

Chapter 4

Introduction to the General Agreement on Trade in Services

What is the GATS? ¹

4.1 As outlined in Chapter 2, the World Trade Organisation (WTO) has its origin in the General Agreement on Tariffs and Trade (GATT). It was formed on 1 January 1995, when the trade agreements negotiated in the Uruguay Round came into operation. One of the most important functions of the WTO is to provide a rules based forum for multilateral trade negotiations. The Uruguay Round was the last of the GATT rounds, and ran from 1986 to 1994. It resulted in the creation of a number of agreements, including the General Agreement on Trade in Services (GATS).²

4.2 As a result, the GATS came into force on 1 January 1995 and was the first binding multilateral agreement covering international trade in *services*. Although not defined in the GATS, *services* are generally understood in economic terms as activities that add value to another economic unit or good.

4.3 The coverage of the GATS is extremely wide, covering twelve services sectors:

- business
- communication
- construction and engineering
- distribution
- education
- environment
- financial
- health
- recreational
- cultural and sporting
- tourism and travel
- transport and an 'other' category

4.4 The exceptions are:

- a) The GATS excludes 'services supplied in the exercise of governmental authority'.³ These are services provided by the

1 The introductory part of this chapter has been largely drawn from the Committee's background paper *General Agreement on Trade in Services: What is it? What's the fuss?* (available at the Committee's web page: http://www.aph.gov.au/Senate/committee/fact_ctte/GATS/index.htm)

2 Other agreements negotiated in the Uruguay round include the Agreement on Agriculture, the Agreement on Trade-Related Investment Measures (TRIMs), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). See Bruce Donald 'The World Trade Organisation (WTO) Seattle Ministerial Conference, December 1999: Issues and Prospects', *Current Issues Brief* 12 1999-2000, Parliamentary Library, Canberra, 1999.

3 GATS Article I.3.

government not on a commercial basis, nor in competition with other suppliers. For example, social security schemes and central banking provided under non-market conditions are not subject to the GATS.

- b) The GATS does not apply to air traffic rights and services directly related to the exercise of those rights.

4.5 The GATS consists of two broad elements:

- a) An overall framework which sets out the general rules and obligations that apply to all Member countries and to all services.
- b) The national ‘schedules of commitments’ in which each Member country specifies the degree of access it is prepared to guarantee to foreign service suppliers. The schedules of commitments represent the extent to which a Member country has elected to ‘opt in’ to international trade in specific service sectors. It is a declaration by the Member country of its commitment to allow the specified foreign services to be delivered to its citizens under the rules set down by the GATS.

Structure of the GATS

4.6 The preamble to the GATS sets out the three basic considerations that shaped its development:

- a) The establishment of a multilateral framework of principles and rules would progressively open up trade in services and contribute to economic development worldwide.
- b) Member countries—and especially developing countries—will still need to regulate the supply of services to meet national policy objectives.
- c) Developing countries should be helped to improve their participation in the world trade in services through strengthening the capacity, efficiency and competitiveness of their own domestic services.

4.7 The GATS as a whole has 29 Articles set out across six Parts. Part I sets out its scope and definition. Part II, the longest, deals with general obligations and disciplines that apply, for the most part, to all services and all Members. Part III sets out the rules that Members must observe in relation to the specific commitments in the schedules. Parts V and VI cover institutional and other final provisions.

4.8 **Part I** describes the services which are subject to the GATS, and extends a Member country’s GATS obligations to its regional and local governments. *Article I* identifies four ways in which a service can be traded. These four ways are known as ‘modes of supply’. These ‘modes of supply’ are critical to the way in which a Member

country specifies its commitments in the schedule of services to which it proposes to give access by foreign suppliers.

Mode 1—cross border supply of services

Here a supplier in one country delivers a service direct to a consumer in another country, comparable to goods being traded across a border. Examples are distance education services, or a lawyer providing legal advice to a client in another country via the internet.

Mode 2—consumption abroad

Here a consumer moves to a foreign country to obtain the service. For example, a citizen travels abroad to study, or to undergo specialist medical treatment, or to simply be a tourist. A ship being repaired in a foreign port is also Mode 2.

Mode 3—commercial presence

This refers to a service provider establishing facilities in a foreign country. For example, a university, a bank or a courier service sets up a branch overseas.

Mode 4—presence of natural persons

This refers to individuals travelling from their home country to perform services in another country for a limited period. For example, a consultant, a fashion model, a sports coach, a project manager goes abroad to do a job then returns home.

4.9 The particular ‘mode of supply’ of a service is very significant in terms of the practical implementation of that service in a country and the management by that country of its GATS obligations regarding the provision of that service. This is because the ability to provide a service to a foreign country depends crucially on the government regulations that apply in that country. The regulations that might apply for one mode of service delivery (for example, training delivered by a visiting instructor) may be quite different from the regulations that might apply to another mode of service delivery (similar training delivered, say, via the internet).

4.10 **Part II** of the GATS sets out the general obligations and disciplines that must be observed by the Member countries in the way they allow access by foreign service providers, whatever the ‘mode of supply’. Part II also specifies the exemptions that are allowable. There are two basic principles that lie at the core of Part II. These are:

- a) The principle of so-called ‘most favoured nation’ (MFN) treatment. That is, Member countries must accord any other Member country treatment that is no less favourable than it accords to like services and suppliers from any other country. However, the GATS provides for exemptions in particular cases under certain conditions which are set out in an Annex to the GATS.

- b) The principle of transparency. Because governments' domestic regulations have such an impact on the delivery of services within their jurisdictions, the GATS requires Members to publish all relevant measures of general application that affect the services under the Agreement. Members must also disclose any laws, regulations or administrative guidelines that affect services listed in their schedule of commitments under GATS. Moreover, to assist developing countries seeking to trade internationally in services, Members must establish contact points to whom service suppliers from developing countries can turn for information about all aspects of the supply of the service concerned.

4.11 Part II also sets out rules to try and ensure that domestic regulations are applied reasonably, objectively and impartially, with independent tribunals or similar procedures available to ensure their fair and proper application. As well, government regulations concerning the qualifications of service suppliers, technical standards and licensing requirements should not constitute unnecessary barriers to trade. That is, they should not operate as disguised restrictions on the delivery of a service. The remainder of Part II deals with safeguards and subsidies.

4.12 **Part III** sets out the rules that, along with the categorisation of services into four 'modes of supply', shape the way in which each Member formulates its individual schedule of commitments to admit foreign suppliers of services into its market. The two main Articles in Part III deal with market access and national treatment. These are two key undertakings when a Member decides to list a commitment to accept a foreign service.

Market access

4.13 For reasons of domestic political concern or national interest, a country may wish to limit access to its market by applying certain measures to would-be foreign suppliers. The GATS lists six measures to limit market access that a Member country may specify in its national schedule of commitments. These are:

- limitations on the number of service suppliers
- limitations on the total value of services
- limitations on the total quantity of services operations or output
- limitations on the number of persons engaged in the supply of the service
- restrictions via a requirement that the service be supplied only through certain forms of legal entity or joint venture
- percentage limitations on the participation of foreign capital or on the total value of foreign investment

4.14 Unless a Member country clearly provides in its schedule for the use of one or more of these limitations, it cannot apply such limitations on market access to a foreign service or its provider. In other words, a foreign service provider has a right to

assume full and free market access to a sector nominated by a Member country unless that country clearly specifies certain limitations in its schedule of commitments.

National treatment

4.15 The rule concerning national treatment (Article XVII) essentially requires that, once a sector has been scheduled for foreign access, a Member country shall not discriminate between foreign and domestic services and suppliers. Article XVII does not list measures that would be considered discriminatory. It simply states that in the sectors covered by the Member's schedule of commitments, with regard to measures affecting trade in services, a Member is obliged to give foreign services and suppliers treatment no less favourable than that it gives its own services and suppliers. This is subject to any qualifications set out in the schedule of commitments.

4.16 **Part IV** comprises essentially technical, procedural rules for the implementation of the GATS. These rules set out the elements to be covered in a Member country's schedule of commitments and confirm the schedule as forming an integral part of the GATS agreement itself. There are also rules about how a member country might modify or withdraw commitments from its schedule. Probably the most important element of Part IV is *Article XIX*, which commits Members to enter into 'successive rounds of negotiations with a view to achieving a progressively higher level of liberalisation'. The current round of GATS negotiations is the first of these 'successive rounds'.

4.17 **Parts V and VI** contain an array of standard institutional and final provisions, including dispute settlement procedures and the formal establishment of the Council for Trade in Services.

4.18 Attached to the GATS are eight Annexes which amplify issues on *Article II* (MFN) exemptions and the presence of natural persons, while others address special concerns in key service sectors – air transport, financial services, telecommunications and maritime transport.

Structure and function of a GATS schedule

4.19 A Member country's obligations under GATS depend profoundly on the specific commitments that the country chooses to include in its national schedule. In its schedule of commitments, a Member country will:

- specify the services sectors or sub-sectors to which the Member will allow access
- specify any limitations to market access that will apply in the sector(s) concerned and according to the particular mode of supply
- specify any limitations that are placed on national treatment for foreign suppliers of the service
- specify any other binding commitments that the Member country is willing to undertake

4.20 The schedule as a whole is set out in two parts. The first part lists ‘horizontal commitments’ that apply across all sectors. The second part sets out the commitments undertaken in relation to each listed sector or sub-sector. If a sector is not listed in the Member country’s schedule, this means that the country has made no specific commitments with respect to that sector. Australia’s commitments are discussed later in this Chapter.

How is this GATS round negotiated?

4.21 Negotiations proceed under the auspices of the WTO’s Council for Trade in Services. The current round of services negotiations – the ‘GATS 2000 negotiations’ – flow from the built-in agenda established at the conclusion of the Uruguay Round which committed Members to embark, within 5 years, upon negotiations to further liberalise international trade in services. These negotiations were formally launched in February 2000, and at the WTO Ministerial Conference in Doha, Qatar in November 2001, WTO Ministers agreed on a timeframe for the market access phase of the GATS negotiations.

4.22 The first phase of the negotiations was a ‘rule-making’ phase, during which Members negotiated new rules about trade in services dealing with subsidies, emergency safeguards and government procurement. This is being handled largely through the Working Party on GATS Rules. Negotiations on GATS rules are continuing, with slow progress having been made to date, and the mandate has been extended to March 2004.

4.23 The second phase is the ‘request and offer’ phase, where Members negotiate further market access on a sector by sector basis. These market access negotiations are taking place in special sessions of the Council. In this request and offer phase, Member countries make direct requests of their trading partners to open up as far as possible the national schedule of commitments each trading partner is prepared to make. Countries meet on a bilateral basis to ‘clarify’ their requests of each other. The parties may then make offers in response to those requests.

4.24 Australia has lodged requests with 35 Member countries for market openings across 21 service sectors, including financial and education sectors, mining, environmental and private hospital and aged care services.⁴

4.25 While many countries disclose broadly the areas in which they are seeking to achieve greater access, and while some trade organisations produce digests of GATS activity, the detailed requests and negotiations between trading partners during the request and offer phase are confidential. Early in 2003, a document alleged to be the requests made of Australia by the European Union was leaked and found its way on to various websites. The alleged EU request sought ‘horizontal’ commitments on Modes 3 and 4 (commercial presence and presence of natural persons) and ‘sectoral’

4 Department of Foreign Affairs and Trade (DFAT) Office of Trade Negotiations, Discussion Paper on the General Agreement on Trade in Services, January 2003.

commitments in such things as postal services, business and financial services, tourism, transport and energy.

4.26 The confidential nature of the negotiations, and the broad range of services under discussion, has led to speculation about the potential negative consequences of GATS, notwithstanding reassurances about governments' right to regulate the nature and extent of services traded. This issue is discussed in more detail in Chapter 5.

4.27 Under the timetable agreed by Ministers at Doha, Members were expected to lodge initial *requests* for specific commitments by 30 June 2002. Initial *offers* were due by 31 March 2003. More than 30 Members have submitted requests for new market openings and the removal of discriminatory practices in the markets of their trading partners. Most developed countries and a small number of developing countries have put forward requests.

Public speculation and concerns about the GATS

The GATS is a new agreement, not yet complete, not terribly user-friendly, with a complex geometry of general and *a la carte* obligations set against the backdrop of [near] universal coverage and sovereign immunity in liberalisation matters. Novelty, complexity and variable geometry all too easily lead to misrepresentation and/or over-interpretation.⁵

4.28 As the GATS 2000 negotiations have gathered momentum, so too has the level of concern being voiced by non-government organisations (NGOs) and others about the potential impact of the GATS on, for example, national sovereignty and public services. The question has been raised as to whether some services are simply too important to submit to an agreement primarily designed to enhance international commerce.

4.29 These issues include to what extent public services fall under the obligations of the GATS, and the extent to which the GATS impinges on governments' right to regulate. These and a number of other issues of concern involving particular sectors were raised with the Committee during the course of its inquiry, and are discussed in greater detail in Chapter 5.

Australia's involvement – an outline of the story so far

4.30 The Uruguay Round of trade negotiations commenced in September 1986, concluding in April 1994. An ambitious agenda was agreed upon at the beginning of the Round, including tariff and non tariff measures, agriculture, tropical products, natural resource-based products, textiles and clothing, safeguards, GATT articles,

5 Pierre Suavé, Trade Directorate OECD, *Trade, Education and the GATS: What's in, what's out, what's all the fuss about?* Paper prepared for the OECD/ US Forum on Trade in Educational Services, Washington DC, May 2002.

dispute settlement and three new issues – trade related aspects of intellectual property rights, trade related investment measures and trade in services.⁶

4.31 However, negotiations took twice as long as the expected 4 years to complete, and broke down a number of times.⁷ Notwithstanding this, Australia has benefited substantially from the gains achieved in the Uruguay Round, which increased significantly market access for Australian firms. Overall, tariffs facing Australia's exports were cut on average by about 50 per cent on a trade weighted basis and more than 86 per cent of Australia's exports gained increased market access through bound tariff commitments by most of Australia's major trading partners.⁸

4.32 During the Uruguay Round, through participation in the Cairns Group, Australia was able to maximise its influence in the WTO and to ensure the group negotiated as a block to achieve substantial reductions in barriers to agricultural trade.⁹

4.33 As outlined earlier in this chapter, the Uruguay Round also contained a 'built in' agenda for negotiations on the Agriculture Agreement and the GATS. This agreement is reflected in Article XIX.1 of the GATS which provides that Members are to enter into successive rounds of negotiations beginning not later than 5 years from the date of entry into force of the WTO Agreement. The aim of these negotiations is to achieve a progressively higher level of liberalisation. As a result, negotiations on both these agreements commenced in early 2000, despite the failure of the Ministerial Conference in Seattle in December 1999 to launch a new round.

4.34 The WTO Ministerial Conference in Doha, Qatar was more successful than the conference in Seattle, succeeding in launching Doha Development Agenda, or the Doha Round, in November 2001. The negotiations in this Round are scheduled to conclude by 1 January 2005.

6 Ann Capling, *Australia and the Global Trading System - From Havana to Seattle*, Cambridge University Press 2001, p. 104.

7 Bruce Donald 'The World Trade Organization (WTO) Seattle Ministerial Conference, December 1999: Issues and Prospects', *Current Issues Brief* 12 1999-2000, Parliamentary Library, Canberra, 1999, p. 12.

8 Submission by the Department of Foreign Affairs and Trade to the Joint Standing Committee on Treaties' inquiry into the nature and scope of Australia's relationship with the WTO (Report 42 - *Who's Afraid of the WTO? Australia and the World Trade Organisation*), submission 222, September 2000, p. 12.

9 The Joint Standing Committee on Treaties Report 42 – *Who's Afraid of the WTO? Australia and the World Trade Organisation*, p.43. The Cairns Group is Argentina; Australia; Bolivia; Brazil; Canada; Chile; Colombia; Costa Rica; Fiji; Guatemala; Indonesia; Malaysia; New Zealand; Paraguay; the Philippines; South Africa, Thailand and Uruguay.

4.35 The Doha Ministerial Declaration¹⁰, adopted on 14 November 2001, states that the multilateral trading system embodied in the WTO has contributed significantly to economic growth, development and employment throughout the past fifty years, and reaffirms the principles set out in the Marrakesh Agreement establishing the WTO.

4.36 The Declaration stresses the importance of international trade in promoting economic development and poverty alleviation, and recognises that the majority of WTO Members are developing countries. To this end, the Declaration indicates that enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity-building programs have important roles to play in ensuring developing countries secure a share in the growth of world trade.

4.37 The Declaration seeks to recognise the particular vulnerability of the least developed countries and the unique structural difficulties they face in the global economy, commits to addressing the marginalisation of these countries in international trade and seeks to improve their effective participation in the multilateral trade system.

4.38 The Declaration also confirms the Members' collective responsibility to ensure internal transparency and the effective participation of all Members, and commits to making the WTO's operations more transparent, including through more effective and prompt dissemination of information and to improve dialogue with the public.

4.39 The Declaration then goes on to set out the work program agreed upon by Members. Paragraph 15 deals with Services, and states that negotiations on trade in services "shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. The Declaration reaffirms the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing negotiations, with a view to achieving the objectives of the GATS. The Declaration provides that participants were to submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003.

4.40 The work program set out in the Declaration covers a broad range of other issues in addition to services, including:

- implementation issues and concerns
- agriculture and market access for non-agricultural products
- trade related aspects of intellectual property rights
- the relationship between trade and investment

10 The text of the Doha Ministerial Declaration can be accessed at the WTO website: http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#services, accessed 9 October 2003.

- interaction between trade and competition policy
- transparency in government procurement
- trade facilitation
- WTO rules
- dispute settlement understanding
- trade and environment
- electronic commerce

Australia’s approach to the Doha negotiations – goals and strategy

4.41 The Department of Foreign Affairs and Trade (DFAT) indicated in its submission to the inquiry that Australia is well placed to participate in the GATS negotiations because of its open and competitive services sector, the result of decades of autonomous reform of the regulatory environment and an increased openness to world trade in services. Further, it is said that autonomous market reform in Australia has “outpaced trade liberalisation in the WTO” so that Australia’s services sector is in fact more liberal than is currently reflected in our GATS schedule.¹¹

4.42 The GATS is often broadly described as a ‘standstill’ agreement in that it commits Members to existing levels of reform, rather than requiring new commitments needing major policy or regulatory adjustments. It is said that the value of such agreements is in preventing certain trade barriers from being reintroduced.¹²

4.43 DFAT argues that there is potential for the current round of GATS negotiations to have a greater impact on services trade liberalisation than the Uruguay Round. The existing GATS schedules reflect commitments made by Members during the Uruguay Round, when the text of the agreement itself was also being negotiated. It is suggested that a lack of familiarity with the operation of the GATS may have limited Members’ commitments, but that prospects for greater liberalisation are increasing, particularly as Members recognise the benefits to their own economies of reforming services trade and so undertake autonomous liberalisation.¹³

4.44 DFAT indicates that one of the main negotiating objectives for Australia is to gain new commitments in markets and sectors where there is significant export potential and interest. To this end, Australia is engaged in a ‘multi-faceted negotiating approach’. This approach is described as follows:

Firstly, Australia is actively engaged in bilateral request/offer negotiations. This requires Australia to identify its negotiating priorities on a sector and country specific basis and to raise these priorities with key countries.

11 *Submission 54*, p. 17 (Department of Foreign Affairs and Trade – DFAT)

12 *Submission 54*, pp. 17-18 (DFAT)

13 *Submission 54*, p. 18 (DFAT)

...

At the same time, Australia participates in a number of sector specific ‘friends’ groups. This enables Australia to work with other members that have similar priorities for specific sectors to form common positions and thereby increase negotiating leverage. ‘Coalition building’ in this sense often involves working through classification and other issues to find possible solutions to problems that make commitment difficult for some members. For instance, wording of limitations on commitments might be crafted to allow WTO Members to achieve their policy objectives while minimising barriers to trade.¹⁴

4.45 As part of the negotiating process, Australia also participates in a range of subsidiary committees examining framework issues such as rules, domestic regulation and scheduling of commitments. Australia’s position in these committees is driven by the need to preserve the right to regulate at all levels of government, and to provide subsidies to public service sectors.¹⁵

4.46 As outlined above, the deadline for receipt of initial requests of other Members as part of the request and offer process was 1 July 2002. Australia’s initial requests, covering 17 services sectors, were delivered to 33 WTO Members in the week commencing 1 July 2002, with supplementary requests delivered in the week commencing 28 October 2002. Australia’s requests have targeted the services trade barriers of Members whose markets are regarded as important to Australian services exporters, including the European Union, the United States, Canada, countries in North, South and South-East Asia, and some countries in Latin America, the South Pacific and Africa.¹⁶

4.47 Australia’s requests were directed to the following services sectors:

- Accountancy
- Architecture
- Engineering
- Legal
- Services related to mining
- Computer and related services (e.g. software implementation, data processing, installation of computer software)
- Construction
- Distribution
- Private education

14 *Submission 54*, p. 18 (DFAT)

15 *Submission 54*, p. 19 (DFAT)

16 *Submission 54*, p. 19 (DFAT)

- Environmental services
- Financial
- Private health and aged care
- Maritime transport
- Pipeline transport
- Freight logistics (services related to the movement of goods though and within national borders, such as cargo-handling, storage and warehousing, container station and depot services, and so on)
- Air transport
- Telecommunications
- Tourism
- Sporting services (e.g. sporting event organisation and promotion, operation of sporting facilities)
- Other business services such as management consulting, landscape architecture and urban planning¹⁷

4.48 Australia has received requests from 23 other WTO Members, including developed and developing countries.¹⁸ The requests cover the following areas:

- Business services and professional services (e.g. real estate, advertising, printing and publishing, legal, accountancy)
- Transport – road, rail, maritime, air
- Recreational, cultural and sporting services
- Tourism
- Health services
- Financial services
- Environmental services
- Education
- Distribution
- Construction
- Audiovisual
- Telecommunications

17 *Submission 54*, pp. 19-20 (DFAT)

18 Australia has received requests from Argentina, Brazil, Canada, China, Chinese Taipei, Egypt, European Communities and their Member States, Hong Kong SAR, India, Japan, Korea, Malaysia, Mauritius, Mexico, Norway, Pakistan, Panama, Peru, Singapore, Switzerland, United States of America and Uruguay. DFAT Discussion Paper on the GATS, January 2003.

- Postal and courier services
- Horizontal issues relating to the temporary movement of services suppliers, foreign investment screening requirements and transparency¹⁹

4.49 As DFAT as indicated, there is no requirement for Australia to respond to these requests, or to provide reciprocity in the requests Australia has made in similar sectors. DFAT has advised that meetings held to date to discuss these requests have focused on clarifying the scope of the requests and responding to any misunderstandings about Australia's regulatory regime.²⁰

4.50 As outlined above, the second stage of the 'request and offer' process is the submission of initial offers by Member countries. The initial offers are non-binding and can be withdrawn or amended at any time. Theoretically, different offers can be made to different Members, however, in practice, one offer is made by a country to all other WTO Members. DFAT has indicated that offers are devised with both 'offensive' and 'defensive' interests in mind. For instance, if a country has strong defensive interests in a particular sector, it may choose not to make any commitments in a particular sector, or to limit its commitments in that sector. If a country has active offensive interests, it may choose to make commitments in order to 'raise the level of liberalising ambition.'²¹

4.51 DFAT has advised that Australia's initial offer was submitted in Geneva on the deadline of 31 March 2003. The offer was developed by DFAT in consultation with other Commonwealth government departments, and drew on information obtained through DFAT's consultations with industry, State and Territory governments, non-government organisations (NGOs) and the public. According to DFAT, the offer also took into account public submissions made to the Department in response to a discussion paper released on 15 January 2003.²²

4.52 As indicated above, DFAT has pointed out that Australia's initial offer to WTO Members is not legally binding and can be amended or withdrawn, depending on progress in negotiations. DFAT has indicated that the offer

... builds on the substantial commitments made in the Uruguay Round and subsequent sectoral negotiations in financial and telecommunications services. The offer includes possible commitments on elements of telecommunications, financial services, air and maritime transport, landscape services, legal services, environmental services, computer and related services and mining services. In certain sectors, the offer modernises our existing commitment to reflect regulatory changes since the last set of negotiations. In other sectors or sub-sectors, Australia is making new

19 *Submission 54*, pp. 20-21 (DFAT)

20 *Submission 54*, p. 21 (DFAT)

21 *Submission 54*, p. 21 (DFAT)

22 *Submission 54*, p. 21 (DFAT)

commitments. The offer is consistent with the current regulatory environment in all sectors.²³

4.53 The sectors in which new commitments have been made are:

- landscape architectural services, in which Australia has a strong export interest;
- mining and related services, in which Australia has substantial expertise and export interest; and
- ground handling within transport services.

4.54 In the telecommunications, computer and related services, other transport services, legal services, environmental services and financial services, Australia's offer builds on commitments made in the Uruguay Round.²⁴

4.55 Notwithstanding the fact that there is no requirement for reciprocity as such, it was pointed out in evidence to the Committee that the initial offer transmitted to the WTO is a clear indication to other WTO Members that Australia is prepared to liberalise in the sectors indicated, and this leads to an expectation that we will follow through and make commitments in those areas.²⁵

4.56 DFAT's public discussion paper released in June 2003 indicated that progress in the Doha round up to that point had been disappointing in many areas, with key deadlines in negotiations in agriculture and industrial products having been missed.²⁶ With regard to services negotiations, Australia lodged its initial offer in response to the initial requests by the deadline of 31 March 2003. As at June 2003, 23 WTO Members had lodged their offers with the WTO.²⁷

4.57 DFAT's assessment of the offers made to Australia is that 'they show modest but serious preparedness to open services markets in various developed countries. The response by developing countries has so far been variable, and Australia is keen

23 *Submission 54*, p. 21 (DFAT)

24 *Submission 54*, p. 22-23 (DFAT). For a fuller description of the offers made in the various sectors, see pages 21 to 23 of *Submission 54* (DFAT)

25 *Committee Hansard*, 8 May 2003, p. 29 (Mr Ted Murphy, National Tertiary Education Union)

26 DFAT Public Discussion Paper – June 2003, Developments in the World Trade Organisation. Available at http://www.dfat.gov.au/trade/negotiations/consultations/background_paper_doharound_030616.html (accessed 14 October 2003)

27 DFAT Public Discussion Paper – June 2003, Developments in the World Trade Organisation, p.2. Members who have lodged their offers include United States, the EC, Japan, Korea, Australia, New Zealand, Canada, Chinese Taipei, Hong Kong, Switzerland, Norway, Uruguay, Paraguay, Argentina, Poland, Iceland, Bahrain, Liechtenstein, Senegal, Israel, Czech Republic, and St Kitts and Nevis.

to see more developing countries make offers.’²⁸ The discussion paper also stressed that gaining a critical mass of offers in services prior to the Cancun Ministerial Report would be important to the balance in market access negotiations overall.

4.58 In evidence to the Committee in October 2003, DFAT indicated that services negotiations had made some modest progress, particularly in the area of market access, but that the lack of progress at the Cancun Ministerial Meeting would have some impact on progress. Notwithstanding this, service negotiators met in Geneva in the first week of October 2003, and as at that date, there were 38 offers on the table covering 52 WTO Members out of a total of 148. DFAT believes that the Members that have made offers are responsible for over 70 per cent of the world’s trade in services.²⁹

4.59 Services negotiating sessions were also held in May and July 2003. These sessions involved negotiations to advance market access through bilateral and plurilateral meetings and negotiating on the GATS framework, particularly in regard to domestic regulation and rules.

4.60 The bilateral sessions have focused on clarifying the detail of offers made by other Members and explaining Australia’s offer. DFAT indicated that Australia has not made any commitment to offer more than its initial offer, despite being pressed by some Members on a range of issues. Australia’s offer has apparently been well received, although some negotiating partners have been ‘critical that our offer does not necessarily reflect fully the current openness of our regime.’ DFAT indicated that it will keep under review the extent of Australia’s ‘negotiating flexibility’.³⁰

4.61 Despite the lack of progress at the Cancun meeting, there remains optimism about the progress of services negotiations, with DFAT indicating that there remains a ‘very positive degree of engagement amongst many members on the services sector’ and that there is ‘degree of support from industry groups globally in the negotiations’. Whilst it is possible to see the services negotiations continuing in the absence of progress in other areas of the Doha Round given this commitment from Members, DFAT acknowledges that it is very hard to see a conclusion on services in the absence of a conclusion of the broader negotiating effort.³¹

Importance of services trade to the Australian economy

4.62 The Committee received evidence referring to the importance of trade in services to the Australian economy, and at a broader level, to the global economy. As discussed above, the GATS covers an extremely broad range of services. While

28 DFAT Public Discussion Paper – June 2003, Developments in the World Trade Organisation, p. 3.

29 *Committee Hansard*, 2 October 2003, p. 428 (Mr Bruce Gosper, DFAT)

30 *Committee Hansard*, 2 October 2003, p. 428 (Gosper, DFAT)

31 *Committee Hansard*, 2 October 2003, p. 441 (Gosper, DFAT)

acknowledging that there is ‘no single measure which captures the various forms which services trade takes’, DFAT argues that ‘...it is clear that services trade has expanded rapidly, contributing strongly to the globalisation of economic activity. Balance of payment statistics show global commercial services trade growing at about one and a half times the annual rate of the growth of merchandise trade in the 1980s and continuing to grow marginally more rapidly than merchandise trade since 1990.’³²

4.63 DFAT points out that Australia has very substantial interests in the services sector. Services industries ‘made up around 69 per cent of total industry value added in 2000-01 and paid 83 per cent of all wages and salaries.’ Further, the contribution of services to the Australian economy is said to have increased substantially over time, with Australian Bureau of Statistics (ABS) data showing that the services contribution to GDP has increased by around 14 per cent between 1964-65 to 1992-93. Over the same period, the share of manufacturing dropped from approximately 26 to 15 per cent of GDP and agriculture from about 11 per cent to 3 per cent.³³

4.64 The contribution of services to Australia’s exports has also increased over time, from 12 per cent in 1959-60 to almost 21 per cent in 1990-91. In 2001-02 the share was 20 per cent. The long term growth in the services sector is said to be attributable to a number of factors, including rising incomes, demographic and lifestyle changes, increasing demand for new business and financial services, the growing importance of knowledge and information technology, and the liberalisation, privatisation and deregulation carried out by successive governments since the 1980s.³⁴

4.65 International Trade Strategies states in its submission that the services sector constitutes “an increasingly important part of the global economy” and that services is the largest and fastest growing sector of the world economy. In Australia, ITS indicates that services account for 72% of GDP, and comprise an 80% share of employment. Total Australian services trade was worth approximately \$57 billion in 2001-02, with exports worth around \$31 billion.³⁵

4.66 International Trade Strategies argues that liberalisation of services trade offers significant benefits for WTO Members, including Australia. Its view is that initial commitments to liberalise services trade under the GATS have been ‘modest relative to trade in goods’ and that significant barriers remain.³⁶

4.67 The Committee accepts that, whilst it may be difficult to precisely measure the impacts of services trade to the Australian and the global economies, the contribution of the services sector to the Australian economy is significant and

32 *Submission 54*, p. 5 (DFAT)

33 *Submission 54*, p. 6 (DFAT)

34 *Submission 54*, p. 6 (DFAT)

35 *Submission 30*, pp. 1-2 (International Trade Strategies Pty Ltd (ITS))

36 *Submission 30*, p. 2 (ITS)

growing. Participation in the GATS would appear to offer benefits in terms of market access for Australian service providers. However, the Committee is concerned that there are some critical issues to be resolved in terms of the broader impact of the GATS on the provision of public services at all levels of government, the impact of the GATS on governments' right to regulate and impacts on particular sectors. These issues are discussed in Chapter 5.

