

GATS AND THE CURRENT WTO NEGOTIATIONS ON SERVICES – THE IMPLICATIONS FOR COMMERCE (DISTRIBUTION SERVICES)

Contents: I: Introduction; II: Definitions; III: Distribution Services in the Economy; IV: Modes of International Trade in Distribution Services; V: Measuring Trade in Distribution Services; VI: GATS-specific Barriers to Trade in Distribution Services; VII: Analysis of Market Access Commitments Undertaken by WTO Members; VIII: The Current WTO Negotiations on Trade in Services. Three Appendices.

I : INTRODUCTION

On 15 April 1994 trade ministers of 125 countries signed the final act of the Uruguay Round of world trade negotiations at Marrakesh, Morocco, bringing the WTO into being on 1 January 1995. The final act also includes an important agreement on trade in services, the General Agreement on Trade in Services (GATS). GATS is Annex 1B of the Agreement Establishing the World Trade Organisation (the WTO Agreement) and is binding on all WTO Members.

The basic purpose of the GATS is the “early achievement of progressively higher levels of liberalisation of trade in services through successive rounds of multilateral negotiations ... , while giving due respect to national policy objectives.”

The aims of the “successive rounds of multilateral negotiations” are spelled out in Article XIX of the GATS, which states that:

- “Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access.” The measures referred to here include regulations of central, regional or local governments and authorities.
- Such negotiations shall be directed towards increasing the general level of specific market-access commitments undertaken by WTO member States.

Although there are bilateral (one-state-to-another) elements in GATS negotiations, the concessions one WTO Member makes to any other WTO Member are, as a rule, automatically extended to all other WTO Members. This arrangement, called the Most Favoured Nation rule, is a fundamental principle of the WTO. In services this means that “ ... each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.” The GATS does provide for some exceptions to this rule.

In this short introduction it should also be noted that in fulfilling its obligations under the GATS, each WTO Member must take “such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies”.

The GATS must be taken very seriously by unions for five reasons. Because of its global scope in terms of both the number of countries (some 150 WTO Members) and the range of services it covers. Because it has established a permanent mechanism for negotiations aimed at further liberalisation. Because liberalisation in the context of the GATS means not only more access for foreign competitors, but –more critical – also the introduction of regulatory disciplines. Because commitments made under the GATS are very difficult to reverse. Because non-observance of the GATS exposes a country to the

risk of WTO-authorized retaliatory measures (e.g., high tariffs on its exports) by other WTO member countries.

Again, this study shows how the WTO can, via the GATS, encroach on matters that most people would not normally consider to be related to international trade – matters such as zoning laws, shop opening hours and employment regulations. This can have grave consequences for democratic governance at all levels of government, central, regional and municipal.

Much of the data used in this study can be obtained via UNI's WTO-GATS-TRADE website, especially the WTO / UNCTAD, GOVERNMENTS / EU and TRADE UNIONS sections: www.union-network.org/gats

The services sector that UNI calls commerce is called distribution services at the WTO, in keeping with the United Nations classification. As for other service sectors, the WTO secretariat has produced an analysis of the implications of the GATS for distribution services. Although it is a detailed paper of 31 pages, it is modestly called a "background note", perhaps in order to respect the fiction that the WTO secretariat plays no role in the negotiations. The WTO likes to present itself as a forum for inter-governmental negotiations – nothing more.

Although some of its data are a little outdated, the WTO paper is important. It is well researched and widely used by governments in the negotiations, even where they do not expressly refer to it. Governments use its arguments and structure in putting forward their negotiating proposals. Parts of the WTO paper, quoted as "the WTO paper (S/C/W/37)", are summarised in this UNI study too. The full reference is: World Trade Organisation (WTO), Council for Trade in Services: Distribution Services – Background Note by the Secretariat; S/C/W/37, 10 June 1998 - http://www.wto.org/english/tratop_e/serv_e/sanaly_e.htm

The WTO paper assumes that its readers know the GATS and how it functions. This cannot be assumed for UNI Commerce affiliates. So GATS rules are summarised in this study, to the extent considered necessary to understand the implications of the GATS for distribution services. Also, the WTO paper does not cover developments in the current WTO negotiations on services. For these, information has been gathered from other sources.

Since the new round of negotiations on services was launched at the beginning of 2000, UNI has kept affiliates informed of general developments and urged them to ensure that they are being properly consulted by their governments. That UNI material has been distributed through circulars, UNI news periodicals and UNI's web site on GATS-WTO-TRADE. Further information on ways to influence developments at the WTO is presented in Part VI of UNI's Briefing Paper on the GATS, which can be found in the TRADE UNIONS section of that website.

II : DEFINITION OF DISTRIBUTION SERVICES UNDER THE GATS

During the Uruguay Round, WTO negotiators developed the Services Sectoral Classification List (MTN.GNS/W/120), which is largely based on the United Nations Provisional Central Product Classification (CPC). In the Services Sectoral Classification List (SSCL), distribution services are defined to include four major services: commission agents' services, wholesale trade services, retailing services, and franchising.

Although the use of the SSCL is not mandatory, most WTO Members have used it as a basis for scheduling their GATS commitments, as explained below. For each of the four subsectors, there is a reference to the CPC: commission agents' services (CPC 621), wholesale trade services (CPC 622), retailing services (CPC 631+632+6111+6113+6121) and franchising (CPC 8929). A more detailed

description of the sub-sectors is to be found on the UN's web site at <http://unstats.un.org/unsd/cr/registry/reqcst.asp?Cl=9&Lg=1>

Commission agents are distinguished from the other categories in that they trade on behalf of others; i.e., they sell products that are supplied and usually owned by others to retailers, wholesalers or other individuals. Wholesale trade services consist of selling merchandise to retailers, to industrial, commercial, institutional or other professional business users, or to other wholesalers. Retailers sell goods for personal or household consumption. Franchisers sell specific rights and privileges; for instance, the right to use a particular retail format or a trademark. Franchising is qualitatively different from the other three categories. It is more a description of the type of contractual arrangement through which a distributor is allowed to use a retail format or a trademark. A retail format is the manner in which operators offer products for sale and conduct sales.

The CPC notes that "the principal service rendered by wholesalers and retailers may be characterised as reselling merchandise, accompanied by a variety of related, subordinated services such as: maintaining inventories of goods; physically assembling, sorting and grading goods in large lots; breaking bulk and redistribution in smaller lots; delivery services; refrigeration services; sales promotion services rendered by wholesalers; and services associated with retailers' businesses, e.g., processing subordinated to selling, warehousing and garage services."

In practice, the distinctions between the four categories of distributors is blurred; many enterprises perform several functions.

The CPC restricts distribution to the selling of merchandise and related services, and therefore does not cover the sale of services.

Distribution services are also performed by enterprises whose primary function is in another business. In restaurant services, the sale of food not consumed on the spot ("take-away") is a distribution service.

Manufacturers may engage in distribution services because they seek advantages of vertical integration. For example, a computer manufacturer may do this in order to guarantee the quality of pre- and post-sales service. A clothing manufacturer may wish to eliminate the negative "vertical externality" arising from the successive mark-ups charged when the distribution chain is made up of independent enterprises.

III : DISTRIBUTION SERVICES IN THE ECONOMY

The WTO paper (S/C/W/37) makes the following points:

The distribution sector typically accounts for a significant part of total economic activity (gross domestic product - GDP). The contribution of the sector to economy-wide employment is usually even greater than to GDP, reflecting the relatively high labour-intensity of the sector. Retailing invariably accounts for a much greater share of employment than wholesale trade.

The sector is usually characterised by relatively low wages, and employs a large number of relatively low-skilled workers. However, changes in consumer preferences and technology are creating a move towards higher service quality, and hence increased demand for higher-skilled workers.

The distribution sector has grown in absolute size in most OECD countries over the years. However, the pattern of development is not uniform. It depends on the structural characteristics of a country, such as population density and the degree of urbanisation, as well as the tastes of its population (for

instance, whether or not proximate outlets are preferred). Also the nature of public policy (for example, zoning laws and restrictions on large stores) influences the evolution of the sector.

The scope for international trade in distribution services has grown rapidly through the expansion of foreign direct investment and the development of new technologies, especially in telecommunications.

The distribution sector is becoming more concentrated. This is manifested both in terms of the emergence of a number of large operators, and in terms of closer links between manufacturers, wholesalers and retailers, particularly through the creation of networks. Also, the average size of shops is generally increasing, both in terms of turnover and employment, and the density of retail outlets is declining.

"It would seem that despite the tendency towards increased concentration, the markets for distribution services tend to be fairly competitive. ... Even (where) ... there is a fairly high degree of concentration, the few large distributors in the market may still behave competitively – as evidenced by the grocery market in several developed countries."

That point – the fairly high degree of competitiveness in the sector – is noted in the WTO paper, but largely ignored in its subsequent analysis of trade barriers. Like the negotiating proposals of governments, this analysis can leave the reader with the impression that distribution services are largely closed to international trade and stifled by domestic regulations.

The important economic and employment role of distribution services has also been emphasised by governments that are participating in the current WTO negotiations on trade in services.

Canada has noted that distribution services, particularly wholesale and retail, account for a large share of economic activity in both developed and developing countries - often in the range of between 10 to 20 per cent of GDP. Canada also notes that it is a sector that is characterised by high labour intensity.

The USA has noted that distribution services consistently produce large numbers of jobs and income opportunities both directly and in other ancillary services, such as transportation, packaging, logistics management, and information technology. "Retailers and wholesalers are among the largest employers in a number of countries."

In the EU more than 23 million people are employed in the sector, 15% of total EU employment. Over half are employed in small enterprises. The retail sector is composed of a few large groups or chains exploiting economies of scale, and many small shops serving local markets.

Some governments have provided statistics in the course of the WTO services negotiations:

Table 1: Australia, Colombia, Korea – Share of distribution services in total output and employment

	output	employment
Australia	10% of GDP	20% of full-time employment
Colombia	9.6% of GDP	21.7% of the workforce (of which 74.4% in the informal economy, 25.6% in the formal sector)
South Korea		18.1% of total employment

Data: see Table in Annex 2.

IV : MODES OF INTERNATIONAL TRADE IN DISTRIBUTION SERVICES

1. GATS Rules

The GATS defines four Modes of international trade in services (Article I.2):

Mode 1: Services being supplied from one country to another, officially known as "cross-border supply";

Mode 2: People or firms consuming a service in another country, officially known as "consumption abroad";

Mode 3: A foreign company setting up subsidiaries or branches to provide services in another country, officially known as "commercial presence";

Mode 4: Individuals travelling from their own country to supply services on temporary assignments in another (e.g. maintenance workers or consultants), officially known as "presence of natural persons", but often called "mode 4" service supply.

2. In Distribution Services

Trade in distribution services, especially for wholesale and retail, has traditionally been characterised by commercial presence (Mode 3) and undertaken by larger firms. The globalisation of companies has taken place through internal growth, mergers and acquisitions, and joint ventures.

Short-term stays abroad (Mode 4) have, in the practice so far, been closely related to commercial presence.

Mail-order services are the most typical form of cross-border supply of distribution services (Mode 1). E-commerce, as is explained below, can be classified either as cross-border supply or as consumption abroad.

Trade in franchising is usually undertaken on a cross-border basis, whereas commission agent services are supplied cross-border and through commercial presence.

Consumption abroad (Mode 2) may be of growing significance, especially with the big cross-border price differences along Central European frontiers. Consumption abroad includes purchases by frontier populations in neighbouring countries. As an example of Mode 2 service supply, the WTO paper (S/C/W/37) notes "that under the GATS, the purchases (net of the wholesale price of the product) by Swiss consumers from the Swiss Migros chain located in France constitute consumption abroad of distribution services, while the sales (net of the wholesale price of the product) of the Migros in France constitute supply of distribution services through commercial presence."

3. Electronic Commerce

WTO Members have not decided whether e-commerce belongs to Mode 1 (cross-border supply) or Mode 2 (consumption abroad). If, for example, a customer in the US is actively using an Indian Internet page to purchase goods, it is not clear whether this is an example of cross-border supply or consumption abroad or both (Aaditya Mattoo; "Services in a Development Round", Global Forum on Trade, OECD, 2003). The Swiss government, for example, claims that cross-border electronic commerce in goods is covered by Modes 1 and 2.

The WTO paper (S/C/W/37) observes that, in attempting to measure the scale of electronic commerce and its impact, it is necessary to delimit its scope. The narrowest definition comprises only products that can be delivered electronically, while wider definitions also include products that are advertised,

ordered or paid for electronically. The degree to which these functions can be performed electronically will determine the manner in which competition in the distribution of specific products is affected. Considerable cost savings can result when products are not only ordered and paid for, but also delivered electronically.

However, it would seem that the EC restricts e-commerce in distribution services to transactions where goods are delivered physically. It has stated that "the process of electronic order and physical delivery of a good is a distribution service".

As noted earlier, the CPC and WTO definitions restrict distribution services to the selling of merchandise, thereby excluding the sale of services. This definition does not cover certain transactions that are commonly considered to be part of e-commerce; for example, online gambling.

With reference to the functioning of the GATS in general, it is nevertheless interesting to note that in June 2003 the Caribbean state of Antigua lodged a complaint with the WTO against the USA, alleging that the USA is in violation of its GATS obligations as a result of its ban on credit-card payments to Internet casinos, most of which are overseas, including in Antigua. This marks the first time a measure concerning electronic commerce has been brought to the WTO.

V : MEASURING TRADE IN DISTRIBUTION SERVICES

There is a lack of data on trade in services, and in this respect trade in distribution services is no exception. This has greatly complicated efforts to assess the impact of GATS-related liberalisation measures, and has meant that WTO negotiators may often be placing bets rather than making informed decisions when it comes to trade in services.

In reading through government negotiating proposals, one notes that the statistics they use refer not to trade flows but to the general role of distribution services in the economy, as presented in Part III of this study. And in that information there is not enough emphasis on the existing degree of competitiveness in the sector.

As noted earlier, the principal activity of distribution services is the reselling of merchandise. To measure the value of that activity one would need to know the difference between the revenue of selling and the cost of buying merchandise. Consequently, value-added provides a closer approximation of trade in distribution services per se than does turnover, but value-added figures are more difficult to get and tend to be less reliable.

In any case, trade data on commercial agent services are unavailable. Cross border trade data (Mode 1) are also generally unavailable for distribution services. Data covering the type of cross-border movements of labour that are covered by Mode 4 are unavailable for services in general. The US and EC statistical offices do provide some data on trade in distribution services through foreign affiliates (Mode 3 - commercial presence).

VI : GATS-SPECIFIC BARRIERS TO TRADE IN DISTRIBUTION SERVICES

The WTO paper (S/C/W/37) observes that under the GATS trade barriers may arise from explicit restrictions on foreign services or suppliers, or from excessively burdensome domestic regulations. One area of domestic regulation is competition policy and barriers to trade in distribution services may also arise from the way it is applied. There are also "spillover effects", where trade in distribution services is hindered by barriers to trade in goods or by other trade-related issues.

UNI Commerce has pointed out that planning and trading hours regulations have been considered necessary to ensure the continued availability of quality services and fair competition between large and small traders, as well as to support jobs. The GATS must therefore not be used to dismantle regulations that enable commerce to fulfil these functions.

1. Explicit Barriers to Trade

A. GATS rules

Market-access commitments (MA): Under the GATS, a WTO Member removes barriers to trade in services by making **market-access commitments** and registering them in its **schedule of specific commitments**. In sectors where market-access commitments are undertaken, the measures that a WTO Member shall not normally maintain or adopt are defined in Article XVI of the GATS as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test*;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test*;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test*;
- (d) limitations on the total number of natural persons (people) that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test*;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

* An economic needs test (ENT), often considered important by trade unions, is a regulatory provision that makes the entry of service suppliers conditional on an assessment of market needs.

"National treatment" (no discrimination against foreign suppliers) (NT): In the sectors for which it has undertaken market-access commitments, a WTO Member must accord to services and service suppliers of any other WTO Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. Treatment is considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the WTO Member compared to like services or service suppliers of any other WTO Member.

Limitations on Market Access and National Treatment: In respect of both market access and national treatment, a WTO Member may make its commitments subject to limitations, which must be specified in its **schedule of commitments**. However, a WTO Member is not free to make whatever limitations it may wish. That freedom is limited by the GATS rules regarding domestic regulation, as is explained in the next section of this study.

B. In distribution services

Here is a non-exhaustive list of the trade barriers in distribution services that are mentioned in the WTO paper (WTO S/C/W/37):

Mode 3: (commercial presence)

- An unfavourable general foreign investment regime;
- Limitations on foreign investment, including those on the extent of foreign ownership (for instance, limiting foreign equity ownership to specific levels);
- Limitations on the type of legal entity required (such as the requirement to incorporate locally);
- Limitations on the ownership of specific assets (such as land);
- Limitations on the scope of operations (restrictions on the number and location of outlets);
- The requirement to form a joint venture with local suppliers (or the prohibition of forming a joint venture);
- The application of economic needs tests.

Mode 4: (temporary presence of people)

- Direct and indirect limitations on short-term working abroad (visas, work permits, non-admission of spouses, etc);

Mode 1: (cross-border supply)

- Measures such as discriminatory (higher) taxation of goods delivered by cross-border mail;

Mode 2: (consumption abroad)

- Limitations on foreign currency and spending abroad imposed on travellers;
- Travel restrictions;

The WTO paper (WTO S/C/W/37) refers to liberalising trends in a number of countries, giving the examples of South Korean and Indonesia.

South Korea had a permit system which restricted floor space and the number of stores for foreign investment. In January 1996 these restrictions were lifted and the permit system was changed into a notification system (Industrial Structure Council, 1998).

In Indonesia the law on foreign investment barred entry of foreign firms to the distribution sector. By Presidential order, a foreign trading house was allowed only to set up a representative office for commission agency activities and could not conduct sales or marketing. However, in January 1996 a deregulation programme was announced, allowing foreign export traders to deal in any product, and foreign import traders to supply areas like export processing zones. Since March 1998, similar liberalisation steps have been taken in retailing.

A paper presented to a recent OECD forum summarises developments in three large developing countries – Brazil, India and China, particularly as regards commercial presence.

Table 2: Brazil, India and China - Regime for foreign suppliers in distribution services (Mode 3)

Brazil	India	China	
No explicit barriers on foreign suppliers	Retail distribution closed to foreign firms but wholesale is relatively liberal	Today	By 2006

		Through joint ventures (not foreign majority controlled) in 5 Special Economic Zones and 8 cities, subject to quotas on retail outlets (e.g. 4 in Beijing and Shanghai), restrictions on product coverage	Foreign majority control allowed except in large chain stores, no restrictions on product coverage
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Data: Aaditya Mattoo; "Services in a Development Round", Global Forum on Trade, OECD, 5-6 June 2003.

2. Domestic Regulation

A. GATS rules

Trade in services differs from trade in goods in that access to services markets depends less on controls at national borders than it does on domestic regulations, whose primary function is usually not to limit market access but to address consumer, environmental and social concerns. The GATS is based on the assumption that regulatory disciplines are needed to avoid "disguised protectionism", i.e. the use of domestic regulations to deny effective market access to foreign service suppliers. This is one of the most controversial areas of the GATS regime, especially those GATS rules that are binding on all WTO Members not only on those that have made market-access commitments.

The GATS principles regarding domestic regulation are set down in Article VI. As regards the rules concerning sectors where a WTO Member has made specific commitments, the Article sets down the general rule that the Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. Where authorisation is required for the supply of a service, the competent authorities must, within a reasonable period of time after the submission of an application, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member must provide, without undue delay, information concerning the status of the application.

Moreover, a Member must not apply licensing and qualification requirements and technical standards in a manner that, among other things, is not based on objective and transparent criteria, such as competence and the ability to supply the service, or is more burdensome than necessary to ensure the quality of the service.

As regards the rules that are binding on all WTO Members, regardless of any specific commitments to open services markets, Article VI requires tribunals and procedures that provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services.

Also, all WTO Members are bound by the special disciplines that the WTO's Council for Trade in Services is required to develop with a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. The most tangible outcome from this work so far has been the adoption of disciplines on accountancy services, which will come into force at the end of the current round of services negotiations.

WTO Members can use another GATS provision to jointly develop more detailed regulatory disciplines. Article XVIII allows them to negotiate additional commitments with respect to measures affecting trade in services, including those regarding qualifications, standards or licensing matters.

Here again, one can distinguish between regulatory disciplines that bind all WTO Members and those disciplines that concern only those WTO Members that choose to include them – in part or in whole – in their schedules of commitments.

All Members are bound by, for example, an Annex to the GATS. Examples include the Annex on Telecommunications and the Annex on Financial Services. In the current GATS negotiations, developing countries have called for the negotiation of an Annex on Tourism. The main example so far of the multilateral negotiation of common rules, with subsequent individual adherence to them, is the Reference Paper for the basic telecommunications services.

There is, as yet, no Annex or Reference Paper for distribution services, though the USA is said to favour the development of such a Reference Paper in the current services negotiations.

B. In distribution services

The WTO paper (S/C/W/37) observes: "The distribution sector is ... affected by a wide range of ... government regulations. These exist for a variety of reasons, including health and safety, urban planning and environmental protection, as well as for economic motives. ... However, where regulations are more burdensome than necessary to achieve the objective in question, they can cause an excessive increase in costs and hence prices, and unduly reduce consumer choice. ... The key question in assessing a particular regulation is whether the stated objectives can be met by policies which have smaller economic costs. ..."

"It is notable that many of the regulations that affect the distribution sector are implemented by local governments and municipalities, who have a powerful influence on the authorisation of new stores and the conditions of operation. Distributors are therefore confronted not only with national differences in policy, but also divergent regional and local attitudes."

The WTO paper (S/C/W/37) refers to the following domestic regulations:

- Restrictions on large-scale outlets;
- Shop opening laws;
- Zoning and planning laws;
- Competition policy - or lack of it (see next section);
- Restrictions on pricing and promotion;
- Labour market legislation.

In practice it can be difficult to draw a distinction between GATS-specific explicit barriers to trade and, on the other hand, GATS-specific barriers arising from domestic regulation. For example, the WTO paper asks whether restrictions on the size of retail outlets and on opening hours should be covered by GATS Article XVI (market access commitments) or only by the disciplines of Article VI?

3. Competition Policy

A. The GATS and competition

Rather than stimulating freer markets, the GATS may be detrimental to competition. By promoting the "commercial presence" of multinationals and strengthening their position on national markets in other ways, the GATS may foster concentration and thereby reduce competition in distribution services.

Moreover, much domestic regulation protects small- and medium-sized enterprises. That can create monopolies in certain small local markets, but it also hinders concentration in the sector as a whole. The GATS, by attacking domestic regulation, hinders the maintenance of a balanced structure of firms of various sizes.

Today there is widespread concern about the growing power of Wal-Mart, a huge US multinational retailer. This year's 2003 FT Global 500 (www.ft.com/ft5002003) shows that in terms of market value, Wal-Mart is four times the size of the world's next largest retail company, the US's Home Depot, and in terms of sales (turnover) Wal-Mart is more than three times the size of the second runner, France's Carrefour. Research by UFCW, a US union, projects that by 2008 Wal-Mart will own more than 50% of the US retail food market.

Surely the concentration of market power in Wal-Mart represents a greater challenge to competition in distribution services than do many of the regulations targeted by the GATS? As for other private services, there may be a case for international co-operation; not in order to de-regulate the sector but to maintain competition. That may have implications for regulatory reform, but maintaining a fair degree of competition, not regulatory reform, should be the central goal.

The WTO, in its present structure and functioning, is certainly not the appropriate forum for the development of an international competition policy, not least because it is too isolated from other international agencies and provides no possibilities for civil society organisations to make an input.

B. Vertical restraints to trade

The WTO paper (WTO S/C/W/37) focuses on the possible anti-competitive consequences of vertical relations between manufacturers and distributors.

One expert has noted: "Vertical restraints are recognised by both economists and competition policy authorities to have both benefits and competition-impeding costs. It is difficult to draw neat lines between those that should be allowed and those that should be prohibited."

Competition authorities have tended to adopt a relatively permissive approach towards non-price based vertical arrangements, especially in the case of consumer durables like cars. As noted earlier, the desire for vertical integration by manufacturers can even stimulate trade in services. Japan often refers to the role of manufactures in promoting trade in distribution services.

In the trade context, tensions have arisen because vertical relations between domestic manufacturers and distributors may impede the market access of foreign goods.

Claims that Japanese distribution channels were skewed to the disadvantage of imported products were a source of tension between the United States and Japan in the mid-1990s. The WTO paper refers to two such cases:

On 16 May 1995, the United States Government announced that it would levy 100 per cent tariffs on 13 imported Japanese luxury car models unless US manufactured products gained enhanced access to Japanese show rooms for finished vehicles and to repair markets for parts. The dispute was resolved and the tariff threat was withdrawn through last-minute negotiations.

On 18 May 1995, the Eastman Kodak company filed a complaint with the US government alleging that Fuji and its network of domestic wholesalers and distributors sustained anti-competitive practices to limit the access of Kodak films and print paper to the Japanese market. This issue was the subject of a dispute at the WTO, which concerned the application of the GATT, not the GATS. (see Japan - Measures Affecting Consumer Photographic Film and paper, Report of the Panel, document WT/DS44/R of 31 March 1998).

4. Spillover Effects

A characteristic of distribution services is their close relation with trade in goods, as noted above in discussing vertical restraints, and other trade-related issues, for example the protection of property rights.

Distribution services are essential for trade in goods. In a recent speech US Trade Representative Robert Zoellick said: "Liberalisation of trade in goods is best able to promote development when it's coupled with an open services market. After all, it does no good to eliminate tariffs on American goods or farm products if a country's distribution network is closed or inefficient or blocked due to corruption." Zoellick was referring to a broad definition of the distribution network, including retailing, transportation and express delivery services.

In some cases, however, restrictions on trade in goods may also affect GATS obligations. For instance, in one dispute under the GATT (European Communities - Regime for the Importation, Sale and Distribution of Bananas, Complaint by Mexico, WT/DS27/R/MEX), the question arose of whether measures regulating the importation of trade in goods could be deemed to be a measure affecting trade in services. The WTO Panel concluded that there was no legal basis for an *a priori* exclusion of measures within the EC banana import licensing regime from the scope of the GATS.

While the liberalisation of trade in goods has facilitated the growth of trade in distribution services, certain barriers to trade in goods may hinder trade in distribution services. Restrictions in the form of complex customs clearance procedures, differences in product standards, burdensome practices for certification and testing of products are among goods-related non-tariff barriers which adversely affect distribution services.

This section and the previous one have shown that the GATS, the GATT (trade in goods) and other WTO agreements can reinforce each other. But, in future, they may also conflict with each other in some cases. For instance, the previous section described how the US was able to exert considerable pressure on Japan's distribution system via the GATT. Would such action be possible where a targeted country has either not made the relevant market access commitment under the GATS or has attached a limitation to it?

VII : ANALYSIS OF MARKET ACCESS COMMITMENTS UNDERTAKEN BY WTO MEMBERS

1. The Number of Commitments

By mid-1998, 36 WTO Members had made specific commitments on distribution services, according to the WTO paper (WTO/S/C/W/37). The European Communities (EC) are counted as one WTO Member. But the schedules of Austria, Finland and Sweden had not yet been integrated into that of the EC. They were therefore counted separately. The WTO paper's summary table is reproduced in this study as Annex 1. UNI Commerce has been unable to obtain an updated total from the WTO. According to one source, the total had risen to 44 by May 2001.

The total number of commitments is, in any case, rather small. The EC has pointed out that only health and education – where trade liberalisation is much more controversial – have attracted fewer commitments. Even though many WTO Members have not made commitments, Members with commitments do account for around 90 per cent of the GDP of all WTO Members.

WTO Members' policies may be more liberal in practice than the number of their commitments would suggest. The WTO paper speaks of a consolidation of existing trends. That would suggest that many WTO Members are, quite correctly, being cautious. They are reluctant to lock in their regulatory regimes by making specific commitments under the GATS, which would, moreover, expose them to the risk of sanctions if the WTO found them to be in non-compliance. UNI has stressed that trade unions should prevent their governments from using the GATS to introduce new domestic liberalisation measures. Moreover, domestically decided liberalisation should never be bound by GATS commitments if it is recent or controversial.

Most of the 36 WTO Members with specific commitments had undertaken them on both wholesale (34) and retail (33) services, and a smaller number on commission agents services (21) and franchising (23).

2. The Nature of Commitments

A. The terminology used in WTO Members' schedules of commitments

The WTO paper (S/C/W/37) distinguishes between three situations:

- full bindings, representing full coverage of the sector and a "**none**" (= no limitations) entry against a particular Mode of supply with respect to both market access and national treatment, denoting the absence of any limitations;
- no bindings, which are designated "**unbound**" (= no commitments) against the relevant Mode of supply, with respect to both market access and national treatment or with respect to market access only;
- the intermediate case of limited bindings, which refer to those entries which are conditioned in some way by a limitation. The limitation may be on product coverage, or in the form of a restrictive measure (which can be one or more of the six types of restrictions on market access listed in Article XVI of the GATS or any measure inconsistent with the national treatment obligation in Article XVII).

The term "bindings" underlines the fact that WTO Members bind their regulatory regimes binding in international law when they make market access and national treatment commitments under the GATS. In other words, the GATS not only promotes liberalisation through successive rounds of negotiations; it also locks it in, creating a "one-way road to services liberalisation".

B. Analysis of the Commitments

Here are some of the conclusions of the WTO paper (S/C/W/37):

- in Mode 4 (temporary presence of foreign workers), uniformly low level of commitments. And commitments are limited to business visitors and certain categories of intra-corporate transferees, such as of managers, executives and specialists;
- in Modes 2, 3 and 4, very few WTO Members – all developing countries - have no limitations on their commitments;
- in Mode 1 (cross-border supply), Australia, the European Communities and the Slovak Republic have restricted their commitments in retailing to mail-order services;

- in Mode 3 (commercial presence), very few WTO Members have made no commitments, but many have horizontal limitations, which apply to distribution as well as to other services, and/or limitations specific to distribution.

The most frequently observed specific limitation is the requirement of an *economic needs test* (3 WTO Members in wholesale trade and 5 in retailing, including some EC countries in both cases). It is applied to the whole distribution sector, or to particular products (pharmacies, motor fuel, used cars, clothing, shoes or foodstuffs), or to particular types of sales outlets (department stores or temporary stalls), or to large outlets. The criteria for the economic needs test have been specified by several WTO Members. These usually include the adequacy of current levels of service, the number of and impact on existing stores, population density, geographic spread and impact on traffic conditions.

The horizontal limitations include limitations on the purchase or rental of estate, restrictions on equity holdings, residency requirements for directors, and tax and subsidy measures;

- there is considerable variation in the products excluded by different WTO Members, ranging from products that cause security concerns to much wider sectoral exclusions. The most commonly excluded products belong to the categories of arms, ammunition and explosives; pharmaceutical, medical and orthopaedic goods; agricultural raw materials and live animals; food, beverages and tobacco; precious metals and motor vehicles. Some Members exclude products supplied at public wholesale markets (Japan, South Korea) or commodity exchange markets, while others exclude goods subject to import authorisation. Canada is unique in excluding the distribution of audio-visual products, and, in wholesale trade, also printed matter (books, newspapers, etc.).

VIII : THE CURRENT WTO NEGOTIATIONS ON TRADE IN SERVICES

1. General Background

At the end of the 1986–94 Uruguay Round, the participants agreed to resume general negotiations on services at the beginning of 2000.

A part of the first phase of the negotiations was used by governments to submit and discuss their **general negotiating proposals**.

Meeting in Doha in November 2001, the 4th Ministerial Conference of the WTO launched a new round of comprehensive trade negotiations, called the Doha Development Agenda (DDA). It set a deadline for the conclusion of all the negotiations being pursued in the round, including the negotiations on services. That date is "not later than 1 January 2005". Most well-informed observers predict that this deadline will not be respected.

With that deadline in view, participants in the services negotiations were required to submit their initial market-opening **requests** by 30 June 2002 and their initial market-opening **offers** by 31 March 2003. It is expected that these deadlines will be extended by the 5th Ministerial Conference, in September 2003.

The next two sections look first at the general negotiating proposals for distribution services and then at various specific requests and initial offers.

Electronic Commerce is not being handled in the general negotiations on trade in services, but separately in the WTO E-commerce Work Program. WTO Members have so far focused on prohibiting the imposition of customs duties on electronically delivered products. Less attention has been devoted

to instruments such as quotas and domestic regulation that may discriminate against foreign suppliers. According to one observer, open trading through e-commerce is more effectively secured through deeper and wider Mode 1 and Mode 2 commitments by WTO Members, which would prevent quantitative restrictions and provide "national treatment", thereby preventing discriminatory taxation (Aaditya Mattoo; "Services in a Development Round", Global Forum on Trade, OECD, 2003; Mattoo, 2003, p.18).

2. General Negotiating Proposals

Ten general negotiating proposals for distribution services have been tabled, two of which cover groups of countries (European Communities and Mercosur).

The basic strategy and salient features of each proposal are presented below, while positions on certain key issues are summarised in Annex 2.

Australia: "... seeks liberalisation in the distribution services sector in order to expand domestic and export markets and raise productivity without compromising service quality and consumer protection. This can occur through minimising trade-distorting barriers within a framework of national interest policies."

Canada: "WTO Members should improve the quality and quantity of specific commitments in their schedules for distribution services to at least the Canadian level. Canada supports facilitating greater liberalisation by allowing Members to phase-in commitments over a specified period," under a method to be agreed upon. Canada is unique in referring to "the importance of industry associations in the distribution services sector in helping to maintain and better inform domestic regulatory practices where consumer, social and business issues are concerned. In this respect, Canada notes the importance of strengthening such associations, particularly in developing countries and least-developed countries."

Colombia: Its proposal presents a very pro-business, pro-liberalisation strategy. As background information, growing foreign investment and activities of international chains in Colombia are emphasised. The proposal contains a long list of barriers that "suppliers of distribution services in Colombia have encountered" and calls for their removal.

European Communities (EC): More WTO Members should make commitments. "Our proposal aims at reducing unnecessary trade distortive barriers without affecting the quality of service and the protection of consumers." In general, the EC states: "Trade, environmental and social policies play a mutually supportive role in favour of sustainable development. ... transitional periods for the implementation of market openings may be considered on a case-by-case basis with particular attention to least developed countries."

Japan: More WTO Members should make commitments. Among the points emphasised by Japan is the role of manufacturers in the provision of services overseas. In that respect, the proposal observes that after-sales services are indispensable in the expansion of distribution services by manufacturers.

South Korea: Too few WTO Members have made specific commitments. More should do so. Negotiations should aim at a substantial liberalisation of distribution services.

Mercosur (Argentina, Brazil, Paraguay and Uruguay): The proposal emphasises the importance of increasing the participation of developing countries in trade in services, referring to Article IV of the GATS. The proposal identifies barriers that are particularly damaging to developing countries in trade in distribution services: prohibitions on the establishment of a commercial presence (Mode 3) by

commission agents (intermediaries) in agricultural products; prohibition of establishing joint ventures (Mode 3); and exclusion of products of vital export interest to developing countries.

As regards the third point, the Mercosur proposal notes that of the 44 WTO Members that had made commitments by May 2001, 16 had excluded distribution of at least one agricultural product and two had excluded products that are subject to import permits or licences. The latter also affect agricultural products because those products "are usually subject to import licensing, particularly in high-income countries which have highly protectionist agricultural policies". The proposal adds that, with one exception, none of the 18 aforementioned countries are developing countries.

Switzerland: More WTO Members should make distribution sector commitments for all modes of supply, cross-border supply (Mode 1) in particular. "Commission agents' services and wholesale trade should be largely liberalised since they are aimed at a 'sophisticated clientele'."

United States: More WTO Members should make commitments, and these commitments should contain no limitations as regards market access and national treatment. "The purpose of this proposal is to help create conditions favourable to economic growth by removing and reducing obstacles to the establishment and operation of facilities and outlets needed for efficient movement of goods and services to business and household consumers. This will lead to increased production and employment in the local economy." The emphasis is therefore on Mode 3; i.e., the operation of US multinationals abroad.

The US proposal contains a long list of 28 obstacles the US government has identified in reviewing the distribution sector, and would like to see removed in the course of the negotiations. Could this list be the Wal-Mart Development Agenda (WDA)? One of obstacles identified by the USA concerns employment, being formulated as follows: "Minimum requirements for local hiring are disproportionately high, causing uneconomic operations". Given the length of the list of barriers, it is surprising that it makes no reference to product coverage. The full list is appended as Annex 3 of this study.

3. The Request-Offer process

Between 31 March and 12 June 2003, 26 WTO Members had submitted initial offers: Argentina, Australia; Bahrain; Canada; Chinese Taipei; Czech Republic; European Communities and its Member States; Fiji; Hong Kong, China; Iceland; Israel; Japan; Republic of Korea; Liechtenstein; Macao; China; Mexico; New Zealand; Norway; Panama; Paraguay; Poland; Slovenia; St Christopher and Nevis; Switzerland; United States and Uruguay.

UNI does not know how many of these initial offers cover trade in distribution services.

Several initial offers have been de-restricted by the WTO Member concerned and are publicly available on the WTO site. In addition, some WTO Members have made their initial offers, or summaries thereof, publicly available on their own Internet sites.

The following paragraphs provide some information on the request/offer process as it affects the EC, the USA and Japan. It is based on documents that can be obtained via the GOVERNMENTS / EU section of UNI's WTO-GATS-TRADE website: www.union-network.org/gats

The European Communities: Information on the requests addressed to the EC as a whole and to the UK in particular can be found in the consultation documents published by the European Commission and the UK government towards the end of 2002. There is abundant unofficial, leaked information on the requests addressed by the EC to other WTO Members. The EC's initial offer has been published in full.

As regards requests to the EC and its Member States, the Commission consultation document reports that 50% of the 25 requests received from other WTO Members address specifically the distribution sector. The two areas to which the requests most frequently refer are the sub-sector of retailing services and Mode 4 (the temporary presence of foreign persons).

In retail distribution, 11 countries have made requests on commercial presence (Mode 3), especially for the removal of economic needs tests, which concern department stores in Belgium, Denmark, France, Italy and Portugal. The requests also target limitations on distribution of tobacco (in Austria, France, Italy, Portugal and Spain). A smaller number of countries have requested the elimination of limitations on distribution of alcoholic beverages (in Finland, Ireland and Sweden). In cross-border supply (Mode 1) of retailing services, the EC countries have made a commitment for mail orders only, except Austria, Finland and Sweden, which have no limitations there. The requests ask for broader commitments in cross-border retailing from the EC as a whole.

As regards the temporary presence of persons, the requests addressed to the EC focus on the elimination of restrictions related to requirements of nationality (in France for wholesale pharmacies and tobacconists) and residence (Italy, Portugal and Spain for commission agents and wholesalers).

The UK consultation document reveals that the EC has also been requested to relax restrictions on shop opening hours. As regards zoning decisions, EC countries have been requested to provide opportunity for prior meetings between service suppliers (e.g., foreign companies) and regulatory authorities / local Councils. There is also a request that WTO Members should negotiate a special text on this and transparency in rules and procedures relating to zoning – perhaps on the lines of the Reference Paper for basic telecommunications (see above). As in the EC consultation document, the countries making requests are not specified. However, other sources show that the requests regarding shop opening hours and zoning decisions have been made by the USA.

In comparing the initial offer of the EC with the requests addressed to it, one notes that Italy, Portugal and Spain are willing to drop their residence requirements. Also, the economic needs tests of the five aforementioned countries, which concern department stores, are harmonised and the main criteria for their application are defined: the number of and impact on existing stores, population density, geographic spread, impact on traffic conditions and creation of new employment. The offer specifies that the tests would be applied “on a national treatment basis”; i.e., without discrimination between national and foreign companies.

The World Development Movement, a UK NGO, has analysed the leaked documents on the EC requests, with special reference to developing countries <http://www.wdm.org.uk/action/EUleaksmedia.htm>. According to this analysis, the EC has addressed requests regarding distribution services to as many as 60 countries, including to six of the 41 low-income countries (World Bank definition) - but to none of the least developed countries.

The WDM analysis takes the case of Thailand, where (as is the case in many other developing countries), retail trade has gradually been liberalised since the late 1980s. Yet Thailand has not locked this liberalisation into GATS commitments. The liberalisation has proved extremely controversial because of the impact on small traditional retail shops and local employment. A Thai WTO submission called this “a very hot potato for the current administration” (Thai Government Submission to WTO on Services Impact Assessment, TN/S/W/4, July 2002). However, the EC is now requesting Thailand to commit retail under the GATS, and thereby reduce its ability to implement regulations to protect local retailers.

Many other developing countries and countries in transition face a similar dilemma. Should they modernise their distribution services by allowing multinationals to operate large, efficient shops or

should their primary concern be job numbers and the protection of traditional SMEs? In pressing its demands, the EC, like other industrialised WTO Members, must be sensitive to this dilemma if it is to be consistent with its principle of promoting sustainable development.

EuroCommerce, the European employers' and business organisation in the distribution services, fully supports the European Commission's negotiating strategy. "We expect liberalisation of services to provide an enormous boost to the EU's economy in general and to distribution companies in particular," said EuroCommerce's General Secretary during the European Parliament's hearings in May 2003. He was particularly critical of the barriers that foreign distribution companies face in China, noting for instance that to open a store approval from seven levels of government was needed. The statement also supported the Commission's initial offer, but beyond that would "welcome if remaining limitations on alcoholic beverages in some EU Member States could be abolished – as well as economic needs tests".

UNI-Europa Commerce has not yet taken a specific position on the EC's negotiating offer. At its European Conference on 16-18 May, UNI-Europa Commerce concluded that the liberalisation of trade in services through the GATS negotiations threatens to further affect and restrict national and European decision-making on important regulation issues, including shop opening hours and zoning. It agreed to monitor developments and, with affiliates, resist GATS measures that undermine the ability to regulate commerce and working conditions in commerce - at the European, national or local level - through collective agreements, municipal bylaws, legislation, European directives or other democratically decided measures. Within UNI and together with other Global Unions, UNI-Europa Commerce and its affiliates will seek to secure significant consultation rights for trade unions at the WTO and also to integrate a social dimension into all WTO agreements and measures, including the enforcement of the core labour standards defined in the ILO Declaration on Fundamental Principles and Rights at Work.

The USA has posted its full initial offer on the Internet site of the US Trade Representative. In distribution services, the USA has little more to offer, as it is, with a few exceptions, already fully bound (i.e. no limitations to foreign suppliers' access to the US market and to their non-discriminatory treatment) in all four sub-sectors: commission agents, wholesale trade, retail trade, and franchising.

The exceptions relate to product coverage and Mode 4 (temporary presence of persons). Alcoholic beverages will continue to be excluded from GATS-bound retail sale by foreign suppliers. The temporary presence of foreigners will continue to be governed by the limitations that apply across all services. Unlike the EC, the USA is not offering to ease its Mode 4 "horizontal" limitations.

In an executive summary of its requests (USTR, 1 July 2002), the US government says it is requesting full market access for retail, wholesale, and franchising services rendered either directly to customers from a fixed location or away from a fixed location via direct person-to-person, catalogue, telephone, video or electronic sales.

In general, the USA is requesting full market access and national treatment from a series of countries, which does not include least developed countries. It is requesting "additional commitments" on zoning; transparency; and giving distributors the right to meet regulatory authorities, community activists and civic associations to satisfy concerns on location and size of establishments. From the EU, the USA is requesting the removal of economic needs tests on department stores in Belgium, Denmark, France, Italy and Portugal, and the removal of nationality requirements in France. The USA also wants restrictions on shop opening hours to be relaxed. The USA wants Japan to lock in its new law on large stores - which eliminates economic needs tests, etc – by including its provisions in its GATS schedule of specific commitments.

Japan has not made its initial negotiating offer available to the public, but did provide a brief summary. According to that summary, Japan is offering to remove the exclusion of salt from the products covered

by its commitments for distribution services. From this it appears that Japan would continue to exclude from its commitments on wholesale and retail trade a fairly large number of products: rice, tobacco, alcoholic beverages, petroleum, petroleum products, as well as products supplied at "public wholesale markets"; namely, fresh foods and flowers. In the requests it is addressing to other WTO Members for its suppliers, Japan is looking for a "minimisation of the number of goods subject to restricted distribution".

Annex 1: Summary of Specific Commitments in Distribution Services – June 1998

COUNTRIES	04.A	04.B	04.C	04.D	04.E	TOTAL
Argentina		X	X	X		3
Australia	X	X	X	X		4
Austria	X	X	X	X		4
Brazil		X	X	X		3
Bulgaria	X	X	X	X		4
Burundi	X	X	X			3
Canada	X	X	X	X	X	5
Czech Republic		X	X	X		3
Ecuador		X				1
European Community	X	X	X	X		4
Finland	X	X	X	X		4
Gambia	X	X	X	X		4
Hong Kong			X			1
Hungary		X	X	X		3
Iceland	X	X	X	X	X	5
Japan	X	X	X	X		4
Korea, Republic of	X	X	X	X		4
Kuwait	X	X	X			3
Lesotho		X	X	X		3
Liechtenstein	X	X	X	X		4
Mexico		X	X			2
Mongolia		X	X			2
New Zealand	X	X	X			3
Norway		X	X	X		3
Panama	X	X		X		3
Peru		X	X			2
Poland		X	X			2
Romania	X	X	X			3
Senegal		X	X			2
Slovak Republic		X	X	X		3
Slovenia	X	X	X	X		4
South Africa		X	X	X		3
Sweden	X	X	X			3
Switzerland	X	X	X	X		4
Thailand	X					1
USA	X	X	X	X		4
Total	21	34	33	23	2	113

04.A. Commission Agents' Services
04.B. Wholesale Trade Services
04.C. Retailing Services

- 04.D. Franchising
- 04.E. Other

Note: The commitments of Austria, Finland and Sweden had not yet been integrated into that of the European Community and its Member States.

Source: World Trade Organisation (WTO), Council for Trade in Services: Distribution Services – Background Note by the Secretariat; S/C/W/37, 10 June 1998. http://www.wto.org/english/tratop_e/serv_e/sanaly_e.htm

Annex 2: Summary of GATS Negotiating Proposals in Distribution Services

(Separate Table in Landscape Format – see Part II on web page)

Annex 3: The US's View of Obstacles to Trade in Distribution Services – December 2000

Excerpt from US negotiating proposal: This proposal is not presented as a legal text, but rather as a list of obstacles identified in reviewing this service sector. Some items on the list may be market access restrictions, or national treatment limitations, or both. In addition, some obstacles, although not limitations on market access or national treatment per se, may result from regulatory provisions which make it difficult for foreign suppliers to market their services.

Obstacles in this sector

- Local equity requirements in excess of 49 percent
- Limitations on the purchase or rental of real estate
- Economic needs tests for service suppliers in this sector
- Prohibition on size and/or location of stores and other facilities without an opportunity to establish such facilities under prescribed conditions
- Denial of permission for service suppliers to enter into and exit from joint ventures with local or non-local, private or government partners
- Limitation on the number of outlets in chain store operations
- Mandatory requirements for partnerships with locals as a condition for establishment and, in other cases, denial of opportunity to form partnerships with locals on a voluntary basis
- Where government approval is required, exceptionally long delays are encountered and, when approval is denied, no reasons are given for the denial and no information is given on what must be done to obtain approval in the future
- Overly burdensome fees and/or taxes are imposed on repatriation of profits or on conversion of currencies to repatriate profits
- Denial of access to, and use of, services essential to this sector (e.g., highways, airports, railroads) on reasonable and nondiscriminatory terms and conditions
- Denial of access to government programs available to domestic service providers
- Tax treatment that discriminates against foreign service suppliers
- Discrimination against foreign service suppliers with respect to choice of business organizations available to domestic suppliers
- Discrimination against foreign partners in a joint venture
- Discrimination against franchises as opposed to and other forms of business organization
- Discrimination against foreign franchises
- Discrimination against direct selling and as opposed to other forms of business
- Lack of transparency of domestic laws and regulations and fairness of administration, including lack of pre-determined, objective criteria for licensing requirements

- Lack of readily available information on zoning and lack of an opportunity for service suppliers to meet with local officials and community representatives to discuss location of facilities
- Lack of consumer choice in selection of postal or other delivery services
- Discriminatory treatment with respect to size, configuration, and/or location of terminals, warehouses, and other facilities and denial of authorization to such facilities under prescribed condition
- Discriminatory treatment with respect to the scope of business and transportation licenses that may be required
- Overly burdensome regulation of telephone and electronic media marketing
- Prohibitions on service providers to offer incentives, rewards, and other promotional programs
- Minimum requirements for local hiring are disproportionately high, causing uneconomic operations
- Lack of means to facilitate temporary entry and exit of specialized, skilled personnel (including managers)
- Restrictions or excessive fees/taxes on international currency transactions
- Restrictions or excessive fees/taxes on licensing or royalty payments

Source: Office of the US Trade Representative <http://www.ustr.gov/releases/2000/12/factsheet.pdf>