ABSTRACT
This paper takes stock of two decades of trade and investment rule making in services, offering insights on the progress accomplished to date and political economy perspectives on a select number of unmet challenges. The paper focuses particular attention on the nature and exigencies of opening services markets; on the tensions between generic (i.e. “horizontal”) and sector-specific (i.e. “vertical”) approaches to rule-design and market opening; on the reasons for heightened regulatory precaution in services agreements; on the likely liberalizing attributes of an operational emergency safeguard mechanism for services; on the policy- and rule-making lessons to draw from preferential approaches to services trade and investment and the scope for migrating “best” regional practices to Geneva; on the difficulty of “fitting” temporary labour mobility in a multilateral trade policy setting and the systemic implications of not doing so; on the consequences of shifting gears from bilateral to collective requests and offers on market opening; as well as on the elements of a development-friendly “aid for trade” response in services.

KEY WORDS
World Trade Organization; General Agreement on Trade in Services; trade in services; preferential trade agreements; domestic regulation; emergency safeguard measures; movement of service providers.

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1. Background considerations

Judged against almost any qualitative or quantitative benchmark, the *negotiated* opening of services markets has proven fiendishly difficult, leading almost invariably to disappointing outcomes. These stand in stark contrast to the remarkable – and typically unilateral - opening that has otherwise characterized services markets across the globe over the past two decades.

The tendency for negotiated outcomes in services to fall short of expectations appears to hold regardless of the negotiating setting. The challenge of prying open services markets and of advancing unfinished rule-making challenges is indeed almost as intractable at the centre – i.e. under World Trade Organization’s (WTO) General Agreement on Trade in Services (GATS) than it is at the burgeoning periphery of preferential trade agreements (PTAs) featuring chapters on services and investment, despite the observed tendency for PTAs to achieve WTO+ outcomes in market opening terms in a range of sectors.¹

For a while, in identifying the various forces that conspired to produce such results, one could credibly invoke the regulatory and negotiating precaution novelty typically induces among risk averse bureaucratic constituencies. Nothing, indeed, is scarier than a blank page, and that is essentially what the early pioneers in services confronted at the negotiating table.

The trade policy community has been grappling with services for just over two decades now. The jury is still out as to whether this is a long enough period from which to expect some measure of policy- and rule-making maturity to take root. In all likelihood, it is not, and so collective judgements, including those of the author, may simply be too harsh. Still, the term “frustration” probably best summarizes the epistemic community concerned with services trade liberalization, or at the very least those directly involved in negotiations within governments, in inter-governmental agencies such as the WTO, the Organization for Economic Cooperation and Development (OECD), the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD) or the World Bank and the private sector stakeholders that follow such negotiations closely.²

¹ The fact that the most recent wave of PTAs has achieved significant levels of (WTO+) market opening in a number of sectors is hardly surprising given the extent of autonomous liberalization implemented since the end of the Uruguay Round and the proliferating set of PTAs that have been negotiated around the world during this period. Negotiating advances on the unfinished rule-making agenda of the GATS have, however, been significantly fewer. See Sauvé (2002; 2006 forthcoming); Marchetti and Mavroidis (2004); and Roy, Marchetti and Lim (2006).

² Like all areas of trade policy, the services field has in recent years witnessed the emerging influence of non-governmental actors whose main preoccupations in services have centered around the defence of public services and the preservation of regulatory autonomy. Accordingly, the NGO community, particularly in the developed world, has generally been highly critical of the pursuit of market opening and rule-making initiatives in services trade at the WTO and regional levels. For a fuller discussion, see OECD (2002) and WTO (2001).
The first truly pioneering (and embryonic) efforts at addressing services in a trade negotiating context arose from discussions between the United States and Israel leading to their 1985 Free Trade Agreement. This was followed shortly by the more developed (if somewhat uneven\(^3\)) endeavours of Australia and New Zealand in their 1986 ANZCERTA and shortly thereafter by the yet more elaborate template found in the Canada-United States Free Trade Agreement of 1987. The latter agreement was arguably the most notable precursor of the general framework that would later emerge from the Uruguay Round negotiations, leading to the establishment of the GATS in 1994.

Though services negotiations continue to this day to be characterized by significant doses of learning by doing, much has been learned, studied, comparatively assessed and negotiated since the mid-1980's. Trade officials have been in perpetual negotiating motion on services since the launch of the Uruguay Round, owing to the “overtime” negotiations that took place in a number of sectors after the Round’s conclusion, to the fact that the GATS framework of rules has yet to be fully agreed and in light of the proliferating web of preferential trade agreements featuring disciplines on trade in services.

Relative to the situation prevailing at the time of the Uruguay Round’s launch, there is today an incomparably better (and more solidly documented) grasp both of the potential returns to sound, pro-competitive, service sector reforms as well as a finer - and more realistic - appreciation of the regulatory challenges such reforms can pose and the consequent need for prior regulatory strengthening and sequencing in their enactment.

Services rules have also become largely commoditized over the past two decades. They come today in two main shapes, from which only minor deviations tend to be made in the multiplicity of negotiating settings in which they are used. These are: (i) the “hybrid” approach practiced in GATS and in a number of preferential trade agreements (PTAs) and (ii) the negative list approach pioneered in the ANZCERTA and NAFTA and replicated in the vast majority of subsequent PTAs.\(^4\)

\(^3\) Such unevenness was most evident in the ANZCERTA’s lack of treatment of investment issues, owing to Australian reticence at the time. Twenty years later, this situation has not changed even though at a February 2005 meeting, the Australian Treasurer and New Zealand’s Minister for Finance agreed to investigate the possibility of adding an investment component to the CER Agreement.

\(^4\) The GATS, or so-called “hybrid”, approach to market opening operates on the basis of the positive selection of sectors, sub-sectors and modes of supply in which countries voluntarily choose to schedule liberalization commitments, subject to the negative listing of non-conforming measures maintained in scheduled areas. A contrario, a negative list approach is one in which all measures affecting services trade are deemed to be fully liberalized unless they are described in reservations lists annexed to the agreements opting for such an approach. While both approaches can achieve similar levels of market opening, negative listing tends to generate greater transparency on existing regulatory restrictions since it produces comprehensive lists of non-conforming measures, and not only those arising in sectors, sub-sectors or modes of supply that have been positively scheduled under hybrid approaches.
Policy officials today thus need to advance more sophisticated reasons than novelty in justifying what remains generally paltry negotiating results. This essay explores some of the political economy forces behind such observed difficulties. It seeks answers to one overriding question: why is it seemingly so difficult to pry open services markets through the process of trade negotiations?

In so doing, the paper tackles the political economy underpinnings of a number of key outstanding challenges in services trade today. It starts with a discussion of the nature of services markets – in particular the ubiquity of market failure – in discussing the exigencies of opening services markets. Such a discussion draws attention to the inherent tensions between generic (i.e. “horizontal”) and sector-specific (i.e. “vertical”) approaches to rule-design and market opening in services trade. The paper recalls some of the reasons for the heightened regulatory precaution present in services agreements. It also discusses why the need has arisen to shift gears from bilateral to collective requests and offers on market opening, an important topic to which this publication devotes deserved attention.5

The paper then turns its attention to the likely liberalizing attributes of what remains to date a largely elusive quest for an operational emergency safeguard mechanism for services. The paper moves on to explore the policy- and rule-making lessons to draw from preferential approaches to services trade and investment and the scope for migrating “best” regional practices to Geneva. As it happens, all is not bleak in suburbia, the challenge being how best to ensure that the multilateral trading system (i.e. the GATS) keeps up with whatever progress in rule-making (generally limited) and market opening (typically much greater) that is being achieved in preferential trade agreements.

The paper next tackles the difficulty of “fitting” temporary labour mobility in a multilateral trade policy setting and the systemic implications deriving there from, particularly from a development perspective. Before concluding, the paper explores what an aid for trade response in services trade can best consist of.

2. Defining characteristics of services: negotiating implications

The novelty, considerable sectoral diversity and greater overall regulatory complexity of services trade resulted in a limited initial harvest of liberalisation commitments in the Uruguay Round. Most attention during the Round was indeed focused on the development of a (yet unfinished) framework of rules governing the progressive liberalisation of services markets.6 With the notable exception of newly-acceding countries, whose oft-coerced level of initial

5 See in particular the contributions by Türk, Kelly and Gao in this volume.

6 Outstanding rule-making negotiations under GATS are proceeding in four areas: emergency safeguards; non-discriminatory domestic regulation; subsidies; and government procurement of services.
commitments is higher in some instances to that which a number of OECD member countries undertook in the Uruguay Round\textsuperscript{7}, the limited liberalisation commitments made by original WTO Members under the GATS recalls that the latter enjoy considerable policy flexibility. This belies the largely fictitious depiction of the GATS as a market opening, sovereignty depriving, juggernaut that one hears about from time to time in academic and NGO circles.

While an increasing body of empirical evidence has come to show that the potential benefits of services trade reform can be considerable,\textsuperscript{8} there is no escaping the reality that progress in services negotiations at the World Trade Organization (WTO) has been disappointing.\textsuperscript{9} One problem, of course, is guilt by association: services talks have been part of - and partly hostage to - a stagnant process of multilateral negotiations under the Doha Development Agenda (DDA). However, the problem is far from unique to the WTO process, as very similar difficulties can also be detected in the context of preferential liberalization initiatives.

To be sure, the political geometry of the currently stalled WTO round has been such that progress in other areas of the DDA, and notably agriculture, appears to have become a necessary pre-condition for progress in services (and on other DDA issues). But it is not, nor should it be, a sufficient condition. As one informed observer aptly noted: “the GATS negotiations have fallen into a low-level equilibrium trap: little is expected and even less offered”.\textsuperscript{10}

Looking back on two decades of learning by doing in services trade, a number of reasons can be adduced to explain why services negotiations continue to be problematic even as the purpose and likely net benefits of them – the question of \textit{why} – is largely seen as being positive and supportive of the development process.

If answers to the question of \textit{why} seem clear enough to most (but not all) observers, things are decidedly murkier when answers are sought to the questions of who, what, how and where: \textit{who} does the negotiating?; \textit{who} are the constituents?; \textit{what} are services negotiations about? ; \textit{how} are services negotiations conducted?; and \textit{where} is services liberalization best pursued: at the centre or at the periphery? We turn our attention to the first four questions in what follows before taking up the question of \textit{where} in a later section of the paper.

\footnotesize
\textsuperscript{7} See Adlung and Roy (2005).
\textsuperscript{8} See Mattoo, Rathindran and Subramanian (2001); OECD (2002; 2003; 2005); Robinson, Wang and Martin (1999); and World Bank (2001).
\textsuperscript{9} See Adlung (2004) and Adlung and Roy (2005) for a comprehensive analysis of the level of market opening achieved to date under the GATS.
\textsuperscript{10} See Mattoo (2006).
2.1. *Who* negotiates?

One of the hallmarks of the modern trade policy process is its near monopolization by representatives of the legal community. This is perhaps not surprising given that trade agreements are, after all, primarily about the making and enforcement of legally binding rules. Services, of course, are no exception to this trend. The regulatory intensity of services trade and the wide range of sectoral interests, regimes and institutions they bring together actually imply an even greater predominance of lawyers at the negotiating table.

While all trade negotiators tend to be risk averse bureaucrats subject to inevitable pressures of regulatory and political capture, experience suggests that lawyers and economists do not always go about their negotiating in quite the same way.

Lawyers, by their very training, tend to be more respectful, and perhaps more protective of the law. This arguably makes them more proficient captives. They are also less prone, unless they have been educated in the law and economics tradition, to question the policy rationale behind the kinds of measures - particularly home country measures - that may otherwise display trade- and investment-inhibiting effects. They may also be less prone to questioning the efficiency of the policy response to the market failure that created the need for a specific law or regulatory measure in the first place. Such an approach arguably lessens the scope for bargaining that may be needed in negotiations centered on the multi-sectoral elimination or progressive dismantling of trade-inhibiting laws and regulations of a non-tariff nature.

Such aspersions aside, lawyers are *sans égal* in their ability to translate the need for policy ambiguity into robust legal provisions. Coming in a policy area that was largely uncharted until very recently, such a skill set has been much in demand in services. A prime example can be found in the drafting of Article 1.3b of the GATS dealing with the decidedly elastic carve-out of services supplied in the exercise of government authority from the Agreement’s scope of coverage.

Economists, for their part, often tend to look first at the nature of the market failure underlying a regulatory measure and to raise questions about its efficacy and its continued need in light of evolving market circumstances. The ubiquity of market failures in services, which run the gamut from information asymmetries in financial and professional services to monopolies and oligopolies in network-based industries and to externalities and universal service provision imperatives in sectors such as tourism, transport, education, health or culture, means that economists are much in need in the design of appropriate policy responses in services markets.¹¹ Their training is particularly useful in considering the cross-border implications of responses to domestic market failures. They may thus display greater interest and intellectual curiosity

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¹¹ See Mattoo and Sauvé (2003) and Krajveski (2003) for a fuller discussion of the interface between domestic regulation and services liberalization.
in seeking lesser or least-trade or investment-restrictive policy alternatives. Such
differences, however subtle, can matter at the negotiating table to the extent that
a readiness to contemplate a departure from the regulatory status quo may open
up new bargaining possibilities.

Economists may also come in handy in prescribing policy choices, particularly
in the market access phase of negotiations, that may yield superior development
dividends to the home country than the preservation of the regulatory status quo
to which lawyers may be more wedded.

It is impossible of course to generalize such arguments, all the more so as the
author is himself a dismal scientist, but his repeated observance of the trends
described above appear worthy of further analytical scrutiny.

The diversity of sectoral challenges and the differing sources of market failures
to which regulation responds across service sectors represents a daunting
challenge for services negotiators. The latter are all at once compelled to be
steeped in several regulatory “languages”, to master the regulatory intricacies of
sectors prone to market failures with highly divergent market access–inhibiting
effects and to highly differentiated market structures. Rule-making in services
typically confronts sectors of economic activity characterized by highly
concentrated and powerful firms who derive their market power either from
network attributes, as in telecommunications, energy, environmental or
transportation services, or somewhat paradoxically from the merger and
acquisition frenzy that has come in globalization’s wake and which has resulted,
in some sectors, in greater market concentration.

Confronting such challenges is without doubt more complex for developing
country negotiators, who do not typically enjoy the legion of sectoral specialists
available to their developed country brethren. In OECD countries, it is not rare
for services negotiators hailing from trade or foreign ministries to outsource
much of the sectoral negotiating challenge to officials from line ministries and
regulatory agencies. More often than not, the latter will be all too happy – turf
protection oblige – to fill the gap.

Such deference to the expertise of sectoral regulators – which has been most
pronounced in the field of financial services and is vividly reflected in the
drafting of the GATS Annex on Financial Services\(^\text{12}\) - may yet offer a further
explanation of the tendency for services negotiations to be characterized by
strong doses of regulatory precaution. Sectoral regulators, after all, tend to be
closer to - and often subject to significant pressures of regulatory capture by –
the industries they regulate. Accordingly, they are likely to be offensive in the
pursuit of market access opportunities abroad but more rigidly defensive in

\(^{12}\) The Annex on Financial Services is unique in mandating the presence of financial
expertise in the handling of possible trade disputes in the sector. It is also unique in its
provision of a prudential carve-out for which financial officials had initially sought – but
ultimately failed to secure - full immunity from WTO dispute settlement procedures in
regard to prudential measures.
protecting prevailing domestic regulation. That sectoral regulators are often
drawn from the legal community may well heighten the above tendencies.

Deference to sectoral expertise invariably imparts greater verticality to rule-
design, feeding tensions between generic (i.e. horizontally applicable) rules,
towards which trade or foreign ministry officials are typically more attracted,
and sector-specific rules that are commonly found in services agreements and
which are generally favoured by line ministries and sectoral regulatory agencies.

Rule-making and market opening efforts in services are typically led by sectoral
officials and regulators that are often closer to the industries they regulate than
to the foreign or trade ministries responsible for securing overall intersectoral
bargains. This can lead to negotiated outcomes that are more narrowly drawn
and self-contained for fear that sectoral interests and the complex domestic
regulatory equilibrium they embody may be “traded-off” by bargain-hunting
trade policy generalists, be they lawyers or economists.

A further remark on the question of who negotiates services agreements
concerns the much greater involvement of developing country officials in
services talks today. The Uruguay Round saw only a handful of developing
countries actively involved in the design of the GATS, the great majority of
developing country GATT members behaving as rule-takers in an area where
expertise was in limited supply and where most felt they had negligible
negotiating (i.e. exporting) interests.

A fuller appreciation of the contribution of services reforms to the development
process, including on the import side, and a growing recognition of the fact that
many developing countries have distinct exporting interests in services trade,
coupled with the rising assertiveness of developing country coalitions in the
WTO’s implicit governance structure and cumulative investments in trade-
related capacity building in services (much of it also dispensed in the context of
PTAs as well) have given a strong voice to developing countries in the conduct
of services negotiations.

At the same time, there can be no escaping the reality that a large number of
developing countries continue to face acute capacity constraints in participating
meaningfully in services discussions and in implementing resulting outcomes.
The full extent of such shortcomings has become much clearer in the context of a
multilateral negotiating round branded as centrally preoccupied with
development matters.

In a DDA context that has witnessed a tangible reassertion of North-South
tensions on many issues and where many developing countries harbour genuine
concerns over the inequity of Uruguay Round outcomes (though not so much in
services), this has produced a paradoxical tendency for defensive posturing – for
instance on the treatment of investment as a Singapore Issue or on the
desirability of moving from bilateral to collective requests and offers - in an area
where the collective negotiating interests of developing countries would appear
to call for more resolute engagement. In so doing, developing countries,
including those least developing countries for whom the signalling and
investment climate-enhancing benefits of international rule-making are arguably
most evident, may well have underplayed their card on services and made the quest for acceptable cross sectoral bargains harder.

Any belief that developing countries may fare better under preferential trade agreements entered into with developed countries, to which the stalled DDA will now give renewed impetus, appears highly misguided. Not only are such agreements fully commoditized in their content, offering little scope for developing countries to influence the substantive nature of the rules being adopted, many of them display substantive elements that can be characterized as WTO minus in areas where developing countries have strong export interests. This is notably the case of the movement of service providers, which has for instance been excluded from the scope of recent PTAs entered into by the United States.

A final remark on the question of who negotiates services agreements relates to the consequences of staff turnover in Geneva and in capitals. Anyone with experience of international negotiations will readily admit that such processes can be heavily influenced by the personalities, leadership, networking qualities and knowledge of precious few individuals. This has been very much the case in services negotiations, particularly at the WTO given its leading role as an incubator of rule-making in what remains a relatively novel policy area. While staff turnover is inevitable in diplomatic circles, it nonetheless results in the loss of the institutional memory and substantive knowledge embodied in the departing experts. Such a loss may exert significant effects on negotiating dynamics. Moreover, such losses can never be fully tempered by the otherwise high degree of competence and professionalism of international secretariats. This is all the more so in a member-driven organization like the WTO where the secretariat has limited scope for advancing its own ideas on issues under negotiation, particularly newer issues that may be more controversial simply because of their novel character.

2.2. In whose interest? Shifting constituent dynamics

Who do services negotiators work for? For their governments of course. However, governments rarely have a fully objective sense of where the national interest lies and even when they do, political constraints often stand in the way of its pursuit. Negotiating interests are thus dictated by the needs and policy preferences – offensive and defensive - of key constituents. Services negotiations are far from immune from the producer bias that characterizes the political economy of trade negotiations in the goods area.

The political economy of constituent involvement in services negotiations has undergone considerable change in recent years. The Uruguay Round saw significant private sector engagement, including at the CEO level in a number of sectors, most visibly in the financial services industry. More than any other industry, the financial community invested the time, money and efforts required to give policy prominence to the development of a trade regime for services.
Beyond its own quest for enhanced access to world markets, the financial sector was also unique in the leadership it assumed in building and sustaining a coalition of business users in favour of liberalised telecommunications markets.

Notwithstanding the telecommunications example, whose success was due in no small measure to the industry’s own (technologically-induced) conversion to market liberalization over the course of the Uruguay Round, user coalitions have proven fiendishly difficult to assemble in the services field. Consumers, patients, passengers and shippers have thus far proven no match for the vocal and entrenched interests of industry associations, professional licensing bodies or dominant firms in key sectors. For instance, the aviation and maritime industries, two sectors that symbolize more than any other the very conduct of world trade, are almost wholly excluded from the scope of trade agreements in services - explicitly in the case of most air transport services; indirectly in the case of the maritime transport industry owing to the refusal of the United States to engage in the sector, whether at the bilateral, regional or multilateral level.

The DDA landscape is much changed, with significantly lesser (and less vocal) engagement from the private sector and the mass arrival on the services scene of civil society organisations concerned by the potential risks that services liberalization might pose to the sovereign right of WTO members to regulate in the public interest and by alleged pressures, stemming primarily from multinational firms, to promote market competition in a range of industries displaying public goods characteristics, such as education, health, water distribution or cultural industries.

Governments, particularly those of developed countries, have responded in a predictable manner to this new landscape. Prodded on more forcibly by NGOs than by private sector interests, WTO Members have tended to exhibit greater regulatory prudence in precisely those sectors deemed sensitive by civil society organisations. This is notable for instance from the fact that not a single OECD country has advanced a market access commitment in health services at a time when such trade is booming and where a case for collective action would seem highly desirable. It is also reflected in the decision of a number of WTO

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13 Part of the reason for the lessened involvement of private actors in services negotiations owes to the perception that trade agreements in services cannot deliver tangible benefits in real time and have not been able to do much beyond locking-in the regulatory status quo. Such behaviour may also reflect the fact that private sector operators are less concerned today with trade and investment impediments in light of the continued wave of unilateral dismantling of protective measures and the limited evidence of backsliding given the intensity of competitive pressures that apply in key services markets in a globalizing world economy. The absence of legally binding commitments under GATS or PTAs does not imply that access to emerging country markets is denied.

14 For a fuller discussion of the GATS critique, see Sinclair (2000) and Sinclair and Grieschaber-Otto (2002). For a rebuttal of such criticisms, see WTO (2001) and OECD (2002).

15 For a comprehensive analysis of the challenges of internationalisation in health services, see Blouin, Drager and Smith, eds. (2005).
Members, such as Canada and the members of the European Union, to renounce making market opening requests to their trading partners in the educational sector at a time when home country institutions have been expanding abroad at an unprecedented rate. The result offers a strange spectacle of rapid internationalisation conducted at arms length from the very framework designed to provide disciplines and rules on how best to manage such market opening in the interests of home and host countries alike under conditions of transparency and orderly adjustment.

2.3. What are services negotiations about?

The very subject matter of services negotiations – the elimination and/or progressive dismantling of discriminatory and non-discriminatory regulatory measures that may directly or indirectly impede access to markets - goes a long way in explaining why progress at the negotiating table is so ponderous. Apart from the movement of service providers, whose torturous political economy is taken up separately below, the border as a physical locus of trade regulation matters little in services given the irrelevance of tariffs as instruments of protection. A few heroic attempts have been made, most comprehensively in Australia\(^\text{17}\), to derive tariff equivalent measures of protection in services. Such efforts have largely run into intractable measurement problems owing to the lack of sufficiently disaggregated data on services trade.

Services negotiations do not therefore lend themselves to the mathematical niceties of tariff negotiations. With domestic regulation as the matière première of services talks, negotiations in the sector can thus be likened to discussions of non-tariff measures in the goods area. As discussions have shown since the Tokyo Round, negotiating on NTBs and on NTB-like measures is considerably more taxing and typically proceeds at a snails pace.

The sheer diversity of the service economy and the powerful interests that lie behind domestic regulatory regimes and institutions obviously add to the complexity of effecting regulatory change at the negotiating table. Doing so is all the more difficult as it is predicated upon modifying, at the behest of foreign trading partners, domestic legislation in what are often sensitive policy domains and where a multiplicity of policy objectives are pursued (equity, access, income redistribution, cultural diversity, consumer protection, regional development, infant industry protection, etc...).

Apart from the context-specific case of the WTO accession process and of governments who may occasionally find it convenient to invoke foreign pressures to unblock stalled domestic reform efforts (e.g. Japan, China), it is

\(^{16}\) For a fuller discussion of the reasons for such regulatory precaution in higher education services, see Sauvé (2002a).

\(^{17}\) See in particular the work by Dee (2003) and by McGuire and Schuele (2000).
most unlikely that significant liberalization requiring changed or *de novo* domestic legislative measures will be driven at the trade negotiating table.

Just as developing countries have shown considerable reluctance towards binding market opening measures that were mandated by the Bretton Woods institutions, so too are most WTO Members unlikely to heed external calls for regulatory reform, however desirable these may be on efficiency or developmental grounds.

Reforming service industries, especially in mature economies where participatory democracy is vibrant, is a long-haul process requiring maturation for change to take hold. It is rare indeed that the time cycle of domestic regulatory reform in major WTO Members coincides with the trade negotiating cycle. Admittedly, WTO Members can make use of Article 18 of GATS (Additional Commitments) to do tomorrow what political conditions will not allow today. And precedents do exist where both cycles have come together. This was the case notably in the area of basic telecommunications in the immediate aftermath of the Uruguay Round, but such instances tend to be exceptions, not the rule.

Not surprisingly, trade agreements in services are far likelier to periodically harvest ongoing reforms, i.e. serve as agents of *status quo* lock-in, than to initiate significant doses of market opening. This tendency is reinforced by the very architecture of services agreements, which provide ample space for governments either: (i) to not to make commitments in any given sector; (ii) to schedule commitments below the *status quo*, or, (iii) in agreements operating on the basis of negative listing, to allow for “unbound” or open-ended reservations to be lodged, thereby preserving the right for governments to introduce new non-conforming regulatory measures in future.

Given the mercantilistic mindset that pervades the trade negotiating process, services negotiations are made no easier by the statistical reality that developed countries continue to account for roughly four-fifths of world services trade. Such a trend inevitably fuels lingering perceptions of developed county dominance in the benefits to be reaped from services trade, despite the weak underlying economic analysis such perceptions reveal. As a result, and despite the fact that services negotiations in the DDA have not so far proven particularly controversial at the inter-governmental level, negotiating bargains have proved hard to strike and offers have, with few exceptions, remained at a low, commercially meaningless, level.

Moreover, doubts arise as to whether the kinds of barriers restricting services markets within OECD countries (i.e. on a North-North basis) can be most efficiently tackled in the WTO. To be sure, trade relations in services among advanced industrial countries continue to confront an array of formal and informal barriers to trade and investment in areas such as professional licensing, government procurement, visa requirements, data privacy, economic patriotism, etc. Yet the will of OECD member countries to address these issues in the WTO,
and the WTO’s track record in delivering lasting solutions in these areas, remain far from convincing. More likely than not, the intra-OECD services agenda seems destined to be tackled in PTAs or, likelier still, within various regional (e.g. Transatlantic) regulatory cooperation fora. Such a tendency, in turn, may well reinforce the North-South tensions and perceptions discussed above.

2.4. How are services negotiations conducted? Moving beyond bilateral request-offer negotiations

Several voices have been heard expressing alarm at the lack of engagement of WTO Members in the DDA’s services negotiations. There are doubtless several reasons for this, starting with the generally desultory progress registered elsewhere in the negotiations, particularly in agriculture, which is by all accounts the defining issue of the Doha Round and that most likely to make or break the development dimension woven into it. The “agriculture comes first” aspect of the DDA has unfortunately relegated services to a secondary role. It has seen many leading developing countries – those with arguably most at stake (i.e. emerging countries having much to offer by way of new or improved market access commitments) in services and the DDA more generally holding back until developed countries show their hands in farm trade.

Experience suggests, however, that it would be a mistake to read too much into such an account of the current state of play of DDA talks in services, as cross-sectoral considerations tend to weigh more heavily in negotiating bargains towards the very end of multilateral negotiations.

Faced with an outstanding rule-making agenda on services - the so-called “unfinished agenda” on domestic regulation, emergency safeguards measures (see section below), subsidies and government procurement in services - that has to date revealed few signs of DDA-induced progress, a number of proposals have been made to impart greater momentum to the market access dimension of negotiations under the GATS.

2.4.1. Inoperative, and now seen as such: the bilateral request-offer process

One major reason for such a push is the growing realization that the current bilateral request-offer approach is largely inoperative. For lack of any credible alternative,18 and drawing on mercantilistic reflexes long honed in goods (i.e. tariff) negotiations, the bilateral request-offer approach was adopted in the Uruguay Round as the dominant negotiating method for services.

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18 It bears recalling that the bulk of the Uruguay Round was spent on developing the framework of disciplines and rules for services trade. Considerably less time was spent on the market access dimension of the talks, and no specific attention was paid to the idea of alternative methods of conducting market access negotiations in services.
Discussions at the December 2005 WTO Ministerial in Hong Kong on the idea of conducting, \(^{19}\) where practicable, negotiations on a plurilateral basis revealed a paradoxical - if largely tactical on the part of some WTO Members - aversion of developing countries to considering alternatives to the current bilateral approach.

The paradox lies in the fact that such an approach is clearly much more taxing for developing countries than it is for developed countries. This is so given the considerable resources and time it consumes, the limited number of services experts available for bilateral discussions in Geneva missions and in capitals; the negotiating imbalances that flow from the limited ability of most developing countries to formulate their own requests; significant asymmetries of negotiating-relevant information available to policy officials; and the more limited extent of stakeholder consultations and private sector engagement – and presence abroad - of service suppliers from developing countries. All of the above factors tend not surprisingly to interact in ways that produce least common denominator, precaution-induced, outcomes at the negotiating table.

Such a stalemate, in turn, complicates attempts at marshalling corporate interest in multilateral negotiations, and tends to shift incentives towards bilateral or neighbourhood responses in the form of preferential trade agreements.

A strong case exists for complementing the current bilateral request-offer approach, which is still of relevance for countries with highly specific offensive or defensive interests, with collective approaches to negotiations. In a world of unequal bargaining power, plurilateral or multilateral approaches, which must be equitable and efficient if they are to produce agreement and must target areas of common interest in a flexible manner, are likely to yield a more desirable outcome than bilateral negotiations.

Collective (plurilateral) approaches are also likely to economize on the scarcest of commodities: time and human resources, and afford developing countries significant economies of scale in negotiating efforts. Avoiding sector-by-sector and country-by-country bartering of commitments can indeed substantially reduce the transaction costs of negotiations.\(^{20}\)

2.4.2. Towards formula-based negotiating in services?

Most formula proposals advanced to date in the DDA center on the idea of ratcheting up the overall level of bound commitments under GATS. The

\(^{19}\) See WTO (2005).

\(^{20}\) Use of such formulas may also represent the only feasible way to grant credit to unilateral liberalizers. In contrast, it is much more difficult to ensure compensation for the loss of negotiating coinage caused by unilateral liberalization in a bilateral request-and-offer negotiation (Mattoo, 2006).
simplest approach would be horizontal in nature and consist of defining a percentage of service sectors to be covered by binding commitments and/or the number of sectors subject to full market opening (i.e. with no restrictions on national treatment and market access). While such an approach can be deemed attractive, one can easily see how it could translate into commitments in sectors that are less commercially meaningful – for instance in regard of Mode 2 trade (movement of consumers) - for the sake of meeting a quantitative threshold.

Quantitative assessments of offers or numerical targets, which some WTO Members had espoused as one way forward in the market access negotiations under GATS, have thus quite sensibly been discarded as unhelpful distractions because even the best available methods of quantifying barriers to trade are widely viewed as inadequate. At best, it could be possible to measure differences in the sectoral coverage of commitments, possibly weighted by some measure of the level of openness. Reaching agreement on any such target, however, would be extremely difficult and consume negotiating time and energy that are already in short supply.

The decision made by Trade Ministers at the December 2005 WTO Ministerial Meeting in Hong Kong to supplement bilateral request-offer discussions with plurilateral negotiations whose results would then be extended to all WTO Members on an MFN basis appears as a more constructive alternative. Such an approach primarily involves groups of members, akin to the numerous “friends” groups that already exist under GATS, to propose a set of negotiating objectives in a given sector or in a cluster of sectors.

Such objectives can be outlined in model schedules similar to the Understanding on Commitments in Financial Services agreed in 1997 or the Model Schedule for Maritime Transport advanced by a number of WTO Members in the DDA. They might also take the form of a set of additional regulatory disciplines, as was done successfully in the Telecommunications Reference Paper appended to the 1997 Agreement on Basic Telecommunications. The latter approach would likely be required should market opening discussions intensify in other network-based industries, such as energy services. The building blocks of model schedules are relatively straightforward, and some have already been proposed for specific modes.

2.4.3. The need for development-friendly clusters

Two clusters around which “friends” groups have emerged and which would appear to show significant promise from a development perspective are those

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21 Such an approach was first used in Hoekman (1995).
23 For a fuller description of pro-competitive regulatory disciplines in energy services, see Evans (2003).
24 See in particular Mattoo, Chaudhuri and Self (2003); Mattoo and Wunsch-Vincent (2004); and Thompson (2000).
relating to computer-related services and logistics. Both, as it happens, relate closely to – and usefully complement – recent or ongoing negotiating efforts in goods trade. In so doing, they recall the close linkages that exist between goods and services in a globalising environment and the need to pursue negotiated strategies that relate more closely to the integrated manner in which firms operate in the global marketplace.

The cluster on computer-related services could thus be crafted as the GATS complement to the highly successful 1997 Information Technology Agreement25, and would seek to address a range of policy challenges arising with greatest intensity at the interface of Modes 1, 2 and 4. It would provide a vehicle for WTO Members to maintain the currently relatively open and benign trading environment governing remotely supplied services (e.g. e-commerce). It would also help pre-empt nascent forms of protectionism in regard to business process outsourcing while also facilitating the temporary business travel of a dedicated category of skilled professionals in the sector.

For its part, the cluster on trade logistics should be designed as the GATS complement to the ongoing DDA discussions on trade facilitation under the GATT. Services make up the bulk of what is ultimately involved in shipping goods across borders, from warehousing to customs brokering, freight-forwarding, port and airport management services, inspection services, express delivery and distribution services. This continuum provides a ready platform within which WTO Members can address key border infrastructure bottlenecks by engaging in selective, progressive, liberalisation across a wide range of sectors. The scope for parallelism between the GATS and GATT negotiations is all the greater as talks on trade facilitation were the lone Singapore Issue survivor and appear to have generated significant policy interest among WTO members in the course of the DDA.

A WTO Member’s incentive to participate in a given negotiation, be it bilateral or plurilateral, will of essence depend on the willingness of its trading partners to make commitments in modes and sectors in which the member has an export interest, both within and outside services. A reformed negotiating method can help, especially if it chips away at the tendency for negotiating bargains to be sought along mutually exclusive sectoral lines, but ultimately members will need to make the hard political bargains necessary for a successful outcome.26

2.4.4. Binding the status quo?

Yet another, albeit potentially more controversial, complementary element, would be for WTO Members to strive to lock in the regulatory status quo in sectors in which they voluntarily decide to schedule commitments. Without changing the way in which liberalization commitments are scheduled under

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25 For a detailed analysis of the ITA, see Sauvé and Fliess (1998).
26 See Mattoo (2006).
GATS (i.e. by preserving the Agreement’s so-called “hybrid” approach\textsuperscript{27}), such an approach would aim to approximate the nature of commitments made in the vast majority of regional trade agreements that follow a negative list approach to market opening.

Doing so would reduce what in some instances are significant gaps between the actual level of market access afforded under domestic laws and regulations and the lower level of access provided under existing GATS commitments. Such an outcome could either proceed from an informal understanding among GATS members or be anchored in a more formal modification of the rules governing the scheduling of market access and national treatment commitments under the Agreement.\textsuperscript{28}

2.4.5. Paying more than lip service: towards a Transparency Undertaking?

Most developing countries appear unwilling to break with past practice in regard to the scheduling of GATS commitments. Accordingly, a softer variation to the proposal outlined above could be envisaged whereby WTO Members would continue to schedule commitments on a hybrid basis while agreeing to prepare non-binding lists of non-conforming measures affecting trade and investment in services for purposes of transparency.

Developing countries, and especially least developed countries, should be given more time and provided with needed technical assistance in preparing such lists. A growing number of WTO Members, it should be noted, have already assumed such an obligation under preferential trade and investment agreements operating on the basis of negative listing.

Such a Transparency Undertaking could serve several good-governance promoting purposes. It could help countries assess their regulatory regimes; benchmark them against best international or regional practice; identify policy objectives that may be achieved in a less trade- and/or investment-restrictive

\textsuperscript{27} The hybrid approach to scheduling commitments under GATS entails the positive determination of sectors, sub-sectors and modes of supply which WTO Members voluntarily agree to inscribe in their schedules and the negative retention of any non-conforming measures maintained in such sectors, sub-sectors and modes of supply.

\textsuperscript{28} The decision to allow WTO Members to schedule commitments below the regulatory status quo was taken in the Uruguay Round, replicating in services trade the mercantilistic instincts long practiced for tariff negotiations in goods trade. In the Uruguay Round, only developing countries availed themselves of such flexibility, as the norm for OECD countries (and subsequently for acceding countries) was to lock in the prevailing level of market openness in their GATS commitments. Closing the gap between applied and bound regulation would arguably increase the predictability and transparency of host countries’ services regimes, contributing in the process to enhancing their investment climates.
manner; identify sectors where the need for restrictions remains a national policy imperative; allow for the rank-ordering of impediments by sector, country, region and mode of supply for purposes of future negotiations; help in the formulation of possible new negotiating formulas; and provide the trade and investment community with a comprehensive reading of regulatory requirements and restrictions in foreign markets.

3. Needed: operational, sector-specific, emergency safeguard measures

Few issues have proven more immune to rule-making advances than that of emergency safeguard measures (ESMs). The period since the end of the Uruguay Round has witnessed a depressing succession of missed deadlines on this issue. Efforts to advance a set of GATS provisions aimed at providing temporary import relief to domestic service providers that may suffer unanticipated injury or dislocation in the wake of market opening have indeed proven stillborn.

This is so for several reasons. First, because a number of WTO members, especially developed countries, have professed outright scepticism on the very need for an ESM in services trade. This is so, they argue, in light of the flexibilities already embedded in the GATS, not least the freedom members enjoy not to schedule commitments, and the fact that the vast majority of commitments either preserve the regulatory status quo or actually bind less than prevailing market access conditions. Neither of these scenarios, it can be alleged, is likely to induce much dislocation in domestic markets.

Lack of progress can be traced, secondly, to the inability of the main (mostly developing country) proponents of a GATS ESM to identify the operational properties of such an instrument. This is so despite the generally acknowledged insurance policy attributes of a properly designed ESM and the likelihood that it could encourage developing countries to contemplate a higher overall level of bound commitments in services trade.

It is noteworthy that precious little progress has been made in tackling this issue in the context of preferential trade agreements. Tellingly, even the most ardent proponents of a GATS ESM – the member countries of ASEAN – have to date failed to embed an ESM within their own regional compact on services (e.g. the Asian Free Trade Agreement, or AFTA).

Still, there arguably remains much scope for useful experimentation on the issue of an ESM, perhaps more so at the regional level given that the negotiating stalemate on this issue seems deeply entrenched at the WTO level despite calls for a negotiated solution by the end of the Doha Round.

29 This section draws on Sauvé (2006 forthcoming). For additional background on the issue of ESMs in services trade, see the paper by Pierola in this volume.
3.1. Requirements for forward movement

For forward movement to prove possible on the issue of a services ESM, it would be important that four elements be taken into account. First, it is important to acknowledge that service sectors differ significantly in the scope for - and forms of - potential liberalization-induced dislocation. This then implies that an attempt be made to explore the scope for developing sector-specific ESMs rather than the generic, all encompassing, instrument sought to date in GATS discussions. Tailor-made solutions may indeed be more fruitfully developed and deployed on a country, sector and mode-specific basis under Article 18 (Additional Commitments) than through a generic catch-all instrument. Sectors that come most readily to mind in this regard include financial and distribution (retail) services.

Second, an ESM need not (and ideally should not) apply to all modes of transacting services. A contrario, it should be tailored to the particularities of specific sectors. Experience suggests that the mode of supplying services that is most likely to generate significant, potentially injurious, dislocations in domestic services markets is that relating to commercial presence, or Mode 3 of GATS.

The stringent regulation and limited mobility of Mode 4 service suppliers (temporary movement of service suppliers) make it an unlikely source of serious unanticipated injury. Meanwhile, the generally weak (and typically status quo minus) level of market opening commitments on cross-border supply (Mode 1) found in most agreements covering services trade would appear to minimize the scope for significant cross-border-induced dislocation. Finally, Mode 2 – consumption abroad, does not seem particularly relevant to the discussion of a services ESM from an importing country perspective. This so given the sectors - education, health, tourism - that such trade chiefly involves and the difficulties countries face in curtailing it (should they be prone to doing so).

The question remains, however, whether dislocation induced through the operations of an established foreign supplier can be likened to an “import surge” triggering safeguard action. In turn, this raises what could be likened to an assignment problem that may have in part fuelled OECD member country scepticism towards the ESM issue: whether the most appropriate policy response to investment-induced dislocation may reside in the application of competition rather than trade policy remedies.

Third, a services ESM should only be allowed to be invoked in instances where actual, de novo, liberalization has taken place, such that a causal link between new market opening and potential injury can be readily established. And fourth, it is essential that any operative safeguard be triggered through recourse to market outcomes that can be properly measured and for which statistical information is both available and robust.\(^{30}\)

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\(^{30}\) This in itself can represent a daunting task given the paucity of sufficiently disaggregated data on services trade.
3.2. A useful precedent?

It is in a PTA context, notably the financial services chapter of the 1994 North American Free Trade Agreement (NAFTA), than one example of an operational ESM (or ESM-type) instrument can be found. Prior to negotiating the NAFTA, Mexico’s financial sector had been characterized by a complete absence of foreign competition, the country’s financial system having been nationalized in the wake of the debt crisis of the early 1980’s. At the time of the NAFTA negotiations (1991-93), only one US bank, Citigroup, maintained a representative office in Mexico, which it used not to engage in banking services but rather to provide consulting services to the Mexican government on matters relating to the management and rescheduling of its external debt.

Not surprisingly, and despite the fact that it had already decided to embark on far-reaching reforms and (domestic) liberalization of its financial sector at the time of the NAFTA talks, Mexico harboured genuine fears over the potential impact of external liberalisation on its domestic financial system, many of whose leading institutions were saddled with high levels of non-performing assets and lagged their North American competitors in terms of competitiveness and financial innovation.

Accordingly, the Mexican negotiators proposed that their country’s seven-year transition towards free trade in financial services under NAFTA would be accompanied by a right to temporarily suspend the issuing of new bank, securities or insurance licenses if the share of financial assets under foreign control exceeded 25 percent of aggregate assets at any point during the transition. Once passed, this threshold allowed Mexico to suspend the issuance of new licences for a period of up to two years, allowing domestic players some space to pursue a consolidation strategy and address their competitiveness problems. Under the terms of the financial services chapter, Mexico reserved the right to invoke such a safeguard only once during the seven year transition period.

3.3. Lessons from the NAFTA experience

The Mexican example under NAFTA is useful in at least three regards for purposes of its replication in other PTAs and its possible adoption under GATS. First, and perhaps most importantly, is the fact that the safeguard mechanism was clearly instrumental in raising Mexico’s comfort level and allowing it to agree to a full liberalization of its hitherto closed financial system. The NAFTA experience clearly demonstrated the “insurance policy” dimension of an ESM.

Secondly, it is notable that Mexico never invoked the NAFTA safeguard during its seven year transition period. This is so even as the share of financial assets under foreign control rather quickly came to exceed the 25% threshold as a result of foreign takeovers of Mexican financial institutions. The level of foreign ownership of the country’s financial system is today more than three times higher than the NAFTA threshold.
A third element of importance was the fact that the safeguard could be made operational through reliance on a statistical measure that was credible, objective and could be readily supplied by the country’s central bank.

When the DDA resumes, it is likely that, alongside the issue of domestic regulation (the so-called Article VI:4 work programme dealing with the trade impact of non-discriminatory domestic regulation), the issue of a GATS ESM will assume renewed significance in outstanding rule-making discussions.31 Services negotiators would do well to use the current lull in WTO discussions to assess the case for experimenting with an ESM on a sectoral basis before seeking, if necessary, a generic, horizontal, solution in future negotiating rounds.

4. Keeping up with the Jones’: lessons from the periphery32

Progress in trade negotiations is often assumed to be inversely proportional to the number of protagonists around the negotiating table, such that bilateral or regional negotiations should in principle prove more expeditious and achieve deeper levels of rule making and market opening than that on offer multilaterally.33 Yet, progress to date in services liberalization at the bilateral and regional levels suggests that expectations of significant, WTO+, forward momentum and path-breaking results probably need to be tempered. Because of the sheer diversity of sectors and the complexity of regulations and institutions it brings into play, experience shows that services trade liberalization tends to occur in small increments, consisting more often of policy consolidation (and, at times, even less) than genuinely new market opening.

One reason for such an observed tendency is that many regional attempts at crafting a regime for services trade and investment generally confront the same difficulties - conceptual and practical - encountered at the multilateral level. This is true both in market access terms - e.g. air and maritime transport, audio-visual services, education, health and other services with public goods connotations, or labor mobility, as well in terms of outstanding rule-making challenges, e.g. domestic regulation, emergency safeguards, and services-related subsidies.34 It is also true politically, as opposition to services liberalization, especially in sectors displaying public goods properties, has recently shown in developed and developing countries alike.

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31 The other two outstanding rule-making issues under GATS, dealing respectively with rules governing the multilateral procurement of services and subsidy disciplines for services trade have revealed a fairly broad collective preference for regulatory inaction on the part of WTO Members.
32 This section draws in part on Sauvé (2006a; forthcoming).
33 See Mattoo and Fink (2004).
Despite the above challenges, all is not bleak at the periphery of the multilateral trading system. Though advances in PTAs have been more pronounced on the market opening side of things - as new markets develop, governments change, regulatory conditions evolve and the scope for technologically-induced market contestability increases, the recent past has also also seen some novel rule-making advances. This is the case, for instance, in the investment field or in the development of disciplines for trade in digital products.35

Progress can also be reported in a number of sectors where market or political conditions were not ripe at the time of the Uruguay Round negotiations or in light of more recent product innovation creating new trade and investment opportunities. This is notably the case of market opening advances in areas such as retail distribution, audio-visual services, express delivery, new financial services, and telecommunications services. Evidence of forward movement can also be adduced from the negotiating asymmetries characterizing the most recent wave of PTAs conducted along North-South lines.

Advances can also be reported in terms of the architecture of the rules for services trade and investment that have been adopted in PTAs. For instance, in its most recent PTA negotiations with the Philippines and Thailand, the government of Japan has sought to harness the best of both positive and negative listing by agreeing to schedule liberalization commitments on a GATS-like, voluntary, basis while also exchanging comprehensive but non-binding lists of non-conforming measures affecting services trade and investment (e.g. a non-binding negative list) for the sake of promoting greater regulatory transparency regulation and also encouraging domestic audits of the optimality of service sector regulation.

In a novel and easily replicable departure from GATS practice however, recent Japanese PTAs compel positively listed commitments to reflect the regulatory status quo prevailing at the time of the treaty’s entry into force. Simply put, such agreements compel voluntarily decreed market access and national treatment commitments to lock-in the level of market openness prevailing at the time of an agreement’s entry into force.

There is thus no denying that PTAs afford services negotiators policy space in which to harness more fully the potential of service sector reforms whilst imparting forward-looking and innovative (and typically GATS+) movement both to liberalization (market access) and rule-making efforts. In two recent papers, the author has identified a number of areas in which that space can and should be used more creatively by services negotiators.36 Such areas range from the architecture of services agreements to the promotion of greater inter-regional labor mobility, the strengthening of disciplines on regulatory transparency; the liberalization of government procurement of services; and the adoption of liberal rules of origin towards third country investors and service providers.

35 See the paper by Wunsch-Vincent for this conference.
Using the policy space afforded by PTAs to advance the rule-making and liberalization agenda in services is important in its own right, given the economy-wide effects that such advances can likely generate in partner countries. It is equally important to the extent that it can set precedents and allow for policy experimentation likely to inform the evolution of multilateral disciplines. The greater the commonality in regional advances, the more pervasive their adoption across countries, the more likely becomes their multilateral migration. The iterative nature of advances in services rule-making and market opening heightens the importance of using PTAs as laboratories in which to experiment with novel policy and rule-making approaches.

With the WTO process currently in abeyance, the urge to go bilateral and regional will likely prove irresistible. In such a negotiating environment, developing countries must guard against the likely recurrence of hegemonic, commoditized, “take it or leave it”, PTAs, the terms of which are likely to be dictated by developed countries and reflective of their needs (offensive and defensive) and collective preferences. It is far from clear that PTAs will in all circumstances offer developing countries superior outcomes than those that may be reaped if WTO Members came to their collective senses and agreed to resume MFN-based negotiations in Geneva.

That said, it is also important not to display excessive theological zeal in such matters. Some sectors, such as land transportation and professional services, may simply be best addressed in suburbia. What’s more, when PTAs adopt, as most have so far, liberal rules of origin towards third country investors, they may well approximate the effects of multilateral (i.e. MFN-based) liberalization. At the same time, negotiators must keep an eye to ensuring that any “best” regional practices and novel rule-making and market-opening advances eventually find their way to Geneva. All too often, and regrettably, regional advances generated by officials that may not be the principal negotiators in the WTO process are viewed with innate suspicion.

5. Squaring a difficult circle: Mode 4 trade

The Doha Work Programme for services usefully calls for a review to be undertaken prior to the conclusion of the DDA to assess the degree to which WTO Members have complied with their pledge to schedule commitments in sectors and modes of supply of priority interest to developing countries. Such a review will likely exert meaningful – and much needed - political pressure on developed countries to live up to their promise of placing development at the heart of the current negotiating round. While the Doha Round is already littered

57 See the paper by Fink and Nikomborirak for this conference. See also Mattoo and Fink (2004) and Beviglia-Zampetti and Sauvé (2006) for a discussion of recent examples where PTA members have begun to tamper with the design of rules of origin for trade and investment in services with a view to conferring first mover advantages to PTA members.
with a number of *rendez-vous manqués* on development-related issues, one question that is certain to come up in this regard concerns the treatment of labor mobility, so-called Mode 4 of GATS.

The very basis for international trade, be it of goods or services (including factors of production), is to exploit differences in relative prices flowing from diverging factor endowments. The larger such differences, the greater the likely gains from opening up international trade. In the case of Mode 4 trade, recent policy research has shown that significant returns could be reaped from liberalisation if medium- and less-skilled workers, who are relatively abundant in developing countries, were allowed to move and provide their services on a temporary basis in developed countries (or indeed in higher income developing countries, as has been the case most notably in South-East Asia and the Gulf States).\(^\text{38}\) Studies show that the gains from even a modest liberalisation of Mode 4 trade could exceed those expected to flow from a full elimination of barriers to merchandise trade.\(^\text{39}\)

5.1. A limited Uruguay Round harvest

Mode 4 of the GATS concerns the temporary movement of natural persons linked to the supply of services, from one Member of the WTO to another Member. Mode 4 is by far the smallest mode of service delivery in terms of both trade flows and the level of scheduled commitments made in the Uruguay Round. Similar patterns hold at the PTA level, where things have recently taken a turn for the worse with the decision of U.S. negotiators to eschew commitments on the movement of service providers in its most recent set of PTAs.\(^\text{40}\)

The limited commitments made to date under Mode 4 refer almost exclusively to higher-level personnel, and especially to intra-corporate transferees, whose mobility is essentially an adjunct of investment liberalisation. For the most part, existing commitments have had limited significance for the majority of developing countries since their comparative advantage lies primarily in low- and medium-skilled labour-intensive services or in the movement of independent (including contract-based) service providers in higher-skilled activities.

A key priority in services for many developing countries under the Doha Development Agenda is to see greater liberalisation of the right of workers to

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\(^{38}\) See Winters (2003).

\(^{39}\) See Winters (2005).

\(^{40}\) This trend commenced with the FTA entered into with Australia, which was completed in 2004 and came into force on 1 January 2005. The US-Chile FTA, which entered into force on 1 January 2004, was thus the last US PTA to feature a chapter dedicated to the temporary admission of business people.
move temporarily to provide services abroad. Constraints on the cross-border movement of service suppliers rank among the most important existing asymmetries in commitments under the GATS. Multilateral liberalization of trade in services through Mode 4 constitutes a key unfinished development agenda of the Uruguay Round. It is also an essential element of any balanced and development-oriented outcome of the current multilateral trade negotiations.

5.2. Avoiding confusion: temporary mobility is not migration

The temporary movement of workers that is under discussion in trade agreements must not to be confused with migration since the workers it concerns will remain long-term residents in their home countries. But the ability to care for the elderly, design software, operate ships or engage in construction work at (or near) American, European or Japanese wages would immeasurably increase the incomes of mobile workers from developing countries.\(^{41}\)

Sending service suppliers abroad on a temporary basis abroad can help a developing country reduce pressure on domestic labour markets while increasing capital flows and helping build human capital. Remittances from abroad can be an important source of revenue. In the case of Bangladesh, for instance, worker remittances totalled US$ 3.86 billion in 2004-05. This represented almost 4% of GDP and one-third of gross export earnings.\(^{42}\)

But there are also some risks. When skilled personnel go abroad, the sending country loses not just their skills but also the resources invested in their education and training. However, these risks may be lessened by the temporary nature of Mode 4 movement if ways are found – and incentives deployed – to ensure the return of temporary workers to their home countries (so-called brain circulation).

Workers’ repatriated earnings in the form of remittances transferred to their home countries are an important way of generating investment and savings and promoting accelerated development of the domestic economy. Remittances have in recent years emerged as one of the most stable, continuous, and counter-cyclical sources of development finance in developing countries. For many developing countries, particularly poorer ones, such flows dwarf FDI and aid as sources of external funding.\(^{43}\) Furthermore, as workers return to their home countries after temporary employment abroad, the knowledge and experience acquired abroad can stimulate the growth of domestic service sectors and enhance sending countries’ ability to assimilate and apply new technologies.

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41 See Winters (2003).
For receiving countries, bringing people in temporarily to provide services can help improve competitiveness and provide short-term relief for labour market shortages. However, care must be taken to ensure that the downward pressures that may be exerted on the wages of unskilled workers are properly mitigated and that the potential social consequences of a greater influx of foreign workers on housing markets and on access to public services such as health and education are properly addressed.

An important challenge in trade agreements is thus to separate Mode 4 trade (of a temporary character) from immigration-related matters so as to mitigate the difficult and often highly emotive political and cultural issues that can hamper realization of the full benefits of facilitated temporary entry for home and host countries alike.

5.3. Tempering the temptation for irrational Mode 4 expectations

While developing countries are pinning high hopes on Mode 4 liberalization in the DDA, it is essential that such expectations be kept rational. Mode 4 liberalization faces three daunting challenges, all of which recall the difficulty of meeting developing country expectations at the trade negotiating table, especially at the multilateral level.

A first challenge stems from the inherently cyclical nature of labor markets (i.e. the demand for labor), and the corresponding reluctance of labor market and immigration officials in receiving countries to take on significant quasi-permanent legal commitments in a trade policy setting. Almost by definition, such concerns imply precaution-induced commitments that are typically scheduled at a significantly lower level than host economies’ actual (or historical) needs for temporary labour.

A second challenge arising specifically at the WTO level stems from the obligation under GATS to extend liberalization commitments on a most-favored nation treatment basis. This is a privilege many WTO Members may be reluctant to bestow to foreign workers, particularly in lower- to medium-skilled worker categories. Recourse to bilateral guest-worker programs and labor cooperation agreements remain important – and typically the preferred (and perhaps preferable) policy options in this regard.

A third challenge owes to the inherent bias in trade discussions towards the movement of highly-skilled personnel, much of it deployed in the context of foreign direct investment activity abroad. Such a bias clearly favours capital exporting countries, a small (if growing) minority of which consists of developing countries.
Much attention has been paid by developing country stakeholders in the DDA in trying to de-link modes 3 and 4 so as to focus on worker categories (medium-skilled) and types (independent contract-based workers) that more clearly match the comparative advantage of a greater number of developing countries.

Seeking to pigeon-hole temporary access to labor markets in a multilateral trade policy setting, and to address those worker categories whose enhanced temporary mobility would make the greatest impact on poverty reduction, is thus far from easy. Doing so has become harder still since the horrific events of September 11, 2001, and in light of the growing controversy that surrounds migration debates in most parts of the world.  

Forward progress on the issue of temporary labor mobility may thus be more feasible – and its potential downsides more easily contained - under bilateral (guest-worker) or plurilateral labor market agreements than in the WTO.

5.4. Acknowledging the systemic consequences of multilateral blockage

The systemic downsides that stem from the above considerations are clear enough. They are also alarming, as they point to a likely continued modal imbalance in commitments - the WTO secretariat estimates that commitments on Mode 3 are between twenty-five to fifty times more commercially significant than those on Mode 4.

Such imbalances have arguably gotten worse for those middle-income countries that are blessed with the dual ability to supply skilled workers to world markets (via Mode 4 trade) and to compete in the market for remotely supplied business services (via Mode 1 trade).  

Both forms of trade have come to elicit, for different reasons, growing disquiet in many OECD countries.

Imbalances of this type are likely to provide ready ammunition to developing countries in arguing that demands for improved access conditions in sectors and modes of supply of primary interest to them continue to go unheeded. Such imbalances may thus well exert negative effects within GATS, leading to fewer developing country commitments on Mode 3-related issues than sound

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44 A worrisome development in this regard is the refusal of the United States government, on orders from Congress, to address the issue of Mode 4 trade in its preferential trade agreements. Indeed, since the 2004 FTA with Australiа, no US FTA has featured a chapter on the temporary entry of business people such as was found in the NAFTA or the US-Chile or US-Singapore FTAs. The United States has, not surprisingly, not shown a willingness to make significant improvements to its Mode 4 commitments under GATS.


development considerations would otherwise dictate. They could also spill over beyond the GATS to other negotiating areas where North-South divides are particularly pronounced, such as in discussions on non-agricultural market access (NAMA).

5.5. Exploring the scope for forward movement in the WTO

While obstacles to a bigger bargain on Mode 4 of GATS are significant, there remains undeniable scope for progress in the DDA and in subsequent WTO negotiating rounds, all the more so as the forces underlying possible bargains are not about to abate: population aging and acute labor shortages in certain occupational categories in the labor markets of advanced industrial countries and even of some emerging economies (e.g., China); the need for globally active firms to deploy their most precious asset – human capital – in an effective manner around the world; and a rising supply of workers (in all skill categories) from developing countries.

A development-friendly outcome on Mode 4 in the Doha Round should thus target a number of elements, among which: (i) a broader range of service providers eligible for temporary entry, so as to include independent workers and contractual service providers de-linked from Mode 3 commitments; (ii) the elimination of economic needs tests or a progressive reduction of their incidence by making them more predictable through the establishment of common, transparent, criteria; (iii) simplification, streamlining and easing of the process of granting temporary entry visas, work permits and licensing requirements and procedures; and (iv) facilitating the recognition of professional qualifications, including through mutual recognition agreements and horizontal application of the GATS guidelines on accountancy to other regulated professions.

5.6. Towards a coherent approach to human mobility

The above disussion suggests that developing country expectations on labor mobility issues, particularly in regard to lower- and medium-skilled worker categories, cannot readily be met in a trade policy setting, especially so at the WTO level. For this very reason, it is essential, not least on coherence grounds, that when the DDA resumes developing countries be sent clear signals that the international community will devote the resources and commit to building the collective action institutions required for a more comprehensive treatment of the manifold challenges – economic, social, and cultural arising from the rising incidence of cross-border migration, both legal and illegal.47

A broad human mobility agenda cannot be tackled by trade policy alone, but there is a complementary role that trade agreements can usefully play so long as expectations remain rational and that determined efforts are made in non-trade

47 See the summary report of the Global Commission on International Migration (2005).
policy settings to tackle the need in sending and receiving countries for comprehensive solutions to what are all at once pressing, highly complex, and ever sensitive development, labor market and demographic challenges.

6. Designing an aid for trade package in services

Aid for trade is about assisting developing countries to increase their exports of goods and services, better integrate into the multilateral trading system, and benefit from liberalized trade and increased market access. Effective aid for trade can be expected, alongside a range of supportive domestic policies, to enhance growth prospects and reduce poverty in developing countries, as well as complement multilateral trade reforms and help distribute their global benefits more equitably within and between developing countries.48

Managing service sector reforms requires that market opening be accompanied by a careful combination of competition and regulation, including pro-competitive regulation. Such a process can present important challenges to resource-constrained governments in many developing countries. It also highlights the need for progressive liberalisation, a feature trade agreements are generally well framed to promote, and to the equally critical need, today fully acknowledged in the Doha Development Agenda, to invest in trade-related capacity building aimed at building sounder negotiating, regulatory regimes and implementing institutions in developing countries.

In the services area, an approach that combines aid for trade with additional trade and investment liberalization commitments could help promote progress in the negotiations while also addressing the legitimate concerns voiced by many developing country governments and civil society organisations over the extent of asymmetries at the negotiating table.

Because of the sheer diversity of the sectoral realities encompassed by services trade, a coherence-promoting aid for trade package in services requires close cooperation and coordination among numerous multilateral institutions, bilateral donors and civil society actors (both private sector and NGO representatives).

The Doha Development Agenda and WTO Ministerial declarations are replete with references to trade-related technical assistance and capacity building, none of which however are legally binding. To guard against the very real risk that the absence of technical assistance may stymie needed reforms and unduly hold back liberalisation commitments, consideration needs to be given to establishing a more formal link between enhanced market access commitments by developing countries and additional assistance on the part of developed countries and relevant multilateral agencies.49

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48 See the recommendations of the WTO Task Force on Aid for Trade (WTO, 2006).
49 See te Velde (2005).
Such a link could lend greater credibility to both liberalisation and technical assistance programs. Indeed, the development promise of the Doha Round, and the ubiquitous calls for coherence in policy-making, would be well served if one of the tangible dividends of a completed DDA were up-front commitments by the leading multilateral and regional lending agencies in support of a strengthening of regulatory institutions and of supply responses in developing countries.

6.1. The need for a tailored response

The particular nature of services trade and of services liberalization imparts a number of special features to the aid for trade debate in the sector. The non-tariff nature of impediments to services trade implies that governments do not forego fiscal receipts when engaging in trade liberalization in the sector. 50 Absent tariff protection, there is no significant preference erosion agenda to speak of in services trade, and hence little need to foresee compensatory payments for countries or regions affected by MFN-based negotiating advances.

The multiplicity of modes of supplying services and the ensuing regulatory intensity of services trade and of related factor movement raises a host of technical assistance challenges. The predominance of commercial presence as a mode of supplying services suggests that assistance directed at enhancing a host country’s investment climate may be particularly important in improving the overall competitiveness of a host country’s service sector.

Meanwhile, the rising salience of cross-border trade and of possibilities for remotely supplying foreign service markets highlights the need for greater regulatory convergence, for the development and adoption of international standards and the negotiation of mutual recognition agreements as means of facilitating cross-border trade in services. All are areas where dedicated technical assistance in favor of developing country service providers need to be deployed in larger quantities.

Moreover, the practice of market opening in services, where negotiated outcomes are far likelier to result in status quo commitments (i.e. policy consolidation or even less) than to generate de novo market opening, suggests that the scope for significant post-liberalization adjustment pressures will generally be absent (or minimal) in most negotiating settings.

The above implies that discussions of an aid for trade response in services can generally be divorced from concerns over the design and adequacy of compensatory financing for the potential “losers” from market opening.

This is not to say that market opening in services cannot produce distributional downsides. It most surely can, as with liberalization in any given sector. Yet an important dimension of the liberalization of trade and investment in services is that the adjustment associated with greater market openness is generally smoother in many service sectors than in some more traditional areas of goods

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50 See Mattoo and Fink (2004).
production. This is so for three reasons. First, adjustment in service industries such as telecommunications and finance often occurs within a dynamic sectoral environment, where expanding market segments and firms can more readily absorb workers from shrinking sectors (or firms). Second, most international trade — some four-fifths of it, continues to take place in manufactured products. This generally lessens the direct exposure of service sector workers to trade-related job displacement even as technological developments and the rise of remotely supplied services exert increasing influences on the location of some categories of white collar work. Third, and perhaps most importantly, owing to a lower degree of sector-specific professional specialization and above-average educational levels, service sector employees in many fields tend to display greater overall labour market mobility. This latter characteristic may explain the observed tendency for displaced workers in non-manufacturing activities to experience shorter periods of unemployment, higher overall re-employment rates and smaller earning losses on average upon re-employment than workers in manufacturing.\(^{51}\)

The main point is thus that, apart from countries seeking accession to the WTO, whose average level of GATS commitments in most instances exceeds that scheduled by developed countries during the Uruguay Round,\(^{52}\) significant new market opening is rarely the norm at the services negotiating table. Any such opening should, moreover, be properly sequenced, including through pre-commitments to future liberalization via GATS Article 18 (Additional Commitments) in such a manner as to anticipate and mitigate potential adjustment pressures and ensure that market opening and regulatory strengthening are carried out in a concomitant manner. Adjustment pressures resulting from market opening initiatives in services could further also be addressed through recourse to an operational emergency safeguard mechanism, an area of unfinished rule-making in services trade where, as noted earlier, progress would be most desirable.\(^{53}\)

6.2. Aid for trade challenges in services trade

The question naturally arises of where additional assistance can best be directed in the services field. Developing countries face two central challenges in undertaking service sector reforms. A first challenge consists of identifying the elements of good (i.e. economically sound) services policy. A second challenge is that of assessing how the choice of good policy at the domestic level can be supported by multilateral (or bilateral/regional) negotiations.\(^{54}\)

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\(^{51}\) See OECD (2002).

\(^{52}\) See Adlung (2004) and Adlung and Roy (2005).


\(^{54}\) See Mattoo (2003).
Addressing the clear deficit in negotiating, enforcement and supply-side capacities that the majority of developing countries face under the GATS requires that a fresh look be given in the DDA to the idea of linked scheduling commitments, now or in future, to legally binding provisions on the supply of needed technical assistance. The latter should aim at the threefold strengthening of: (i) the ability to negotiate from a more informed position; (ii) the capacity to better manage the process of market opening; and (iii) the ability to supply newly-opened foreign markets.

6.2.1. Negotiating and analytical capacities

Despite its innate promise, the complexity of liberalising services trade under the GATS cannot be underestimated, particularly in light of the limited administrative and negotiating capacities of many developing countries. A country needs to gather significant knowledge before it can submit sensible market opening requests and make informed offers. This includes identifying opportunities and challenges for its exporters, determining the capacity building needs of its negotiators, line ministries, and regulatory agencies, and assessing the likely economic and social impacts of various liberalisation scenarios.

Preparation for negotiations thus requires that countries establish a multi-stakeholder approach involving all relevant governmental agencies (and negotiators), legislators, sectoral regulators as well as civil society representatives (business and non-governmental organizations). Improved mechanisms for coordination and consultation are critical to putting forward a coherent view that identifies and pursues the national interest. This is particularly true for services, given the wide variety of sectors, modes of supply and regulatory spheres involved and the influences that service sector reforms can impart on economy-wide performance.

A large number of developing countries have encountered recurring difficulties in identifying their specific sectoral interests in services negotiations, the barriers to their exports or the impact of detailed requests by trading partners (particularly those from developed countries) on their services sectors. Such challenges are compounded when developing country administrations are stretched by several concurrent negotiations at the bilateral, regional and multilateral level. Not surprisingly, progress in tabling meaningful liberalization commitments has been slow, with several leading developing country service exporters advancing proposals that have to date failed singularly (albeit partly on tactical grounds) to lock in the regulatory status quo, let alone roll back impediments to trade and investment in services.

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Djibouti offers an useful illustration, as the country’s sole services expert at the Ministry of Trade and Industry is expected to simultaneously lead negotiations on an Economic Partnership Agreement with the European Union alongside regional talks within COMESA and multilaterally in the WTO. Needless to say, there are not enough days in a week to carry out such tasks in an informed manner.
Of particular concern to developing countries are the questions of how to evaluate the requests received from trading partners and to formulate their own requests and offers. Both are particularly complex challenges as countries need to determine their national policy objectives and the competitiveness of each sector or sub-sector. Such challenges are compounded by the need to determine, among other things, the optimal sequencing of the steps involved in liberalization, the capacity of domestic firms to provide the services in question and whether this capacity would be positively or negatively affected by further competition in the market, as well as the adequacy of domestic regulatory regimes and enforcement capacities.

Other elements of such an evaluation relate to the impact of market opening on investment, employment and access to higher quality imports or more efficient foreign suppliers, gender, access to essential services and poverty alleviation.

While the recent adoption of plurilateral negotiating platforms (i.e. collective requests and offers) could lessen some of the above burdens, it would clearly not obviate the need for WTO Members to be clear on the economic and regulatory implications of making new or improved commitments.

WTO Members cannot participate meaningfully in services negotiations without first understanding how domestic reform is best pursued. This requires careful analysis informed by two-way dialogue between national stakeholders, country negotiators and independent researchers. A stocktaking exercise to consider national and cross-country experience with services reform could help identify areas where reforms can be fast-tracked and those where uncertainties suggest greater doses of regulatory precaution.

Much capacity-building in services has so far focused on helping negotiators and policy officials master the legal provisions of the GATS. A more pressing need, and one that is arguably more conducive to harnessing the pro-development potential of services liberalisation, is that of acquiring the analytical tools to determine a country’s readiness to liberalise; develop government-wide negotiating strategies; and help domestic service providers take full advantage of the market access opportunities arising from regional and multilateral liberalisation efforts.

Technical assistance directed to the above needs deserves greater attention on the part of multilateral agencies and the donor community. For the most part, this entails the dissemination of knowledge on best practice initiatives in countries – developed and developing – that have been successful reformers. Invariably, these countries will tend be those that have developed efficient communication channels with the multiplicity of stakeholders that services negotiations entail.

An assessment of the effects of services liberalisation is foreseen under the GATS. The donor community could lend credibility to such a process by setting up a group of internationally recognised experts to either lead and direct such work or at least develop the analytical framework with which it can best be pursued with a view to generating useful cross-country performance assessments. An initiative
of this type could help ensure that WTO commitments reflect sound economic policy rather than the dictates of domestic or foreign pressure groups.56

6.2.2. Implementation and enforcement capacities

The complexity of service sector reform, and the critical need for liberalisation efforts to be rooted in, accompanied and, in some instances, preceded by sound regulation (including in respect of regulatory enforcement capacity) can present formidable challenges to developing countries. The latter are likelier on average to have weaker regulatory regimes and enforcement capacities. There is, accordingly, a need for progressivity in liberalisation, a feature the GATS is uniquely framed to promote, and to the equally critical need to invest in trade-related capacity building aimed at remedying such institutional and regulatory weaknesses.

If there is one area where competent technical assistance can make a difference, it is in strengthening regulatory agencies and their staff in developing countries. Regulatory institutions are costly and require staff with sophisticated legal and economic skills. Yet sound domestic regulation is critical to realising the full benefits of open service markets and responding to its potential downsides.

Helping developing countries improve domestic standards and qualifications for services and service providers, notably by strengthening their participation in regional or global standard-setting initiatives, is another area where more focused capacity-building efforts can yield strong development dividends. Low standards and related inadequacies in domestic regulation can frustrate access of developing country services and service providers to foreign markets. A further candidate for enhanced assistance in the post-negotiating/implementation phase relates to help in designing reforms that properly factor the impacts of liberalisation on the poor and improve their access to essential services. Such services run the gamut from sanitation to transport, health, telecommunications, small-scale finance, education and health. While most of these complimentary policy challenges lie outside the realm of GATS negotiations, getting them right can help build needed support for broader reform efforts, including in the reade field. However, implementing such policies in an economically sound manner can present numerous challenges to weak bureaucracies, and many developing countries, particularly least-developed countries, will require outside support in meeting them.

Service exporting firms in industrial countries have an obvious stake in ensuring that developing country markets are opened, that such opening is sustainable and that it occurs in a stable regulatory environment. These objectives can be served by enhanced private sector support for improved regulatory institutions and universal access policies. Means thus need to be devised for the private sector to contribute financial resources, people and expertise towards enhanced regulatory reform efforts in developing countries.

56 See Mattoo (2003).
6.2.3. Supply capacity\textsuperscript{57}

The third pillar of a coherent aid for trade package in services needs to target the very real constraints that many developing country exporters face in attempting to supply newly opened markets. Despite the many (and growing number of) success stories that one can report in the developing world in sectors such as energy, research and development, business process outsourcing, construction or environmental services, there remain too few examples of companies from developing countries involved in export trade to a significant degree.

Several reasons may be adduced to explain this fact, starting with the large fixed costs of entering such capital-intensive sectors as well as the global presence of some very large companies in the market already. Even in sectors where developing countries are exporting, studies reveal a number of key common problems facing their exporters, including: (i) lack of access to financing for export or business development; (ii) difficulties encountered in establishing credibility with international suppliers; (iii) lack of access to reliable and inexpensive infrastructure\textsuperscript{58}; and (iv) lack of access to a range of formal and informal networks and institutional facilities necessary for trade.\textsuperscript{59}

Because of its central focus on the private sector, capacity building in respect of supply-side constraints involves a different set of institutional actors from those concerned with the strengthening of trade negotiating or regulatory capacity. Such differences matter for assistance design and inter-agency coordination efforts. It is also an area where greater private sector involvement from service exporting firms in industrial countries could usefully complement the efforts of bilateral donors and multilateral agencies such as the World Bank and the ITC. The contribution of private sector actors from the developed world may also be usefully harnessed in strengthening the regulatory compliance mechanisms of service firms in developing countries.

7. Concluding Remarks

This paper has attempted to take stock of two decades of attempts at prying open services markets and at developing and refining the trade disciplines

\textsuperscript{57} For a fuller discussion, see OECD (2003).

\textsuperscript{58} Lack of reliable energy supply and inadequate transport or telecommunications infrastructures raise costs for all goods- and services-producing sectors. Poor infrastructure can thus exacerbate the credibility problems described above.

\textsuperscript{59} The latter can range from a sound domestic legal environment for business, links to other exporters or export associations or to broader business networks. For services in particular, given the close linkages and symbiotic relationships between service firms, particularly small and medium-sized enterprises, problems can arise from the unavailability of important ancillary or supporting business services in the home market.
required to do so. In so doing, the paper reveals its author’s propensity to dwell on the unfinished, and thus inherently more frustrating, aspects of this journey.

Yet a glass half empty is always and everywhere a glass half full, and it is important to recall that significant forward movement has been achieved over the past two decades in our understanding of the economics of services trade and of the legal translation deriving therefrom.

Forward movement is notable in respect of a collective appreciation of both the large development dividends likely to be reaped from well conceived and implemented service sector reforms and of the considerable difficulty of getting such reforms right given the innate complexity of services markets, the ubiquitous nature of market failures affecting their operation and the continued novelty of the subject matter. That services liberalization has tended to proceed at a slow, ponderous, precaution-induced pace, particularly at the multilateral level, should hardly surprise. The services field, indeed, continues to be characterized by significant doses of learning by doing.

Yet it is precisely because the potential gains from market opening in services are so significant that special care must be given to identifying how best to secure them and to overcome some of the roadblocks standing in the way of development-friendly outcomes at the trade negotiating table. This paper has directed attention to a number of those roadblocks and advanced ideas on how best to impart renewed impetus to the services negotiations when (not if) the DDA resumes.

The market opening and rule-making advances that have been achieved at the (preferential) periphery of the multilateral trading system in recent years are useful, if at times sobering, reminder of the iterative nature of progress in a policy area characterized all at once by complexity, uncertainty and novelty.

The paper suggests that political economy goes a long way toward providing answers to the questions of who negotiates, on whose behalf, in what manner, and on what issues? Such answers on the whole appear to substantiate the paper’s premise that collective attitudes towards services negotiations (as opposed to unilateral conduct) continue to be shaped by strong doses of regulatory and bureaucratic precaution.

For the trade negotiating process to play more of a leading role in service sector policy reforms, this paper argues that officials will need to think outside the box on a number of issues. These include: (i) embracing collective, multi-sectoral, approaches to market opening and focusing negotiating efforts on a limited subset of clusters that complement recent or ongoing advances in goods trade and whose development payoff appears particularly important (i.e. logistics/trade facilitation services and ICT-related services); (ii) experimenting with sector-specific emergency safeguard measures as a means to raise comfort levels over enhanced liberalization commitments; (iii) taking stock of “best” practices emerging from preferential liberalization in services trade and migrating such advances to the WTO, including in respect of improved negotiating modalities and enhanced regulatory transparency; (iv) tempering expectations on far-reaching multilateral advances in respect of Mode 4 trade while advancing concerted collective action responses to the manifold (and
mostly non-trade centric) challenge of human mobility; and (v) devising an aid for trade regime for services centered that is informed by what distinguishes services from goods trade and addresses the threefold challenge of enhanced negotiating, implementing and supply capacities in developing countries.
References


te Velde, Dirk Willem (2005), “Revitalizing services negotiations at the WTO: can technical assistance help?”, London: Overseas Development Institute, (December).


