

# THE WORLD SERVICES MARKET REGULATION, WTO REQUIREMENTS AND PROBLEMS OF ACCEDING COUNTRIES

By

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## The world services market.

1. The international trade of world services market represents about 1400 billion US \$/y and 18 % of the total international trade. This market is more important than the goods market in advanced industrial countries where its share represents about **60-80% of the total GDP**. Given its rate of growth, the services market is estimated to double in volume in the next 15-20 years. Services are one of the main motors of the international economy and their sectors are among the most dynamic in the world trade. It is the case of financial, telecommunications or tourism services. Services firms buy over 60 % of products from the manufacturing sector. They also account for up 70 % of the value added to manufactured and agricultural products and play a key role in improving country's competitiveness.
2. The most important exporters and importers of services are USA, UK, France, Germany, Italy, and Japan. Taken together they have about 47 % of the international trade of services. Among the developing and Eastern European countries, China, Turkey, Thailand, India, Mexico, Poland, and Russia are the most important exporters of services. On the import side, we must include to the group Malaysia, Indonesia, and Brazil. In total, they have 11% of services market shares. (Fig 1)
3. The services market is under evaluated, it is due to different classifications, its rapid changes, and the lack of reliable statistical data. Many analysts estimate the market bigger at about 25-30% of the international trade. To improve the evaluation of the services sector, WTO members are increasing the use of the Central Product Classification (CPC) system of the UN. Nowadays it is one of the most used. It covers **12 principal areas, sub-divided in 155 sub-sectors**, which are matter of negotiation for WTO candidates and for the next round of multilateral negotiations. (Fig. 1).

## Multilateral negotiations and Services.

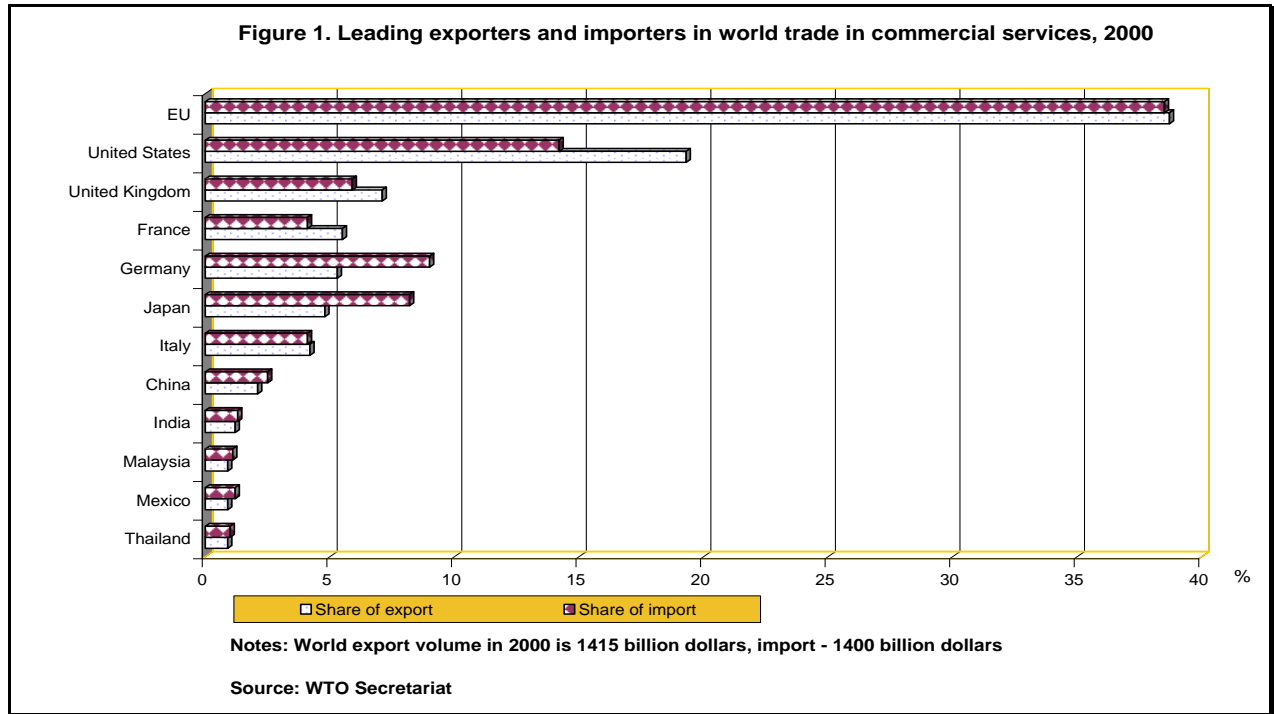
4. The international trade of services was not regulated by any multilateral agreement until the end of the Uruguay Round (UR) in 1994. Its insertion in the regulation of the multilateral trade system (MTS) is one of the most important accomplishments of the Round. The negotiations on services during the UR, was one of the most difficult to carry out due to its condition as **new trade issue** for international regulation, the obstacles to set up or change the legislation of GATT members and the policy discrepancies between developing and industrial countries. The main problems during the round were the country's legislation, the obstacles concerning different treatment for foreigners and nationals, market limitations for foreign firms, use of subsidies and others. Thus, at the beginning of the UR in 1986 an important number of developing countries (DVC) were against the inclusion of services in the negotiations. They argued the needs to introduce specific conditions to protect the infant service sectors or the "national champions".
5. On the other side the EU, USA and Japan pushed for inclusions of services in the negotiations but conceding minimum changes in their schedules. At the same time the EU and US diverged in their approach to market regulation. The EU proposed a voluntary and unilateral liberalization based in the creation of its single services market. In this context the EU based in the articles 57 and 58 of the Rome Treaty, applied the national treatment principle (NTP). However, selected sectors received a limited treatment for foreign firms. A typical case is the EU is the audiovisual sector.

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**Key Words:** Trade in services, GATS, services negotiations, modes of supply, commitments, WTO accession, difficulties

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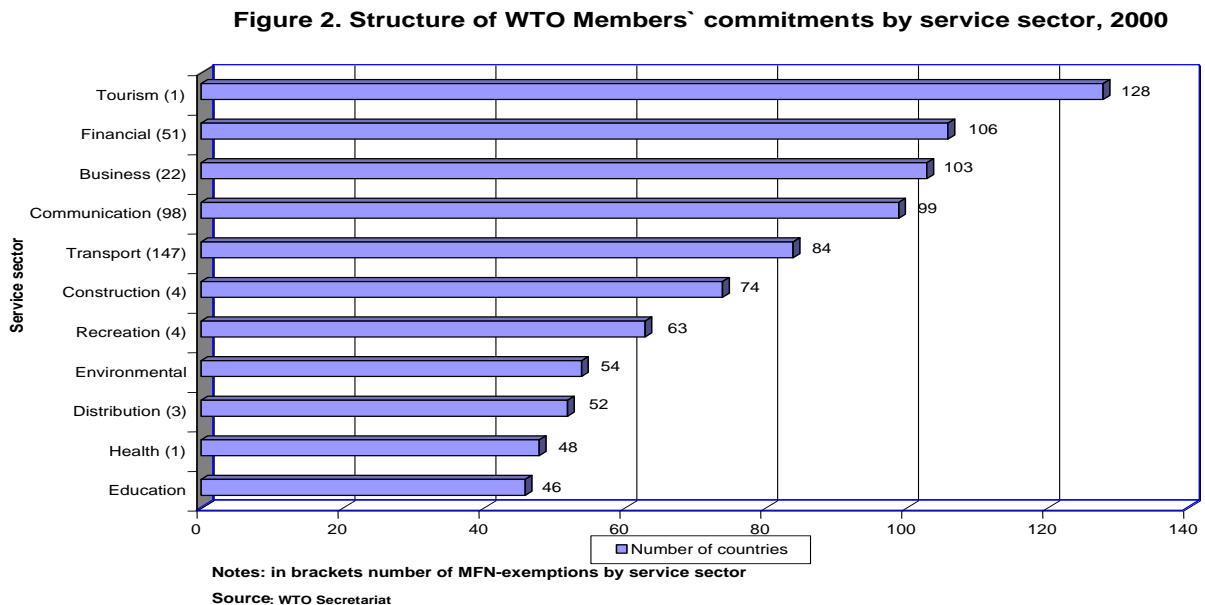


6. The USA, the second most open largest market in services proposed negotiations based on reciprocity, i.e., only the countries opening their market in similar conditions can receive similar treatment to profit of the possibilities of the large US market. However, US negotiators regarded the threat of withholding MFN (most favored nation) status in the financial services, maritime and basic telecommunications sectors as leverage, to ensure that other countries engage seriously and expeditiously in the reciprocal reduction of trade barriers.
7. At the end most of the countries were satisfied to accept a framework code that essentially set up a standstill on existing market access, hoping that future trade negotiations would focus on other key issues for trade liberalization. The MFN issue was put on hold for sensitive industries and various sectors given their situation continued negotiations after the end of the UR. These negotiations are call GATS “protocols” (General Agreement of Trade and Services). Thus, the second (July 97) and fifth (Nov. 97) GATS “protocol” concerns financial services, the third (July 95) the movement of natural persons and the fourth protocol (April 97) concerns the basic telecommunications.
8. The definition of services, it is absent of the GATS, but it considers the trade of services following **4 modes of supply**: 1. *cross-border supply (mode 1)*, it means from the territory of one country to another, this do not require the physical movement of supplier or consumer. A typical case is the international telephone calls, electronic data transmission and others, 2. *Consumption abroad (mode 2)*, i.e., from the territory of one member to the service consumer of any other member. It is the case of tourist visits and training abroad of executives or students, 3. *Commercial presence (mode 3)* services sold in the territory of a member by foreign firms with establish commercial presence in the country. It is the case of foreign banks, hotel chains, engineering services, others. Investment abroad is base in this mode, 4) *Presence of natural persons (mode 4)*, is the provision of services requiring the temporary movement or presence of a person of one country to another. It is the case of consultants, fashion models, health experts, geologists, others.
9. To ease to reach an agreement between members MFN-*exemptions* (art.2) were allow to all services. They are temporary and are list in the country's schedule of commitments. The exemptions are revise every 5 years and should not last for more than 10 years after negotiations. All the listed services in the country's schedule apply the national treatment principle. The countries also negotiated various market limitations

for a determinate period such as: number of services suppliers allowed, share of equity ownership, and number of natural persons to employ. Given the limitations and exemption possibilities, GATS is considering a flexible agreement that gives room for commitments and policy facilities for decision makers. It is also considered as **unfinished or compromise agreement** with strict agenda for the next round.

### Services sector commitments.

10. By the number of commitments by country the **tourism sector** is the most important, 128 countries adhered to this sector (June 2000), follows **financial and business services** with over 100 countries. **Communications** another important sector has commitments of 99 countries. (See fig. 2). On the other side about 66% of WTO members presented MFN exemptions and 80% of them introduced unlimited ones, which is contradictory with the agreement. **Exemptions** are mainly in four sectors, transport (147 cases, see Fig. 2) communications (98), financial (51 cases) and business services (22).
11. **Tourism** is a high growing sector, view as a major employment generator worldwide, and one in which many developing and Eastern European countries (Poland, Czech Republic) are competitive. However,



main destinations for tourism are France, USA and Spain. Nearly all WTO members have made commitments particularly on the services of hotels and restaurants. The primary **limitations** are **currency regulations** (consumption abroad, mode 2) Travel agencies and tour operators may face restrictions on the **establishment of a presence** (mode 3) in mayor supply markets to capture tourism business, including restrictions (visa) on travel abroad of the supervisory staff. Another problem is access to the global distribution system for tourism related information. Given the increased **use of computer reservation** to book hotels, rental cars, tours etc. any restrictions on use by locally owned travel agencies can have a trade distortion effect. To ensure the income from tourism, it is important to involve immigrations and trade officials as well as tourism agency in insuring market access. Simplification of **visa regime** and insuring security for tourist are important to develop this market.

12. **The financial service** agreement covers all-insurance and insurance related services, banking, and financial services. In total, they cover over 17 sub-sectors (Fig.2) going from life and health services to money broking management and transfer of financial information. The level of commitments in this sector is high but we must remark that 39 WTO members have taken MFN exemptions and considerable number of **limitations** has been listed under both **market access and national treatment**. It can be also remarked that several developing and transition economies have made more commitment in banking and insurance than established GATT members.

13. **On business or professional services**, the commitments make represents over 90 % of the world market. It includes commitments in management consulting, accounting, computer services, R&D, legal services, real estate, and others. CIS countries committed important part of sub-sectors in this category (tab. 1). After special ministerial decision, it is recommended the creation of a Working Party to make sure that the principles concerning domestic regulation and recognition of qualification and standards (art 7) do not make up barriers to trade in professional services.

<b>Table 1. Services commitments scheduled in selected services in new WTO members</b>						
<b>Country</b>	<b>Bulgaria</b>	<b>Mongolia</b>	<b>Kyrgyz Republic</b>	<b>Latvia</b>	<b>Estonia</b>	<b>Georgia</b>
<b>Accession date</b>	<b>01.12.96</b>	<b>29.01.97</b>	<b>20.12.98</b>	<b>10.02.98</b>	<b>13.11.99</b>	<b>14.06.00</b>
<b>Total sub-sectors (155) a</b>	78	32	131	115	96	120
<b>Financial services (17):</b>	14	10	14	16	16	16
Banking (12) a	9	8	11	12	12	12
Insurance (4) a	4	2	3	4	4	4
<b>Business (46) a</b>	27	6	39	37	28	41
<b>Communication (24) a</b>	11	9	22	16	16	20

Notes: in brackets number of sub-sectors; a - total number of sub-sectors in the relevant category

Source: WTO Secretariat

#### **Acceding countries conditions and services agreements difficulties.**

14. From the last 20 countries that have acceded during the last 5 years, most of them faced important problems in presenting the service offer. Several of them have presented it 2-3 times before starting really negotiations and others presented the offer for negotiations with many technical contradictions. All of them faced problems in amending the legislation. Among the main problems figure: a knowledge and **understanding** of the service agreement, misinterpretations of the modes of supply and the form to present the schedule of commitments. Usually there is much misunderstanding on the specific vocabulary, such as limitations on market access, national treatment, MFN exemption, none, unbound, mode 2 (consumption abroad), commercial presence, confusion between subsidiaries, branches, and representation.
15. In various cases, the conditions of the sector-specific commitments are contradictory with horizontal ones (HC). In other cases, the description of the HC is vague and unclear especially when it concerns the limitations on market access and national treatment. This has its consequences when is presented the sector commitments. A great part of these problems is due to the lack of knowledge of GATS and WTO system, the way of how the offer should be prepared, lack or weak coordination of the process among institutions, a high rotation of personnel. Beside this, one must name the lack of right material and financial resources to face the accession process with success.
16. Thus, various countries retarded their accession process due to **unclear or weak commitments** on market access. **China** for example, after 15 years of negotiations faced problems on reach agreement on **banking** and insurance issues mainly with US, EU, Switzerland, and Japan. On banking services nowadays, China allows foreign banks to conduct foreign currency business and to supply local currency services to Chinese companies within two years after WTO accession and to individuals within five years. **On insurance** foreign non-life insurances can set up branches or joint ventures (JV) with 51% ownership and 100 % wholly owned subsidiaries after 2 years of accession. For large-scale commercial risks, re-insurance and international marine, aviation and transport insurance and reinsurance, 50% JV will be possible. The investment conditions proposed by China are limit to 51% within the first 3 years and 100% within 5 years

after WTO accession. **On telecoms**, foreign mobile operators in China are allow 25% stakes in JV, rising to 35% after one year and 49% after 3 years. **On internet**, paging and other value-added services foreign companies may take 30% stake in Chinese firms in Beijing, Shanghai, and Guangzhou, rising to 50% in 2 years when geographical constrains are lifted.

17. Other problems that have face-accessing countries have been the presentation of its commitment schedules on **audiovisual** services, which includes films, videotape production and its distribution, radio and TV services and others. Thus, two Baltic countries, Croatia, Albania, and Moldavia have seen their accession and negotiations on GATS retarded by 6-10 months. Most of them have presented an open liberal market access commitment that satisfied USA negotiators but not EU. This is due to the conception that they have of the audiovisual sector. For the USA which is the most important supplier of audiovisual services in the world and in Europe, it is product as any other but for the EU and in special for France and to some extent Italy, Spain, India, and Australia, it needs limitations in the market access. For the EU it is an important product that allows the **development of its culture and way of thinking** therefore it need to protect its market to support its development with special state subsidies, quotas, language, and others. For USA, it is up to the producer, exporter, importer to show a TV film videotape etc. in its market and in the language that you want (Chinese, Hindi, Italian, etc.), if the market accepts it, nice, if not you lost your money.
18. On the other side Eastern European countries candidates to EU and that are part of the Council of Europe, presented audiovisual schedule commitments contradictory with the conditions existing in the EU market. Thus, keeping the first schedule of these countries outside of any legal EU support program to develop the country's audiovisual sector. The change on audiovisual commitments implied also re-negotiations with the USA that had already accepted the first offer. It also forces negotiations between EU-USA on the offer of particular country. One can also remark, that various of these countries first negotiated with US and after with EU, which was considered secured or easier; it was the wrong strategy and the interpretation of the audiovisual commitments in EU and WTO.
19. At the end, one must say that various acceding countries presented service schedules **de-connected** of the economic development policy and re-structuring process of the country. This is due in part by the lack of service market development strategy and by the way of how the schedules are prepared. In most cases the departments and persons dealing with, work at the margin of the process and its function is perceived as technical rather of strategic policy. Few are the countries that have evaluated seriously the economic and social implications of key sectors in the schedule. Most of them just exclude the sector or introduce exemptions. Perhaps we must remember that WTO accession is a political will that eases re-structuring of the economy through locking-in the trade reform with the introduction of new laws. WTO Accession is way to help country development with clear and transparent rules and not WTO accession per se, as have been the case in various countries. Various considered a way to "turn the page" from the earlier system and others "on the way" we will resolve the problems that appear.

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