade agreements should pursue the request for one-to-one mappings between commitments relating to Modes 1 and 3 in order to ensure non-discrimination across modes. This modal neutrality is an objective worth pursuing because, as is often emphasised in the literature, trade and investment have increasingly become complementary.
- 57 See Hong Kong Ministerial Declaration (WT/MIN(05)/DEC, adopted 22 December 2005), Annex C, para. 1.
- 58 See, for example, Mattoo (2002). A few years ago there was considerable concern in the USA about the loss of jobs to outsourcing of back-office functions to developing countries, and several states considered passing legislation to prevent outsourcing overseas. Nothing came of this at the time, but it is an issue that could surface again in the future. Binding by the USA of Mode 1 commitments without Mode 3 linkage (currently most Mode 1 commitments made by the USA are linked to Mode 3 (Cho, 2009)) would prevent this.
- 59 Walmsley and Winters (2005) have estimated that the opening of the developed countries to allow temporary entry equal to 3 per cent of their workforce would produce welfare gains greater than those resulting from full merchandise trade liberalisation. Rodrik (2002) has calculated that the same degree of Mode 4 opening would result in a gain of US\$200 billion.
- 60 For example, one of the authors learned that Tuvalu, a country of some 10,000 people, has around 900 qualified seamen, many of whom are currently unemployed.
- 61 See Faini (2007); Ozden and Schiff (2006). These authors investigate the link between migration and remittances and their results show that migrants tend to offset their absence by sending transfers back home.
- 62 The UNCTAD Secretariat, in its study 'Increasing the Participation of Developing Countries through liberalisation of Market Access in GATS Mode 4 for Movement of Natural Persons Supplying Services', estimates that even limited liberalisation of Mode 4 would provide gains to developing countries and to the world 25 times larger than those that could be obtained from liberalisation in traditional areas of trade in goods and agriculture. See UNCTAD, TD/B/COM.1/EM.22/2 of 18 June 2003.
- 63 See UNCTAD Secretariat (2003).
- 64 Commercially meaningful market access for developing countries providers of services through Mode 4 would include such services activities as tourism, construction, maintenance work and cleaning services for lower-skilled workers and several categories for skilled workers. Commitments in these sectors would reflect a development-oriented negotiated outcome.
- 65 See Stephenson and Hufbauer (2010).
- 66 See, for example, NAFTA and the EC–Mexico and EC–Chile FTAs, available at [worldtradelaw.net](http://worldtradelaw.net)
- 67 Enquiry points were to be established to provide information to other members, and contact points to provide information to developing countries' service suppliers. In most, if not all, cases the enquiry and contact points are the same. See International Trade Centre (2000), Appendix VII.
- 68 Such trade capacity issues include rural diversification programmes for agricultural products (e.g. coffee), strengthening of food and agriculture regulatory systems, market linkages for goods and services, food industry development, sanitary and phyto-sanitary issues, and the strengthening of labour, judicial and customs systems.
- 69 Figure taken from the website of the United States Trade Representative at [www.ustr.gov](http://www.ustr.gov)
- 70 From *Development and Democracy*, Report of the Commonwealth Secretary-General, Commonwealth Secretariat, London, 2003, p. 17.
- 71 See website of the Commonwealth Secretariat for detailed information on the 'Hub and Spokes' programme: [http://www.thecommonwealth.org/Internal/191502/159353/what\\_is\\_hub\\_spokes/](http://www.thecommonwealth.org/Internal/191502/159353/what_is_hub_spokes/)
- 72 From 'Hub and Spokes Project: Mid-Term Review', 2004/2009, carried out by Freer Spreckley in September 2007. Other review reports can be found at: Pacific Brief: [www.thecommonwealth.org/files/222002/FileName/HS\\_II\\_Regional\\_Brief\\_Pacific.pdf](http://www.thecommonwealth.org/files/222002/FileName/HS_II_Regional_Brief_Pacific.pdf); Caribbean Brief: [www.thecommonwealth.org/files/223379/FileName/RegionalBrief-Caribbean-Online.pdf](http://www.thecommonwealth.org/files/223379/FileName/RegionalBrief-Caribbean-Online.pdf); African Brief: [www.thecommonwealth.org/files/223378/FileName/RegionalBrief-Africa-Online.pdf](http://www.thecommonwealth.org/files/223378/FileName/RegionalBrief-Africa-Online.pdf); Final Report: [www.thecommonwealth.org/files/216008/FileName/FINALDRAFTPCCProgressReportJan-June20091.pdf](http://www.thecommonwealth.org/files/216008/FileName/FINALDRAFTPCCProgressReportJan-June20091.pdf)
- 73 For example, several low-income developing countries in Africa undertook highly liberalised commitments in financial services under Protocol V of the GATS without fully realising the need to have

- appropriate regulatory and prudential requirements in place. This has resulted very negative consequences in some cases, with loss of income for consumers and the country as a whole. See, for example, the description of the experience of Zambia in financial services in Mattoo and Payton (2007), discussed in note 48 above.
- 74 Decision Adopted by the General Council on 1 August 2004, WT/L/579 (emphasis supplied).
- 75 Negotiating Group on Trade Facilitation, Draft Consolidated Negotiating Text, TN/TF/W/165/Rev.9, 17 June, 2011. See also, Section II, Paras. 2.3, 5.3, 9.1, 9.2.
- 76 See Chandra (2006), 'Inter-Modal Linkages in Services Trade', OECD Trade Policy Working Paper No. 30, number JT00200273.
- 77 The authors are very grateful to Julian Arkell for his very detailed and insightful comments on this section of the study. Nearly all of his textual suggestions have been incorporated into this discussion.
- 78 Collection of FDI flows for the members of the OECD is a fairly recent activity and is undertaken through the gathering of FATS statistics, or 'foreign affiliates trade in services'.
- 79 See the useful survey of recent modelling efforts for services liberalisation carried out by Fukui and McDaniel (2010). This section summarises their discussion on the various channels through which liberalisation of services can affect the domestic economy. Another very useful article discussing how economists have gone about quantifying the impacts of trade liberalisation in services, specifically with reference to developing countries, is Whalley (2004).
- 80 This is the idea behind the computable general equilibrium models, which try to capture the 'network effects' of improved efficiency through services liberalisation on the entire economy.
- 81 A survey article by Hoekman (2000) discusses the earlier attempts to estimate the impact of services liberalisation, while the studies done during the past decade are surveyed by Fukui and McDaniel (2010).
- 82 Hoekman (2000) and Fukai and McDaniel (2010) survey a number of such studies. For example, Robinson, Wang, and Martin (1999) and Chadha (1999) use 'guesstimates' of the relative restrictiveness of services policies as revealed by the comprehensiveness of GATS commitments as inputs into the CGE models. Chadha *et al.* (2000) do the same, as do Konan and Maskus (2002) and Jensen, Rutherford and Tarr (2008).
- 83 See Fukui and McDaniel (2010).
- 84 See Hoekman (2000).
- 85 See Dee and Hanslow (1999), who show that for economies such as China, Hong Kong and Indonesia the gains from services liberalisation are a multiple of the gains associated with goods liberalisation, while the converse is true for countries such as New Zealand, Japan, Korea, Singapore, Taiwan, the EU and the USA. In fact, the EU and the USA would lose, resulting from a change in the pattern of FDI stocks held worldwide and an associated loss in the rents they generate.
- 86 Hoekman (2006) presents a detailed discussion of the frequency approach and the gravity approach to estimating the impact of services trade barriers and the difficulties involved in obtaining the appropriate information on restrictive measures affecting services trade in order to carry them out.
- 87 Of course, the higher the price wedge or tariff equivalent, the larger will be the welfare and income effects of the resulting estimates.
- 88 Deardorff and Stern (2004) also present a thorough survey of these issues.
- 89 Of course it would be preferable if the reference paper were adopted by the WTO as a whole and binding on all developed country members, but this seems unrealistic.
- 90 See, for example, Council for Trade in Services, Report of the Meeting Held on 18 March 2011 (TN/S/M/41).
- 91 The concern is that a multinational corporation might set up a local entity and use it as a 'mailbox' to take advantage of the preference. The EU has reportedly suggested that a firm have substantial business operations in the LDC to qualify for the preference.
- 92 WTO Director-General Lamy put forward this suggestion at an informal meeting of the Trade Negotiations Committee on 30 May 2011. The suggestion was discussed at the TNC meeting on 9 June 9 2011 and is still under consideration. See Lamy's statement at: >[http://www.wto.org/english/news\\_e/news11\\_e/tnc\\_infstat\\_31may11\\_e.htm](http://www.wto.org/english/news_e/news11_e/tnc_infstat_31may11_e.htm)
- 93 As noted in section 2.4.3 of this paper, a few developed countries have begun to allow access to semi-skilled workers in the context of their RTAs.



- 94 A number of WTO members have reserved the right in their GATS schedules to operate minimum wage requirements. See Adlung (2009).
- 95 WT/MIN(01)/DEC/1, adopted 18 November 2001.
- 96 S/L/93, adopted 29 March 2001.
- 97 TN/S/6, adopted 6 March 2003.
- 98 TN/S/13, adopted 5 September 2003.
- 99 TN/S/16, adopted 1 August 2004.
- 100 WT/MIN(05)/DEC, adopted 22 December 2005.
- 101 TN/S/34, 28 July 2008
- 102 TN/CTD/W/28, 14 February 2003.
- 103 TN/S/W/13, 7 May 2003. This was a revision of an earlier draft circulated on 2 December 2002 as JOB(02)/05.
- 104 As noted above, the Hong Kong Ministerial Declaration acknowledged that LDCs will not be expected to make any new commitments.

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This Economic Paper assesses new innovative measures in trade in service negotiations that reflect the vulnerabilities and challenges faced by developing countries. It outlines the approaches that can help small and low-income countries employ the Special and Differential Treatment Arrangements provided under the WTO GATS in a manner that is practical and supportive of their economic development.

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