

Overview: Services Issues for the Western Hemisphere

SHERRY M. STEPHENSON

INTEREST IN THE LIBERALIZATION of services trade in the Western Hemisphere has been running high since the mid-1990s, and all of the countries of the region are participating in liberalization efforts, often on various fronts simultaneously. The majority of chapters in this volume were presented at the conference “Services Trade and the Western Hemisphere,” in San José, Costa Rica, in July 1999. This conference was one of the key events leading up to the first World Services Congress in Atlanta in November 1999, and to the negotiations under the WTO General Agreement on Trade in Services (GATS) in January 2000. One inspiration for the conference was the fact that in the Western Hemisphere countries had already launched regional negotiations on services in April 1998 as part of the effort to create a Free Trade Area of the Americas (FTAA). In addition, since 1994 all of the countries in the hemisphere have also concluded one or more subregional integration agreements to cover trade in services or are in the process of doing so.

Thus, efforts to negotiate the liberalization of services trade are currently under way at three levels in the Western Hemisphere: the multilateral level, the regional or hemispheric level, and the subregional level. These efforts make it imperative both to understand what is being discussed and implemented and to articulate the linkages and relationships between the different agreements and the disciplines and obligations they contain. A great deal has been written about services at the multilateral level under GATS, but no one volume addresses the subregional and regional efforts to liberalize services in the Western Hemi-

sphere. This book fills that gap and explores the link between the ongoing regional, subregional, and multilateral negotiations on services.

Part One deals with the main issues relevant to services liberalization at the multilateral and regional levels, including options to improve the GATS architecture; the scope of regulatory reform; the treatment of investment; and the clarification of WTO requirements for countries to engage in an economic integration agreement. Part Two examines regional agreements on trade in services concluded by several economic integration groups—including NAFTA, the Andean Community, MERCOSUR, and CARICOM—as well as several bilateral free trade agreements covering services, especially those signed by Mexico. These agreements are examined in depth by regional trade experts, who also evaluate the degree of market opening and regulatory reform such agreements have achieved. Also discussed is the way these agreements might best contribute to ongoing services liberalization.

What lies behind the recent activity and interest in negotiating liberalization of services trade by countries of the Western Hemisphere? Interest in this area was heightened by the fact that services were brought under multilateral disciplines for the first time with the coming into force of the World Trade Organization in January 1995. Countries first negotiated on services during the Uruguay Round, from 1986 to 1994, becoming familiar with the concepts. The Uruguay Round translated to the policy level a phenomenon that had been occurring for some time at the practical level as trade in services increased in importance in world trade. By the middle of the 1990s, services trade constituted more than one-fifth of world exports and imports of goods and services. The conclusion of NAFTA and its implementation in January 1994 proved to be an equally strong catalyst for the countries of the hemisphere, inciting them by example to incorporate services into their subregional arrangements. In particular, Mexico extended the liberalization of services to other Latin American countries in the hemisphere through a series of NAFTA-type free trade agreements.

The economic importance of trade in services has been increasing steadily in the Western Hemisphere over the past few decades and has become one of the most critical elements of economic growth for the region. The region has a slight comparative advantage in services trade, accounting for 25 percent of world services exports in 1998, as compared with around 21 percent of world merchandise exports. However, trade in services achieved only sluggish growth during the 1990s, compared with the dynamism of trade in goods in the Western Hemisphere. According to the WTO annual report of 1999, services exports of the Western Hemisphere grew 7 percent over the 1990 to 1998 period. This compares with 9 percent for merchandise trade over the same period. This

situation suggests that considerable barriers to trade in services remain within the region, in contrast to tariffs, which have been lowered by more than two-thirds since the mid-1980s (from an average of over 40 percent for the region in 1986 to around 12 percent in 1999).

Among countries within the region, the importance of services varies considerably. Although as a percentage of GDP the U.S. service sector is the largest, with service activities constituting 75 percent of output, for the region as a whole the figure is over 60 percent on average. In terms of trade, however, services are more important by far for the smaller countries of the Caribbean and Central America; in 1994 the specialization ratio for traded services (that is, the percentage derived by dividing the value of services exports by that of merchandise exports) was over 100 percent for twelve countries of the hemisphere and between 30 and 100 percent for another six countries. Thus for the smaller and even medium-sized countries of Latin America and the Caribbean, commercial services exports constitute the largest foreign exchange earner, and services represent the largest source of employment for their economies. For these countries the importance of services can hardly be overstated. The bulk of commercial service activity at present is primarily in tourism, financial services, and transport. However, exports of other services, helped by evolving technological developments such as the Internet, are rapidly increasing in importance as well (health care services, data processing, and educational services, in particular).

Thus all countries in the Western Hemisphere have a strong interest in improving the quality and competitiveness of their service sector and in expanding the growth of their services exports. One of the best ways to reach this objective is by engaging in market-opening and rule-setting negotiations. However, attempting to do this at several levels simultaneously is both challenging and complex for policymakers, although the fundamental issues to be addressed contain many similarities. These include the threefold challenge of how best to remove discrimination against foreign service providers, how to deal with non-discriminatory regulations that have the effect of restricting trade, and how to design rules that enhance transparency, ensure stability, and help to optimize the liberalizing character of any given services agreement. The chapters in this volume attempt to answer these questions, examining services issues and developments for countries in the Western Hemisphere on all three levels—multilateral, regional, and subregional—as well as their interrelationship.

Part One: Crosscutting Services Issues

In the first section of the book, which deals with crosscutting services issues, the chapter by Geza Feketekuty evaluates the principal existing GATS

provisions and their application and suggests how they could be improved in the coming round of multilateral services negotiations. The author emphasizes the threefold challenge faced by negotiators in designing GATS, namely the removal of discrimination against foreign service providers, the problem of nondiscriminatory regulations having the effect of restricting trade, and the four different ways or modes through which services can be traded. Several of the deficiencies encountered by GATS in its first five years of operation stemmed from the fact that many of its concepts and terminology were adapted from the GATT system and do not fit comfortably in their application to services trade. This is due to the nature of restrictions affecting trade in services, which are present in the form of different regulatory regimes and discriminatory laws or decrees. The author suggests that most of the present shortcomings in GATS do not require a fundamental overhaul of the system but could be remedied through specific improvements in the GATS structure. These would include: clarifying the scheduling procedures; separating the commitments on discriminatory and nondiscriminatory quantitative restraints into two separate categories; obliging greater precision in specifying how a particular law violates national treatment or imposes quantitative barriers; adopting negotiating targets or formulas in order to expand both the number of commitments in GATS schedules and the number of service sectors covered; and establishing conditions under which countries would be prepared to eliminate existing MFN reservations. The author also suggests that it would make sense to begin thinking about integrating GATT and GATS into a single instrument for liberalizing trade in goods and services because the distinction between the two should become less important in the future.

The chapter by Joel Trachtman and Kalypso Nicolaïdis stresses the importance of having regulatory reform and the development of regulatory disciplines to accompany services liberalization in critical, regulated sectors so that service providers are assured of their ability to effectively gain access to foreign markets. Although most attention with respect to services has been focused on *discriminatory* barriers to trade in services, the authors underline that *nondiscriminatory* regulatory diversity also poses a substantial barrier to international trade in services. They explore options for developing regulatory principles and fostering recognition agreements for service industries under GATS and the subregional agreements, including an assessment of the kind of criteria that should guide the fundamental trade-off between trade liberalization objectives and legitimate domestic constraints. The authors point out the choice to be made between elaboration of more general principles for regulatory practices, which would require interpretation and clarification through disputes and panel rulings, and agreement on more specific rules, which would mandate recogni-

tion or harmonization through political agreement. For such a choice to be made, it is critical for governments to decide how to allocate regulatory jurisdiction. It is also critical to determine the appropriate regulatory structure by service sector and the institutional framework within which to implement this structure.

GATS has only recently begun to address the issue of regulatory barriers to services, which should be one of the major areas of focus during the coming round of multilateral service negotiations. Provisions on domestic regulation and recognition are also included in the various integration agreements in the Western Hemisphere. The choice made by members of these agreements, to adopt general standards or specific rules to develop regulatory principles and promote recognition agreements, will depend upon the institutional setting in which such a choice takes place. Because the circumstances for a small number of states in a regional arrangement may differ from those of a larger and more disparate membership, different groupings of states will have different preferences and affinities. The authors provide arguments in favor of and against the alternative approaches and recommend that governments choose a standard that maximizes the level of liberalization, that rules and standards be combined whenever possible, and that an evolutionary approach to rule-making be adopted.

The question of what governments should do about the growing links between services trade and investment is considered by Pierre Sauvé in his chapter. The central tenet of the paper is that although the time appears not yet ripe for the development of a generic set of investment disciplines at the multilateral level, the FTAA process offers countries of the Western Hemisphere a unique opportunity to consolidate the liberalization they have already been carrying out in the investment and services area at the regional level, and to explore new avenues of liberalization and rule-making through novel solutions to what have become emotionally charged problems. The author underlines the heightened sensitivities over possible international investment rules resulting from the failure of the negotiations on a Multilateral Agreement on Investment at the OECD in 1998 and the failure of the Seattle WTO ministerial meeting of December 1999. He states that the development of multilateral investment rules at the WTO will most likely be a slow, incremental process, given the lack of a compelling rationale in support of a multilateral set of investment protection disciplines. In fact, it is through the services negotiations under GATS (mode 3 of service supply) that discriminatory regulations inhibiting foreign direct investment in service activities might best be rolled back. The author proposes several ways to enhance the "investment-friendliness" of the agreement.

This situation at the multilateral level contrasts sharply with the decision of the countries in the Western Hemisphere to negotiate generic investment disciplines in the context of the FTAA process. Such negotiations are already well

advanced, and a broad consensus exists on what an investment agreement at the regional level should include, borrowing heavily from those disciplines contained in the many existing bilateral investment treaties. The author thus urges the countries of the hemisphere to go forward in the FTAA context and incorporate investment into a broad hemispheric free trade agreement; this would give much greater commercial value and political legitimacy to previous unilateral liberalization efforts by providing a floor of juridical security along with procedural and regulatory transparency. Countries in the Western Hemisphere are in a position to innovate in the design of rules and disciplines and to make the interface between services and investment an effective one.

The only link between WTO multilateral disciplines on services and regional integration efforts to liberalize services trade is found in GATS Article V, the equivalent for services of GATT Article XXIV for goods, covering customs unions and free trade areas. All regional integration arrangements incorporating provisions on services trade must meet the requirements set out in GATS Article V in order to be deemed compatible with the multilateral trading system and to be considered as contributing to trade liberalization overall. In her chapter, Sherry Stephenson argues that GATS Article V is extremely important because it should provide the underpinning for members of regional agreements to set their objectives for liberalization and integration as high as possible. However, at this writing, GATS Article V is not functioning well for two basic reasons, one of a systemic nature and the other of a practical but ultimately political nature. The systemic problem is a lack of clarity in its provisions, the concepts of which have largely been taken from GATT Article XXIV but which cannot be easily applied to services trade. Unlike reductions in tariff barriers, reductions in barriers to service providers are difficult to measure quantitatively because they are found in the form of national laws, regulations, and administrative requirements. Moreover, the degree of liberalization in services trade that a regional integration arrangement is expected to achieve among its members (in order to qualify for the removal of “substantially all discrimination” under Article V) is not uniformly understood, nor is the interpretation of what is meant by “substantially all trade” in terms of encompassing the four modes of service supply and various service sectors. The second problem is that parties to regional integration agreements covering trade in services, particularly those with membership of developing countries, have not chosen to notify such agreements to the WTO. This situation is resulting in a low degree of transparency over the provisions and disciplines of regional integration agreements in the Western Hemisphere and elsewhere. The author argues that if this article is not strengthened in the current round of services negotiations under

GATS it may undermine the trading system in the future, given the proliferation of regional efforts to liberalize services.

Very little has been written on the dispute-settlement process involving services. The chapter by Hector A. Millán Smitmans fills this gap. In particular, the author discusses whether the existing rules and procedures set up originally to deal with trade in goods and now extended to services under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) are adequate, or whether they should be amended to deal with the particularities of services trade. His analysis focuses on those WTO dispute-settlement cases in which the provisions of GATS have been invoked. Within the five years that the DSU has been operational, no fewer than twelve cases have been brought to the WTO in which services issues have been involved and provisions of the GATS have been invoked, including Articles I, II, III, VI, XVI, XVII, XXI, and XXVIII. These disputes have involved complaints by Ecuador, Guatemala, Honduras, Mexico, and the United States over the regime of the European Communities for the importation, sale, and distribution of bananas, involving wholesale and distribution services and the definition of these as well as subsequent related complaints over the implementation of the panel's report and the recommendations of the Dispute Settlement Body (DSB); the United States against Japan on measures affecting distribution services; the European Communities against Canada on measures affecting film distribution services; the United States against Canada on certain measures concerning the tax treatment of "split-run" periodicals; the European Communities against Korea regarding its laws, regulations, and practices in the telecommunications procurement sector; and the United States against Japan concerning its laws, regulations, and requirements affecting the distribution and internal sale of photographic film and paper.

The author points out that WTO DSU rules and procedures may only be invoked for disputes concerning the general obligations of GATS and with regard to the specific commitments set out in the national GATS schedules. Given the history of the services disputes to date and the tendency of the various panels and the Appellate Body to interpret the definition of services involved in the disputes in a broad rather than a narrow manner, this may have implications for the willingness of participants in future GATS negotiations to take on additional, wide-ranging market-access commitments. The author writes that there is a risk that the DSB will be called upon to examine increasingly complex issues in the services sector where a simple extrapolation of existing provisions may not be adequate without prior agreement on the rules and principles that must be observed. It is also notable that several of the disputes con-

sidered by the WTO touching on services involve members of regional groupings who have chosen to have these adjudicated at the multilateral rather than the regional level, although both options are available through the dispute-settlement mechanisms of the various regional integration agreements. This is also an issue that may need to be considered in future negotiations.

Part Two: Services Liberalization at the Regional Level

Services have been the object of considerable liberalizing zeal at the regional level in the Western Hemisphere, and several agreements were signed or extended during the 1990s to promote the liberalization of services trade. The forerunner of such efforts is NAFTA (January 1994) among Canada, Mexico, and the United States. In his chapter, Carlos Piñera discusses the provisions and disciplines contained in the NAFTA treaty and its innovations in the area of trade in services. These include, in particular: the liberalization of services trade in all covered sectors without restriction, except in the case of those measures otherwise specified and set out in lists of reservations or nonconforming measures; the binding of national laws affecting services suppliers in order to consolidate the degree of liberalization existing upon entry into force of the agreement; the inclusion of a “ratchet” clause to lock in future liberalization; the absence of a safeguard clause; the elimination of the residency requirement for professional service providers within a two-year period; and the existence of separate chapters on investment and government procurement covering both goods and services and integral to the agreement. The author explains how the NAFTA approach to services liberalization has been extended by Mexico to six other countries throughout Central and South America (Bolivia, Chile, Colombia, Costa Rica, Nicaragua, and Venezuela) in five subsequent free trade agreements negotiated since 1994, such that the member countries of these agreements (both NAFTA and the NAFTA-type agreements) now account for over 85 percent of trade in services in the Western Hemisphere.

In the agreements negotiated by Mexico subsequent to NAFTA, the sectoral emphasis and coverage of the various agreements varies somewhat, but the basic principles of national treatment, most-favored-nation treatment, and non-obligatory local presence represent the cornerstone of disciplines on trade in services in all. The author points out that certain of the subsequent agreements go further than and improve upon NAFTA through the incorporation of a built-in dynamic to foster future trade liberalization. In several of the agreements (Mexico-Bolivia; Mexico-Costa Rica; Mexico-Nicaragua), a provision binds both parties to carry out periodic negotiations at least every two years, with a view to removing substantially all of the remaining nonconforming measures

contained in the lists of reservations. The agreements also contain an obligation to carry out periodic future negotiations to remove remaining nondiscriminatory quantitative restrictions. The author concludes that Mexico's extensive efforts to carry out services liberalization since 1994 through the conclusion of the various free trade agreements described in the chapter have resulted in an improvement of efficiency in Mexico's service sector and in the provision of higher-quality services to the domestic market at internationally competitive prices.

Members of MERCOSUR (Argentina, Brazil, Paraguay, and Uruguay) signed the Protocol on Services of Montevideo in December 1997 in order to extend the coverage of the MERCOSUR agreement (March 1991) to services trade. The chapter by María-Angelica Peña examines the provisions of this protocol, pointing out the characteristics that distinguish its approach to the liberalization of services trade. The author points out that, inspired by the GATS model and closely modeled after its main provisions, the MERCOSUR services agreement is based upon the same principles that have guided the MERCOSUR integration process from its beginning, namely gradual and progressive liberalization and pragmatism. Like the GATS participants, MERCOSUR members have chosen to carry out services liberalization through the establishment of lists of commitments covering all service sectors, improving upon their multilateral commitments, and to do this by means of annual rounds of negotiations.

The MERCOSUR agreement on services differs from GATS, however, in at least three very important ways. The first difference is found in the unconditional form of the most-favored-nation principle (which cannot be qualified by MERCOSUR members among themselves). The second is found in the final objective of liberalization. MERCOSUR members have agreed to remove all restrictions to services trade among themselves within a ten-year period, once the Protocol of Montevideo has come into effect and has been ratified by three of the four governments. The third difference is the lack of a provision on safeguard action such that no liberalization, once extended among MERCOSUR members, can be modified, once the transition period of ten years for the liberalization process is completed. In the MERCOSUR Protocol, four sectors are singled out for special consideration and rules—namely financial services, maritime transport, land transport, and the movement of natural persons. The author points out that the latter area is an important one for MERCOSUR members, who are also trying to promote this form of services trade by encouraging the professional associations of the member countries to develop agreed requirements and standards for the recognition of diplomas and the right to practice. A challenge for MERCOSUR members in the future will be to articulate the linkages between services-related areas such as competition policy, invest-

ment, subsidies, and government procurement (some of which are already covered in separate protocols, some of which are being elaborated) and services themselves under the Montevideo Protocol, so as to ensure that the treatment of these issues is coherent and compatible.

In the early 1990s, the transformation of the Andean Group into the Andean Community and a modern and outward-looking trade agreement has included the extension of the agreement to encompass liberalization of services as well as goods. Andean Decision 439 of June 1998 provides a framework of principles and disciplines for the liberalization of services trade within the subregion. The decision has already been put into effect and incorporated into the national law of the five member states (Bolivia, Colombia, Ecuador, Peru, and Venezuela). Chapter 9 by María Esperanza Dangond examines the content of this decision and its implications for trade in services in the Andean region. The author points out the ambitious nature of Decision 439, which foresees the complete elimination of all barriers to services trade among members of the Andean Community, along with the harmonization of national policies in those areas that are deemed to require this, such as regulatory issues for services or standards. Although it draws upon many of the concepts of GATS for definitions and concepts, the Andean Community agreement is different in several important ways. First, the most-favored-nation principle for trade in services among members of the Andean Community is an unconditional one. Moreover, national treatment is to extend to the area of government procurement of goods and services once a decision is established to this effect, or no later than the year 2002. Third, a specific timetable for complete liberalization of services trade is established.

The modality chosen for services liberalization by members of the Andean Community is similar to that chosen by MERCOSUR members—that is, a series of annual negotiations. These negotiations are to be based upon a consolidated inventory established by all five states containing national measures affecting either market access or national treatment for service providers from other members. Negotiations are to result in a complete removal of all barriers to services trade for Andean service suppliers within five years of the initiation of such negotiations. The Andean Decision is also unique in including a provision to bind the status quo with respect to treatment of service providers as of June 1998 and to move toward the harmonization of all relevant regulatory measures for services. Like MERCOSUR, the Andean Community also has established separate, services-related decisions, including decisions on competition policy and investment. The challenges faced by the Andean Community will be not only to ensure that these separate decisions are compatible with that on services, but also to establish the required

inventories for the five members in order to fulfill the strict timetable for liberalization set out in the decision.

Central America has one of the oldest regional integration agreements in the Western Hemisphere (the Central American Common Market, or CACM, dating from 1960), but has not yet expanded this agreement to cover trade in services. Only construction services were included within the national-treatment obligation of the original agreement. A few stand-alone sectoral agreements have been concluded in order to facilitate road and maritime transport and the movement of personnel between the five Common Market members. In chapter 8, Alvaro Sarmiento describes the renovation of the CACM agreement through the signature of the Protocol of Guatemala in 1995. The latter foresees the extension of the agreement to services and underlines the importance for members of harmonizing national legislation in key service sectors such as banking, insurance, and capital markets. Following this mandate, CACM members have been exploring various approaches for designing a regional instrument for the liberalization of traded services and have made considerable progress in the outline of a Central American Treaty on Services and Investment.

Although no agreement has been finalized at the subregional level, the author points out that nonetheless various Central American countries have negotiated bilateral free trade agreements with Mexico covering the liberalization of trade in services (Costa Rica in 1995 and Nicaragua in 1998). Even more striking is the fact that Central America as a regional grouping has negotiated and concluded one NAFTA-inspired free trade agreement (with the Dominican Republic in 1998) and concluded negotiations with Chile in late 1999 on a similar free trade agreement. Thus the five members of the region have jointly taken on disciplines and obligations with respect to services trade and investment under the first agreement, and with respect to services trade only under the second agreement, though they have not yet been able to finalize an agreement among themselves in either of these two areas. The author points out the dichotomy and legal uncertainty created by such a situation and stresses the necessity for CACM members to rapidly conclude agreement on a legal instrument for services and investment that will promote liberalization and bring stability to service providers in the region. Such an agreement should also improve the efficiency of services in the domestic markets, particularly important for the development of "industrial clusters" within the region in sectors such as tourism and agribusiness, which need efficient support from service infrastructure in telecommunications, distribution, and transport.

In the Caribbean, members of the Caribbean Common Market (CARICOM) have also recognized the vast opportunities to expand services trade in their

region and finalized an agreement in July 1998 for the liberalization of such trade. Like the Andean Community and the CACM, governments in the Caribbean region collectively decided in the late 1980s to reinvigorate their integration process and move to a deeper level of economic integration that would result in the creation of a single market (Declaration of Grand Anse, 1989). A series of nine protocols have since been drafted in an attempt to meet this objective. The chapter by Pamela Coke Hamilton analyzes the protocol addressed to services, formerly known as Protocol II: Establishment, Services, Capital.

The main provisions of Protocol II, which is not yet in force, consist of the right of any CARICOM national to provide cross-border services, to move capital throughout the region, and to establish new enterprises; the free movement of labor; and an effective standstill clause carrying the obligation not to impose any new restrictions once the protocol enters into force. One of the main innovations of Protocol II is contained in its provisions for the free movement of persons, in particular university graduates, professionals, and other skilled occupations. The qualifications of graduates of CARICOM institutions are to be recognized throughout the region, as well as those of other skilled workers, and work permits and passports are to be eliminated for all CARICOM nationals. If successfully implemented, these provisions will approximate the Caribbean region to that of a customs union with respect to the free movement of factors of production. The author outlines the current status of legislation to bring about the implementation of these provisions in the various member nations. The author also points out, however, that Protocol II is missing two key elements, most notably an MFN clause, and a clearly defined approach to the services liberalization process. She recommends that CARICOM members act as soon as possible to include specific language on MFN within the protocol and to outline the modality for regional liberalization in the services sector. Without these two critical components, the effective implementation of Protocol II may remain in doubt.

Part Three: Challenges and Conclusions

Part Three of the volume covers the challenges that the liberalization of services trade faces at the multilateral level and in the Western Hemisphere and also summarizes the discussion that took place at the conference on this issue held in Costa Rica in July 1999. The contributors in this section draw out considerations relevant to the negotiations of trade in services, particularly from the point of view of developing countries in the region. They evaluate the progress achieved so far by the subregional agreements on services in the West-

ern Hemisphere and provide a synthesis of the discussion that took place at the conference.

The first chapter in Part Three, by Eduardo Lizano, makes the point that developing countries are in urgent need of achieving greater integration within the international economy, because the generally small size of their domestic markets does not provide the best conditions for achieving an optimum division of labor, scale economies, capital accumulation, or the adoption of new technologies. This point is particularly valid for services trade, where the quality, cost, and efficiency of key service sectors heavily influence the international competitive position of developing countries. The author examines the factors that might explain why developing countries are advancing so slowly toward the liberalization of their services markets. He stresses the importance for developing countries of participating actively in both multilateral and regional negotiations on services and of using those negotiations to provide leverage against the pressure of internal interest groups in various service industries that may be opposed to liberalization. The political economy argument for participating in services negotiations makes these a more viable means of market opening than that of unilateral liberalization. The broader the regional agreement, the more advantages it provides to developing participants for several reasons, including less trade diversion and lower administrative costs, greater ease of negotiation, and a wider market-broadening effect.

The chapter by Francisco Javier Prieto evaluates the degree of liberalization in services trade posited by GATS and the various subregional agreements discussed in Part Two, along with the strengths and weaknesses of the various agreements. In particular, the author discusses the two main approaches that have been developed for the liberalization of services trade—namely, the bottom-up approach of GATS and the top-down approach of NAFTA, to which the majority of countries in the hemisphere have subscribed. The strengths and weaknesses of both approaches are discussed.

The author points out the lack of provisions under NAFTA to ensure the ongoing dynamic of liberalization as well as the possibility to make reservations to the MFN principles and the lack of a built-in mechanism to negotiate the elimination of outstanding restrictions or nonconforming measures. Certain of these weaknesses have since been addressed in the NAFTA-type agreements on services negotiated by Mexico with various Latin American countries in the hemisphere. The WTO GATS approach to liberalization of services trade is also examined critically by the author who, similar to the other authors in the volume, finds many of the GATS provisions currently inadequate and in need of greater definition or elaboration. This is particularly true of the need to sub-

stantially reduce discriminatory treatment among member countries and to improve general disciplines so as to avoid the impairment or nullification of specific commitments. Improvement of GATS techniques on the scheduling of commitments is also cited as important, as well as the need to review and refine the GATS classification systems and to improve the provisions on transparency.

The author argues that liberalization initiatives at the subregional or broad regional level such as that offered by the Free Trade Area of the Americas (FTAA) process offer a *second-best* option for improving upon the insufficiencies of the multilateral institutional framework.

In terms of progress achieved to date, however, Prieto argues that the majority of existing subregional agreements have not yet generated an effective liberalization of services trade and that the commitments under such agreements have been limited on the whole to providing better transparency or greater judicial certainty. Existing agreements are critiqued as not having yet fulfilled an important task, namely the concerted and ongoing liberalization of services in a binding fashion.

However, the potential for wide-ranging liberalization contained in the subregional agreements of the hemisphere is great. Prieto reviews, in particular, the disciplines of the MERCOSUR and Andean Community agreements on services in order to draw some lessons for their possible application to the future hemispheric agreement on services currently being negotiated within the FTAA process. He argues that elements from nearly all of the subregional agreements could be used as building blocks for constructing an FTAA services agreement that would prove satisfactory to the concerns of all countries in the region and that would ensure mutually advantageous outcomes. The obligations of such an agreement could be implemented at different speeds by less-developed or smaller economies.

A hemisphere-wide FTAA agreement should allow for greater depth of reform and more substantive commercial opening in the services area than that which has been and could be achieved at the multilateral level, given the higher level of rapprochement between adjacent economies in the region. The breadth and depth of the disciplines to be included in a hemispheric services agreement, drawing upon the subregional models, should allow an FTAA agreement to converge with, underpin, and surpass services liberalization at the multilateral level.

The last chapter in the volume, by Maryse Robert, provides an overview and summary of the key issues debated at the San José conference and sets forth the main points made by speakers and participants during those two days of discussion. Conference participants emphasized the growth in services trade being

made possible by rapid technological innovations, the importance of adequate regulatory changes and rule-making on the part of government authorities in response to such developments, the necessity of improving GATS for the purpose of the WTO multilateral services negotiations, including addressing existing MFN exemptions, reviewing the operation of GATS Article V, revising the GATS articles on market access and national treatment, and addressing and reconciling trade and regulatory objectives.

In particular, the author notes that conference participants focused on how to ensure greater liberalization of services trade in the future, because the current level of policy commitments on services at the multilateral level does not exceed the status quo for the most part. One of the main objectives of the current round of multilateral GATS negotiations is to reduce the imbalances in service commitments across members, sectors, and modes. The positive role that regional negotiations on services could play as a complement, and also as a means of stimulating the multilateral process, was frequently emphasized. For service providers, transparency in rules and in the provision of information is of the greatest importance. In this context, the adoption of a “negative list” approach in several of the regional integration agreements in the Western Hemisphere was cited as offering more transparency than the “positive list” approach of GATS because all sectors and measures are covered in the liberalization process except those that are specifically exempted and must be listed in annexes. It was emphasized that countries in the Western Hemisphere had much to gain by participating in multilateral and regional trade negotiations because they could take advantage of such opportunities as a way to lock in policies of reform and liberalization, and as a signaling device to international investors. This signaling function is always more powerful when bound in international agreements. Trade negotiations and liberalization of services trade, while not ends unto themselves, provide the means to promote efficiency and to generate growth and development. It is for this reason that all countries in the Western Hemisphere have an important stake in this process.

