

Going Global

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The case for enhancing global trade
in professional services



ENGINEERS
AUSTRALIA

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Kathryn Hurford



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National President's Foreword

Our members have an ongoing interest in trade in professional services, highlighting the role it plays in determining both the quality and speed of economic progress while underpinning the continued evolution of Australia as a knowledge-based economy.

Engineers Australia is the peak body for engineering practitioners in Australia and represents all disciplines and branches of engineering, including information technology. Engineers Australia has over 70,000 members Australia wide and is the largest and most diverse engineering association in Australia.

Engineers Australia promotes and advances the practice of engineering, ensuring that the community is well served by its engineering resources. It encourages the development of Australia's technological capacity in a way that ensures sustainability and maximises its contribution to the economic growth of the nation.

Rapid technological change is allowing services to be provided in different forms and with greater speed than ever before. Many services that were considered non-tradeable until recently are now being actively traded through the ease of international travel and the application of information and telecommunications technology.

Australia has the expertise and capabilities necessary to succeed in providing professional services in a rapidly growing international market place. To this end, Engineers Australia believes there is a role for the Australian government to proactively support overseas trading opportunities for Australian exporters of professional services.

The following report examines the role of non-tariff barriers, mutual recognition agreements, and domestic regulation in obstructing and facilitating trade in professional services at a regional and multilateral level. It also addresses the role of the Australian government in supporting, facilitating and championing overseas trading opportunities for Australian exporters.

Engineers Australia presents this report to provide input into future discussions and activities to enhance trade in professional services.

A handwritten signature in black ink that reads "Peter Greenwood." The signature is written in a cursive, flowing style.

Dr Peter Greenwood
National President

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List of acronyms

ASEAN	Association of South East Asian Nations
ABS	Australian Bureau of Statistics
CER	Closer Economic Relations
COMECOM	Council for Mutual Economic Assistance
DFAT	Department of Foreign Affairs and Trade
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IMF	International Monetary Fund
MFN	Most Favoured Nation
MRA	Mutual Recognition Agreement
NAFTA	North American Free Trade Agreement
PECC	Pacific Economic Cooperation Council
RTA	Regional Trade Agreement
TRIPs	Trade-Related Intellectual Property Rights
WTO	World Trade Organisation

Executive Summary

Globalisation has led to increased economic integration and technical developments that have, in turn, supported the growth of traded services. While international transactions between residents and non-residents across geographical borders were impossible or prohibitively expensive in earlier times, the ease with which people can now travel and communicate across international borders has made international transactions commonplace.

In both trade and foreign direct investment, services are the fastest-growing component of the world economy over the past two decades, displacing trade in merchandise. Australia has the expertise and capabilities necessary to succeed in providing professional services in this rapidly growing international market place.

The liberalisation of international service transactions poses challenges that are quite different from those in the goods area. Market access for goods can be increased simply by reducing border measures that are imposed on goods as they enter a market (for example reducing tariffs and streamlining customs procedures). However, market access for trade in services hinges on government policy interventions that are less transparent and are often applied after a service supplier has entered the market. These measures take the form of government regulation and are usually aimed at domestic policy objectives rather than trade policy objectives. As a result, there is usually little consideration of the effect of domestic regulation on market access for foreign service suppliers.

Major impediments to the international provision of professional services commonly arise from the non-recognition or limited acknowledgment of home country education, qualification or accreditation/licenses. Other major non-tariff barriers to services trade include nationality and residency requirements; restriction on incorporation; restricted eligibility for contracts including government procurement contracts; and prohibition on advertising for ethical reasons. Restrictions on foreign direct investment and ownership; requirements pertaining to a minimum number/percentage of local staff; and restrictions on the international relationship of locally established firms are the most common barriers identified by Australian service providers.

In response to the growing importance of the services sector, this report examines the role of non-tariff barriers, mutual recognition agreements, and domestic regulation in obstructing or facilitating trade in professional services at a regional and multilateral level. It also addresses the role of the Australian government in supporting, facilitating and championing overseas trading opportunities for Australian exporters of professional services.

Findings

Agreements entered into by governments across the world have primarily focussed on goods. With the rapid expansion of international trade in services, it is timely for Australian governments to focus on agreements that assist Australian services exporters.

The Australian government has a significant continuing role to play in facilitating trade in services. In particular, government could undertake the following:

- ▶ Improving the collection of trade in services statistics so as to be able to focus on those activities where trade in professional services could be dramatically increased.
- ▶ Providing tailored information and technical assistance on the types of barriers operating in overseas markets to assist Australian exporters of professional services meet the standards required by other countries regulatory regimes.
- ▶ Supporting, facilitating and championing overseas trading opportunities for Australian exporters of professional services, particularly when the markets they are attempting to gain access to are heavily regulated by onerous licensing regimes.
- ▶ Continuing to refrain from entering into RTAs that could not be extended to a multilateral setting.
- ▶ Ensuring that any RTAs they negotiate successfully include a workable MRA on the domestic regulation of professional services.
- ▶ Reviewing the work done by professional associations in negotiating MRAs to ensure that these existing agreements are supported and enforceable under international law. Wherever possible, these agreements should be included in future RTAs.
- ▶ Undertaking a nationwide review/audit of the Federal, State and local regulation of professional services, with the aim of undertaking regulatory reform where increased international compatibility of practices is needed.

1

Introduction

The continued evolution of Australia as a knowledge-based economy will be determined by the international success of the services sector. Services play an essential role in determining both the quality and speed of economic progress, and Australia will be unable to compete in the international economy without an efficient and technologically advanced services sector.

Knowledge-based industries, including professional and technical services, information technology services, banking and insurance, and education, are the driving forces behind the transformation of the services sector.

Rapid technological change is allowing services to be provided in different forms and with greater speed than ever before. Many services that were considered non-tradeable only recently are now being actively traded through the application of information technology and advances in telecommunications.

Higher levels of mobility and expansion in the international delivery of professional services are leading to increased numbers of professionals undertaking activities in countries other than the one in which they gained their initial qualifications and experience.

There has been a global flood of product standards and other consumer protection law. Not only are developments much faster in some countries than others, but the substantive standards and rules adopted vary widely. These become effective barriers to global trade. Economies around the world are increasingly identifying that international trade can be made more efficient, less costly and less time consuming, if complicated and outmoded administrative processes are streamlined or removed.

Trade facilitation reforms result in increased market access, reduced costs to business, improved efficiency and eased impediments to competition and innovation. The benefits of these reforms are passed on not only to exporters, but to other businesses and consumers as well.

Many studies have found that similar relationships exist between the openness of service sectors and income. The Pacific Economic Cooperation Council (PECC) has documented a positive relationship between wealth and openness, finding that APEC member economies with a higher number of General Agreement on Trade in Services (GATS) commitments also tend to have higher GDP per capita.¹

Australia has the expertise and capabilities necessary to succeed in providing professional services in a rapidly growing international market place. Clearly, there is a role for the Australian government to proactively support exporters of professional services.

In response to the growing importance of the services sector, this report examines the role of non-tariff barriers, mutual recognition agreements, and domestic regulation in obstructing and facilitating trade in professional services at a regional and multilateral level. It also addresses the role of the Australian government in supporting, facilitating and championing overseas trading opportunities for Australian exporters of professional services.

¹ Pacific Economic Cooperation Council (PECC), (1995), *Survey of Impediments to Trade and Investment in the APEC Region*, PECC, Singapore.

Box 1: The Engineering Sector

In most official statistics, engineering services are absorbed in the broader categories of business services or construction activity. The engineering sector is however, a diverse and large profession including a range of practitioners, such as professional engineers, engineering technologists, engineering associates, and tradespeople.

Engineering is about applying science and technology to develop and implement new technologies, placing engineers in a central role in improving the security and living standards of the community, improving the standards of environmental care and generating wealth for Australia.

The traditional focus of engineering activities has been in infrastructure — the fundamental facilities and systems that allow a modern society to function effectively. These include transportation, communication systems, energy and water supply, and waste removal. However, engineering impacts on many aspects of community life. For instance, the following lists only some of the areas in which professional engineers commonly practice:

Acoustics, Aeronautics, Agriculture, Arbitration, Automation and control, Biomedical, Bridges and viaducts, Building services, Building surveying, Civil, Chemical, Coastal and oceans, Communications, Computing, Construction management, Dams, Electric power, Electronics, Engineering education, Engineering survey, Environment, Fire safety, Food technology, Foundations and footings, Fuels and energy, Geotechnics, Industrial, Local government, Maintenance, Manufacturing, Materials, Metallurgy, Military, Mining and tunnelling, Naval architecture, Nuclear, Petroleum and gas, Pipelines, Process control, Public health, Quality management, Railways, Risk, Roads and highways, Software, Space, Structural, Telecommunications, Transportation, Water resources.

The most commonly traded engineering services are consultancy services typically consisting of design services, planning and design development, procurement services, field services during construction and project management. These services usually fall within three broad categories. For example:

- ▶ General services: feasibility studies, cost estimations, preparation of drawings, specifications and contract documents and the supervision of construction;
- ▶ Specialised services: design and development of process equipment, environmental advisory and design services, materials testing, software or systems development and project management; and
- ▶ Comprehensive services: turnkey services such as build-own-operate-transfer contracts.

With advanced communication systems many of these services can and are being supplied “cross border”. For example consulting can be performed on-line, with designs, specification, blueprints and know-how being transmitted electronically. Despite the increased ease with which engineering services can be provided electronically it seems that while the cross border supply of engineering services is increasing, the bulk of services are continuing to take place through commercial presence or the movement of engineers overseas. Given this trend, issues related to domestic regulation and mutual recognition agreements will be important to the successful growth of trade in engineering services.

2 | Trade in Services

Globalisation has led to increased economic integration and technical developments that have, in turn, supported the growth of traded services. While international transactions between residents and non-residents across geographical borders were impossible or prohibitively expensive in earlier times, now the ease with which people can travel and communicate across international borders have made international transactions commonplace.

Export of services accounts for 20 percent of Australia's exports, a proportion that is growing faster than the export of goods. While the growth is welcomed, the export of trade in services could be significantly increased.

This section considers the level of support for services liberalisation, and the importance of trade in services, while highlighting the inadequacies of trade statistics which inhibit an effective focus on those activities that could dramatically increase trade in professional services.

2.1 Support for Services Liberalisation

Despite strong theoretical and empirical support for the benefits of openness, trade liberalisation and globalisation have not been embraced with enthusiasm in all quarters. A primary concern has been that developing countries may not be able to benefit from a more open trading environment and will fall even further behind developed economies. This concern is justified, but it does not imply that poor countries should not participate in trade liberalisation.

Critics of services liberalisation assert that open markets will bring about a number of unfavourable outcomes. While some critics are concerned with the outcomes for less developed nations, others are voices from workers, incumbent firms and bureaucracies who perceive liberalisation as a threat to employment and profitability. Most of their claims and concerns can be classified under the following categories:

- ▶ Liberalisation will reduce the availability, increase the costs, threaten the quality, or skew the distribution of social services such as health and education, or vital utilities such as electricity and water.
- ▶ Unlimited entry of cultural products such as films, television programs, and music will undermine, displace and marginalise indigenous cultures.
- ▶ Giant, multinational corporations will be the only real beneficiaries of open services markets, and the open markets will give them the means to overwhelm their smaller competitors, especially in developing countries.
- ▶ Liberalisation threatens a country's sovereignty and the right to regulate.²

While these concerns are valid to varying degrees, and need to be addressed, Engineers Australia believes that there are significant economy wide benefits deriving from services trade and investment liberalisation.

The global welfare effect of services liberalisation is regarded to be in the same scale as the full liberalisation of barriers to trade in merchandise (agriculture and manufacturing). A study by Dee and

² Organisation for Economic Cooperation and Development, Working Party of the Trade Committee, *Open Services Markets Matter*, 11 December 2001, p27.

Hanslow (1999) finds that the world as a whole is projected to be better off by more than US\$260 billion annually as a result of eliminating all post-Uruguay Round trade barriers. Half of the overall welfare gain, US\$130 billion, would take place from the liberalisation of services trade.

Developing countries stand to gain relatively more than industrial countries from liberalising their services trade. The gains in welfare (expressed as a percentage of GDP) from a “hypothetical” 25 percent reduction of service sector protection were estimated to represent 1.2 percent for the United States (US) and Japan and 1.0 percent for the EU. The corresponding values were 3.0 percent for the rest of South Asia, 2.9 percent for ASEAN countries, 2.5 percent for a group of newly industrialising economies and 1.4 percent for India.³ See Box 2 for an outline of the relationship between liberalisation offered under the GATS and developing countries.

Overall, the potential gains from international cooperation and multilateral rule making in the services sector are substantial and obtainable by both developed and developing countries equally.

Box 2: The GATS and Developing Countries⁴

The claim is often made that the GATS, and the liberalisation of services trade and investment, primarily serve the interest of developed countries and large multinational firms and are thus detrimental to the growth and development prospects of the world's least developed.

There is considerable evidence suggesting that developing countries are deliberately, if often autonomously, encouraging foreign competition in key sectors to upgrade their domestic service infrastructures, with developing countries now major stakeholders in the GATS process. Developing countries are no longer merely importers of services, and their increasing participation in services trade and the expansion of their service exports is a central objective of the GATS.

Apart from the general structure of the GATS, which is flexible to enable accommodation of the interests of countries at different stages of development, a number of GATS provisions deal specifically with the particular situation of developing countries. Article IV provides that increasing the participation of developing countries in world trade should be facilitated through specific commitments, notably relating to: (a) the strengthening of domestic services capacity; (b) the improvement in their access to distribution channels and information networks; and (c) the liberalisation of market access in sectors and modes of supply of particular export interest. Article IV also provides for the establishment of contact points in developed country members and others where possible, with the objective of facilitating access for developing countries to information. Other general provisions in the Agreement include special conditions that take into account the specific needs of developing countries, eg., Article V (3) on economic integration; Article XIX (2); the technical cooperation provisions (Article 6) of the Annex on Telecommunications.

2.2 Value of Trade in Services Worldwide

Trade can be divided into two groups — goods and services.

In 2000, world exports of services were US\$1435 billion, or approximately 20 percent of total world exports.⁵ Services trade now accounts for the principal share of gross domestic product (GDP) and employment in both developed and developing economies. The service sector is about 40 to 60 percent of GDP and employment for developing economies and 60 to 80 percent for developed economies.⁶

3 Information draws heavily from Organisation for Economic Cooperation and Development, Working Party of the Trade Committee, *Open Services Markets Matter*, 11 December 2001, p53

4 Ibid.

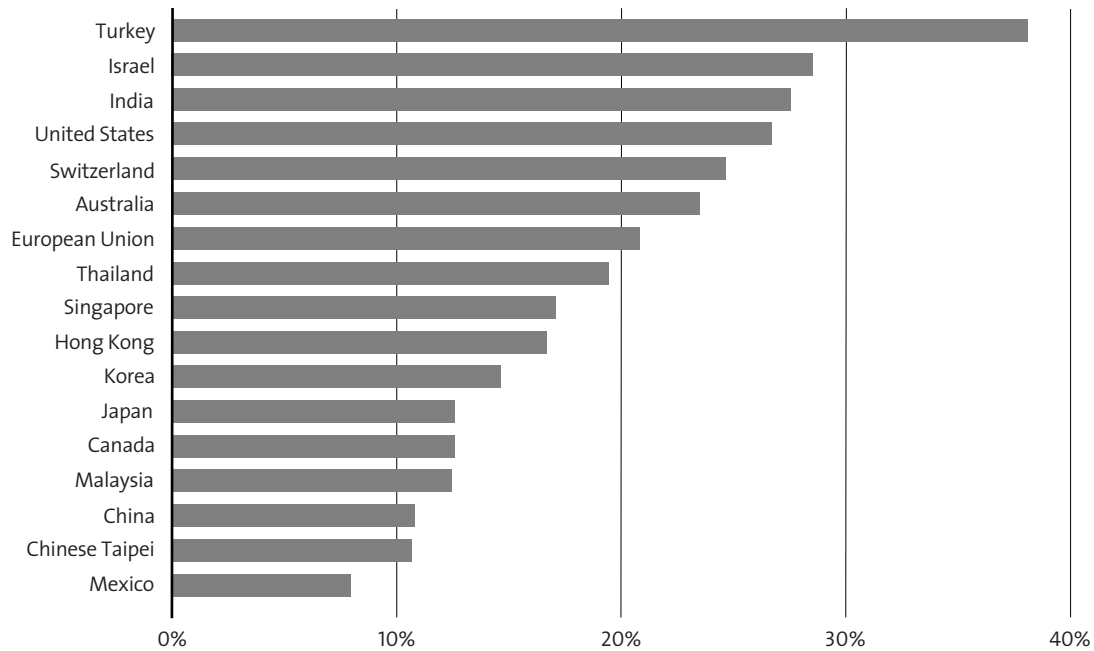
5 WTO (2001), *Annual Report – International Trade Statistics 2001*, WTO, Geneva.

6 Hardin, A. and Holmes, L. (1997), *Services Trade and Foreign Direct Investment*, Industry Commission Staff Research Paper. AGPS, Canberra.

Services have become the fastest growing component of the world economy over the past two decades. In both trade and foreign direct investment, services have displaced trade in merchandise. The share of commercial services in world trade grew from 17 percent in 1980 to 21.4 percent in 1993 and 22 percent in 1995, before dropping to 19.2 percent in 1996.⁷

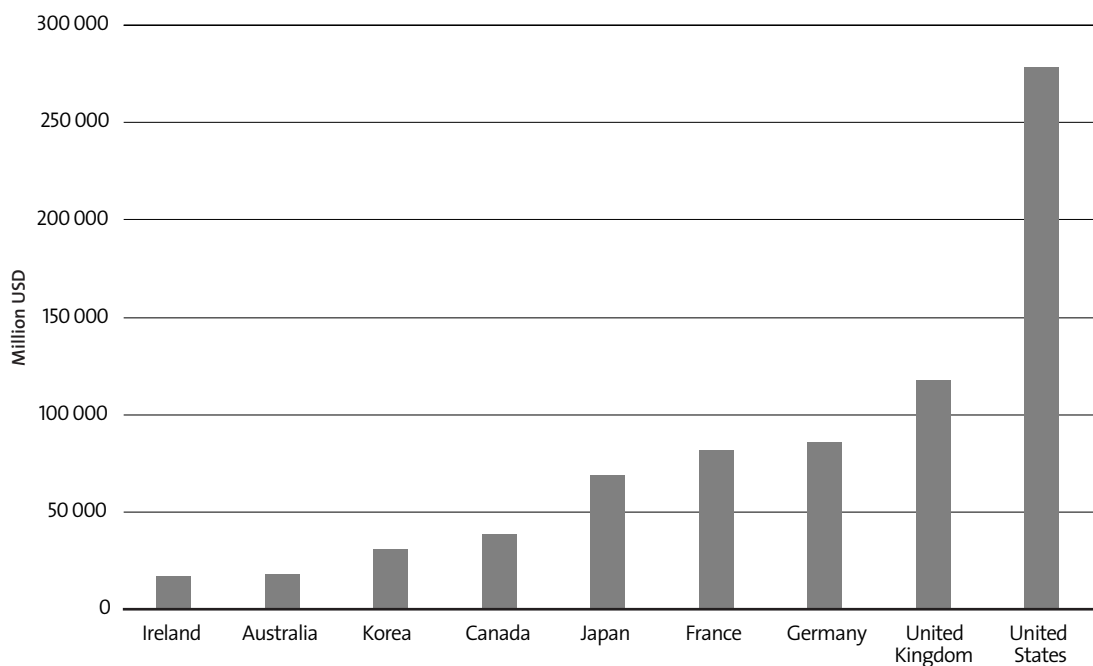
Figures 2.1, 2.2 and 2.3 illustrate the significance of exported services for a number of countries.

FIGURE 2.1: Significance of Services in Selected Countries' Exports 1999
(services exports as a share of total exports, 1999)



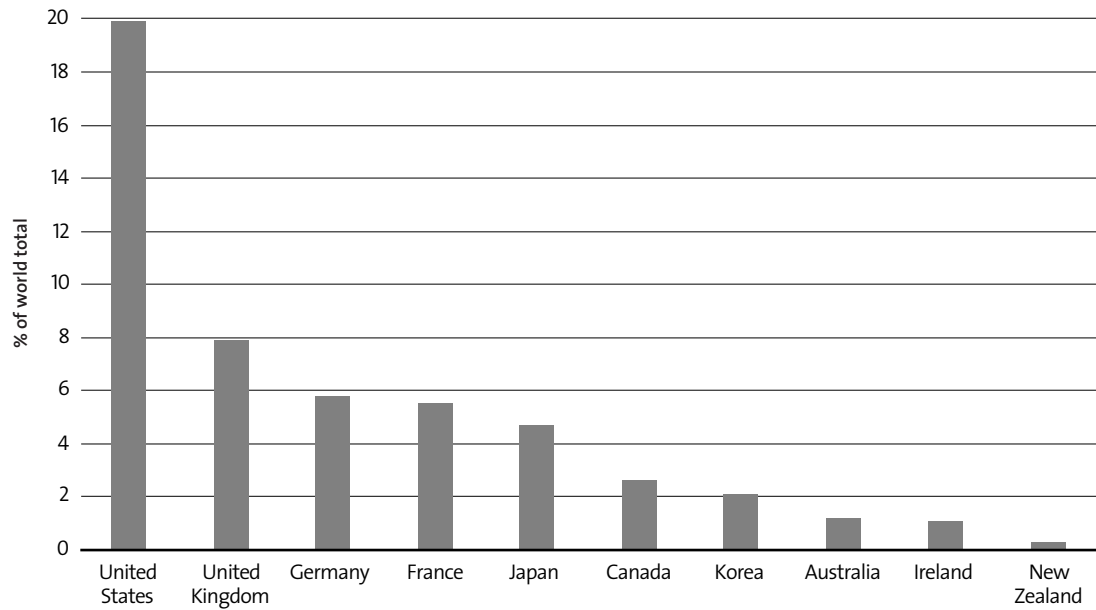
Source: Calculated from World Trade Organisation (2000).

FIGURE 2.2: Value of Services Exports 2000 (various countries)



Source: Organisation for Economic Cooperation and Development, *Statistics on International Trade in Services: Partner Country Data and Summary Analysis, 1999–2000*, July 2002, p14–17

FIGURE 2.3: Services Exports as a Percentage of World Total (various countries)



Source: Organisation for Economic Cooperation and Development, *Statistics on International Trade in Services: Partner Country Data and Summary Analysis, 1999–2000, July 2002, p8.*

2.3 Value of Trade in Services to Australia

Service exports accounted for 20 percent of Australia’s total exports, or \$31.2 billion in 2001.

Four out of every five Australian workers are employed in services industries, many of which have an export focus. Since the mid-1980s, Australia’s services exports have grown more rapidly than agriculture, mining and manufacturing exports.⁸ The services industries are now collectively more important than any other sector of the Australian economy, accounting for around three-quarters of gross domestic product. Recent estimates show that as many as 80 percent of firms that export are now from the services sector.

The major components of services (Figure 2.4) are:

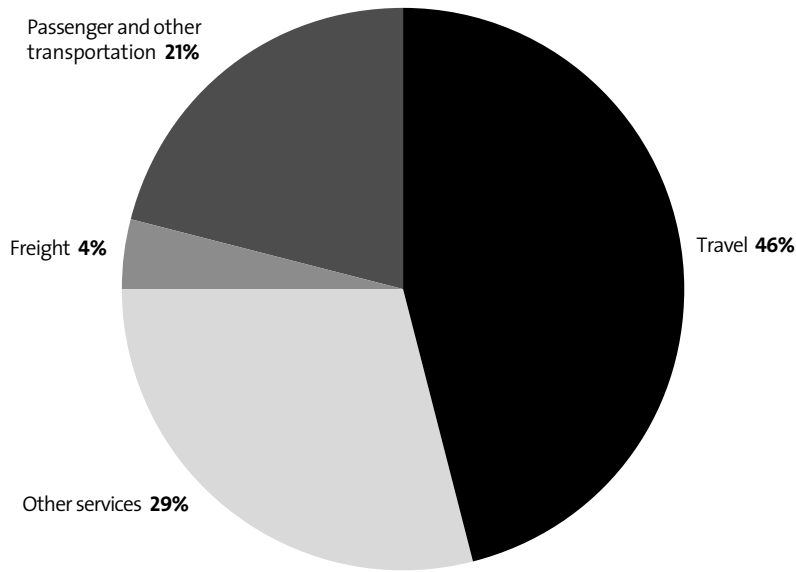
- ▶ travel;
- ▶ freight;
- ▶ passenger and other transportation; and
- ▶ other services, which include communications, construction, insurance, financial, computer and information services, royalties, personal, cultural and recreational, government and other business services.

Travel services are by far Australia’s largest services exports, comprising almost half of total exports of services in 1999–2000.

The category “other services” contributed to 29 percent of total services exports in 1990–2000. This category consists of a diverse set of services including operational leasing services, professional services, other trade related services, research and development, architectural, engineering and other technical services, agriculture, mining and on-site processing and services between affiliated enterprises.

⁸ Department of Foreign Affairs and Trade, *Fact Sheet: The General Agreement on Trade in Services.*

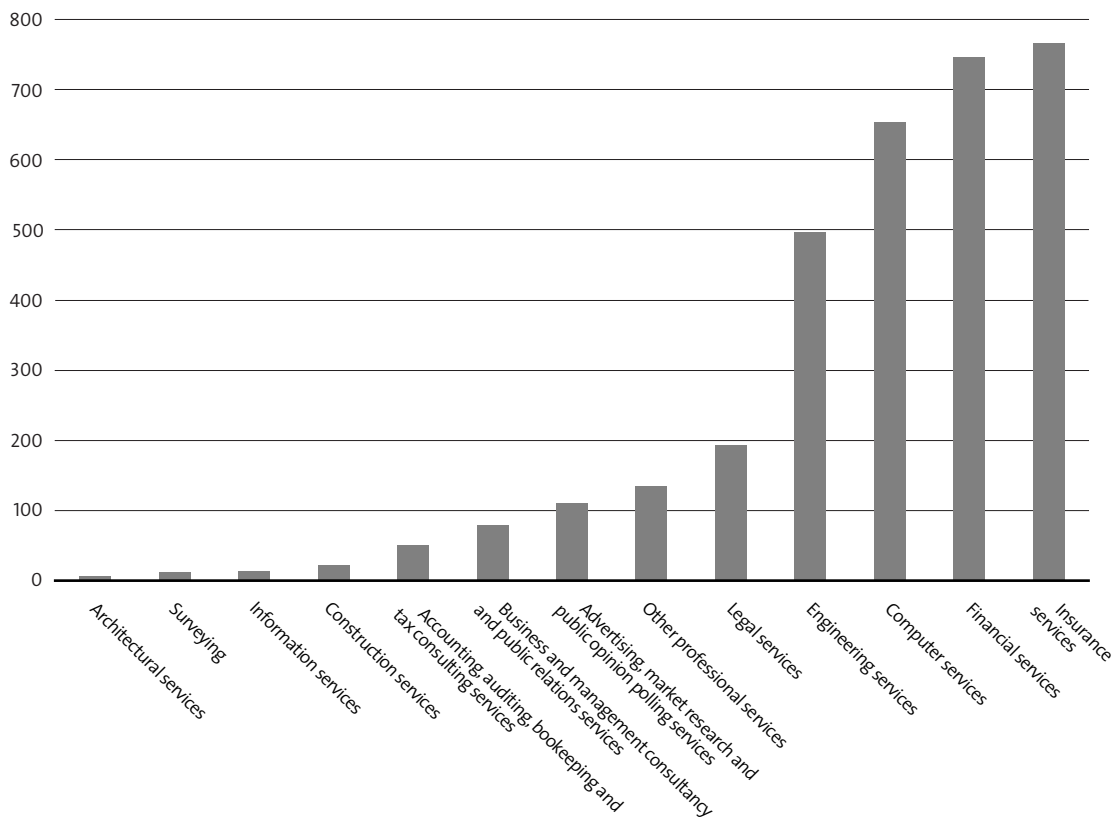
FIGURE 2.4: Exports of Services by Type (share of total) 1999–2000



Source: ABS Catalogue 5302.0 reproduced in Department of Foreign Affairs and Trade, *Trade in Services 1999–2000*, p4.

Figure 2.5 lists the value of exports of selected professional services that comprise the bulk of the exports in the “other services” category.

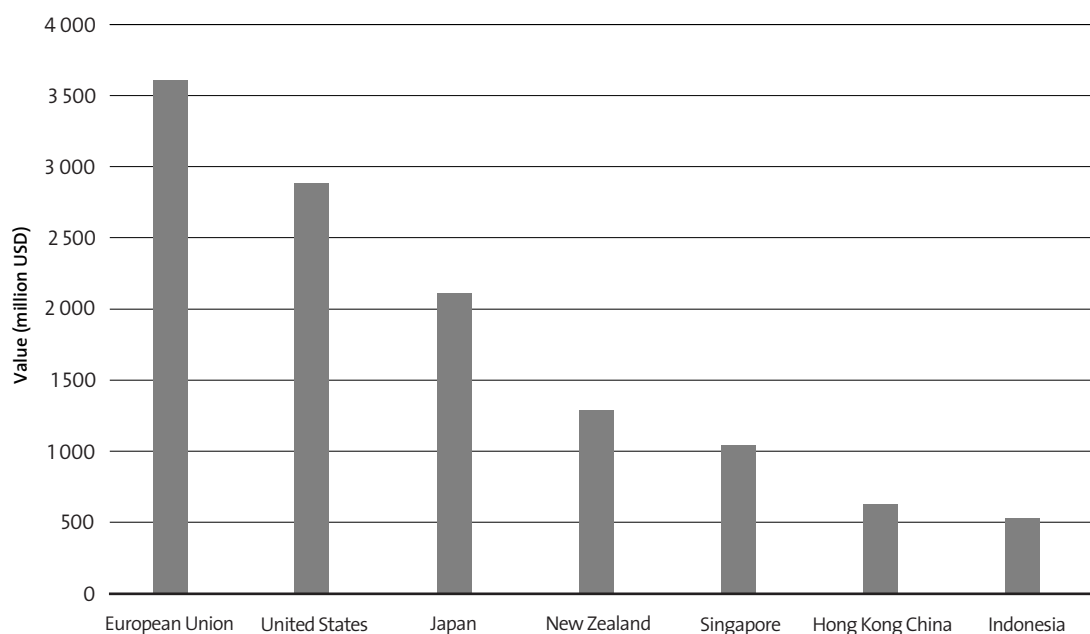
FIGURE 2.5: Australia’s Exports of Services by Type of Activity 2000 (A\$ million)



Source: ABS Catalogues 5363.0 and 5302.0 reproduced in Department of Foreign Affairs and Trade, *Trade in Services 1999–2000*, page 22–23.

Figure 2.6 illustrates Australia's top seven trade in services partners.

FIGURE 2.6: Top Seven Trade in Services Partners: Australia 2000



Source: OECD, *Statistics on International Trade in Services: partner country data and summary analysis 1999–2000*, p14.

The growing internationalisation of services trade and the greater ease with which services markets can be contested worldwide have created opportunities for Australia (and other countries) to develop new sources of export growth.

2.4 The Statistics Problem

Numerous studies analysing the economic impacts of policies affecting trade in goods are available, but far less work has been completed on assessing the potential gains from increased trade in services. This has been due to the difficulties arising from poor information on international service transactions and a lack of comprehensive measurement of restrictions on trade in services.

The quality of service statistics is notably poor, so that the significance of service transactions in world trade is generally understated. Data on trade in services are not as comprehensive, detailed, timely or internationally comparable as data on trade in goods.

Statistics on trade in services do not include earnings from foreign direct investment and this also undermines the quality of service statistics. Cross border intra-firm service transactions are also not captured. Intra-firm sales are increasing rapidly, and service and foreign direct investment in services is estimated to represent more than one half of all international services transactions.⁹ These factors mean that services statistics are significantly underestimated.

The Department of Foreign Affairs and Trade (DFAT) publishes a comprehensive statistical publication on Australia's services trade each financial year. The publication draws on data from the Australian Bureau of Statistics (ABS), the International Monetary Fund (IMF), World Trade Organisation (WTO) and other sources.

⁹ World Bank(1995), *Global Economic Prospects and the Developing Countries*, page 43.

As a result of the way statistics are categorised, it is difficult to gain a clear understanding of the value of professional services to the Australian economy and of the sectoral composition of services trade. In much of the data presented by the ABS and DFAT, it is difficult to uncover statistics related to individual trade in professional services sectors. It is easy to overlook the true value of these sectors to the Australian economy because data on these activities is combined into the “other business services” category within the “other services” category.

By not collecting statistics in a form that allows analysis to be undertaken, it is not possible to identify areas where the trade in professional services is under-performing, or to measure or predict the impact on trade volumes of changes in policy and regulation.

More resources need to be invested in capturing trade in service statistics. In particular, the ABS and DFAT need to review the “other business services” category to ensure that this data better reflects the value of trade in professional services to the Australian economy.

Findings

Significant improvement needs to occur in the collection of trade in services statistics so as to be able to focus on those activities where trade in professional services could be dramatically increased.

Box 3: Engineering Services Definition

Most countries use the WTO’s Services Sectoral Classification list to define what Engineering and Integrated Services mean. Both of these definitions correspond to the United Nations Central Product Classification (UN CPC) at the four-digit level.

Engineering Services (CPC 8672): This sector covers all activities except integrated engineering services. It includes: advisory and consultative engineering services; engineering and design services for foundations and building structures, engineering design services for mechanical and electrical installations, engineering design services for civil engineering construction, engineering design services for industrial processes and production, engineering design services not elsewhere classified, other engineering services during the construction and installation phase, and other engineering services.

Integrated engineering services (CPC 8673): Includes integrated engineering services for transportation infrastructure turnkey projects, integrated engineering and project management services for water supply and sanitation works turnkey projects, integrated engineering services for the construction of manufacturing turnkey projects and integrated engineering services for other turnkey projects.

3

Impediments to Trade in Services

The liberalisation of international service transactions poses challenges that are quite different from those in the goods area. Barriers to services trade occur in national economies in the form of legislation and administrative practices and are not found at the border, making them less transparent than tariffs and quotas, and more difficult to assess their restrictive impacts.

A key feature of impediments to trade in services is that they tend to be in the form of non-tariff barriers such as domestic regulations, licensing requirements, migration and labour restrictions and other prohibitions that are opaque and difficult to measure.

This section examines the role of non-tariff barriers, mutual recognition agreements, and domestic regulation in obstructing and facilitating trade in professional services.

Box 4: How are Services Internationally Traded?

The WTO's General Agreement on Trade in Services (GATS) describes four ways or "modes of supply" for trade in services. These include:

Mode 1: Cross-border

Services can be traded in the same way goods are, across borders with a clear geographical separation between the buyer and the seller. For example, a New Zealand resident may buy or sell shares through an Australian stock broking firm over the Internet. Australia is exporting financial services across the border to New Zealand, and New Zealand is importing financial services from Australia.

Mode 2: Consumption abroad

Services can be traded by the consumer moving or travelling to the foreign market. For example, a Korean fee-paying student may travel to Australia to study at an Australian University. Australia is exporting education services to Korea and Korea is importing education services from Australia.

Mode 3: Commercial presence

The majority of services are traded by the capital of the exporter moving to a foreign market. For example, a telecommunications company from Singapore may establish a company in Australia. The sale of telecommunications services in Australia is an export of services from Singapore to Australia, while Australia is importing telecommunications services from Singapore.

Mode 4: Movement of people

Services can be traded by the producer or service supplier moving to the foreign market. For example an engineer that is an Australian Citizen may work temporarily for a company in the US. The Australian engineer is exporting professional services to the US and the US is importing professional services from Australia.

3.1 Non Tariff Barriers

Market access in services is inherently more complex than market access for trade in goods. Market access for goods can be increased simply by reducing border measures that are imposed on goods as they enter a market for example reducing tariffs and streamlining customs procedures.

However, market access for trade in services hinges on government policy interventions that are less transparent and are often applied after a service supplier has entered the market. These measures take the form of government regulation and are usually aimed at domestic policy objectives rather than trade policy objectives. As a result, there is usually little consideration of the effect of domestic regulation on market access for foreign service suppliers.

Major impediments to the international provision of professional services commonly arise from the non-recognition or limited acknowledgment of home country education, qualification or accreditation/licenses. Nationality and residency requirements; restriction on incorporation; restricted eligibility for contracts including government procurement contracts; and prohibition on advertising for ethical reasons also operate as major non-tariff barriers to services trade. Restrictions on foreign direct investment and ownership; requirements pertaining to a minimum number/percentage of local staff; and restrictions on the international relationship of locally established firms are the most common barriers identified by Australian service providers.

Three broad categories of non-tariff barriers that impede international service transactions have been identified¹⁰. These are:

1. Instruments relating to market access which regulate the entry of foreign service providers into a host country (such as prohibition on foreign investment, or visa restrictions or quotas).
2. Instruments, which effectively provide discriminatory treatment to foreign service providers as compared with domestic service providers (such as exclusion from investment incentives, differential treatment of non-residents, taxes on cross-border supply through higher international telecommunication charges and taxes on foreign tourists).
3. Other measures that are not intended to affect market access or to discriminate against foreign service providers, but to do so in practice (such as some consumer protection laws, licensing procedures and government procurement practices).

Each category of restrictions will require different resources and policy interventions to reduce the limitations on international market access for Australian professional service providers.

Restrictions limiting service suppliers from entering and/or operating in a services market, have the effect of increasing the price of services and decreasing the quantities of services consumed. The Australian government needs to support initiatives to ameliorate establishment restrictions working to limit the ability of foreign service providers to establish physical outlets in an economy and supply services through those outlets.

Establishment restrictions regulating the entry of foreign service providers into a host country are immediate breaks to trade in professional services. These restrictions may include: opaque and unpredictable application of economic needs tests, restrictive quotas, restrictions on the nature of the services that may be provided by foreign professionals and membership of mandatory professional bodies limited to citizens. The issue of the mutual recognition of professional qualifications only arises when foreign service suppliers have actually gained access to the market of a given sector. The experience within the European Union suggests that recognition of qualifications remains one of the most significant barriers to the movement of professional service suppliers, but only when establishment restrictions have been removed or met.

The Australian government will need to address the barriers faced by providers of professional services on two fronts. Firstly, by helping to ensure that the service provider can access the market, and secondly, that once they gain access to the market, they are allowed to practice.

3.2 Temporary Migration of Labour

There is no detailed data on the value of earnings from the movement of service providers overseas. However, it is clear that a large number of Australians work overseas in service industries.

¹⁰ UNCTAD and World Bank (1994), *Liberalising International Transactions in Services: A Handbook*, New York: United Nations.

In 1999–2000 approximately 28 000 persons travelled overseas for long term employment, with over 70 percent classifying their Australian occupations as managers, administrators or professionals. Australian balance of payments data shows remittances from persons employed overseas for less than 12 months at over A\$900 million in 2001–02. No data are published on transfers from persons staying overseas for longer than 12 months.¹¹

The temporary entry and stay of labour is easily constrained through domestic regulation. These restrictions usually operate in one of the following ways:

- ▶ Disparity in the handling of domestic and foreign personnel: inflexible qualification and eligibility conditions, citizenship or residency requirements, are often imposed on foreign service suppliers.
- ▶ Recognition of qualifications, work experience and training: market access for foreign service suppliers can be inhibited or reduced in scope by recognition requirements.
- ▶ Entry is often conditional on commercial presence: foreign personnel are often limited in applying for entry under immigration regulations without some form of business establishment.
- ▶ Immigration regulation: restrictions on the entry and stay of service providers include conditions on the issuing of work permits, unwieldy application procedures and limitations on the duration of stay and transferability of employment.

Many of these regulations stem from policy concerns such as consumer protection, public interest and security. It is remaining regulations, such as immigration laws and procedures, labour market policies, or regulation attaching prior conditions to the employment of foreign service providers which act as the biggest non-tariff barriers to the international movement of temporary workers.

Time-consuming processes impair and undermine service sectors where personnel need to be shipped overseas at short notice and where delays mean loss of opportunities and business. These include strict eligibility criteria for entry, procedures for the issuing work permits and time consuming application procedures,

The growth of cross-border investment has also increased business interests in facilitating the temporary migration of labour. Companies establishing a commercial presence in new markets often need to take key personnel with them as experienced staff have a role to play in passing on company culture, practices and standards. Trusted managers are needed to steer business development in the crucial early stages and special technical staff may also be required to ensure that necessary communications and data systems are operating effectively.

Restrictions on the movement of people mainly originate in the immigration and labour market policies of individual countries. This is a result of the temporary movement of labour not being separated from the permanent movement of labour under immigration legislation and labour market conditions. These restrictions span from strict eligibility conditions for applications for work visas and work permits, cumbersome and expensive procedures for application and processing of visas and permits, to limitations on the length of stay and transferability of employment in the overseas market. All of these restrictions raise the direct and indirect costs of gaining access to foreign markets, thereby undermining the cost advantage of foreign service providers.

3.3 Domestic Regulation

As a result of globalisation, the economic performance of one economy is increasingly affected by the quality of the regulatory environment of its trading partners. Accordingly, it is becoming increasingly important that governments introduce, amend and operate their domestic regulation regimes with an understanding of its potential positive or negative effects on international trade. Overall, good regulatory practices, support the growth of effective and efficient regulatory outcomes and enhance the operation of domestic economies. This in turn supports the growth of international trade.

¹¹ Department of Foreign Affairs and Trade, *Submission to the Senate Foreign Affairs, Defence and Trade Committee Inquiry into the General Agreement on Trade in Services and the Australia-United States Free Trade Agreement*, 2003 page 8.

Regulation is defined by the OECD as the diverse set of instruments by which governments set requirements on enterprises and citizens. This includes laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.¹²

Regulation has been traditionally used by national governments to protect consumers and vulnerable social and economic groups, and promote better economic performance by, for example safeguarding competition in the market place. There are however, costs associated with any regulatory intervention and these will vary depending on how well the regulatory regime is designed, implemented and administered. These costs include, the fiscal costs to government, compliance costs to business and consumers and dynamic costs to economic performance. An outline of what constitutes good regulatory practice can be found in Box 5.

For international trade in professional services the major costs associated with poor quality regulation are related to a lack of transparency in the regulation making process combined with uneven implementation of regulatory instruments. The biggest of these are restrictive and onerous licensing regimes.

Box 5: What is Good Regulatory Practice”¹³

Governments throughout the world are engaged in a variety of activities. One of the most important of these is regulation. Regulatory interventions are necessary for a number of reasons, to safeguard the environment, protect lives, consumers and vulnerable social and economic groups and to promote better economic performance.

There are costs associated with regulatory intervention and these fluctuate in relation to how well the regulatory regime has been designed, implemented and administered. Important pillars of good regulatory practice include:

- ▶ **Efficiency:** Adopt and maintain only those regulations for which the costs on society are justified by the benefits to society and that achieve objectives at lowest cost, taking into account alternative approaches to regulation.
- ▶ **Effectiveness:** Regulation should be designed to achieve the desired policy outcome
- ▶ **Transparency:** The regulation making process should be transparent to both the decision-makers and those affected by regulation.
- ▶ **Clarity:** Regulatory processes and requirements should be as understandable and accessible as practicable.
- ▶ **Equity:** Regulation should be fair and treat those affected equitably.

3.4 Licensing Regimes

Divergence in the regulatory environment for professional services across countries may restrict market access on a de facto basis. As a result, governments are increasingly recognising that advances in market access will result in little additional trade if the harmonisation of regulatory practices and the recognition of overseas qualifications are not undertaken at the same time.

Despite this connection there has been limited international movements towards the harmonisation of regulatory practices and the streamlined recognition of overseas qualifications and licenses.

¹² Organisation for Economic Cooperation and Development (1997), *The OECD Report on Regulatory Reform: Synthesis*.

¹³ Mumford, Peter, *What Constitutes Good Regulation of Services?*, Ministry of Economic Development, Wellington, New Zealand, prepared for the meeting of the Asia-Pacific Economic Cooperation Group on Services, Mexico 19-20 February 2002.

¹⁴ Organisation for Economic Cooperation and Development (2002), *Service Providers on the Move: mutual recognition agreements*, Working Party of the Trade Committee, p21

A number of factors may be contributing to this situation. For example:¹⁴

- ▶ The wide range of practices between countries in relation to the education and training of professionals; and the equally wide range of cultural influences and assumptions that lie behind these.
- ▶ Fear of loss of regulatory sovereignty and that recognition could lead to the harmonisation of standards or practices at the “lowest common denominator”.
- ▶ The absence of licensing systems for some professions or of formal qualification mechanisms in some countries against which equivalence could be judged, and the difficulty of calculating the equivalence of on-the-job and formal training, and the like. See Box 6 for an outline of the variances in licensing procedures for the engineering profession worldwide.
- ▶ The fact that many recognition initiatives are led by, or require the close involvement of professional associations; organised, well resourced and representative associations may be lacking in some countries, and in other cases professional associations may not always be interested in facilitating the access of additional foreign suppliers to the market.
- ▶ Lack of awareness of the possibilities provided by Mutual Recognition Agreements (MRA) and the perception that MRAs are tools of market invasion instead of means of enhancing opportunities to work abroad.
- ▶ The resource-intensive and highly complex process involved in establishing recognition, and the lack of a perceived short-term market gain to balance the costs of developing an MRA.
- ▶ The lack of incentive to negotiate MRAs in the absence of relevant market access guaranteed through binding commitments.

The extent to which recognition of qualifications is a problem is likely to vary by type of professional service supplier, by sector and by country. Given the different regulatory environments operating for professionals internationally, the most important issue for Australian professional service providers becomes the transparency of local regulations and licensing requirements operated by foreign governments. Instability and inconsistent application of regulation increases difficulties for firms operating in markets with which they are relatively unfamiliar. Many professionals have been discouraged from pursuing projects in countries where regulations are not clear or transparent.

Box 6: Engineering as an “Accredited” Professional Service

In most countries, engineering is an “accredited” profession and as a result, engineers are required by law to be licensed before they provide professional services or use the title “professional engineer”. Many other accredited professions such as accountancy and legal services are also subject to accreditation or licensing requirements. These licensing requirements can often operate as significant barriers to trade in professional services. This is because in addition to having professional qualifications, licensing requirements contain other conditions such as completing practical training, passing examinations and meeting language, good character and reputation, citizenship or residency conditions.

While several OECD countries including the United Kingdom, Denmark, Australia, Switzerland and Finland have no, or very limited legal restrictions on the provision of engineering services, the US, Canada, Japan and Singapore operate restrictive licensing procedures. The removal of these hurdles will rely on increasing the international recognition of qualifications and practice competency and the negotiation of professional accreditation and reciprocity agreements. These developments are an important means for professional service providers to gain international market access.

4

Multilateral Liberalisation of Trade in Services

Multilateral liberalisation is a necessary compliment to unilateral liberalisation. Multilateral commitments and ongoing negotiations can advance services liberalisation within international enforceable rules. The multilateral system can help to lock in unilateral reform to limit the possible back sliding by governments in the future.

This section considers the evolution of the multilateral trading system under the WTO, the involvement of the Australian government in multilateral negotiations and some of the reasons why governments have become increasingly attracted to multilateral trade liberalisation.

Box 7: The World Trade Organisation in Brief

The WTO is a multilateral trade agreement to which 146 countries now adhere. It includes the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Intellectual Property Rights (TRIPs) and thirty sector or issue specific ancillary agreements. Headquartered in Geneva, Switzerland, the WTO is the successor agreement to the GATT, first negotiated in 1947.

The WTO constitutes a contractual framework of rules stipulating the kinds of trade policies and practices its members may pursue in regulating goods and services and related policies involving investment and the protection of intellectual property rights.

Through successive “rounds” of trade negotiations, WTO members have succeeded in eliminating more than 80 percent of the tariff protection in industrialised countries, in effect at the GATTs founding in 1947. Negotiations have also resulted in the gradual elaboration of more detailed rules and procedures covering issues such as subsidies and countervailing measures, licensing procedures, technical standards, domestic regulation, services trade and government procurement.

Under Dispute Settlement Mechanisms, the WTO provides a forum for the settlement of conflicts among members based on the principles of law and conciliation. Decisions by panels have gradually strengthened the legal foundations of the WTO and panel decisions, once adopted are binding on members.

The basic objective of WTO negotiations is to eliminate and reduce as many barriers to international trade as possible and to limit remaining restrictions to the greatest extent feasible, based on the principles of transparency, non-discrimination and due process.

4.1 Multilateral Agreements

Trade has assumed increasing importance as a basis of global economic activity. As international trade has expanded and economic interdependence has bound trading partners, the policy stance of one country has become a direct concern to other countries. The WTO and the GATT before it have presided over these developments. See Box 7 for an outline of the WTO agreement.

A fundamental challenge for the multilateral trading system under the WTO is how to manage the growing diversity in economic characteristics, needs and priorities of its members. This diversity will need to be managed so that all parties believe they are better off within the system, than outside it.

The motivation behind why governments take part in the WTO include:

- ▶ **Reciprocity:** Governments have seen an advantage in opening their markets up to competition together despite no rule in the WTO requiring countries to make reciprocal commitments. This has developed from recognition that any movements towards increased liberalisation are mutually beneficial.
- ▶ **Transactions Costs:** The costs of doing business internationally can be dramatically reduced through cooperative arrangements moving toward harmonised approaches in areas such as standards, technical regulations and conformity assessment.
- ▶ **Rules:** Trade is more likely to grow and be more profitable under certain and secure terms of market access. The dispute settlement process in the WTO plays a role by allowing government's remedy when they believe a trading partner has neglected their obligations.¹⁵

These arguments evoke a compelling rationale for the significance of cooperating through a multilateral institution like the WTO. Countries have become increasingly convinced that turning away from multilateralism, international engagement and cooperation in trade policy would be economically damaging.

4.2 What is the GATS?

The General Agreement on Trade in Services (GATS) is one of the component agreements of the WTO and was negotiated during the Uruguay Round of multilateral negotiations. The GATS agreement applies to all members of the WTO and as a result covers well over 90 percent of global services trade.

Implemented on 1 January 1995, the GATS is a comprehensive framework of trading rules that applies to all measures affecting trade in services. The term "measures" is defined broadly to include laws, regulations, rules, procedures, decisions and administrative actions. The GATS covers all trade service sectors except those supplied in the exercise of governmental authority ie the services that governments themselves deliver. Air transport traffic and related rights are also excluded from GATS coverage because they are already managed by the provisions of the multilateral Chicago Convention, administered by the International Civil Aviation Organisation.

The agreement is made up of three parts:

- I. The general framework of rules and obligations for government regulation of trade and investment services.
- II. Specific commitments undertaken by each WTO member, which specify, on a sector by sector basis, the conditions under which foreign nationals may supply services.
- III. Several sector-specific annexes and ministerial decisions that supplement rules found in the framework and provide a schedule for follow-up activities and additional negotiations.

The most important obligations of the GATS include the following:

- ▶ **National Treatment:** A member country cannot discriminate between domestic and foreign service providers.
- ▶ **Most Favoured Nation (MFN) Treatment:** Member countries cannot provide more favourable treatment to services providers of any one country. A service supplier from a WTO member country must be treated as favourably as a service supplier from any other country.
- ▶ **Transparency:** Members must make public all policies, regulations and administrative guidelines related to the GATS and inform the WTO of any changes to government regulation which affect specific commitments made under the agreement. Each country must also establish a contact point to respond to requests for information on their regulatory regimes.

¹⁵ World Trade Organisation, *World Trade Report 2003*, p121.

- ▶ **Market Access:** A member cannot take measures to restrict market access in the sectors listed in a member's schedule of commitments.
- ▶ **Domestic Regulation:** Qualification, licensing requirements and technical standards must be administered in a transparent manner.

Under the GATS, each WTO member country outlines in their schedule of commitments, horizontal and sector specific commitments. These commitments are made by sector and within sectors under four modes of supply, cross border, consumption abroad, commercial presence and the movement of people (see Box 4 for a full explanation of how services are internationally traded).

Commitments may also be made on a horizontal basis. Horizontal restrictions relate to all service sectors and normally outline restrictions related to commercial presence and investment, real estate transaction restrictions, government subsidies or taxation, and the temporary movements of people. Horizontal commitments supplant any sector-specific commitments. Therefore, horizontal commitments have to be considered in combination with sector specific commitments in order to assess the full extent of trade liberalisation offered by GATS commitments.

Box 8: Non Tariff Barriers — Common Horizontal Restrictions

Commercial presence and investment restrictions: the acquisition and control of a domestic business by a foreigner may be subject to investment ceilings, restrictions as to the type of assets that may be held, local incorporation and presence requirements and government approval.

Real estate transaction restrictions: many countries restrict the purchase of real estate and the acquisition of land. Nationality restrictions and deposit requirements are relatively common. These regulations are commonly established by sub-federal levels of government and consequently tend to be exceedingly complicated.

Government subsidies or taxation: foreigners may not be eligible for subsidies and may have to pay a different tax rate, under specific circumstances. For example, a country may reserve the right to impose higher taxes on a national, resident or corporation of a foreign country. All countries retain sovereignty over domestic issues of taxation and subsidisation.

Movement of people: Many members have made GATS commitments facilitating the temporary entry of intra-corporate transferees (managers, executives and specialists) and personnel engaged in the establishment of a business. Permanent entry remains under the authority of local immigration authorities and is not dealt with in the GATS.

While the GATS is aimed at reducing or eliminating the trade-restricting effects of certain regulatory measures, it does not infringe upon a governments' ability to regulate within its own territory. In its preamble, the agreement recognises "the right of members to regulate, and to introduce new regulation, on the supply of services within their territories in order to meet national policy objectives".

By providing a basis for progressively reducing and eliminating barriers to international trade and requiring that member governments apply their laws, regulations and policies in a transparent and non-discriminatory manner, the GATS has a significant role to play in creating a more open and predictable environment for international trade.

4.3 The Current Negotiating Round

The Uruguay Round is widely seen as having generated only modest commitments in the services area. The first round of negotiations laid the foundations for future work, putting in place a still incomplete framework of rules under which progressive liberalisation could be pursued in subsequent negotiations.

The current round of WTO negotiations, known as the “Doha Round” was launched in Doha, Qatar in November 2001. Progress to date in the Doha Round negotiations have been disappointing in many areas and key interim deadlines have been missed. The Doha Declaration set deadlines for initial services offers to be lodged by 31 March 2003. By June 2003, only 23 WTO members (mostly developed countries) had lodged their offers with the WTO Secretariat. The list includes the US, European Community, Japan, Korea, Australia, New Zealand, Canada, Chinese Taipei, Hong Kong, Switzerland, Norway, Uruguay, Paraguay, Argentina, Poland, Iceland, Bahrain, Liechtenstein, Senegal, Israel, Czech Republic and St Kitts and Nevis.

While Services Offers have been disappointing in number and also in scope, the biggest setback to WTO negotiations was the collapse of the Cancun Ministerial Conference in Mexico in September 2003. The Conference was set to direct negotiations for the next stage of the Round, but ended in deadlock, without consensus. This is a major setback for the WTO and is a reflection of the delicate and protracted nature of multilateral negotiations.

The number and quality of liberalisation commitments in services from the Uruguay Round and subsequent initial offers in the Doha Round are currently the most evident GATS deficiency. The sectoral coverage of commitments and initial offers in many WTO members’ schedules is small and many of the commitments that do exist are either subject to important limitations or fail even to lock in the statutory or regulatory status quo. To harness the full potential of the GATS, the current negotiations will need to aim for a significant expansion in the number and coverage of commitments and for the progressive removal of existing limitations. The collapse of the Cancun Ministerial Conference is therefore particularly worrying.

Box 9: Technology Transfer¹⁶

Technical knowledge can be defined as the design, or blueprint of a new product, process or service. One of the key characteristics of technological knowledge is that it can be transferred across countries. The stock of technological knowledge in a country is influenced by domestic innovation and the international diffusion of technology.

The transfer of technology across countries can take place through a variety of channels including trade in both goods and services, foreign direct investment and partnership agreements. Trade can enhance technology transfer by giving firms access to technologically advanced capital goods and intermediate products from overseas. Trade in services, particularly professional services can provide the input needed to enter new sectors and lower the costs of exchanging information. Trade also opens up the possibility of person-to-person communication that can also contribute to technology transfer.

Foreign direct investment also contributes to technology transfer through on the job training and various forms of interaction among local and foreign firms. Backward and forward linkages favour technological diffusion, and technologically advanced foreign affiliates help their local suppliers and host country firms involved in later stages of production processes to raise quality and service standards. New managerial, marketing and production processes may be adopted as a result of the interaction between local and foreign producers. This interaction also has the potential to exert a positive influence on technology transfer through competitive pressure.

Technology transfer is a core development issue. This was recognised by the WTO during the Fourth Ministerial Meeting when the Working Group on Trade and Transfer of Technology was created. The purpose of this group is to scrutinise the relationship between trade and the transfer of technology and any potential steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.

¹⁶ World Trade Organisation, *World Trade Report 2003*, p91.

4.4 The Role of the Australian Government in Multilateral Agreements

A benefit of the GATS process is that it requires each member country to identify impediments to services trade and the operation of licensing regimes via the GATS schedules of specific commitments. In these schedules, economies list many of their remaining breaches of market access and national treatment greatly facilitating identification of impediments relevant to professional services. However, not all of these schedules of commitments are publicly available, they are also documents which require the reader to have a technical understanding of the GATS process in order to understand the commitments made. There is also some evidence that not all market restrictions are included in these schedules for example, local government level restrictions.

The Australian government needs to be more pro-active in supporting professional service providers by providing information tailored to specific industries and countries on the types of non-tariff barriers and regulatory hurdles operating in overseas markets, and how they can be ameliorated. DFAT has made a number of comprehensive requests to overseas countries to liberalise service sectors under the GATS. This information should be made publicly available. Publication of measures affecting services trade for specific markets and professions, reduces the costs to Australian service providers of learning about domestic laws and regulations in foreign markets and decreases the costs of uncertainty.

Technical assistance needs to be provided to professionals to help them meet the standards required by other countries regulatory environments. The government should look to provide targeted one-on-one support to professional service providers, particularly to professionals working in smaller firms, or as independent consultants.

An important initiative is Trade Watch, a DFAT and Austrade program to provide Australian businesses with current information about the international trade and investment environment and Australian Government action to open international markets. An example of the type of information required by professional services exporters can be found in Box 10.

Recently, the Foreign Affairs, Defence and Trade Joint Standing Committee released the report, *Expanding Australia's Trade and Investment Relationship with the Countries of Central Europe*. The key finding of the report was that an "information failure" exists between Australia and Central Europe. While the potential for Australia to trade with Central Europe is apparent, substantial trade and investment between Australia and Central Europe has failed to emerge. The Report identified that the main ingredient missing from this potentially fruitful economic relationship is market knowledge of each other and each others' needs. The report recommends a range of measures to increase mutual awareness and mutual understanding of trade and investment opportunities to stem the "information failure".

Recommendations include sending senior trade missions to the region led by the Minister for Trade, increasing support for Australian exporters to become involved in overseas trade fairs, expanded support for Australia firms seeking Austrade funding, encouraging links between Australian and Central European research institutions, improving Australian trade representation at the World Bank and European Commission and reconfiguring diplomatic arrangements in Central Europe to better support Australian trade and investment activity.¹⁷

There is a role for the Australian government to support, facilitate and champion overseas trading opportunities for Australian exporters. This is particularly true when Australian exporters of professional services are attempting to gain access to a markets heavily regulated by onerous licensing regimes.

Reform in services markets has been and will likely continue to be driven primarily by domestic priorities. For example DFAT outlines that "Australia's basic objective for services negotiations is to improve market access conditions for Australian services exporters". Reform efforts have proven to be more sustainable in political and economic terms if they are pursued out of recognition of national self-interest. Left to domestic discretion, however, experience shows that reform may never be undertaken in a systemic way. The WTO/GATS multilateral rule-making and liberalisation efforts have the potential to help countries overcome domestic resistance to change by offering compensatory bargains in sectors of priority export interest.

The GATS also performs the useful function of allowing countries to lock in past reform giving greater permanency to reform efforts, and establishing heightened regulatory transparency. Bound liberalisation commitments in the services area can send a powerful signal to domestic and foreign suppliers alike, which are likely, on balance, to generate greater inflows of foreign investment, given the importance of commercial presence as a means of contesting services markets.¹⁸

Overall, the effectiveness of the GATS and the flow on effects to providers of trade in professional services will be determined simply by the extent to which WTO members have bound their existing policies and committed themselves to new and ongoing liberalisation.

Findings

Tailored information and technical assistance needs to be made available on the types of barriers operating in overseas markets, to help Australian exporters of professional services meet the standards required by other countries regulatory regimes.

There is a role for the Australian government to support, facilitate and champion overseas trading opportunities for Australian exporters of professional services, particularly when the markets they are attempting to gain access to are heavily regulated by onerous licensing regimes.

Box 10: United States Licensing Procedures — Engineering

Within the US, there are fifty-five separate and independent jurisdictions (States and Territories) which undertake assessment and licensing of professional engineers. In each jurisdiction, it is a statutory requirement to be licensed in order to engage in the practice of engineering or to use the title of “Professional Engineer”. The government body in each jurisdiction for administering the engineering practice law is the “Board of Registration of Professional Engineers”. An engineer that has been granted a license to practice by a board is considered to be registered in that jurisdiction. This has resulted in each State and Territory having its own engineering practice laws, and hence its own registration system for licensing engineers.

Some of the conditions prescribed by State and Territory engineering licensure laws are problematic. For example, requirements such as good character and reputation, references, citizenship, residency, and proficiency in English, all restrict unnecessarily, trade in engineering services. The information below is a snapshot of some of the areas where the registration system is being used as a non-tariff barrier to trade in engineering services in the US.

- ▶ Only a limited number of US States require US citizenship as a condition for licensure, even fewer require residency in the State. Citizenship requirement: District of Columbia, Guam, Nevada, New York, Texas, Virgin Islands. Residency requirement: Puerto Rico, Texas, Virgin Islands
- ▶ Ten engineering licensure statutes or regulations include provisions that prohibit licensees from bidding their professional services: Alabama, Arkansas, Georgia, Guam, New York, North Carolina, Oklahoma, Texas, Virginia, Washington.
- ▶ A majority of the States (58 percent) require business associations that seek to provide professional engineering services to first obtain certificates of authority from the engineering licensure authority: Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Guam, Idaho, Illinois, Kansas, Kentucky, Louisiana, Missouri, Montana, Nebraska, New Hampshire, New Jersey, Northern Carolina, North Dakota, Northern Mariana, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Washington, West Virginia, Wisconsin, Wyoming
- ▶ Nine states require business associations desiring to obtain a certificate of authority in the State to have a physical presence in the State: Alabama, Georgia, Kentucky, Montana, Nevada, New Hampshire, Tennessee, Texas, Virginia.

¹⁷ Senator Ferguson, Senate Hansard, Monday 15 September 2003, p14416.

¹⁸ Organisation for Economic Cooperation and Development, Working Party of the Trade Committee, *Open Services Markets Matter*, 11 December 2001, p50.

Currently, the global trading system is seeing not only increased multilateral interaction between countries under the WTO, but a sharp increase in regional trading agreements (RTAs). The move towards regionalism was fuelled throughout the 1980s and 1990s firstly by the seemingly bleak prospects offered by the multilateral system after the inconclusive 1982 GATT Ministerial Meeting, and secondly by the collapse of COMECON, a preferential arrangement involving the old Soviet Union and Eastern European Countries, and the alignment of the Central and Eastern European Countries to the European Union through a number of RTAs.

While regionalism and multilateralism have the potential to positively interact with each other, one of the most common questions asked is whether regional trading agreements help or hinder the multilateral trading system? Generally, regional agreements do have the potential to support the multilateral trading system, by allowing groups of countries to negotiate rules and commitments that go beyond what is possible at the multilateral level. Later, these agreements have the potential to feed constructively into WTO negotiations.

The economic effect of RTAs depends on the particular architecture of the agreements and most importantly how far they go toward removing trade barriers and how many sectors they cover. This section considers the evolution of regional agreements, some of the reasons why governments have become increasingly attracted to RTAs and the potential for RTAs to achieve deeper integration than is currently possible under the WTO.

5.1 Regional Trade Agreements

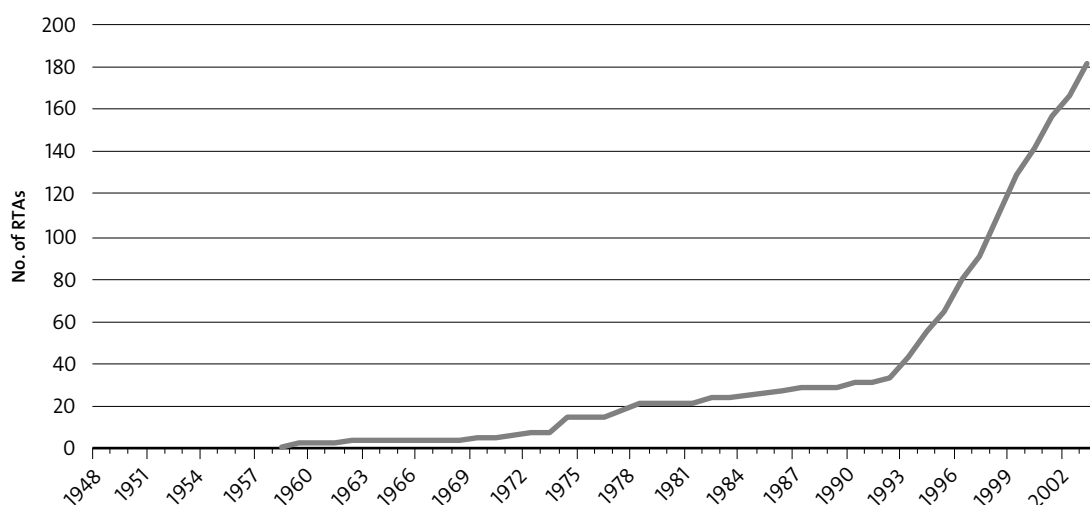
Free Trade Agreements (FTAs) and Customs Unions are together defined as Regional Trade Agreements (RTAs) in WTO terminology. FTAs are defined as agreements among two or more parties in which reciprocal preferences (whether or not reaching complete free trade) are exchanged to cover a large spectrum of the parties' trade. Customs Unions are in contrast, defined as agreements with a common external tariff in addition to the exchange of trade preferences.

FTAs and Custom Unions comprise the main exception to the Most Favoured Nation principle within WTO rules, allowing individual countries to offer preferential treatment to partners via an RTA, providing that the RTA conforms to certain strict conditions to ensure that they do not encourage the establishment of new barriers, or provide an easy route to introduce new measures discriminating between trading partners.

FTAs are becoming an increasingly important feature of the international trading system. Gains can be negotiated and delivered in a shorter time frame through an FTA than through the multilateral process. All of the OECD members, with the exception of the Republic of Korea, belong to at least one FTA and the majority of developing countries are members of an FTA, customs union or other RTA. Over half of all global trade takes place under such arrangements.

WTO members are bound to notify the WTO of the RTAs in which they participate. The number of these RTAs has increased dramatically over the last decade as represented in Figure 5.1.

FIGURE 5.1: RTAs in Force by Date of Entry into Force 2002



Source: WTO Secretariat, http://www.wto.org/english/tratop_e/region_e/regfac_

Not all RTAs notified in the last half century are still in force today. Many of the discontinued RTAs have however, been superseded by redesigned agreements among the same signatories. A number of significant RTAs and their signatories are outlined in Box 11.

Box 11: Significant Regional Trade Agreements and their Signatories

ASEAN Free Trade Area (AFTA): Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Association of South East Asian Nations (ASEAN): Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

Baltic Free-Trade Area (BAFTA): Estonia, Latvia, Lithuania.

Bangkok Agreement: Bangladesh, China, India, Republic of Korea, Laos and Sri Lanka.

Andean Community (CAN): Bolivia, Colombia, Ecuador, Peru and Venezuela.

Caribbean Community and Common Market (CARICOM): Antigua & Barmuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Monserrat, Trinidad & Tobago, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines and Surinam.

Central American Common Market (CACM): Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

Central European Free Trade Agreement (CEFTA): Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovak Republic, Slovenia.

Economic and Monetary Community of Central Africa (CEMAC): Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea and Gabon.

Closer Trade Relations Trade Agreement (CER): Australia and New Zealand.

Commonwealth of Independent States (CIS): Azerbaijan, Armenia, Belarus, Georgia, Moldova, Kazakhstan, Russian Federation, Ukraine, Uzbekistan, Tajikistan and Kyrgyz Republic.

Common Market for Eastern and Southern Africa (COMESA): Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

East African Cooperation (EAC): Kenya, Tanzania and Uganda.

Eurasian Economic Community (EAEC): Belarus, Kazakhstan, Kyrgyz Republic, Russian Federation and Tajikistan.

European Communities (EC): Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

Economic Cooperation Organisation (ECO): Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyz Republic, Pakistan, Tajikistan, Turkey, Turkmenistan, Uzbekistan.

European Economic Area (EEA): European Community, Iceland, Liechtenstein and Norway.

European Free Trade Association (EFTA): Iceland, Liechtenstein, Norway and Switzerland.

Gulf Cooperation Council (GCC): Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

General System of Trade Preferences among Developing Countries (GSTP): Algeria, Argentina, Bangladesh, Benin, Bolivia, Brazil, Cameroon, Chile, Colombia, Cuba, Democratic People's Republic of Korea, Ecuador, Egypt, Ghana, Guinea, Guyana, India, Indonesia, Islamic Republic of Iran, Iraq, Libya, Malaysia, Mexico, Morocco, Mozambique, Myanmar, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Republic of Korea, Romania, Singapore, Sri Lanka, Sudan, Thailand, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Venezuela, Vietnam, Yugoslavia and Zimbabwe.

Latin American Integration Association (LAIA): Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

Southern Common Market (MERCOSUR): Argentina, Brazil, Paraguay and Uruguay.

Melanesian Spearhead Group (MSG): Fiji, Papua New Guinea, Solomon Islands and Vanuatu.

North American Free Trade Agreement (NAFTA): Canada, Mexico and US.

Overseas Countries and Territories (OCT): Greenland, New Caledonia, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Mayotte, Saint Pierre and Miquelon, Aruba, Netherlands, Antilles, Anguilla, Cayman Islands, Falkland Islands, South Georgia and South Sandwich Islands, Montserrat, Pitcairn, Saint Helena, Ascension Island, Tristan da Cunha, Turks and Caicos Islands, British Antarctic Territory, British Indian Ocean Territory and the British Virgin Islands.

Protocol relating to Trade Negotiations among Developing Countries (PTN): Bangladesh, Brazil, Chile, Egypt, Israel, Mexico, Pakistan, Paraguay, Peru, Philippines, Republic of Korea, Romania, Tunisia, Turkey, Uruguay and Yugoslavia.

South Asian Preferential Trade Arrangement (SAPTA): Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA): Australia, New Zealand, Cook Islands, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa.

Tripartite Agreement: Egypt, India and Yugoslavia

These RTAs differ considerably in scope. Some operate to provide for the exchange of preferences on a limited range of products between two or more countries while others aim to liberalise a wide variety of sectors and contain commitments well beyond the liberalisation offered by WTO commitments.

The simplest configuration is a bilateral agreement formed between two parties or a plurilateral agreement uniting three or more countries. More complex agreements are those where one or more of the parties to an agreement is an RTA itself. Examples include European Community — MERCOSUR and Closer Economic Relations (CER) — Association of South East Asian National (ASEAN). These developments are a reflection of the growing consolidation of established RTAs.

Economists offer two explanations of the trend towards countries pursuing both multilateral liberalisation and RTAs. Firstly, there is the application of “second best” theory, where frustration with the enormity of attempting to remove trade restrictive policies across-the-board via the multilateral process under the WTO, results in countries moving to reduce barriers on a selective basis. In this case, if some countries are unwilling to liberalise while others wish to, liberalising via an RTA becomes beneficial to world trade in contrast to the status quo.

The second explanation is that governments seek discriminatory liberalisation so that they may be able to reap the rewards for trade in areas where they cannot compete internationally. In this sense, RTAs are used as a means to shut out third party competition from more efficient suppliers. RTAs undertaken with this motivation have negative connotations for the world trading system.

Even if national governments feel that the multilateral option is more desirable, many are now securely focused on negotiating regional agreements. Some governments are simply uninterested in multilateral liberalisation, some may wish to negotiate agreements on issues not dealt with in the WTO, including harmonisation of economic policies or regulations, and some governments may regard the multilateral option as too time consuming and costly as the transaction costs associated with liberalisation are reduced with fewer participants in negotiations. Another reason, particularly relevant to smaller economies, is that participation in RTAs may be necessary from an economic perspective. Governments may see RTAs as insurance policies from being placed at a competitive disadvantage through discriminatory policies and being excluded from markets.

There are also political considerations to the negotiation of RTAs. While RTAs can increase regional security by creating linkages between economies, making conflicts more costly, they also have the potential to create internal and external tensions. This is because RTAs are designed to be preferential, and as a result, gains are redistributed across member economies and trade is also diverted from non-members, reducing the welfare gains of third parties. Another political consideration is that governments may seek to acquire greater bargaining power in multilateral negotiations by first tying in partner countries through regional commitments.

RTAs characterise a threat to the multilateral system with their capability to distort trade flows. In this sense, they are an inferior alternative to coordinated multilateral liberalisation. There are a number of key arguments as to why regional agreements frustrate the attainment of multilateral goals. Firstly, the multiplicity of RTAs, with varying levels of protection against third parties, and the application of numerous rules of origin and differing standards will make international trade more complex and costly. Secondly, the growing number of overlapping bilateral and plurilateral agreements risk undermining the transparency of trading rules, a fundamental principal of the WTO. Thirdly, “difficult sectors” like agriculture are often excluded from RTAs while service sector interests are often, at least in part, satisfied. As a result, increasing regionalism distracts attention and energy from multilateral negotiations particularly as interest groups needs are met through RTAs and they no longer need to exert political influence to support multilateral liberalisation.¹⁹

The WTO rules have sought to limit features of RTAs that would undermine the multilateral trading system. Ultimately, countries will need to begin to refrain from engaging in RTAs that they would be unwilling to extend into a multilateral setting. Only this measure will ensure that RTAs feed into and strengthen, rather than undermine, the multilateral trading system.

Findings

The Australia government should continue to refrain from entering into RTAs that could not be extended to a multilateral setting.

5.2 Role of the Australian Government in Bilateral and Plurilateral Agreements

The Australian government is focused on multilateral trade liberalisation but is also actively pursuing complementary WTO-consistent regional trade and economic agreements via a number of bi-lateral RTAs. As a result, the Australian Government is currently pursuing an FTA with the US, a Closer Economic Relations Free Trade Agreement with Thailand and an Australia — Japan Trade and Economic Framework. Australia already has FTAs with Singapore and New Zealand.

The Closer Economic Relations Agreement between Australia and New Zealand (CER), which entered into force in 1983, has been described in a WTO review “as the world’s most comprehensive, effective and multilaterally compatible free-trade agreement”.

The objectives of CER are to expand free trade by eliminating barriers to trade and promoting fair competition. The agreement assisted in building up momentum for trade liberalisation. By 1990, five years ahead of schedule, all tariffs and quantitative restrictions had been removed from trans-Tasman goods trade. The success of CER is a testimony to the benefits that can be reached under RTAs when negotiating countries have complementary regulatory processes.

Measures and methods to increase and support trade in professional services are not always effective within FTAs. A clear example of this is the domestic regulatory environment for professionals in the US. While the FTA currently under negotiation between Australia and the US will enhance trade in professional services by increasing opportunities for professionals to gain access to the US market through the liberalisation of temporary migration procedures, many professionals will be unable to practice in the US as a result of restrictive licensing regimes operating at a State level.

The Federal government of the US is unable to bind US States to the provisions of FTAs. The limitations of the FTA to increase trade in professional services through the recognition of professional qualifications is shown through the limited gains accorded to Canada and Mexico under the North American Free Trade Agreement (NAFTA) with the US.

The NAFTA Professional Services Annex encourages relevant professional bodies to develop mutually acceptable professional standards for licensing and certification of professional services providers. The Annex also encourages professional bodies to develop procedures for the temporary licensure of professional services providers by other signatories to the agreement. To date, the NAFTA Professional Services Annex has had a limited impact on licensing procedures for professionals within the US. Texas has been the only State in the US to agree to the provisions.

The conflicting domestic regulatory environment for providers of professional services in Australia and the US has resulted in a difficult environment from which to negotiate an agreement on mutually acceptable professional standards for licensing and certification of professional services providers.

Even if national governments feel that negotiations at a multilateral level are a more desirable option than pursuing RTAs, many governments are pursuing regional agreements often to negotiate on issues not dealt with in the WTO, including harmonisation of economic policies or regulations. Given that RTAs should look to be more liberalising than the current status quo offered by WTO/GATS commitments, the Australian government must make sure that any RTAs they negotiate, successfully supports trade in professional services by moving beyond GATS commitments to put in place effective mutual recognition agreements. This challenge, while significant, is ameliorated to an extent when negotiating countries have complementary regulatory processes.

Findings

The Australian government should ensure that any RTAs they negotiate include a workable MRA on the domestic regulation of professional services.

19 World Trade Organisation, *World Trade Report 2003*, p65.

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Mutual Recognition Agreements

Mutual Recognition Agreements (MRAs) are one instrument that can help to reduce regulatory barriers and facilitate international trade. This section considers the role of MRAs in multilateral and regional trade agreements, the benefits that can be achieved from MRAs and the role of the Australian government in supporting MRAs at the regional and multilateral level.

GATS Article VII permits WTO members to enter into MRAs. The article states “For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a member may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously”.

This provision enables members to diverge from the Most Favoured Nation (MFN) requirements, extending recognition to some WTO members but not others. This exemption has developed from an understanding that, given the regulatory diversity among members, recognition is more likely to be agreed bilaterally than multilaterally. As a result, the MFN requirement to automatically extend recognition to all other WTO members would most likely result in fewer, if any, bilateral MRAs being negotiated.

In terms of professional qualifications, mutual recognition generally refers to both recognition of the equivalence of the home country’s authority, and their ability to certify training through the granting of diplomas or other confirmation of qualifications. Some recognition is extended for academic purposes, to enable enrolment in further study. In other cases, MRAs deal with the recognition of professional qualifications and the right to practice as a licensed professional.

Regulation is achieved in many countries through a combination of legislation and self-regulation, at both Federal and sub-Federal levels. As a result, a wide range of MRA agreements currently operate between states, between agencies acting under delegated authority laid down in legislation, between professional associations who may be wholly independent of government, or a combination of these. This diversity of regulatory structures has meant that many current MRAs are not binding agreements and under international law, nations would not be required to enforce the terms of the agreement.

Box 12: Engineering Mutual Recognition Agreements

Accredited Australian qualifications and overseas engineering qualifications are recognised through formal agreements with engineering accreditation bodies in other countries. These agreements include:

APEC Engineer Register

The APEC Human Resources Development Working Group Steering Committee for mutual recognition of professional engineers developed the initiative for the APEC Engineer Register over the period 1997 — 1998. The intent of the APEC Engineer Register is to recognise the equivalencies in the qualifications and experience of practising professional engineers in the participating economies and to facilitate trade in engineering services between those participating economies. It is anticipated that engineers entered on the APEC Engineer Register will be granted a high degree of mutual exemption from further assessment when practising in any of the participating economies: Australia, Canada, Hong Kong SAR, Japan, Korea, Malaysia, New Zealand and the US.

An APEC Engineer is defined as a person who is recognised as a professional engineer within an APEC economy, and has satisfied an authorised body in that economy operating in accordance with the criteria and procedures approved by the APEC Engineer Coordinating Committee, that they have completed an accredited or recognised engineering program; been assessed within their own economy as eligible for independent practice; gained a minimum of seven years practical experience since graduation; spent at least two years in responsible charge of significant engineering work; and maintained their continuing professional development at a satisfactory level.

APEC Engineers must agree to be held individually accountable for their actions, both through requirements imposed by the licensing or registering body in the jurisdictions in which they work and through legal processes.

Washington Accord

The Washington Accord was signed in 1989. It is an agreement between the bodies responsible for accrediting professional engineering degree programs in each of the signatory countries. It recognises the substantial equivalence of programs accredited by those bodies, and recommends that graduates of accredited programs in any of the signatory countries be recognised by the other countries as having met the academic requirements for entry to the practice of engineering. The Washington Accord covers professional engineering undergraduate degrees. *Engineering technology and postgraduate-level programs are not covered by the Accord.* The signatory countries of the Washington Accord are: Australia, Canada, Hong Kong SAR, Ireland, New Zealand, South Africa, United Kingdom and US.

Sydney Accord

This agreement was signed on 23 June 2001 and is in its early stages of implementation. The Sydney Accord is an agreement between the engineering accreditation bodies to recognise as substantially equivalent the Engineering Technologist/Incorporated Engineer course of study which are accredited and delivered in those countries. The Sydney Accord applies only to accreditations conducted by the signatories within their respective national or territorial boundaries. The following accreditation bodies are signatories to the Sydney Accord: Engineers Australia, Canadian Council of Technicians & Technologists, The Hong Kong Institute of Engineers; Institution of Engineers of Ireland; Institution of Professions Engineers, New Zealand; The Engineering Council of South Africa; The Engineering Board of the UK.

International Register of Professional Engineers

The Register is governed by the Engineers' Mobility Forum, a grouping of international professional associations who enter into various types of mutual recognition agreements for membership. The following professional associations participate: Engineers Australia, Canadian Council of Technicians and Technologists, The Hong Kong Institute of Engineers, Institution of Engineers of Ireland, Korean Professional Engineers Association, Board of Engineers, Malaysia, Institution of Professions Engineers, New Zealand, Engineering Council of South Africa, The Engineering Registration Board of the United Kingdom and the US Council for International Engineering Practice.

Through this Agreement, the signatories aim to facilitate cross border practice by experienced engineers. The signatories have agreed to use their best endeavours to ensure that the bodies responsible for licensing engineers to practice in their own economies simplify as much as possible the requirements for those on the International Register.

A number of recognition agreements, or attempts at moving toward international standards for a given profession, have been initiated and undertaken by industry itself, with little or no involvement by governments. Beviglia Zampetti (2000) argues that MRA agreements reached independently by professional associations are at best a private contract, even if the bodies can be considered part of the governmental structure and competent to enter into international agreements. These MRAs,

particularly those negotiated between professional associations with no specifically delegated powers, operate as voluntary agreements that can be reversed without engendering legal responsibility.²⁰

These issues need to be resolved. Professional associations need to be involved in MRA negotiations, especially in view of their considerable expertise, but the arrangements reached need to be embedded in another, broader legal context, and supported by national governments. One resolution would be to support existing MRAs negotiated by professional associations within the Domestic Regulation Annex of an FTA.

FTAs tend to be viewed as an important mechanism for advancing matters related to regulatory cooperation in services trade, particularly in areas such as services-related standards and the recognition of licenses and professional or education qualifications. In reality, progress in the areas of domestic regulation has been slow and generally disappointing at the regional level and FTAs have in many cases failed to incorporate effective MRA provisions. See Box 13 for an outline of the lost opportunity to secure a MRA for Engineering Services under the Singapore-Australia FTA.

Box 13: SAFTA — Missed Opportunities

The Singapore-Australia Free Trade Agreement (SAFTA) provides a framework for Australian professional bodies to negotiate mutual recognition agreements (MRA) with their counterpart bodies in Singapore. Unfortunately, Engineers Australia has been attempting to negotiate a MRA with Singapore for a number of years without success. The last round of negotiations between Engineers Australia and the Singaporean Professional Engineers Board (PEB) terminated unsatisfactorily in 2001. Without strong backing from the Australian government it seems unlikely that the current status quo will change. It is unfortunate that opportunities to incorporate a MRA into SAFTA for the engineering profession have been overlooked.

Major problems exist with the mutual recognition of Australian engineering degrees by the PEB. Currently, not all Bachelor of Engineering Degrees offered by Australian universities are accredited by the PEB. As such, engineers who have graduated from these universities are unable to practice as a professional engineer in Singapore. The Professional Engineers Act (Singapore) sets out which Australian Universities have been accredited by the PEB as having acceptable standards. Currently, out of the over 40 Australian universities who provide engineering programs, only 14 universities are recognised by the Act as providing engineering degrees acceptable to Singaporean standards. Of these 14 universities, only half of the engineering degrees they offer are accredited by the PEB. For example the PEB recognises only four of the eight engineering courses offered by the Curtin University of Technology and only two of the nine courses offered by James Cook University of North Queensland.

The limited recognition of Australian engineering degrees by the PEB is extremely problematic for Australian engineers attempting to export their services to Singapore. Unless Australian engineers have studied one of the degree programs recognised by the Professional Engineers Act, they are unable to gain registration in Singapore.

As a flow on effect, Singaporean students have been effectively barred from studying engineering at a majority of Australian universities, and SAFTA has done nothing to improve the situation. Engineering students are effectively being forced to study only those courses accredited by the PEB and listed under the Professional Engineers Act.

It is disappointing that opportunities for the Australian government to support and facilitate a MRA agreement for the engineering profession under SAFTA have been overlooked. The government must not miss the opportunity, during the first review of SAFTA, to readdress these non-tariff barriers if a positive outcome for the Australian economy and the engineering profession is to be achieved.

20 Beviglia Zampetti, Americo (2000) "Market Access Through Mutual Recognition: the Promise and Limits of GATS Article VII" in Sauve and Stern (eds), *GATS 2000: New Directions in Services Trade Liberalisation*, Harvard University: Brookings Institution Press, Washington DC.

Securing a MRA remains an exceedingly complicated and time-consuming task due to the difficult nature of trying to compare registration and licensing frameworks that have been established to meet differences of cultural, social and economic circumstances. Given the level of difficulty in reaching a MRA on professional standards and licensing frameworks, it is disappointing that the Australian government has been slow to support MRAs already negotiated by professional associations in bilateral and multilateral agreements.

The Australian government is however, beginning to take these issues into consideration when considering RTAs. For example, a bilateral MRA to facilitate mobility for professional engineers between Australia and Japan was signed in Tokyo on 1 October 2003, by the Presidents of Engineers Australia and the Institution of Professional Engineers Japan.

The arrangement based on the APEC Engineer Register (see Box 12) will enable engineers in Australia and Japan to straightforwardly achieve registration in either country. The arrangement removes the need for re-assessment of qualifications, professional experience and language requirements.

The MRA resulted from the *Trade and Economic Framework* signed by the Australian Prime Minister, Mr Howard and the Japanese Prime Minister, Mr Koizumi in early 2003.

While the engineering profession welcomes this development, Engineers Australia believes there is still a need for the Australian government to review the considerable work done by professional associations in negotiating MRAs. The government will then need to take immediate measures to ensure these agreements are supported and enforceable under international law, and wherever possible included in future RTAs.

Most governments do not have a good grasp of all the measures in place in their national economy, which affect services trade. Some of the direct benefits of MRAs is that such agreements provide opportunities for reform in the home country market. A country may first be required to get its own regulatory house in order, to ensure a coherent and functioning domestic regulatory framework for the profession, in order to enter into an MRA with a trading partner. The need for legal certainty in the administration of processes such as the certification of professionals and the accreditation of academic programs, which are fundamental elements of an MRA, can be a justification to engage in a national exercise of modernisation regarding the regulation of relevant professionals. MRAs are therefore not a short term objective, but a tool to assist in domestic policy reform towards increased international compatibility of professional practice.

Engineers Australia recommends that the Australian government undertake a nation wide review/audit of Federal, State and local regulation of professional services with the aim of undertaking regulatory reform where increased international compatibility of practices is needed. For an analysis of the regulatory reform needed in the engineering sector see Box 14.

Findings

There is a need to review the work done by professional associations in negotiating MRAs to ensure that these existing agreements are supported and enforceable under international law. Wherever possible, these agreements should be included in future RTAs.

There is also a need to undertake a nationwide review/audit of the Federal, State and local regulation of professional services with the aim of undertaking regulatory reform where increased international compatibility of practices is needed.

Box 14: Australian Regulatory Environment for Engineers

For the public, the risk of inadequate engineering depends on their exposure to engineering services. Every person's lifestyle is dependent on engineering via transport, communications, manufacturing and utilities. Therefore, every person has some risk exposure to engineering services.

There are many regulatory and quasi-regulatory regimes maintained by local, State and Territory governments that come into existence because of the absence of a comprehensive regulatory system for engineers. Each State and Territory has different notions of what constitutes an effective regulatory regime. Some jurisdictions have implemented registration through a statutory board, while others have introduced co-regulatory regimes with professional associations and government taking on various roles in the registration process. Other jurisdictions have elected to have no regulatory regime, preferring to leave the profession to self-regulate. Various government agencies and departments keep their own lists of engineers for procurement, certification and employment purposes. These "registers" are usually based on highly subjective and often biased or ill-informed judgement as to who is competent to practice as an engineer.

Engineers Australia takes the view that self-regulation is appropriate as applied to the provision of some, but not all, engineering services. A joint approach by government and the profession, with appropriate legislative support (co-regulation), is required for those areas of engineering practice that represent a risk to public health and safety or where there is a significant asymmetry of knowledge between the engineer and the consumer.

Engineers Australia supports the following regulatory measures:

- ▶ Restrictions on who may deliver a service — legislation that reserves the provision of services to qualified and/or experienced persons. This clearly delineates the boundaries of what activities are to be confined to professional engineers, engineering technologists and engineering associates while allowing other activities to be performed by less qualified or skilled persons.
- ▶ Regulation as to professional conduct — provides for the adherence to codes of ethics and disciplinary measures to minimise the incidence of malpractice and unprofessional conduct, and to provide a visible assurance to clients that practitioners can be trusted to act in their interests.
- ▶ Regulation as to continuing professional development — provides for a practitioner to undertake continuing professional development as a requirement for continuing practice after initial registration or attainment of chartered status.

Australian governments should facilitate the introduction of a consistent registration system for the engineering profession in areas of highest risk to public health and safety and should adopt a co-regulatory approach to regulation of the engineering profession.

The continued evolution of Australia as a knowledge-based economy will be determined by the international success of the services sector. Services play an essential role in determining both the quality and speed of economic progress, and Australia will be unable to compete in an international economy without an efficient and technologically advanced services sector.

Market access in services is inherently more complex than market access for trade in goods. Market access for goods can be increased significantly simply by reducing border measures that are imposed as goods enter a market for example reducing tariffs and streamlining customs procedures. Market access for trade in services however, hinges on government policy interventions that are less transparent and are often applied after a service supplier has entered the market.

This report examines the role of non-tariff barriers, mutual recognition agreements, and domestic regulation in obstructing and facilitating trade in professional services at a regional and multilateral level. It also addresses the role of the Australian government in supporting, facilitating and championing overseas trading opportunities for Australian exporters of professional services.



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