The phrase “trade in services” applies to international transactions in a diverse array of fields, including financial services, transportation, communications, construction, and distribution. When considering barriers to trade in services, domestic regulations governing their supply and consumption are more important than border measures (such as tariffs). This is in contrast to trade in goods, where border measures play a significant role. These domestic regulations are put in place for a variety of reasons: sometimes to protect domestic industries, but just as often to meet public objectives such as protecting culture and traditions, or protecting the interests of consumers. Not until recently has there been a greater need for multilateral disciplines in the area of trade in services.

However, trade in services has been steadily increasing. According to WTO statistics, services now account for 18.8 percent of world trade (by shipping value), or about $1.435 trillion in 2000 (see Figure 11-1). This increase in trade in services has led to a greater need for disciplines in this area. The General Agreement on Trade in Services (GATS), requiring most-favoured-nation treatment, market access commitments, and national treatment, was agreed upon at the end of the Uruguay Round negotiations with the participation of all Member nations including developing countries. The GATS covers a wide
Part II Chapter 11 Trade in Services

range of service industries, including financial services, transportation, communications, construction, and distribution.

Figure 11-1
World Trade in Services (Export Value Basis)

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</thead>
<tbody>
<tr>
<td><strong>Goods</strong>*</td>
<td>2,137</td>
<td>3,439</td>
<td>4,241</td>
<td>5,422</td>
<td>6,186</td>
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<tr>
<td><strong>Services</strong></td>
<td>450</td>
<td>783</td>
<td>1,038</td>
<td>1,318</td>
<td>1,435</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2,587</td>
<td>4,222</td>
<td>5,279</td>
<td>6,740</td>
<td>7,621</td>
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<tr>
<td><strong>Services Total</strong></td>
<td>17.4%</td>
<td>18.5%</td>
<td>19.7%</td>
<td>19.6%</td>
<td>18.8%</td>
</tr>
</tbody>
</table>

* Excludes Hong Kong’s re-exports.

LEGAL FRAMEWORK

The GATS covers governmental measures that would influence trade in any and all services (excluding services supplied in the exercise of governmental authority). The GATS defines 155 service sectors based on categories developed by the GATT Secretariat, and specifies four modes of trade in services (see Figure 11-2):

1) Cross-border supply (supply of services from the territory of one Member into the territory of another Member);
2) Consumption abroad (supply of services in the territory of one Member to a service consumer of another Member);
3) Commercial presence (supply of services by a service supplier of one Member through commercial presence in the territory of another Member); and
4) Presence of natural persons (supply of services by a service supplier of one Member through the presence of natural persons of that Member in the territory of another Member.)
Members make liberalization commitments by service sectors and modes. Obligations under the GATS can be classified into three types: (1) obligations applied to all sectors regardless of whether a commitment has been made; (2) obligations applied equally to sectors in which commitments have been made; and (3) obligations applied according to the specific commitment undertaken. General obligations that must be applied in all service sectors include Most-Favoured-Nation treatment to foreign service suppliers and assurance of transparency of relevant laws and regulations. In sectors where specific commitments are undertaken, Members must ensure objective application of domestic regulations and, in principle, cannot restrict payments and transfers. Finally, obligations are undertaken with respect to market access and national treatment in these sectors according to the specific commitment undertaken in each sector and mode. Furthermore, special rules for specific sectors, such as financial services and telecommunications, are defined in the annexes of the GATS. Outlines of major provisions are described in Annotation 11-1.

For the financial sector, an Understanding on Commitments in Financial Services was made — which describes very specifically the measures to be taken for market access, national treatment and other issues, and defines a very high degree of liberalization. For the basic telecommunications sector, a Reference Paper defines frameworks for insurance of interconnection, universal service, public availability of licensing criteria, and other competition-enhancing regulations. In these two sectors, many Members, particularly the developed countries, voluntarily made liberalization commitments on the principles outlined in Annotation 11-2.

As part of the Uruguay Round negotiations, after the GATS was concluded and Members made schedules of specific liberalization commitments. An example of a schedule of specific commitments is shown in Figure 11-3. For an overview of Members’ specific commitments and Most-Favoured-Nation treatment exemptions, see Figures 11-4 and 11-5 respectively. Japan made commitments in approximately 100 sectors and maintained no exemptions from Most-Favoured-Nation treatment.
## Four Modes of Trade in Services

<table>
<thead>
<tr>
<th>Mode</th>
<th>Description</th>
<th>Example</th>
<th>Schematic Diagram</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Cross-border Supply</td>
<td>Supply of services from the territory of one Member into the territory of another Member (Border-crossing of services)</td>
<td>To receive the legal advice by telephone from a lawyer living abroad</td>
<td><img src="image" alt="Schematic Diagram" /></td>
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<tr>
<td>2. Consumption abroad</td>
<td>Supply of services in the territory of one Member to a service consumer of another Member (Border-crossing of consumers)</td>
<td>Local consumption by a foreign tourist or businessperson (rental of electronic equipment etc.)</td>
<td><img src="image" alt="Schematic Diagram" /></td>
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<tr>
<td>3. Commercial presence</td>
<td>Supply of services by a service supplier of one Member through commercial presence in the territory of another Member (Border-crossing of commercial presence)</td>
<td>Financial services provided by a foreign branch</td>
<td><img src="image" alt="Schematic Diagram" /></td>
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<tr>
<td>4. Presence of natural persons</td>
<td>Supply of services by a service supplier of one Member through the presence of natural persons of that Member in the territory of another Member (Border-crossing of suppliers)</td>
<td>Invitation of a foreign artist</td>
<td><img src="image" alt="Schematic Diagram" /></td>
</tr>
</tbody>
</table>

Note: Symbols in the Schematic Diagrams

- S: Service supplier (natural person or juridical person)
- C: Service consumer (natural person or juridical person)
- NP: Natural person
- CS: Commercial presence
- Movement of service supplier
- Movement of service consumer
Annotation 11-1
Outline of Major Rules and Regulations in the GATS

OBLIGATIONS REGARDING TRADE IN SERVICES
IN ALL SERVICE SECTORS

1. Most-Favoured-Nation Treatment (Article II)

Members must accord equal treatment (MFN treatment) to all other Members (See Chapter 1 for MFN Principle). Trade in services, however, spans a wide range of fields that contain many measures that cannot be subject to MFN treatment for various historical or other reasons. Accordingly, the GATS stipulates that if such measures are registered at the time the GATS enters into force, those measures may be exempted from obligation of MFN treatment. The Council for Trade in Services shall review all exemptions granted for a period of more than five years. The first such review shall take place no more than five years after the entry into force of the WTO Agreement. In principle, such exemptions should not exceed a period of 10 years. These exemptions are subject to negotiation in subsequent trade liberalizing rounds.

(Cases in which MFN treatment obligations do not apply under the GATS provisions.)

- Each Member is not prevented from taking part in an agreement liberalizing trade in services between or among the parties. (Article V)
- Each Member is not prevented from taking part in an agreement establishing full integration of the labour markets between or among the parties. (Article V bis)
- Each Member may recognize education, licenses, and certification granted in a particular country as domestically valid. (Article VII)
- Most-Favoured-Nation treatment shall not apply to the procurement by governmental agencies of services purchased for governmental
purposes not with a view to use in the supply of services for commercial sale. (Article XIII)

2. *Transparency (Article III)*

The lack of transparency in laws, regulations, and other measures pertaining to or affecting trade in services may constitute a barrier to trade in services. The GATS, therefore, provides a general obligation to publish all such laws and regulations. This provision will remove any barrier resulting from non-transparent procedures, as well as facilitate future negotiations on such procedures.

**OBLIGATIONS REGARDING TRADE IN SERVICES IN SECTORS WHERE SPECIFIC COMMITMENTS HAVE BEEN UNDERTAKEN**

1. *Domestic Regulations (Article VI)*

   In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.

2. *Payments and Transfers (Article XI)*

   Except to safeguard its balance of payments, a Member may not restrict international payments and transfers for current transactions covered by specific commitments undertaken in the GATS. Nothing in the GATS, however, affects the rights and obligations of the Members of the International Monetary Fund. A Member shall not impose restrictions on any capital transactions inconsistent with its specific commitments regarding such transactions, except under Article XII (Restrictions to Safeguard the Balance of Payments) or at the request of the IMF.

**OBLIGATIONS DEPENDENT ON THE CONTENT OF SPECIFIC COMMITMENTS**

1. *Market Access (Article XVI)*
Market access is an obligation whose terms and conditions are determined through specific commitments. Each Member may decide through negotiations to undertake a market access commitment (i.e., a commitment not to maintain or adopt certain measures contained in an exhaustive list in Article XVI), in each sector and mode. There are six types of measures: (a) limitations on the number of service suppliers; (b) limitations on the total value of services transactions or assets; (c) limitations on total output; (d) limitations on the total number of natural persons that may be employed; (e) measures that restrict the types of legal entity through which a service is provided; and (f) limitations on the participation of foreign capital. Members may maintain some or all of these restrictions, which must then be specified in the Schedule of Commitments. Member countries may take measures that do not fall within the six types, or which have been reserved unless they violate other articles in the GATS. This Article on market access does not ensure a specific market presence (in terms of market share or other measures).

2. National Treatment (Article XVII)

National treatment is a principle that requires each Member to accord services and service suppliers of any other Member no less favourable treatment than that accorded to its own like services and service suppliers (See Chapter 2 for National Treatment Principle). The provision of national treatment is another obligation to be determined through specific commitments. Each Member may decide whether to undertake national treatment commitments in each sector and mode through negotiations. In undertaking a national treatment commitment, a Member may still maintain some discriminatory measures by making reservations. For example, in undertaking a national treatment commitment in the banking sector, a Member may promise national treatment in all sectors of banking except deposit operations. Any such reservation must be specified in the Schedule of Commitments.

OTHER PROVISIONS

1. Negotiation of Specific Commitments (Article XIX)
To further the objectives of the GATS, Members shall enter into successive rounds of negotiations aimed at achieving progressive liberalization of trade in services, beginning not later than five years from the date of entry into force of the WTO Agreement (1 January 1995), and periodically thereafter. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.

2. Annexes

(a) *Annex on Financial Services*

Nothing in the GATS prevents a Member from taking measures for prudential reasons and to ensure the integrity and stability of its financial system.

(b) *Annex on Telecommunications*

Members shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule.

(c) *Annex on Air Transport Services*

The Annex applies to measures affecting trade in air transport services and ancillary services. The GATS shall not apply to measures affecting a Member’s traffic rights, or services directly related to the exercise of those rights, as recognized under existing bilateral agreements.

(d) *Annex on Movement of Natural Persons Supplying Services Under the GATS*

The Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of another Member. The GATS shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of specific commitments regarding market access, national treatment, and similar issues.
Annotation 11-2
Definitions and Principles on the Regulatory Framework

Scope of Application

This principle applies to major suppliers who have the ability to materially affect the terms of participation in the relevant market for basic telecommunications services as a result of control over essential facilities or use of its position in the market.

Competitive Safeguards

Appropriate measures shall be maintained for the purpose of preventing suppliers who are a major supplier from engaging in or continuing anti-competitive practices.

Interconnection to Be Ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network.

Universal Service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se provided they are administered in a transparent, non-discriminatory, and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

Public Availability of Licensing Criteria

Where a license is required, the following will be made publicly available:

(a) All the licensing criteria and the period of time normally required to reach a decision concerning an application for a license; and

(b) The terms and conditions of individual licenses.
Independent Regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services.

Allocation and Use of Scarce Resources

Any procedure for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner.

Figure 11-3
Example of Schedule of Specific Commitments

<table>
<thead>
<tr>
<th>Sector or Subsector</th>
<th>Limitations on Market Access</th>
<th>Limitations on National Treatment</th>
<th>Additional Commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>All sectors included in this schedule</td>
<td>4) Unbound except for measure concerning the entry and temporary stay of a natural person who falls in the following category: i) Activities to direct a branch office as its head.</td>
<td>Unbound for research and development subsidies</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sector or Subsector</th>
<th>Limitations on Market Access</th>
<th>Limitations on National Treatment</th>
<th>Additional Commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services related to management consulting</td>
<td>1) Unbound</td>
<td>1) Unbound</td>
<td>**</td>
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<tr>
<td>*</td>
<td>2) None</td>
<td>2) None</td>
<td>**</td>
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<tr>
<td></td>
<td>3) The number of licences conferred to service suppliers may be limited</td>
<td>3) None except as indicated in horizontal</td>
<td>**</td>
</tr>
</tbody>
</table>
Modes of supply: 1) cross-border supply; 2) consumption abroad; 3) commercial presence; 4) presence of natural persons.

Notes
* Sector or subsector, when making liberalization available, shall be inscribed in this column. Articles XVI and XVII shall not apply to sectors or subsectors not indicated in this column.
** Commitments with respect to measures affecting trade in services but not subject to put in the schedule under Articles XVI or XVII shall be inscribed in this column.
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<tr>
<th>Sectors</th>
<th>US</th>
<th>EU</th>
<th>CA</th>
<th>KR</th>
<th>HK</th>
<th>SG</th>
<th>MY</th>
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<th>TH</th>
<th>AU</th>
<th>PH</th>
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<th>JP</th>
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<td>Real estate/leasing</td>
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<td>Communication services</td>
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Notes:

1) Sectors for which any liberalization commitments have been made are shown with symbols (*). However, there are many cases in which liberalization commitments cover only a part of the sector or in which measures that are inconsistent with national treatment or that restrict market access are reserved. This table should not, therefore, be interpreted as a direct indication of the level of liberalization. The Secretariat Categories are more detailed than those in this table, defining 155 sectors.

2) CA-Canada, KR-Korea, HK-Hong Kong, SG-Singapore, MY-Malaysia; ID-Indonesia, TH-Thailand, AU-Australia, PH-Philippines, IN-India, JP-Japan.

**Figure 11-5**
Overview of Article II (MFN) Exemption Lists of Major Trading Partners

| United States | 1. Cross-sectoral (measures related to movement of natural persons, taxation measures, measures related to land use, measures of registration by small businesses)  
| | 2. Telecommunications services (One-way satellite transmission)  
| | 3. Banking services  
| | 4. Insurance services  
| | 5. Air transport services  
| | 6. Space transport services  
| | 7. Road transport services  
| | 8. Pipeline transport services  
| EU | 1. Cross-sectoral (measures related to movement of natural persons, measures related to land use, measures related to investment)  
| | 2. Rental/Leasing services  
| | 3. Audiovisual services  
| | 4. Insurance services  
| | 5. Internal waterways transport services  
| | 6. Air transport services  
| | 7. Road transport services  
| Canada | 1. Business services (Fishing-related services)  
| | 2. Film, video and television programming  
| | 3. Insurance services  
| | 4. Air transport services  
| | 5. Maritime services  
| Korea | 1. Air transport services.  
| Hong Kong | None  

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#### Singapore
1. Cross-Sectoral
   - Measures related to movement of natural persons, Measures related to investment, Taxation measures
2. Professional services (Legal services)
3. Audiovisual services
4. Banking services
5. Insurance services
6. Air transport services
7. Maritime services

#### Malaysia
1. Cross-Sectoral (measures related to movement of natural persons, measures related to foreign investment)
2. Business services (Advertising services)

#### Indonesia
1. Cross-Sectoral (measures related to movement of natural persons)
2. Construction services
3. Banking services

#### Thailand
1. Cross-Sectoral (Amity Economic Treaty)
2. Professional services (auditing services, publishing newspapers)
3. Maritime services
4. Air transport services
5. Road transport services

#### Australia
1. Audiovisual services

#### Philippines
1. Cross-Sectoral (measures related to movement of natural persons, measures related to investment)
2. Banking services
3. Maritime services

#### India
1. Telecommunications services
2. Audiovisual services
3. Entertainment services
4. Maritime services

#### Japan
None

Note: Some measures or sub-sectors are integrated into one sector in this table.

### Recent Developments

#### The Uruguay Round and Before Seattle

During the Uruguay Round negotiations, views were split on which areas the agreement should cover, and negotiations continued after the Round in four disputed areas: movement of natural persons, maritime services, financial services, and basic telecommunications. (See Figure 11-6.)
With regards movement of natural persons, agreement was quickly reached in July 1995.

In the maritime services negotiations, the Uruguay Round negotiations included international shipping, auxiliary services such as freight handling, and port usage. Cabotage\(^1\), however, was not included in the negotiation because many countries restricted foreign shipping from domestic shipping. Negotiations on maritime transportation were continued, but were not concluded successfully causing them to be suspended in June 1996, mainly because the United States did not submit an offer. The negotiations in maritime services were resumed when the next round of service negotiations began in 2000. Countries are under a standstill agreement to maintain their present level of restriction.

The initial deadline for basic telecommunications was April 1996, but negotiations were subject to considerable delay, and a successful agreement was finally reached on a Most-Favoured-Nation basis with the participation of 69 countries in February 1997. The agreement resulted in the signing and entering into effect of the 4th Protocol in February 1998 (which defines the deadline for ratification and the procedures for entering into effect; the additional liberalization commitments made by Members annexed to this protocol). Regarding financial services, a provisional agreement was reached in July 1995, and in December 1997, a full agreement was reached with the participation of 70 countries on a Most-Favoured-Nation basis. The 4\(^{th}\) Protocol was entered into effect and ratified by 64 countries as of February 2002. As a result, permanent agreement was reached with the United States, EU, and major developing countries in Asia and Latin America.

There were also several working groups studying other aspects of the GATS. In professional services, work had begun in the accounting sector, where progress was being made toward standardization. The working groups focused on two topics: 1) guidelines for the signing of mutual recognition agreements for accounting qualifications, and 2) multilateral disciplines for matters not covered in the GATS but that nonetheless constitute barriers to trade. The guidelines for mutual recognition agreements were completed in May 1997. The disciplines on domestic regulation were also adopted in December 1998, which provided

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\(^1\) Cabotage often refers to a right granted to foreign carriers and is defined as coastal navigation and trade, especially between parts within a country. See Webster’s New World Dictionary, 3\(^{rd}\) ed. at 194 (1988).
for transparency, licensing requirements, licensing procedures, and qualification requirements.

Later, in light of the three years that were required just for the accounting sector and the fact that Article VI:4 of the GATS is not limited to professional services only, some argued that a single organization should discuss disciplines for services as a whole, including professional services. This resulted in the reorganization of the Working Party on Professional Services in April 1999 into the new Working Party on Domestic Regulation that discusses the development of disciplines for services as a whole, including professional services.

Working groups are also studying government procurement, safeguards, and subsidies as they relate to services, but major progress was yet to be seen. Opinion has been especially divided on safeguards. Some countries think that some form of safeguards is needed, and others think that approval of any safeguards should be subject to strict conditions.

As a result, the deadline of the negotiation on safeguards was extended from the end of 1997 to the end of June 1999 at the Council on Trade in Services in November 1997. Discussions are thus continuing. In June 1999, the negotiation deadline was again extended. Negotiations continued with a goal of completion in December 2000.

In addition, the Committee on Specific Commitments is discussing development of the procedures for the modification of schedules and revision of the current classification. With regard to the classification, the committee is studying whether there is a need to revise the current classification, as well as the question of new services, and other issues.

Start of the Services Negotiations and until Doha Ministerial Meeting

In light of this, Japan negotiated during the Seattle Ministerial Meeting in November 1999 for agreement on GATS Article XIX:3, “Negotiation Guidelines and procedure.” As well as the launch of a comprehensive new round that would include other areas as well. Unfortunately, no consensus was achieved at the meeting. Moreover, services negotiation started in February 2000, but no agreement on the “Negotiation Guidelines” could be reached. To resolve this situation, it was proposed that a “Road Map” be created and agreed upon to provide a schedule through March 2001. The Trade in Services Committee adopted this “Road Map” in May 2000. The “Road Map” calls for Members to submit proposals for negotiations by December 2000, with a stock-taking
meeting held in March 2001 to review submissions and to consider the direction to be taken in subsequent negotiations. Pursuant to the “Road Map,” Japan submitted its proposals in December 2000 (for an outline of Japan’s proposals see Annotation 11-3). After the adoption of the “Road Map,” discussions of the “Negotiation Guidelines” began in earnest in May. The Guidelines were finalized in March 2001, stipulating negotiation goals, principles, scope and modalities (see Annotation 11-4 for details). In the course of the year-long discussion process, developing countries had at times threatened to pull out on the grounds that their views were not being adequately reflected, but agreement was finally reached as a result of the inclusion of numerous references to considerations for developing countries. March also saw a review of the progress to date, with members considering how to approach the next stage of negotiations.

Member countries continued to actively submit negotiation proposals even in the wake of the December 2000 deadline. These negotiation proposals reveal those areas of particular interest to respective Member countries, and demonstrate Members’ positive approach to the negotiations. Proposals were even received from some developing countries, with a total of 23 areas addressed by 30 countries (see Figure 11-7). In addition to its December 2000 proposal, Japan has also submitted negotiation proposals on MFN exemptions (see Annotation 11-5), measures related to the movement of natural persons, and energy services (see Annotation 11-6), demonstrating active involvement.

Since May 2001, the Special Session of the Council for Trade in Services has been examining the content of negotiation proposals. Each country’s proposal has been subject to three or four sessions in which the country in question explains its proposals in terms of cross-cutting and sectoral issues, while other countries raise questions or offer evaluations. This process has highlighted the particular issues presented by each area, such as classification, market access and national treatment. Discussion is currently underway concerning the proactive negotiation of energy services, which have not until now been granted individual sector status.

The November 2001 Doha Ministerial Declaration set the deadline for services negotiations, as with other agenda items, for 1 January 2005. The Ministerial Declaration also established benchmarks for initial requests and offers for specific commitments — 30 June 2002 for the former, 31 March 2003 for the latter — boosting the momentum of the services negotiations (see Annotation 11-7). Subsidiary organizations (including the Working Party on
Domestic Regulation, Working Party on GATS Rules, the Committee on Specific Commitments, and the Finance Committee) are also discussing technical issues as prerequisite to negotiations in light of these developments. Safeguard discussions by the Working Party on GATS Rules is fast approaching its March 2002 deadline, but progress to date suggests that the deadline will have to be extended yet again.

**Japanese Efforts**

In February 1999, the Subcommittee on Trade in Services of the WTO Relations Committee, a subsidiary organization to the Industrial Structure Council, published its interim report providing general directions for Japanese negotiations. The government of Japan takes every opportunity to make positive contributions to the negotiations on trade in services with consideration to a wide range of domestic opinion. For example, it made a joint proposal advocating maritime transportation negotiations (see above) and a negotiation proposal based on the “Road Map.”

The Japan Services Network (JSN) was established in October 1999 by industry leaders and published recommendations in March 2000. The JSN also exchanges opinions with its counterparts in other countries, including the Coalition of Service Industries (CSI) in the United States and the European Services Forum (ESF) in Europe. More information on these organizations can be found on their websites at:

- JSN: http://www.keidanren.or.jp
- CSI: http://www.uscsi.org
- ESF: http://www.esf.be
Part II Chapter 11 Trade in Services

Figure 11-6
Framework of the Four Unfinished Areas

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<thead>
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<th>Present Situation</th>
<th>Financial Services</th>
<th>Basic Telecommunications</th>
<th>Maritime Transport Services</th>
<th>Movement of Natural Persons</th>
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<td>Concluded 13.12.97 (came into force on 1.3.99)</td>
<td>Concluded 15.2.97 (came into force on 5.2.98)</td>
<td>Suspended in June 1996 (negotiations resumed in 2000)</td>
<td>Concluded 28.7.95 (came into force on 31.1.96)</td>
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Annotation 11-3

Outline of Japanese Proposal for the Negotiations on Trade in Services

1. Japan’s Position

Japan’s evaluation of the liberalisation of trade in services recognizes the contribution to the economic growth of Members.

2. Concrete Issues for Liberalization

Japan articulates the value of, and challenges for the liberalisation in sectors including financial services, telecommunication service, transport (maritime) service, reflecting upon interests of business community.

The scope of negotiations in this area should be comprehensive. The Most Favoured Nation principle should be of utmost consideration and applied equally. The central modality of negotiations should be the “request and offer” approach, a traditional bilateral negotiating method. In addition, Japan advocates the use of other negotiating methods such as the “cross-cutting approach” to complement the “request and offer” method.

The establishment of discipline should enhance the transparency of the regulations.
3. Relationship With a New Round

A new round should be launched expeditiously and the services negotiations should be a part of this new round.

Annotation 11-4

Guidelines and Procedures for the Negotiations on Trade in Services

1. Objectives and Principles

Pursuant to the objectives of the GATS, as stipulated in the Preamble and Article IV, and as required by Article XIX, the negotiations shall be conducted on the basis of progressive liberalisation as a means of promoting the economic growth of all trading partners and the development of developing countries, and recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services. The negotiations shall aim to achieve progressively higher levels of liberalization of trade in services through the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access, and with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

The negotiations shall aim to increase the participation of developing countries in trade in services. There shall be appropriate flexibility for individual developing country Members, as provided for by Article XIX:2. Special priority shall be granted to least-developed country Members as stipulated in Article IV:3.

The process of liberalization shall take place with due respect for national policy objectives, the level of development and the size of economies of individual Members, both overall and in individual sectors. Due consideration should be given to the needs of small and medium-sized service suppliers, particularly those of developing countries.

The negotiations shall take place within and shall respect the existing structure and principles of the GATS, including the right to specify sectors in which commitments will be undertaken and the four modes of supply.
2. Scope

There shall be no *a priori* exclusion of any service sector or mode of supply. Special attention shall be given to sectors and modes of supply of export interest to developing countries.

MFN Exemptions shall be subject to negotiation according to paragraph 6 of the Annex on Article II (MFN) Exemptions. In such negotiations, appropriate flexibility shall be accorded to individual developing country Members.

Negotiations on safeguards under Article X shall be completed by 15 March 2002 according to the Decision adopted by the Council for Trade in Services on 1 December 2000. Members shall aim to complete negotiations under Articles VI:4, XIII and XV prior to the conclusion of negotiations on specific commitments.

3. Modalities and Procedures

The negotiations shall be conducted in Special Sessions of the Council for Trade in Services, which will report on a regular basis to the General Council, in accordance with decisions taken by the General Council.

Negotiations shall be transparent and open to all Members and acceding States and separate customs territories according to Decisions taken in this regard by the General Council.

The starting point for the negotiation of specific commitments shall be the current schedules, without prejudice to the content of requests.

Liberalization shall be advanced through bilateral, plurilateral or multilateral negotiations. The main method of negotiation shall be the request-offer approach.

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

Based on multilaterally agreed criteria, account shall be taken and credit shall be given in the negotiations for autonomous liberalization undertaken by Members since previous negotiations. Members shall endeavour to develop such criteria prior to the start of negotiation of specific commitments.

The Council for Trade in Services in Special Sessions shall continue to carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and of Article IV in particular.
This shall be an ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment. In accordance with Article XXV of the GATS, technical assistance shall be provided to developing country Members, on request, in order to carry out national/regional assessments.

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

While the Council for Trade in Services in Special Sessions may establish subsidiary bodies as it deems necessary, the proliferation of such bodies should be avoided to the maximum extent possible. Existing subsidiary bodies shall be utilised to their maximum capacity.

The needs of smaller delegations should be taken into account, e.g. by scheduling meetings in sequence and not in parallel.

The Council for Trade in Services in Special Sessions shall, when appropriate, develop time schedules for the conduct of the negotiations in accordance with any relevant decisions taken by the General Council.
**Figure 11-7**
List of Negotiating Proposals

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* : U.S. submitted proposals about Accounting Services and Legal Services separately.
The U.S. submitted proposals about Advertising and Related Services and Telecommunications and Complementary Services separately.
Canada submitted proposals about Business Services and Computer and related Services.
Part II Chapter 11 Trade in Services

Australia submitted proposals about Accountancy, Architectural, Engineering, and Legal Services separately.

Annotation 11-5

Outline of Japanese Proposal for the MFN Exemption

The MFN principle is one of the most important pillars for realizing trade liberalization in a multilateral framework and is one of the most fundamental principles of the WTO Agreement. The Annex on Article II Exemptions specifies the condition, such as, "in principle, such exemptions should not exceed a period of 10 years," or "in any event, they shall be subject to negotiation in subsequent trade-liberalizing rounds."

This paper provides a basic analysis of all registered MFN exemptions based on data, thereby allowing a common understanding among Members. This should be effectively used during the future negotiations regarding the elimination and reduction of MFN exemptions.

Of the total 401 MFN exemptions registered with the WTO, we have included only 331 in our analysis. The remaining exemptions, relating to maritime transport (63 measures) have been excluded from this analysis.

A large proportion of the total exemptions is registered by only a limited number of Members. (Merely 13% of Members (17 Members) have registered 51% (167 measures) of all registered MFN exemptions.)

Developed countries have registered more exemptions than developing countries and least-developed countries. (Of 74 countries which registered exemptions, developed countries, accounting for 36% of the number of Members, have registered 47% of the measures, while developing countries, accounting for 53% of the total number of Members, have registered 45% of the exemptions. Significantly, those countries with more than 7 exemptions are mostly developed countries. Developed countries, which account for 64% of the Members, have registered 68% of the exemptions.

There are 75 cross-sectoral exemptions and many of them relate to either the movement of natural persons (38%. VISA requirements, etc.), or to investment (29% purchase of real estate, preferential measures, etc.). With
regard to single-sectoral registered MFN exemptions (258 exemptions), many of
them relate to audiovisual services (29%), financial services (20%), road
transport services (17%), business services (9%) and air transport services (9%).
By dividing the Members into 6 geographic regions, European countries
occupied 48% of the audiovisual services. In financial services, Asia occupied
14% and Africa occupied 12%. As regards road transport services, European
countries occupied 23%.

As shown in the above analysis, MFN exemptions are not equally
registered by all Members. Rather, only a handful of Members occupy a large
proportion of their total exemptions. Thus, to achieve our goal of eliminating
MFN exemptions, it is indispensable for Members to seriously endeavor to
reduce them.

In view of advancing the current services negotiations, it is not appropriate
for developed countries to maintain the total number of MFN exemptions
registered, especially since they are expected to set an example by opening their
large markets to all Members, including developing Members. Thus, in order to
achieve further liberalization in the future, in cooperation with developing
Members, developed countries with many exemptions should take the initiative
to reduce their exemptions as much as possible.

Japanese Proposal for the MFN Exemption URL

Outline of Japanese Proposal for the Energy Services

Importance of Energy Services and Issues to be Considered >

Securing an efficient and stable supply of energy is of great importance for
achieving economic and social development. In addition, in order to pursue
economic growth, it is of prime importance to increase the efficiency of
providing energy services, as well as other services.

Regarding rule-making in the energy services sector under the GATS, in
order to address the issues of public interest, such as the preservation of energy
security and supply reliability, environmental preservation, and the maintenance
of universal service and public safety, Member Countries should reserve their
own rights to adopt those regulatory measures which are transparent, competition-neutral and not more burdensome than necessary. The difference in commitments scheduled under the GATS should be justified under such Member's rights.

Furthermore, the possible rules under the GATS for the domestic regulation of the energy services sector should recognize the diversity among Member Countries, based on the fact that each country has a different history of energy services (e.g. whether energy services has been provided by a state-owned or private provider), and also in accordance with the current industrial structure. However, to the greatest possible extent, rules should be non-discriminatory and should ensure the maximum transparency.

Expectations from the Negotiations

A. Classification

Japan proposes that during the current negotiations, development of a new classification for the energy services sector be considered. Such classification should limit itself in scope to the energy services sector and should be developed so as to avoid conflict with existing commitments.

Discussions should comprehensively cover the entire range of energy services, from the wholesale of energy to the final consumption by the consumer. An initial focus should be placed on the "core" energy services, namely, wholesale sales, transportation (transmission and distribution of electricity, pipeline transportation and transmission of heat) and retail sales of energy.

Energy services subject to consideration should be energy neutral and irrespective of the energy resources. However, as regards energy services relating to nuclear power, careful consideration is necessary. In addition, Japan proposes to exclude discussions on the issue of the public ownership of natural resources.

B. Market Access and National Treatment

All Member Countries should consider negotiating on market access and national treatment to the greatest possible extent, taking into account the public interest.

The central government (including independent regulators) should ensure that local governments improve market access and national treatment within the market as a whole, in accordance with the economic reality.
Japan expects that appropriate consideration will be given with the aim of removing barriers of the installation of specific materials/equipment for energy services and technical experts knowledgeable about the energy sector.

C. Review of Regulatory Frameworks

Japan believes that in the negotiations on energy services, it would be useful to consider the effectiveness of frameworks for domestic regulation, which would contribute to the creation of a competitive environment taking into account the viewpoint of a non-discriminate, fair and transparent use of the networks.

Japanese Proposal for the Energy Services URL

Annotation 11-7

Ministerial Declaration
(quotation concerning of Trade in Services)

15. The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. We recognize the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by Members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons. We reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. Participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003.

31. With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:
(iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

ECONOMIC IMPLICATIONS

In many developed countries, service industries account for about 60 to 70 percent of the gross domestic production and a similar percentage of the total labour force, making them a vital component of the national economy. This tendency toward a so-called soft-economy or service economy is something that can be observed around the world, although to varying degrees.

Movement of Production Factors

Unlike trade in goods, trade in services is usually accompanied by movement of production factors such as capital, labour, technology, and managerial resources. Although trade in services can sometimes be accomplished without any movement of the service provider or consumer, as in the case of cross-border movement of visual and software products, this is rarely the case. Trade in services often requires relocation of the service provider to the place of consumption (e.g., establishment of a business in the country of consumption, or relocation of natural persons to the country of consumption to provide services), or movement of the consumer to the place where the service is provided (e.g., repair of machines abroad, or overseas trips for sight-seeing purposes). In addition, services have another characteristic distinct from that of goods: one cannot hold stock in services.

Since trade in services often requires movement of production factors, including capital, labour, technology, and management expertise, liberalization of trade in services will create new relationships among production factors originating in different countries. The effects on the domestic economy tend to be large, although the degree differs according to the form it takes, such as direct investment and movement of labour.

Direct investment will, in many cases, take the form of market entry of high-quality competitive service providers. Their participation may, in turn, change business practices in the importing country, and have a positive effect on
efficiency in the service industry there, as well as provide consumers with a wider range of choices. In this case, existing domestic service suppliers would be faced with increased competition, and at times be subject to merger or be driven out. However, the negative effects on the labour market are often small, and in the case where new services are created, it will have a positive effect.

Movement of labour will have a more direct effect on the labour market. For example, if there is movement of unskilled labour from a low-wage country to a high-wage country, service suppliers will benefit from the use of cheap labour, and will be able to supply services more cheaply. On the other hand, foreign unskilled labour will directly compete with domestic unskilled labour. Significant social costs may arise, depending on scale of the movement of labour.

Effects of Increased Efficiency in the Service Sector

We need to keep in mind that most services such as financial services, transport and shipping, communications, distribution, construction, and energy are inputs to other industries. Therefore, increased efficiency in a certain service sector may benefit not only the service sector itself, but will often have a greater positive spill-over effect in other service and manufacturing sectors. Benefits of trade in a service sector are not limited to increased efficiency in that specific service sector.

To conclude, although the liberalization of trade in services may result in a short-term selection of some inefficient service providers, it will lead to improved economic welfare for consumers through increased competition over quality and prices. Over the long term, it will contribute to better productivity and competitiveness of service providers not only in the liberalized service sector, but also in industries that use that service as an input. The economic benefits to be had from liberalized trade in services are therefore immense, and even in areas where regulation is required, steps must be taken to ensure transparency, procedural fairness, and fair competitive conditions.

E-Commerce: Main Points of Discussion

Main Points in WTO Discussion on E-Commerce

E-commerce has prompted WTO discussion on its relation with existing
Part II Chapter 11 Trade in Services

WTO agreements as a new form of trade which frequently involves cross-border transactions. Specific areas of discussion are as follows.

**Main Points of Discussion**

*a. Handling of Digital Content Under Current Agreements*

E-commerce is bringing substantial changes to the distribution structures for goods and services. The change does not remain in electronic processing of contracts and settlement of accounts; digital content lends itself to on-line distribution, and as a result, a market for international distribution is growing.

In the context of trade, the question is how to discipline on-line cross-border transactions of digital content within the context of the WTO.

The United States asserts that digital content is a “virtual good” that should be treated the same way as any other good under the GATT disciplines. The EU, on the other hand, asserts that electronic commerce is a service activity and, from the standpoint of technical neutrality, should be disciplined only by the GATS. Digital content as well should be recognized as a form of service trade similar in nature to the programming content of broadcasting services.

Japan’s position on this issue is that in cases where recording and cross-border transactions of digital contents through carrier media, for example paper or diskette form, fall within the coverage of GATT disciplines, it is appropriate that the same digital contents transmitted through the Internet should also be granted GATT-level treatment, that is disciplines such as the unconditional application of the MFN, national treatment, or the general prohibition of quantitative restrictions. Japan is wary of the EU position that electronic commerce should be governed entirely by the GATS because of the potential to apply to the rapidly developing e-commerce field the most-favoured-nation exemptions, and reservations of market access and national treatment obligations claimed by the EU for 155 service sectors (particularly cinema, broadcasting), primarily for cultural reasons. We have explained repeatedly to the EU and the US the essential need to assure basic WTO principles such as most-favoured-nation and national treatment for the distribution of digital content.

*b. Taxation of Electronic Transmissions*

Digital content that used to be delivered in physical form on floppy disks
and CD-ROMs is increasingly being delivered on-line across national borders. The main problem in attempting to tax these cross-border transactions is that it is almost impossible for customs agencies to monitor them. If one attempts to tax the means of electronic transmission (for example, the transmission log) as a substitute, one runs the risk of imposing taxes far in excess of the value of the content because it is impossible to value the digital content itself separately from the means of transmission.

In addition to these difficulties in collecting customs duties on electronic transmissions, there is also the need to ensure a free trading environment to foster the growth of e-commerce. This has led many to argue for the establishment of an international agreement not to impose custom duties on electronic transmissions.

At the Second WTO Ministerial Conference of 1998, Members agreed to a “Ministerial Declaration on Global Electronic Commerce” that promised to maintain the current practice of not imposing custom duties on electronic transmissions until the next Ministerial Conference (1999). However, when physical goods are moved, ordinary tariffs apply.

The impasse at the Third Ministerial Conference in 1999 delayed agreement on the handling of the taxation moratorium. The Fourth Ministerial Conference in Doha, Qatar in November 2001, however, officially announced that the moratorium would be extended until the Fifth Ministerial.

c. Other Main Points

Other main points are as follows. These overlap to some extent with issues discussed above.

Classification of digital goods. What are the disciplines to be applied to digital products that can be distributed both in the physical world and on-line (examples include software, videos, and programs; see above)? While they are essentially the same things, the GATT would be applied in the case of physical distribution while the GATS would be applied for on-line distribution, and the question is how to make adjustments when treatment under one agreement is less advantageous than treatment under the other.

Technological neutrality. When goods and services can be provided in both the physical and the on-line worlds, what adjustments are required so that one is not treated disadvantageously to the other? For example, tariffs that would
be applied to physical goods may not be applied on-line, or services may be impaired by domestic regulation that was not drafted with the on-line world in mind. It is important to examine that WTO rules be reformulated and applied to adapt to technological advances.

Consumer confidence. There may be cases in which regulations enacted for prudential reasons (to protect consumers) may serve as impediments to e-commerce. A horizontal discussion not limited by the good/services frameworks is needed to arrive at a balance.

Competition policy. The issue here is how to balance intellectual property protection and competition promotion when a monopoly based on intellectual property rights exists. This will require study of how to rework of the GATS competition disciplines and the TRIPs disciplines.

Jurisdiction and applicable law. The growth of cross-border e-commerce will inevitably be accompanied by a surge in the number of cross-border disputes. The WTO will need to consider how to approach the issues of jurisdiction and applicable law in the context of the WTO agreements.

E-commerce Initiatives and the WTO

a. Adoption of Ministerial Declaration on Global Electronic Commerce

At the second WTO Ministerial Conference (the Geneva Ministerial Conference) in May 1998, ministers adopted a “Ministerial Declaration on Global Electronic Commerce”. The Declaration paved the way for the formulation of a work programme for the consideration of all trade-related aspects of e-commerce, and also instituted a moratorium on the taxation of electronic transmissions.

b. Creation of Electronic Commerce Working Programme

The work programme was created in October 1998 in response to the declaration from the Second WTO Ministerial Conference the previous May. Subsidiary bodies (the Council for Trade in Goods, Council for Trade in Services, Council for TRIPS, and Committee on Trade and Development) were asked to report their findings to the General Council by 30 July 1999. The Council for Trade in Services issued an interim report in March 1999 and a final
report in July. The Council for Trade in Goods, Council for TRIPS, and Committee on Trade and Development also issued reports. Below is an outline of the issues studied by each of these bodies.

**Council for Trade in Goods**

Discussions focused on the relationship between e-commerce and GATT disciplines, the relationship between e-commerce and import licensing procedures, rules of origin, customs duties, and classification issues.

**Council for Trade in Services**

The Council for Trade in Services recognized that e-commerce fell within the scope of the GATS disciplines, but also found the need for further studies. On the question of which of the four modes of the GATS to apply, the Council acknowledged that any of them could be applied, but was unable to reach a conclusion on how to distinguish between Modes 1 and 2 and how to classify services. The Council also discussed privacy protection, competition (issues raised by monopolistic suppliers), customs duties, classification issues, and domestic regulation.

**Council for TRIPS**

The TRIPS Council discussed copyrights and related rights, protection and enforcement of trademarks, and access to technology. On the question of legal enforcement, the Council found that further studies of jurisdiction rights and other areas would be required, as would coordination with WIPO.

**Committee on Trade and Development**

The Committee on Trade and Development discussed the impact of e-commerce on developing country trade and economies, methods to maximize the benefits from e-commerce, transfers of e-commerce technologies to developing countries, improvement of access to telecommunications infrastructure, and the role of movement of natural persons.
c. Suspension and re-open of The E-Commerce Work Programme

The E-Commerce Work Programme has for all purposes been in suspension since the collapse of the Third WTO Ministerial Conference in October of 1999. However, there have been high demands for liberalization and rule formulation for rapidly developing e-commerce-related sectors, and spurring the General Council to announce the resumption of the Work Programme in July 2000, approximately six months after its suspension at the Seattle Ministerial. There, it was decided that the report submitted to the Third Ministerial Conference will be updated to in time for the December General Council meeting, and the groups responsible for the working plan have been instructed to identify horizontal issues as part of this. Below is an outline of the issues being studied by different councils and committees.

Council for Trade in Goods

The Council for Trade in Goods is verifying that the 1999 report is correct and discussing market access, tariffs, standards for e-commerce, rules of origin, and classification issues. It has been announced that the Council on Goods has made early contributions in the area of classification of digital goods.

Council for Trade in Services

The Council for Trade in Services determined that the 1999 report accurately reflected the opinions of members even today, and avoided reopening the discussion on these issues. It will be discussing issues for which further discussion was found to be necessary, but claims that the December deadline is too soon. The main horizontal issue identified by the council is development. There is also a difference of opinion on whether customs duties, classification of electronically transmitted materials, competition and other areas identified by other councils should be included in horizontal issues.

Council for TRIPS

Among TRIPS-specific issues involved with electronic commerce are trademark issues, Internet domain name issues, anti-competitive use of intellectual property in digital environments, and how digital technology can be used to enforce intellectual property rights. Among the horizontal issues identified by the Council are legal jurisdiction, choice of law, electronic
contracts, enforcement, and categorization of intellectual property products.

There is a difference of opinion in the Council on whether the handling of these issues should be left to a task force, but it was recognized that this was a decision for the General Council to make. Members agreed on the need to consider coordination with WIPO, which has enormous expertise in this area and has already begun studies.

Committee on Trade and Development

The Committee acknowledged that no further study of the issues had been undertaken since the submission of the 1999 report and identified the development aspects of e-commerce as having a horizontal nature.

d. Response to Crosscutting Issues (Discussion on the Establishment of a Horizontal Taskforce)

While various WTO subsidiary organizations are addressing individual e-commerce issues, Japan and other WTO Members have come to recognize that many issues regarding the impact of e-commerce on WTO disciplines require crosscutting consideration beyond the capacity of these organizations, which deal with specific WTO agreements. So, the WTO is considering the establishment of a horizontal taskforce on e-commerce to develop a broad understanding of the impact that it will have on WTO disciplines (the impact on trade in goods, services and intellectual property, etc.).

Japan advocates the establishment of a horizontal task force in which experts in this rapidly advancing area would participate. We see this as an appropriate venue for centralized discussion of the issues that will be raised by various aspects of e-commerce. We have explained repeatedly the examples of the cross-cutting issues that would be considered in the horizontal task force, and that liberalization itself will be undertaken within the services negotiations framework.

The United States, Canada, and many other countries support the establishment of the working group, and during the APEC Brunei Ministerial and Summit Meetings held in November 2000, APEC members agreed to call on the WTO to establish an analytical horizontal taskforce. Industry groups in Japan, North America, and Europe have also expressed an interest in the task force.
Opposition to the task force comes from the EU, which faces sensitive issues regarding audio and visual products, and some developing countries, who argue that implementation issues should be resolved first. Others argue that substantive discussions could be held at a special meeting of the General Council without establishing a working group. A decision on the establishment of the task force has not yet been reached.

**e. Resumption of Substantive Discussions (Resumption of the E-Commerce Work Programme)**

Noting that the focus on establishment of a horizontal taskforce was forestalling adequate progress with discussion in WTO subsidiary organizations, the “Quad” countries (Japan, the US, Canada and the EC) sought to redress this situation by holding an experts’ meeting in April 2001. The meeting agenda addressed market access for software (including discussion on the classification issue) and developing country issues.

In May 2001, the General Council also responded to the growing momentum of e-commerce considerations by deciding to hold a dedicated discussion on e-commerce in June as an arena for intensive discussion among experts on crosscutting issues. The meeting began by examining the crosscutting issues (classification of digital goods, development, the financial implications of e-commerce, the relation between e-commerce and conventional trade, taxation of electronic transactions, competition, and jurisdiction and applicable law) suggested by the WTO Secretariat. Japan and Singapore presented papers on the classification of digital contents, while the EU addressed development issues, prompting substantive discussions. The digital contents issue drew a particularly lively response indicative of the strong interest in this area. Little support was expressed for the EU and Singaporean view that all digital contents transmitted electronically should be considered as services. Many Member countries noted that it was impossible to categorize all digital contents as either goods or services, and called for further considerations. The matter was therefore earmarked for continued consideration.

**f. Fourth WTO Ministerial Conference**

The Fourth WTO Ministerial Conference held in Doha, Qatar 9-13 November 2001 adopted a Ministerial Declaration which signaled the launch of a new round of negotiations based on a broad-ranging agenda. That agenda included tariff reductions for non-agricultural goods and other trade liberalization, the strengthening of anti-dumping and other WTO disciplines, the creation of an investment framework, and responses to 21st century issues such
as e-commerce and the environment.

In the context of e-commerce, it was agreed to continue the moratorium on taxation of electronic transmissions until the Fifth Ministerial. Members also agreed to continue the Work Programme on Electronic Commerce, and instructed the General Council to consider the most appropriate institutional arrangements for handling the Work Programme, and to report on further progress to the Fifth Session of the Ministerial Conference.

At the drafting stage, Japan pushed for the inclusion of four points: 1) the application of WTO rules to e-commerce; 2) avoidance of the introduction of unnecessary regulations; 3) continuation of the Work Programme on E-Commerce and provision of a mandate for a new e-commerce organization; and 4) extension of the taxation moratorium up until the Fifth Ministerial. Developing countries objected to the application of WTO rules to e-commerce on the grounds that with the shape of future agreements on e-commerce still unclear, further consideration was needed as to the results of such a move. They also felt that avoidance of the introduction of unnecessary regulations was a vague expression which did not specify exactly what type of regulations would be regarded as unnecessary. No overt reference was therefore made to these points in the Ministerial Declaration.

As to the third point, Japan argued that many WTO issues relating to e-commerce needed to be discussed from a crosscutting perspective, and that the mandate held by the General Council should be transferred to a new organization (an E-Commerce Committee, for example) which would undertake the necessary considerations with a focus on cross-cutting issues. This was taken on board in the Ministerial Declaration reference to “consideration of institutional arrangements”.

Turning to the taxation moratorium extension, the permanent extension sought by the United States was opposed by the bulk of Member countries who wanted a more limited extension, with the latter view reflected in the Ministerial Declaration.

As noted above, the relation between the WTO and e-commerce has been debated for close to three years since the Geneva Declaration in the context of the Work Programme on Electronic Commerce and under the auspices of four different WTO subsidiary organizations (the Council for Trade in Services, the Council for Trade in Goods, the Council for TRIPS, and the Committee on Trade and Development). The new institutional arrangements to be made should see considerations gather greater momentum in the years ahead.

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g. “Towards eQuality: Global E-Commerce Presents Digital Opportunity to Close the Divide Between Developed and Developing Countries”

The development of concrete rules will be crucial in facilitating the further
evolution of e-commerce and the creation of an internationally harmonized e-commerce environment. Recognizing this, Japan has participated actively in WTO discussion on e-commerce, with the Ministry of International Trade and Industry announcing its first proposal in June 2000, a second in October, and a third in June 2001 in its new incarnation as the Ministry of Economy, Trade and Industry. These proposals were designed to identify and stimulate discussion on key issues for consideration in relation to e-commerce and the WTO. The three proposals are outlined below.

E-commerce is a powerful tool in the world economy of the future. It has the ability to alleviate the international gaps in information and to help achieve a global “eQuality”. The term “eQuality” implies a strong faith in the absolute necessity of “equality” and “quality of life” for people living in the information society. The ideas expressed in the “eQuality” proposal are based on the principles and concepts founded in the “Okinawa Charter on Global Information Society” issued by the Kyushu-Okinawa Summit in July 2000 and on the Basic Law on the Formation of an Advanced Information and Telecommunications Network Society (IT Basic Law) that took effect in January 2001.

The proposal attempts to achieve three balances.

The first is the balance between the interests of enterprises and the interests of consumers. We seek to ensure “eQuality” in the information society of all countries, and we must take care that corporate activities do not harm the interests of consumers. WTO members should take into consideration the viewpoints of both consumers and the industries when they formulate and implement policies.

The second is the balance between developed and developing countries. It is vital that we provide reliable, stable networks at a global level so that both developed and developing countries have the opportunity to expand their e-commerce opportunities. As we make the transition to an information-centric society, liberalization and facilitation alone will not be enough. We must create consistent environments while accommodating different social and cultural circumstances, and we must build capacity in developing countries so that both developed and developing countries enjoy “eQuality”.

The third is the balance between liberalization and rules. Liberalization in the network economy invigorates economies by enabling corporate activities to expand internationally. On the other hand, there are justified fears that the information economy may give rise to an international oligopoly of global
companies. Enjoying the benefits of liberalization is predicated upon fair competition in liberalized markets. Rule-making is also vital to the building of a vigorous, active cyberspace, because people must be able to participate in market environments with full confidence that they will work. There must therefore be a balance in the legal environment between promotion of the liberalization of e-commerce and the maintenance of necessary consumer protection and order.

The establishment of the “E-commerce Committee”

To draw on the results of the considerations of the Work Program on E-commerce currently being conducted under the leadership of the General Council and take these considerations a step further, we propose the establishment of the “E-commerce Committee” (provisional title) under the auspices of the General Council. The new Committee should follow the progress of negotiations at the various Councils, providing guidance to them where appropriate, while also conducting its own considerations centered on cross-cutting issues beyond the mandates of individual Councils.

Trade Liberalization of E-Commerce-related Sectors

As borderless e-commerce entails the cross-border provision of telecommunications, settlements, distribution and other related services, market access also needs to be secured for these related services. From the perspective of promoting the liberalization of trade in services closely related to borderless e-commerce, we support the idea of selecting certain services as the “e-commerce cluster”, in a manner of delimiting this to an appropriate scope in terms of facilitating the negotiations. However, to handle concrete delineation of scope more realistically, it would be selected the services needed as a basis for cross-border e-commerce in both goods and services, as well as the most vital among those services provided in cross-border e-commerce, and define them as the “e-commerce cluster”.

Consideration of domestic regulatory principles

The development of e-commerce makes it easier for companies to participate in markets in a number of countries, but also underscores the issues involved with domestic regulation. States continue to introduce a range of domestic regulations to achieve their respective policy goals, and these domestic regulations could potentially obstruct cross-border e-commerce and restrict trade.

It is desirable that domestic regulations in different countries be unified and minimized so as not to impair the development of e-commerce. As domestic regulatory principles, it should be ensured objectivity, transparency and necessity (i.e., “no more burdensome than necessary”) in domestic regulations.
related to e-commerce. It is important to work toward the formation of the additional principles and the criteria for determining in light of these as mentioned above.

*Capacity Building of Developing Countries*

The WTO and its Members should consider assistance to developing countries so that the benefits of e-commerce are spread equally to them. Specific forms of cooperation might include technology cooperation, infrastructure creation, sharing of information and experiences through close policy dialogues, and cooperation using regional frameworks like APEC.

The full paper is available on the Ministry of Economy, Trade and Industry website at:


**LEADING CASE STUDY**

Canada -- *Measures Regarding Automobiles*

The Canada's preferential measures for wholesale automobile services under the “Auto Pact” are in violation of the most-favoured-nation (Article II) and national treatment (Article XVII) obligations of the Services Agreement (GATS). Japan, together with the EC, contested the programs in WTO panels. The Panel upheld virtually all of the Japanese arguments. But the report of the Appellate Body submitted in May 2000 overturned the Panel ruling, finding insufficient evidence that the measure impacted services. Canada, after completing its public comment procedures, issued an administrative order eliminating the preferential measures effective 18 February 2001. (For details, see the section on Canadian automobile measures in Chapter 1, Most-Favoured-Nation Principle.)