

OAS TRADE UNIT STUDIES
Analyses on trade and integration in the Americas

Deepening Disciplines for
Trade in Services

Sherry M. Stephenson

A Publication of the
Organization of American States
Trade Unit
March 2001



OAS TRADE UNIT STUDIES

The OAS Trade Unit Studies series addresses issues of importance to trade and economic integration in the Western Hemisphere. The reports are prepared by the Trade Unit staff and do not necessarily reflect the opinions of the OAS Member States. An electronic version of this document is available on the Internet at a site maintained by the Trade Unit's Foreign Trade Information System, which is also known by its Spanish acronym, SICE. The address is: <http://www.sice.oas.org>.

Secretary General
César Gaviria

Assistant Secretary General
Luigi Einaudi

First Edition, March 2001

OEA/Ser.D/XXII
SG/TU/TUS-11

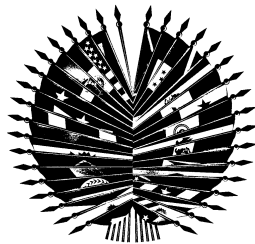
© 2001 Organization of American States, General Secretariat. All rights reserved. This publication or any portion thereof may not be reproduced or transmitted in any way without the permission of the General Secretariat of the OAS. The ideas, thoughts and opinions contained herein are not necessarily those of the OAS or of its Member States. All inquiries regarding this publication should be directed to: Organization of American States, Trade Unit, 1889 F Street NW, Washington, D.C. 20006, U.S.A. Electronic Mail: trade@sice.oas.org.

OAS TRADE UNIT STUDIES

Deepening Disciplines for
Trade in Services

Sherry M. Stephenson*

A Publication of the
Organization of American States
Trade Unit
1889 F Street, N.W.
Washington, D.C. 20006
USA



* Sherry Stephenson is Deputy Director of the Trade Unit of the Organization of American States (OAS), and responsible for providing technical and analytical support to the services negotiations under the Free Trade Area of the Americas (FTAA) process.

TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
I. Transparency	2
1. The Role of Transparency	2
2. The Rationale for Transparency	2
3. Ways to Ensure Transparency in Services Trade	3
a. Publication	3
b. Notification	4
c. Establishment of enquiry points	6
4. Evaluation of Effectiveness of Transparency Requirements for Services	6
a. Publication	6
b. Notification	7
c. Establishment of Enquiry Points	7
5. Recommendations for Improving Transparency in Services Trade	8
a. Publication and Notification	8
b. Improving the Functioning of Enquiry Points	9
II. Domestic Regulation and Recognition	10
1. Introduction	10
2. Domestic Regulation	11
a. GATS Article VI	11
b. Sub-regional Agreements in the Western Hemisphere	13
3. Recognition	16
a. GATS Article VII	16
b. Sub-regional Agreements in the Western Hemisphere	16
c. Assessing the Sub-regional Structures	19
d. Implications of the analysis	22
References	30

INTRODUCTION

Services trade has been under multilateral rules and disciplines since 1995, with the coming into force of the WTO General Agreement on Trade in Services (GATS), applicable for all members of the World Trade Organization. At the regional level services trade has also been increasingly subject to rules and disciplines in the context of new or revitalized sub-regional trade agreements covering services trade. As of the end 2000, no less than fourteen (14) sub-regional agreements encompassing services had been signed between various countries of the Western Hemisphere. All countries in the hemisphere have by now become party to at least one and, in some cases, several of these agreements, with the objective of both liberalizing services trade and providing more stability and legal certainty for their service providers.

Many of the rules and disciplines that were developed for services trade at the multilateral level in the context of the GATS have been incorporated into the various sub-regional agreements, however, not always in an identical manner. In some cases the latter agreements do not include articles that are found in the GATS; in other cases they go further to deepen disciplines for an area contained in the GATS.

One of the most fundamental disciplines for services trade for an agreement at any level is that of transparency. This is an especially critical area for services given the type of non-transparent regulatory barriers that affect the ability of foreign service providers to supply their services. All service agreements contain some form of a transparency provision; however in many cases these disciplines are weak and provide for little effective means to bring greater clarity and openness to domestic laws, regulations, and procedures, thus weakening the incentives for services trade liberalization.

Another fundamental discipline for services trade is that of domestic regulation. In contrast to trade in goods, services trade liberalization will often not be effective through the provision of greater market access alone, but must be accompanied by appropriate regulatory reform to ensure that incumbent suppliers are not able to block participation in the market. A trade-off in the services area is possible between developing general horizontal regulatory disciplines affecting all service sectors, or agreeing upon more specific rules to promote services trade on the basis of recognition agreements. This may be cast in the light of the rules vs. standards debate in which the costs of harmonized regulations for a given service sector must be weighed against the benefits they might bring, as an alternative to the elaboration of general standards based on agreed principles.

This study examines the key disciplines of transparency, domestic regulation, and recognition in the services area and compares how these disciplines have been elaborated at the multilateral level under the GATS with agreements at the sub-regional level in the Western Hemisphere. It suggests ways in which these disciplines might be strengthened.

I. TRANSPARENCY¹

1. The Role of Transparency

Transparency is critical to the facilitation of services trade. This is because the measures that affect trade in services are inherently non-transparent. They are in the form of domestic laws, regulations, administrative rules and procedures and others. Such measures are not border measures and thus foreign service providers can only be made aware of them if and when they are made publicly available. In the absence of information on domestic laws, regulations, and practices, foreign service providers are handicapped in their access to third markets and crippled in operating their businesses.

Thus transparency provides an essential tool to service providers through making clear on the one hand the discriminatory elements present in the measures affecting services trade, and on the other hand, the regulatory requirements in place that govern the operation of all services providers in a given market. This includes making explicit the rationale behind regulatory decision-making, along with those procedures involved in administering, implementing, and enforcing regulations. Only when services providers have access to complete and transparent information on the conditions and constraints affecting their access to foreign markets, along with the requirements and the necessary competence, can they effectively engage in services trade.

Transparent laws and regulations foster fair competition in services trade through allowing equal availability and access to vital information. All potential economic actors should have the same potential access to information on measures affecting services trade so as to have an equal starting point in competing with each other. Otherwise, one party with privileged access to information would be advantaged with respect to the others that do not have this access, and the result would distort market outcomes.²

2. The Rationale for Transparency

Transparency is one of the basic GATT principles under the multilateral trading system, along with most-favored nation treatment (MFN) and national treatment. World Trade Organization (WTO) agreements attempt to make effective the principle of transparency in services trade in two major ways:

Through the obligation to publish, or at least make publicly available at the national level, all relevant laws, regulations, and administrative requirements. Often linked with this are provisions relating to the impartial administration of such laws and regulations and the right of review of decisions taken under them; and

Through the obligation to notify various forms of governmental action to the WTO and WTO members.

What is the underlying rationale for transparency? A paper by the WTO Secretariat has set out four major ways in which transparency is useful in facilitating and liberalizing trade flows.³

First, transparency helps in promoting a rules-based approach to trade policy at the national level. A basic condition for the rule of law is that all legal requirements be published and made publicly available, and wherever possible, enforced only after those juridical persons under their purview have had a chance to become acquainted with them. The provisions concerning the impartial administration of such

¹ Part I is co-authored with Soonhwa Yi. An earlier version of the paper was prepared for the meeting of the APEC Group on Services (GOS) in Beijing, China on 17-18 February 2001, as part of the project on the "Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment" undertaken by PECC for the APEC Group on Services.

² See Feketekuty, "Regulatory reform and trade liberalization", 2000.

³ See WTO WT/WGTCP/W/114, "The Fundamental WTO Principles of National Treatment, Most-Favoured-Nation Treatment and Transparency", background note by the WTO Secretariat, 14 April 1999. The provisions of the three main WTO Agreements containing obligations for publication are GATT Article X; GATS Article III; and TRIPS Article 63.

legal requirements and the scope for review by an independent body of decisions concerning their application are also critical in this respect.

Second, transparency provides information to economic actors so that they can take maximum advantage of the opportunities created by WTO rules, disciplines, and commitments, whether this concerns market access, treatment of service providers, protection of intellectual property or other relevant matters.

Third, transparency facilitates monitoring of compliance with obligations under the WTO and, through this means, helps to avoid disputes.

Fourth, transparency facilitates multilateral trade negotiations under the WTO as well as discussions on trade relations at the regional level such as those in the Western Hemisphere that promote the further liberalization of international trade.

3. Ways to Ensure Transparency in Services Trade

There are fundamentally three ways to enhance transparency in services trade. These are: i) through publication of laws, regulations and administrative rules and procedures affecting service providers; ii) through the notification of measures affecting services trade to agreed bodies; and iii) through the establishment of enquiry or contact points for the diffusion of this information. These three aspects of transparency are found as obligations in the WTO General Agreement on Trade in Services (GATS) as well as in sub-regional integration agreements in the Western Hemisphere.⁴ This section highlights provisions on transparency in trade in services agreements concluded both at the multilateral and sub-regional level.

a. Publication

Transparency can be achieved through publications of

- domestic legislation affecting trade in services
- international trade agreements pertaining preferential treatments to parties of the agreements
- explanation of rationale or justification of measures
- and interpretations of measures

Publication of trade-related domestic laws, rules, regulations, and administrative procedures pertaining trade in services is the first way in which transparency can be carried out. Under the GATS Article III, WTO members are to either publish or make publicly available this information in their national economies: "each member shall publish ...all relevant measures of general application which pertain to or affect the operation of this Agreement." All agreements in the Western Hemisphere (with the exception of CARICOM Protocol II) stipulate an obligation to publish relevant measures affecting trade in services. In Article 1802, NAFTA envisages prompt publication of laws, regulations, procedures and administrative rulings, affecting not only trade in goods but also trade in services and services providers, at the national level. The Andean Community contains a similar provision in Article 9; and MERCOSUR in Article VII.

Under the GATS members are to publish as well all international trade agreements they have signed that incorporate trade in services. This is because bilateral or regional trade agreements, due to their preferential nature, contain provisions to treat service providers from parties to the agreement on a different basis from non-parties, making it important to have these publicly available. The transparency provisions in the Andean Community and MERCOSUR agreements require the publication of all international agreements.

⁴ The sub-regional agreements on trade in services in the Western Hemisphere number more than fourteen. This discussion comments only on the North American Free Trade Agreement (NAFTA), the Andean Community Decision 439 on Services, the Montevideo Protocol of the Southern Cone Common Market (MERCOSUR), and Protocol II of the Caribbean Common Market (CARICOM).

Publication can be done in paper form, CD-Rom database or electronically, through the creation of a web site and the posting of relevant information on the web page,⁵ all of which should be easily accessible by the market participants.

Each form of the publication of the legislation should be both in the national language and in another foreign language that is widely used throughout the world. This would facilitate the access of foreign services suppliers to domestic regulations by allowing them to overcome the linguistic barrier.⁶

Explanation of the rationale or justification of all measures affecting services trade should be published as well. GATS Article VI:4 requires that such measures be necessary for achieving the policy objectives and for ensuring the quality of the service. Transparent explanation of the rationale or justification of the measures demonstrates whether they are necessary and whether they are the least trade restrictive options to ensure the given objectives. Greater transparency in this sense could thereby help in avoiding services trade disputes.

A government may also assist in facilitating transparency through the publication of a summary of domestic legislation, where it is written in a complicated fashion and in difficult legal terms. Such summaries would provide services suppliers with a clear understanding of whether they are exempted from or subject to certain measures, thus fostering economic efficiency in services trade.

Publication of measures affecting services trade would play a major role in boosting competition and efficiency in services trade, especially in government procurement of services. Services are the largest category of public purchases in many countries where governments outsource these to the private sector.⁷ In the bidding process efficiency would be increased through 'ex ante' and 'ex post' publications. In tendering procedures (ex ante), as stipulated in the WTO Government Procurement Agreement, a government should publish a list of qualified suppliers, whether domestic or foreign, to whom it must give equal opportunity to bid. It should also publish specific procedures and criteria for the procurement process so that potential bidders have access to the same information. In order to keep the procurement efficient (ex post), the government should establish independent regulatory bodies to audit the winner's business practices and publish the audits.⁸

An essential aspect of the publication of relevant rules, regulations, and administrative procedures is that such publication be carried out in a timely manner. Official publications and web sites should be updated on a regular basis as well to reflect changes and amendments. A newsletter would be a good example for such periodic updates. The GATS and all regional agreements in the hemisphere require that members to a respective agreement publish all relevant measures "promptly ... at latest by the time of their entry into force..." There is, however, no obligation to allow for advance comment on these measures prior to their publication. NAFTA and NAFTA-type agreements go further than the multilateral obligation of the GATS in this respect to allow for advance comment on new or changed laws and regulations affecting services trade, "to the extent possible".

b. Notification

- notification of new or amended legislation
- mechanism for prior consultation
- reverse notification

Notification of the introduction of any new laws, regulations or administrative guidelines that significantly affect trade in services, or any changes to existing ones, is also a requirement of GATS

⁵ With regard to a web page, it is imperative to emphasize that all relevant measures be posted because in practice, partial information is not sufficient enough to provide proper information to service providers.

⁶ Moisé, "Background Report on Enhancing Market Openness through Regulatory Reform", 2000.

⁷ Evenett and Hoekman, "Government procurement of services and multilateral disciplines", 2000.

⁸ Realizing the important role of transparency in the area, the 1996 Singapore WTO Ministerial Conference established a multilateral work program on transparency in government procurement for goods.

Article III. All economic integration agreements and recognition agreements are to be notified as well. With respect to the latter, the notifying party is also required to provide detailed information on the purpose of such agreements and explicit explanation of each provision relevant to trade in services.

In the NAFTA and other NAFTA-type agreements in the hemisphere, parties must notify all existing discriminatory as well as non-discriminatory quantitative restrictions affecting service providers as part of the treaty obligations. Upon entry into force, the CARICOM protocol requires notification of existing restrictions on the provision of services and right of establishment by each member to the CARICOM Council for Trade and Economic Development. Similar to GATS, MERCOSUR, NAFTA, and the NAFTA-type agreements also require notification of changes in existing laws and any new laws, regulations, and administrative procedures affecting trade in services, whereas the Andean Community Decision obliges members to the agreement to notify international agreements only.

It should be pointed out that under the GATS, as in the case of regional trade arrangements in the hemispheric region, it is not necessary to notify all existing legislation affecting trade in services, but rather only new or amended legislation which significantly affects trade in services covered by a member's specific commitments under the GATS.⁹ This is to lessen the administrative burden of such a requirement. Notification of new or amended legislation should ideally be accompanied by the text of such legislation, although this is not a requirement.

In an innovative step, NAFTA and some NAFTA-type agreements contain the right for parties to request information on any actual or proposed measure affecting trade in services. A party should promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not the other party has been previously notified of that measure.

However an obligation for notification of new or amended laws and regulations, especially new legislation, is being actively discussed in the GATS Working Party on Domestic Regulation. The idea is borrowed from the WTO Agreement on Technical Barriers to Trade (TBT), where an obligation for prior notification is set out with a view to improving transparency. The provision is as follows:

If the technical regulations or procedures for conformity assessment prepared by Members are not the same as, or are not based substantially on, international standards, and if they may have a significant effect on the trade of other Members, they must be notified to other Members through the WTO Secretariat at a sufficiently early stage in their drafting (generally at least sixty days prior to their formal adoption).¹⁰

The TBT Agreement obliges WTO members to notify proposed or amended laws at an early stage in their drafting so as to allow reasonable time for other Members, without discrimination, to make comments in writing. Members should be prepared to discuss these comments upon request, and take these written comments and the results of these discussions into account before adopting regulations or procedures for conformity assessment and publishing them. The TBT Agreement further obliges a member to ensure that its standardizing bodies which accept the Code of Good Practice attached to the agreement notify their work programs so that interested parties can be informed of the standards they are preparing and can take into account comments received before finalizing these.

The key element for prior consultation is making the information publicly available at an early stage so as to provide enough time for public comments. A standard period for the submission of comments could be agreed.. Both new and amended legislation at the national level as well as that developed by sub-national entities should be subject to comment. This procedure would help to ensure that new or amended legislation is more appropriate to trading conditions and better enforceable. Further, it provides domestic and foreign service providers with the opportunity to obtain an advance picture of

⁹ Up to 2000, 135 notifications to the WTO Council for Trade in Services had been made: 17 notifications under Article V (Economic Integration); 4 under Article XXVII (k)(ii) (Definition); 33 under Article. VII:4 (Recognition); and 79 under Article. III:3 (Transparency, notification of the introduction of any new or any amended legislation).

¹⁰ WTO S/WPPS/W/6, "Background Information on the Agreement on Technical Barriers to Trade and the Agreement on Import Licensing Procedures", note by the WTO Secretariat, 29 February 1996.

regulatory development and modifications, thus enabling them to better understand the markets with which they trade and comply with their requisites.

Under the GATS and MERCOSUR, notification is to be carried out “promptly and at least annually.....”. This is to fulfill the requirement of the timely provision of information to service providers and interested parties. However, the GATS allows for notification to be made only once a year as a minimum, rather than requiring that notification be carried out at the time that a new or amended law or regulation comes into force. Requiring that notification be done in a more timely fashion would also promote greater market efficiency.

In order for all notification and prior consultation mechanisms to be efficient, certain standards for procedures are necessary. A format for notification and prior consultation could be developed at the multilateral level.

The possibility for reverse notification would enhance transparency with respect to barriers to trade in services as it is specified in GATS Article III.5. An affected government should be able to notify another government’s practices that create barriers to services trade, when such measures have not been notified by the government putting them into place.¹¹

c. Establishment of enquiry points

The third requirement of GATS Article III with respect to transparency is the obligation to establish an enquiry point at the national level for the purpose of providing information on national laws, decrees, regulations, and practices that affect the possibility of foreign service providers to access their national markets as well as on any new, or any changes to existing laws, regulations, or administrative rules and procedures. Information is also to be provided on any international agreements that have been signed with services provisions. Like GATS, NAFTA and all NAFTA-type agreements as well as MERCOSUR further require parties to establish contact points or information centers and to provide information on measures affecting services trade upon request. Enquiry points are not expected to be the depositories of laws and regulations, but they are expected to know where to find such information for all service sectors, and to access this information when required.

Information is to be provided by the enquiry point in response to requests from other members (governments) to an agreement, with the purpose of enhancing transparency. Those members who have complied with this obligation have most often indicated a government department or division located within the Ministry of Trade.

4. Evaluation of Effectiveness of Transparency Requirements for Services

Given the importance of transparency to trade facilitation, the three major requirements for enhancing transparency in trade in services described above should be critically evaluated by a government to determine if the current system is one that fulfills the need for an open, easily accessible and effective mechanism to make information on measures affecting trade in services available to service providers.

a. Publication

The current WTO requirements in the GATS for publication of measures affecting trade in services are less exigent than disciplines in other WTO agreements such as those on Technical Barriers to Trade and Sanitary and Phytosanitary Measures. Unlike NAFTA and NAFTA-type agreements, the GATS requirements do not mandate or indeed even encourage WTO members to make available for advance comment the texts of new laws, regulations, and administrative guidelines or amendments to existing ones prior to their publication. There is therefore no effective means for interested service providers to voice their opinions on the shape of such laws and regulations, though they may be the ones specifically targeted in terms of necessary compliance.

¹¹ WTO WT/WGRCP/W/114, 1999.

b. Notification

Even without the possibility of prior comment, the GATS does not allow for foreign service providers to become acquainted with the text of new or amended laws and regulations, as there is no need to publish such measures until the date on which they become effective. Likewise, the GATS does not contain any provisions requiring the scope for review by an independent body of the application of such measures in its Article III provisions on transparency (though this is one of the requirements of paragraph 2(a) of GATS Article VI on Domestic Regulation that is currently being reviewed in the ongoing negotiations).

With respect to notification, WTO members are not obliged to inform the WTO as soon as new or revised measures affecting trade in services become effective. This can compromise in a serious way the timeliness of information available to foreign service providers who generally do not have access to all of the national legislation in third markets and may negatively impact upon investment and other market-related decisions. Particularly in the services area where changes in information technology make this a very dynamic and constantly changing environment, the need to be kept up to date is critical to the competitiveness of the business sector.

c. Establishment of Enquiry Points

Perhaps the most serious deficiency at present of the three requirements to enhance transparency, however, is the functioning of national enquiry points. It is a broadly-held view of services experts that the present system of services enquiry points under the GATS is not working well. Though set out as one of the three means to fulfill the transparency requirements of Article III, the way in which the enquiry point system has been designed means that it is for all practical purposes not being used.

Discussion with service industry companies as well as with government services experts reveals that after six years of operation of the GATS, most WTO members do not make use of the enquiry points, though many members have notified these to the WTO and though they are also available on the WTO web site. Two explanations might be suggested for this unsatisfactory situation.

First, it is the private sector that trades services on the whole, not the government. Yet the enquiry points under the GATS have been set up for access by governments only. Actual service providers – either individuals or firms – with a direct interest in obtaining this information to access foreign markets are not allowed to make use of the enquiry points.

Second, the broad-based nature of service activities means that several different sectors are involved in the provision of services at the national level. The WTO has developed an indicative list of 11 major service sectors and 154 sub-sectors for purposes of the negotiations (GNS/W/120). This implies that several different government ministries and/or agencies have competence over activities as diverse as banking, insurance, securities markets, telecommunications, transport, distribution, education, health, and environmental services, among others. All regulated service sectors will be under a specific government body or regulatory entity responsible for both developing and implementing such regulations. In the case of professional services, various professional associations serve as the repository of information on the academic degrees or qualifications/ competence requirements necessary to be able to exercise the profession at the national and/or state/provincial level.

The above two factors combined have resulted in a transparency system that is neither timely, nor directed of use to those interested parties. One single national enquiry point will not in the large majority of cases have the information or expertise necessary to meet the needs of those third parties requesting such information on a given service activity. The enquiry point representative in question will therefore need to consult with the appropriate ministry or professional association in order to respond to the request. For an individual or private firm to use the enquiry point system, it must first be aware of its existence, then address its request for information on a specific service sector abroad to its own government, who must in turn request this information of the government body designated as the enquiry point in the foreign market. Clearly such a procedure is cumbersome at best, irrelevant at worst.

The specialized and highly diversified nature of service activities means that a different structure for a system of enquiry points would prove more helpful to meet the objectives of transparency and

provision of information. Such notifications could be expanded to devolve responsibility for the notifications of new and amended laws, regulations, and administrative guidelines to each of those ministries or relevant bodies within each economy responsible for the service activity in question.

Development of such an expanded list of enquiry points on a national basis would also permit the enhanced interaction of these bodies and service associations, which itself would facilitate the creation of national Coalitions of Services Industries. These coalitions would be very helpful to the development of a services agreement at the regional level, particularly when sector-specific expertise will be required.

An alternative to the establishment of enquiry points is to create web sites that are interactive and coordinate with national enquiry points to provide information on barriers to trade in services. Coordination between the websites and enquiry points could be facilitated by the creation of a Central Registry of measures containing information on actual regulations.¹² All measures affecting services trade at the multinational, national, and sub-national levels should be included in this database that could be accessed through the Central Registry and information then provided upon request.

The interactive Central Registry system could prove more effective and beneficial than the current enquiry points system because:

the function of an enquiry point depends on availability of a central code of actual regulations and on the extent of coordination between regulatory authorities and the enquiry point in providing substantive information, and

a central code maintained at the national level is more effective than enquiry points registered at the multilateral level as the former is more systematically organized and provides foreign service providers operating at the national market direct access to information on that market.

5. Recommendations for Improving Transparency in Services Trade

As services trade grows rapidly, the issue of transparency becomes increasingly significant for enhancing the ability of service providers to access foreign markets. Effective transparency both facilitates services trade and speeds the growth of such trade. As highlighted in this paper, transparency disciplines at present are not functioning effectively. Improvements in such disciplines at both the multilateral and regional levels could do much to eliminate the opaqueness and uncertainty surrounding the legal and regulatory framework within which services providers can operate. Thus improvements in transparency disciplines should be encouraged in the areas that are the object of the recommendations below. Importantly, the usefulness of transparency provisions in trade agreements is maximized only when such steps are carried out in a timely, practical, and effective manner, and when such information is accessible to all service providers.

a. Publication and Notification

- ☞ It would be desirable to publish all measures affecting trade in services prior to their entry into force
- ☞ The publication of new or amended measures should be accompanied by an explanation for their rational and/or justification
- ☞ It would be desirable to notify new measures affecting trade in services within three months time prior to their entry into force
- ☞ When possible, it would also be desirable to develop a system for prior comment on new measures before they are finalized and brought into effect

¹² OECD TD/TC/WP (99)43/FINAL, "Strengthening Regulatory Transparency: Insights for the GATS from the Regulatory Reform Country Review", 12 April 2000.

b. Improving the Functioning of Enquiry Points

- ⚡⚡ A central registry of regulations should be established in each country where all pertinent laws, regulations, and administrative guidelines would be kept, in an up-to-date state
- ⚡⚡ The central registry should be made available on line, if possible, so as to be able to access electronically
- ⚡⚡ Responsibility for responding to requests for information on measures affecting trade in services should be devolved to those in charge of regulations for each specific service sector
- ⚡⚡ The Ministry or regulatory body responsible for developing and implementing those laws and regulations for the service sector in question should be the one responsible for the notification of any new or changed laws and regulations in their area
- ⚡⚡ The information on the Central Registry, as well as the ability to address inquiries about such measures and information, should be available and open to private service providers as well as to government officials.

II. DOMESTIC REGULATION AND RECOGNITION¹³

1. Introduction

One of the features that distinguish trade liberalization at the regional level, as opposed to the multilateral level, is the attempt by regional trading arrangements to achieve “deep” integration. This can be illustrated by examining trade in services, and the two areas of domestic regulation and recognition, where regional efforts to deepen these disciplines can be contrasted with those of the WTO General Agreement on Trade in Services (GATS).

This paper examines what has been done by members of regional trading arrangements in the Western Hemisphere to promote stronger disciplines for domestic regulation or recognition agreements in the area of trade in services. This contrast allows conclusions to be drawn as to the effectiveness of regional arrangements in actually bringing about more similar regulatory disciplines and structures and/or promoting market access for service providers through mutual recognition agreements.

As barriers facing foreign service suppliers often take the form of domestic regulations, regulatory reform is at the heart of services liberalization if such liberalization is to be effective and is therefore an indispensable ingredient for achieving more open services markets.¹⁴ Article VI (Domestic Regulation) of the WTO General Agreement on Trade in Services (GATS) requires that all measures affecting trade in services, in sectors where commitments are undertaken, be administered in a reasonable, objective, and impartial manner. Differences in the qualifications of professionals and other service providers can also be an obstacle to their exercise abroad and thus to trade in services through the movement of natural persons. GATS addresses this through its attempt to promote recognition agreements of education obtained, requirements met or licensing or certification granted in a particular country, under the condition that these recognition agreements remain open to the participation of other WTO members (Article VII on Recognition).

To date, GATS has addressed non-discriminatory barriers facing foreign service suppliers primarily through general principles rather than through specific rules of harmonization or recognition of regulatory measures. While more specific, harmonized rules usually afford a greater degree of trade liberalization than general principles and provide economic actors with a higher degree of predictability, they are also more costly to negotiate, given the divergence in regulatory approaches and systems across borders and the lack of information about the complex interaction between these systems and services trade. Accordingly, countries seeking to liberalize services trade must weigh carefully the costs and benefits associated with general principles and more specific rules.

This paper analyses how, faced with the choice between general principles and more detailed rules, countries in the Western Hemisphere have tried to address the potential trade restrictive effects of domestic regulation in the sphere of services, as well as how they have tried to encourage the mutual recognition of licenses and qualifications for professional service providers with a view to reducing barriers to trade in services at the sub-regional level within economic integration arrangements. It seeks to answer the question of whether sub-regional agreements (SRAs) have allowed countries in the Americas to go further in deepening multilateral disciplines.

Intuitively, it would seem that a handful of countries participating in a sub-regional trading agreement would face fewer costs when negotiating more detailed rules on harmonization and recognition than almost 140 countries negotiating together at the multilateral level, and that therefore sub-regional agreements would apply more constraints on the regulatory sovereignty of their members than would multilateral disciplines. This paper addresses this hypothesis by comparing the provisions on domestic regulation and recognition of GATS with those of four SRAs in the Western Hemisphere—the North American Free Trade Agreement (NAFTA), the Andean Community, the Common Market of the South (MERCOSUR), and the Caribbean

¹³ An earlier version of Part II was prepared for the workshop on “Regulatory Reform and the Multilateral Trading System: Insights from Country Experience”, OECD, Paris, 7-8 December 2000. The author is grateful to Karsten Steinfatt and to Anne-Lise Georges for their collaboration and valuable input into this part of the study and to helpful comments by colleagues in the OAS Trade Unit.

¹⁴ See, in particular, Geza Feketekey, “Regulatory Reform and Trade Liberalization in Services,” in Pierre Sauvé and Robert M. Stern, eds., *GATS 2000: New Directions in Services Trade Liberalization* (Washington, D.C.: Brookings Institution and Center for Business and Government, Harvard University, 200).

Community and Common Market (CARICOM). It also draws the implications of this analysis for countries in the Western Hemisphere by looking at how the costs and benefits of the different approaches to domestic regulation and recognition espoused by SRAs are affected by the broader institutional framework of these agreements.

Part II of this paper presents the framework for domestic regulation in the GATS and contrasts it with the disciplines formulated by SRAs in this area. Part III engages in a similar exercise with respect to recognition, and undertakes a brief survey of mutual recognition agreements on professional services concluded in the context of Western Hemisphere SRAs to date. Part IV presents the main results of the comparative analysis. The last section of the paper seeks to explain these results in terms of the broader institutional framework in which liberalization of services trade takes place.

2. Domestic Regulation

a. GATS Article VI

Given that non-discriminatory regulatory measures can pose substantial barriers to international trade in services, GATS Article VI on domestic regulation is one of the most important substantive provisions of the Agreement, as it is a necessary complement to market access liberalization. In general terms, Article VI recognizes the right for WTO Members to regulate services within their territories in order to meet national policy objectives. This right is reaffirmed in the Preamble to the GATS. However, national laws and regulations with an impact on services trade must be transparent, administered with due process, and changed or adapted in a predictable manner.

The article has six parts. Article VI.1 embodies the principles of consistency and non-discrimination. It requires each member to ensure that in sectors where specific commitments are undertaken, all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. Article VI.2 spells out the concept of recourse by requiring the establishment of judicial, arbitral or administrative procedures to ensure that service suppliers can secure remedies for any inappropriate or GATS-inconsistent use of domestic regulations. Article VI.3 incorporates the concept of due process. It states that, where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application.

Article VI.4 directs the Council for Trade in Services to develop disciplines to ensure that qualification requirements and procedures, technical standards and licensing requirements are, inter alia:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service (emphasis added).

Article VI.4 requirements are important in guarding members against the covert use of regulations for protectionist or discriminatory ends. Transparency is already a discipline of general application in the GATS (Article III), but it is further reiterated in Article VI. Transparency is one of the four concepts, along with necessity (see below), equivalence, and internationally recognized standards, which has been agreed by WTO Members as a key element for the development of horizontally applicable disciplines as specified by Article VI.4.

Pending the entry into force of more specific disciplines developed under Article VI.4, Article VI.5 of GATS aims at ensuring that a member does not apply licensing and qualification requirements or technical standards that nullify or impair its commitments. The existing disciplines established by Article VI.5 apply only to measures in areas in which the importing WTO member has undertaken commitments. However, for the disciplines in Article VI.5 to apply, the licensing and qualification requirements or the technical standards must not only fail to meet the transparency and necessity criteria outlined in Article

VI.4, but they must also nullify and impair specific commitments in a manner that could not reasonably have been expected of that Member at the time the specific commitments were made (emphasis added). The predictability principle thus appears to prevail over that of non-discrimination in a situation of pre-existing conditions.

Finally, Article VI.6 requires members that have adopted specific commitments regarding professional services to provide for adequate procedures to verify the competence of professionals of any other member. This paragraph constitutes an attempt on the part of GATS to facilitate trade in services through the movement of natural persons.

As mentioned above, there exist two methods available to countries in order to advance “deep” services trade liberalization: the development of general principles or agreement on specific rules contained in negotiated or political agreements.¹⁵ Both approaches are embodied in Article VI of GATS. Specifically, Article VI.5 makes general principles applicable to those sectors where individual members have made specific commitments, leaving it to adjudication to determine whether the disciplines available under the Article apply in a specific factual context. Article VI.4, on the other hand, effectively provides an avenue for GATS members to deepen the general principles of Article VI.5 and eventually, to arrive at political agreements specifying more detailed rules of recognition and/or harmonization.

A concrete example of the possibility afforded by Article VI.4 to formulate more specific disciplines on domestic regulation affecting services trade is given by the Disciplines on Domestic Regulation in the Accountancy Sector, adopted by the Council on Trade in Services in December 1998¹⁶. The Disciplines contain, among others, more detailed provisions on the administration of licensing requirements, qualification requirements and procedures, and technical standards for the accountancy profession. The Disciplines are to be applicable to all WTO members who have scheduled specific commitments for accountancy. They have no immediate legal effect but will be further developed and are to be ultimately integrated into the GATS before the end the GATS 2000 round of services negotiations and applied by all WTO Members.

A key provision in the Disciplines is the general requirement that measures relating to licensing requirements and procedures, technical standards, and qualification requirements and procedures should not be more trade-restrictive than is necessary to fulfill a legitimate objective (necessity test). In this area, the Disciplines give additional content to the necessity principle contained in Article VI.5. Whereas Article VI.5 defines “legitimate objective” solely in terms of the quality of the service, the Disciplines articulate further this definition by incorporating additional parameters into the concept of “legitimate objective.” Such parameters include the protection of consumers, the quality of the service, professional competence, and professional integrity.

The Disciplines also take one step further the general principle of transparency present in Article VI.5. Under the Disciplines, WTO members are requested, for the first time, to explain upon request the specific objectives intended by their regulations, so as to avoid arbitrary measures. Members are also required for the first time to provide an opportunity for trading partners to comment upon proposed regulations, and to give consideration to such comments.

GATS Article VI, then, provides a basic framework for minimizing the trade distortions created by domestic regulation in service sectors covered by national commitments. At the same time, it opens the possibility of increasing the level of detail of those principles, and in the medium to longer terms, of developing more specific rules of recognition or harmonization or both. This element of flexibility incorporated into the Article that allows Members to combine the use of general principles and harmonization/recognition efforts should prove an efficient tool for facilitating the liberalization of professional services in the context of the GATS 2000 negotiations.

¹⁵ Kalypso Nicolaidis and Joel P. Trachtman, “From Policed Regulation to Managed Recognition in GATS,” in Pierre Sauvé and Robert M. Stern, eds., *GATS 2000: New Directions in Services Trade Liberalization* (Washington, D.C.: Brookings Institution and Center for Business and Government, Harvard University, 200), 241.

¹⁶ WTO document S/L/64.

b. Sub-regional Agreements in the Western Hemisphere

Members of sub-regional agreements (SRAs) are faced with the same choices to advance services trade liberalization as the members of GATS. They can formulate general principles to which panels or tribunals give more specific content, or they can seek to put into place harmonization and recognition initiatives through political agreements. If one accepts for a moment the premise that members of a SRA have similar preferences, and as a result, face fewer costs when designing more detailed common rules on services trade than countries in the multilateral context, then one might expect to find more detailed disciplines on non-discriminatory regulatory measures affecting services trade at the sub-regional than at the multilateral level. This section seeks to explore the extent to which members of SRAs have developed stronger disciplines on non-discriminatory regulation affecting services trade by comparing the disciplines on domestic regulation contained in four sub-regional agreements in the Western Hemisphere—NAFTA, the Andean Community, MERCOSUR and CARICOM—to those contained in GATS Article VI.

?? NAFTA (Art. 1210) and NAFTA-type Agreements

The North American Free Trade Agreement (1994) and other subsequent NAFTA-type free trade agreements that have been concluded in the Western Hemisphere do not contain an article on domestic regulation per se in their chapter on services.¹⁷ In NAFTA, the equivalent of GATS Article VI appears in reference to measures related to the licensing and certification of professionals, contained in Article 1210. The requirements to ensure that any measure on licensing or certification of nationals of another member does not constitute an unnecessary barrier to trade are the same as those set out in GATS Article VI.4.

The first important difference between Articles VI.5 of GATS and 1210 of NAFTA pertains to their scope of application. NAFTA Article 1210 is narrower than its GATS counterpart, as it only applies to licensing and certification measures; technical standards for services are dealt with elsewhere in the agreement (Chapter 9). Also, where the GATS states that licensing and certification measures should not be a restriction to the supply of a service, the NAFTA-type treaties narrow this requirement to the cross border supply of a service (given the fact that investment in services in the NAFTA is dealt with in a separate chapter covering both goods and services—Chapter 11).

Article 1210 of NAFTA does not incorporate the concept of non-violation nullification or impairment (NVNI) found in Article VI of GATS. This implies that the disciplines on national measures available under Article 1210 of NAFTA apply when a licensing or certification measure is not based on objective and transparent criteria, is more burdensome than necessary to ensure the quality of the service, or when the measure constitutes a disguised restriction on the cross-border provision of a service. For the disciplines of GATS Article VI.5 to apply, not only must it be shown that a measure does not fulfil any of these three criteria, but also that the measure nullifies or impairs a country's commitments. As has been pointed out elsewhere, the concept of NVNI makes it difficult to challenge a particular regulatory measure since it places the burden to show nullification or impairment on the complaining party.¹⁸ The absence of this criterion may therefore make it easier to bring cases of regulatory non-compliance forward in the NAFTA context.

Under NAFTA, regulatory measures affecting services trade other than licensing and certification requirements for professional service suppliers are covered in Chapter 9 on standards-related measures. This Chapter applies to both goods and services. Article 904 generally prevents countries from adopting measures aiming at, or having the effect of, creating unnecessary barriers to trade, unless they fulfill a legitimate objective. Article 905 requires countries to use relevant international standards to draft these measures, except where such standards would fail to provide the appropriate protection; measures that are conformed to international standards are presumed to be non-discriminatory and not to create

¹⁷ Mexico has been particularly active in promoting the NAFTA model, having negotiated agreements with Bolivia, Chile, Costa Rica, the Group of Three (Colombia, Mexico, Venezuela), Nicaragua, and the Northern Triangle (Guatemala, El Salvador, and Honduras). Canada concluded an agreement of the same type with Chile in 1996, whereas Central American countries negotiated agreements with the Dominican Republic and Chile that have many of the same features as the NAFTA. CARICOM countries and the Dominican Republic signed in August 1998 a bilateral free trade agreement.

¹⁸ Nicolaidis and Trachtman, "From Policed Regulation to Managed Recognition in GATS," 258.

unnecessary barriers to trade. But in both articles a great deal of autonomy is left to the state since there is no definition of a “legitimate objective” nor of “appropriate protection” and there has been no interpretation of these terms by a dispute settlement panel to date. This stands in sharp contrast to Articles VI of GATS and 1210 of NAFTA, both of which emphasize the quality of the service as the sole criterion determining whether a measure is deemed “necessary.” Chapter 9 of NAFTA represents an interesting attempt to draft common rules for goods and services that does not exist at the multilateral level nor in the other SRAs in the Western Hemisphere that have not followed the NAFTA model.

Members to NAFTA and NAFTA-type agreements are also committed to eliminate any citizenship or permanent residency requirement for the licensing or certification of professional service providers of another Party. In those sectors where a Party does not comply with this obligation, the other Parties may maintain equivalent requirement. The Parties are obliged to consult periodically with a view to determining the feasibility of such removal. This obligation represents a much deeper commitment than that in GATS with respect to ongoing liberalization. However, it appears that in practice, this obligation is not being respected by the three NAFTA Parties or by members to other NAFTA-type agreements.

?? The Andean Community

Among the objectives of the Andean Community Decision 439 (signed in 1998) is not only the strengthening and diversification of services in the Andean Community, but also importantly the promotion of harmonization of national regulations for selected service sectors where appropriate.

Article 10 of Decision 439 addresses domestic regulation and applies to all new measures adopted by member countries affecting trade in services. Specifically, member countries bind themselves not to establish new measures that would increase the degree of non-conformity or fail to comply with the commitments contained in Articles 6 (market access) and 8 (national treatment) of the agreement. Thus, it would appear that regulatory measures affecting services trade in force prior to June 17, 1998, the date of entry into force of Decision 439, are shielded from the market access and national treatment disciplines of the Decision. In this respect, Article 10 of Decision 439 is similar to GATS Article VI.5, which could also be viewed as a type of “standstill” obligation. As noted earlier, the presence of a NVNI clause in Article VI.5 of GATS makes it difficult for a complaining party to challenge long-standing nondiscriminatory measures under this Article.

Decision 439 also differs from the GATS in its definition of necessity. Whereas GATS Article VI.5 focuses solely on the “quality of the service” as the determinant of what is “necessary,” Article 11 of Decision 439 adopts a somewhat broader view of necessity, one that is partly modeled on the language of Article XX of GATT.¹⁹ Thus, Andean Community legislation would appear to “shield” regulatory measures that are not directly aimed at ensuring the “quality of the service.” These same regulatory measures, however, must not be applied in a manner that is “disproportionate to the objective sought, be aimed at protecting national services or service providers, be implemented in such a way that they

¹⁹ According to Article 11 of Decision 439, each member of the Andean Community may adopt or apply the necessary measures to:

- ?? Protect public morals or to maintain the public order;
- ?? Protect the human, animal and plant life and health, and conserve the environment;
- ?? Protect essential national security interests;
- ?? Guarantee the imposition or the equitable and effective collection of direct taxes with respect to services or service providers of other Member Countries, even if such measures are inconsistent with the national treatment obligation contained in article 8;
- ?? Implement provisions for avoiding double taxation contained in international agreements signed by the Member Country, even if such measures are inconsistent with the obligation stipulated in article 7 to provide most-favored-nation treatment; and
- ?? Obtain the enforcement of laws and regulations concerning:
 - ?? The prevention of deceptive and fraudulent practices or related to the effects of default on services contracts;
 - ?? The protection of the privacy of individuals with regard to the processing and dissemination of personal data and the protection of the confidential nature of the records and accounts of individuals; and
 - ?? Public safety.

constitute an unnecessary obstacle to subregional trade in services or a means of discrimination against Andean Community services or service providers in relation to the treatment granted to other countries.”²⁰ This article codifies the principle proportionality that must be applied together with the necessity test, in order for the disciplines established by Decision 439 to apply.

?? MERCOSUR

The Protocol of Montevideo on Trade in Services for the MERCOSUR members, signed in December 1997 (but not yet formally in effect), incorporates the language of GATS Article VI.4 on domestic regulation. It calls on members of MERCOSUR to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements fulfill the three criteria listed in Article VI.4 of GATS so as to ensure that these measures do not constitute unnecessary barriers to trade in services. This language would suggest that all measures, both existing and future ones, are covered by the disciplines of Article X.

Like Article 1210 of NAFTA, Article X of the MERCOSUR Protocol does not incorporate the principle of NVNI into its disciplines on domestic regulation. The absence of this “protective mechanism” would arguably make it easier for a member of MERCOSUR to show that a particular measure in another member country is inconsistent with the provisions of the Protocol, even if the measure forms part of the members’ regulatory “status quo.” In addition, the necessity test contained in Article X of the MERCOSUR Protocol, like that of Article 1210 of NAFTA and Article VI.4 of GATS, focuses on the quality of the service in determining whether a domestic regulatory measure is deemed more burdensome than necessary.

?? CARICOM

Two articles of CARICOM’s Protocol II on Establishment, Services and Capital (in force provisionally since July 4, 1998) have a direct bearing on domestic regulatory measures affecting services trade: Article IV, which replaces Article 35 of the 1973 Caribbean Common Market Annex; and Article V, which replaces Article 36 of the aforementioned Annex. Both of them differ from GATS Article VI in terms of their approach to disciplining domestic regulatory measures.

Article 36 consists of two main parts. The first part is essentially a standstill provision, prohibiting CARICOM members from introducing any new restrictions on the provision of services in the Community by CARICOM nationals. In this regard, Article 36 of Protocol II resembles Article VI.5 of GATS, which may also be viewed as a type of standstill provision, as it tends to protect a country’s regulatory “acquis.” In contrast to GATS, however, Protocol II lacks GATS Article VI.4-type disciplines. In light of this omission, it is difficult to predict the impact Protocol II will have on each members’ regulatory sovereignty, and thus contribute towards the explicit goal of the annex to liberalize intra-CARICOM services trade. Much is left to the meaning that future panels or tribunals give to the phrase “new restrictions on the provision of services,” in light of the fact that no necessity test or other criteria are specified against which such restrictions may be evaluated.

The second part of Article 36 seeks to “roll-back” existing discriminatory restrictions on the provision of services by Community nationals. The addition of the word “discriminatory” in the second part of Article 36 seems to exclude from the reach of the Article a wide range of measures that, albeit nondiscriminatory, can pose a substantial barrier to international trade in services. In other words, the focus of the second part of Article 36 of

Protocol II on existing discriminatory restrictions is on national treatment restrictions rather than regulatory barriers, and might therefore shield many (non-discriminatory) regulatory practices of CARICOM members from being “rolled-back.” Even if Article VI.5 of GATS similarly protects past regulatory practices or circumstances, it still provides for a window of opportunity—in the form of the concept of NVNI—to address new nondiscriminatory measures affecting services trade.

²⁰ Andean Community, Decision 439, Article 11.

The second article with a direct bearing on domestic regulation is Article 35 of CARICOM's Protocol II. This provision prohibits new, and calls for the removal of existing, restrictions on the right of establishment of nationals of CARICOM member states.²¹ Like Article 36, Article 35 of Protocol II does not specify what type of regulations might be deemed necessary to achieve a specific objective, and might therefore be shielded from the provisions of the Protocol. Article 35 simply calls on the CARICOM Council for Trade and Economic Development (subject to the approval of the Conference of Heads of Government) to "establish a program providing for the removal of restrictions on the right of establishment of nationals of a Member State in the territory of another Member State within one year from the entry into force of the Protocol."²²

3. Recognition

a. GATS Article VII

GATS Article VII neither encourages nor promotes, but only authorizes recognition of the qualifications of foreign service providers as a means to carry out trade liberalization. It allows members of the WTO selectively to recognize the education or experience obtained, requirements met, or certification granted in the territory of other members. The article thus permits the departure from the most-favoured nation (MFN) principle, while attempting to ensure the openness of any bilateral/plurilateral recognition agreement through several procedural requirements. The heading of the article is "recognition" rather than "mutual recognition" because it concerns not only recognition through bilateral or plurilateral agreements, but also autonomous, unilateral and, presumably, informal "de facto" recognition.

Article VII thus allows WTO members to treat service suppliers of other members differently depending on the level of qualifications granted in their country of origin. However, it does not allow members to discriminate in the application of their substantive standards or criteria for authorization, licensing or certification of service suppliers (VII.3). In other words, the Article makes a distinction between allowing service suppliers of certain members to have access to the market through a fast procedural track on the basis of a recognition arrangement on the one hand, and applying different substantive requirements to service suppliers on the other hand. An individual who can meet the substantive standards should be allowed to qualify whatever his or her country of origin.

In an attempt to "multilateralize" recognition agreements, the GATS requires that such agreements be open for negotiation by other parties (Article VII.2). This allows third countries to try to demonstrate that their education or licensing requirements should be recognized as equivalent to those of the parties to a mutual recognition agreement. Such efforts should be facilitated by the requirement that all recognition measures must be notified to the Council for Trade in Services (Article VII.4). The opening of negotiations on new agreements must indicate, among other pieces of information, the expected time of the start of negotiations and an indicative date for the expression of interest by third parties.

Article VII.5 calls upon members, wherever appropriate, to base recognition of qualifications on multilaterally agreed criteria and to cooperate with international bodies to establish common international standards and criteria for recognition.

b. Sub-regional Agreements in the Western Hemisphere

Article VII of GATS may be viewed as providing an additional means for member countries to advance the liberalization of services trade through political, negotiated agreements. It allows a group of

²¹ These restrictions could presumably be either quantitative or regulatory (covering both GATS Article XVI- and XVII-type measures).

²² Protocol Amending the Treaty Establishing the Caribbean Community (Protocol II: Establishment, Services, Capital). In performing this task, the Council for Trade and Economic Development shall, among other things, require member states to remove "administrative practices and procedures which impede the exercise of the right of establishment," as well as "all restrictions on the movement of managerial, technical and supervisory staff of economic enterprises and on establishing agencies, branches and subsidiaries of companies and other entities established in the Community."

countries to waive part of their multilateral obligations with a view to establishing more specific rules of recognition. Again, assuming for a moment that countries participating in a SRA have similar preferences, similar levels of development, and similar legal, regulatory and/or educational systems, then one would expect the wide array of sub-regional economic integration schemes between countries of the Western Hemisphere to be a fertile ground for the development of recognition agreements. This section seeks to shed light on this hypothesis by examining the provisions on recognition contained in the four SRAs specified above. It also conducts a brief survey of the recognition agreements concluded to date within the framework of these SRAs. The table in Annex 2 sets out the list of agreements that have been concluded by countries in the Western Hemisphere in the area of professional services and notified to the WTO as of October 1999.

?? The North American Free Trade Agreement

The right of each member country to sign a recognition agreement autonomously or with another State (member or non-member) is set out in NAFTA and the NAFTA-type agreements, provided they give the opportunity to the other members to demonstrate that their titles are equivalent, or to negotiate an agreement of comparable effect. To a large degree, this approach mirrors that of Article VII of GATS.

NAFTA and the subsequent NAFTA-type agreements signed by Mexico and Chile with other Latin American countries include an annex on professional services that establishes procedures for the recognition of studies, diplomas, licensing and certification obtained by professional service providers. Although more narrow in its focus, NAFTA's Annex on Professional Services adopts a more proactive approach to recognition than GATS Article VII, as it requires Parties to encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for the licensing and certification of professional service providers, to provide recommendations on mutual recognition to the Parties, and to develop procedures for the temporary licensing of professional service providers of another Party. The guiding principle for the establishment of standards is the equivalence of qualifications in the home and host countries. Education, examination and experience are the criteria for evaluation. The provisions of this Annex are to be revised at least once every three years. All subsequent NAFTA-type agreements include a similar annex.

With respect to the procedural requirements to ensure the openness of recognition agreements to other members of the group, Article 1210 of NAFTA requires a Party that has entered into a recognition agreement to afford to another Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in that other Party's territory should also be recognized or to conclude an agreement of comparable effect. This language incorporates certain elements of GATS, particularly Article VII.2, but provides for more flexibility than the GATS as it does not include the level of detail contained in GATS Article VII.4.

Another key provision on recognition is contained in Chapter 9 of NAFTA on standards-related measures. In contrast to GATS Article VII, which merely authorizes recognition, NAFTA Article 906 mandates recognition of equivalence of technical standards for goods or services whenever the home country can demonstrate, to the satisfaction of the host country, that its standards adequately fulfil the host country's legitimate objectives.

Under NAFTA, an agreement to recognize the equivalency of professional qualifications for the temporary and permanent licensing of engineers was signed in 1995. It was approved by all Canadian provinces and Mexican states. In the U.S., however, only the state of Texas has adopted it.²³ The text of a recognition agreement for legal consultants was also agreed by representatives of the legal profession from all three countries in 1995 but has not yet been adopted by any of the states or provinces. Other professions that are currently working on elaborating recognition agreements under NAFTA include architects, accountants, nurses (Trilateral Initiative for North American Nurses), land surveyors, and actuaries.

²³ The federal system of government of the three NAFTA members obliges recognition agreements to be approved at the level of each state or province before coming into effect.

Under the earlier US-Canada Free Trade Agreement (1989), two recognition agreements were signed by non-governmental professional bodies. The first (1989) covers the equivalence of professional qualifications for architects, and has been approved and implemented in 41 U.S. states and all Canadian provinces. The second (1990) covers the equivalence of professional qualifications for accountants, and has been approved and implemented in 37 U.S. states and all Canadian provinces. It has not yet proved possible to extend these two agreements to Mexico under the NAFTA.

?? The Andean Community

Article 13 of Andean Community Decision 439 requires each member country to recognize the licenses, certifications, professional degrees and accreditations granted by another member country, in accordance with the criteria established under a relevant Decision to be adopted by the Andean Commission. This decision is currently being drafted. Its objective will be to elaborate a general standard containing the conditions for the recognition of titles as well as mandatory licenses, and other requirements for the exercise of each service profession. In so far as Article 13 requires Andean countries to recognize other members' standards affecting trade in professional services, the Article goes well beyond GATS Article VII. However, a fuller comparison of Article 13 with GATS Article VII must await the development of the criteria upon which recognition of professional services in the Andean Community will be based.

To date there is only one recognition agreement that appears to be effective among all Andean countries, the Bolivar Agreement on Academic Degrees and this predates the formation of the Andean Community. Signed in 1911, this instrument recognizes diplomas for the purpose of enrolment in higher studies. Another similar agreement, the Regional Convention on the Ratification of Higher Education Studies, Qualifications and Diplomas in Latin America and the Caribbean, signed in 1974, includes all Andean Community members but has a broader coverage (namely, Argentina, Brazil, Bolivia, Colombia, Costa Rica, Chile, Cuba, El Salvador, Ecuador Guatemala, Haiti, Honduras, Mexico, Panama, Paraguay, Peru and Venezuela).

?? MERCOSUR

Article XI of the Montevideo Protocol envisages the possibility of recognition agreements involving one or more members of MERCOSUR. The Article incorporates the language of GATS Article VII.2, thus introducing the possibility of bilateral or trilateral recognition deals between the members of the group. Article XI differs from GATS provisions on recognition in four respects. First, like NAFTA, the Article is less specific as regards the procedural requirements that members must follow when entering into recognition agreements, as it does not contain provisions similar to those of GATS Article VII.4. Second, MERCOSUR countries are "committed to encourage" professional entities to develop standards and criteria for the exercise of professional services. This means that professional bodies are assigned a prominent role in proposing and drafting recommendations for the mutual recognition of professional qualifications in the area of services.²⁴ Third, MERCOSUR's Common Market Group is to examine the consistency of each recommendation with the Protocol. Once adopted, the recommendation must be implemented in all the countries within an agreed time-frame. Professional bodies are not mentioned in Article VII of GATS. Fourth, the Protocol of Montevideo contains an inbuilt mechanism for review, as the implementation of the article on recognition is to be reviewed periodically and at least once every three years. There is no such review mechanism in GATS.

A concrete result of the objective to promote the liberalization of the exercise of professional services through recognition was realized in 1999 when the Board of Architecture, Agronomy, Geology and Engineering Professional Entities for Mercosur Integration (Comisión de Integración de la Arquitectura, Agrimensura, Agronomía, Geología e Ingeniería para el Mercosur, CIAM) adopted a resolution on the temporary exercise of a professional service by a foreign professional. This resolution allows for the reciprocal recognition of skills between professional oversight entities of the four countries for the professions of architects, agronomists, geologists and engineers. The resolution applies to a

²⁴ The approach embodied in Article XI of the Montevideo Protocol represents an interesting and practical way to proceed in the area of recognition. However, the approach may not be inherently trade facilitating.

professional registered in one country of MERCOSUR and beneficiary of a work contract abroad for no more than two years. The resolution does not specify that the agreement is open to other states, but, once adopted by the Common Market Council, it will fall under the provisions of the Montevideo Protocol, and, in particular, Article XI on recognition, that provides for such openness. Other service professions are being studied at present.

?? CARICOM

Article 35 of the Protocol on Establishment, Services and Capital directs the CARICOM Council for Human and Social Development to establish common standards and measures for accreditation or, when necessary, for the mutual recognition of diplomas, certificates and other evidence of qualifications of the nationals of CARICOM members. This provision calls for the creation of a framework for a comprehensive policy on the free movement of CARICOM nationals in the Community.

Thus far, significant progress has been made in CARICOM with respect to the free movement of university graduates, other professionals, and skilled persons. As noted by Coke Hamilton, progress in this area has been aided by the common operation of a number of Caribbean institutions, most notably the University of the West Indies, by CARICOM member states.²⁵ This has played a critical role in facilitating and accelerating progress toward mutual recognition in the region, particularly as regards the free movement of university graduates, other professionals, and skilled persons and occupations. For example, eleven member states of CARICOM have already enacted legislation providing for the free movement in the community of graduates of the University of the West Indies, the University of Guyana, the University of Suriname and graduates of other recognized institutions inside and outside the region (see table 1). Other provisions that form part of the common policy on the free movement of persons include the elimination of the requirement for work permits for CARICOM nationals, as well as the harmonization and transferability of social security benefits, the creation of mechanisms for certifying and establishing equivalency of degrees and accrediting institutions, as well as the coordination of social policies.

c. Assessing the Sub-regional Structures

Due to the highly regulated nature of many service sectors, services trade liberalization is most effectively achieved through “deep integration” aimed at opening national markets by bringing about a certain degree of harmonization/compatibility of regulations along with the mutual recognition of the qualifications of foreign service providers. Deep integration thus implies coordination between governments, regulators and professional bodies and acceptance of the credibility of foreign economic systems and institutions, as well as the acceptance of the equivalence of foreign training and education programs and surveillance and control mechanisms.

With respect to domestic regulation, the foregoing analysis does not seem to support the hypothesis presented at the outset of this paper that disciplines on non-discriminatory domestic regulation affecting services trade and developed in the context of SRAs in the Western Hemisphere are more detailed and far-reaching than those developed in the context of the multilateral trading system. In fact, the analysis has shown that the principles adopted by some SRAs to discipline domestic regulation have a higher degree of generality than these principles in GATS. Such is the case of Articles 904 and 905 of NAFTA, which do not provide a definition of “legitimate objective,” an important concept that is defined in terms of the quality of the service in GATS Article VI.4.

For other SRAs in the hemisphere, provisions on domestic regulation have been modelled on the language of Article VI of GATS. This is the case of Articles 1210 of NAFTA and Article X of MERCOSUR’s Protocol of Montevideo. However, the two agreements apply more stringent disciplines than GATS on their members’ capacity to adopt non-discriminatory measures that pose a barrier to the

²⁵ For a more detailed account of the elements of Caribbean policy covering the free movement of CARICOM nationals see Pamela Coke Hamilton, “Services in the Caribbean: Protocol II on Establishment, Services, and Capital,” in Sherry M. Stephenson, ed., *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform* (Washington, D.C.: Brookings Institution and Organization of American States, 2000).

intra-regional supply of services. The reason is that the language adopted from GATS is not accompanied by some of GATS “protective mechanisms,” including the concept of NVNI.

On the other hand, certain SRAs have neither adopted language from GATS in order to formulate their disciplines on domestic regulation nor have they sought to deepen general principles. While the new approaches embodied in these SRAs often involve the use of concepts not contained in GATS, these are generally not given specific content. The Andean Community’s Decision 439 introduces the concept of “proportionality” into its definition of necessity while the CARICOM Protocol II includes the concept of “new restrictions on the provision of services”. In neither case is the new concept well defined.

Turning to recognition, the comparative analysis conducted above reveals that members of SRAs in the Western Hemisphere have adopted a more proactive approach vis-à-vis recognition than members of GATS. The sub-regional integration schemes examined above go beyond GATS in encouraging or requiring the formation of recognition agreements among all or some of its members. NAFTA and MERCOSUR also stipulate that members entering into a recognition agreement (with another member or a non-member) follow certain procedures in order to ensure that the recognition agreement remains open to the remaining members of the two groups. However, the procedures specified in both agreements are not as detailed as those in GATS Article VII.4.

Table 1
Summary of the Status on the Implementation by Member States of Domestic Legislation based on the
Skilled CARICOM Nationals Law

MEMBER STATE	LEGISLATION ENACTED	ADDITIONAL STEPS REQUIRED
Antigua & Barbuda	Legislation has been enacted. Act no. 3 of 1997. (Caribbean Community Skilled Nationals Act) 1997	
Barbados	The Immigration Act Chapter 190 has been amended by the Immigration (Amendment) Act, 1996, to give effect to the decision of the Conference	
Belize	No legislation has been enacted	Status unclear
The Bahamas	No legislation has been enacted	The Government has indicated that it will not be participating in the arrangements for the free movement of skilled persons at this time
Dominica	Legislation has been enacted. Act No. 30 of 1995, Caribbean (Community Skilled Nationals Act) Act 1995	
Grenada	Legislation has been enacted. Ct No. 32 of 1995, (Caribbean Community Skilled Nationals Act) 1995	
Guyana	Legislation has been enacted. Act No. 6 of 1996. (Caribbean Community Free Entry of Skilled Nationals Act) 1996	
Jamaica	Legislation has been enacted. Act No. 18 of 1997. (Caribbean Community Free Movement of Skilled Persons) Act	
Montserrat	No legislation enacted	National Consultations on the Policy and Law are being held
Saint Lucia	Legislation has been enacted. Act No. 18 of 1996 (Caribbean Community Skilled Nationals Act) 1996	
St. Kitts and Nevis	Legislation has been enacted	Regulations and administrative arrangements to be completed
St. Vincent and the Grenadines	Legislation has been enacted. Act No. 4 of 1997 (Caribbean Community Skilled Nationals Act) 1997	
Republic of Suriname	Legislation has not been enacted	Draft law will be sent through relevant legal entities then ratified by President
Trinidad and Tobago	Legislation has been enacted. Act No. 26 of 1996. Immigration (Caribbean Community Skilled Nationals Act)	The Act must be promulgated in order to take effect. This has not yet been done.

Source: Pamela Coke Hamilton, "Services in the Caribbean: Protocol II on Establishment, Services, and Capital," in Sherry M. Stephenson, ed., *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform* (Washington, D.C.: Brookings Institution and Organization of American States, 2000).

An examination of the WTO notifications under Article VII.4 of GATS made by countries of the Western Hemisphere (see table in Annex 2) shows that, although both bilateral and plurilateral mutual recognition agreements are numerous in the region, all these agreements involving Latin American countries pertain to recognition of education for the purpose of higher education (see table in Annex 2). Moreover, under GATS, countries have made very limited commitments with reference to the fourth mode of supplying a service, namely the movement of natural persons.

Signing a recognition agreement means granting preferential treatment to some service suppliers. This could potentially have the effect of distorting trade because it could allow discrimination against potentially more economically efficient new suppliers. Thus, to avoid discrimination among service providers, the GATS and all sub-regional agreements in the Western Hemisphere (Andean Community Decision still pending) provide for the opening of these agreements to third countries. This means that recognition agreements under sub-regional agreements are potentially open to others and could be "multilateralized".

Although in theory, the progressive extension of recognition agreements runs smoothly, the reality of promoting services liberalization at the sub-regional level through recognition agreements has proven arduous. In practice, the extension of recognition agreements is quite challenging because deep integration entails the willingness of governments to recognize the regulatory authority and competence of other sovereign states in areas that are often domestically sensitive. Such agreements are therefore a matter of mutual trust. Significantly, the recognition agreements on the professions of architecture and accountancy signed between Canada and the US under their FTA still have not been extended to Mexico under the NAFTA.

It is also possible that the requirement of openness of Article VII.2 and VII.4 be circumvented if members notify mutual recognition agreements under GATS Article V on Economic Integration rather than under Article VII. If an MRA is notified under a wider free trade agreement, it would be virtually impossible for non-members to negotiate their accession. The openness of the MRA would be restricted, while the agreement would still be consistent with GATS requirements.²⁶

Under optimal conditions, the openness of mutual recognition agreements could trigger more liberalization at the multilateral level. But, in a second-best world, an MRA that is effectively closed (notified under Article V and /or in sectors where countries have no commitments at the multilateral level) might still be possibly envisaged as welfare enhancing as it would, combined with commitments at the sub-regional level to liberalize certain professional services, lay the basis for future openness.²⁷

d. Implications of the analysis

The analysis conducted above suggests that members of SRAs in the Western Hemisphere have generally perceived the costs of advancing services trade liberalization through the development of disciplines on domestic regulation going beyond those existing at the multilateral level (whether through enhanced legal principles or political agreements or both) to outweigh the benefits from such initiatives. This interpretation is based on the assumption that states design institutional approaches to the liberalization of services trade whose gains in terms of reducing discriminatory and non-discriminatory

²⁶ See Aaditya Mattoo (1998), *Most-Favored Nation and the GATS*, draft paper presented at the World Trade Forum Conference on "Most-Favored Nation: Past and Present" in Neuchatel, Switzerland.

²⁷ *Ibid.*

barriers to services trade exceed their costs.²⁸ Such costs arise from the partial loss of regulatory sovereignty following the implementation of an agreement on services trade (so-called “regulatory costs”), and from the transaction costs implicit in entering into and enforcing the commitments of such an agreement.

The examination of different institutional approaches to domestic regulation affecting services trade revealed that, for the SRAs covered in this paper, the perceived costs (both regulatory costs and transaction costs) associated with deepening general principles disciplining domestic regulation exceed the benefits associated with such an initiative. The same appears to hold with respect to the harmonization of measures relating to qualification requirements and procedures, technical standards and licensing requirements. However, it is still quite early to pass any definitive judgement in this regard, as most of the SRAs in the hemisphere are very recent agreements, and members are still in the process of developing knowledge and expertise in the services area, particularly with respect to the challenges and implications of moving their respective regulatory frameworks closer together.

The generally stronger language used by SRAs to address the topic of recognition would appear to suggest that countries perceive the benefits of such agreements to outweigh their costs. In practice, however, it appears that there are also very high transaction and regulatory costs associated with concluding such agreements. Only one mutual recognition agreement has been signed between the three NAFTA partners. The members of the other NAFTA-type agreements have not yet concluded any such agreements. In MERCOSUR, the recognition agreement recently signed is limited in terms of sectors and effective liberalization of the covered professional services.

In seeking to explain the differences among the various institutional structures explored in this paper, it is important to recognize that the liberalization of services trade in the Western Hemisphere is not occurring in a vacuum, but rather, within broader institutional settings aimed at advancing sub-regional economic integration among groups of countries. Thus one of the explanations behind the different choices that have been adopted may be that of the broad institutional settings within which they are carried forward and which affect the cost-benefits calculus of initiatives aimed at liberalizing services trade, thus shaping their specific form and content. To illustrate this, consider a group of countries seeking to reach a political agreement on services trade. From a purely theoretical perspective, the transaction costs involved in reaching this agreement would be lower if the group of countries were organized under a “supranational” institutional structure characterized by majority voting among its members and “strong” dispute settlement provisions than if the same group were organized under an “intergovernmental” structure where members take decisions by unanimous consent.²⁹ A rule of majority voting, which removes the power of a single country to exercise a veto, could be viewed as a way to reduce transaction costs towards reaching an agreement, whereas stronger dispute resolution might reduce the transaction costs derived from enforcing the commitments of the agreement. One would therefore expect the “supranational” group to rely more heavily on transaction cost-intensive alternatives to the liberalization of services trade (i.e. political agreements) than the intergovernmental group.

As discussed earlier, political agreements (which include harmonization and recognition agreements) involve extremely high regulatory and transaction costs. As a result, it is not surprising to find that none of the broad institutional settings underlying the SRAs analyzed in this paper (other than that of the Andean Community discussed below) tilts the cost-benefit equation of services trade liberalization in favor of political agreements. This factor may be one that changes over time, however, as political agreements also allow for the internalization of the transactions and political costs involved in bringing national regulations closer together

In this context the example of the Andean Community is of interest. Andean Community legislation appears to place relatively more emphasis on harmonization of domestic regulations as a route to services trade liberalization than other SRAs in the Western Hemisphere. Specifically, Article 15 of

²⁸ For a theoretical framework on the costs and benefits of international economic organizations, see Joel P. Trachtman, “The Theory of the Firm and the Theory of the International Economic Organization: Toward Comparative Institutional Analysis,” *Northwestern Journal of International Law & Business* 12 (Winter/Spring), 1996/97.

²⁹ The terms “supranational” and “intergovernmental” are, of course, relative terms that lie on a spectrum between two extremes.

Decision 439 stipulates that, based on studies conducted by the Andean Community General Secretariat, the Andean Community Commission shall adopt relevant sectoral decisions aimed at harmonizing regulations in specific services sectors. Two institutional features of the Andean Community appear to have played a crucial role in making the harmonization alternative appear more viable to member states by reducing the transaction costs of harmonizing their domestic regulations in certain services sectors. First is the existence of a “supranational” mechanism in the form of the Andean Community General Secretariat, which has the power to present policy proposals for the consideration of the Andean Community Commission and, according to Decision 439, is responsible for “coordinating” the annual negotiations among countries leading to the gradual and progressive elimination of measures affecting intra-Community services trade. The second feature relates to the legal status of the Andean Community Commission’s formal decisions, which are directly enforceable in member countries without requiring congressional ratification by each one of them.³⁰ In spite of the two important institutional features noted here, it remains unclear whether these will be sufficient to ensure that benefits of a harmonization-driven approach to services liberalization in the Community exceed its costs. Members of the Andean Community will still face significant transaction costs in their efforts to harmonize domestic regulations, since decisions in the Commission, an intergovernmental body, have to be adopted by consensus.

One would perhaps expect to find an emphasis on harmonization of domestic regulation in other Western Hemisphere SRAs as well, particularly those that, like MERCOSUR or CARICOM, aspire to “deeper” levels of integration than those commonly achieved between members of a free trade area. Perhaps surprisingly, there is little, if any, emphasis on harmonization of domestic regulations in either Protocol II of CARICOM or the Protocol of Montevideo of MERCOSUR. Accounting for the characteristics of these two agreements’ approaches to services trade liberalization would require a detailed analysis of the broad institutional structures of the two agreements, an endeavor that is beyond the scope of the present study. Suffice it to say that in the case of MERCOSUR, the strict intergovernmental nature of its institutions and the lack of a strong Secretariat with the power to present proposals and coordinate the liberalization process might cause a harmonization-based approach to services liberalization to appear too costly. In the case of CARICOM, the transaction costs associated with harmonization might be even higher, given not only the essentially intergovernmental nature of its institutions, but also the large number of members (14) that participate in it.

The important role played by the broad institutional setting in shaping approaches to services trade liberalization is also illustrated by the alternatives to recognition espoused by Western Hemisphere SRAs. Specifically, it is possible to distinguish two approaches to recognition. The first, or top-down, approach assigns a prominent role to regional institutions in initiating and driving the process of recognition, whereas the second, or bottom-up, approach leaves most of the process to non-governmental entities such as professional associations. Here again, the broad institutional structures of Western Hemisphere SRAs seem to account for part of the differences. The emphasis on a bottom-up approach by NAFTA and MERCOSUR might be the most efficient in light of the “inter-governmental” nature of these agreements’ institutional structure. On the other hand, the “supranational” dimension of the Andean Community’s institutional framework might minimize the transaction costs associated with a top-down approach to recognition.

While additional research is needed to determine the interaction between the broad institutional structures and more targeted initiatives, the results of the analysis above seem suggestive of the need for policy-makers to take account of the “big” institutional picture in designing and understanding the various approaches to the liberalization of services trade. In light of this conclusion, the design of rules and disciplines for the liberalization of services trade at the hemispheric level presents significant challenges for services negotiators, given the absence of an institutional framework within which to measure the costs and benefits of different alternatives. Still, as a free trade area, the institutional structure of the FTAA will likely be closer to the intergovernmental end of the spectrum. As such, we could imagine a parallel elaboration of Article VI-type disciplines, or an incorporation of the disciplines that will result from

³⁰ For more on the institutional framework of the Andean Community and other sub-regional integration agreements in the Americas see, José M. Salazar-Xirinachs, Theresa Wetter, Karsten Steinfatt, and Daniela Ivascanu, “Customs Unions,” in José M. Salazar-Xirinachs and Maryse Robert, eds., *Toward Free Trade in the Americas* (Washington, D.C.: Organization of American States/Brookings Institution, 2001).

the work in the GATS negotiations on deepening current rules on domestic regulation. Alternatively, a more ambitious objective would consist of going further in particular sectors like transportation or financial services to deepen regulatory disciplines.

However, the larger the economic integration grouping, it is evident that the more difficult and challenging it is to advance deep integration through politically-directed agreements aimed at harmonization of regulatory practices or mutual recognition agreements. Given the diversity of legal systems and levels of development of the 34 countries participating in the FTAA process, it would seem that a reasonable way of proceeding would be through the development of regional-wide disciplines on domestic regulation that would facilitate the conclusion of mutual recognition agreements in a complementary manner between smaller groups of countries in the hemisphere.

ANNEX 1Transparency Provisions in the WTO GATS

Publication

Article III (Transparency)

4. Each member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this agreement. International agreements pertaining to or affecting trade in services to which a member is a signatory shall be also published.

5. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

Article V: 7 (a) ... They shall also make available to the Council such relevant information as may be requested by it.

Article VI: 3 (Domestic Regulations) ... At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

Notification

Article III: 3 Each member shall promptly and at least annually inform the Council of Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this agreement.

Article III: 5 any member may notify to the Council of Trade in Services any measures, taken by any other member, which it considers affects the operation of this agreement.

Article V: 7 (Economic Integration) (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. (b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation.

Article VI: 3 (Domestic Regulations) Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

Article VII: 4 (Recognition) Each Member shall: (a) within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1; (b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase; (c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

Article VIII: 4 (Monopolies and Exclusive Service Suppliers) If, after the date of entry into force of the WTO Agreement, a Member grants monopoly rights regarding the supply of a service covered by its specific commitments, that Member shall notify the Council for Trade in Services no later than three

months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply. Enquiry points

Article III: 4 Each member shall respond promptly to all requests by any other member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. each member shall also establish one or more enquiry points to provide specific information to other members, upon request, on all such matters as well as those subject to the notification requirement in the agreement establishing the WTO. Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country members. Enquiry points need not be depositories of laws and regulations.

Article IV: 2 (Increasing Participation of Developing Countries) Developed country Members, and to the extent possible other Members, shall establish enquiry points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

- (a) commercial and technical aspects of the supply of services;
- (b) registration, recognition and obtaining of professional qualifications; and
- (c) the availability of services technology.

ANNEX 2

Notification of Recognition Agreements to the World Trade Organization pursuant to GATS Article VII.4
(Countries of the Western Hemisphere)

Member notifying	Date of signature	Description of the agreement	Countries specifically affected
Brazil	1995	<ul style="list-style-type: none"> - Protocol on Educational Integration, revalidation of diploma, certificates, titles and recognition of studies of medium technical level - Protocol on Educational Integration for University Post-Graduation Studies 	Recognition within Mercosur countries
Colombia	Several	Mutual Recognition of Study Certificates	Bolivia, Brazil, Bulgaria, Colombia, Czech Republic, Chile, Slovak Republic, United Kingdom, Peru, Dom. Republic, Uruguay and Venezuela
Colombia	1902	Validity of Diplomas for the Exercise of Academic Professions	Argentina, Bolivia, Colombia, Paraguay, Peru, Uruguay; Brazil, Costa Rica, Chile, Ecuador, Spain and Dom. Republic
Colombia Cuba	1975	Regional Convention on the Ratification of Higher Education Studies, Qualifications and Diplomas in Latin America and the Caribbean	Argentina, Brazil, Colombia, Costa Rica, Chile, Cuba, Haiti, Mexico, Paraguay, Venezuela, Bolivia, Colombia, Ecuador, Guatemala, Honduras, Panama, Peru and El Salvador
Cuba	1982	Regulations on the Recognition or Ratification of Qualifications, Diplomas and Studies granted or effected abroad	Brazil, Colombia, Cuba, El Salvador, Ecuador, Mexico, Nicaragua, Netherlands, Panama, Suriname, Venezuela and Yugoslavia.
Cuba	1994	Agreement on Mutual Recognition of Higher Education Studies and Qualifications with the Republic of Colombia	Colombia and Cuba
El Salvador	1963	Central American Convention on the Basic Unification of Education	
El Salvador Guatemala	1964	Central American Convention on the Exercise of University Professions and recognition of University Studies	Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua
Guatemala	1903	Agreement on the Exercise of University Professions	Bolivia, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Peru
United States	1994	Inter-Recognition Agreement in Architecture (agreement between non	Canada and the United States

Member notifying	Date of signature	Description of the agreement	Countries specifically affected
States		Architecture (agreement between non-governmental professional bodies)	
United States	1989	Washington Accord in Engineering (agreement between non-governmental professional bodies)	Australia, Canada, China, Hong Kong, Ireland, New Zealand, South Africa, United Kingdom and the United States
Venezuela	1914	Diplomas or degrees of a scientific, professional and technical nature shall be valid for enrolment in higher studies provided they meet the legal and educational requirements in force in both countries.	Bolivia, Colombia, Ecuador, Peru and Venezuela.

Source: WTO, www.wto.org.

REFERENCES

- Coke Hamilton, Pamela. 2000. "Services in the Caribbean: Protocol II on Establishment, Services, and Capital," in *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform*, edited by Sherry M. Stephenson. Washington, D.C.: Brookings Institution and Organization of American States.
- Evenett Simon J., and Bernard M. Hoekman. 2000. "Government procurement of services and multilateral disciplines", in *GATS 2000: New Directions in Services Trade Liberalization*, edited by Pierre Sauvé and Robert Stern. Washington, D.C.: Brookings Institution Press.
- Feketekuty, Geza. 2000. "Regulatory reform and trade liberalization", in *GATS 2000: New Directions in Services Trade Liberalization*, edited by Pierre Sauvé and Robert Stern. Washington, D.C.: Brookings Institution Press.
- Mattoo, Aaditya. 1998, Most-Favored Nation and the GATS, draft paper presented at the World Trade Forum Conference on "Most-Favored Nation: Past and Present" in Neuchatel, Switzerland.
- Moisé, Evdokia. 2000. "Background Report on Enhancing Market Openness through Regulatory Reform", Paris: OECD.
- Nicolaidis, Kalypso and Joel P. Trachtman. 2000. "From Policed Regulation to Managed Recognition in GATS," in Pierre Sauvé and Robert M. Stern, eds., *GATS 2000: New Directions in Services Trade Liberalization*. Washington, D.C.: Brookings Institution and Center for Business and Government, Harvard University.
- OECD. 2000. "Strengthening Regulatory Transparency: Insights for the GATS from the Regulatory Reform Country Review". TD/TC/WP (99)43/FINAL.
- WTO Secretariat. 1996. "Background Information on the Agreement on Technical Barriers to Trade and the Agreement on Import Licensing Procedures". S/WPPS/W/6.
- WTO Secretariat. 1999. "The Fundamental WTO Principles of National Treatment, Most-Favoured-Nation Treatment and Transparency". WT/GTCP/W/114.

OAS TRADE UNIT STUDIES SERIES*

1. Small and Relatively Less Developed Economies and Western Hemisphere Integration. / Economías Pequeñas y Relativamente Menos Desarrolladas e Integración del Hemisferio Occidental. April /Abril 1997.
2. Harmonization and Competition Policies Among Mercosur Countries. José Tavares de Araujo Jr. and Luis Tineo. November 1997
3. Standards and the Regional Integration Process in the Western Hemisphere. / Las Normas y el Proceso de Integración Regional en el Hemisferio Occidental. Sherry M. Stephenson. November / Noviembre 1997.
4. Mechanisms and Measures to Facilitate the Participation of Smaller Economies in the Free Trade Area of the Americas: An Update. / Mecanismos y Medidas para Facilitar la Participación de las Economías Más Pequeñas en el Area de Libre Comercio de las Américas: Actualización. March / Marzo 1998.
5. Constructing an Effective Dispute Settlement System: Relevant Experiences in the GATT and WTO. / Creación de un Sistema Eficaz de Solución de Controversias: Experiencias Pertinentes en el GATT y la OMC. Rosine M. Plank-Brumback. March / Marzo 1998.
6. Approaches to Services Liberalization by Developing Countries. Sherry M. Stephenson. February 1999. OEA/Ser.D/XXII, SG/TU/TUS-6; ISBN: 0-8270-3991-3
7. Towards Financial Integration in the Hemisphere. Sylvia Saborío. September 1999. OEA/Ser.D/XXII, SG/TU/TUS-7. ISBN 0-8270-3990-5.
8. Multilateral and Regional Investment Rules: What Comes Next? Maryse Robert. March 2001. OEA/Ser.D/XXII, SG/TU/TUS-8.
9. Multilateral and Regional Services Liberalization by Latin America and the Caribbean. Sherry M. Stephenson. March 2001. OEA/Ser.D/XXII, SG/TU/TUS-9.
10. Antidumping in the Americas. José Tavares de Araujo Jr., Carla Macario, and Karsten Steinfatt. March 2001. OEA/SER.D/XXII, SG/TU/TUS-10.
11. Deepening Disciplines for Trade in Services. Sherry M. Stephenson. March 2001. OEA/SER. D/XXII, SG/TU/TUS-11.
12. Business Facilitation: Concrete Progress in the FTAA Process. Jane They. March 2001. OEA/SER. D/XXII, SG/TU/TUS-12.

* These publications may be found on the Trade Unit web page at <http://www.sice.oas.org/Tunit/tunite.asp>.

The Organization of American States

The Organization of American States (OAS) is the world's oldest regional organization, dating back to the First International Conference of American States, held in Washington, D.C., from October 1889 to April 1890. The establishment of the International Union of American Republics was approved at that meeting on April 14, 1890. The OAS Charter was signed in Bogotá in 1948 and entered into force in December 1951. Subsequently, the Charter was amended by the Protocol of Buenos Aires, signed in 1967, which entered into force in February 1970; by the Protocol of Cartagena de Indias, signed in 1985, which entered into force in November 1988; by the Protocol of Managua, signed in 1993, which entered into force in January 29, 1996; and by the Protocol of Washington, signed in 1992, which entered into force on September 25, 1997. The OAS currently has 35 Member States. In addition, the Organization has granted Permanent Observer status to 48 States, as well as to the European Union.

The basic purposes of the OAS are as follows: to strengthen peace and security in the Hemisphere; to promote and consolidate representative democracy, with due respect for the principle of non-intervention; to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the Member States; to provide for common action on the part of those States in the event of aggression; to seek the solution of political, juridical and economic problems that may arise among them; to promote, by cooperative action, their economic, social and cultural development, and to achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States.

MEMBER STATES: Antigua and Barbuda, Argentina, The Bahamas (Commonwealth of), Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica (Commonwealth of), Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay and Venezuela.

PERMANENT OBSERVERS: Algeria, Angola, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Equatorial Guinea, European Union, Finland, France, Germany, Ghana, Greece, Holy See, Hungary, India, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Latvia, Lebanon, Morocco, Netherlands, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, and Yemen.

Organization of American States
Trade Unit
1889 F Street NW
Washington, D.C. 20006