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# Ideas, interests, and institutionalization: “trade in services” and the Uruguay Round

William J. Drake and Kalypso Nicolaïdis

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Throughout the 1980s, a multilateral debate raged about whether international trade in services should be governed by the rules of the General Agreement on Tariffs and Trade (GATT). The growth of services activities is one of the most distinctive features of the ongoing global economic restructuring. The services sector presently accounts for about 70 percent of gross domestic product (GDP) in the industrialized world and up to 50 percent of GDP in much of the developing world. While only 10 to 15 percent of services are rendered commercially across borders, services exports nevertheless are now generally estimated to be worth over \$700 billion per year and to make up 25 to 30 percent of world trade.<sup>1</sup> But quantitative indicators do not reveal the qualitative importance of services in general and of business services in particular. The strategic use of these services by increasingly globalized transnational corporations (TNCs) affects corporate performance and market structures across the agricultural, manufacturing, and service sectors. This is because many services, especially those of an infrastructural nature, such as telecommunications, play dual roles as both inputs for other activities and outputs or products in their own right. Hence, whether services would remain governed according to traditional regulatory regimes or be governed instead by the sort of market-

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1. The imprecision of these figures is due in part to cross-national disparities in both the categorization of certain transactions and the ability to compile accurate statistics. But it is also due to the fact that services often move across national frontiers in ways not captured by existing measures. Experts on the statistical arcana point out that the widely used \$700 billion figure may not fully cover many types of services transactions, especially those embodied in traded goods or delivered via establishment, and that the inclusion of these might move the total figure into the trillions.

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based rules embodied in GATT was recognized to have critical implications for the world economy as a whole.

Governments would not have confronted this choice if new ideas had not emerged. True, there were by the mid-1970s powerful U.S.-based TNCs that wanted greater freedom to sell services abroad in what were heavily regulated markets. But states could have managed these pressures by adapting regulatory rules on an industry-by-industry basis. It was only when analysts showed that diverse cross-border transactions in telecommunications, finance, management consulting, construction, and so on had the common property of constituting “trade” that comprehensive liberalization on a pan-industry basis became an issue on the global agenda. The shift to a trade discourse was a revolution in social ontology: it redefined how governments thought about the nature of services, their movement across borders, their roles in society, and the objectives and principles according to which they should be governed. But when the discourse first arose, governments had no idea whether comprehensive liberalization and GATT negotiations would be advantageous. If anything, their existing intellectual frameworks and material interests pointed in exactly the opposite direction. Services had been regulated heavily for centuries, and state institutions and organized social constituencies opposed to open competition were embedded deeply in domestic polities. It took a fundamental change of mind-set to believe that the long-term benefits of trade liberalization could outweigh the substantial adjustment costs and risks involved. Governments changed their minds and redefined their interests because of the influential analyses of an epistemic community—a group of experts with shared causal and principled beliefs, shared validity tests, and a common policy project.

In this article, we explore the interplay of new ideas and interests in the institutionalization of trade in services on the international agenda. We seek to explain the form and substance of that institutionalization: how services became embedded in trade policy mechanisms, what concepts and principles framed the search for a new regime, and why governments agreed against the early odds to pursue cooperative liberalization. The institutionalization process we trace evolved in three stages, each demarcated by a turning point event. The first began in 1972, when a group of experts met under the auspices of the Organization for Economic Cooperation and Development (OECD) and coined the phrase “trade in services,” and ended when the services question was brought to the GATT forum during the 1982 ministerial meeting. The second began in 1982, when GATT members undertook an initial assessment of the issues, and ended with the 1986 ministerial launching of new negotiations that included services. The third spans the Uruguay Round, which began in 1986 and continues at the time of writing (August 1991). In this last stage, governments have endeavored to conclude the General Agreement on Trade in Services (GATS), which would be a new international regime legally and substantively separate from but linked to the GATT regime for trade in goods.

Our purpose here is not to present a detailed reconstruction and explanation

of the final bargaining over GATS, which in any event is not yet complete. Our dependent variable is the process of issue institutionalization leading up to that stage, not its precise outcome: “why collaborate?” rather than “cooperate or defect?” We argue that epistemic community members provided the enticement for negotiators to gather, chose one table rather than another for the occasion, and determined what initially was and was not to be on it. They framed the issues and specified a range of options in the permissive period when policymakers were highly uncertain about the issues and their interests. But they could not determine exactly what governments would agree to do after arriving at the table. Once uncertainty had been reduced through analysis, material interests crystalized and policymakers picked from and modified the menu. As a result, while the current draft GATS conforms in broad outline with the epistemic community’s vision, bargaining has rendered some specific provisions different from it in important ways.

In the following sections of the article, we trace the evolution of both the epistemic community and the international dialogue it fostered. The former task is necessary because, unlike many of the other cases in this volume, there was not at the outset an established community of experts for governments to turn to. Instead, a new group grew from a handful of people into a sizable and self-conscious community in tandem with the governments’ increasing demands for new ideas and information. In exploring the interplay of supply and demand forces in the intellectual marketplace, we map changes in the community along three dimensions: its membership, its scope of common beliefs, and its influence dynamics.

The community’s membership has two tiers. The first includes personnel from governments, international agencies, and private firms—individuals who work for organizations with direct interests in alternative policy solutions. In contrast, the second tier includes academics, lawyers, industry specialists, and journalists—individuals whose stakes, if any, are more purely intellectual or a matter of professional entrepreneurship. But the members of the first and second tiers share a conceptual framework and agenda, and this, coupled with the latter’s organizational independence, helps legitimate the former’s views in the eyes of cautious policymakers. Moreover, that members of either tier might benefit in terms of pay or prestige from governments adopting their suggestions does not mean that the substance of their ideas necessarily reflects only material interests or that the epistemic community’s causal beliefs can have no independent impact. As is the case with the communities of environmental scientists, cetologists, arms control specialists, food aid experts, Keynesians, and financial regulators which are described by other contributors to this volume of studies, the issue is not where community members sit but instead what they say. Regardless of affiliation, the members’ authority derives from their articulation of causal beliefs that appear to external policymakers to be “scientifically objective” and susceptible to truth tests and also appear to benefit the international community as a whole, rather than solely particularis-

tic interests. In the case of trade in services, it was understood that implementation of the epistemic community's ideas would have distributional consequences, since some players would be more competitive in a liberalized market than others. But these ideas would not have enjoyed legitimacy or served as the basis of consensual interest redefinition if they were recognizably biased and intended only to benefit one set of players over another.

The services community is a new grouping, broader and more intellectually and professionally diverse than the traditional trade policy profession. The desire to understand services issues and propose solutions has been a focal point around which experts have converged from various directions. For example, many members are specialists on individual regulated industries, such as telecommunications or finance, while others are "services theorists" intrigued by the growing role of services as a new phase of capitalist development. These members do not necessarily read publications about trade theory or have highly developed ideas about trade in goods. They are services experts, period. They generate ideas specifically to promote a new multilateral project heretofore ignored by the trade policy profession. So while some traditional trade thinkers and practitioners have migrated into services and brought along their theoretical baggage, they comprise only part of a larger and more eclectic grouping, the character of which they do not by themselves define.

As the epistemic community's membership grew in size and diversity, the scope of its common beliefs increased. However, this commonality has been greater on causal than principled beliefs. In the 1972–82 period, the scope of causal agreement included the ideas that services transactions were important, had trade-like properties in common with goods, were subject to regulatory barriers, and would better serve the world economy if liberalized, preferably under GATT. In the 1982–86 period, it included the proposition that existing GATT principles could be useful as the baseline for a new regime. In the current third period, members have come to agree that these principles are not directly applicable to all services industries and therefore need to be modified or supplemented by new principles. But even today, there remains some disagreement on principled beliefs regarding the precise balance to be struck between trade and regulatory objectives in certain industries and regarding the types of exceptions that should be made for less developed countries (LDCs). Nevertheless, these differences do not threaten the underlying consensus on the tradability of services and on the need for multilateral principles.

Over time, the community's influence dynamics have changed as well. Here we distinguish between influence within the community and influence exerted by the community on policymakers. Internally, the predominantly Anglo-American analysts who first posed the issues established the terms of discourse to which other members later had to respond. The very act of defining services transactions as "trade" established normative presumptions that "free" trade was the yardstick for good policy against which regulations, redefined as nontariff barriers (NTBs), should be measured and justified only exceptionally.

Members believing there to be many justifiable exceptions thus had to defend what their counterparts label “protectionism.” Nevertheless, the balance of influence has shifted in recent years away from the largely American partisans of comprehensive liberalization and toward analysts favoring a more European-style managed liberalism. But it is the community’s external influence which is the main focus of this article. In keeping with the volume’s shared premises, our principal argument comprises four straightforward assertions.

First, under circumstances of complexity and uncertainty, governments will consult with expert communities in search of new ideas that make sense of the problem. When services liberalization emerged on the trade agenda, policymakers faced a number of impediments to negotiation, including the dearth of organized information on the nature and volume of services transactions, the lack of an adequate conceptual framework and of applicable policy principles, and a high level of uncertainty about their national interests regarding negotiations and a regime. These conditions created a fluid space in which an epistemic community formed and generated a growing body of analysis designed to clarify the issues and suggest solutions.

Second, the level of an epistemic community’s influence depends on the extent of its access to top policymakers. In the services case, the epistemic community successfully established both formal and informal direct channels to elites and, perhaps more important, created a body of thought that filtered to them indirectly.

Third, epistemic communities can play a major role in framing the issues and delimiting a range of defensible policy options. These functions were essential in the services process, since the governments’ prior interests regarding economic and trade policies did not translate readily into issue-specific interests. Bridging the gap between the two required analyses, which the services community provided.

Fourth, direct epistemic community influence often declines once ideas and interests have been clarified. In the services case, this was particularly true with regard to the influence of the second-tier members. The services community was extremely influential up to the point where governments had to negotiate final commitments. But with that point now reached, power and bargaining dynamics increasingly determine which of the ideas put forward earlier will be selected and how they will be modified and embodied in the future regime. These assertions are summarized in Figure 1.

## Issue identification, 1972–82

Diverse services transactions have crossed borders for hundreds of years, but it was not until the 1970s that anyone thought of them as having the common property of being traded. This section examines the initial period of what liberalization partisans came to call “consciousness raising” about the importance of and barriers to services trade. Especially in the late 1970s, an epistemic

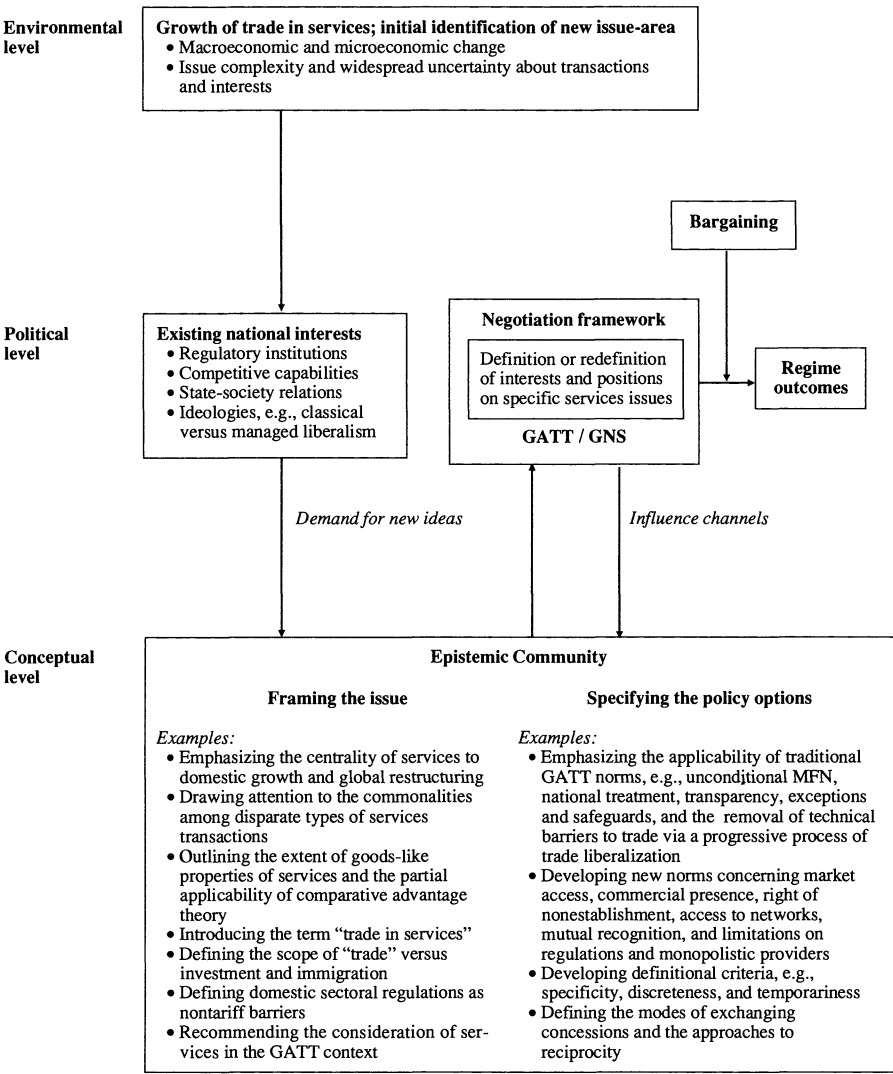


FIGURE 1. *The role of the trade in services epistemic community*

community began to take shape in the United States and Britain and place the question of multilateral liberalization firmly on the global agenda.

*From “invisible transactions” to “trade in services”*

The term “services” covers such a wide array of activities that many people find it difficult to offer a single encompassing definition. Often services are defined by simply listing examples, such as transportation, shipping, banking

and finance, management consulting, advertising, education, telecommunications, construction, entertainment, massages, and hair cuts. As members of the epistemic community often jokingly put it to the layperson, “Services are something you can buy and sell but cannot drop on your foot.”<sup>2</sup> Yet to the economist, T. P. Hill observed, “a service may be defined as a change in the condition of a person, or of a good belonging to some economic unit, which is brought about as the result of the activity of some other economic unit, with the prior agreement of the former person or unit.”<sup>3</sup> Hence, a service is a value-enhancing transaction between at least two units, a transaction that is invisible in the sense that a physical embodiment of value is not handed over from one to the other.<sup>4</sup> For centuries, economists and the authors of standard textbooks minimized the importance of services and their trade and sometimes even treated them as a waste of resources.<sup>5</sup> Four limiting assumptions were common: (1) Whereas commodities and manufactured goods in the “real” economy made visible contributions to wealth, services were unproductive; haircuts were a favorite example. (2) Services were ancillary to or derivative of goods. Manufacturers might use accountants, consultants, advertisers, and so on, but without goods production, there would be little demand for the services of these groups. (3) Since services were often performed in house by manufacturers rather than by outside vendors, they contributed to wealth only as inputs to the “real” economy. And, as inputs, there was often little basis for evaluating their distinctive market values. (4) Compared with physical objects, services were insignificant because of their invisibility and temporary existence.

This conceptual gap translated into a policy gap. Since services came in invisible streams of activity and not in discrete units like goods, output and value were difficult to assess, and accurate national accounting measures could

2. The phrase is usually attributed to *The Economist*. It is cited, for example, by Mario A. Kakabadse in *International Trade in Services: Prospects for Liberalization in the 1990s* (London: Croom Helm, 1987), p. 5. Kakabadse is a key first-tier member working in the GATT Secretariat.

3. T. P. Hill, “On Goods and Services,” *Review of Income and Wealth* 23 (December 1977), p. 318.

4. Payments need not be involved, since governments and other entities provide free services. However, the focus of this article, like the debate itself, is on commercially rendered services.

5. For example, Adam Smith made the following argument: “The labour force of some of the most respectable orders in the society is, like that of menial servants, unproductive of any value, and does not fix or realize itself in any permanent subject, or vendible commodity, which endures after that labour is past, and for which an equal quantity of labour could afterwards be procured. . . . In the same class must be ranked, some both of the gravest and most important, and some of the most frivolous professions: churchmen, lawyers, physicians, men of letters of all kinds; players, buffoons, musicians, opera singers, opera dancers. . . . Like the declamation of the actor, the harangue of the orator, or the tune of the musician, the work of all of them perishes in the very instant of its production. . . . Both productive and unproductive labourers, and those who do not labour at all, are all equally maintained by the annual produce of the land and labour of the country.” See Adam Smith, *The Wealth of Nations* (New York: Random House, 1937), p. 315. Focusing narrowly on material production and labor, Karl Marx was even more dismissive of the importance of services. Perhaps in consequence, the Soviet Union historically excluded almost all services from its national accounts.

not be devised. Until quite recently, most governments simply lumped services into a broad “tertiary” sector comprising everything that was not agriculture and manufacturing.<sup>6</sup> In the absence of systematic data and information on the nature and volume of services, comprehensive policies were precluded. Instead, each service activity was treated as discrete, not only involving different regulatory issues but also subject to different civil codes and bureaucratic authorities.

The national conceptual and policy voids were mirrored at the international level. For centuries, individuals and organizations based in one country provided services for a price to consumers in other countries, and these transactions showed up in national accounts under the broad label “invisibles.” They constituted trade in an accounting sense but not in a physical sense—that is, not like goods produced in one country and later shipped to and consumed in another. Services per se could not be shipped, since they were nonseparable and nonstorable. Moreover, they were “embodied” in the provider, so production and consumption had to occur simultaneously through the physical proximity of seller and buyer.<sup>7</sup> Invisible transactions usually required movement of one actor to the location of another, either through a temporary stay or permanent establishment. Nobody thought this constituted trade, so services were left out of the GATT regime and fell under the auspices of institutions that gave preference to regulatory rather than market-based rules. Each of the services sectors was considered discrete, with the result that they were each managed under separate agreements or international organizations, catering to different constituencies. In the case of telecommunications, for example, governments agreed to treat these services as jointly provided by noncompetitive national partners who shared equally the costs and revenues. And while the industrialized countries devised a few instruments containing pan-industry norms, they did not establish trade concepts or rules. The OECD convention of 1960 called broadly for the elimination of obstacles to the “exchange” of services, yet subsequent instruments with more explicit language dealt primarily with the treatment of foreign direct investment (FDI) and payments.<sup>8</sup> Similarly, the Treaty of Rome endorsed the “free movement” of services among member states of the European Community (EC), but the EC

6. For early discussions of services as part of the tertiary sector, see Alan Fisher, *The Clash of Progress and Security* (London: Kelley, 1935); Colin Clark, *The Conditions of Economic Progress* (London: Macmillan, 1940); and W. W. Rostow, *The Stages of Economic Growth* (Cambridge: Cambridge University Press, 1960).

7. See Herbert G. Grubel, “All Traded Services Are Embodied in Materials or People,” *The World Economy* 10 (September 1987), pp. 319–30.

8. See OECD, *Code of Liberalization of Current Invisible Operations* (Paris: OECD, 1961); OECD, *Code of Liberalization of Capital Movements* (Paris: OECD, 1976); and OECD, *Declaration of National Treatment* (Paris: OECD, 1976). These instruments allowed for many national reservations and derogations, and they contained no enforcement mechanisms. The OECD agreed in 1989 to expand the strength and scope of the instruments in light of the new thinking about trade in services.

Commission did not begin to develop and enforce detailed “trade” rules until the launching of its 1992 program.<sup>9</sup>

The reconceptualization of services began with shifts in the underlying economic structure. While the United States and the other industrialized countries each had a substantial services sector by the turn of the century, these sectors expanded dramatically in the post–World War II era. Rising mass incomes, relative market saturation for some types of goods, technological innovations, the growing interrelationship of services and advanced manufacturing, and other factors are part of the story of the boom in services, but a coherent grand theory about the phenomenon has yet to emerge. Nevertheless, as the statistical treatment of “tertiary” activities became more refined and the evidence of growth accumulated, some analysts undertook to describe and explain the shift.<sup>10</sup> The general sense of significant changes being under way created an intellectual space in which independent analysts and vested interests alike began to define and socially construct a new reality.

In 1972, the OECD convened a high-level group to consider the long-term outlook for trade in light of changing industrial structures and the coming Tokyo Round. The resulting report contained a section in which the term “trade in services” was introduced: “The services sector, like the industrial sector, is experiencing a measure of internationalization and interpenetration. For some countries trade in services is at least as important as, and in some cases more important than, merchandise trade. . . . The Group has not made a detailed examination of questions concerning international trade in services. It considers however that, from the point of view of international economic relations, this sector poses problems similar in nature to those met with in merchandise trade. Given that services are a sector which seems likely to expand rapidly in countries’ economies, the main need is to avoid any tendencies to protectionism and to aim at achieving a more thorough liberalization.”<sup>11</sup> Without detailed consideration of the unique properties of cross-border transactions, the group took a huge leap by suggesting tentatively that the transactions in services could be considered trade, that the principles and norms for trade in goods might apply, and that the challenge in the emerging transition was to avoid “protectionism.” The issue had never been framed in this manner by the regulatory agents and institutions governing services industries. The advisory group did not take this leap at the behest of any state or private firm with a material interest in market liberalization. As Geza Feketekuty noted, “The decision to include a chapter on trade in services

9. See EC, *Treaties Establishing the European Communities* (Luxembourg: EC, 1987), especially Part II, Title III, Chapter 3 on “Services” (Articles 59–66).

10. For an early argument that services should no longer be treated simply as “tertiary” activities, see Victor R. Fuchs, *Production and Productivity in the Services Industries* (New York: Columbia University Press, 1969).

11. OECD, *Report by the High Level Group on Trade and Related Problems* (Paris: OECD, 1973), p. 63.

was largely due to several individuals associated with the preparation of the report,” most of whom were economists.<sup>12</sup> Two years later, the Trade Policy Research Centre in London published a volume that went further by linking services explicitly to trade issues and principles.<sup>13</sup>

The terms of this nascent discourse were embraced quickly in the United States. A huge domestic market, a comparatively friendly regulatory environment, and other factors had nurtured some of the world’s largest services firms, but barriers to entry often made competitive entry abroad more difficult in services than in manufacturing. For American-based TNCs, the “trade” category had a dual appeal. Internally, it rolled together a new political coalition of companies from diverse industries by underscoring their common problems and justifying their individual demands. Externally, it gave them each a potent discursive weapon with which to advance these demands by redefining industry-specific policies as “protectionism,” a charge that was less easily ignored by foreign governments than were ad hoc appeals for regulatory flexibility. For the Office of the U.S. Trade Representative (USTR), it provided a means to bring new and powerful firms into a broader GATT-oriented constituency, thereby partially offsetting the manufacturers’ wavering commitments to free trade. For high-level politicians, it promised new economic vitality and balance-of-trade surpluses in an era of declining competitiveness and excess capacity in traditional industries. Moreover, the intellectual environment of the early 1970s provided fertile ground for these assessments. The information revolution and the rapid growth of the services sector were becoming palpable, and a book on the emergence of a “post-industrial” society attracted an unusual degree of attention inside the beltway for an academic treatise.<sup>14</sup> Wrongly, the idea was taking root that manufacturing was the wave of the past, while services were the wave of the future.<sup>15</sup> Trade officials seeking new turf and constituencies, politicians wanting to appear farsighted, industry analysts concerned with the operational consequences of competition, academics intrigued by the analytic challenges, corporate lobbyists hoping to legitimate their private agendas—these and other groups were converging around the trendy question of services.

12. Geza Fekete, *International Trade in Services: An Overview and Blueprint for Negotiations* (Cambridge, Mass.: Ballinger, 1988), p. 297.

13. See Brian Griffiths, *Invisible Barriers to Invisible Trade* (London: Macmillan, 1975). In the years to follow, the Trade Policy Research Centre became a major intellectual force in the trade in services debate, especially through the dozens of services articles published in its journal, *The World Economy*.

14. See Daniel Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting* (New York: Basic Books, 1973). While Bell is usually credited with coining the term “post-industrial society” and related concepts, he drew heavily on unattributed works by French social theorists such as Touraine. See Alain Touraine, *The Post-Industrial Society* (New York: Random House, 1969).

15. The idea was misconceived. The issue is not that services replace goods but, rather, that their growth complements manufacturing. See Stephen S. Cohen and John Zysman, *Manufacturing Matters: The Myth of the Post-Industrial Economy* (New York: Basic Books, 1987).

The White House established the Interagency Task Force on Services and the Multilateral Trade Negotiations, while the Department of Commerce and the USTR each established an office of services industries that produced studies of foreign trade barriers. In addition, the Department of Commerce set up an industry advisory committee for services to solicit corporate views. Several TNCs complained of “services protectionism” during the congressional debate on the 1974 Trade Act.<sup>16</sup> With bipartisan support, the Congress not only amended the act by inserting a few provisions allowing bilateral negotiations and Section 301 retaliation but also authorized the USTR to raise the matter in the impending Tokyo Round. Yet while the U.S. government could point to restrictions on the provision of services by American individuals and firms located abroad, it lacked a convincing argument that these were trade barriers. Other governments saw them as investment or regulatory issues that were not part of the GATT mandate. Without a shared causal belief that services were indeed tradable, it was impossible to discuss the question coherently, much less negotiate. In a compromise, governments inserted a few services liberalization commitments into three of the new codes, but these were not framed in terms of generalizable trade principles.<sup>17</sup> The Americans also attained an informal agreement from industrialized countries to assess services in the OECD. Participation in and the analytic sophistication of the discussion began to shift into second gear.

*From Washington, D.C., to Paris*

As the services question moved into the OECD at the turn of the decade, the organization was already embroiled in a debate on transborder data flow (TDF)—the transmission of computerized information across borders via telecommunications. The rapidly expanding corporate use of TDF raised concerns about the implications for national sovereignty, economic welfare, legal autonomy, and cultural integrity.<sup>18</sup> Governments around the world were contemplating new restrictions on what types of information could be transferred over networks and under what conditions, and the OECD was pursuing

16. In *International Trade in Services*, p. 299, Feketekuty states that “it is not entirely clear which company first came up with the idea of using the trade bill to advance the international commercial interests of the services industries, though the recollections seem to point to Pan American Airways,” which wanted the right to carry mail to foreign countries.

17. The GATT Government Procurement Code contained language calling for states to move toward open tenders in transportation and insurance services. The Standards Code had language on recognizing test results from foreign laboratories, while the Subsidies Code stated that services used to export goods cannot be subsidized. Many members did not sign the codes, but partisans of liberalization later cited them as establishing the GATT’s competence in services. On the codes, see Gilbert R. Winham, *International Trade and the Tokyo Round Negotiations* (Princeton, N.J.: Princeton University Press, 1986).

18. See William J. Drake, “Territoriality and Intangibility: Transborder Data Flows and National Sovereignty,” in Kaarle Nordenstreng and Herbert I. Schiller, eds., *National Sovereignty and International Communication*, 2d ed. (Norwood, N.J.: Ablex, forthcoming).

multilateral rules. Without delving further into this complex issue-area, we wish to emphasize that the TDF debate is significant here because it illuminated means of services mobility that were not previously understood. When analysts first thought of services flows as trade, they visualized movements of individuals or organizations that brought sellers and buyers into physical and temporal proximity. But now it appeared that there was another major means of supply: “electronic highways” allowing sellers and buyers to remain apart while exchanging information-based services, which could henceforth be separated from their sources, stored in computers, and “shipped” across borders. In short, advanced computer networks collapsed space and time. Financial, consulting, advertising, data processing, and other services important to TNCs were transportable from home to host country in disembodied forms. Markets existed wherever there was network access; the global network was in fact a market.<sup>19</sup> As transmission capacity increased and costs fell, buyers could in principle purchase on-line services from abroad almost as easily as from across the street.

The TDF debate had several other important consequences for the emerging discussion about services sold abroad. First, while it still required a contestable conceptual leap to view as “trade” those services which involved individuals and TNCs established abroad, it was relatively easy to view network-based sales as trade. Second, if networks were to services as roads and waterways were to goods, heretofore legitimate telecommunications regulations could be re-defined by liberalization partisans as NTBs to banking, data processing, and other industries. Third, as the information revolution became a backdrop to the services discussion, analysts increasingly took the view that dynamic technological change should not be restricted by “outmoded” state policies. Intentionally or not, their outlooks became increasingly commensurate with the TNCs’ particularistic demands. Hence, the TDF debate affected the emerging services community, as experts on and awareness of network issues became key elements of its discussion. It also underscored for American-based TNCs the possibilities of and regulatory limitations on networked services. As the discussions of the services and TDF communities progressed and intermingled, the TNCs began to redefine their interests. With the possibility of TDF restrictions on the horizon and growing protectionism in goods already evident, the 1980s began with widespread predictions of impending gloom and doom in the business press and corporate conferences. Anticipating new protectionism

19. See Claude E. Barfield and Robert Benko, “International Communications and Information Systems: The Impact on Trade,” *AEI Foreign Policy and Defense Review*, vol. 5, no. 4, 1985, pp. 11–19; Geza Feketekey and Kathryn Hauser, “The Impact of Information Technology on Trade in Services,” *Transnational Data and Communications Report*, vol. 8, 1985, pp. 220–24; Raymond J. Krommenacker, “The Impact of Information Technology on Trade Interdependence,” *Journal of World Trade Law* 20 (July–August 1986), pp. 381–400; and Raymond J. Krommenacker, “Services and Space Technology: The Emergence of Space Generated, Highly Integrated Goods and Services (IGS),” in Orio Giarini, ed., *The Emerging Service Economy* (New York: Pergamon, 1987), pp. 173–92.

at a time when services were increasingly important, American-based TNCs endeavored to refocus the international agenda. In a variety of multinational business associations, American firms urged their foreign counterparts to take up the cause. This was no easy task, since some of them benefited from protection. But those oriented toward global markets were learning the potential advantages of liberalization, and given the mood in Congress, their acceptance of increased competition at home might be an acceptable price to pay for continued access to the lucrative American market.

The “consciousness raising” campaign was aided by technological and market trends. As a provider of financial services, a domestic bank might benefit from protectionism. But as a user of telecommunications, advertising, management consulting, and similar services, it also wanted to purchase and apply the best of these without restrictions so as to compete with other banks. The international coalition-building strategy therefore emphasized the common plight of TNCs as services users, especially when, as in civil aviation or telecommunications, the protected suppliers were state entities. Moreover, many users were becoming producers through the externalization of internal functions. Whether because of excess capacity or the lure of new profit centers, firms that had built up economies of scale in accounting, finance, data processing, or other services were employing advanced networks to sell these services. For example, Lockheed, General Motors, and many other “users” became providers of on-line information services and management systems. Companies also realized economies of scope by building on their flexible production technology and expertise to generate differentiated services in interrelated markets. Conversely, some users “outsourced” their services functions to external suppliers as part of a down-sizing strategy, recognizing that networks facilitated close relationships between suppliers and customers and hence reduced the contractual risk of opting for markets over hierarchies. These trends provided a widening array of firms from around the world with incentives to push for services liberalization. New ideas helped them see the potential of networks and information systems and encouraged them to change positions with respect to global markets and government regulations. In 1981, the International Chamber of Commerce endorsed GATT negotiations on services, and similar industry lobbies soon followed suit.

At the outset, the epistemic community consisted primarily of American and, to a lesser extent, British members and included more analysts from the first tier than independent observers and academics from the second. In the private sector, the U.S. Chamber of Commerce organized a services committee chaired by Ronald Shelp, who authored the first detailed book calling for GATT negotiations.<sup>20</sup> Similar activities were launched by the U.S. Council for

20. See Ronald K. Shelp, *Beyond Industrialization: Ascendancy of the Global Service Economy* (New York: Praeger, 1981). See also Ronald K. Shelp, “Trade in Services,” *Foreign Policy* 65 (Winter 1986–87), pp. 64–83. Through his many writings and conference presentations, Shelp became one of the leading first-tier business intellectuals in the international discussion.

International Business, the Conference Board, and other industry alliances. In the government, congressional hearings were held, new executive branch groups were established, and the USTR launched an intellectual campaign under the leadership of Geza Feketekuty, the most visible, prolific, and influential analyst of the time. His activism in congressional hearings, efforts in organizing interagency and business coalitions, and writing and speaking activities have led some to regard him as the “father of trade in services.” Indeed, one study describes the institutionalization of services on the American agenda as his one-man enterprise.<sup>21</sup>

The scope of common beliefs was substantial because of the relatively small and highly interactive membership. The historical assumptions noted above were being revised on the conference circuit, in public and private sector meetings, and in a handful of publications. For example, services and, in particular, business services were increasingly viewed as a productive new locus of wealth creation; as independent outputs in lucrative markets instead of derivative inputs to goods production; as measurable in value; as continuous, rather than ephemeral and temporary, since ongoing buyer-seller relationships were common; as separable and storable in networks and physical media (for example, computer discs and electronic circuitry); as traded between different entities, rather than jointly provided by cartel members; as moving across borders through identifiable delivery paths (via networks or via the movement of suppliers); and, above all, as a coherent class of activities subject to similar regulatory NTBs and meriting liberalization under a common set of general trade principles.<sup>22</sup> The community’s influence was more intensive than extensive. Internal influence was strong and skewed, as classical liberal thinking in the American mode shaped the agendas of those who were aware of the issues. But external influence on policymakers outside the United States and Britain was still weak, as their interest in the subject was limited and tentative in nature.

The OECD Trade Committee agreed to undertake a study in 1979. Some Europeans argued for a go-slow approach in which the gathering of statistical data would predominate. The United States wanted to speed things up, arguing

21. See Jonathan Aronson, “Negotiating to Launch Negotiations: Getting Trade in Services on the GATT Agenda,” Pew Program in Case Teaching and Writing in International Affairs, Pittsburgh, 1988. Feketekuty highlights perhaps better than anyone our point about the independent influence of first-tier members. A counselor to the USTR, Feketekuty was essentially the government’s “house intellectual” on services, and his analyses were considered abroad to be of descriptive and explanatory merit regardless of his bureaucratic affiliation.

22. For early and influential discussions of these and related issues, see Raymond J. Krommenacker, “Trade-Related Services and the GATT,” *Journal of World Trade Law* 13 (November–December 1979), pp. 510–22; Andre Sapir and E. Lutz, “Trade in Services: Economic Determinants and Development-Related Issues,” World Bank staff working paper no. 480, Washington, D.C., 1981; Andre Sapir, “Trade in Services: Policy Issues for the Eighties,” *Columbia Journal of World Business* 17 (Fall 1982), pp. 77–83; and Michael Cohen and Thomas Morante, “Elimination of Nontariff Barriers to Trade in Services: Recommendations for Future Negotiations,” *Law and Policy in International Business*, vol. 13, 1981, pp. 495–519.

that the study should quickly identify trade barriers. According to Feketekuty, many members were skeptical but lacked a coherent alternative, and “since the United States [agreed] to do the work, the committee ultimately [agreed] to pursue the approach it had proposed.”<sup>23</sup> The government asked the U.S. Chamber of Commerce to update its 1976 inventory of foreign trade barriers and submit it. Annually revised, the inventory became a basic reference document for American policymakers, as well as the starting point for the OECD’s investigation. Other governments then turned to their own firms for similar, supplementary lists of barriers. This method of issue framing, which was consistent with that used by second-tier members in their early studies and was also consistent with U.S. preferences, shaped the research and negotiation agendas of the 1980s.<sup>24</sup> The OECD Trade Committee was now the focal point for a reevaluation of services transactions and regulations across member countries. Other OECD committees responsible for individual industries submitted background papers, as did governments, TNCs, and independent analysts. These assessments indicated that services liberalization might well invigorate a sluggish world economy, offset declining competitiveness and protectionism in goods markets, and yield gains for countries other than the United States. Governments began to reassess the parameters of their reticent stances, and the OECD ministers declared in 1981 that GATT negotiations merited further consideration.

### *From Paris to Geneva*

Despite this willingness to engage in further study, there would not have been sufficient consensus to launch a new round of GATT negotiations if services had been the sole item on the agenda. Only the United States was convinced by the new thinking on the trade character of services; other OECD countries were just beginning to examine the issues, and the LDCs were far from beginning. Moreover, there was a good deal of “unfinished business” on trade in goods left over from the Tokyo Round, as well as widespread fears of a general crisis in the GATT regime. Because of these tensions, the introduction of services issues might be perceived as a distraction from the goods agenda. But if services negotiations could be framed as strengthening the system as a

23. Feketekuty, *International Trade in Services*, p. 316.

24. Also important was a compromise on the scope of the project. Some delegations wanted an industry-by-industry study because of the varying types of regulations, domestic social concerns, and policy objectives in each. The United States, which feared this would facilitate arguments that some industries should be excluded from liberalization, insisted on a study of barriers across industries on the premise that their commonalities (from a corporate viewpoint) were greater than their differences (from a regulatory viewpoint). A dual-track approach was adopted so that each side had its way, but the pan-industry intellectual overlay favored by the Americans ensured that research focused on the generalizability of trade principles and barriers across cases. International commercial criteria thereby became a new yardstick for examining domestic regulations designed with other, often social policy criteria in mind.

whole, members might give it a sympathetic hearing as part of a larger, multi-issue package. The United States had to convince GATT members not only that the new thinking made sense but also that it was complementary to the resolution of other issues.

The autumn 1982 ministerial meeting was the first since the launching of the Tokyo Round in 1973, when the United States had tentatively raised the issue of services negotiations before anyone, itself included, fully understood what it entailed. That there was a widespread sense of urgency in convening the 1982 meeting did not mean that there was a consensus on what to do. In this fluid context, the USTR arrived in Geneva with a set of proposals which the U.S. government argued would both strengthen the existing GATT and expand its coverage. Some of the proposals dealt with “unfinished business,” but the USTR was most adamant about the “new issues,” including services.<sup>25</sup> Unlike in 1973, this time the USTR tried to lay the intellectual groundwork first and indicated that services negotiations would be sought a few years hence. But even this low-key push was premature, as other key GATT members lacked the knowledge and preparation needed to take preliminary positions. Indeed, the EC Commission was then in the process of establishing an interservices group to assess the issue. Members of the EC were uncertain about their competitiveness in liberalized markets, worried about preserving extant regulatory objectives, and skeptical about the applicability of traditional trade concepts and principles to some of the services transactions. Hence, during the ministerial meeting the EC representative did not oppose further exploration, but neither did he commit to the idea of services negotiations.

In contrast, the reaction of the LDCs was firm and negative. The still largely Anglo-American epistemic community had neglected to give development problems much thought; the LDC policymakers were not familiar with the conceptual claims being made; and the U.S. government had failed to convey its views to them. Since there were no clear theories or evidence that open markets would promote development, the LDCs assumed that their services industries would not be competitive globally or locally and assumed that if the United States wanted liberalization, it was simply because huge American firms were prepared to swoop down on the vulnerable LDC markets. As one diplomat observed, “From a developing country’s perception, [the Americans] are now trying to have a new outlet with services so that they can expand their trade to areas where they think they still have comparative advantage. On the other areas they are on the defensive.”<sup>26</sup> Unlike the reactions of the OECD countries, those of the LDCs were unaffected by the epistemic community analyses of the trade properties of services and reflected an inability or unwillingness to differentiate the first tier’s causal beliefs from its particularis-

25. Other new issues included “high-technology” goods, trade-related intellectual property rights, and trade-related investment measures for both goods and services.

26. Interview with a delegate from Brazil, member of the Group on Negotiations on Services (GNS), GATT, Geneva, June 1987.

tic interests. Moreover, the LDCs worried that attention would be distracted from the industrialized countries' protectionism in agriculture and manufacturing. The Group of 77 (G-77) therefore maintained that the GATT regime had no legal jurisdiction over or competence in services.

With all but a few governments completely uncertain of their interests and preferences, the participants in the 1982 ministerial meeting could only agree to defer the decisions regarding services and keep the issue on the back burner. Meanwhile, they announced, case studies of national services industries could be provided informally and on a voluntary basis and would be reviewed during the 1984 session of the Contracting Parties. For the majority of members, this was a way of postponing the debate on services until they understood the stakes. But while OECD governments did not state strong predispositions one way or the other, the LDCs, led by Brazil and India, were almost unanimously opposed to services negotiations. In sum, the emerging epistemic community had provided the United States with a new vision that fit with its corporate and state interests and had helped place the issue on the agendas of the OECD governments, but it had failed to convince the Third World governments. Whether services would fall under the GATT auspices was highly uncertain.

### **Issue consolidation, 1982–86**

“Trade in services” was quickly becoming an accepted topic among trade theorists and industry analysts in the industrialized world, as well as a favorite cause for the United States and its TNCs. But most governments were either cautious or reacting negatively on the basis of a priori assumptions and established regulatory interests. Yet with services now a discussion topic in GATT, they had to establish reasoned positions on how to proceed. This generated a strong demand for new ideas, in turn spurring the rapid growth and internationalization of the epistemic community. By elaborating a conceptual framework and delimiting a range of policy options, the community greatly facilitated the reassessment of national interests during the next four years.

#### *Doing homework*

Before interests could be evaluated and defined, basic data and information about the nature and extent of services transactions had to be gathered. Existing balance-of-payments statistics were imprecise and highly aggregated; indeed, the most rapidly growing and lucrative services industries were often lumped together with the rest in the category “other services.” Since cross-border flows had not been classified as trade, it was difficult for policymakers to know in which industries they held surpluses or deficits and to determine what their competitive abilities might be in a liberalized market. To ascertain this information, the industrialized countries had to establish bureaucratic mecha-

nisms to collect and classify the relevant indicators in light of the new terminology. This function did not require an epistemic community per se, although many of the ministerial personnel and consultants involved in the process were or would become involved in the broader conceptual debate. While the gathering of data and information was a prerequisite for interest clarification, it was far from sufficient. On the one hand, it could tell policymakers how much revenue nationally based firms in banking, accounting, and other services industries derived from foreign sales. On the other hand, it could not tell them whether the activities of these industries had common trade properties, whether traditional GATT principles were therefore relevant, how the application of GATT principles would affect the existing sectoral regulations and the social objectives and constituencies thereof, or what specific mix of national concessions would be logical in principle or feasible in practice. A coherent conceptual framework was thus needed to elucidate the cause-and-effect relationships and make sense of the disparate bits of information. This function did require an epistemic community and provided analysts in and out of government with strong incentives to join the debate and offer their input.

As indicated above, governments not only needed substantive input on the nature and trade properties of services transactions but also needed strategic input on what a liberalization agreement might mean for their national policies and capabilities. For example, what changes would be required if regulations were redefined as NTBs? Would telecommunications and transportation deregulation erode network integrity or preclude the cross-subsidization of services to the poor or outlying areas? Would monetary stability be undermined by the free provision of financial services or changes in reserve requirements? Would the free movement of professional service providers such as doctors, lawyers, professors, and architects undermine quality and safety objectives? How might alternative regime rules affect national consumers and providers? Information alone could not answer these complex questions; interpretation by experts was required.

In addition, governments needed procedural input on the consequences of GATT negotiations and compliance. The GATT institutional framework set forth specific modes of collective bargaining, decision making, and dispute resolution that might or might not be optimal for services. Moreover, the implementation of regime commitments could result in new types of bureaucratic problems. Nationally, jurisdiction over services industries was balkanized among separate ministries of education, finance, health, and so on. Would common multilateral rules mean that trade ministries and their policies would be given precedence, and might this result in debilitating turf squabbles? Internationally, the same jurisdictional problem applied. If an airline or telecommunications firm filed trade grievances in the GATT forum and the offending government held that it was simply complying with the rules of the International Civil Aviation Organization or the International Telecommunications Union, which agreement would take precedence? More generally, could a

division of labor be devised in which sectoral international organizations handled purely “technical” functions while GATT managed the commercial aspects, or might the former involve trade-restrictive rules that rendered this boundary line indistinguishable?

To address questions such as these, the intellectual market generated a flood of studies, especially after 1984. But until the evidence and interpretations began to cumulate as a coherent and convincing body of thought, the GATT discussion moved ahead slowly. The industrialized countries had concluded that there was sufficient reason to at least explore the services issue in an organized manner, but the majority of LDCs remained intuitively opposed to doing so. The GATT Secretariat could not establish an official work program or officially pursue intergovernmental dialogue without compromising its mandate to represent all national parties. But in 1983, a group of delegates began a series of informal minilateral meetings to keep the issue alive and explore areas of agreement and disagreement before approaching the broader membership. Even a few governments opposed to services negotiations joined in to prevent the exclusion of their views and keep tabs on the discussion. Their comfort level was increased when Colombia’s ambassador to GATT, Felipe Jaramillo, who had a solid reputation for understanding trade issues and facilitating compromise, was selected to chair the informal sessions.

As the “Jaramillo Group” engaged in regular discussions, the industrialized countries and even a few newly industrializing countries (NICs) began to share the causal beliefs and views of the epistemic community, although they still differed at times on the normative implications. Delegates were exploring the tradability of services and the potential consequences of GATT rules in accordance with both their own internal dialogues and the external debate. The first-tier members of the growing epistemic community, who pushed for services negotiations, cultivated a two-way flow of ideas with the second-tier analysts to pursue symbiotically linked objectives. In the outward flow, they promoted their views in the published literature and on the conference circuit, so that the independent second tier would pick up, elaborate on, and legitimate these views as “scientifically objective” and correct.<sup>27</sup> In the inward flow, they brought the second tier’s assessments directly into the meeting room as evidence of the growing consensus among experts who did not stand to gain materially from liberalization. That trade experts and services industry analysts almost uniformly favored some sort of new regime, they argued, underscored the need for negotiation. For opponents of negotiation, the situation was more

27. For example, the second tier elaborated on the views set forth by the USTR, William E. Brock, in his article entitled “A Simple Plan for Negotiating on Trade in Services,” *The World Economy* 5 (November 1982), pp. 229–40. The chief EC delegate in the Jaramillo Group was John Richardson, who also chaired the EC Commission’s task force. Like Geza Feketekuty of the USTR staff, Richardson was regarded, despite his bureaucratic affiliation, as a leading international authority on services concepts. For a particularly influential example of his work, see John Richardson, “A Sub-Sectoral Approach to Services’ Trade Theory,” in Giarini, *The Emerging Service Economy*, pp. 59–82.

difficult, since they lacked a strong theoretical and empirical basis for challenging the views of the epistemic community. Although there was an established body of regulatory theory arguing against open entry into services industries, there was evidence that technological and market changes were undermining its continued applicability, as in the case of telecommunications monopolies. Moreover, while opponents could point to cases of jointly provided services and argue that trade did not exist under the existing arrangements, they could not deny that even in these cases trade could exist under new arrangements, such as those fostering end-to-end provisioning into foreign markets.

The prenegotiations soon reached a turning point. In follow up to the 1982 ministerial meeting, in which participants had agreed that governments could present national studies to GATT on a voluntary basis, the United States had begun preparing its study. In early 1984, it submitted a 185-page “state of the art” report that discussed the growing role of services in the world economy, the regulation and competitiveness of the U.S. services industry, the conceptual issues involved in considerations of trade in services in general as well as in specific sectors, the existing international disciplines, and the possible approaches to a new regime.<sup>28</sup> Included were 56 pages of statistics on the GATT members’ foreign income, based on the International Monetary Fund’s annual *Balance of Payments Statistics*. While these statistics were aggregates that did not distinguish clearly between trade and investment payments or industries, they did seem to indicate that quite a few countries had net services surpluses. The U.S. report was followed quickly by similar reports from fifteen other industrialized countries, whose studies offered trade statistics disaggregated on an industry basis and confirmed that many of them were major exporters of services.<sup>29</sup> The results were extremely fortuitous for the American position. Having gone out in the field and gathered data, information, and ideas from official and secondary sources, often with strong business participation, the governments had provided the Jaramillo Group with the basis for a fundamental realignment of interests. Their analyses built on and made concrete the vague understanding that had begun to emerge three years earlier in the OECD. As one delegate recalled, the industrialized countries’ positions shifted toward a hearty embrace of negotiations “after we did our homework.”<sup>30</sup>

While substantive learning about the merits of liberalization was the primary catalyst for interest reevaluation, strategic considerations played a supporting role. In parallel with its GATT initiative, the United States was beginning to

28. U.S. Government, *U.S. National Study on Trade in Services: A Submission by the United States Government to the General Agreement on Tariffs and Trade* (Washington, D.C.: Government Printing Office, 1984).

29. In addition to the national studies, see Nicholas Oulton, *International Trade in Services Industries: Comparative Advantage of European Community Countries* (Brussels: EC Commission, November 1982).

30. Interview with John Richardson, EC delegate to the GNS, GATT, Geneva, June 1987.

pursue bilateral deals on services. These initially included pan-industry negotiations with Israel and Canada and later included industry-specific talks with Japan and the EC.<sup>31</sup> The United States hoped to gain quick entry for American-based TNCs in key markets, set a standard for services initiatives, and pressure other GATT members into negotiations. While the other industrialized countries would not have endorsed a GATT effort if convinced it was conceptually indefensible and contrary to their interests, they did not want to see the United States forming exclusionary bilateral agreements. Further, a services pact could have the additional benefit of buttressing the domestic American coalition for free trade in general, a goal these countries shared with the USTR.

Japan was the first country to join the American cause and was soon followed by Britain, Canada, France, and Switzerland. Japan's national study had shown a trade deficit in services, but the new thinking in and out of government circles was that a regime could stimulate regulatory innovation and the growth of an export capability while deflecting criticisms on trade in goods. In contrast, the others to join the cause had discovered a trade surplus in services. While the EC had initially been cautious, it began to reevaluate its position in light of the results of numerous analyses undertaken by national ministries and the Commission's interservices group. These analyses dovetailed with those of the rapidly growing second tier, whose ideas were being taken up in European think tanks, conferences, and publications. Willy De Clercq, the EC commissioner for external affairs, soon began to proclaim in numerous speeches that the EC was "the biggest world exporter of services," and in March 1985, the EC trade ministers announced their support for services negotiations. At the Bonn summit meeting in May 1985, the seven key industrialized countries endorsed a new trade round, with services to be at the top of its agenda. In contrast, most LDCs with stated positions on the issue still opposed services talks. Nothing had convinced them that, however tradable services might be in theory, liberalization would be to their advantage in practice. As a Brazilian delegate argued, liberalization "could contribute to a new international division of labor where we are granted some advantages in certain manufactures but will be permanently excluded from passing on to a post-industrial or more services-oriented economy as is happening in the developed world."<sup>32</sup> LDCs also feared a tactical linkage whereby the Southern countries would be forced into services concessions to win new access to or prevent retaliation in Northern markets for commodities and goods such as textiles.

Recognizing the momentum, the LDCs did take one step that would have important consequences for their substantive understandings of and bargaining positions on services: they raised the status of the services issue in the United

31. The U.S.-Israel free trade pact of 1985 contained a nonbinding declaration of intent to liberalize a number of services industries. The first legally binding, broad agreement on trade in services was the U.S.-Canada Free Trade Agreement, which came into effect in 1989.

32. Interview with a delegate from Brazil, member of the GNS, GATT, Geneva, June 1987.

Nations Conference on Trade and Development (UNCTAD). Unlike GATT, UNCTAD had a track record in services, although it had not dealt with them in terms of general trade concepts. For example, it had provided the LDCs with technical assistance regarding insurance, had examined problems in air transportation, and had addressed questions concerning construction, engineering, and software in the context of its technology transfer programs. Moreover, the LDCs had considered the UNCTAD Liner Code as a crucial safeguard against dominance of the North over maritime and multimodal transport of goods. At its sixth conference in 1983, UNCTAD had asked its Secretariat to undertake studies on the role of services in the development process. In 1984, this yielded a general study of services and accompanying papers on individual sectors, all of which stressed the problems faced by LDCs.<sup>33</sup> With the OECD countries shifting to support for negotiations, UNCTAD expanded its Secretariat's mandate in March 1985 to include the examination of the definitional and conceptual issues, the gathering of additional statistics, the generation of more detailed assessments of the development issues, and the provision of assistance to individual countries wishing to pursue their own studies. Much of this early research was in keeping with the LDCs' skepticism regarding both the epistemic community's views and the North's intentions. In working papers and the UNCTAD journal, *Trade and Development*, three overarching criticisms of the Northern agenda were voiced by the staff and its outside consultants. They questioned the applicability of trade concepts and placed quotes around the phrase "international trade in services" in their reports. They maintained that even if some services transactions could be viewed as trade, these were exceptions to the more typical phenomenon of services delivery via FDI, which was outside the jurisdiction of GATT.<sup>34</sup> Therefore, a restrictive definitional boundary needed to be drawn. And they worried that a liberal regime might benefit the large TNCs that dominated global markets more than it did development.<sup>35</sup> In sum, by 1984–85, the game was no longer the United States versus the world; it was now the North versus the South.

### *Comparing notes*

Now that the national studies were available, the Jaramillo Group shifted gears. Key members had agreed on the desirability of negotiations, but there remained substantial uncertainty about the issues to be addressed. And beyond some unspecified level of market liberalization commitments, none of them really knew what kind of agreement they wanted. What trade principles could

33. See UNCTAD, *Services and the Development Process*, TB/B/1008/Rev.1 (Geneva: UNCTAD, 1984).

34. See UNCTAD, *International Trade in Goods and Services: Protectionism and Structural Adjustment*, TD/B/1008 (Geneva: UNCTAD, 1985).

35. See Frederick F. Clairmonte and John H. Cavanagh, "Transnational Corporations and Services: The Final Frontier," *Trade and Development*, no. 5, 1984, pp. 215–75.

serve as the basis of general obligations, and to what range of industries could they apply? If at least the broad outlines of the answers were not delineated, it would be impossible to get other GATT members to sign on for actual negotiations over specific commitments. But the body of knowledge generated to date in the first- and second-tier discussions was too fragmentary to provide clear guidance on what to do next. The many issues and principles in play needed to be cross-referenced and organized so a coherent issue-area could be constructed and then broken down into manageable tasks. Policymakers and independent experts had to move beyond their individual homework and begin comparing notes.

The epistemic community was developing rapidly in a manner that facilitated the organized consideration, if not yet the final resolution, of these problems. As the Jaramillo Group discussions proceeded and the services issue became more salient politically, the community membership grew and diversified, with analysts from academia, research institutes, corporations, consulting firms, business associations, and governments joining in from an increasing number of countries. They generated dozens of articles in new newsletters, such as *The Service Economy*, and in established economics journals, such as *The World Economy* and the *Journal of World Trade Law*.<sup>36</sup> Some contributors to these publications undertook early efforts to consider the specific issues arising in different services industries.<sup>37</sup> Other analysts produced articles and books delineating the broad range of issues and promoting negotiations.<sup>38</sup> As it

36. See, for example, S. Benz, "Trade Liberalization and the Global Service Economy," *Journal of World Trade Law* 19 (March–April 1985), pp. 95–120; I. D. Canton, "Learning to Love the Service Economy," *Harvard Business Review* 62 (June 1984), pp. 89–97; H. Peter Gray, "A Negotiating Strategy for Trade in Services," *Journal of World Trade Law* 17 (September–October 1983), pp. 377–88; Brian Hindley and Alasdair Smith, "Comparative Advantage and Trade in Services," *The World Economy* 7 (December 1984), pp. 369–90; Harald B. Malmgren, "Negotiating International Rules for Trade in Services," *The World Economy* 8 (March 1985), pp. 11–26; Jeffrey J. Schott, "Protectionist Threat to Trade and Investment in Services," *The World Economy* 6 (June 1983), pp. 195–214; and S. Schultz, "Trade in Services: Its Treatment in International Forums and the Problems Ahead," *Intereconomics*, November–December 1984, pp. 267–73.

37. Since finance and telecommunications were thought to be the most important industries at stake, these received early attention. See, for example, Jonathan D. Aronson and Geza Feketeekuty, "Meeting the Challenges of the World Information Economy," *The World Economy* 7 (March 1984), pp. 63–86; Barbro Beer, "Informatics in International Trade," *Journal of World Trade Law* 19 (November–December 1985), pp. 570–78; Wilson P. Dizard, "U.S. Competitiveness in International Information Trade," *The Information Society*, vol. 2, nos. 3 and 4, 1984, pp. 179–216; Geza Feketeekuty and Kathryn Hauser, "A Trade Perspective on International Telecommunications Issues," *Telematics and Informatics*, vol. 1, no. 4, 1984, pp. 359–69; Brigid Gavin, "A GATT for International Banking?" *Journal of World Trade Law* 19 (March–April 1985), pp. 121–35; and Ingo Walter, *Barriers to Trade in Banking and Financial Services* (London: Trade Policy Research Centre, 1985).

38. See K. Albrecht and R. Zemke, *Service America: Doing Business in the New Economy* (Homewood, Ill.: Dow Jones Irwin, 1985); Jonathan D. Aronson and Peter F. Cowhey, *Trade in Services: The Case for Open Markets* (Washington, D.C.: American Enterprise Institute, 1984); M. Bannon and S. Blair, *Services Activities, the Information Economy and the Role of the Regional Center* (Dublin: University College, January 1985); Shirley A. Coffield, "International Services-Trade Issues and the GATT," in Seymour J. Rubin and Thomas R. Graham, eds., *Managing Trade Relations in the 1980s: Issues Involved in the GATT Ministerial Meeting of 1982* (Ottawa, N.J.:

accumulated, the body of work took on the attributes of a social science literature in which authors cited, critiqued, and built on each other's analyses. But unlike most academic debates, in which contending theories and assumptions remain contested, the services discussion produced broad and lasting consensus on core concepts and objectives. Community members were by now unanimous in their dedication to the common policy project of placing services on the GATT agenda, and this relevance test precluded meta-theoretical differences of the sort familiar to political scientists. Disagreements were confined to the issue of which GATT principles and processes were right for which transactions, rather than to the question of whether services should be treated as trade in the first place.

Intellectual convergence among individuals was also promoted by the increasing involvement of and interaction among organizations that sponsored research and conferences on services and advocated common policy positions. In the private sector, the Coalition of Services Industries in the United States and the Liberalization of Trade in Services Committee in Britain had been launched in 1982, and they continued to play leading roles throughout the 1980s. By mid-decade, they were complemented by organizations in other countries, by established business alliances, such as the International Chamber of Commerce, and by new alliances, such as the Conference of Services Industries. In the public sector, there was also increased activity and interchange. At the national level, most governments now had interministerial working groups, and their various reports were frequently circulated to one another. At the multilateral level, the OECD Trade Committee was developing a model framework agreement of trade principles, while other committees focused on their sectoral applicability.<sup>39</sup> Contacts were initiated and sustained among the services staff members of such organizations as the OECD, GATT, UNCTAD, the International Civil Aviation Organization, and the International Telecommunications Union.

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Rowman & Allanheld, 1983), pp. 69–108; A. V. Deardorff, “Comparative Advantage and International Trade and Investment in Services,” paper presented at the Research Seminar on International Economics, University of Michigan, Ann Arbor, 1984; William Diebold, Jr., and H. Stalson, “Negotiating Issues in International Service Transactions,” in William R. Cline, ed., *Trade Policy for the 1990s* (Washington, D.C.: Institute for International Economics, 1983), pp. 581–610; Robert P. Inman, ed., *Managing the Service Economy: Prospects and Problems* (Cambridge: Cambridge University Press, 1985); Raymond J. Krommenacker, *World-Traded Services: The Challenge for the Eighties* (Dedham, Mass.: Artech House, 1984); Jacques Nusbaumer, *Les services: Nouvelle donne de l'économie* (Paris: Economica, 1984), later published in English as *The Services Economy: Lever to Growth* (Hingham, Mass.: Kluwer, 1987); and Robert M. Stern, “Global Dimensions and Determinants of International Trade and Investment in Services,” paper presented at the Research Seminar on International Economics, University of Michigan, Ann Arbor, 1984.

39. After several years of highly interactive consultations between first- and second-tier members, the OECD Trade Committee's product was released in March 1987 and entitled “Elements of a Conceptual Framework for Trade in Services.” Some of the framework's concepts were carried into the multilateral negotiations by national delegates.

Finally, the creation and interaction of independent research institutes and forums began to accelerate, complementing extant programs such as that of the Trade Policy Research Centre in London. For example, in October 1984, Orio Giarini, an independent economist based in Geneva and a member of the Club of Rome, launched the *PROGRES Newsletter*.<sup>40</sup> Conceived as a “neutral” channel for the exchange of ideas unbound by particularistic interests, it was distributed gratis to three thousand experts in business, government, and academia. The following year, Giarini and several dozen other leading experts formalized their contacts by creating the Services World Forum, a group that has held several prominent meetings and published two books.<sup>41</sup>

In sum, by the mid-1980s there was a large and still expanding multinational “trade in services mafia,” as some participants jokingly referred to themselves. The joke is telling, for it underscores their regularity of interaction and increasing similarity of perspective. This “epistemic community,” as we refer to the participants, indeed self-consciously shared causal and principled beliefs, validity tests, and a policy project. There was a symbiotic relationship between the first- and second-tier members, who cultivated their connections and regularly jetted off to pleasant locales for what some called “collective brainstorming exercises” designed with policy relevance in mind. There was a real sense of excitement in these meetings and in the expert network generally, as participants were intrigued by the conceptual and bargaining challenges and pleased to be seen as involved in a “cutting edge” issue. As Feketekuty recalls, “Conferences in places like Ditchley Park outside Oxford, Bellagio in Northern Italy, and Winston House near Steyning provided focal points for the international coalition-building efforts. The meetings provided a unique opportunity to compare notes on the evolution of thinking in various countries, to coordinate plans for conferences and seminars, and to develop an informal

40. Orio Giarini later coauthored, with Walter R. Stahel, *The Limits to Certainty: Facing Risks in the New Service Economy* (Hingham, Mass.: Kluwer, 1990).

41. The purpose of the Services World Forum was to build direct links between key conceptual innovators from the first and second tiers. Orio Giarini served as president. Geza Feketekuty of the USTR staff was a vice president, as was Jacques Nusbaumer, who was the head of services activities in the GATT Secretariat. Among other noted analysts active in the Services World Forum were Claude Barfield of the American Enterprise Institute, who later organized a book series on trade in services; Albert Bressand, who in 1985 formed Prométhée, a research group that has sponsored many meetings and publications on services; Murray Gibbs and Bruno Lanvin, who were the chief researchers on services in the UNCTAD Secretariat; Mario Kakabadse and Raymond Krommenacker of the GATT Secretariat; G. Russel Pipe, publisher of *Transnational Data and Communications Report*; Juan Rada, Director of IMEDE, based in Lausanne; and John Richardson, head of services in the EC Commission. All wrote prominent works cited elsewhere in this article. In the latter half of the decade, the Services World Forum played an additional important role by convening conferences that focused on services markets in Eastern Europe and helped extend the epistemic community into that region. The forum has published two books so far: Giarini, ed., *The Emerging Service Economy*; and Albert Bressand and Kalypso Nicolaïdis, eds., *Strategic Trends in Services: An Inquiry into the Global Services Economy* (New York: Harper & Row, 1989).

consensus on the future direction of the work in the OECD, in the GATT and elsewhere.”<sup>42</sup>

As the epistemic community’s membership grew, so too did the scope of its shared beliefs. The fundamental assumptions of the earlier Anglo-American debate—the assumptions, for example, that services were productive, measurable, separable and storable, crossed borders, and comprised a coherent class of activities subject to NTBs—provided an unchallenged frame of reference. Analysts were now taking the next logical step: rather than reinventing the wheel to accommodate services transactions that had trade-like properties, they were using general trade theory as the conceptual baseline for further evaluation of the issues at hand. As Brian Hindley and Alasdair Smith argued, “None of the potential difficulties of applying the normative theory of comparative costs to trade and investment in service industries appears to yield any *a priori* reasons to suppose that the theory does not apply.”<sup>43</sup> By this reasoning, familiar principles such as unconditional most-favored-nation (MFN) status and national treatment provided the best starting point. The convergence on these general ideas within and outside of the Jaramillo Group meant that proponents could argue plausibly that the negotiations would have a clear purpose and agenda. Nevertheless, while trade theory and policy provided a broad justification for launching negotiations, there remained a number of vexing conceptual ambiguities. It was the members of the epistemic community who pointed out these problems, and it would be they who later developed the solutions. Six points illustrate the general dilemma.

First, not all services transactions appeared to fit under the traditional definition of trade as products produced entirely in one country and purchased in another. Some were rendered jointly within corporate alliances, while others were co-produced in real time by buyers and sellers, as when firms based in two or more countries cooperate via global networks to design a customized service. A new definition of trade would be required, a definition that specified the means by which services were delivered and also accounted for the fact that production, distribution, and consumption were not discrete, sequential stages.<sup>44</sup>

Second, again related to the issue of definition, given that some cross-border services were delivered by the temporary or permanent movement of producers and consumers toward one another, a boundary line between trade and FDI was necessary conceptually. It was also necessary politically, since the majority of LDCs would be unwilling to negotiate a global free investment regime, especially under GATT. Moreover, several community members noted that if capital flows were essential for some forms of services trade, so too were labor

42. Feketekuty, *International Trade in Services*, p. 310.

43. Hindley and Smith, “Comparative Advantage and Trade in Services.”

44. See Slobodan Djajic and Henryk Kierzkowski, “Goods, Services and Trade,” mimeograph, Graduate Institute of International Relations, Geneva, January 1986.

flows. If the industrialized countries demanded free FDI rules, the LDCs might demand the liberalization of labor movements.<sup>45</sup>

Third, because tariffs were not the relevant impediments to trade, a boundary line between illegitimate NTBs and legitimate regulations was required. Wherever that line could be drawn, services liberalization would necessarily involve the extensive restructuring of what were once thought of as purely domestic regulations. This required a sea change in social purpose. Both the intellectual frameworks in which services industries were visualized and the vast array of social interests and institutions related to regulations would now have to be judged according to the narrow commercial criterion of whether they impeded trade. Significant deregulation would also be necessary, since regulations also limited entry for national firms, thereby making national treatment an insufficient means of achieving true competition.

Fourth, the basic concept of comparative advantage might require modification, since competitiveness in services generally derived from knowledge and technology engineering rather than from natural factor endowments. To show that liberalization was mutually advantageous for all GATT members, which was politically essential, it might have to be balanced with permissible steps to develop human-made factor endowments as a precondition.<sup>46</sup>

Fifth, there was substantial skepticism among some second-tier members about the applicability of unconditional MFN treatment in industries such as telecommunications and air transport, where allowing open entry for all comers could erode network integrity and generate uneconomic redundancies. However, trade policymakers felt it imperative politically to negotiate on this basis. The divergence on this point would later come back with a vengeance.

Sixth, in light of the above, it was becoming evident that the extant GATT framework could not be applied wholesale to services, as the Americans had initially hoped. Simply adding “and services” to the original GATT treaty was understood to be inadequate. Services liberalization would have to be a “progressive” process of socioregulatory adjustment over time, rather than an immediate elimination of barriers. While the GATT organization was the appropriate venue for negotiations, the GATT regime did not suffice. What was required was a separate treaty that could be linked to the existing GATT in an as yet undefined manner.<sup>47</sup>

45. One extremely influential article attempted to set criteria distinguishing between “pure” trade and investment: Gary P. Sampson and Richard H. Snape’s “Identifying the Issues in Trade in Services,” *The World Economy* 8 (June 1985), pp. 171–82. Sampson, an analyst at UNCTAD at the time the article was written, later became head of services activities in the GATT Secretariat.

46. For an excellent discussion that received widespread attention in the Third World, see Juan F. Rada, “Advanced Technologies and Development: Are Conventional Ideas About Comparative Advantage Obsolete?” *Trade and Development*, no. 5, 1984, pp. 275–96.

47. As Gold argued, “The services code would need an independent legal structure parallel to the GATT, with its provisions drafted to meet the special circumstances of trade in services. The fundamental principles of the GATT could be incorporated therein.” See Philip Gold, “Legal Problems in Expanding the Scope of GATT to Include Trade in Services,” *International Trade Law Journal* 7 (Winter 1982–83), p. 303. See also Philip Gold, “Liberalization of International Trade in

The consensus emerging among epistemic community members deviated from what we might expect to emerge from the traditional trade policy profession. Indeed, the community members were toying with the profession's sacred cows in moving toward the view that trade principles should be modified and placed in a more complex conceptual matrix which reflected the specificities of certain transactions and the continuing importance of some regulations and which translated into an extra-GATT instrument. In essence, the community members were defining trade in services as a new issue-area, different from but linked to trade in goods. This issue framing derived from the character of the epistemic community, which was professionally and intellectually more diverse than the trade profession. It also reinforced the community's claims to external authority and influence, since the trade profession could neither analyze nor propose comprehensive solutions for the issue-area on its own. Governments required the epistemic community's ideas because their underlying national interests and their positions on economic policy in general and trade policy in particular did not translate readily into clear guidelines on services.

The consensus was also beginning to deviate from the initial vision of the Anglo-American analysts. The epistemic community's internal balance of influence was shifting away from those who believed that all regulatory barriers could and should be eliminated quickly and moving toward those who saw difficulties that required a more cautious and managed approach to liberalization. However, the balance remained skewed on the North–South axis. While UNCTAD was raising important concerns, there were precious few studies by Third World analysts or Northerners sympathetic to an antidependency perspective. In part, this inactivity derived from a substantive assessment: the assertion that services could not be traded made no sense, while the difference between trade and investment and the presence of corporate interests did not by definition negate the logic of negotiations. And in part, it was a function of the discussion's "hegemonic" cast (in the Gramscian sense): there was little to be gained professionally from aligning with a dissident view at the margins. As a result, this critical phase of the prenegotiations failed to produce a widespread, intellectually informed oppositional discourse of the sort evident in the debate about the new international economic order and the debate about the new international information order, which had both taken place in the 1970s. In 1984, many LDCs remained opposed to services negotiations, but they did so on a shaky intellectual ground. During the next few years, that ground would progressively give way.

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the Service Sector: Threshold Problems and a Proposed Framework Under the GATT," *Fordham International Law Journal* 5 (Winter 1981–82), pp. 371–409; Frieder Roessler, "The Scope, Limits and Function of the GATT Legal System," *The World Economy* 8 (September 1985), pp. 287–98; and Elaine M. Whitford, "A Rainy Day for the GATT Umbrella: Trade Negotiations on Services," *North Carolina Journal of International Law and Commercial Regulation*, vol. 14, 1989, pp. 121–33.

*Leaping into the dark*

By mid-1985, it appeared that there were enough pressing problems of mutual interest for the GATT membership to piece together a unanimous decision to launch a new round of negotiations. The industrialized countries were especially enthusiastic about the “new issues,” such as high-technology trade and trade-related intellectual property and investment, while the LDCs wanted to pick up the “unfinished business” of the Tokyo Round. The big question mark was services. In the North, the consensus was on generalities and was not specific enough for governments to know precisely what they wanted to achieve in any given industry. In the South, opinions ranged from the opposition of countries such as Brazil and India to the skepticism and agnosticism among the majority of LDCs, which lacked major stakes either way but saw no obvious benefits to liberalization. Nevertheless, each country was going to have to take a position on one side or the other without waiting for final clarification of its interests. Accordingly, many participants in the services discussion characterized the choice they faced as a “leap into the dark.”

During their autumn 1985 session, the Contracting Parties established a preparatory committee to lay the groundwork for negotiations. The committee had until July 1986 to draft a declaration that would serve as the basis for final prenegotiations at the ministerial level in September. At the same time, Brazil and India were making the headlines in the world press by opposing the plan to begin services negotiations. Given the GATT's tradition of unanimous consent on new rounds, it was therefore impossible to formally include services in the preparatory committee's mandate or to draw an institutional link between the committee and the Jaramillo Group. But GATT members did issue a statement inviting the Jaramillo Group to continue its work and prepare recommendations to be considered in the next session of the Contracting Parties. This procedural compromise was coupled with an implicit recognition that the preparatory committee delegates could still make unofficial, unilateral statements on services. Such maneuvers bought time for negotiation proponents by keeping services on the agenda in a nondivisive manner while governments continued to assess their positions. From January to May 1986, the preparatory committee met every month, but progress on the draft declaration was slow. During the April meeting, however, they did agree that the ministerial session launching the round would be held at Punta del Este, Uruguay, and would begin on 15 September 1986. The negotiations would thus be referred to as the Uruguay Round. The symbolic gesture was to assure the LDCs that their special development needs would be duly noted and their active participation sought. For many, this lessened the fears that the industrialized countries would try to ram services down their throats and also made it easier to think about the issues in a less threatening light.

With a few notable exceptions, the G-77 bloc had been largely united in refusing services negotiations. But the opposition was usually based on

uncertainty, rather than on informed cost-benefit calculations. As Jaramillo recalled, "Whether developing countries would agree to discuss services depended on the degree to which each had studied this problem internally. Most countries had not. In this case it [was] much easier to say 'no' and follow Brazil and India."<sup>48</sup> The majority of LDCs simply had not been convinced that liberalization could be to their long-term advantage, and they feared binding, short-term commitments to radical domestic restructuring before their competitive capabilities were established. They also feared tactical issue linkages by the North and, in particular, retaliation in the goods market in response to perceived protectionism in services. Negotiation proponents realized that if they could satisfy the LDCs on these points, their unity would dissolve. Doing so meant bringing more LDCs directly into the substantive discussions, demonstrating the benefits of liberalization, noting that some regulations were legitimate and that key commitments might be phased in over time depending on a country's situation, and forswearing goods for services retaliation if an agreement were reached while at the same time leaving open what would happen if it were not. It also meant pursuing the strategy of divide and conquer. In this regard, the United States and its allies began to differentiate publicly between the "moderate" majority of LDCs and the "radical" or "hard-line" minority. The latter, called the Group of 10, was led by Brazil and India and included Argentina, Cuba, Egypt, Nicaragua, Nigeria, Peru, Tanzania, and Yugoslavia.

As the preparatory committee and Jaramillo Group discussions proceeded, a growing number of "moderates" found their *de facto* association with the "hard-line" position uncomfortable. The G-77 was quietly breaking down. Initially, the dissolution was not based on a substantive reevaluation of services liberalization. Many LDCs were beginning to suspect that Brazil and India were really pursuing their own regional spheres of influence in services under the guise of Third World solidarity. The G-10 appeared set on a confrontation from which most LDCs did not stand to benefit, since their main interest was in achieving access to Northern markets for goods. At the same time, the G-10 was making important tactical errors. In June 1986, it submitted the first official proposal to the Contracting Parties since the preparatory committee had been formed. Not only did the draft declaration completely omit services and other new issues, but it was also formulated without any participation from other LDCs. As a result, the North and much of the South were becoming alienated from the G-10, with whom opposition to services talks was now synonymous. The "moderates," led by Colombia and Jamaica, banded together informally as the Group of 20 in an effort to develop a new course. If the North could get the G-20 to examine and accept services issues as these had been framed previously, other Southern dominoes might fall into line.

48. Interview with Filipe Jaramillo, head of the GNS, GATT, Geneva, June 1987.

Another coalition, the Group of 9, consisting of small industrialized countries primarily from the European Free Trade Association (EFTA) and led by Switzerland, positioned itself as a comparatively neutral “conceptual mediator” with whom the LDCs could explore issues in a noncoercive manner. By the end of June 1986, Jaramillo was coordinating regular, informal meetings between the G-9 and the G-20 under the label “friends of the new negotiations,” with the United States, EC, and Japan actively participating but not dominating the process. Held outside the GATT framework in the EFTA building, the July meetings were the first real chance for the G-20 to think through the substantive issues on their merits. As LDC delegates familiarized themselves with the accumulated wisdom of previous discussions, the epistemic community’s first tier finally acquired a Southern flank. The G-20 collective reevaluation was also aided by the fact that, in response to previous events, more second-tier members were examining the development consequences of a services regime. Respected economists and industry analysts agreed that liberalization would promote growth and that some LDCs might already have strong comparative advantages in certain industries. But they also recognized the need to accommodate development objectives by taking special steps, such as “phasing in” rule application and possibly agreeing on free labor movement to deliver LDC-originated services.<sup>49</sup> By late July, the EFTA group drafted the *café au lait* proposal, named after its Swiss and Colombian godfathers. Among other things, it called for multilateral liberalization in services with due regard for development concerns, but the relevant portion of the text remained in “brackets” to signal the other LDCs that nothing had been finalized without them. This informal procedure circumvented the cumbersome preparatory committee and the “hard-liners,” reducing the former to a post hoc legitimating forum.

49. Especially important was the support of Jagdish Bhagwati, a Columbia University professor who has had high standing in the Third World and is now adviser to the GATT Secretary General. See the following works of Bhagwati: “Splintering and Disembodiment of Services and Developing Countries,” *The World Economy* 7 (June 1984), pp. 133–44; “Why Are Services Cheaper in the Poor Countries?” *Economic Journal* 94 (June 1984), pp. 279–86; and “GATT and Trade in Services: How We Can Resolve the North–South Debate,” *Financial Times*, 27 November 1985. Also influential was the work of Juan Rada, a Chilean who is director of IMEDE, Europe’s largest management school. See Rada, “Advanced Technologies and Development.” For additional works concerning services and development, see A. F. Ewing, “Why Freer Trade in Services Is in the Interest of Developing Countries,” *Journal of World Trade Law* 19 (March–April 1985), pp. 147–69; Tamar Atinc et al., “International Transactions in Services and Economic Development,” *Trade and Development*, no. 5, 1984, pp. 141–214; Murray Gibbs, “Continuing the International Debate on Services,” *Journal of World Trade Law* 19 (May–June 1985), pp. 199–218; Andre Sapir, “North–South Issues in Trade in Services,” *The World Economy* 8 (March 1985), pp. 27–42; Jeffrey J. Schott and Jacqueline Mazza, “Trade in Services and Developing Countries,” *Journal of World Trade Law* 20 (May–June 1986), pp. 253–73; Ronald Shelp et al., *Service Industries and Economic Development: Case Studies in Technology* (New York: Praeger, 1984); Dorothy I. Riddle, *Services-Led Growth: The Role of the Service Sector in World Development* (New York: Praeger, 1987); and OECD, *Trade in Services and Developing Countries* (Paris: OECD, 1989).

Rather than wholeheartedly embracing the *café au lait* draft, the EC took an ambiguous stand. In part, the EC position reflected tactical maneuverings vis-à-vis the United States on the scale and pace of domestic deregulation and vis-à-vis Japan on what it called the need for “balanced benefits” in trade reform. And in part, it reflected the desire of the EC to be seen by the Brazilians and Indians as a sympathetic player with overlapping interests. Whereas the United States had originally proposed the direct application of extant GATT principles, the EC wanted to accommodate national regulations within the overall GATT philosophy. Since Brazil and India found merit in the formulation set forth by the EC, the three together stressed publicly their growing conceptual convergence around a managed liberal vision which acknowledged the contributions that services made to development, the legitimacy of many regulations, and the problem of the TNCs’ dominant positions in global markets. Brazil and India still asserted that there was no conclusive evidence that liberalization was mutually advantageous, but they shifted their position from that of opposing services negotiations altogether to that of opposing them within the formal GATT framework. A few days before the Punta del Este meeting, the EC, Brazil, and India suggested a “common working platform” based on a “two-track” approach for the round. The proliberalization countries, they argued, needed to be flexible on procedure if they wanted an inclusive agreement on substance. In effect, the suggested approach would allow the G-10 to save face while accepting services negotiations. It would also insulate goods and services, so the LDCs would not fear that their demands on the “unfinished business” were to be traded away for a services deal.

More than fifteen hundred delegates gathered at Punta del Este on 15 September 1986. After a week of marathon negotiations, the Contracting Parties reached unanimous agreement on a ministerial declaration launching the Uruguay Round. The first part of the round would cover trade in goods, while the second would address trade in services. The latter was presented as a separate decision by the ministers, who just happened to be in attendance. The Uruguay Round would therefore consist of two “distinct but parallel negotiations” in which services were legally outside the GATT framework.<sup>50</sup>

50. For a discussion on the two-track procedure and issue disaggregation as key to the launching of the round, see Kalypso Nicolaïdis, “Learning While Negotiating: How Services Got on the Uruguay Round Agenda,” in Bressand and Nicolaïdis, *Strategic Trends in Services*, pp. 161–81. See also Gilbert Winham, “The Prenegotiation Phase of the Uruguay Round,” *International Journal* 44 (Spring 1989), p. 299. Three leading first-tier members from the EC Commission, the Indian delegation, and the Colombian delegation have also written about the importance of procedural and conceptual compromises at Punta del Este. See John B. Richardson, “What Really Happened at Punta del Este: Understanding the Framework of the Uruguay Round,” in Dorothy Riddle, ed., *Toward an International Service and Information Economy* (Bonn: Friedrich Ebert Foundation, 1987), pp. 202–13; P. S. Randhawa, “Punta del Este and After: Negotiations on Trade in Services and the Uruguay Round,” *Journal of World Trade Law* 21 (March–April 1987), pp. 163–71; and Felipe Jaramillo, “Balance of Interests Underlying Services Negotiations,” *Transnational Data and Communications Report* 11 (August–September 1988), pp. 18–20.

This was in keeping with the common working platform but distasteful to the United States, which in a last-minute compromise won acknowledgment that the two processes were part of a “single undertaking.” Hence, progress on goods and services would have to move in a parallel with regard to deadlines and negotiation phases, while the question of linked concessions was reopened implicitly. Still, Brazil and India could say that they kept services out of GATT, while the United States could say that it got services into the round.

The process of achieving unanimity produced other twists. The ministerial declaration stated that negotiations would be conducted “with a view to expansion of such trade [i.e., trade in services] under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all parties and development of developing countries.” The LDCs insisted that trade was but a means to the end of economic development, which implied that the principles of trade might have to bend to serve the goals of development. Similarly, the declaration stated that a new regime should “respect the policy objectives of national laws and regulations applying to services,” a concern shared by the LDCs and the EC. The Anglo-American analysts’ initial, classical liberal vision was being reformulated by the continental analysts who were now members of the epistemic community and who recognized the need to accommodate political realities. The declaration also held that “GATT procedures and practices shall apply to these negotiations” and established the Group on Negotiations on Goods (GNG) and the Group on Negotiations on Services (GNS).<sup>51</sup> While both would report to the GATT Trade Negotiations Committee, the GNS was to be formally autonomous from the rest of the negotiations.

### **The Uruguay Round negotiations, 1986 to mid-1991**

The negotiations evolved in three stages. The first stretched to the midterm review in December 1988 and focused on assessing the trade principles suggested by earlier analyses. The second lasted until October 1989 and involved translating and testing these principles on a sectoral basis. The third, which continues at the time of writing, has concentrated on drafting the services agreement and setting national commitments. As the negotiations moved from exploring principles to bargaining over concessions, the epistemic community’s direct influence on events was increasingly mediated by the mobilization of newly clarified material interests. While the resulting draft agreement corresponds closely with the community’s suggestions in its broad outline, it differs from them with regard to the precise structure and substance of national obligations.

51. GATT, “Ministerial Declaration on the Uruguay Round,” Geneva, 25 September 1986, pp. 11–12.

*Defining general principles*

In January 1987, the GNS agreed to a five-part work program dealing with definitional and statistical issues, concepts and principles, sectoral coverage, existing international instruments, and policies expanding or limiting trade in services. The national delegates and GATT staff members were largely the same core group of first-tier members who had been together in the prenegotiations. However, the GNS also had significantly increased representation from the LDCs, and this expanded the number and pluralism of members thinking through conceptual issues. The discussions were regular, intensive, and ideas-oriented, since the goal was to at least delimit a range of principles by the 1988 midterm review.<sup>52</sup> Participants from countries large and small generated background papers designed to clarify conceptual issues rather than to present national positions. That made sense, as the issues were still too broadly framed for anyone to even have detailed positions. The GNS also invited a number of second-tier members to present their analyses. This routinized the contacts, increased the epistemic community's sense of collective identity, and placed directly on the table concepts developed in the literature and conference circuit. But at the same time, the fact that issue examination now took place within the GATT context had a limiting impact on the ideas in play. Previously, second-tier discussions had been conceptually open because the trade theory baseline was modified by the involvement of industry analysts and "services economy" scholars interested in social and regulatory questions. Now this conceptual diversity was being reduced as issues were collapsed to fit the criteria of GATT principles and procedures. Moreover, most delegates were experienced negotiators socialized in the GATT culture, and some were concurrently involved in the GNG. In an odd way, the GATT context simultaneously reduced the complexity of the issues and made some of their dimensions more difficult to address. By beginning from the baseline of labeling as potential NTBs anything that restricted competition, the diverse social purposes of existing regulations were obscured. Negotiators thus encountered problems when considering measures that restricted trade but served important purposes. The GATT context channeled the process toward a trade agreement but complicated the search for a balance between trade and regulatory objectives.

Given the institutional setting and issue framing, it was logical to begin with existing trade principles as the takeoff point. Negotiators agreed rapidly that the principles of unconditional MFN, national treatment, and transparency were central politically for what was now referred to as the GATS. But in light of previous analyses, they recognized that GATT principles would sometimes

52. For example, the GNS met twenty-seven times for three to five days each between November 1986 and January 1990. Delegations submitted over eighty contributions dealing with a wide range of topics, including general principles, their application in specific sectors, and the relevance of existing multilateral disciplines.

have to be modified because of the unique properties of services. Figuring out when the principles were inadequate and what was needed consumed much of the time and brain power of the GNS. For example, some second-tier members had questioned whether unconditional MFN status was impractical, since multiple market entrants could reduce network interoperability and economies of scale in telecommunications, could generate congestion in air transport, could undermine monetary stability in banking and finance, and could weaken quality and safety standards in health care and professional services.<sup>53</sup> Nevertheless, negotiators felt that unconditionality was the only way to spread the benefits of liberalization and piece together a winning coalition. National treatment was also problematic, but in paradoxical ways. In the absence of tariffs or other border checks to services entry, full national treatment of services once foreign providers were in a market seemed to be too much, too fast for governments to cope with. Delegates compared this option to an immediate, non-phased in zero-tariff situation, something seldom achieved for goods. Conversely, in some cases, national treatment might be too little for providers, since regulations often erected barriers to entry for domestic as well as foreign firms. Similarly, since transparency requirements involving the public dissemination of all regulations and administrative procedures of possible trade import could lead to expensive bureaucratic nightmares or the disclosure of sensitive information, a relevance test was needed. These and other dilemmas forced negotiators and their second-tier supporters to innovate and think through how services differed from goods.

GNS participants converged on two new concepts and a consequent principle. The first concept concerned the definition of trade in services and hence the scope of the regime's coverage. To show that services were tradable and should be liberalized, most analyses had begun by establishing how services crossed borders and where they were impeded by NTBs. Epistemic community members devised various typologies, some based on the physical embodiments of the movement of services (in people, capital, goods, and information) and others based on characterizing the movement of services suppliers and consumers across borders. Drawing directly on these discussions, the GNS ultimately settled on a four-part typology. Trade in services was defined as the supply of services from one country to another (1) through cross-border flows in which neither the supplier nor the consumer moves physically (for example, through telecommunications networks), (2) through the movement of a consumer to the supplier's country, (3) through the movement of an individual supplier to the consumer's country, or (4) through the movement of a

53. Even the OECD, normally a bastion of free trade thinking, admitted this was a problem. In its 1987 framework document, which was an influential input for the GNS, it noted the following: "Domestic regulation is . . . an important aspect of the proper functioning of some service industries. The need for countries opening their markets to each other's industries to obtain certain guarantees in this area may justify attaching an element of conditionality to nondiscrimination." See OECD Trade Committee, "Elements of a Conceptual Framework for Trade in Services," p. 8.

commercial organization to the consumer's country. While this precise fourfold definition was not agreed upon until autumn 1990, variants of it constituted the implicit baseline for earlier discussions. What was explicitly spelled out by 1988, however, was that liberalization required that providers have the right to choose their preferred mode of delivery and that governments should undertake to reduce restrictions on each. With the playing field leveled, a provider's decision about which mode to use would then depend on cost and quality considerations rather than prejudicial policies that made one more feasible than the others.

The second concept derived from the first. While some services were provided by "natural" persons or individuals, others were provided by "legal" persons or organizations. If the preferred mode of delivery involved the latter, was a GATS not treading on the politically sensitive turf of FDI? As with the definitional issue, much of the literature and conference discussions had addressed this issue, frequently by envisioning a continuum with "pure" trade at one end, "pure" FDI at the other, and a hybrid "establishment trade" somewhere in between. Negotiators agreed quickly that portfolio investment could not be considered trade. But they needed a criterion to delineate what was and was not properly "trade-related" establishment. One possibility was to focus on the degree of ownership involved in corporate arrangements. As one study argued, "In between [pure trade and investment] are various organizational mechanisms through which foreign firms are able to gain access to overseas markets. Such mechanisms include joint business ventures, licensing agreements, management contracts, sub-contracting arrangements, franchises, representative offices and agencies."<sup>54</sup> In such cases, the firms usually do not have exclusive ownership. However, excluding all services transactions based on exclusive membership in the importing country would result in a regime with limited coverage, a result unacceptable to the United States and EC. The GNS, settling instead on an alternative suggested by UNCTAD and community members, specified that only foreign providers present in a market for a limited duration and specific purpose could be considered as services "traders."<sup>55</sup> They could render for an agreed period only those services which a country opened to competition; for example, a bank allowed in to provide commercial credit could not subsequently claim a right to sell insurance as well. This formulation was not prejudicial regarding the form of corporate arrangements or the degree

54. See V. N. Balasubramanyam, "International Trade in Services: The Issue of Market Presence and Right of Establishment," in Peter Robinson, Karl P. Sauvant, and Vishwas P. Govitrikar, eds., *Electronic Highways for World Trade: Issues in Telecommunications and Data Services* (Boulder, Colo.: Westview Press, 1989). This work is part of a book series published by the Atwater Institute in Montreal. As with the conferences of the Services World Forum, the conferences of the Atwater Institute became important locales for first- and second-tier interaction.

55. See Kalypso Nicolaïdis, "Contractors vs. Contactors: Towards an Integrated Definition of Trade in Services," *Prométhée Working Papers*, no. 37, prepared for UNCTAD (Paris: Prométhée, 1987).

of ownership, and it provided a conceptually logical and politically palatable means to separate services trade from permanent establishment. To capture this impermanence and variability of form, the fourth mode of delivery was dubbed commercial presence.

Even with these qualifications, commercial presence nevertheless amounted to giving TNCs new legal rights to locate in a foreign market. Many LDCs were uncomfortable with this, but it did provide them with a crucial opening. In the past, key second-tier analysts and UNCTAD staff members had pointed out that many LDC services were labor intensive, so their trade required the movement of personnel.<sup>56</sup> In the GNS, LDCs now demanded “symmetry” in treating factors of production: either capital flows and labor flows should both be covered by the agreement or they should both be left out. Third World negotiators were taking an epistemic community concept and using it to their benefit when they argued that the mobility of labor—whether skilled or unskilled—was simply their providers’ preferred mode of delivery and that it was consistent with the theory of comparative advantage exalted by the North.<sup>57</sup> While India went so far as to propose a “right of residence” abroad, most LDCs were careful to argue that the criteria of limited duration and specific purpose should apply to labor and capital alike. As the negotiations proceeded, this issue would present major difficulties for the industrialized countries, whose labor unions had so far failed to assess and mobilize against the services agenda. Moreover, the LDCs wanted to ensure that services imports enhanced their human capital. Influential second-tier analysts had shown that information technology applications were simultaneously preferencing high value-added services and eroding their traditional comparative advantage in low-end, labor-intensive manufacturing.<sup>58</sup> LDCs used this insight to argue that liberalization commitments should be phased in and coupled with a GATS requirement for the transfer of knowledge and technology.<sup>59</sup>

In their consideration of what kind of new general trade principle could promote competition given the modes of delivery specific to services, negotiators drew on previous epistemic community analyses and endorsed the right of market access. While the term “market access” was often used generically in trade circles to signify competitive entry, it meant something quite specific in the context of trade in services: that governments would be obligated to reduce restrictions on the modes of delivery. GNS participants sometimes invoked this general principle in proposing more specific entitlements suggested in earlier epistemic community discussions, such as new rights of access to distribution

56. See Bhagwati, “Splintering and Disembodiment of Services and Developing Countries.”

57. See Pan Eng Fong and Linda Low, “Labour Mobility, Trade in Services and the Uruguay Round: The Perspective of ASEAN Countries,” in UNCTAD, *Services in Asia and the Pacific: Selected Papers*, vol. 1 (New York: United Nations, 1990), pp. 141–75.

58. See Juan F. Rada, “Information Technology and Services,” in Giardini, *The Emerging Service Economy*, pp. 127–71.

59. See UNCTAD, *Trade and Development Report, 1988—Part Two: Services in the World Economy*, TDR/8 (Geneva: UNCTAD, 1989).

channels, licensing procedures, and on-line information, as well the new right to telecommunications interconnection (the right to “plug in” systems).<sup>60</sup> In light of the new telecommunications capabilities, another concept discussed was the right of nonestablishment—that is, the right of a provider to operate and be reachable remotely from a market without being required to be there physically. Whether these access rights would apply to services in general or apply only to specific industries and transactions remained an open question.

Two other new general trade principles were considered. In many markets, there were exclusive service providers, either public or private in ownership. The most radical move would be to require the dismemberment of these monopolies, but this was politically impossible to attempt. Instead, the GNS debated the merits of a principle concerning the behavior of monopolies in competitive markets. As frequently argued in community analyses, monopolies should not be able use their positions in closed or reserved markets to compete unfairly in open ones. For example, telecommunications administrations should not use their control of underlying national networks to manipulate the conditions of interconnection for specialized service providers, nor should they use profits from reserved operations to cross-subsidize competitive ones. The GNS also discussed various ways to formulate a principle regarding legitimate regulation. Many trade-restrictive measures clearly had defensible purposes, such as the protection of financial stability, health, or safety. Given the wide diversity of regulations across industries, it was impossible to set a broadly applicable boundary between what was and was not acceptable. The only solution was to frame the sovereign right to regulate as a general principle and then establish specific deregulatory obligations on a sectoral basis. Nevertheless, participants agreed that regulations remaining in force should be applied to foreign market entrants on a nondiscriminatory basis.

While this learning process was evolving inside the negotiation room, the epistemic community grew tremendously in terms of membership and visibility. Services negotiations were now a reality rather than a “cause of the future,” and many individual analysts were rushing to stake claims to expertise through publications, speeches, and other means. Articles appeared in a broader array of journals, and there were a growing number of books.<sup>61</sup> New organizations

60. For a discussion of these access issues in the TDF context, see Karl P. Sauvant, *International Transactions in Services: The Politics of Transborder Data Flows* (Boulder, Colo.: Westview Press, 1986).

61. The well-noted books were often edited volumes around which authors worked closely together. These included the following: Orio Giarini and Jean Remy Roulet, eds., *L'Europe face à la nouvelle économie des services* (Europe and the new service economy) (Paris: Presse Universitaire de France, 1987); Bruno Lanvin, ed., *Global Trade: The Revolution Beyond the Communication Revolution* (Montpellier: IDATE, 1989); Gunter Pauli, *Les services: Nouveaux moteur de notre économie* (Services: The new engine of our economy) (Paris: Duculot Perspectives, 1987); Patrick A. Messerlin and Karl P. Sauvant, eds., *The Uruguay Round: Services in the World Economy* (Washington, D.C.: World Bank, 1990); Giarini, ed., *The Emerging Service Economy*; and Bressand and Nicolaïdis, eds., *Strategic Trends in Services*. See also Jean Claude Delaunay and Jean Gadrey, *Les enjeux de l'économie de services* (The stakes of a service economy) (Paris: Presses de la

specializing in the area of services continued to proliferate, while extant organizations set up research programs and conference series with expanded participation.<sup>62</sup> Among established generalist bodies, the American Enterprise Institute made a splash with its strongly proliberalization series of books, which American Express paid to have distributed free of charge to GNS participants.<sup>63</sup> In all of these activities, the first- and second-tier members were becoming more familiar and interactive with one another. Yet at the same time, a gap between the two tiers was becoming evident and gradually widened as the negotiations proceeded. On the one hand, GNS participants were forced to examine the issues not only from a broad conceptual standpoint but also through the narrow lenses of GATT procedures and of what seemed feasible in the GATT context. With the issues already framed and the policy project established, the ideas that mattered to them most were those directly relevant to proposals on the table and the task of formulating a treaty. On the other

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Fondation Nationale des Sciences Politiques, 1987); Phedon Nicolaides, *Liberalizing Service Trade: Strategies for Success* (London: Royal Institute of International Affairs, 1989); and Jacques Nusbaumer, *Services in the Global Market* (Hingham, Mass.: Kluwer, 1987). Articles and chapters included the following: Jagdish N. Bhagwati, "International Trade in Services and Its Relevance for Economic Development," in Giarini, *The Emerging Service Economy*, pp. 3–34; Seev Hirsch, "A Service or Not a Service: Defining the Question by Its Terms," *The World Economy* 11 (December 1988), pp. 565–67; Bernard M. Hoekman, "Services as the Quid Pro Quo for a Safeguards Code," *The World Economy* 11 (June 1988), pp. 203–16; Deepak Nayyar, "Some Reflections on the Uruguay Round and Trade in Services," *Journal of World Trade Law* 22 (January–February 1988), pp. 35–48; H. Stalton, "U.S. Trade Policy and International Service Transactions," in Inman, *Managing the Service Economy*, pp. 161–78; and Robert M. Stern and Bernard M. Hoekman, "Issues and Data Needs for GATT Negotiations on Services," *The World Economy* 10 (March 1987), pp. 39–60.

62. In addition to the Services World Forum, the following were especially active as sponsors of meetings and studies during the second half of the 1980s: the Center for the Study of International Negotiations and the Applied Services Economics Center, both in Geneva; Prométhée, the Paris-based group that established a newsletter, organized meetings, and founded the Thinknet Commission, an international commission on networked services markets; the Lyon-based Centre d'Etude de l'Economie des Services (CEDES), which set up a French foundation for services research; and the International Service Institute in Tempe, which produced a bulletin. Other groups with services activities included the Berkeley Roundtable on International Economics, the Nederlands Economisch Instituut, the Canadian Institute for Research on Public Policy, the Pacific Trade and Development Conferences, and the Institute for World Economics of the Hungarian Academy of Science. In 1987, the EC Commission established Réseau Européen de Documentation et d'Information sur les Marchés de Services (REDIS), a data network that interconnected European research programs on services.

63. The series was published in 1988 by Ballinger Press of Cambridge, Mass., and consisted of the following titles: Feketekey, *International Trade in Services*; Jonathan Aronson and Peter Cowhey, *When Countries Talk: International Trade in Telecommunications Services*; Daniel Kasper, *Deregulation and Globalization: Liberalizing Trade in Air Services*; James Lee and David Walter, *International Trade in Construction Design and Engineering Services*; Thierry Noyelle and Anna Dutka, *International Trade in Business Services: Accounting, Advertising, Law and Management Consulting*; Ingo Walter, *Global Competition in Financial Services: Market Structure, Protection, and Trade Liberalization*; Lawrence White, *International Trade in Ocean Shipping Services: The United States and the World*; and Steven S. Wildman and Stephen E. Siwek, *International Trade in Films and Television Programs*. The purpose of the series was to analyze international competition in each sector and then "formulate and assess policy approaches for opening services markets through an umbrella services agreement and subsequent individual sector agreements in GATT."

hand, since second-tier members were not involved directly in the negotiations, they often could not offer suggestions of real time relevance to the GNS. Moreover, with services and their trade now an established topic of inquiry, some academic analysts in particular were turning their attention to more theoretical and less policy-oriented questions.

The move from the issue institutionalization stage to the negotiation stage was altering the nature of epistemic community influence in three ways. First, community members in the national and intergovernmental bureaucracies were becoming far more important than their second-tier contacts. This bureaucratization process made a comparatively small number of experts in the GNS and on the GATT, UNCTAD, and OECD staffs the main source of the specific kinds of new ideas needed to carry the policy project to a conclusion. Second, while the first-tier bureaucrats continued to participate in conference discussions and read the literature, they served as a transmission belt for concepts from a narrower range of second-tier members than before—those who were intimately familiar not only with services issues but also with the GATT legal framework.<sup>64</sup> Third, the space for pure intellectual innovation was beginning to narrow. As negotiators became more familiar with the issues and consulted with their governments at home, the broad outlines of their national interests and eventual positions came into view. A similar evaluation process was beginning among domestic constituencies that had been silent during the prenegotiations. Thus, anticipation of the impending bargaining was forcing governments and interested groups to filter and select from the range of ideas already in play.

New pressures and shifts at the national level provided evidence of this last trend. A divisive reappraisal was under way in the United States, which had been the leading advocate of negotiations. In July 1987, the Office of Technology Assessment published the most detailed study yet on American competitiveness in services. According to the study, while the U.S. services industry remained strong in telecommunications and information, its positions in banking and finance, engineering and construction, and high-technology licensing were in decline, as was its services trade surplus generally.<sup>65</sup> The

64. As a GNS delegate from Australia stated in a June 1988 interview in Geneva, "The people who we need are people close to the GATT, who understand that concepts work in tandem, people who are both visionaries and practitioners of trade law." Not surprisingly, those who were often mentioned were GNS members or were those providing support to the GNS. The second-tier member most consistently cited by negotiators as influential was John Jackson. One of the world's leading experts on GATT law, Jackson authored a widely noted piece on the institutional framework within which general principles and sectoral rules could be devised; see "Constructing a Constitution for Trade in Services," *The World Economy* 11 (June 1988), pp. 187–202. For a broader treatment of the constitutional issues, see also Jackson's *Restructuring the GATT System* (London: Francis Pinter, 1990).

65. U.S. Office of Technology Assistance, *International Competition in Services: Banking, Building, Software, Know-How . . .* (Washington, D.C.: Government Printing Office, July 1987). Skepticism was also expressed about banking and finance, the sectors in which Japanese firms had grown rapidly in size and competitiveness. See Rachel McCulloch, "International Competition in Services," working paper no. 2235, National Bureau of Economic Research, Cambridge, 1989.

Treasury Department and the Federal Reserve Board, which were also assessing their interests, expressed fears that liberalization could disrupt both domestic financial stability and concurrent efforts to harmonize capital adequacy ratios in the Bank for International Settlements. Clearly, new information and ideas did not by definition mean support for a competitive regime. In parallel, while prolberalization TNCs stepped up their lobbying, smaller or more vulnerable firms began to voice their own concerns. If they were uncompetitive, they did not want multilateral liberalization. If they were competitive, they were not convinced that bilateral pressure under Section 301 of the 1974 Trade Act was an inferior alternative. As always, GATT participants found themselves having to keep one eye on the American scene. In contrast to the United States, the EC was increasingly confident, having newly launched its 1992 program. The potential benefits of liberalization were underscored in well-publicized studies of EC competitiveness and barriers encountered by its exporters.<sup>66</sup> Key countries, such as France, Britain, and West Germany, had growing surpluses in services trade and were hot on the Americans' heels.<sup>67</sup> But the centrality of services to the 1992 program also meant that the EC had to proceed with caution in the GATT negotiations to ensure consistency between the two processes.

These national moods were increasingly reflected in proposals tabled at the GNS meetings.<sup>68</sup> On the American side, the USTR's office was feeling pressure to show quick gains before domestic opposition solidified. Substantively, it advocated a classical liberal approach designed to forcefully and visibly eliminate barriers to American firms. The popular beltway discourse on "fair trade" was interpreted to mean that discrimination was the chief problem and that national treatment was the primary solution. Procedurally, the USTR proposed that a framework agreement be reached ahead of schedule and be presented at the 1988 midterm review and implemented before the round's planned conclusion in 1990. The EC position was shaping up differently. While the EC acknowledged that nondiscrimination was essential, it stressed that this was only one element of a new regime. Substantively, the EC Commission advocated a managed approach that would balance the progressive liberalization of market access with a respect for policy objectives. To that end, it

66. For an optimistic report prepared by the main corporate lobby for EC services firms, see European Community Services Group (ECSG), *Report on Trade in Services* (Brussels: ECSG, April 1987). See also Peat Marwick and Company, *A Typology of Trade Barriers to International Services Industries* (Brussels: EC Commission, December 1986).

67. For example, a GATT study indicated that the top five services exporters in 1987 were the United States, with an 11.2 percent share of world services trade; France, with 10.6 percent; Britain, with 8.6 percent; West Germany, with 8.6 percent; and Italy, with 6.5 percent. Japan, a former laggard, had leaped rapidly to the sixth position with 5.5 percent. Figures were cited by Peter Montagnon in "Project to Unravel the Numbers for Trade in Services," *Financial Times*, 29 September 1989.

68. See, for example, U.S. Government, "Concepts for a Framework Agreement on Trade in Services," MTN.GNS/W/24, GATT, Geneva, October 1987; and EC Commission, "A Possible Conceptual Structure for a Framework Agreement," MTN.GNS/W/29, GATT, Geneva, December 1987.

introduced the concept of “appropriate regulation” and proposed the creation of a standing “Regulation Committee” empowered to determine whether the objectives served by regulation were commercially oriented or served some greater national goal. Procedurally, it argued for a gradual process of norm development and application. The EC was already following the American lead on deregulation, especially in telecommunications; but it was doing this by selectively opening specific market niches, assessing the effects, buffering the social adjustment costs, and then proceeding to the next step depending on the results. Except for Britain, the countries in Europe were not ready to equate trade liberalization with rapid across-the-board deregulation that simply eliminated long-standing social and other policy objectives. The chief EC representative called publicly for the elimination of value-loaded language pitting “regulators” against “nonregulators,” as if the former were by definition illegitimate.

Although LDCs had moved beyond the issue of whether to negotiate, many of them were still in the initial phase of interest definition and needed time to gather more facts. The NICs were communicating with one another via regular consultations involving their relevant ministries, corporations, and incipient expert communities. Lacking the requisite capabilities, most other LDCs were looking to international organizations for help. In particular, they turned to UNCTAD, thereby significantly increasing its role. In 1987, member governments asked UNCTAD to determine “the need for, and implications of, a multilateral framework . . . and not ‘liberalization’ of or removing the ‘barriers’ to trade in services. . . . These implications should include political, cultural and security aspects, and the analysis should bear in mind that the issues of transfer of technology and the restrictive business practices of transnational corporations are of paramount importance.”<sup>69</sup> Hence, the LDCs maintained that services had many complex sociopolitical dimensions that were not captured fully by the narrow criterion of whether a given policy restricted trade. Within the confines of this mandate, the Secretariat’s services group assembled seminars with outside experts and began to generate detailed analyses that were widely circulated among the LDCs.<sup>70</sup> UNCTAD staff members closely coordinated their activities with those of the GNS; held seminars bringing together Third World academics, research institutes, and firms; and launched a technical assistance program to help LDCs undertake internal assessments of their export capabilities and related issues. Similar activities were begun by the United Nations Centre on Transnational Corporations, which had previously

69. UNCTAD, “Developments in the Uruguay Round Negotiations on Trade in Services: Discussion Paper,” prepared during a high-level brainstorming session on trade in services, Cairo, 18–23 May 1991, p. 3.

70. These analyses were later published in a book series. See, for example, Murray Gibbs and Michiko Hayashi, “Sectoral Issues and the Multilateral Framework for Trade in Services: An Overview,” in UNCTAD, *Trade in Services: Sectoral Issues* (New York: United Nations, 1989), pp. 1–48; and Philippe Brusick, Murray Gibbs, and Mina Mashayekhi, “Anti-Competitive Practices in the Services Sector,” in UNCTAD, *Uruguay Round: Further Papers on Selected Issues* (New York: United Nations, 1990), pp. 129–56.

been involved centrally in the TDF debate.<sup>71</sup> Much of this research provided an intellectual grounding for the LDCs' concerns about TNC power and domestic regulatory objectives. But at the same time, it underscored that LDCs, too, could benefit from some measure of multilateral liberalization, and this helped catalyze the reassessment of national interests. There were increasingly apparent overlaps between the Third World's general antidependency ideology and the EC's preference for a managed, incremental form of liberalism. This was not to the advantage of the original American hard-line position, but it did contain the seeds of a deal.

### *Testing general principles by sector*

The midterm review of December 1988 took place in Montreal against an inauspicious backdrop. This was the high point of the hype about "Fortress Europe" and 1992, and the United States and Japan found themselves in a loose alliance against the EC. The EC Commission had suggested that comparable levels of market access and equivalent treatment be invoked as broad objectives in the midterm declaration on the round's status. The Americans and Japanese suspected, probably wrongly, that the Europeans wanted to put sectoral reciprocity or mirror reciprocity into the services agreement. The United States feared an attack on its fragmented financial market as enshrined in the Glass-Steagal Act, so the Federal Reserve Board and Treasury Department adopted a high profile in Montreal in an effort to set implicit boundaries on services reciprocity. Japan opposed any formulations implying the need for balanced benefits and justifying results-based concessions. These differences clouded discussions of the round in general and hence services as well.

For months, the GNS had debated a range of possible principles without settling on a cleanly delimited set of them. Since it would look bad to arrive in Montreal without a document that ministers could cite as progress, an informal group consisting of the United States, the EC, Sweden, Brazil, and Egypt prepared a composite paper outlining the various competing concepts. While the GNS hoped that its numerous brackets could be negotiated away during the midterm discussions, the week-long marathon in Montreal produced only a text stating which principles could be "considered relevant."<sup>72</sup> Most suggestions from the LDCs were left out "for lack of time." In consequence, the Montreal

71. See, for example, the following works of the United Nations Centre on Transnational Corporations: *Transnational Corporations and the Growth of Services: Some Conceptual and Theoretical Issues* (New York: United Nations, 1989); *Foreign Direct Investment and Transnational Corporations in Services* (New York: United Nations, 1989); and *Transnational Corporations, Services and the Uruguay Round* (New York: United Nations, 1990).

72. See Trade Negotiation Committee, "Mid-Term Meeting," MTN.TNC/11, GATT, Geneva, 21 April 1989, p. 38. The principles mentioned included transparency, progressive liberalization, national treatment, MFN, market access, increasing participation of LDCs, safeguards and exceptions, and the right to introduce regulations consistent with the framework. The Montreal declaration did not say how these were to be formulated or implemented.

declaration's section on services was essentially another statement of purpose, more detailed than the Punta del Este declaration's section but clearly not the draft agreement the Americans had desired. Policymakers nevertheless proclaimed it "encouraging," since it provided a mandate for further negotiations under a set timetable. The section also included the following: a suggestion to define services trade in terms of three modes of delivery (the distinction between movements of individual and corporate suppliers was not drawn yet) and in terms of the criteria of limited duration and specificity of purpose for factor movements, which satisfied the LDCs that FDI rules were not being forced on them; a call for "progressive" rather than immediate and sweeping liberalization; and a "right of access to information networks."

The Montreal meeting achieved even less on other key issues, such as trade-related intellectual property, safeguards, textiles, and agriculture. Disagreements in these areas sidetracked the entire round for the next fourth months. When the GNS began anew in April 1989, it changed direction. The discussion of general principles had failed to achieve closure, but there was increasing recognition that time was growing short. Moreover, whenever principles were discussed, participants found themselves unable to say what these would mean in different sectors. Would national treatment apply equally well to education, shipping, advertising, and other sectors in light of their distinctive properties? Since the early 1980s, first- and second-tier epistemic community members had maintained that a GATS would have to include both a framework agreement of broad principles and a set of sectoral annexes dealing with industry-specific issues. Accordingly, the Montreal declaration called for a "process of examining the implications and applicability of concepts, principles and rules for particular sectors and specific transactions."<sup>73</sup> It was time to stop rehashing general principles in the abstract and see how they might work in each case. The professed intention was to test the applicability of principles in an intellectual free space without engaging in negotiations over country commitments. But like the prior examination of principles, the discussion was increasingly mediated by national positioning for the impending bargaining.

In April, the GATT Secretariat drew up an extensive reference list of thirteen sectors broken down into over a hundred subsectors. The working assumption was that the framework agreement would cover all services industries but that sectoral annexes might be included for those cases in which the principles needed clarification, modification, or amendment. Six industries were chosen for the testing exercise: telecommunications, construction, transportation, tourism, finance, and professional services. GNS members floated exploratory papers discussing potential problems in each case. Many national delegates at the GNS, otherwise seasoned GATT negotiators on goods, generally lacked detailed expertise regarding these industries, so the views set

73. Trade Negotiation Committee, "Mid-Term Meeting," p. 41.

forth by those among them who were first-tier epistemic community members received particularly careful hearings during their meetings. These services negotiators drew directly on ideas generated in the conference circuit, second-tier literature, and other extra-GATT sources. GNS participants also paid attention to the work produced by the specialized committees of the OECD, which had undertaken their own sectoral reviews in parallel with the OECD Trade Committee's conceptual framework exercise.<sup>74</sup> In general, the thrust of the various reviews was that a straightforward and unmodified application of trade principles was often difficult, a problem which the less specialized negotiators increasingly recognized. A brief overview of some of the issues concerning the six sectors may convey the flavor of the discussions that took place.

In telecommunications, a distinction was drawn between the basic transmission services, such as telephony, and the computer-enhanced services that altered and added value to the information in transit. Some participants held that since the former were jointly provided by monopolistic carriers, were cross-subsidized to meet social welfare objectives, and were essential to national security, the opening of market access would be functionally difficult, normatively undesirable, and contrary to the principles and practices of the international telecommunications regime. Others argued that both types of services could in principle be provided through commercial presence or on an end-to-end, cross-border basis and should therefore be covered in an agreement. Additional discussion focused on the TNCs' internal communications among globally dispersed branches and whether these communications should be treated as trade; the impact on personal privacy protections for TDF; the link between services trade and equipment markets, which had been left out of GATT; and the inadequacy of national treatment in light of national monopolies. In construction, there was again a confounding link between the opening of markets for goods and services and the voluminous regulations that would make transparency difficult. But the biggest problem concerned labor. The LDCs pointed out that competition would require the free movement of skilled and unskilled workers alike, whereas the industrialized countries wanted to retain tight immigration controls on both. In transportation, the testing exercise focused primarily on civil aviation and maritime markets. Many delegates argued that aviation could not be subjected to MFN status and national treatment because of safety concerns and the scarcity of air space and landing slots, which were managed in accordance with a series of bilateral agreements under the 1944 Chicago convention. Similarly, many fare structures were established by the International Air Transport Association to preserve

74. Among the sectors analyzed by the OECD committees were insurance, banking, tourism, maritime transport, construction and engineering, management consulting, professional services, telecommunications, and computer and audiovisual services. For a brief review of the OECD analyses, see Serge A. Devos, "Services Trade and the OECD," *Journal of Japanese Trade and Industry*, no. 4, 1984, pp. 16–19.

carrier integrity. Related concerns were voiced about maritime services, which were heavily regulated nationally and under the UNCTAD Liner Code.

In tourism, there was generally less widespread regulation. Although many LDCs wanted to retain visa restrictions and maintain foreign exchange controls to preserve monetary stability, they might be willing to make trade concessions if as a result the airline computer reservation systems and links between Northern tourist agencies and hotels would become less prejudiced against their local firms. Changing the current restrictions and practices in home and host countries would impose adjustment costs, but the application of general trade principles to tourism did not seem logically problematic. In contrast, banking and finance appeared to involve major complications, and discussion of this sector consumed a great deal of time. There was widespread concern about the impact of open competition on fiscal, monetary, and debt policies. Many participants stressed that it was important to retain the basic structures of national and international regulatory systems and that the pace and extent of liberalization should be compatible with these structures. Finally, in professional services, regulations had become widespread because of concerns about ensuring consumer protection regarding health, safety, and quality. National treatment could threaten these objectives unless coupled with additional measures to set common performance standards.

Discussions about these six sectors led the GNS to consider general principles in a sharper light. In some cases, especially that of professional services, policies might require harmonization for an optimal balance between trade and regulation to be found. Alternatively, governments could agree to the mutual recognition of each other's standards. The twin principles of harmonization and mutual recognition were at the core of the EC's services liberalization process but had not yet made the journey from Brussels to Geneva.<sup>75</sup> Because of their centrality to its 1992 program, the EC thought they should be permissible for those governments willing to undertake more demanding forms of liberalization. But other GNS participants worried that this might constitute a back-door derogation from unconditional MFN treatment.

By its conclusion in October 1989, the testing exercise had brought home for governments the possibilities and problems outlined in earlier epistemic community discussions. As Anglo-American members had long argued, general trade principles could indeed serve as the baseline for services liberalization. But as less fervent members had cautioned, there were also many sectoral and subsectoral specificities that justified modifications of and even exceptions to those principles. Indeed, there were enough such cases that the GNS required more systematic assessments and expert advice to determine which sectors needed annexes and how to write them. Accordingly, in May 1990, it established separate working parties on eight sectors to do that in parallel with

75. See Kalypso Nicoläidis, "Mutual Recognition: The New Frontier of Multilateralism?" *Project Prométhée Perspectives*, no. 10, June 1989, pp. 21–34.

its own deliberations. The composition of the working parties differed from that of the GNS in that seasoned GATT negotiators were joined by numerous specialists from national ministries and international organizations that had jurisdictions over the sectors. This later proved consequential because the specialists' enthusiasm for the enterprise varied and was sometimes less than that of the seasoned GATT negotiators. For example, the financial services working party was exceedingly concerned with maintaining critical regulatory objectives, while many in the air transport group were openly hostile to undoing the existing web of market-sharing deals. In contrast, specialists from the national telecommunications ministries and the International Telecommunications Union, which had previously been cool to the GATS process, now spoke of the "complementarity" of trade and regulatory arrangements, and key staff members of the union cooperated extensively in formulating the annex. To be sure, governments remained divided on precisely which markets to open and by how much, but the view that telecommunications services were not and could not be traded had largely evaporated. The comparatively strong intellectual convergence in the telecommunications working party derived from the centrality of networks as a mode of delivery, the trends toward national liberalization and international regime transformation already under way in the industry, and the prominence of telecommunications experts in epistemic community discussions over the years.<sup>76</sup> It was also catalyzed by the entrepreneurial efforts of a key second-tier member, G. Russel Pipe, who organized several seminars bringing high-level trade and telecommunications officials together for the first time prior to the negotiations.<sup>77</sup> These variations in interests across working parties would later affect the precise language contained in the annexes.

### *Balancing national commitments*

The GNS faced contradictory pressures in the autumn of 1989. The round was due to end in December 1990, and it was necessary to draft the framework and annexes so that delegates could get on with the third phase of negotiating national commitments on these bases. But despite this need to accelerate,

76. For discussions concerning telecommunications, see Peter F. Cowhey, "The International Telecommunications Regime: The Political Roots of Regimes for High Technology," *International Organization* 44 (Spring 1990), pp. 169–99; and William J. Drake, "Asymmetric Deregulation and the Transformation of the International Telecommunications Regime," in Eli M. Noam and Gerard Pogorel, eds., *Asymmetric Deregulation: The Dynamics of Telecommunications Policy in Europe and the United States* (Norwood, N.J.: Ablex, forthcoming).

77. G. Russel Pipe, the publisher of *Transnational Data and Communications Report*, had been a central figure in getting TDF on the international agenda. He established the Telecommunications Services Trade Project and organized a series of "bridge-building" meetings that took place in Brussels and Geneva beginning in February 1988. Pipe worked closely with the telecommunications working party, in particular by helping some LDCs prepare influential position papers, and was also a cofounder of the Applied Services Economy Center, which organized similar meetings including first- and second-tier members.

increasing politicization was pushing in the opposite direction. The first two phases had clarified the major issues to the point that many governments could now define their national interests and positions. In parallel, domestic constituencies, which had gone through a similar learning process, were also mobilizing for and against anticipated provisions. With the issues framed and policy options clarified, there was now less space for pure conceptual exploration and more pressure on governments to seek national gains. And by coincidence, some of the leading first-tier innovators whose involvement dated back to the beginnings of the Jaramillo Group had now left the GNS for promotions or other assignments and had been replaced in the GNS by more “nuts and bolts” GATT negotiators. While the epistemic community had mapped out the road to follow, its influence on the process from here on would be more in the form of an intellectual shadow than direct involvement in crafting regime instruments.

In October 1989, the United States presented the first comprehensive proposal for a framework. The text contained the major trade concepts floated to date by the epistemic community, but it barely acknowledged the community’s views on the limitations of these concepts and was too demanding for other delegates to endorse.<sup>78</sup> To get the ball rolling in a more consensual manner, the GNS Secretariat issued in December a compendium of all submitted positions grouped into four categories: scope and definition, concepts and principles, sectoral coverage, and institutional aspects.<sup>79</sup> The text included 180 sets of square brackets indicating alternative formulations, and their side-by-side placement helped participants identify areas of agreement and disagreement on each point. This solidified the recognition that whatever exceptions might be taken in the national schedules, there was in fact considerable convergence on which principles to include and how to write them in the framework. The epistemic community’s prior framing of the issues and options set a baseline from which deviant and particularistic formulations were easy to identify and subject to truth tests. As the discussion proceeded over the coming months, delegates removed many of the brackets and settled on language that appeared to the majority to favor the needs of the trade system as a whole over one or another government’s interests.

However, this convergence shifted the search for national advantage onto new terrain. If governments could not gain advantage by introducing distributional biases into the principles, they could still seek latitude on how tightly to be bound by them. In the summer of 1990, the debate moved from the substance to the structure of the framework and began to focus on where the principles would be located in the text: under “General Obligations,” which

78. U.S. Government, “Communication from the United States: Agreement on Trade in Services,” MTN.GNS/W/75, GATT, Geneva, 17 October 1989.

79. GNS, “Elements for a Draft Which Would Permit Negotiations to Take Place for the Completion of All Parts of the Multilateral Framework,” MTN.GNS/28, GATT, Geneva, 18 December 1989.

applied across the board, or under “Specific Commitments,” which were to be included in national schedules and could be bargained over in subsequent trade rounds. The epistemic community had maintained from the start that liberalization should conform to the greatest extent possible with general, binding principles. But it had also shown how regulatory objectives and the specificities of certain transactions justified modifications and exceptions, as the GNS confirmed in the testing exercise. In consequence, immediate and blanket applications of unconditional MFN, national treatment, and open market access appeared to be far more radical than the GATT’s historical approach of eliminating tariffs and quotas on goods in an evolutionary, multiround fashion. While the United States favored the radical approach, which would show domestic constituencies quick gains, almost everyone else favored the progressive, managed liberalization advocated by the EC and LDCs.

In a crucial move, the GNS majority took the progressive approach to its logical conclusion and decided that national treatment and market access would be negotiable specific commitments rather than general obligations. They would apply only to those services provided via those modes of delivery which governments listed in their national schedules. This led to the other side of the structural question: How would concessions be listed? With respect to the hundred or more services classified by the GATT Secretariat, the United States advocated a “negative list” approach similar to that used in the OECD, under which a signatory would be bound to accept liberalization of all services except those specifically removed from its national schedule. The extremely arduous task of compiling a negative list would be a strong disincentive to request exceptions. As the other governments were quick to point out to the United States, the result would be a cumbersome “telephone book” of national exclusions. They instead advocated a “positive list” approach in which a signatory would be bound to liberalize only those services specifically added to its schedule. In short, while the United States was pushing for full and rapid liberalization as the baseline from which deviations would be made exceptionally, the majority of countries wanted existing policy arrangements to serve as the baseline from which liberalization departed selectively. In the autumn of 1990, when the United States had finally been convinced that its approach was impractical, it agreed to a formula that combined the positive and negative listing approaches but leaned closer toward the majority view.

According to the new formula, each signatory would begin with a positive list of sectors and subsectors to be included in its national schedule. Under each sector or subsector, it would list only those modes of delivery which it agreed to open up to competition. Under each mode of delivery, it would have the option of providing a negative list of limitations and conditions concerning market access, national treatment, or both. It would agree in all sectors, subsectors, and modes listed to apply the principle of unconditional MFN, which would remain a general obligation. In the case of management consulting, for example, a signatory could agree to the entry of individual experts for a limited

duration and specific purpose without allowing for the other modes of delivery of consultation services. It could also note that there are national standards to be met and certifications to be attained before the experts could enter.

In effect, the framework per se would not mandate compulsory liberalization; it would simply institutionalize rules within which governments selectively opened market niches on a nondiscriminatory basis. The actual scope of liberalization would then depend largely on bilateral bargaining within that context, insofar as one government could pressure another into concessions. If this could be resisted, the latter might manage to be party to the agreement without liberalizing much of anything in the short term. Clearly, this underscores the extent to which material interests were now filtering the range of new ideas and reconfiguring them in a package with less bite. Trade concepts introduced by the epistemic community to promote liberalization were being neutered and even stood on their head. For example, the preferred mode of delivery now meant which mode a government wanted to offer, not which one a supplier wanted to use. The way in which concepts were being applied not only departed from the hard-line vision of the early Anglo-American analysts but also deviated from the more moderate vision of the continental analysts, many of whom would have preferred a less permissive approach to maintaining regulatory objectives.

The United States was now in an uncomfortable situation. Throughout the 1980s, Congress had displayed a growing frustration with GATT and a penchant for bilateral pressures to open foreign markets. The GATS initiative provided a more palatable multilateral alternative, but the GNS had settled on a single negotiating text in which only unconditional MFN status and subsidiary principles such as transparency were nonnegotiable. The structural placement of principles in the text also seemed to have negative implications for the United States. If national treatment and market access were negotiable on a sectoral basis, foreign markets could remain largely closed to American-based TNCs. At the same time, with unconditional MFN positioned as a binding obligation, any concessions listed in the American schedule would be extended to all parties. Given the deregulatory movement of the 1980s, the United States already had many of the most open and competitive services markets in the world. As Carla Hills, the USTR argued, the text meant “that countries with open markets must stay open to everyone, and countries with closed markets may stay closed to everyone, and have no incentive to open to anyone.”<sup>80</sup> In short, access to the American market could no more be used as leverage to open foreign markets.

Ironically, then, domestic support for the proposed GATS crumbled rapidly in the United States during the summer and autumn of 1990. American labor unions and relatively uncompetitive firms voiced growing opposition on Capitol

80. Carla Hills, cited by Peter Truell in “Trade Talks Are Key for Many U.S. Firms, but They’re Worried,” *Wall Street Journal*, 3 December 1990, p. 16.

Hill. One of the most powerful lobbies, the maritime transport industry, strenuously argued against losing the exclusive market position it held under the Jones Act. More interestingly, many of the same TNCs that had promoted services liberalization in the first place reevaluated their preferences and rejected the accord in its current form. Battered by recession and a crisis at home, leading financial institutions did not want large Japanese and European banks in their markets, and the Treasury Department and state regulators were worried about monetary stability and related issues. The airlines balked at the prospect of giving nondiscriminatory concessions on routes and gateways without assured gains abroad. Major telecommunications carriers, led by the American Telegraph and Telephone Company, came out strongly against including basic services in the agreement at all, a position echoed by the Federal Communications Commission. Since the text did not bar foreign monopolies, these firms reasoned that national treatment and market access would give them little abroad, while MFN treatment would damage them at home. The Coalition of Services Industries denounced the agreement for failing to open markets. Accordingly, the USTR's office announced in July that it would not accept GATS coverage of shipping, civil aviation, and basic telecommunications unless it could derogate from the MFN principle. This bewildered GNS delegates, many of whom were only willing to phase in liberalization selectively in these areas but wanted to ensure that offers would be nondiscriminatory.

Bewilderment turned to outrage in late November 1990, when Carla Hills hinted publicly that MFN treatment might have to be made a negotiable specific commitment and that the round might need be extended beyond the planned December 1990 deadline. The USTR would then have to return to Congress for reauthorization in March 1991, where the legislators could pick the agreement apart. Few GNS members really believed that the USTR wanted to take MFN out. As the EC's Willy De Clercq concluded, "Much of what the U.S. says, of what it promises in these talks is bluff. [The Americans] are making demands on the rest of us that they can't defend themselves."<sup>81</sup> Indeed, some key participants saw the moves as serious tactical miscalculations on the USTR's part. Rather than encouraging strong foreign concessions, the alleged motive for such brinkmanship, they removed from the table lucrative American sectors of interest to other governments and thus diminished the incentive to reciprocate. With each side waiting for the other to make the first move and time ticking away, the situation on the eve of the ministerial meeting that was supposed to conclude the round looked less than promising. Yet nobody wanted the blame for a failure. Governments representing 80 percent of world trade thus submitted at least some initial commitments, but these were selectively crafted and far short of American demands. Nevertheless citing

81. Willy De Clercq, cited by Mark M. Nelson and Tim Carrington in "If GATT Talks Fail, There's Likely to Be Plenty of Blame for All," *Wall Street Journal*, 30 November 1990, p. 2.

them as evidence of a successful bargaining strategy and progress for American firms, the USTR reversed course and stated that unconditional MFN was an acceptable general obligation as long as it could be derogated in a few sectors. But time had been lost in the maneuvering over national schedules, and the GNS and its working parties were unable to finalize the overall GATS framework agreement.

The GATT ministers arrived in Brussels on 3 December 1990 to be greeted by 24,000 angry European farmers. After four days of rancorous finger-pointing in the so-called green rooms, the meeting adjourned ingloriously. The United States blamed the round's deadlock on European and Japanese agricultural policies, but in fact there was no way it could have been concluded even without the agricultural debacle. There were many unresolved problems in the other fourteen negotiations, services being one of them. At Brussels, Ambassador Jaramillo presented on his own authority the GATS text of 22 November.<sup>82</sup> Despite numerous brackets indicating lack of final consensus on fine points, most of the framework's major principles and sections were in place. Table 1 presents a overview of these, with the purely procedural provisions omitted.

Part I of the GATS text begins by defining trade in services in terms of the four "modes of supply," as GATT lawyers insisted on relabeling them. Part II, "General Obligations and Disciplines," consists of fifteen articles; some are modifications of the GATT's familiar language and require no additional commentary, while others are entirely new principles. Under Article II, unconditional MFN treatment applies only to those services and modes of supply offered in national schedules. Article III on transparency requires governments to publish promptly all of the laws and regulations pertaining to their offers and to establish "enquiry points" through which others can attain further information. Similarly, Article IV requires industrialized countries to establish "contact points" through which LDCs can attain commercial, regulatory, and technological information and also requires them to provide the LDCs with access to information networks and support in building domestic capabilities. Article V echoes the view set forth in GATT Article XXIV—namely, that regional free trade areas are good for the global system as long as they do not raise "overall" levels of trade barriers. It also adapts the GATT language by referring to regional trade as "economic integration," thereby underscoring the deeper level of mutual adjustment required for services liberalization. Article VII endorses a style of liberalization that differs markedly from traditional approaches to goods. Groups of countries seeking a higher level of openness among themselves can enter into special arrangements for the harmonization and mutual recognition of regulations, standards, and qualifications related to services supply as long as these arrangements are "open" to the participation of other parties. This imprecise language implicitly

82. See GNS, "Draft Text of a General Agreement on Trade in Services," MTN.TNC/W/35, Rev.1, GATT, Geneva, 22 November 1990.

**TABLE 1.** *Key articles and annexes of the GATS text considered during the 1990 ministerial meeting in Brussels**Articles of the agreement*

Part I.	Scope and Definition
Article I.	Scope and definition
Part II.	General Obligations and Disciplines
Article II.	Most-favored-nation treatment
Article III.	Transparency
Article IV.	Increasing participation of developing countries
Article V.	Economic integration
Article VI.	Domestic regulation
Article VII.	Harmonization and recognition
Article VIII.	Monopolies and exclusive service providers
Article IX.	Behavior of private operators
Article X.	Emergency safeguard measures
Article XI.	Payments and transfers
Article XII.	Restrictions to safeguard the balance of payments
Article XIII.	[Public] [government] procurement
Article XIV.	Exceptions
Article XV.	Subsidies
Part III.	Specific Commitments
Article XVI.	Market access
Article XVII.	National treatment
Part IV, Part V, and Part VI.	Progressive Liberalization, Institutional Provisions, and Final Provisions (Articles XVIII through XXXV)

*Annexes to the agreement*

Annex i.	[Maritime Transport Services]
Annex ii.	[Inland Waterway Transport Services]
Annex iii.	[Road Transport Services]
Annex iv.	Air Transport Services
Annex v.	[Basic Telecommunications Services]
Annex vi.	[Telecommunications Services]
Annex vii.	[Labor Mobility]
Annex viii.	[Audiovisual [Broadcasting, Sound Recording and Publishing] Services]
Annex ix.	[Financial Services]

allows the EC members and similar groups to practice a form of conditional MFN treatment vis-à-vis outsiders, despite the objection from the South that the LDCs might not be able to comply fully with the North's demanding requirements.

Article VI acknowledges the sovereign right to regulate services suppliers. But unlike the articles of extant international agreements, it qualifies this by holding that domestic regulations should not restrict trade or be discriminatory and should be based on objective criteria such as competence and the ability to

provide services. Moreover, parties are to establish tribunals or other procedural mechanisms through which suppliers and users alike can seek remedies. Since it proved impossible to determine on a pan-sectoral basis which regulations are “appropriate,” these provisions may seem rather permissive. Nevertheless, they do subject national regulators for the first time to an external, commercial set of criteria on which their actions may be challenged. In bracketed language, the article also states that immigration regulations should not preclude the temporary stay of “natural” persons supplying services. In parallel with the sovereign right to regulate, Article VIII neither condones nor condemns monopolies. However, it requires that they not exploit positions in closed markets to compete unfairly in those opened under national schedules. And subject to certain limitations, it also requires that they provide competitors with information about their operations. In a notable contrast, bracketed Article IX calls only for “consultations” regarding TNCs’ restrictive business practices, rather than the expansive prohibitions sought by the LDCs. Three other articles in Part II are extensively bracketed: Article XII provides for emergency restrictions to prevent extreme balance-of-payments deterioration; Article XIII endorses multilateral negotiations on government procurement within two years of the GATS’ entry into force; and Article XIV allows for national measures to protect a potpourri of objectives, including national security, sustainable development, environmental protection, cultural values, and public morals and order.

Under Part III, “Specific Commitments,” Article XVI on market access gives providers of a service the right to choose a mode of supply only from the modes designated in the schedule of the importing country. It also mandates that the principle of unconditional MFN treatment be applied with respect to all commitments outlined in national schedules.

Important participants in the working parties had worried that the rigorous application of general trade principles to their sectors would undermine extant regulatory and market-sharing arrangements. However, once the GNS made national treatment and market access negotiable specific commitments and governments could choose which services and modes would be open to competition, the need to devise elaborate sectoral rules and exceptions was greatly reduced. With the task thus simplified, the objective in many cases was to establish derogations from the remaining demanding principle, unconditional MFN treatment. Hence, the annexes on maritime, inland waterway, and road transport say simply that MFN treatment would not apply until some unspecified future date, after which time existing national and international arrangements would be modified or phased out. As a result of the adamant positions taken by members of the International Air Transport Association, the air transport services annex states that “no provision of the Agreement shall apply to traffic rights [and . . . related activities],” although in brackets it suggests that it might apply to aircraft repair and maintenance, computer reservation systems, selling and marketing of air transport services, and ground

handling services.<sup>83</sup> Much to the chagrin of the United States, the audiovisual annex is also a simple MFN derogation, with the additional recognition of cultural policy objectives and a bracketed section stating that nothing in the agreement shall affect the status of services providing entities, such as government-owned or government-licensed broadcasters. Much to the chagrin of everyone else, the United States insisted on adding a separate, MFN derogating annex for a bizarre and expansively defined range of “basic” telecommunications networks and services, including data transmission networks, integrated services digital networks, private leased circuits, and fiber-optic and satellite systems.

The most hotly debated case concerned financial services. Since the working party could not agree on the long and complicated proposals before it, it simply forwarded to Brussels a blank page titled “Financial Services Annex.” Although the labor mobility annex calls for negotiations based on a list of categories of “natural” persons who would be allowed to provide services where market access commitments via this supply mode are offered in national schedules, it does not include such a list. Interestingly, governments in the working party on professional services decided, over the objections of key industry lobbyists who “wanted it in writing,” that an annex was not needed. But Article VII of the general framework, which was added late in the game mainly to serve the needs of this sector, says that arrangements for harmonization and mutual recognition related to professional services “shall concern qualifications, standards or scope of practice based on objective criteria such as competence.”<sup>84</sup> In the end, the only semi-agreed sectoral annex to do something besides preclude MFN treatment was for “nonbasic” telecommunications. Even here, there are many detailed provisions that could restrict competition. Thus, the text did not by itself force open markets in a manner comparable to requiring the elimination of tariffs and quotas on certain classes of goods. Rather, it simply set a framework within which governments could make offers and pressure their counterparts for the same according to common substantive and procedural rules.

This outcome underscores both the extent and the limitations of epistemic community influence. On the one hand, 108 GATT members were joining the policy project of pursuing some measure of multilateral liberalization and were negotiating an agreement that incorporated the new concepts and general principles advocated over the years by the community. And as many participants confirmed, the contributions of key individuals derived to a significant extent from a mastery of conceptual issues honed through involvement in the intellectual marketplace. Especially as time pressures increased, this mastery rather than brute national power often accounted for the unexpectedly central roles played by delegates from countries such as Australia, Egypt, India,

83. *Ibid.*, p. 368.

84. *Ibid.*, p. 341.

Sweden, and Switzerland. Similarly influential in the drafting of the agreement were first-tier GATT staff members who were brought in from the outside because of their expertise on services and not merely transferred from unrelated GATT divisions, as is normally the case. But on the other hand, while the epistemic community members could clarify services issues and concepts and translate them into precise legal wording, their caution on the applicability of trade principles in certain cases was being used to justify broader exemptions than they preferred. Moreover, they did not have the ability to override the objections of mobilized constituencies and government ministries to rapid liberalization, nor could they prevent participants from inserting MFN derogations in the annexes. Actions such as these would require heavy pressure from central governments committed to the cause, which was not yet forthcoming. The resulting GATS text left many liberalization advocates disgruntled. Indeed, key American TNCs and the Coalition for Services Industries expressed satisfaction that the agreement in its current form had not been signed.

After tempers cooled and delegates returned to their capitals for consultations, GATT members relaunched the negotiating round in the spring of 1991. Real movement was delayed, however, until the U.S. Congress grudgingly renewed the USTR's fast-track negotiating authority in May. When the GNS reconvened, it shifted gears. Given the paucity of significant national commitments made up to this point, governments agreed to concentrate on improving their offers. Once there was more on the table worth talking about, it would be easier to reconsider the bracketed proposals in the articles and annexes to the GATS text. During the spring and summer of 1991, thirty-five countries, including key LDCs, submitted schedules covering a broader range of services sectors and subsectors. These remained carefully bounded within the selective market access approach, but they nevertheless began to include services of substantial economic importance. Intensive bilateral contacts were initiated, often by the United States and the EC, in order to fashion packages of mutual concessions that would be sustainable with domestic constituencies. The effort yielded an unexpected and consequential by-product: the recognition that governments were often confused about the boundary lines between the four modes of supply and were thus uncertain about how to write their national schedules. This was reflected, for example, in the fact that some governments listed movements of capital and labor as cross-border supply. After further examination, the GNS reaffirmed that factor movements did not fit under this category, although delivery in the form of certain goods (such as computer discs and documents) as well as via communications systems did.

More important, governments were uncertain about what to include in the negative listing of limitations and conditions on market access and national treatment. In principle, the former pertained to a supplier's ability to enter a market, while the latter pertained to how it would be treated once there. In practice, some governments confused the two and also assumed that the many

restrictions affecting domestic and foreign suppliers alike did not have to be listed. In a major move, the GNS decided to redefine the two principles with greater specificity. The participants devised a four-quadrant graph that differentiated discriminatory from nondiscriminatory measures on one axis and differentiated quantitative from qualitative measures on the other. They agreed that market access should be defined as covering all quantitative measures, whether of a discriminatory or a nondiscriminatory nature, while national treatment should be defined as covering qualitative, discriminatory measures. They also agreed that for each sector or subsector that a government listed in its schedule, it would be required to note any measure falling into one of these three quadrants.<sup>85</sup> This procedure should significantly enhance the liberalizing bite of the commitments made by governments, since their restrictions will now be clearly identifiable and subject to immediate bargaining pressure from other parties. As one participant put it, the restrictions will be “candidates for attack in this round, rather than just items to try to get on the agenda in the next one.”<sup>86</sup> Moreover, with this demanding requirement for specific and comprehensive listings, any limitations on national treatment and market access not noted at the time schedules are filed could later be challenged and found illegal. Although this new approach will introduce substantial administrative and negotiating problems for the LDCs in particular, it should make the agreement on services a more forceful tool of liberalization.

The summer 1991 GNS sessions also witnessed another breakthrough. Prior to the Brussels meeting, there had been widespread disappointment with the Americans’ MFN derogations, which limited the potential benefits to other parties and invited them to pile on their own derogations. When the round reconvened, significant pressure was placed on the United States to reconsider its position, especially in light of the more substantial commitments that were now being made by other countries. Moreover, intensive discussions led to the recognition that only in the case of air transport landing rights was there near universal support for a derogation. The GNS therefore decided on a different route: rather than excluding an entire sector from coverage, governments could

85. A remaining problem is what to do about the fourth quadrant, into which qualitative, nondiscriminatory measures would fall. This “gray area” includes a wide variety of “soft” measures that do not impede entry into a market but instead impede operations within a market. Examples are the diploma or qualification requirements applied nationally to most professions and the licensing requirements applied to financial services firms. Such requirements impose duplication costs to foreign providers, all the more so when they also vary within a given country, as is the case for the different bar exams administered to lawyers in the fifty American states. As discussed above, a clear remedy is to engage in harmonization or mutual recognition agreements as provided under Article VII. But what can be done in the absence of such agreements? Currently, the GNS is considering two options. The first is to define a list of the measures to be specified according to “objective” criteria. The second is simply to deal with the measures on a “bottom up” basis—that is, wait until a party complains about a limitation not mentioned in another’s schedule and determine then whether it is contrary to the spirit of the GATS text. For further discussion, see GNS, “Notes on the Meeting of 24–28 June 1991,” MTN.GNS/43, GATT, Geneva, 15 July 1991, pp. 8–9.

86. Interview conducted at GATT in July 1991.

apply for waivers on certain obligations pertaining to the sector. Under GATT, waivers allow a government to pursue practices inconsistent with the agreement if two-thirds of the signatories consent. In practice, to piece together such a two-thirds majority requires applicants for waivers to make some concessions in exchange. First-tier epistemic community members who were versed in services and familiar with GATT procedures pointed out that the same legal mechanism could be used in the GATS context, thereby eliminating the need for annexes that had been designed solely to cater to particular parties' demands for MFN derogations.<sup>87</sup> Their plan was to allow waivers now and thereby speed up the process of reaching an agreement and then phase them out later. Accordingly, the GNS decided to streamline the agreement by jettisoning many of the annexes and placing a footnote on air landing rights in the GATS article concerning MFN treatment (Article II). There is also at present strong pressure on the United States to drop its basic telecommunications annex. This would leave only nonbasic telecommunications, finance, and labor to be treated as annexes.

Recent bargaining over the labor annex shows the seeds of another crucial deal: a trade-off between issues related to labor movement and issues related to establishment. With respect to the services provided by "natural" persons, the United States and some of the other industrialized countries had argued that access rights should be given only to skilled labor (managers, executives, and specialists), while the LDCs had argued that rights should be given to unskilled labor as well. And with respect to services provided by "legal" persons, negotiators had come up with criteria to distinguish FDI from "commercial presence"—namely, presence for a limited duration and for a specific purpose—a right that the negotiators felt would be less restrictive than one based on the form of corporate arrangements or the degree of ownership. As it turned out, further investigation into the matter showed that "commercial presence" was just as restrictive as the alternatives were. The industrialized countries, especially the United States, noted that joint ventures, licensing, and similar arrangements currently represent only a small portion of services rendered abroad. The vast majority of cases do in fact involve FDI, and to require that investment be temporary is to prohibit a key form of market access. At this point in the negotiations, many LDCs appeared to be ready to allow for permanent establishment in exchange for broader guarantees on labor mobility. In effect, then, FDI would come under GATS coverage.

As all of these recent trends indicate, governments are now moving toward a GATS text that is stronger than the one considered at Brussels. In part because governments now recognize that they will have to give a little to get a little in the national schedules, they are reassessing their previous efforts to take cover behind narrowly circumscribed trade principles. How much they will get and

87. The road transportation annex, for example, was included largely because Austria and Switzerland adamantly refused to have large foreign lorries on their roads.

how the pending issues will be resolved will in turn depend on power relationships and international bargaining dynamics that cannot be discussed in detail here. However, the recent breakthroughs making a trade in services agreement possible can be traced back to the efforts of the epistemic community and, in particular, a small number of delegates and GATT staff members forming the core of the first-tier membership, who worked doggedly at massaging ideas and interests into formulations that are both conceptually coherent and politically appealing to governments seeking a way forward. The evolution of the epistemic community membership, beliefs, and influence and the parallel evolution of the trade in services negotiation process are summarized in Tables 2 and 3.

Finally, we should note that there is also discussion about creating a new umbrella organization for GATT and GATS and possibly calling it the Multilateral Trade Organization. The EC has proposed that the new organization be given more power than GATT. The USTR, while favorably disposed in principle, is afraid to speak too publicly about the idea before the U.S. Congress approves the Uruguay Round package. In light of the fact that Congress vetoed the formation of the International Trade Organization in 1951, the path of least resistance might involve simply renaming the GATT organization without giving it greater bureaucratic weight and supervisory powers. In any case, it would be legally and verbally awkward for the GATT organization to house both the GATT and the GATS regimes.

## Conclusions

In this article, we have examined the impact of the trade in services epistemic community on the form and the substance of issue institutionalization leading to the creation of a new regime (the GATS) and have argued that by framing the issues and establishing the policy options, the community provided governments with the bases on which to define or redefine their national interests and pursue multilateral cooperation. We have not argued that power and interests were unimportant or that parties simply ratified the community's vision in an unmodified manner. To the contrary, as complexity and uncertainty were reduced progressively through analysis, governments and their domestic constituencies clarified their material interests and preferences and engaged in bargaining on that basis. This produced a draft agreement that employed the community's concepts and principles but differed in important respects from its vision regarding the scope and pace of liberalization. Developments since the round's relaunching also underscore the centrality of power and bargaining, even if first-tier members are playing a central role in crafting compromises. As such, our claims regarding epistemic community influence in this case are modest relative to those in some of the other cases presented in this volume. Moreover, we do not rule out that once national interests and preferences have

TABLE 2. *Evolution of the trade in services epistemic community*

<i>Community attribute</i>	<i>1972–82</i>	<i>1982–86</i>	<i>1986–91</i>
Membership	<p>First tier consists of staff members of U.S. government offices, especially that of the USTR; a small group of analysts from U.S.-based TNCs; and trade specialists and transborder data flow analysts from the OECD. Second tier consists of analysts from London's Trade Policy Research Centre and a small group of Anglo-American trade and "services economy" theorists.</p>	<p>First tier expands to include trade and industry analysts from OECD member governments and a widening multinational network of analysts from TNCs. Second tier expands, with rapid growth in the number of academics and investigators from think tanks.</p>	<p>First tier continues to expand as nontrade experts are drawn in from national and international government organs with regulatory functions and as UNCTAD and a growing number of LDC government bureaucrats become active. Second tier grows enormously to include greater numbers of academics and analysts from think tanks and research groups.</p>
Scope of shared beliefs	<p>Members are in broad agreement on questions concerning the movement of services, the trade-like properties of services, regulatory barriers, and the potential benefits of liberalization. Members are less in agreement concerning the applicability of extant trade principles and GATT competence.</p>	<p>Members are in growing agreement that application of GATT trade principles is possible and desirable. But as membership expands, there are more doubts about whether existing principles can be applied without modification.</p>	<p>Members reach widespread agreement on general trade principles and on new concepts, such as market access and preferred mode of delivery, coupled with slow but steady progress in translating and modifying general principles as detailed sectoral rules.</p>
Influence dynamics	<p>Internal balance is skewed toward primarily U.S. advocacy of sweeping liberalization. External influence on policymakers is limited to U.S. policymakers in the 1970s but begins to spread to others at the turn of the decade.</p>	<p>Internal balance is still skewed, but members begin questioning applicability of classical liberalism. External influence on policymakers grows rapidly as the services issue reaches GATT and governments must formulate their initial positions.</p>	<p>Internal balance shifts from the support of U.S. classical liberalism to the support of managed liberalism, which is advocated by the EC and is compatible with LDC antidependency views. External influence of second-tier members declines as state interests become clearer and bargaining begins.</p>

TABLE 3. *Evolution of the trade in services process*

<i>Process</i>		<i>1972-82</i>	<i>1982-86</i>	<i>1986-91</i>
Evolution of ideas	Evolution of ideas	Anglo-American consensus emerges concerning the impact of services trade on global economic welfare, the trade-like properties of services, the modes of cross-border delivery, the concept of nontariff barriers, and the potential applicability of trade principles to services in the GATT context.	Industrialized countries reach consensus concerning the appropriateness of the GATT forum for further exploring the issue and the need to investigate the potential impact of services liberalization on developed and developing countries. LDCs assume a priori that liberalization will have a negative impact on economic development.	As discussions move from general to specific issues, governments begin exploring the idea that some GATT trade principles need to be modified, that the LDCs' special circumstances need to be considered, that boundary issues with other intergovernmental organizations should be addressed systematically, and that the mode of exchanging concessions regarding services may differ from that regarding goods.
	Evolution of interests	The United States pursues its interests in liberalizing services trade by broaching the subject during the Tokyo Round and raising it again at the 1982 ministerial meeting. In the face of widespread uncertainty, other governments are either cautious and noncommittal or strongly opposed to viewing services transactions as a trade issue.	Industrialized countries and "moderate" LDCs support services negotiations after the development issues are explored and competitive capabilities are assessed. "Hard-line" LDCs, led by Brazil and India, oppose negotiations. The proliferation of TNC coalition gains wider international membership.	All GATT members come to support the broad effort but remain divided on the precise balance of national rights and obligations to be reached in different sectors. Most TNCs support the effort, but some U.S.-based TNCs shift to opposition after reassessing their capabilities and studying the draft GATS text.
Institutionalization	Institutionalization	Initially, services and transborder data flows are discussed in the OECD forum; other international governmental organizations with stakes in regulating services are uninvolved. After 1982, discussions take place primarily in the GATT forum, but the OECD remains an important forum for research and discussion.	GATT hosts the informal meetings of the Jaramillo Group, but the "friends of the new negotiations" reach a compromise outside the formal GATT procedures. At the 1986 meeting in Punta del Este, GATT ministers launch the formal Uruguay Round negotiations. Most other international governmental organizations remain marginal.	GATT hosts "dual-track" negotiations and convenes the 1988 midterm review in Montreal and the 1990 ministerial meeting in Brussels. UNCTAD and some of the international governmental organizations with stakes in regulating services become centrally involved.

been specified clearly, analysts could tell versions of the story of the final negotiations and regime outcome from the perspectives of conventional theories of cooperation, such as neorealism and neoliberal institutionalism. But such theorists would be hard pressed to explain how and why negotiators got to the table and what has been on it without reference to the epistemic community and its ideas.

Methodologically, our approach has involved thick description and process tracing. Trends in community thought were identified and shown to have filtered into the GATS process through direct first-tier participation and second-tier consultations, as well as through a variety of indirect avenues, including conference participation and publications. This is a reasonable way to render somewhat empirical the diffusion and internalization of new ideas. But it also suggests the difficulty, given the wide variety of historical and contextual factors shaping their paths, of formulating arguments about ideas as covering law explanations with cleanly falsifiable hypotheses. Our argument is admittedly conjunctural in nature and falls short of many political scientists' preferences for deductive and generalizable propositions. However, by posing counterfactual conditions and exploring three instances in which choices and events would probably have branched down different paths in the absence of the ideas generated by the epistemic community, we can provide further support for our claims.

First, the trial balloon launched by the United States during the Tokyo Round and during the 1982 ministerial meeting deflated rapidly because other states refused to be pushed into a negotiation lacking a consensual intellectual justification. But when epistemic community analyses and national studies began to demonstrate clearly the potential for mutual gains from liberalization, other countries shifted to support for negotiations. It cannot be said that "objective" national interests changed in the course of these few intervening years. Instead, community framing played a fundamental role in defining the issues and altering the governments' general orientations. This happened first and most forcefully with the industrialized countries. It is difficult to see why they would have agreed to a process of wrenching social change contrary to many constituencies' vested interests in the absence of convincing arguments that some measure of multilateral liberalization was in their national interests as well. True, the United States had enough power to get services on the agenda, but even with bilateral pressures and free trade deals, it could not simply force other countries to go along with a policy project that made no sense to them. These countries had to reach the conclusion that it did make sense, and they did so as the result of a knowledge-intensive effort based on community inputs.

In parallel, the early lack of development analyses gave LDCs little reason to reexamine their assumptions about the intentions of the Americans and American-based TNCs and about the biases built into the discussion. That the LDCs, including the last of the hard-liners, later embraced the project was

especially striking and was in large part a function of the increased community attention after 1985 to the link between development and expanded services trade. To be sure, there is no doubt that for some LDCs, particularly those at the lower end of the income scale, whether services were tradable or not mattered little. Their support for negotiations had less to do with the substantive issues than with implicit tactical linkages to progress on goods; that is learning, but not the kind we are concerned with here. Nevertheless, it would be a gross mistake to underestimate the depth and breadth of the intellectual conversion among Third World state and business elites, the effects of which are most notable in the increasingly serious attention and effort they are devoting to the negotiations and the broader questions of services and development. Indeed, the mastery of the conceptual issues has in several cases given the LDCs a degree of issue power we might not otherwise expect. At a number of key junctures in the process—the decision on the GATS structure, the inclusion of labor mobility, and so forth—the LDCs used epistemic community insights to help win important battles. In such cases, they were opposed by the United States in particular, but the latter failed to articulate convincing arguments about the illogic of the LDCs' claims and the superiority of its own.

Second, the epistemic community had a decisive impact on the procedural and organizational dimensions of institutionalization. The choice of the GATT forum did not have to happen; the United States and its corporate allies could have pursued their objectives through bilateral and other agreements, perhaps even with greater success. The liberalization of some services industries was already beginning for various reasons, and greater market access might have been achievable on a piecemeal, sectoral basis. In fact, in the early years, many governments thought that the GATT forum was the wrong place to pursue this objective and that reform in the International Telecommunications Union, the International Civil Aviation Organization, UNCTAD, and related institutions made more sense. GATT and its procedural framework became unavoidable because of the plausibility and spread of causal beliefs that services transactions had common trade properties, faced common trade barriers, and could be governed according to common trade principles. Before there was conceptual support on these points, even the majority of industrialized countries had refused to undertake a GATT negotiation, with all the legal and institutional baggage that implies.

Third, in the GATS text and its recent modifications, epistemic community fingerprints are strikingly evident. It is far from clear that we could explain the new principles and concepts that have been agreed to solely by counting power capabilities and specifying a game structure. Indeed, it would be difficult to explain the definition of interests and preferences in the first place without regard to the ideas floating in and out of the GNS. To the extent that they marginalize the role of ideas, conventional theories and categories are often too broad to explain why governments agree to one concept over another or

why they decide that a given principle will be applied in the telecommunications but not the finance annex. In sum, none of the major steps toward a GATS—issue definition, clarification of mutual benefits, agreement to negotiate, or agreement to certain principles but not others—could be readily explained without reference to the epistemic community and its ideas. However, despite its centrality to institutionalization, the community may be at best an intervening variable in explaining the final bargained regime outcome. Whatever issue framing and policy suggestions brought them to the negotiating table, states will select final moves commensurate with their material interests.