General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments

Investigation No. 332-367

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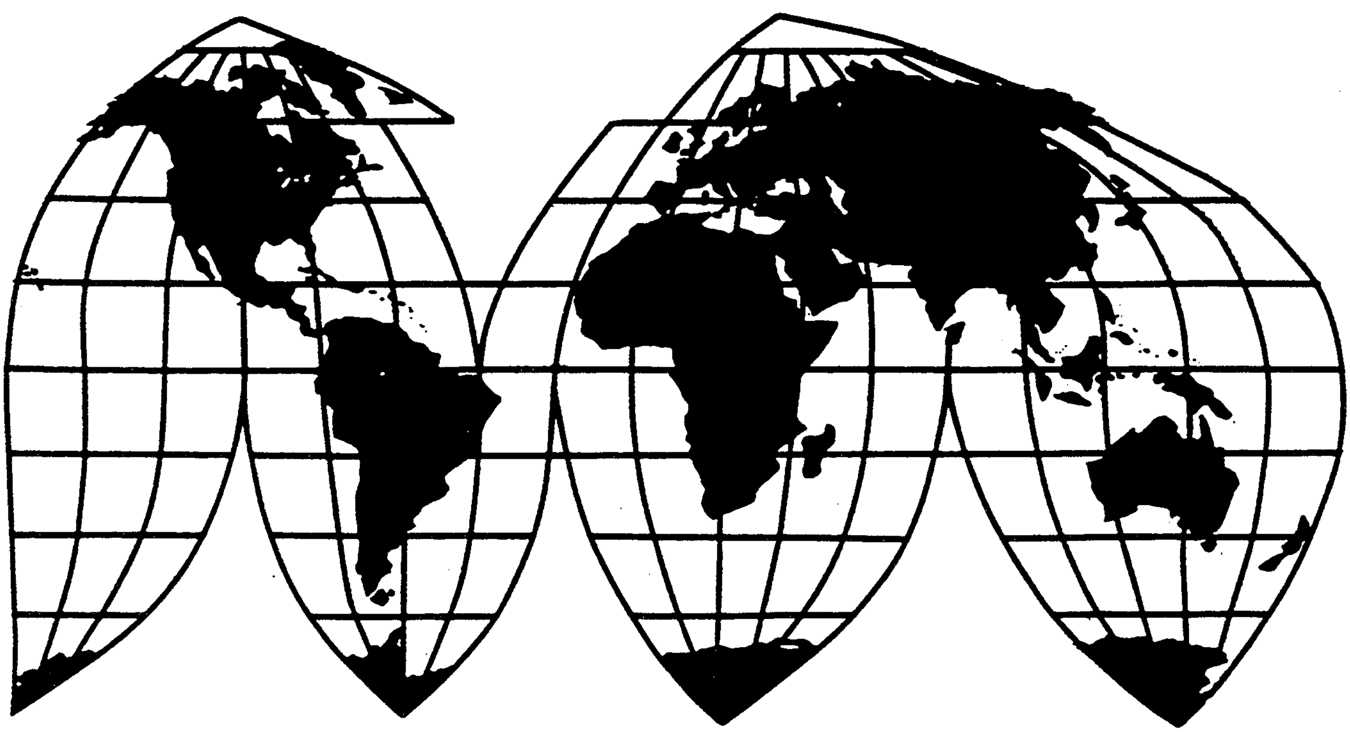

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PREFACE

Following receipt on April 9, 1996, of a request from the United States Trade Representative (appendix A), the U.S. International Trade Commission instituted the investigation *General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments* (investigation 332-367). The purpose of this report is to examine the schedules of commitments of nine South American countries, explain the commitments in nontechnical language, and identify the potential benefits and limitations of the commitments.

Copies of the notice of the investigation were posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC 20436, and the notice was published in the *Federal Register* (61 F.R. 24510) on May 15, 1996 (appendix B). The Commission held a public hearing in connection with the investigation on July 18, 1996. All persons were allowed to appear by counsel or in person to present information. In addition, interested parties were invited to submit written statements concerning the investigation.

The information and analysis provided in this report are for the purpose of this report only. Nothing in this report should be considered to reflect possible future findings by the Commission in any investigation conducted under statutory authority covering the same or similar subject matter.

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EXECUTIVE SUMMARY

On April 9, 1996, the United States Trade Representative requested that the Commission examine the schedules of commitments submitted by nine South American countries under the General Agreement on Trade in Services (GATS). The subject countries are Argentina, Bolivia, Brazil, Chile, Colombia, Paraguay, Peru, Uruguay, and Venezuela. The Commission was asked to explain the commitments in nontechnical language as they relate to seven service industries, and to identify potential benefits and limitations that may accrue to U.S. service providers. The subject industries are as follows:

- Distribution services, defined as wholesaling, retailing, and franchising services;
- Education services;
- Communication services, defined as enhanced telecommunication services, courier services, and audiovisual services;
- Health care services;
- Professional services, defined as accounting, architectural, engineering, construction, advertising, and legal services;
- Land-based transportation services, defined as rail and trucking services; and
- Travel and tourism services

Overview of South American Schedules

GATS signatories agreed that developing countries require a more gradual approach to services trade liberalization, and therefore would initially schedule fewer commitments in the first round of GATS negotiations. This proved to be the case with respect to the schedules submitted by South American countries. For example, South American countries did not schedule any commitments on audiovisual services or education services. This means that South American countries remain free to maintain or impose limits on market access and national treatment (i.e., they remain free to deny foreign firms the same rights accorded to domestic firms). Commitments on certain other industries, such as land transportation and health care services, were scheduled by just one or two countries.

Among the industries that were addressed in the schedules, the commitments generally represent standstill positions rather than liberalization, as was the norm for most GATS signatories during the initial round of talks. Such commitments establish benchmarks and improve regulatory transparency. As a result, U.S. service providers are better able to assess the regulatory environment and gain some measure of assurance that trade restrictions will become no worse, and may become less burdensome.

On the basis of foreign fieldwork and industry interviews, it appears that the actual market environment in most South American countries is significantly more liberal than indicated by their schedules of commitments. This discrepancy reflects both recent policy changes and negotiating tactics. Since the conclusion of the Uruguay Round, a number of deregulation and privatization programs have been initiated across the region that have liberalized the competitive environment substantially. In addition, negotiations related to Mercosur, NAFTA accession, or APEC may have provided incentive for countries to make limited concessions under the GATS in order to maintain bargaining power in other negotiating fora.

Assessment by Country

South America represents less than 10 percent of total U.S. services trade, with the most significant U.S. export markets being Brazil, Argentina, Venezuela, and Chile. Argentina scheduled the most commitments, covering more sectors than any other South American country. By contrast, the schedules from Brazil and Chile are less ambitious, with few sectors covered by commitments. Smaller countries, such as Bolivia and Paraguay, tended to schedule very few sectors.

Assessment by Industry

The service industries accounting for the greatest U.S. export volume are travel and tourism, transportation, professional services, and distribution services. Several South American countries scheduled full commitments pertaining to travel and tourism services, indicating that trade in the industry is largely unrestricted. Land transportation services did not fare as well, although Brazil and Uruguay scheduled commitments that address the industry. Treatment of professional services varied by service industry. For example, commitments on accounting services and legal services were scheduled by a number of countries, whereas architectural and engineering services were addressed less frequently. Commitments on distribution services were scheduled by three countries.

Labor Mobility

As was customary among most GATS signatories, South American countries' commitments on the entry and stay of business persons applied only to selected types of employees, typically senior managers and specialists. A number of the South American countries impose stringent restrictions in this area. For example, Bolivia, Chile, Colombia, Peru, and Venezuela limit the percentage of foreign employees to between 10 and 20 percent of total staff. Other countries, such as Argentina, Brazil, and Uruguay, declined to specify the permissible duration of stay. In such cases, foreign regulators appear to retain broad discretion regarding the entry and temporary stay of business persons.

Capital Investment

A number of South American countries listed investment-related restrictions. For example, Brazil requires that investment capital be registered with the central bank, Chile restricts the repatriation of investment capital for a 3-year period, and Colombia imposes a tax on profit remittances by foreign companies. Similarly, Bolivia and Brazil limit market entry options by requiring foreign companies to establish separately incorporated subsidiaries. Investment-related measures generally reflect current regulation.

Exemptions From Most-Favored-Nation Treatment

GATS signatories are obligated to accord most-favored-nation (MFN) treatment to services and service suppliers of other signatory countries. Under the MFN principle, a country generally is required to accord terms and conditions of trade to any one trading partner that are "no less favorable" than those accorded to any other trading partner. In certain instances, however, South American countries listed MFN exemptions. These exemptions principally affect land transportation and audiovisual services. With respect to land transportation, several countries scheduled exemptions from MFN treatment to accommodate existing agreements that accord preferential treatment to firms from neighboring countries. With respect to audiovisual services, several countries reserved the right to accord preferential treatment to countries with which they have coproduction agreements. In both cases, however, there are mitigating circumstances that reduce the adverse effects of exemptions on U.S. firms. Specifically, for logistical reasons, U.S. land transportation service firms have expressed only limited interest in providing their services in countries that are not contiguous with the United States, and developments such as the progressive liberalization of telecommunication services and the advent of new electronic media such as the Internet will make it increasingly difficult for governments to restrict the provision of audiovisual services.

Industry Viewpoint

While some U.S. industry representatives have noted specific sectoral concerns with respect to market access and transparency issues, most have expressed satisfaction with the degree to which South American countries are participating in the GATS. They also indicate that the absence of country commitments on many industries does not necessarily reflect closed markets. In fact, U.S. service providers generally report that competitive conditions are improving across South America as a result of privatization and market liberalization programs.

Conclusion

Due to the widespread omission of commitments on subject service industries, the South American schedules provide modest benchmarks and slight improvements in transparency. As a result, the South American commitments offer little immediate benefit to U.S. service providers. However, by presenting some information on impediments to trade in services when little was available previously, and by establishing a framework for future negotiations, the GATS provides a substantial foundation from which to achieve progressive liberalization. More tangible benefits for U.S. service providers, in the form of binding commitments to full market access and national treatment, may be achieved in future rounds of negotiations.

CHAPTER 1
Introduction

One achievement of the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) was the agreement regarding international transactions in services. This agreement, entitled the General Agreement on Trade in Services (GATS), is the first multilateral, legally enforceable agreement covering trade and investment in service industries. Key components of the agreement are national schedules of commitments submitted by all member countries. These schedules specify commitments to accord market access and national treatment[1] to foreign service providers, and to serve as benchmarks[2] for future efforts to liberalize global trade in services.

Purpose and Scope

At the request of the United States Trade Representative (USTR), the United States International Trade Commission (USITC) has examined the schedules of commitments submitted by nine South American countries.[3] The nine countries are Argentina, Bolivia, Brazil, Chile, Colombia, Paraguay, Peru, Uruguay, and Venezuela. These trading partners account for less than 10 percent of U.S. exports of services (see chapter 2). This USITC study follows an earlier examination of schedules of commitments submitted by the European Union, Japan, Canada, and Mexico. That report, entitled *General Agreement on Trade in Services: Examination of Major Trading Partners' Schedules of Commitments* (USITC publication 2940, Dec. 1995) was submitted to the United States Trade Representative (USTR) in December 1995.[4]

With respect to this second report, the USTR asked the Commission (1) to examine the content of the foreign schedules of commitments and explain the commitments in non-technical

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[1] National treatment generally accords to foreign firms the same rights and obligations accorded to domestic firms.

[2] Benchmarks comprise full and partial commitments. Full commitments are obligations to accord foreign firms full market access and national treatment. Partial commitments are obligations to accord foreign firms at least some degree of market access and/or national treatment subject to specified limitations. Where GATS signatories have scheduled full and partial commitments, they may introduce new trade-impeding measures only if they are willing to compensate aggrieved parties. Where trade impediments remain unbound, no benchmarks have been established, and signatories may introduce trade-impeding measures without penalty.

[3] A copy of the request letter and the *Federal Register* notice instituting the investigation, can be found in appendices A and B, respectively.

[4] The full text of the schedules of commitments and exemptions to most-favored nation (MFN) treatment may be obtained by ordering volumes 28-30, 32 and 34 of *Legal Instruments of the Uruguay Round* (price: SF 420) from theWorld Trade Organization, Publications Services, Centre William Rappard, Rue de Lausanne 154, CH-1211 Geneva, Switzerland. WTO publications also are available by telephone: (022) 7395208/5308; by fax: (022) 7395458; and through the Internet address: publications@wto.org.

language, and (2) to identify the potential benefits and limitations that South American trading partners have conferred or imposed on foreign service providers, emphasizing the effect on U.S. firms. The USTR asked that the Commission focus on South American countries' commitments pertaining to the following service industries:[5]

- distribution services, defined as wholesaling, retailing, and franchising services;
- education services;
- communication services, defined as enhanced telecommunication services, audiovisual services, and courier services;
- health care services;
- professional services, defined as accounting, architectural, engineering, construction, advertising, and legal services;
- land-based transportation services, defined as rail and trucking services; and
- travel and tourism services.

The USTR request letter indicates that upon delivery of this report, the USTR may request initiation of an additional follow-on report examining commitments scheduled by Australia, Hong Kong, India, Indonesia, Korea, Malaysia, New Zealand, the Philippines, Singapore, and Thailand.

Overview of the General Agreement on Trade in Services

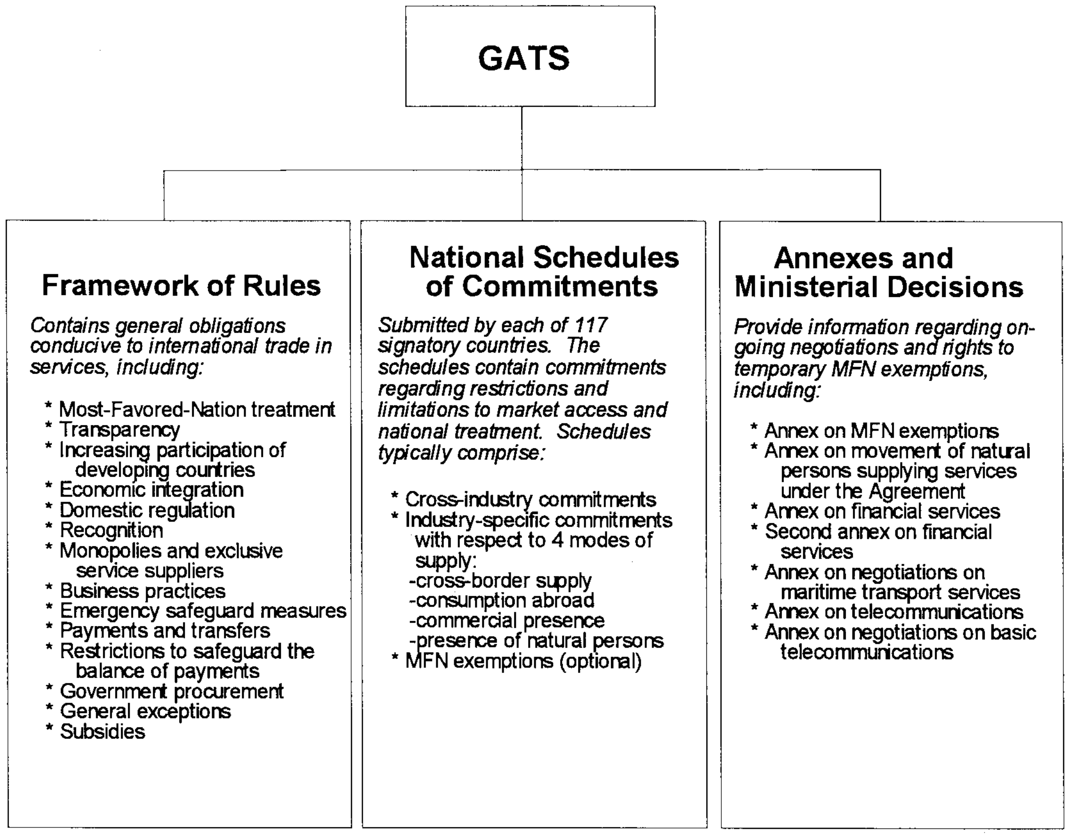
As noted, the GATS is the first multilateral, legally enforceable agreement to establish obligations and disciplines pertaining to international trade and investment in services.[6] It is an integral part of the Uruguay Round Agreements that entered into force on January 1, 1995.[7] Three elements constitute the text of the GATS: (1) a framework of rules for government regulation of trade and investment in services; (2) a set of national schedules wherein each country commits itself to apply the rules to specific industries, subject to defined exceptions; and (3) a series of annexes and ministerial decisions that augment rules found in the framework and provide for follow-up activities or additional negotiations (figure 1-1).

[5] For a complete list of service industries over which negotiations were held, see the GATT Secretariat's *Services Sectoral Classification List (MTN.GNS/W/120).*

[6] Uruguay Round Agreements Act Statement of Administrative Action (SAA), published in H. Doc. 103-316, 103rd Cong., 2nd Session, 1994. The SAA, which describes significant administrative actions proposed to implement the Uruguay Round Agreements, was submitted to Congress on September 27, 1994, in compliance with section 1103 of the Omnibus Trade and Competitiveness Act of 1988, and accompanied the implementing bill for the Agreement Establishing the World Trade Organization and the agreements annexed to that agreement (the Uruguay Round Agreements).

[7] The agreements provide for establishment of the World Trade Organization (WTO) and set forth the scope and functions of the WTO. The GATS and various other agreements negotiated during the Uruguay Round are set forth as annexes to the Agreement Establishing the World Trade Organization.

Figure 1-1
Structure of the General Agreement on Trade in Services



The GATS Framework

The framework calls on parties to observe 14 general obligations and disciplines that are conducive to international trade in services. Key among these obligations are most-favored-nation (MFN) treatment[8] (article II) and regulatory transparency (article III).[9] Other important elements of the framework provide for international economic integration agreements such as the North American Free-Trade Agreement (article V); "reasonable, objective, and impartial" regulation (article VI); recognition of authorization, licensing, and certification standards and procedures (article VII); and safeguards on monopolies (article VIII) and subsidies (article XV).

[8] MFN status accords to one trading partner terms and conditions of trade that are no less favorable than those accorded to any other trading partner. Countries were allowed to submit a list of exemptions to the MFN obligation outlined in article II of the GATS. In other words, certain trading partners could be accorded preferences over all other signatory countries. These "MFN exemptions" are optional. For more information, see the section later in this chapter on "Annexes and Ministerial Decisions."

[9] Transparency exists when the nature and extent of all trade-impeding measures are explained in their entirety, with precision and clarity. See appendix C for a glossary of terms.

These obligations are binding on all GATS signatories, although exceptions are permissible subject to agreed rules. Important institutional provisions require countries to afford other signatories consultations on any matter affecting the operation of the GATS. Such consultation is to follow newly created Dispute Settlement Understanding procedures.[10]

Schedules of Commitments

As noted earlier, national schedules specify commitments undertaken by signatories to provide foreign firms with market access and national treatment, mostly on an industry-by-industry basis.[11] As such, they provide most of the detail of the final agreement. The schedules are bifurcated in structure. One section describes regulatory measures as they are applied on an industry-specific basis. The other section specifies cross-industry commitments, which are broad conditions and restrictions applicable across all industries listed in the schedule.[12]

Industry-Specific Commitments

The industry-specific section of the schedules essentially consists of a matrix whereby market access and national treatment limitations on each service industry[13] are indicated and examined in relation to one or more possible delivery channels or "modes of supply." There are four modes of supply:

1. Cross-border supply, wherein a service provider mails, electronically transmits, or otherwise transports a service across a national border;

2. Consumption abroad, wherein a consumer, such as a tourist, patient, or student, travels across national borders to consume a service;

3. Commercial presence, wherein a service supplier establishes a foreign-based corporation, joint venture, partnership, or other establishment, to supply services to foreign persons; and

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[10] See USTR, *Final Texts of the GATT Uruguay Round Agreements Including the Agreement Establishing the World Trade Organization* (Washington, DC: GPO, 1994), p. 353.

[11] The obligation to develop national schedules is found in part IV, article XX of the GATS. See USTR, *Final Texts of the GATT Uruguay Round Agreements*, p. 299.

[12] Cross-industry commitments are referred to as "horizontal" commitments in the GATS text. To simplify the discussion in this report, however, commitments that apply to all service sectors will be referred to as cross-industry commitments.

[13] In preparing national schedules, countries were requested to organize and define service industries as noted in the GATT *Secretariat's Services Sectoral Classification List*, which draws on the United Nations' *Provisional Central Product Classification (CPC) System*. Accordingly, national schedules frequently make explicit references to the CPC numbers. A concordance of this report's subject industries and their corresponding CPC classifications is provided in appendix D.

4. Presence of natural persons, wherein an individual, functioning alone or in the employ of a service provider, travels abroad to deliver a service.

For each mode of supply, countries may offer one of two types of commitments. A "full commitment" creates the most liberal trading environment and is shown on the schedules by the word "none." This indicates that there are no industry-specific market access or national treatment restrictions. A "partial commitment" is the second type of commitment shown in the schedules. Partial commitments communicate the nature of currently existing restrictions on market access or national treatment. Both full and partial commitments are "binding" in the sense that no further trade impediments may be introduced unless a country is willing to compensate parties adversely affected by the new measure. In the absence of a full or partial commitment, additional restrictions on market access and national treatment may be imposed in the future. The absence of a commitment is indicated by the word "unbound" in the appropriate cell of the matrix.[14]

Members of the WTO recognized that developing countries might require a more gradual approach to scheduling commitments and liberalizing service markets.[15] To accommodate such needs, the Uruguay Round Agreement includes measures designed to provide special treatment for developing countries participating in the trade liberalization process. The Decision on Measures in Favor of Least-Developed Countries permits such countries to "undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities."[16] The GATS includes a similar provision in Article IV (Increasing Participation of Developing Countries) which states that, with respect to scheduling industry-specific commitments and providing for progressive liberalization, "particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs."[17] In other words, the GATS recognized that many developing countries would initially schedule few commitments, and encouraged developed countries to offer assistance to less developed countries by according them access to trade facilitating technology, distribution channels, and information networks. Article IV also encourages developed countries to establish "contact points" to help firms in developing countries gain market access by providing commercial and regulatory information.

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[14] In certain instances, the term "unbound" coupled with an asterisk (i.e., Unbound*) is used to identify modes of supply that are "technically infeasible" in an industry. Cross-border supply of many construction services, for example, is technically infeasible.

[15] For example, since Brazil records a deficit in services trade, it is concerned that easing market access to services delivered on a cross-border basis may worsen its balance of payments. Consequently, Brazil prefers to pursue a gradual process of liberalization that begins with services delivered through a commercial presence, which usually involves some direct investment and the creation of local employment opportunities. Brazil Foreign Ministry representative, interview by USITC staff, Brasilia, Brazil, Aug. 6, 1996.

[16] *Final Texts of the GATT Uruguay Round Agreements Including the Agreement Establishing the World Trade Organization*, Apr. 1994, p. 385.

[17] Ibid., p. 288.

Since many of the South American countries may be considered developing countries,[18] it should be expected that these countries would schedule fewer commitments than larger U.S. trading partners such as the European Union, Canada, and Japan. This proved to be the case, as, for example, South American countries scheduled no commitments pertaining to education services and audiovisual services, and only Bolivia scheduled commitments regarding health care services. Table 1-1 shows which countries scheduled commitments of any kind for specific industries by displaying an 'X' in the relevant cell.

Education, health care, audiovisual, and transportation services were omitted by most South American countries for various reasons. First, these sectors often are controlled by the government, and services supplied in the exercise of governmental authority lie outside the GATS. Second, in some cases, these sectors are undergoing major regulatory change, which made it infeasible for countries to schedule binding commitments. Third, negotiating dynamics also played a role. Demandeur countries did not identify education and health care industries as high priority areas. With respect to the exclusion of audiovisual services, negotiating dynamics appear to be the primary factor. Larger trading partners such as France scheduled broad MFN exemptions on audiovisual services that substantially weakened the value of EU commitments. This left smaller countries with weak audiovisual industries with little incentive to offer binding commitments in this industry.[19]

Cross-Industry Commitments

As noted, cross-industry commitments span all service industries listed in a signatory's schedule.[20] These commitments generally address investment, taxation, real estate transactions, government subsidies, and the temporary entry and stay of natural persons. Consequently, they almost always apply to two modes of supply: commercial presence and the presence of natural persons. One of the principal complexities of the national schedules is that the industry-specific commitments cannot be understood fully without reference to the cross-industry commitments. For example, if an accounting firm wanted to establish a commercial presence in Brazil, it would need to consider both the industry-specific limitations found under "accounting," as well as the cross-industry restrictions on investment. Table 1-2 summarizes the cross-industry commitments scheduled by the South American countries, which are described in further detail in appendix E.

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[18] In the context of the GATS, countries that have claimed "developing" status generally are those outside the Organization for Economic Cooperation and Development.

[19] USITC staff interviews, Geneva, Switzerland, Apr. 24, 1996, Sao Paulo, Brazil, Aug. 6, 1996, and Caracas, Venezuela, Aug. 13, 1996.

[20] Although signatory countries were not obligated to schedule cross-industry commitments and no guidelines were established for scheduling such commitments, many countries provided cross-industry commitments to avoid excessive repetition in the industry-specific section of the national schedules.

Table 1-1
Industry-specific commitments scheduled by South American countries, by industry

	Argentina	Bolivia	Brazil	Chile	Colombia	Paraguay	Peru	Uruguay	Venezuela
Distribution	X		X				X		
Education									
Enhanced telecomuni-cation	X			X	X		X		
Audiovisual									
Courier	X		X					X	X
Health care		X							
Accounting	X		X	X	X		X		X
Advertising	X		X				X		X
Legal	X			X	X				X
Architectural, engineering, and construction	X		X	X	X		X		X
Transportation . . .			X					X	
Travel/Tourism . . .	X	X	X	X	X	X	X	X	X

Source: Compiled by the staff of the U.S. International Trade Commission.

Table 1-2
Highlights of cross-industry commitments, by country

	Argentina	Bolivia	Brazil	Chile	Colombia	Paraguay	Peru	Uruguay	Venezuela
Investment		X	X	X	X		X		
Real estate acquisition	X	X		X	X		X		
Subsidies			X		X				
Temporary entry and stay of natural persons	X	X	X	X	X		X	X	X

Source: Compiled by the staff of the U.S. International Trade Commission.

An additional complicating factor is that the schedules do not reflect all of the service sectors addressed during negotiations. The GATS employed a "positive listing" approach that required countries to list in their national schedules only those sectors in which they accord foreign service providers either market access or national treatment with respect to at least one mode of supply. Thus, if a signatory offered no market access or national treatment commitment for any mode of supply within a sector, then that sector does not appear in its national schedule and trade impediments remain unbound. As such, signatories may impose new or additional trade restrictions pertaining to this sector in the future. On the other hand, once a country has made a partial or full commitment to provide foreign firms with market access or national treatment in a specific service sector, then that sector is listed in that country's national schedule.

Most commitments that were submitted by individual countries are, essentially, standstill commitments; i.e., a continuation of current policies with promises not to impose additional or new trade restrictions in the future.[21] Although standstill commitments do not liberalize trade, they meet important objectives of the first round of GATS negotiations. Standstill commitments establish benchmarks that identify trade impediments and impose limits on the restrictions specific to an industry. In addition, standstill commitments enhance the transparency, or clarity, of existing restrictions by listing current regulations.

Annexes and Ministerial Decisions

Eight annexes are attached to the GATS and form an integral part of the agreement. For the purpose of this discussion, the Annex on Article II Exemptions, which provides for MFN exemptions, may be the most important.[22] This annex allows countries to attach a list of MFN exemptions[23] to national schedules, although the annex stipulates that the duration of these exemptions may not exceed 10 years in principle, and must be reviewed within 5 years. About two-thirds of GATS signatories, including seven of the nine countries examined in this report, attached MFN exemptions to their schedules. Signatories included MFN exemptions because of concerns regarding "free-ridership," particularly in the financial and basic telecommunications industries.[24] Free-riders enjoy beneficial terms and conditions of trade in foreign markets, but do not accord similar benefits to individuals and foreign firms operating in their own markets. Most of the MFN exemptions scheduled by South American countries, however, accord preferential treatment to selected trading partners in the transportation and audiovisual service industries (table 1-3). A detailed presentation of MFN exemptions scheduled by the subject countries may be found in appendix F. Other annexes and ministerial

[21] Negotiations on financial services, basic telecommunication services, and maritime transport services are exceptions to this rule. Because financial services and telecommunications affect so many sectors of the economy, countries sought actual liberalization of these service markets in this round of negotiations.

[22] See USTR, *Final Texts of the GATT Uruguay Round Agreements*, p. 305.

[23] MFN exemptions list measures that are accorded preferentially to selected countries in all or some service industries. For example, a number of South American countries' MFN exemptions provide preferences to neighboring countries with respect to transportation services.

[24] Bernard Hoekman, *Tentative First Steps: An Assessment of the Uruguay Round Agreement on Services*, paper presented at The Uruguay Round and the Developing Economies Conference of the World Bank, Washington, DC, Jan. 26-27, 1995, p. 6.

decisions define the scope of certain industries for the purposes of further negotiations, establish the modalities of ongoing and future negotiations, establish future work programs, and set timetables for concluding negotiations rolled over from the Uruguay Round.[25]

Table 1-3
Highlights of MFN exemptions, by country

	Argentina	Bolivia	Brazil	Chile	Colombia	Paraguay	Peru	Uruguay	Venezuela
All services				X			X	X	
Audiovisual services		X	X	X	X		X		X
Distribution services									X
Land transportation services		X	X	X	X		X	X	
Professional services									X
Telecommuni-cation services					X				

Source: Compiled by the staff of the U.S. International Trade Commission.

Methodological Approach

Since little information on the GATS is published, USITC staff were required to collect information through primary sources. The Commission conducted a public hearing on July 18, 1996,[26] and staff conducted extensive in-person and telephone interviews with, and made telefax inquiries of, domestic and foreign service providers, principal service industry associations, and U.S. and foreign regulatory authorities (appendix H).

[25] Negotiations on financial services, basic telecommunication services, and maritime transport services were not concluded during the Uruguay Round, but provisions were made for them to continue. Negotiations on financial services concluded in June 1995. With respect to these services, the United States registered a broad MFN exemption that preserves the right to differentiate among foreign service providers in terms of regulatory treatment. Acting on a reciprocal basis, U.S. regulations will specify countries whose firms may establish a presence in the U.S. market, expand current operations geographically, or provide new services. Negotiations regarding basic telecommunication services, which were scheduled to conclude in April 1996, were extended further until February 1997, after the United States and other WTO members indicated dissatisfaction with the commitments offered by significant trading partners. Maritime transport services negotiations, which were scheduled to conclude by June 1996, were postponed until 2000.

[26] See appendix G for the calendar of witnesses.

Each industry discussion begins by defining the scope of the services covered, and identifying the principal channels through which service providers deliver services to foreign consumers.[27] To identify these channels, staff reviewed the best available statistical estimates of international service transactions, published by the Bureau of Economic Analysis of the U.S. Department of Commerce.[28] Staff include a brief presentation about the nature and extent of trade in the subject service industries in each discussion.

Thereafter, each discussion turns to an examination of the individual country schedules. An overview summarizes pertinent industry-specific commitments, cross-industry commitments, and MFN exemptions. The overview also references a table that summarizes the industry-specific commitments listed by each country in its national schedule. Detailed discussions of the individual country schedules follow. These discussions focus on the net effect of industry-specific and cross-industry commitments.[29] Each discussion concludes with a summary that identifies the principal benefits conferred, and limitations imposed, on U.S. service exporters by the subject trading partners. The summary is qualitative, rather than quantitative in nature, drawing on staff analysis and input provided by U.S. industry representatives. In some cases, anecdotal information gathered from industry interviews has revealed impediments to trade that are not apparent from an examination of the schedules. In other cases, industry representatives have indicated that the trade environment is more open than some national schedules suggest.

In addition to the qualitative analysis of commitments discussed above, an overview of services trade data appears in chapter 2, and a quantitative summary of the commitments is found in chapter 13. Data for the quantitative summary are derived from the schedules of commitments.[30]

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[27] With three exceptions, service industries identified in the request letter are discussed and analyzed separately. The nature of the distribution industry and the commitments regarding distribution services favored broad treatment of the industry, rather than discrete discussions of retailing, wholesaling, and franchising services. Similarly, the nature of commitments regarding architectural, engineering, and construction services favored simultaneous treatment of these services. Also, the nature of commitments regarding land transportation services (i.e., rail and trucking) favored broad treatment of the industry. Communication services and professional services, as defined in the request letter, are separated into their component industries for the purpose of analysis.

[28] Among the member countries of the Organization for Economic Co-operation and Development (OECD), only the United States compiles data on sales of services through foreign affiliates. As discussed in chapter 2, this channel of delivery is a principal component of trade in services. See OECD, Statistics Directorate, *Services: Statistics on International Transactions*, 1996, p. 8.

[29] Cross-industry commitments apply to all industries in a signatory's schedule and must be referenced when discussing certain industry-specific commitments. It is important to note that cross-industry commitments do not apply to industries for which no industry-specific commitments were scheduled or where unbound limitations are specified. Repeated references to cross-industry commitments may result in some redundancy across chapters, but improve the discussion in terms of clarity and comprehensiveness.

[30] For a complete discussion of the methodology used in chapter 13, see the annex to that chapter.

Obstacles Inherent in Examining the GATS

As noted, the GATS breaks new ground in terms of its coverage and comprehensiveness. As a consequence of the agreement's broad coverage and recent derivation, an examination of this nature encounters significant obstacles. The principal obstacle has been the sheer complexity of the agreement, which is largely a function of the complexity of the industries covered under the agreement, and the often technical nature of government regulation pertaining to certain service industries (e.g., telecommunications). The difficulty of this task has been compounded further by imprecise language found in the schedules, which provides for rapid technological and regulatory change and reflects signatories' desire for some latitude in implementing scheduled commitments. These factors combine to make precise interpretation of certain commitments very difficult.

In addition, identifying the difference between *de facto* and *de jure*[31] restrictions emerged as another obstacle in analyzing the GATS. In some cases, trading partners have listed restrictions based on obsolete laws that may not be enforced in practice. In this instance, a country may appear to be more restrictive than it actually is. Staff attempted to identify such cases through interviews with industry representatives and government officials.

Organization of Study

Chapter 2 provides an overview of U.S. trade in services, both by industry and by trading partner. Chapters 3 through 12 examine specific service industries.[32] Finally, chapter 13 presents a summary of findings that provides an overall perspective on the accomplishments of the Uruguay Round with respect to services. This chapter employs simple quantitative techniques to summarize the extent of bindings undertaken by the subject countries. Recognizing that some readers may only be interested in reading such a summary, chapter 13 is presented in a manner that does not require familiarity with chapters 2 through 12 to understand the principal report findings.

[31] *De facto* restrictions are restrictions that are imposed in practice, whereas *de jure* restrictions are those that are recorded in national regulations, but may not be applied in practice.

[32] Since no commitments were offered by any of the subject countries on audiovisual or education services, these industries are not addressed in individual chapters.

CHAPTER 2
Overview of International Trade in Services

Introduction

This chapter provides some context for the industry-specific discussions that follow in chapters 3 through 12. The chapter illustrates the relationship between the "modes of supply" framework used in the General Agreement on Trade in Services (GATS), reviewed briefly in chapter 1, and the framework used by data collection agencies to report on U.S. trade in services.[1] Thereafter, the chapter describes U.S. trade in services, and compares the trading partners and industries examined in this USITC report.

Modes of Supply

Trade data pertaining to services are reported under two broad headings: cross-border transactions and sales through affiliates located in foreign markets. Cross-border service transactions appear explicitly in the current account of the balance of payments. By contrast, transactions by affiliates are not explicitly listed in the balance of payments. Instead, the income derived by the parent firm from sales by its foreign-based affiliates enters the balance of payments as investment income.[2] With respect to affiliate transactions, this report covers income from sales reported by only majority-owned affiliates.[3] Data regarding sales by affiliates in which U.S. persons hold only minority interests are not available on an industry-specific basis.

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[1] This presentation is based substantively on official trade statistics prepared by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA). The methodological difficulties inherent in collecting information on cross-border and affiliate trade in services are reflected in this presentation. Namely, trade data in the detail required for this report are available only through 1993 for affiliate transactions, and only through 1994 for cross-border transactions. In addition, the availability and comparability of information on certain industries vary according to the mode of delivery and year, reflecting the reporting obligations of service providers, the suppression of confidential data, and improvements in BEA's estimation and reporting methodologies.

[2] The balance of payments records income from both majority-owned affiliates and non-majority-owned affiliates.

[3] Majority-owned foreign affiliates of U.S. firms are defined as foreign affiliates for which the combined direct and indirect ownership interest of all U.S. parents exceeds 50 percent. Majority-owned U.S. affiliates of foreign firms are U.S.-based affiliates for which the combined direct and indirect ownership interest of all foreign parents exceeds 50 percent. For reporting purposes, the country in which the U.S.-based affiliate's "ultimate beneficial holder" resides receives credit for sales to U.S. persons. An ultimate beneficial holder of a U.S. affiliate is the entity, proceeding up the affiliate's ownership chain, that is not owned more than 50 percent by another entity.

The GATS identifies four narrower channels, or "modes," of supplying services to foreign consumers. Figure 2-1 shows the relationship of these four modes of supply to the balance of payments entries for cross-border and affiliate trade. As noted earlier, the modes of supply listed in the GATS comprise cross-border supply, consumption abroad, commercial presence, and presence of natural persons.

Cross-border trade encompasses three of the four GATS modes of supply: cross-border supply, consumption abroad, and the presence of natural persons. Services provided to foreign consumers via cross-border supply are reported as service exports in the U.S. balance of payments. For example, when U.S. firms mail, electronically transmit, or otherwise transport services across a national border, the payment received is recorded as a cross-border export. So, too, are transactions completed through consumption abroad, wherein services like tourism or education are purchased outside the consumer's home country. In other words, U.S. exports are recorded when foreign tourists or students enter the United States and spend money. In addition, sales made by U.S. persons who have entered a foreign market temporarily are counted as cross-border exports. In GATS terminology, such sales are transacted through the presence of natural persons. Such sales take place, for instance, when a U.S. attorney briefly travels abroad to provide legal services to a foreign-based client, and then returns to the United States.

Sales through affiliates are equated with the fourth GATS mode of supply, commercial presence. A commercial presence is established when, for example, an advertising agency establishes a foreign-based affiliate to sell its services to other firms located in the foreign market. Sales receipts from majority-owned affiliates are captured by data collection agencies and the income returned to the U.S.-based advertising agency as a result of its foreign affiliate's sales enters the U.S. balance of payments as investment income.

Cross-Border Trade

U.S. cross-border exports of services consistently have exceeded imports, creating a large surplus on the services trade account (figure 2-2).[4] The surplus on cross-border trade in services increased from $3.2 billion in 1986 to $40.1 billion in 1994. As a result, trade in services has helped to reduce the current account deficit of the United States (figure 2-3).[5] Travel and tourism, transportation, and passenger fares (predominantly air fares), taken together, account for 69 percent of service exports and 77 percent of services imports (figure 2-4).

[4] Trade figures referenced in this discussion exclude public sector and intra-corporate transactions (i.e., sales made by a parent firm to an affiliate, or vice versa). The single exception is the data presented in figure 2-3, where an accurate comparison of the services trade balance to the merchandise trade balance required the inclusion of public sector and intra-corporate trade.

[5] The current account is one component of the balance of payments. The current account reflects cross-border trade in merchandise and services, international flows of investment income, and unilateral transfers (e.g., U.S. Government grants).

Figure 2-1
Modes of supply for international delivery of services

Services trade

Cross-border trade
Reported as exports and imports in the balance of payments

Cross-border supply: The service crosses the border to the consumer, while the supplier remains in its home country. For example, architectural services may be provided in the form of design drawings sent via mail to a consumer in a foreign country.

Consumption abroad: The consumer crosses the border to consume the service. A tourist visiting a foreign country or a student studying in a foreign university are examples of consumption abroad.

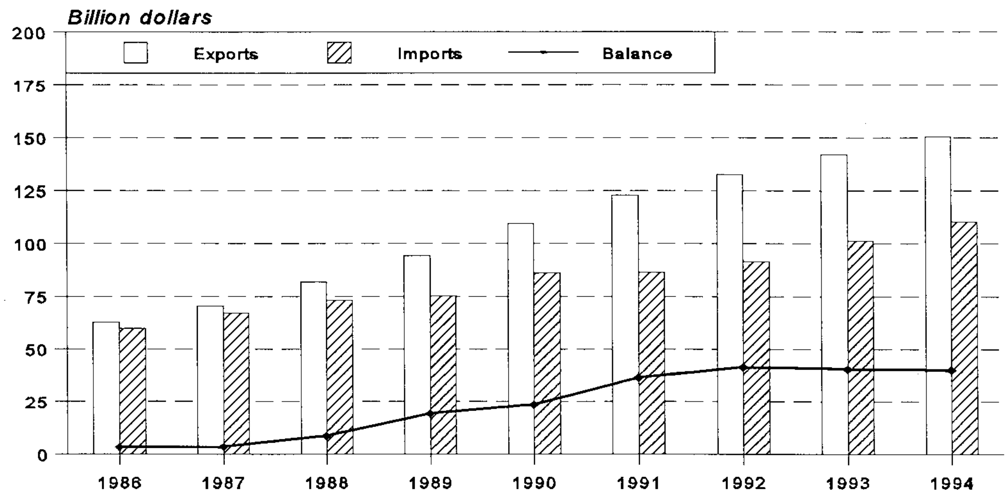
Presence of natural persons: The service supplier crosses the border temporarily to provide a service through the presence of a "natural person." For example, an accountant might travel abroad to provide services to a client.

Sales through affiliates
Reported as investment income in the balance of payments

Commercial presence: The service supplier establishes a "commercial presence" in a foreign market, through which it provides services to foreign consumers. For example, an advertising firm might establish a commercial office overseas to better provide services to foreign customers.

Source: Compiled by the staff of the U.S. International Trade Commission.

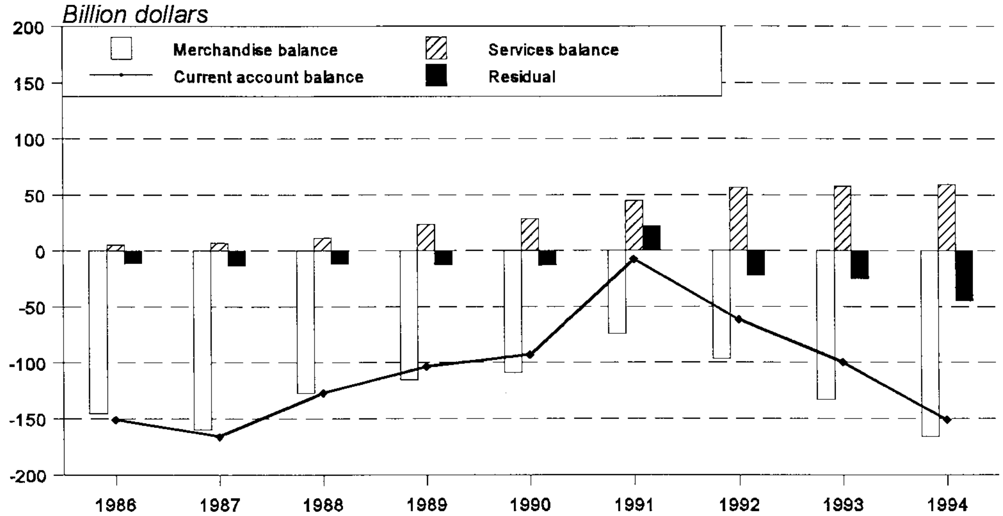
Figure 2-2
Cross-border service transactions: U.S. exports, imports, and trade balance, 1986-94[1]



[1] Data on cross-border trade exclude public sector and intra-corporate transactions.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

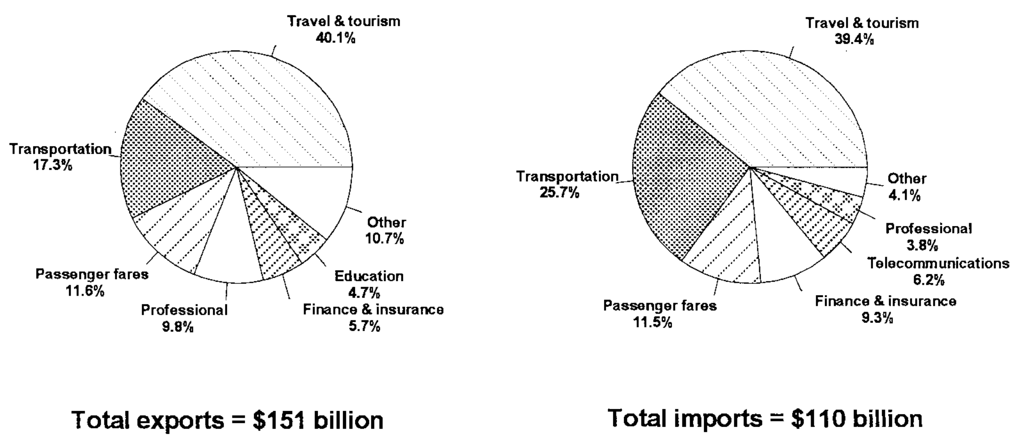
Figure 2-3
U.S. merchandise, service, and current account balances, 1986-94[1]



[1] The balance on trade in services includes public sector and intracorporate trade. The residual reflects the sum of net unilateral transfers and net investment income. The current account balance reflects the sum of total net merchandise trade, net services trade, net unilateral transfers, and net investment income.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Figure 2-4
U.S. cross-border service exports and imports, by industry, 1994



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Cross-border service exports grew by an average annual rate of 12 percent during 1986-94, increasing from $63 billion in 1986 to $151 billion in 1994 (figure 2-2). Increasing receipts from tourism and passenger fares generally have led growth in cross-border service exports in terms of value, reflecting an overall rise in the number of tourists visiting the United States.[6] The professional service industries also recorded strong export growth, increasing by an average annual rate of 16 percent between 1986 and 1994.

Cross-border service imports expanded less quickly than exports. During 1986-94, U.S. cross-border service imports grew by an average annual rate of 8 percent, increasing from $60 billion in 1986 to $110 billion in 1994 (figure 2-2). Payments for royalties and license fees and payments for financial services each grew by 18 percent per annum, leading import growth during 1986-94. Imports of transportation services also increased, due in part to growth in payments to foreign shippers as an expanding U.S. economy drove up merchandise import volumes during 1992-94. Among this report's subject industries, imports of professional services grew most, principally because of rapidly increasing imports of advertising and legal services.

Sales by Majority-Owned Affiliates

Many business, professional, and technical services are traded through affiliates, since these types of services generally require continuous contact between service providers and customers. In 1993, 45 percent of total U.S. service exports were accounted for by foreign affiliates of U.S. firms, and 55 percent of total U.S. service imports were accounted for by U.S.-based affiliates of foreign firms.[7] The U.S. balance on affiliate transactions registered a surplus during 1987-93, averaging almost $11 billion each year. However, this surplus declined to $3 billion in 1993, reflecting the effects of slower economic growth abroad on the sales revenues of foreign-based affiliates of U.S. companies (figure 2-5).[8]

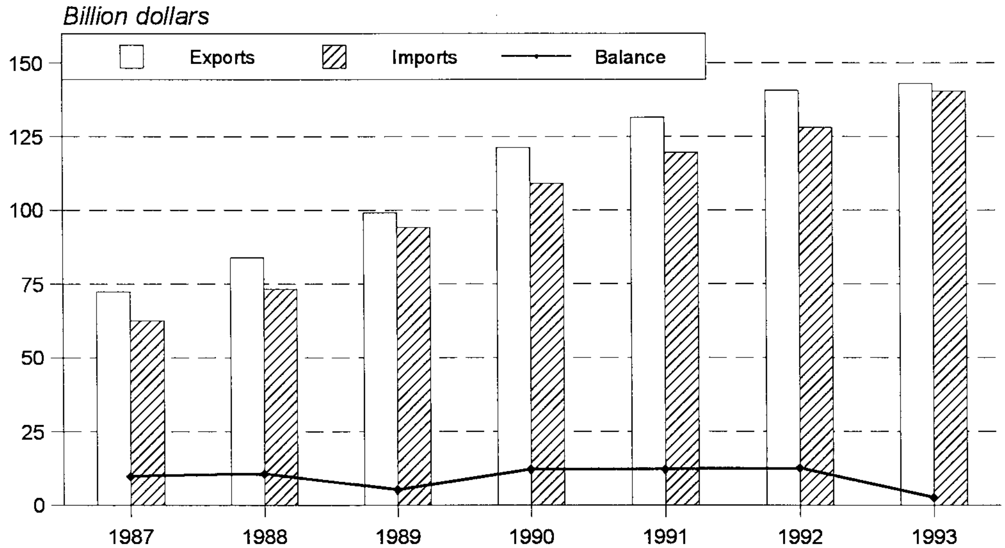
During 1987-93, sales by U.S.-owned affiliates in foreign markets (exports) grew by an average annual rate of 12 percent, from $72 billion in 1987 to nearly $143 billion in 1993. Insurance firms, distribution service providers, securities firms, and certain professional service firms, such as computer and data processing firms, accounted for large shares of sales through U.S.-owned affiliates (figure 2-6).

[6] This trend slowed somewhat in 1993 as recessions in foreign economies discouraged tourism in the United States.

[7] Trade figures referenced in this discussion exclude transactions between a foreign affiliate and its U.S. parent company, but include transactions among different affiliates of the parent. Data that exclude all intra-corporate trade are not publicly available.

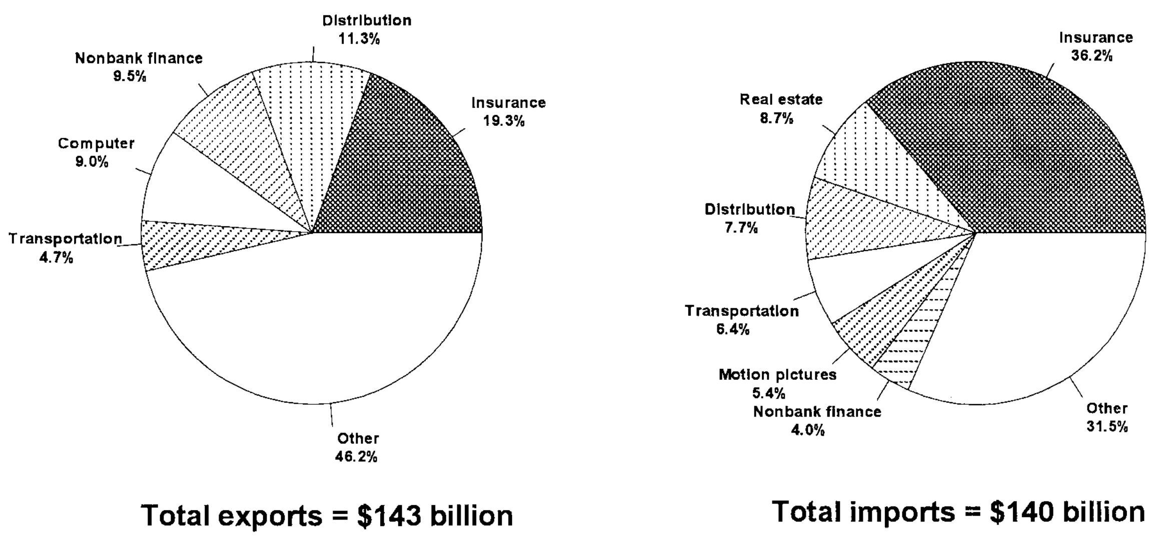
[8] Comparable data for U.S. trade in services through affiliates are available only for the time period 1987-93.

Figure 2-5
Affiliate transactions: U.S. exports, imports, and trade balance, 1987-93



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1992, Sept. 1994, and Sept. 1995.

Figure 2-6
Affiliate transactions: U.S. exports and imports, by industry, 1993



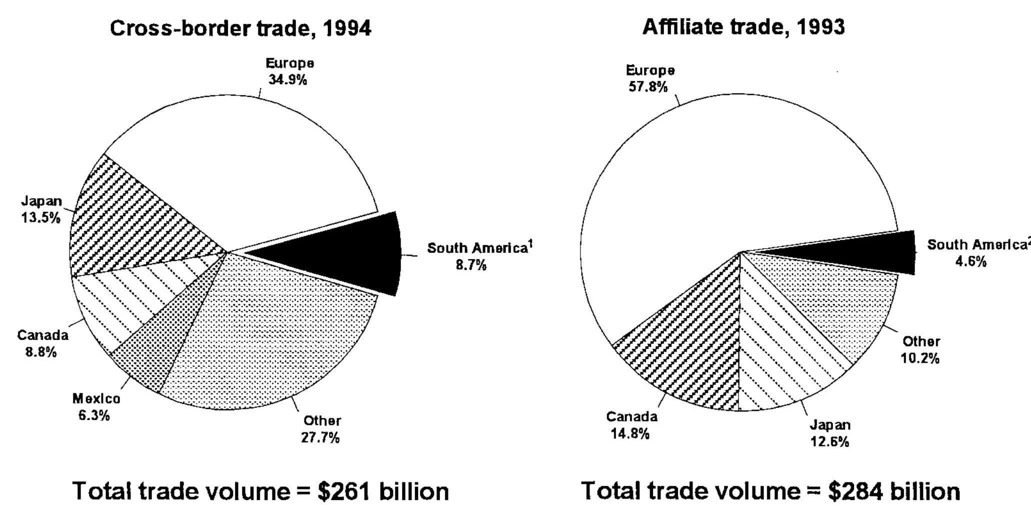
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Imports through affiliates, or sales to U.S. nationals by U.S.-based affiliates of foreign firms, expanded more rapidly than exports, growing by an average annual rate of 14 percent during 1987-93, from $63 billion in 1987 to $140 billion in 1993. Affiliates in the insurance industry represented by far the largest source of imports (36 percent), reflecting the strong presence of foreign-owned insurance companies in the U.S. market. Real estate firms accounted for the next largest share of sales, 9 percent, followed closely by distribution service affiliates, with 8 percent of total sales.

U.S. Trade in Services with South American Countries

Services trade with South America represents a small portion of the total volume of U.S. trade in services.[9] In 1994, the volume of cross-border services trade with South America amounted to less than 9 percent of total U.S. cross-border services trade (figure 2-7). By comparison, cross-border services trade with Europe and Japan accounted for 35 percent and 14 percent of total cross-border services trade, respectively. South American countries represent an even smaller portion of affiliate trade in services. In 1993, the volume of affiliate trade with the entire region of South and Central America, including Mexico and the Caribbean,[10] accounted for only 5 percent of total U.S. affiliate trade, as compared with Europe and Canada, which accounted for 58 percent and 15 percent, respectively.

Figure 2-7
U.S. services trade volume, by region



[1] Includes Central America, but excludes Mexico.
[2] Includes Central America, Mexico, and the Caribbean region.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

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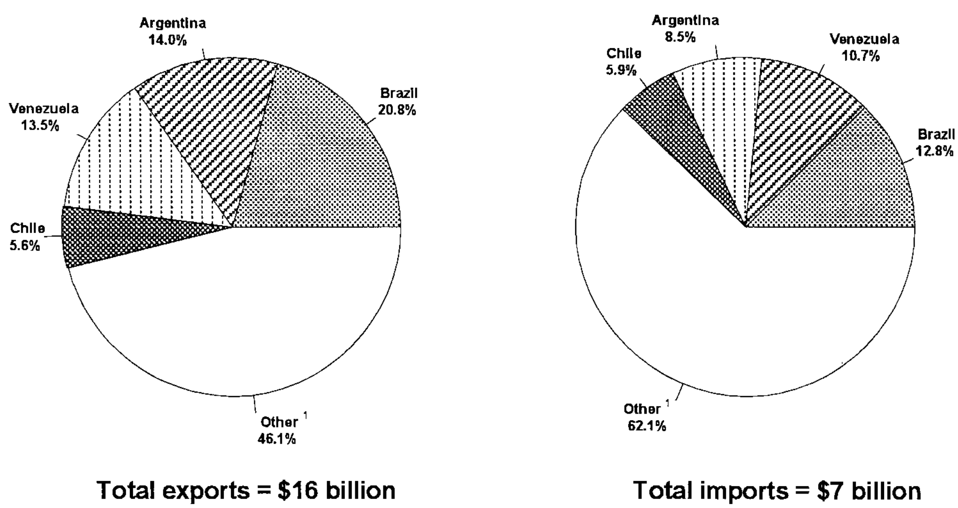
[9] The volume of trade is the sum of U.S. exports and imports of services.
[10] Data on affiliate transactions in services are available only on a highly aggregated level.

Cross-Border Services Trade with South America

Whereas South America accounts for a relatively small portion of total U.S. cross-border services trade, the region nevertheless contributes significantly to the U.S. surplus in services trade. In 1994, South and Central America accounted for 11 percent of U.S. cross-border services exports, or $16 billion. By contrast, U.S. imports from the region amounted to only $7 billion, which resulted in a rather substantial U.S. surplus of $9 billion in 1994. Among South American countries, Brazil, Argentina, and Venezuela account for the majority of trade with the United States (figure 2-8). In addition, most of the U.S. services trade surplus recorded with South America results from substantial surpluses with Brazil and Argentina, which measured $2.5 billion and $1.7 billion, respectively, in 1994.

Figure 2-8
U.S. cross-border services trade with South and Central America, by country, 1994



[1] Comprised of other South and Central American countries.

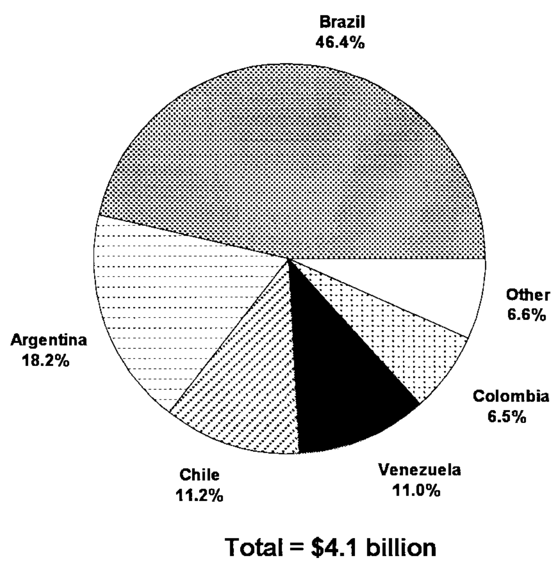
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Affiliate Transactions with South America

As noted, services trade through affiliates in South America represents a small portion of total U.S. affiliate trade in services. Despite this, U.S. trade with South America contributes substantially to the U.S. affiliate trade surplus. In 1993, the U.S. affiliate trade surplus with South and Central America, including Mexico and the Caribbean, amounted to $6.3 billion, which helped to offset the deficits recorded with larger trading partners such as Canada, Europe, and Japan.[11] The U.S. surplus reflects the relatively strong presence of U.S. transnational corporations in South America.

Within South America, the largest export markets for services trade by affiliates correspond to overall market size. Brazil represents by far the most significant export market, accounting for 46 percent of sales by foreign affiliates of U.S. companies operating in South and Central America, including Mexico and the Caribbean, in 1993 (figure 2-9). Argentina places second, with 18 percent of U.S. exports, followed by Chile and Venezuela, each with approximately 11 percent.

Figure 2-9
Affiliate transactions: U.S. exports to South America, by country, 1993



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *U.S. Direct Investment Abroad*, preliminary 1993 estimates, June1995; and USITC staff estimates.

[11] Data on the U.S. affiliate trade surplus is available only for the entire region of South and Central America, including the Mexico and the Caribbean, because affiliate import data are too small to be reported on a country-specific basis.

CHAPTER 3
Distribution Services[1]

Introduction

The distribution industry is comprised of four major services: commission agents' services, wholesale trade services, retail trade services, and franchising services.[2] Service providers generally are distinguished as follows: commission agents sell products that are supplied and typically owned by others to retailers, wholesalers, or other individuals; wholesalers take title to products supplied by others and subsequently resell them to retailers;[3] retailers sell goods and services mostly to individual consumers and households, although certain retailers also may sell to businesses; and franchisors sell certain rights and privileges, such as the right to use a retail business format or a trademark, in exchange for fees and royalties.

Nature of International Trade in Distribution Services

Trade in distribution services occurs both through sales by affiliates and cross-border sales. The two largest components of distribution services trade are wholesale and retail services, which are conducted predominantly through majority-owned, foreign-based affiliates. Consequently, among the most significant nontariff barriers faced by U.S. wholesalers and retailers abroad are barriers to the establishment of a commercial presence and limitations on their ability to staff these establishments with nationals from the home country. Franchising trade is recorded on a cross-border basis, as measured by the exchange of royalties and fees in return for the rights to use business formats or trademarks. International franchising typically is not affected by commercial presence barriers because foreign franchisees usually are citizens of the country in which they own the franchise, making the establishment locally owned and operated.

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[1] Among the individuals consulted by the United States International Trade Commission (USITC) staff in preparation of this report were those affiliated with the following organizations: Avon Products, Inc.; Home Depot; J.C. Penney; Liz Claiborne; Wal-Mart Stores; International Franchise Association; International Mass Retail Association; Arthur Andersen and Company; Brownstein, Zeidman and Lore; the Organization of American States; The American Chamber of Commerce, Sao Paulo, Brazil; the Venezuela-American Chamber of Commerce, Caracas, Venezuela; and the Bureau of Economic Analysis (BEA), U.S. Department of Commerce (USDOC).

[2] Commission agents' services are not captured in the U.S. Standard Industrial Classification (SIC) codes. Wholesale trade services are captured in SIC codes 50 and 51, retail trade services are captured in SIC codes 52 through 59, and franchising services are captured in SIC code 6794. Foreign schedules of commitments refer to international central product classification codes. A list of these codes can be found in appendix D.

[3] In addition to selling, wholesalers often provide services such as maintenance of inventories, extension of credit, and promotion of goods.

Commission agents' services may take place on both a cross-border and affiliate basis. However, since commission agents typically are individuals or small businesses whose sales are difficult to capture in national data surveys, trade data on commission agents' services are unavailable.

U.S. and foreign retail firms seeking to expand into South America often choose local partners with ties to developed distribution networks and local suppliers. An important goal in such overseas expansion is to introduce more affordable products demanded by South American consumers. U.S. retail leader Wal-Mart opened its first stores in Brazil in 1995 through a majority interest in a joint venture with a Brazilian retailer, Lojas Americanas. Wal-Mart established an affiliate in Argentina in the same year, and plans to enter Chile in 1996.[4] Another U.S. retailer, J.C. Penney, opened an affiliate recently in Chile, and additional U.S. firms are reportedly considering direct investment in Argentina or Chile.[5] The U.S. firms' affiliates would face competition from well-established affiliates of European firms, principally Carrefour of France and the Dutch-owned Makro. Meanwhile, local retailers are undergoing deep retrenchment, as consolidations and closures reportedly affected more than 40,000 retail businesses in Argentina alone in 1995.[6] In Brazil, the anticipation of price stability following the adoption of a new currency, reductions in certain taxes, and reforms in investment regulation contributed to an increase in foreign investment in that country's retail sector, evidenced by rapid expansion in the number of shopping malls and an increase in the size of supermarkets.[7] In Colombia and Venezuela, other foreign countries' retailers are establishing a market presence, although U.S. retail firms have not opened affiliates in these markets. Dutch hypermarket[8] chain Makro reportedly has planned rapid expansion in numerous locations, which is likely to increase price competition and cause locally owned firms to accelerate modernization of operations, where possible.[9]

Franchising operations in numerous South American markets are among the fastest growing business sectors in recent years. South American consumers' awareness of U.S. brands aids U.S. franchisors' expansion into Latin markets. Among the fastest growing franchise markets is Argentina, where U.S. franchisors accounted for more than 50 percent of foreign franchisors in 1995.[10] In Brazil, local franchising systems are highly developed. However, U.S. franchisors accounted for 85 percent of the foreign-owned franchises in 1993.[11] In Chile, franchising is in the early development stages; however, the high performance and efficiency of many Chilean firms have led foreign franchisors to grant regional licenses to Chilean franchisees. Some of

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[4] *1996 Annual Report*, Wal-Mart Stores, Inc., 1996.

[5] "After four years of bonanza, recession is beginning to bite," *Crossborder Monitor*, June 21, 1995, The Economist Intelligence Unit.

[6] Ibid.

[7] Industry representatives, interviews by USITC staff, Sao Paulo, Brazil, Aug. 8 and 9, 1996, and "Country Profile - Brazil," The Economist Intelligence Unit, Dec. 1, 1995.

[8] Hypermarkets include both food and beverage goods as sold in grocery stores, and merchandise such as household furnishings, apparel, appliances, and toys as sold in department or specialty stores.

[9] "Colombian Retail: Going Dutch," *Business Latin America*, Apr. 15, 1996, The Economist Intelligence Unit.

[10] "Franchising in Argentina," USDOC, International Trade Administration (ITA), Market Research Report, Jan. 16, 1996, National Trade Data Bank (NTDB).

[11] "Brazil - Franchising Services," USDOC, ITA, market research report, Apr. 19, 1995, NTDB.

the early development stages; however, the high performance and efficiency of many Chilean firms have led foreign franchisors to grant regional licenses to Chilean franchisees. Some of these licenses even extend into other South American countries. As of mid-1995, approximately 60 percent of the total franchising businesses in Chile were of U.S. origin.[12]

The market for franchising services in Venezuela is very different from that in the three countries discussed previously. While existing franchisors continue to expand selectively, high unemployment, inflation, recession, and exchange controls in Venezuela reportedly have discouraged potential foreign franchisors from entering the country. Venezuelans have partially filled the gap by creating local enterprises modeled after U.S. operations, which could inhibit U.S. firms' future market entry. U.S. franchisors currently operating in Venezuela include firms engaged in fast food, vehicle rentals, electronics, and aerial ambulances, among other businesses. There are believed to be few non-U.S. foreign franchise operations in Venezuela.[13]

Cross-Border Transactions

Franchising is the only distribution service that is tracked on a cross-border basis by measuring flows of royalties and license fees. During 1990-94, U.S. cross-border franchising exports grew by 17 percent per year, on average, amounting to $458 million in 1994 (figure 3-1). In that year, the largest regional markets for U.S. cross-border franchising exports were Europe (41 percent), Asian and Pacific countries (26 percent), and Canada (12 percent). South and Central America accounted for 6 percent of U.S. franchising exports (figure 3-2). The franchise fees received by U.S. franchisors from leading South American markets amounted to $5 million from Brazil, and $4 million each from Argentina, Chile, and Venezuela, each representing approximately 1 percent of total U.S. franchise exports. Data on U.S. imports of franchising services from South America are not available on a country-specific basis. However, U.S. imports of franchising services from all countries were only $10 million in 1994, which resulted in a trade surplus of $448 million.

Sales by Majority-Owned Affiliates

Wholesale trade services represent the largest component of distribution services as well as a significant portion of U.S. sales through foreign affiliates. Wholesale trade conducted by foreign affiliates of U.S. firms (U.S. exports) stood at $15.4 billion in 1993, approximately $470 million below the 1990 level. The similarity in wholesale trade export values at the beginning and end of the period masks 4 percent average annual export growth during 1990-92, followed by an 11-percent decline in 1993 (figure 3-3). Declining U.S. sales through foreign-based affiliates during 1993 were largely attributable to weak economic growth and higher inflation in European markets, which accounted for two-thirds of wholesale trade sales by foreign-based affiliates of U.S. firms (figure 3-4). Latin America, including the Caribbean, accounted for just 7 percent of U.S. wholesale trade service exports in 1993.[14]

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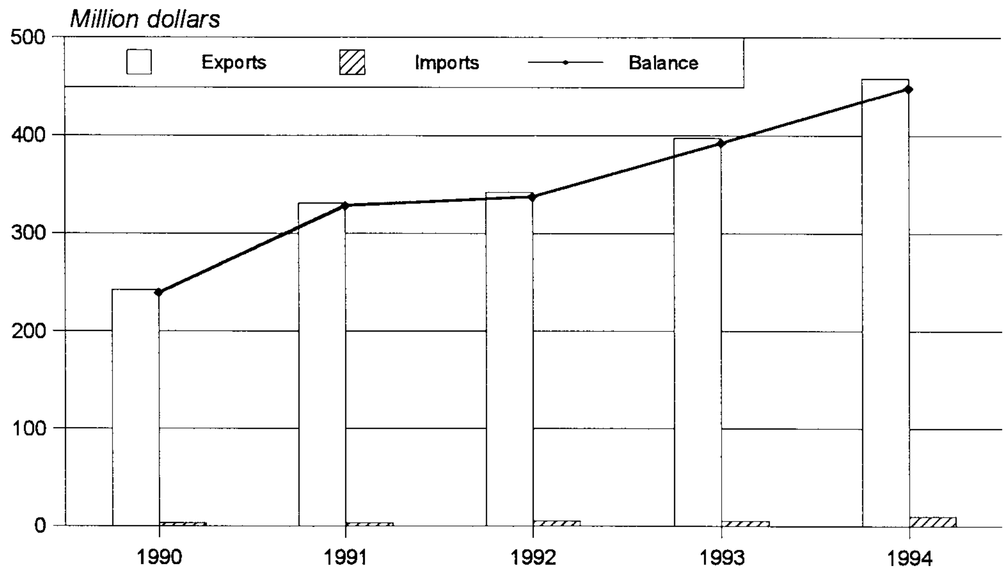
[12] "Chile - Franchising," USDOC, ITA, market research report, June 2, 1995, NTDB.

[13] "Venezuela - Franchising," USDOC, ITA, market research report, Oct. 12, 1995, NTDB.

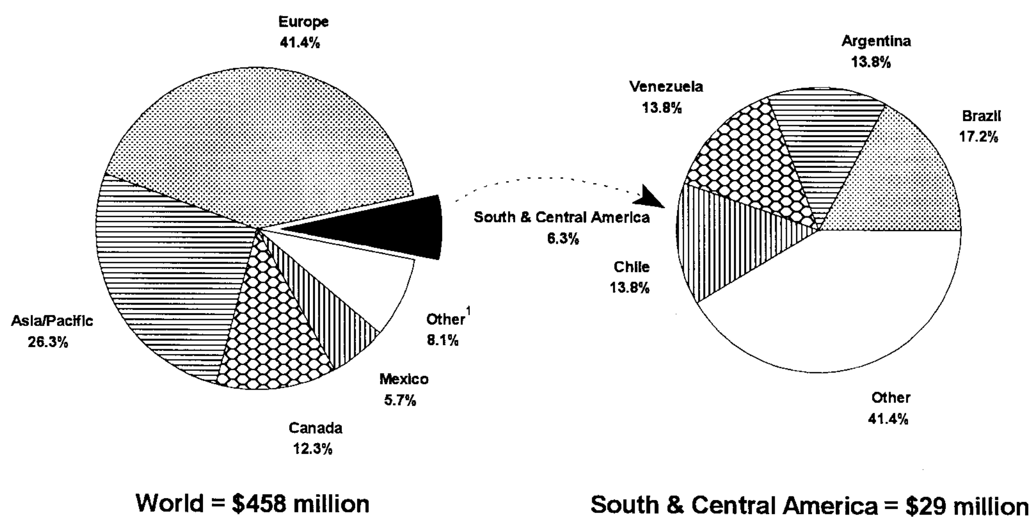
[14] Wholesale distribution services for consumer goods are not widely developed in certain South American markets. Industry representative, interview by USITC staff, Caracas, Venezuela, Aug. 12, 1996.

Figure 3-1
Cross-border trade in franchise fees: U.S. exports, imports, and trade balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1992, Sept. 1993, and Sept. 1995.

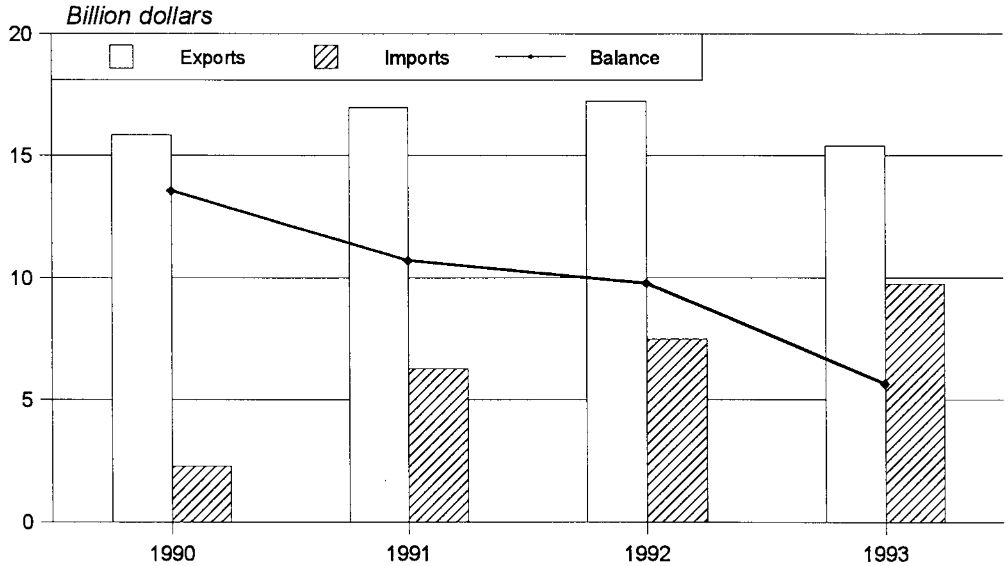
Figure 3-2
Franchise fees: U.S. cross-border exports, by principal markets, 1994



[1] Principally includes the Middle East, Africa, and the Caribbean.

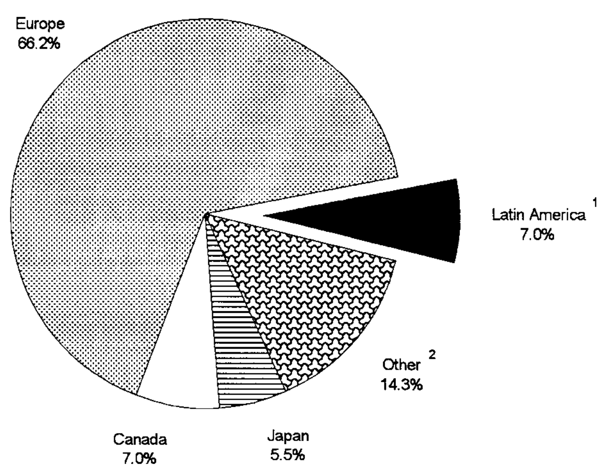
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Figure 3-3
Wholesale trade transactions by majority-owned affiliates: U.S. exports, imports, and trade balance, 1990-93



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Sept. 1992, Sept. 1994, and Sept. 1995.

Figure 3-4
Wholesale trade exports: Sales by majority-owned affiliates of U.S. firms, by principal markets, 1993



Total = $15.4 billion

[1] Includes Mexico and the Caribbean region.
[2] Includes Africa, the Middle East, and Asian and Pacific countries, except Japan.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business,* Sept. 1995.

In the same year, wholesale trade conducted by U.S.-based affiliates of foreign firms (U.S. imports) rose by 30.4 percent to $9.8 billion. U.S.-based, foreign-owned wholesalers increased in number as well as sales, benefitting from higher economic growth in the United States than in other regions. The resulting wholesale trade surplus of $5.6 billion in 1993 was smaller by $4.1 billion, or 42 percent, than the $9.8 billion surplus recorded in 1992.[15]

U.S. exports of retail trade services by foreign-based affiliates of U.S. firms during 1990-93 increased at an average annual rate of 12 percent (figure 3-5).[16] The slight decline in sales through foreign affiliates during 1993 is explained partially by lingering recessions in Europe, which held more than 40 percent of the assets of foreign-based retail trade affiliates of U.S. parent firms.[17] During 1990-93, U.S. imports of retail trade services appear to have grown steadily to reach $1.1 billion in 1993.[18] Accelerated growth in imports during 1991-93 increased the deficit in retail trade services, which stood at $370 million in 1993. The U.S. deficit in retail trade services reflects significant foreign direct investment in the large and highly-developed U.S. retail sector. In 1993 alone, direct investment in U.S. retail establishments by foreign parent firms increased by 8 percent, accompanied by increases in the number of U.S.-based, foreign-owned affiliates and employment by such affiliates.[19]

Examination of Commitments on Distribution Services

The schedules of commitments address a number of nontariff trade barriers that affect trade in distribution services (table 3-1). As noted previously, these barriers generally limit the ability of distribution service firms to establish a commercial presence in a foreign country and to staff their establishments with nationals from their home country. Barriers to the remaining two modes of supply, cross-border supply and consumption abroad, are negligible. Among the four distribution services, wholesalers and retailers rely most heavily on the freedom to establish commercial presence in the form of a foreign affiliate. Consequently, commercial presence barriers adversely affect these distribution services more significantly than franchising and commission agents' services, which typically are owned by local residents and therefore are not considered to be foreign establishments.

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[15] The average annual growth rate for wholesale imports cannot be calculated reliably because import data prior to 1992 did not include data for countries where such data would disclose the operations of individual companies.

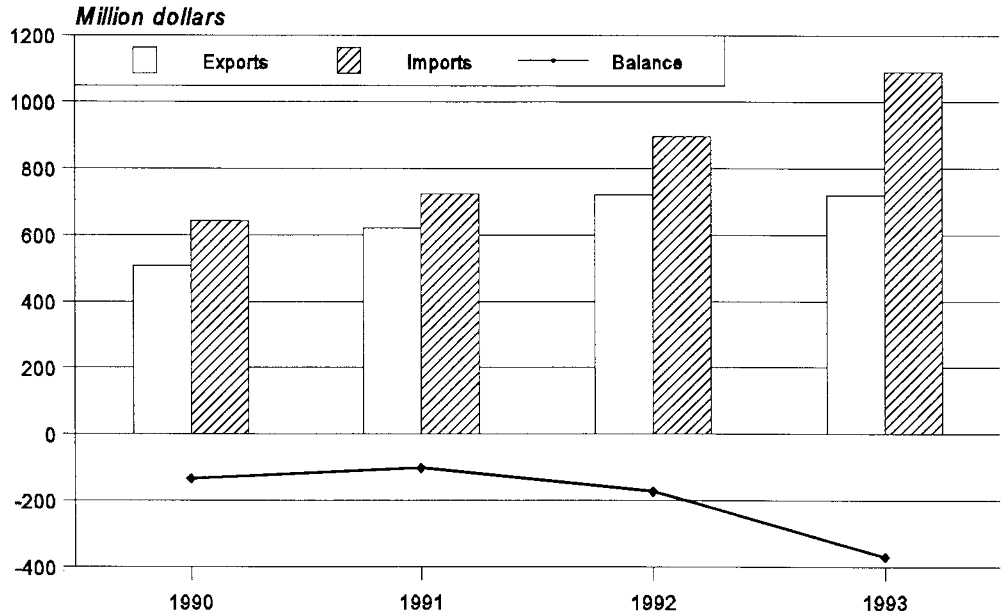
[16] Data on retail trade transactions by affiliates are not available on a country-specific basis.

[17] USDOC, BEA, *U.S. Direct Investment Abroad*, Preliminary 1993 estimates, Table III.B 6.

[18] Data on imports of retail services for 1990 are estimated by USITC staff because selected data from the BEA were suppressed in order to avoid disclosures relating to the operations of individual companies.

[19] USDOC, BEA, *Foreign Direct Investment in the United States*, Preliminary 1993 estimates, Table J-2.

Figure 3-5
Retail trade transactions by majority-owned affiliates: U.S. exports, imports, and trade balance, 1990-93



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1992, Sept. 1994, and Sept. 1995.

The primary commercial presence and natural person barriers to trade in distribution services include limitations on the purchase of real estate, restrictions on equity holdings, product or service exclusions due to state monopolies or national interest, nationality quotas, residence requirements, and limitations on the length of stay of foreign nationals. With the exception of real estate limitations, which appear only as cross-industry restrictions, trade barriers to distribution services may appear in the schedules as either cross-industry restrictions or industry-specific restrictions, depending upon how each country completed its schedule.[20]

[20] For detailed information on the cross-industry commitments, see appendix E. In addition, general exemptions to most-favored-nation treatment are listed in appendix F.

Table 3-1
Highlights of industry-specific restrictions on distribution services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Argentina	COMMISSION AGENTS' SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	COMMISSION AGENTS' SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	COMMISSION AGENTS' SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	COMMISSION AGENTS' SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	• Argentina did not offer commitments on Commission Agents' Services.
	WHOLESALE TRADE SERVICES, RETAIL TRADE SERVICES, AND FRANCHISING SERVICES: **Market Access:** None **National Treatment:** None	WHOLESALE TRADE SERVICES, RETAIL TRADE SERVICES, AND FRANCHISING SERVICES: **Market Access:** None **National Treatment:** None	WHOLESALE TRADE SERVICES, RETAIL TRADE SERVICES, AND FRANCHISING SERVICES: **Market Access:** None **National Treatment:** None	WHOLESALE TRADE SERVICES, RETAIL TRADE SERVICES, AND FRANCHISING SERVICES: **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 622 (wholesale trade services). • CPC 6111, 6113, 6121, 631, 632 (retail trade services). • CPC 8929 (franchising services).
Brazil	COMMISSION AGENTS' SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	COMMISSION AGENTS' SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	COMMISSION AGENTS' SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	COMMISSION AGENTS' SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	• Brazil did not offer commitments on Commission Agents' Services.
	WHOLESALE TRADE SERVICES AND RETAIL TRADE SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	WHOLESALE TRADE SERVICES AND RETAIL TRADE SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	WHOLESALE TRADE SERVICES AND RETAIL TRADE SERVICES: **Market Access:** None **National Treatment:** None	WHOLESALE TRADE SERVICES AND RETAIL TRADE SERVICES: **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 622 (wholesale trade services), excluding CPC 62271, wholesale trade services of solid, liquid, and gaseous fuels and related products, on which Brazil did not offer commitments in any mode of supply. • CPC 631, 632 (retail trade services).
	FRANCHISING SERVICES: **Market Access:** • Franchise contracts must be in conformity with the Industrial Property Code to be eligible for payment of royalties. **National Treatment:** Unbound	FRANCHISING SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	FRANCHISING SERVICES: **Market Access:** None **National Treatment:** None	FRANCHISING SERVICES: **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 8929 (franchising services).

Table 3-1
Highlights of industry-specific restrictions on distribution services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Peru	COMMISSION AGENTS' SERVICES AND FRANCHISING SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	COMMISSION AGENTS' SERVICES AND FRANCHISING SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	COMMISSION AGENTS' SERVICES AND FRANCHISING SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	COMMISSION AGENTS' SERVICES AND FRANCHISING SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	• Peru did not offer commitments on Commission Agents' Services or Franchising Services.
	WHOLESALE TRADE SERVICES AND RETAIL TRADE SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	WHOLESALE TRADE SERVICES AND RETAIL TRADE SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	WHOLESALE TRADE SERVICES AND RETAIL TRADE SERVICES: **Market Access:** None **National Treatment:** None	WHOLESALE TRADE SERVICES AND RETAIL TRADE SERVICES: **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 62211-62277, 62279 (wholesale trade services). • CPC 63101-63109 (retail trade services).

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.
[2] Bolivia, Chile, Colombia, Paraguay, Uruguay, and Venezuela did not offer commitments on distribution services.
[3] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.

Limitations on the activities of distribution service firms have a variety of effects. Restrictions on real estate and equity investment may limit the ability of foreign distribution service firms to retain control over their foreign affiliates. State monopolies on the distribution of selected products and exclusion from product or service areas that are considered to be of national interest may adversely affect distribution service firms by limiting product mix. Finally, restrictions on the temporary entry and stay of natural persons, such as nationality quotas, residence requirements for boards of directors, and limits on the length of time foreign persons are permitted to reside in the country, may restrict the ability of distribution firms to select and manage staff.

Of the countries examined in this report, Argentina, Brazil, and Peru offered partial commitments on distribution services.[21] The remaining six countries, Bolivia, Chile, Colombia, Paraguay, Uruguay, and Venezuela, did not offer commitments on distribution services. Those countries that did not address distribution services in their schedules have left the entire industry unbound, meaning that current market access and national treatment limitations may be in place currently or may be imposed in the future.

Argentina

In its commitments on distribution services, Argentina places no market access or national treatment limitations on commercial presence for the retail and wholesale trade services specified. With respect to delivery of wholesaling services through commercial presence, Argentina's schedule includes full commitments on wholesale trade of a vast range of food and nonfood items but makes no reference to the inclusion of wholesale trade services of motor vehicles, motorcycles, and parts and accessories of such goods. As a result, wholesale distribution in these unaddressed areas remains unbound. With respect to retailing, Argentina's full commitment on commercial presence does extend to retailing services of motor vehicles and motorcycles, and parts and accessories of such goods, as well as food and nonfood retailing services. With respect to franchising, Argentina scheduled full commitments for cross-border supply, consumption abroad, and commercial presence, although for all practical purposes, commitments on cross-border supply are the most relevant due to the nature of franchising trade. Argentina's cross-industry commitments suggest that there may be some limitations on the entry and stay of certain business persons, with restrictions on all other natural persons remaining unbound.[22] However, while Argentina's schedule identified categories of executives, senior managers, and specialists with "advanced knowledge," it did not specify permissible lengths of stay for such personnel. As a result, Argentina retains broad discretion regarding the entry of key individuals. Argentina's cross-industry commitments on the acquisition of real estate by foreign entities in border and coastal areas also may have some relevance to distribution service providers.

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[21] However, none of the nine countries scheduled commitments on commission agents' services, for any mode of supply, rendering these services possibly subject to more restrictive regulatory regimes in the future.

[22] Argentina, Brazil, and Peru maintain similar unbound limitations with regard to other types of visitors.

Brazil

Brazil scheduled market access and national treatment bindings for wholesale trade services delivered through commercial presence, except for wholesaling of solid, liquid, and gaseous fuels and related products. The country's commitments on retail services provided through commercial presence extend to food and nonfood retailing but do not include retailing of motor vehicles, motorcycles, or related parts and accessories. With respect to the cross-border supply of franchising services, Brazil's schedule stipulates that franchise contracts must conform with the Industrial Property Code to be eligible for royalty payments. National treatment limitations on franchising services supplied on a cross-border basis, however, were left unbound, meaning that current measures, if any, remain unstated and future measures may be imposed.

Brazil scheduled several noteworthy cross-industry limitations that may affect foreigners' provision of distribution services. Subsidies for research and development, which could be used to favor domestic firms, remain unbound for all modes of supply. Additionally, Brazilian law does not recognize a sole proprietorship or partnership as a juridical person, which means that U.S. firms can only establish commercial presence in the form of a subsidiary or a joint venture. Finally, Brazil's cross-industry commitments pertaining to the movement of natural persons preserves broad discretion with respect to permitting the temporary entry and stay of specialized technicians, highly qualified professionals, managers, and directors.

Although Brazil's schedule stipulates that foreign capital must be registered with the Central Bank of Brazil as a condition for the remittance and transfer of funds abroad, capital registration procedures have been simplified in recent years. Furthermore, an amendment to Brazil's constitution, ratified in 1995, eliminated the distinction between foreign and domestic capital in order to facilitate further foreign investment.[23]

Peru

Peru's schedule places no market access or national treatment limitations on commercial presence for most wholesale services, although commitments are not extended to specialized wholesaling services of wastes and scrap, and materials for recycling. With respect to retailing, Peru's commitments encompass food retailing services only, and are therefore less liberal than the commitments of Argentina and Brazil. Peru's schedule is also the most restrictive of the three countries with regard to franchising services, because Peru left unbound both market access and national treatment limitations for all modes of supply. Peru also scheduled cross-industry limitations pertaining to foreign investment and temporary entry of staff that affect the provision of distribution services through commercial presence and the presence of natural persons. Among these are provisions limiting foreign workers to specified proportions of total staff size and remuneration, subject to defined exceptions. However, Peru did specify permissible lengths of stay for individuals employed by foreign service providers, who may

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[23] Brazilian and U.S. Government officials, interviews by USITC staff, Brasilia, Brazil, Aug. 6 and 7, 1996. While the Brazilian Constitutional amendment is regarded as an important step, implementation requires passage of an "ordinary law" by the Brazilian Congress, which may adopt, modify or eliminate the Constitutional amendment previously ratified.

initially stay in Peru for 3 years, and extend their stays in 3-year increments thereafter. In this sense, Peru appears more liberal than Argentina and Brazil.

Industry Opinion

Distribution service firms generally approve of the results of the Uruguay Round. Reductions in tariff levels likely will increase sales volume and profitability for all distribution service providers,[24] and anticipated improvements in intellectual property protection may benefit retailers and franchisors that rely heavily on trademarks or brand names. Industry representatives also regard the inclusion of distribution services in the General Agreement on Trade in Services as a step forward by clarifying existing barriers and providing a forum for future liberalization.

Nevertheless, distribution service organizations believe that considerable work remains to be done.[25] In particular, industry representatives allege that nontransparent barriers persist, such as variable administrative fees, inconsistently applied customs clearance procedures, and administrative inexperience regulating distribution systems in newly privatized industries.[26] U.S. firms also report that they have experienced myriad ad hoc taxes and irregular procedures at national borders in recent years.[27]

According to industry representatives, the lack of adequate intellectual property protection remains a serious concern with respect to most countries examined in this report, although they are encouraged by recent efforts by countries such as Brazil to improve enforcement. The revenue loss as a result of infringement on intellectual property rights amounts to many millions of dollars for U.S. producers and foreign affiliates of U.S. retailers.[28] Accordingly, the USTR has added Argentina to its "priority watch list" and Brazil, Chile, Colombia, Paraguay, Peru, and Venezuela have been placed on the "watch list" under the Special 301 provision of the Trade Act of 1974.[29] Most South American countries are described as falling

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[24] In contrast to most services discussed in this report, distribution services have a very close relationship with trade in goods due to their primary functions of sourcing, transporting, and merchandising goods.

[25] Industry representative, telephone interview by USITC staff, June 5, 1996.

[26] Industry representatives, interviews by USITC staff, Sao Paulo, Brazil, and Caracas, Venezuela, Aug. 8-11, 1996.

[27] Industry representative, telephone interview by USITC staff, June 5, 1996.

[28] "Estimated Trade Losses Due to Piracy of U.S. Copyrighted Works in 97 Countries (1994)" (Washington, DC: International Intellectual Property Alliance, Dec. 1995).

[29] USTR, "Fact Sheet -- 'Special 301' on Intellectual Property Rights," May 2, 1996. The "Special 301" provision requires the USTR to determine whether the acts, policies, and practices of foreign countries deny adequate and effective protection of intellectual property rights or fair and equitable access for U.S. persons who rely on IPR protection.

considerably short of provisions under the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights.[30]

Investment barriers have been lowered significantly in recent years in many South American countries, such as in Argentina as a result of its bilateral investment treaty with the United States that took effect in October 1994. Problems remain in certain other countries, like Venezuela, where U.S. firms experienced delays in payments to suppliers of imported goods during 1995-96 due to the imposition of foreign exchange controls. The lingering issue is whether U.S. firms will have to pay suppliers with currency that was substantially devalued upon the removal of exchange controls.[31]

On balance, industry representatives operating in South American markets indicate relatively less concern over restrictions to market access and greater concern over anticompetitive practices, removal of restrictions on communication services, and on the need for improvements to roads, ports, and airports in order to expedite distribution of goods and services.

Summary

The three South American countries that made commitments on distribution services generally permit market access and national treatment for U.S. distribution service firms that establish a commercial presence. Limitations regarding the temporary entry and stay of foreign nationals could affect distribution service firms by placing some restraints on staffing and management. However, these limitations do not appear to be so severe as to preclude establishment or operations.

An examination of the schedules of commitments suggests that Peru is somewhat more restrictive and Argentina relatively less restrictive for distribution services. Industry representatives, however, indicate that, prior to the removal of foreign exchange controls, they perceived Venezuela to be the most restrictive subject country. Many industry sources note that, contrasted with earlier periods, the early- to mid-1990s mark a watershed of reduced barriers to distribution services in South America. They expect the future to be an era of unprecedented opportunity for expansion, especially in Chile, which some hold is the least restrictive market in the region.[32]

The commitments on distribution services scheduled by South American trading partners generally do not serve the purposes of providing benchmarks and improving transparency, primarily because two thirds of the subject countries did not make any commitments. Among

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[30] U.S. Senate, Committee on Foreign Relations, Committee on Finance, and U.S. House, Committee on International Relations, Committee on Ways and Means, report submitted by U.S. Department of State, "Country Reports on Economic Policy and Trade Practices," (Washington, DC: GPO, 1996), pp. 319-443.

[31] Industry representative, telephone interview by USITC staff, June 5, 1996, and industry representative, interview by USITC staff, Caracas, Venezuela, Aug. 13, 1996.

[32] Industry representatives, telephone interviews by USITC staff, June 5, 1996.

those countries that did offer commitments, difficulties may remain in the form of variable commercial regulations or unwritten business practices that could be used to impede the activities of foreign distribution service firms. Despite these findings, industry representatives indicate that the present regulatory climate in most countries is becoming increasingly conducive to the participation of U.S. distribution service firms.

CHAPTER 4
Enhanced Telecommunication Services[1]

Introduction

Enhanced telecommunication services include a wide range of services that add "value" to otherwise basic transmission of voice and data over telecommunication networks.[2] This study examines enhanced telecommunication services, defined by the General Agreement on Tariffs and Trade to include: electronic mail, voice mail, on-line information and data base retrieval, electronic data interchange (EDI), enhanced/value-added facsimile services (including store and forward, and store and retrieve), code and protocol conversion, on-line information and/or data processing (including transaction processing), and other enhanced telecommunication services.

Nature of International Trade in Enhanced Telecommunication Services

Enhanced telecommunication services are delivered to foreign consumers via telecommunication and computer networks that link globally dispersed communication centers, or nodes, with lines leased from multiple telecommunication carriers. Enhanced telecommunication services are provided both across borders and through foreign commercial presence. Enhanced service providers primarily serve multinational businesses. Users may connect to an enhanced telecommunication network to access services such as electronic mail or EDI through a number of methods. Typically, the customer will dial directly from a personal computer into the network using a local number provided by the enhanced telecommunication service provider. However, when a local connection is not possible, users may access the network through direct long-distance dialing, by using an Integrated Services Digital Network (ISDN)[3] connection through the local telephone network, or through arrangements with the local telephone company to connect to a public data network. The provision of such services is complex, and a single message may cross multiple national borders. Leading global suppliers of enhanced telecommunication services include INFONET, a carrier consortium; GE Information Services

[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following organizations: AT&T, Global One, MCI, Electronic Data Systems, and the Bureau of Economic Analysis (BEA), U.S. Department of Commerce (USDOC).

[2] Enhanced telecommunication services are captured under the U.S. Standard Industrial Classification (SIC) code 4822.

[3] ISDN provides high capacity digital transmission of information using an internationally accepted standard for voice, data, and signaling.

(U.S.); BT Tymnet (U.K.); SITA, an airline consortium; SprintNet (U.S.); IBM Information Network (U.S.); AT&T (U.S.); and CompuServe (U.S.).

As users of basic telecommunication services, providers of enhanced services may benefit from ongoing WTO negotiations pertaining to basic telecommunication services,[4] scheduled to conclude February 15, 1997.[5] Principal objectives of these talks are the liberalization of restrictions pertaining to foreign investment and service provision and establishment of pro-competitive regulatory environments. Currently, restrictions on foreign investment and provision of basic telecommunication services limit opportunities for enhanced telecommunication firms since many prospective clients favor companies that are authorized to provide both basic voice services and enhanced services.[6] Enhanced telecommunication firms also may benefit if extended negotiations reduce prices and improve other terms and conditions of access to network infrastructure. Leases that allow lessees to share circuits and resell excess capacity, for instance, significantly reduce the costs of constructing private telecommunication networks.[7]

U.S. Government surveys completed in 1986 and 1991 provide aggregate data pertaining to cross-border supply of enhanced telecommunication services. The data are not broken out by country. In 1986, the survey reported that the United States registered a trade surplus in enhanced telecommunication services of $31 million. This figure rose substantially over the next 5 years, to $60 million in 1991. In both years, trade in this sector represented less than 1 percent of overall international service trade flows.[8] While the U.S. surplus in enhanced telecommunication services increased markedly during this 5-year period, imports grew faster, rising by nearly 900 percent (figure 4-1). Data pertaining to foreign affiliate sales are not available.

Consequently, it is not known with certainty whether cross-border trade or sales by affiliates is larger. With respect to South America, it is estimated that the market for enhanced telecommunication services increased by more than 10 percent in 1993.[9] Brazil represents the largest South American market, with sales revenues expected to have reached $280 million in 1995.[10]

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[4] Basic telecommunication services entail the straightforward transmission of voice and data without change in form or content.

[5] U.S. Department of State Telegram, "WTO Basic Telecom Negotiations: Extension Until 1997," message reference No. 3124, prepared by U.S. Mission, Geneva, May 1996.

[6] Industry representative, telephone interview by USITC staff, Feb. 28, 1995.

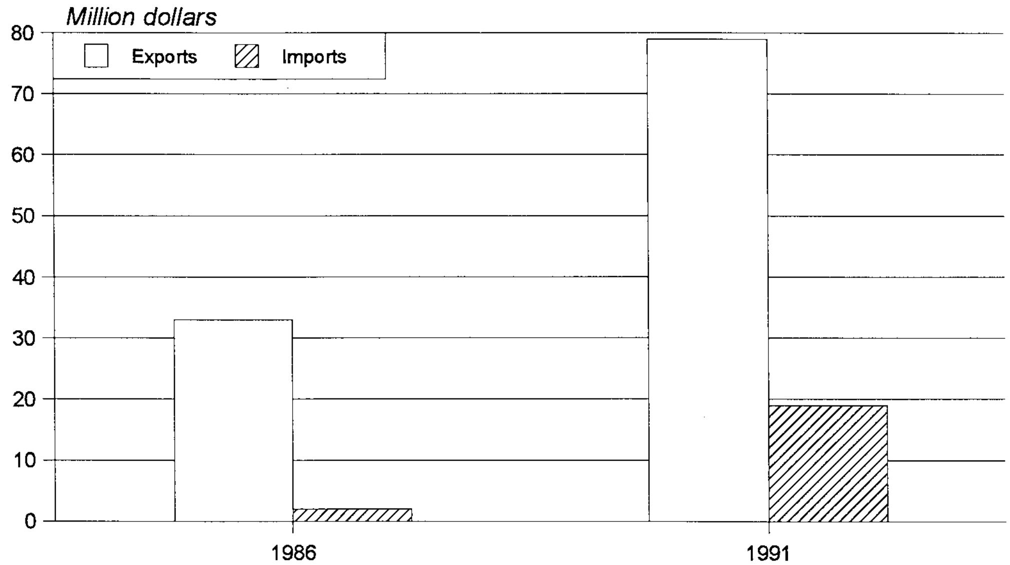
[7] Industry representative, interview by USITC staff, Washington, DC, Feb. 17, 1995.

[8] USDOC, BEA, *Survey of Current Business*, Oct. 1988, pp. 27-29, and Sept. 1992, p. 84.

[9] Dr. Pekka Tarjanne, Secretary-General, International Telecommunication Union, Keynote Address, Tenth Anniversary and Eleventh Annual Conference and Trade Exhibition, Caribbean Association of National Telecommunications Organizations (CANT), June 5, 1995.

[10] USDOC, "Brazil - Value Added Telecommunications Services," *Market Research Reports*, Mar. 2, 1996.

Figure 4-1
Cross-border trade in enhanced telecommunication services: U.S. exports and imports, 1986 and 1991



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Oct. 1988, and Sept. 1992

Examination of Commitments on Enhanced Telecommunication Services

As noted, enhanced telecommunication services are either supplied to foreign consumers across borders or through a foreign commercial presence. Some of the major impediments in foreign markets affecting these delivery channels include restrictive licensing requirements;[11] explicit prohibitions on the provision of certain services; limitations on foreign ownership and participation in joint ventures; discriminatory access to, and non cost-based pricing[12] of, leased

[11] To guard against potential bottlenecks posed by foreign public telecommunication network carriers, the GATS, through provisions outlined in the Telecommunications Annex, ensures a signatory member "access to and use of public telecommunication transport networks and services" when such services or facilities are required to supply a service included in its national schedule. Under the terms of the Annex, firms must be provided access on "reasonable and nondiscriminatory terms and conditions," but the annex does not impose disciplines in this area.

[12] Cost-based pricing involves adding a moderate rate of return to the actual cost of providing the service.

telecommunication lines; and underdeveloped or unreliable telecommunication infrastructure.[13] Limitations vary widely across markets and are abundant in most South American countries.

U.S. providers of enhanced telecommunication services encounter numerous restrictions in each of the South American markets assessed in this study.[14] This restrictiveness is reflected in the commitments, and lack of commitments, scheduled by the subject trading partners. Table 4-1 highlights the industry-specific commitments that are inconsistent with market access and national treatment for enhanced telecommunication services, by trading partner and mode of supply.

Cross-industry commitments will also affect suppliers of enhanced telecommunication services in the countries that made commitments on enhanced telecommunication services, namely Argentina, Chile, Colombia, and Peru. Cross-industry restrictions most often pertain to the establishment of a commercial presence and the movement of natural persons. Most subject trading partners have restricted foreign firms' market access by limiting investments in real estate and by imposing performance criteria for establishing commercial presence. Cross-industry restrictions regarding the movement of natural persons generally provide for the employment of technical, executive, or managerial personnel from the home country as well as intra-corporate transferees for a limited period of time. They also impose limits on the number of foreign nationals employed. Among the subject trading partners, only Colombia lists a most-favored-nation (MFN) exemption that applies directly to enhanced telecommunication services.

Five South American trading partners - Bolivia, Brazil, Paraguay, Uruguay, and Venezuela-elected to offer no commitments on enhanced telecommunication services, leaving potential restrictions on foreign service providers unbound. These nations may maintain or impose restrictions on foreign firms at their discretion. However, the absence of commitments does not necessarily mean that South American regulators deny foreign firms market access and national treatment. For instance, in Venezuela, value-added telecommunication services are generally unrestricted and even basic telecommunication services are being opened to foreign participation.[15] Similarly, it has recently been reported that Brazil allows foreign companies to provide enhanced telecommunication services as long as the firms use the state monopoly carrier to transmit those services.[16] In addition, a 1991 law states that private sector firms with similar communication needs may create and operate their own data transmission networks, telephone networks, and satellite communication systems. Brazil also passed a law in July 1996 opening cellular Band-B, satellite transmission, and enhanced telecommunication services to private

[13] Industry representatives, interviews by USITC staff, Washington, DC, Feb. 10 and 17, 1995, and telephone interview by USITC staff, Feb. 28, 1995.

[14] Although enhanced telecommunication service suppliers historically have used telecommunication trade agreements, international value-added network services agreements, and regional agreements, such as the North American Free-Trade Agreement, to gain access to important foreign markets, the United States does not have any such agreements with South American countries.

[15] Venezuela's state-owned telecommunication company is being managed by a consortium of companies, including GTE and AT&T, that holds 49 percent of the equity.

[16] USDOC, "Brazil, Value-Added Telecommunications Services," *Market Research Reports*, Mar. 2, 1996.

Table 4-1
Highlights of industry-specific restrictions on enhanced telecommunication services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Argentina	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ELECTRONIC DATA INTERCHANGE (EDI), ENHANCED FACSIMILE SERVICES, CODE AND PROTOCOL CONVERSION, ON-LINE INFORMATION AND/OR DATA PROCESSING, AND OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** None **National Treatment:** None	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ELECTRONIC DATA INTERCHANGE (EDI), ENHANCED FACSIMILE SERVICES, CODE AND PROTOCOL CONVERSION, ON-LINE INFORMATION AND/OR DATA PROCESSING, AND OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** None **National Treatment:** None	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ELECTRONIC DATA INTERCHANGE (EDI), ENHANCED FACSIMILE SERVICES, CODE AND PROTOCOL CONVERSION, ON-LINE INFORMATION AND/OR DATA PROCESSING, AND OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** None **National Treatment:** None	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ELECTRONIC DATA INTERCHANGE (EDI), ENHANCED FACSIMILE SERVICES, CODE AND PROTOCOL CONVERSION, ON-LINE INFORMATION AND/OR DATA PROCESSING, AND OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 7523 Electronic mail, voice mail, on-line information and database retrieval, electronic data interchange (edi), enhanced facsimile services, code and protocol conversion, on-line information and/or data processing, and other enhanced telecommunication services. • CPC 843[4] On-line information and/or data processing. • No CPC specified for Other Enhanced Telecommunication Services.
Chile	ELECTRONIC MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ENHANCED FACSIMILE SERVICES: **Market Access:** • None, except "subject to a correspondence convention with an international services concessionaire." **National Treatment:** None	ELECTRONIC MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ENHANCED FACSIMILE SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	ELECTRONIC MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ENHANCED FACSIMILE SERVICES: **Market Access:** • Permit required. "Contract with public service concessionaire. Complementary service authorization from the Sub-department of Telecommunications." **National Treatment:** None	ELECTRONIC MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ENHANCED FACSIMILE SERVICES: **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• No CPC specified • On-line information and database retrieval includes only on-line information retrieval services.
	VOICE MAIL, ELECTRONIC DATA INTERCHANGE (EDI), CODE AND PROTOCOL CONVERSION, ON-LINE INFORMATION AND/OR DATA PROCESSING, OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	VOICE MAIL, ELECTRONIC DATA INTERCHANGE (EDI), CODE AND PROTOCOL CONVERSION, ON-LINE INFORMATION AND/OR DATA PROCESSING, OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	VOICE MAIL, ELECTRONIC DATA INTERCHANGE (EDI), CODE AND PROTOCOL CONVERSION, ON-LINE INFORMATION AND/OR DATA PROCESSING, OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	VOICE MAIL, ELECTRONIC DATA INTERCHANGE (EDI), CODE AND PROTOCOL CONVERSION, ON-LINE INFORMATION AND/OR DATA PROCESSING, OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	• Chile did not offer commitments on voice mail, electronic data interchange (edi), code and protocol conversion, on-line information and/or data processing, and other enhanced telecommunication services.

Table 4-1
Highlights of industry-specific restrictions on enhanced telecommunication services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Colombia	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ELECTRONIC DATA INTERCHANGE (EDI), ENHANCED FACSIMILE SERVICES, CODE AND PROTOCOL CONVERSION, AND ON-LINE INFORMATION AND/OR DATA PROCESSING SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ELECTRONIC DATA INTERCHANGE (EDI), ENHANCED FACSIMILE SERVICES, CODE AND PROTOCOL CONVERSION, AND ON-LINE INFORMATION AND/OR DATA PROCESSING SERVICES: **Market Access:** None **National Treatment:** None	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ELECTRONIC DATA INTERCHANGE (EDI), ENHANCED FACSIMILE SERVICES, CODE AND PROTOCOL CONVERSION, AND ON-LINE INFORMATION AND/OR DATA PROCESSING SERVICES: **Market Access:** • The State will provide telecommunication services directly or through contracts, which may be granted exclusively to Colombian persons. The State reserves the power to control and supervise the supply of such services. **National Treatment:** Unbound	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ELECTRONIC DATA INTERCHANGE (EDI), ENHANCED FACSIMILE SERVICES, CODE AND PROTOCOL CONVERSION, AND ON-LINE INFORMATION AND/OR DATA PROCESSING SERVICES: **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• No CPC specified
	OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	• Colombia did not offer commitments on Other Enhanced Telecommunication services.

Table 4-1
Highlights of industry-specific restrictions on enhanced telecommunication services

Country[2]	Mode of Supply[1] Cross-Border Supply	 Consumption Abroad	 Commercial Presence	 Presence of Natural Persons	Comments[3]
Peru	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ENHANCED FACSIMILE SERVICES, ON-LINE INFORMATION AND/OR DATA PROCESSING, AND OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** • Private networks may provide enhanced telecommunication services as a complement to the public network if the public carrier cannot supply these services. Prior approval from the competent national authority is required. The supply of enhanced telecommunication services may be suspended if the operation interferes with the public telecommunication network. Foreign persons that supply these services must enroll in the Register of Suppliers of Value-Added Services. **National Treatment:** None	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ENHANCED FACSIMILE SERVICES, ON-LINE INFORMATION AND/OR DATA PROCESSING, AND OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ENHANCED FACSIMILE SERVICES, ON-LINE INFORMATION AND/OR DATA PROCESSING, AND OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** • Private networks may provide enhanced telecommunication services as a complement to the public network if the public carrier cannot supply these services. Prior approval from the competent national authority is required. The supply of enhanced telecommunication services may be suspended if the operation interferes with the public telecommunication network. Foreign persons that supply these services must enroll in the Register of Suppliers of Value-Added Services. **National Treatment:** None	ELECTRONIC MAIL, VOICE MAIL, ON-LINE INFORMATION AND DATABASE RETRIEVAL, ENHANCED FACSIMILE SERVICES, ON-LINE INFORMATION AND/OR DATA PROCESSING, AND OTHER ENHANCED TELECOMMUNICATION SERVICES: **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 75232[4] • Voice mail limited to voice messaging services. • On-line information and database retrieval limited to teletext, and storage and retrieval of data. • Enhanced facsimile services limited to facsimile, storage and retransmission. • On-line information and data processing limited to teleprocessing and data processing. • Other enhanced telecommunication services include remote control, tele-alarm, and advice services.

Table 4-1
Highlights of industry-specific restrictions on enhanced telecommunication services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Peru-Cont.	ELECTRONIC DATA INTERCHANGE (EDI), AND CODE AND PROTOCOL CONVERSION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	ELECTRONIC DATA INTERCHANGE (EDI), AND CODE AND PROTOCOL CONVERSION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	ELECTRONIC DATA INTERCHANGE (EDI), AND CODE AND PROTOCOL CONVERSION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	ELECTRONIC DATA INTERCHANGE (EDI), AND CODE AND PROTOCOL CONVERSION SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	• Peru did not offer commitments on electronic data interchange (edi), and code and protocol conversion services.

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.
[2] Bolivia, Brazil, Paraguay, Uruguay, and Venezuela did not offer commitments on enhanced telecommunication services.
[3] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.
[4] Commitments pertain to only part of the services captured by the referenced CPC code.

concession.[17] Each of the four subject countries that offered commitments on enhanced telecommunication is discussed separately in the following sections.

Argentina

Among the South American countries that scheduled commitments on enhanced telecommunication services, Argentina appears to have the least restrictive market. Argentina indicates that it places no restrictions on foreign provision of enhanced telecommunication services, whether provided on a cross-border basis or through an Argentine affiliate. Limitations on the presence of natural persons remain unbound, although Argentina may not impose restrictions on temporary entry and stay that nullify the benefits conferred on foreign firms by its industry-specific commitments.

Despite the full commitments scheduled by Argentina, foreign provision of enhanced telecommunication services in the Argentine market may be problematic. Non-Argentine firms report that service providers must use a network operated by Telintar, a state-sanctioned monopoly, to deliver enhanced telecommunication services to Argentine clients on a cross-border basis.[18] This requirement may place U.S. and other foreign firms at a competitive disadvantage to Argentine competitors because calls to Argentina are subject to a high accounting rate, which increases the price that foreign firms pay Telintar to terminate inbound international calls. For instance, AT&T reported that outbound calls to Argentina were billed at $2.22 per minute during peak periods as of December 1995, versus $1.91 in Chile, $2.07 in Colombia, and $2.18 in Peru.[19]

Chile

Chile's enhanced telecommunication market is open to competition. Chile encourages new technologies and value-added services, as well as foreign investment in telecommunications. Chile also allows consumers to choose their long-distance provider.[20] However, Chile's commitments pertain solely to electronic mail, on-line information and database retrieval, and enhanced/value-added facsimile services provided over private networks. Limitations on all other enhanced telecommunication services are unbound. The services addressed in the Chilean schedule, when supplied through cross-border trade or a commercial presence, are subject to a "correspondence convention" with a "concessionaire." In other words, because foreign providers of enhanced telecommunication services may operate private networks only, these firms must establish agreements with public network operators to communicate with entities not connected to the private network, whether inside or outside Chile. Chile made no industry-specific commitment with respect to the presence of natural persons, although cross-industry commitments allow senior personnel and specialists to stay for 2 years, and to extend

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[17] U.S. Department of State telegram, "Brazilian Senate Passes "Minimal" Telecom Law," message reference No. 03260, prepared by U.S. Embassy, Brasilia, July 19, 1996.

[18] Industry representative, interview by USITC staff, July 19, 1996.

[19] Federal Communications Commission, *Statistics of Communications Common Carriers,* Dec. 1995, pp. 254-257.

[20] USDOC, "Chile-Telecommunications Equipments," *Market Research Reports*, May 21, 1995.

their stay for up to 2 years thereafter. However, foreign personnel must establish a residence in Chile, and may not comprise more than 15 percent of the staff employed by any foreign service provider.

Chile's cross-industry commitments place stringent restrictions on the establishment of a commercial presence. Authorization to provide services through a commercial presence is dependent upon an assessment of the enterprise's expected effect on product sourcing, exports, technological development, competition in the sector, and consumer welfare. In addition, foreign investors may not transfer their capital abroad during the first 3 years of establishment.

Colombia

Colombia's schedule addresses virtually all enhanced telecommunication services (except "other telecommunication services"), yet it indicates that many restrictions are placed on foreign service providers. Colombia specified that limitations on cross-border supply of enhanced telecommunication services are unbound. With respect to commercial presence, Colombia indicates that the State will provide telecommunication services directly or through contracts with private sector providers. Colombia reserves the right to grant contracts to Colombian persons only. If U.S. firms are successful in obtaining a telecommunications concession, their ability to compete may be adversely affected as a result of an exemption to most-favored-nation (MFN) treatment listed by Colombia. This exemption, which will last "indefinitely," obligates Colombia to grant national treatment only to companies from the Andean group.[21] Furthermore, Colombia notes that it levies a tax on the remittance of profits but does not state the rate at which remittances are taxed.

Colombia's commitments on the presence of natural persons are unbound, although it may not impose restrictions on the temporary entry of managers, legal representatives, and technical experts that nullify the benefits conferred on foreign firms by its industry-specific commitments. However, the Colombian schedule indicates that, in companies with more than 10 employees, foreign staff may constitute no more than 10 percent of production workers and no more than 20 percent of administrative, managerial, and other non-production workers.

Despite Colombia's seemingly restrictive commitments on enhanced telecommunication services, the market reportedly has opened up in recent years. Private suppliers of value-added telecommunication services were allowed to enter the market in 1992 and the government reportedly plans to introduce competition in the domestic and international long distance service markets by 1998.[22] In addition, Unisys has received a 3½-year contract to supply voice mail, facsimile, and other enhanced telecommunication services to residential and business customers.[23]

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[21] The Andean group includes Bolivia, Colombia, Ecuador, Peru and Venezuela

[22] "Colombia: Government Hopes Infrastructure Projects Will Attract MNCs," *Crossborder Monitor*, July 26, 1995.

[23] USDOC, "Colombia - Telecommunications Equipment and Services," Market Research Reports, Oct. 19, 1995.

Peru

The telecommunication services industry in Peru is a virtual monopoly of Telefonica del Peru. However, the 1993 telecommunications law eliminates all barriers to foreign investment.[24] Peru's commitments on enhanced telecommunication services bear little resemblance to those scheduled by other countries. Peru's commitments predominantly pertain to narrowly defined electronic message and information service, such as voice messaging; storage and retrieval of data; facsimile, storage and retransmission of facsimiles; and data processing. In addition, Peru scheduled commitments on certain other narrowly defined services that are not found in the GATT Secretariat's Services Sectoral Classification List, such as tele-alarm and advice services. Peru did not schedule commitments on electronic data interchange, and code and protocol conversion. Restrictions on these services are unbound.

For the services appearing in its list, Peru scheduled partial commitments with respect to cross-border supply and commercial presence. The commitments restrict market access by confining foreign firms to the provision of services over private networks exclusively, and only in regions where the public telecommunication system cannot provide enhanced services. In addition, the supply of these services may be suspended if operation of the private network is thought to interfere with the public network. Foreign persons that supply enhanced telecommunication services must obtain authorization to construct a private network and must enroll in the Register of Suppliers of Value-Added Services.

Peru maintains unbound restrictions on the supply of enhanced telecommunication services through the presence of natural persons, but cross-industry commitments state that intra-corporate transferees are allowed to stay in Peru for an initial period of 3 years and may extend their stay by 3 years thereafter. However, such persons may not comprise more that 20 percent of the total staff of foreign enterprises and their collective pay must not exceed 30 percent of the total payroll.[25]

Industry Opinion

U.S. firms express general satisfaction with the markets in most of the subject countries and optimism about the prospects of providing enhanced telecommunication services. Industry representatives indicate that the market for enhanced telecommunication services in the subject countries is more open to foreign providers than the GATS schedules seem to suggest.[26] For example, industry representatives state that Chile offers one of the most open and competitive markets in the region, whereas its commitments in the GATS are very restrictive. U.S. firms

[24] USDOC, "Peru - Telecommunication Equipment," Market Research Reports, Mar. 22, 1995
[25] Exceptions to these percentages are granted in specific unlikely cases.
[26] Industry representative, interview by USITC staff, Washington, DC, July 9, 1996.

expect the demand for enhanced telecommunications services to expand so long as economic growth continues.

Recent trends in deregulation and privatization of telecommunication monopolies have made the region more attractive to U.S. investors. Enhanced telecommunication services in Argentina, Chile, and Venezuela are relatively open to competition and Brazil, Colombia, and Peru have initiated reforms to dismantle government monopolies. The industry remains a monopoly in Bolivia, Paraguay, and Uruguay, which are smaller and less strategic markets.[27]

Industry representatives also state that the penetration of telephone services in the region, ranging from 16.2 lines per 100 people in Uruguay to 2.6 lines in Bolivia,[28] is low and may constitute an obstacle to the growth of enhanced telecommunication services. But new wireless communication technologies including cellular and personal communication systems (PCS) are creating opportunities for U.S. service providers. Most industry representatives also express satisfaction with the transparency of the regulatory systems. However, such transparency may vary depending upon the service or the country. For example, in Brazil one major U.S. service provider faced a delay of at least 4 months before it could begin operating due to unforeseen difficulties complying with regulations.[29] Despite occasional difficulties U.S. service providers report that they generally receive the same treatment as local companies.[30]

Summary

Based on the national schedules, few of the subject trading partners appear to provide fully open markets for enhanced telecommunication services. Argentina, Chile, Colombia, and Peru are the only South American countries to address enhanced telecommunication services in their schedules. Of these four, only Argentina commits to full market access and national treatment for foreign providers of enhanced telecommunication services.

With respect to Argentina and, perhaps, Colombia, the national schedules have improved transparency and established effective benchmarks, which ultimately could benefit U.S. firms. However, the benefits conferred by commitments on enhanced telecommunication services are contingent upon the negotiation of a basic telecommunication agreement in the WTO. An agreement that liberalizes regulations pertaining to foreign investment and service provision and establishes pro-competitive market environments could ultimately reduce leased line fees and accounting rates and generally improve the terms and conditions of competition. The successful conclusion of these negotiations may be augmented by market forces that are bringing about liberalization in some of this report's subject countries. As noted, the current market environment in certain South American countries is much more open than may be inferred from the national schedules.

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[27] Industry representative, interview by USITC staff, Washington, DC, July 9 and 19, 1996.
[28] Kaitlin Quistrgard, "Dynamic telco duo," *Global Telephony*, June 1996, p. 42.
[29] Industry representative, interview by USITC staff, Sao Paulo, Brazil, Aug. 8, 1996.
[30] Industry representative, interview by USITC staff, Washington, DC, July 9, 1996.

CHAPTER 5
Courier Services[1]

Introduction

Courier services[2] are performed by numerous business operations engaged in the pickup and expedited delivery of parcels, packages, letters, and other articles destined for domestic or international locations. In the United States, courier services are provided by large integrated companies, such as Federal Express Corp. (FEC), United Parcel Service (UPS), DHL Worldwide Express (DHL), and by approximately 10,000 small independent messenger and delivery operations. The large companies specialize in providing overnight courier services to both domestic and international destinations, whereas the smaller companies generally provide same-day local delivery within the United States.[3] Since the GATS does not address air transportation services, this report focuses only on the land-based component of courier services, which primarily involves the delivery of packages within a country market once they have cleared the airport. The major U.S. courier service firms provide such land-based services either directly or through affiliates in a number of foreign markets.

Nature of International Trade in Courier Services

Official data on U.S. trade in courier services are not available. Industry representatives maintain, however, that the United States is a net exporter of such services.[4] These exported services are provided to customers primarily through foreign-based affiliates of FEC, UPS, DHL, and similar courier operations. In certain countries, however, these companies deliver packages through contractual agreements with foreign-owned trucking operations. For example,

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[1] Among the individuals consulted by the USITC staff in preparation of this report were those affiliated with the following organizations: Federal Express Corp.; United Parcel Service; DHL Worldwide Express; and Airborne Courier Conference of America.

[2] The U.S. SIC codes applicable to courier services are 4212, local trucking without storage (which includes freight weighing 100 pounds or more); and 4215, courier services, except air (which includes packages under 100 pounds).

[3] With respect to the large integrated companies, courier services include a number of activities related to various service sectors, such as customs brokerage, aviation, air cargo (including freight forwarding), telecommunications, ground transportation, postal services (delivery services), ground handling of aircraft and cargo, warehousing and distribution, and consulting and management services. For the small companies courier services are generally limited to in-hand transport of documents by a courier. *Prehearing Brief of Federal Express Corp.*, submitted to the USITC, investigation No. 332-367, July, 12, 1996, pp. 5-8.

[4] Industry representative, telephone interview by USITC staff, Jan. 27, 1995.

one major U.S. company delivers packages through affiliates in Argentina, Brazil, Chile, Uruguay, and Venezuela (these countries are the largest markets for courier services in South America), but also operates through contractual agreements with local service providers in Bolivia, Colombia, Paraguay, and Peru.[5] In addition to transporting packages from the United States to South American countries, U.S. couriers may also render point-to-point service within South American countries and transport packages from South America to the United States and other countries. Regardless of the type of service, government approval is required before service can be provided in a particular country.

U.S. firms' expansion to South America reflects increasing demand for expedited delivery services, resulting largely from the relative inefficiency of postal services in Argentina, Colombia, Peru, and Venezuela. In addition, the geographic proximity of these countries has served as further enticement for U.S. couriers to expand operations.[6]

DHL, which is the largest supplier of courier services to South America, entered that market in 1977. DHL currently ships approximately 2.5 million pieces of expedited parcels, packages, and similar products monthly to customers in South America.[7] About 35 percent of DHL's business originating in South America is shipped to the United States, approximately 25 percent remains within the region, and most of the remainder is shipped to Europe.[8] Given the reported deficiencies of South America's postal systems, DHL established a "remail"[9] center in Ecuador to serve as a continental supplier for its worldwide "remail" operation based in the Netherlands. Reportedly, Ecuador was selected because its postal system no longer operates as a monopoly.

In 1987, FEC entered the South American market by acquiring Island Courier (Cayman Islands) as a distribution point. Currently, FEC is operating from more than 40 locations in Latin America and the Caribbean.[10] UPS considers Brazil, Paraguay, Peru, Uruguay, and Venezuela to be lucrative markets for expanding operations.[11] In Venezuela, UPS currently operates through a contractual arrangement with Transvalcar, a well-established Venezuelan courier and transportation company.[12] As an indication of this company's interest in South America, UPS recently established weekend flights into Brazil and Venezuela, in addition to daily flights during the business week.[13]

Argentina has been identified as the South American country having the most significant barriers to U.S. trade of courier services.[14] U.S. couriers in that country reportedly encounter

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[5] Industry representative, telephone interview by USITC staff, May 1, 1996.

[6] "Clearing Hurdles In Latin America," *Distribution*, Sept. 1995, p. 43.

[7] Ibid., p. 46.

[8] Ibid.

[9] "Remail" refers to a situation where materials, such as catalogs or packages, are transported to the post office of another country for delivery by that country's postal system. Ibid.

[10] "Clearing Hurdles In Latin America," *Distribution*, Sept. 1995, p. 44.

[11] Industry representative, interview by USITC staff, Washington, DC, May 23, 1996.

[12] Industry representative, interview by USITC staff, Caracas, Venezuela, Aug. 13, 1996.

[13] 1996 Knight-Ridder/Tribune Business News.

[14] Warren A. Goff, managing attorney, Federal Express Corp., testimony before the USITC, investigation No. 332-367, July 18, 1996, *transcript of hearing*, p. 58.

monopolizing warehousing practices that result in inequitable service charges.[15] In addition, the enactment of pending legislation to regulate postal and courier services in Argentina will establish a variety of burdensome requirements on capital, guarantees, personnel, vehicle fleets, facilities, and communications.[16] With regard to customs clearance, Argentina reportedly uses different processing procedures for express shipments and traditional shipments of cargo, which increases the time for the clearance of goods through customs. Argentina's personnel and property ownership restrictions, which reportedly are complex and onerous, also hamper the effectiveness of U.S. businesses.[17] With respect to other South American countries, U.S. couriers are concerned that taxes and concession fees imposed by the postal services of Colombia and Venezuela, coupled with ongoing confrontations with Brazil regarding postal and customs regulations, limit their ability to compete fairly.[18] According to an official of DHL, Brazil (which is the largest market in South America for courier services) imposes a myriad of customs requirements on shipments that are burdensome, time-consuming, and costly.[19] Difficulties with customs clearance procedures appear to be widespread throughout South America, with adverse implications for U.S. couriers as well as U.S. providers of distribution and transportation services.[20] Reportedly, conditions are improving as a result of government initiatives. For example,Venezuela has established a new task force to improve customs procedures and reduce corruption that is staffed by individuals who are highly professional, well paid, and protected from being fired.[21]

Examination of Commitments on Courier Services

As noted, U.S. land-based couriers provide services to consumers in South America through affiliated operations usually located within the country being serviced. In some instances, these affiliates service customers in adjacent countries through land-based cross border transactions. Therefore, commitments regarding cross-border supply, commercial presence, and the presence of natural persons have an important impact on trade of courier services. This portion of the chapter focuses on these three modes of supply as they relate to the schedules submitted by Argentina, Brazil, Uruguay, and Venezuela, which were the only South American trading partners to schedule commitments on courier services. Highlights of industry-specific country commitments addressing courier services and the relevant modes of supply are presented in table 5-1.

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[15] Prehearing Brief of Federal Express Corp., submitted to the USITC, investigation No. 332-367, July 12, 1996, pp 39-40.

[16] Ibid.

[17] Ibid.

[18] Industry representatives, telephone interview by USITC staff, May 8, 1996.

[19] Ibid.

[20] See chapter 3 and 11 for a discussion of how customs clearance problems affect distribution and transportation services.

[21] Industry representatives, interviews by USITC staff, Caracas, Venezuela, Aug. 13, 1996.

Table 5-1
Highlights of industry-specific restrictions on courier services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Argentina	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound, except as indicated in the cross-industry commitments. **National Treatment:** • Unbound, except as indicated in the cross-industry commitments.	• CPC 7512
Brazil	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound, except as indicated in the cross-industry commitments. **National Treatment:** • Unbound, except as indicated in the cross-industry commitments.	• CPC 75121
Uruguay	**Market Access:** • The National Post Office grants operating licences of a precarious character which lapse at the end of three years unless prior to its lapse the license-holding enterprise indicates its intention to seek renewal. **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • The National Post Office grants operating licences of a precarious character which lapse at the end of three years unless prior to its lapse the license-holding enterprise indicates its intention to seek renewal. **National Treatment:** None	**Market Access:** • Unbound, except as indicated in the cross-industry commitments. **National Treatment:** • Unbound, except as indicated in the cross-industry commitments.	
Venezuela	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound, except as indicated in the cross-industry commitments. **National Treatment:** • Unbound, except as indicated in the cross-industry commitments.	• CPC 751

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.
[2] Bolivia, Chile, Colombia, Paraguay, and Peru did not offer commitments on courier services.
[3] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.

Argentina

Argentina imposes no restrictions on cross-border supply and commercial presence of foreign providers of courier services. With respect to presence of natural persons, however, Argentina's limitations on market access and national treatment are effectively unbound as Argentina declined to specify the length of stay permissible for foreign business persons. The cross-industry commitments scheduled by Argentina most significantly affect commercial presence. With respect to commercial presence, Argentina reserves the right to limit land acquisitions in "frontier areas;" i.e., within 150 kilometers of its land borders and 50 kilometers of its coastal areas.

Brazil

Like Argentina, Brazil imposes no limitations on cross-border supply and commercial presence, but the scope of Brazil's commitments appears to be narrower. Brazil's commitments exclude tracking and transfer services and reserve the right to impose future restrictions on the presence of natural persons. Brazil declined to specify permissible lengths of stay for foreign business persons, thereby scheduling no binding commitment. With respect to cross-industry commitments applicable to courier services, Brazil requires that all foreign investment in that country be registered with the Central Bank of Brazil to be eligible for remittances. Beyond this, Brazil has listed an MFN exemption that allows it to accord preferential treatment to firms from Argentina, Bolivia, Chile, Paraguay, Peru, and Uruguay under the Agreement on International Land Transport.

Uruguay

With respect to cross-border supply and commercial presence, Uruguay's schedule indicates that the National Post Office issues operating licenses that expire at the end of a three-year period, unless the licensee indicates an intention to renew the license prior to the expiration date. Like Argentina and Brazil, Uruguay declined to specify permissible lengths of stay for foreign business persons, effectively leaving limitations on the presence of natural persons unbound. Through two MFN exemptions, Uruguay reserves the right to (1) provide preferential treatment to signatories under the Agreement On International Land Transport and (2) guarantee the freedom to invest and transfer capital to firms from countries with which it has investment promotion and protection agreements.

Venezuela

Venezuela's commitments on courier services appear to apply equally to postal services such as those typically provided by national postal administrations; e.g., collecting and delivering periodicals, parcels, and packages, selling postage stamps, handling certified and registered mail, and renting postal boxes. Thus, the scope of the Venezuelan commitments on courier services is broader than the commitments scheduled by other South American countries. Venezuela imposes no restrictions on commercial presence, but indicates that trade restrictions applicable to cross-border supply are unbound. Venezuela's commitments addressing presence of natural persons also are unbound, but cross-industry commitments provide for the entry and temporary stay of sales representatives, administrative staff, and specialists. Persons within these categories are entitled to renewable one-year stays. However, foreign business persons who enter Venezuela are subject to Venezuelan labor laws and may not account for more than 10 percent of the personnel or 20 percent of the total remuneration paid to personnel in foreign-owned establishments.

Industry Opinion

The U.S. courier services industry generally supports the GATS and is pleased that courier services were addressed during the trade negotiations. However, U.S. industry representatives have indicated that burdensome customs regulations, monopolies, postal taxes, and concession fees imposed by certain South American countries have reduced their efficiency. In addition, industry representatives note that their business actually encompasses aspects of other service industries, specifically air and land transportation and distribution services. Consequently, commitments undertaken on courier services may be substantially undermined by restrictions in these other sectors. Representatives of the U.S. industry indicated that they are hopeful that future rounds of negotiations will address these problematic aspects of commitments on courier services.[22]

Summary

Despite the existence of numerous barriers to trade in certain South American countries, U.S. providers of courier services still consider those countries to be lucrative markets for overnight delivery services and the expansion of operations. Argentina, Brazil, Venezuela, and Uruguay appear to have established effective benchmarks and enhanced transparency somewhat. The national schedules suggest that Argentina, Brazil, and Venezuela appear to have the least restrictive markets. However, U.S. industry representatives have identified Argentina as being most restrictive. Bolivia, Chile, Colombia, Paraguay, and Peru declined to schedule commitments on courier services. As a result, they established no benchmarks and failed to enhance regulatory transparency. Yet, the U.S. industry considers these countries to be important markets for overnight delivery services.[23]

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[22] Prehearing Brief of Federal Express Corp., submitted to the USITC, investigation No. 332-367, July 12, 1996, p. 94, and industry representatives, interviews by USITC staff, May 8, 1996. Ibid.

[23] Industry representatives, interviews by USITC staff, Washington, DC, May 23, 1996.

CHAPTER 6
Health Care Services[1]

Introduction

The health care services covered in this report include those performed by hospitals and investor-owned hospital companies and chains; offices and clinics of medical doctors and other health service professionals; nursing homes; home health care facilities; managed care organizations;[2] medical and dental laboratories; kidney dialysis centers; and specialty outpatient facilities.[3]

Nature of International Trade in Health Care Services

Trade in this sector comprises both cross-border transactions and sales by affiliates located in foreign markets. Cross-border exports largely consist of treatment of foreign persons in the United States by U.S. hospitals, clinics, medical doctors, and other health care service professionals. Cross-border imports comprise the treatment of U.S. citizens overseas by foreign hospitals and doctors.[4] Trade through affiliates includes health care services provided to foreign persons by foreign-based affiliates of U.S. hospital companies, and services provided to U.S. persons by U.S.-based affiliates of foreign hospital companies. The volume of U.S. affiliate transactions appears to exceed the volume of cross-border transactions by a significant margin.

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[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following organizations: Ochsner Clinic and Hospital (New Orleans); Houston Medical Center; Methodist Hospital (Houston); Mayo Clinic; Johns Hopkins University Hospital; Miami Heart Institute; Tenet Healthcare; Humana; Columbia/HCA Healthcare; American Hospital Association; Federation of American Health Systems; the Health Care Financing Administration; and the Census Bureau, the International Trade Administration, and the Bureau of Economic Analysis (BEA), U.S. Department of Commerce (USDOC).

[2] Includes health maintenance organizations (HMOs) and similar organizations engaged in providing medical or other health care services to members. However, health care services do not include HMOs that limit services to the provision of insurance against hospitalization or medical costs.

[3] These health care services are classified under the U.S. Standard Industrial Classification (SIC) code 80.

[4] Cross-border health care service transactions therefore correspond to consumption abroad in the General Agreement on Trade in Services (GATS) terminology.

Cross-Border Transactions

In 1994, U.S. exports of health care services totaled $794 million (figure 6-1).[5] U.S. cross-border imports of health care services amounted to an estimated $500 million in 1994.[6] Such imports represented a 4-percent increase from 1993, well below the 9-percent average annual rate of increase of cross-border imports during 1990-93. As in the prior period, a significant amount of the 1994 increase was due to a rise in the number of U.S. tourists obtaining treatment from foreign health service providers while traveling abroad.[7] South American health care providers and institutions accounted for less than 5 percent of total U.S. cross-border imports of health care services.[8]

The U.S. surplus in cross-border trade of health care services amounted to an estimated $294 million in 1994. This represented a 9-percent increase in the trade balance from 1993, and a significant departure from the 2-percent average annual decline in the surplus during 1990-93. Rapid export growth can be attributed, at least partially, to a rebound in health care markets following several years of stringent cost-containment and budget uncertainty due to health care reform proposals in the United States and in important foreign markets.

Canada and Europe were the largest markets for U.S. exports of health care services in 1994, together accounting for an estimated 75 percent[9] of the total (figure 6-2). Latin American and other Western Hemisphere nations, including Mexico, absorbed $56 million, or 7 percent[10] of total U.S. cross-border exports of health care services in that year. The South American trading partners covered in this study accounted for an estimated $24 million, or 3 percent[11] of total U.S. cross-border exports of health care services. Colombia, Venezuela, Argentina, Brazil, and Chile are the largest South American markets for U.S. health care service exports.

The superior facilities of U.S. hospitals and the acclaim of U.S. specialists have long attracted upper-income patients from Latin American countries.[12] Hospitals in major southern U.S. cities, such as Houston, New Orleans, and Miami, have catered especially to well-to-do Latin American patients. For example, the Houston Medical Center estimates it attracted over 15,000 international patients in 1994, many of them arriving from Mexico and other Latin American

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[5] USDOC, BEA, *Survey of Current Business*, Sept. 1995, p. 76.

[6] USITC staff estimate, based on telephone interviews with U.S. industry representatives and BEA officials, Dec. 12-15, 1995. BEA data not available.

[7] Ibid.

[8] U.S., Argentinean, and Brazilian industry and government officials, telephone interviews by USITC staff, May 7-10, 1996.

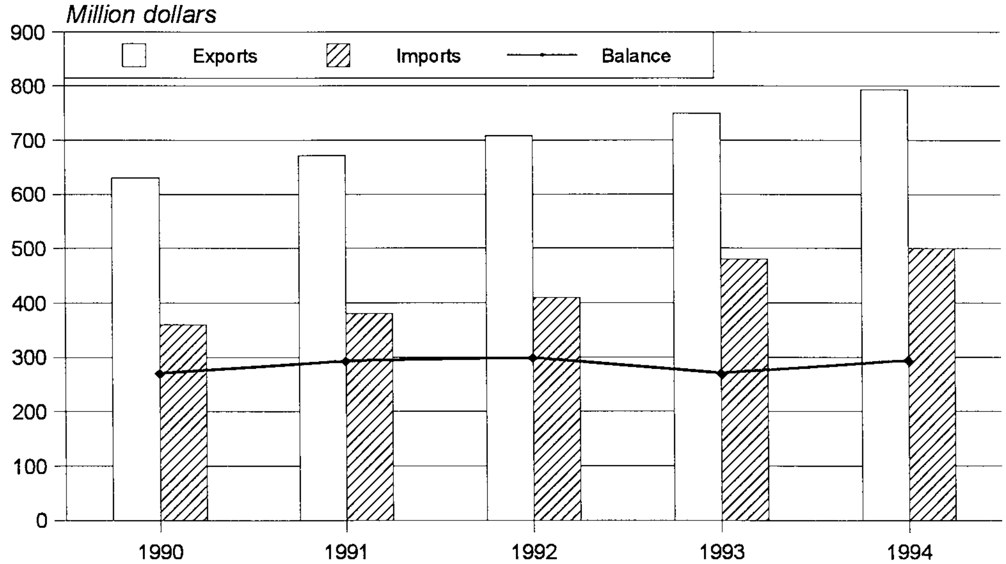
[9] USITC staff estimate.

[10] Ibid.

[11] Ibid.

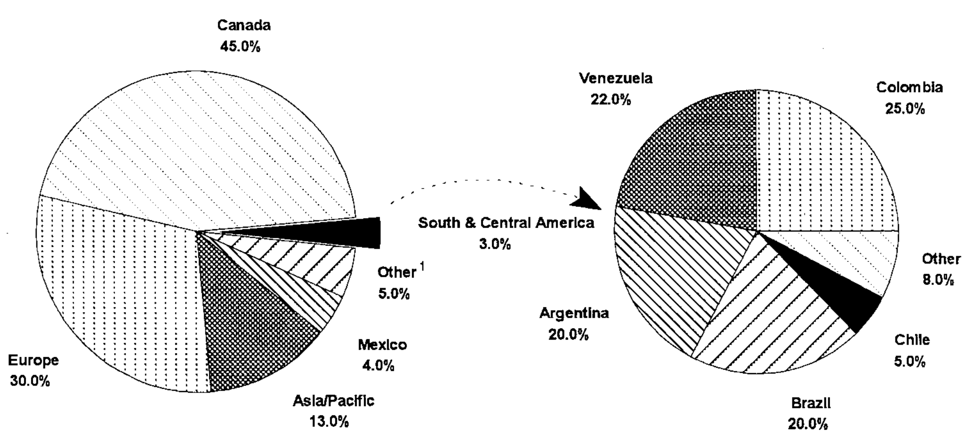
[12] Officials of several U.S.-based hospital chains estimated that 10 to 15 percent of the patients treated in their hospitals located in Florida, Louisiana, and Texas were from Latin America. U.S. industry officials, telephone interviews by USITC staff, Miami, Houston, and New Orleans, May 23-25, 1996.

Figure 6-1
Health care services: U.S. cross-border exports, imports, and trade balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995, and USITC staff estimates.

Figure 6-2
Health care services: U.S. cross-border exports, by principal markets, 1994



World = $794 million

South & Central America = $24 million

[1] Principally includes the Middle East, Africa, and the Caribbean

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995, and USITC staff estimates.

countries.[13] Florida, a shopping and tourism destination for wealthier South American tourists, has attracted patients to its hospitals and other health care facilities for many years.[14] The Miami Heart Institute (MHI), part of the large Columbia/HCA Healthcare hospital network, has begun participating in a number of cardiology conferences in Latin America for purposes of establishing stronger networks between MHI physicians and Latin American physicians.[15] In the past two years, MHI has focused primarily on Colombia, Chile, and Ecuador, and has seen measurable year-to-year growth in the number of referrals from those countries.

Sales by Majority-Owned Affiliates

Sales by foreign-based affiliates of U.S. majority-owned health care service companies amounted to $381 million in 1993 (figure 6-3).[16] This represented a 9-percent increase in such exports from 1992. Much of the 1993 increase reflected rising U.S. affiliate exports to Japan, Spain, and Singapore, which offset a decline in exports to the United Kingdom. Sales by U.S.-based affiliates of foreign health care companies amounted to $1.4 billion in 1993, which represented a 4-percent increase over the previous year.

Sales by foreign-based affiliates of U.S. health care companies were concentrated in the United Kingdom, Switzerland, Japan, Spain, and Singapore during 1993, with the United Kingdom accounting for $97 million, or 25 percent of such sales. U.S. affiliate sales to Canada were negligible due to market restrictions imposed by that country's national health care system. Official data on U.S. affiliate exports of health care services to Latin American and other Western Hemisphere countries are not available for 1993.[17] Even though such exports are believed to be relatively low compared to total U.S. affiliate exports of health care services, emerging growth in managed care in some South American countries has contributed to improved prospects for U.S. companies. U.S. firms h ave gained significant experience in managed care, which is much more prevalent in the United States than elsewhere in the world.[18]

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[13] "Medicine without Borders," *U.S./Latin Trade, Special Supplement*, 1996, p. 10b.; and U.S. health care industry representatives, Houston, TX, telephone interviews by USITC staff, May 20, 1996.

[14] The Mayo Clinic, the world's largest group medicine practice, opened a major clinic in Jacksonville, Fl. in 1986, in an effort to market its services to the growing Latin American market. In Latin America, Mayo has promoted a tourism concept called the Seaside program, combining a check-up at the clinic and vacation at a five-star resort just outside Jacksonville. If problems are detected, more tests and exams are ordered. "Medicine without Borders," pp. 8-9b; and representatives of Miami-based hospitals, telephone interviews by USITC staff, May 13, 1996.

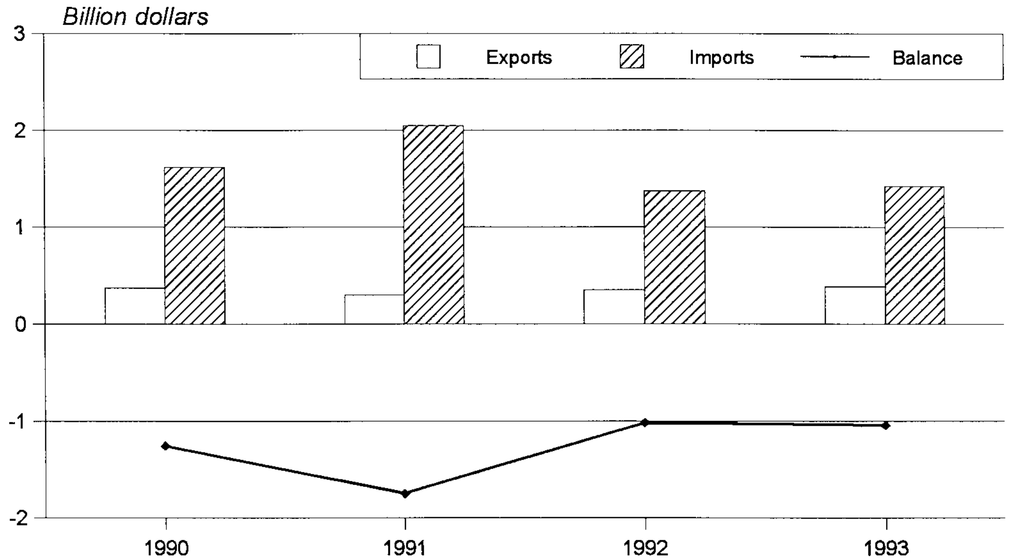
[15] "Medicine without Borders," p. 12b.

[16] USDOC, BEA, *Survey of Current Business*, Sept. 1995, p. 104.

[17] Ibid.

[18] U.S. and South American industry and government officials, telephone interviews by USITC staff, May 13-16, 1996.

Figure 6-3
Health care service transactions by majority-owned affiliates: U.S. exports, imports, and trade balance, 1990-93



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1992-95, and USITC staff estimates.

The U.S. deficit in affiliate trade of health care services amounted to slightly over $1 billion in 1993. Much of the deficit is attributed to fairly extensive U.S. networks of hospitals owned by the majority-owned Australian health care organization, Ramsey Group, and the German-owned health care system, Paracelsus. Although a number of U.S. health care companies maintain affiliate operations overseas, their operations are not nearly as extensive as those of the Australian and German systems in the United States.

In South America, opportunities for U.S. health care service firms were previously limited due to the preponderance of public sector involvement in the health care sector. However, in recent years there has been an increase in private sector provision of health care services in this region, increasing actual and potential opportunities for U.S. health care services firms, particularly managed care companies. Currently, the percentage of the population obtaining its health care services from the for-profit private sector ranges from a low of about 3 percent in less developed countries, such as Paraguay and Bolivia, to an estimated 12-15 percent in more advanced countries such as Argentina, Colombia, and Brazil.[19]

In Argentina, the lack of a clear national health policy in the last 20 years has resulted in the vigorous growth of private sector health clinics at the expense of public hospitals. In recent years, some U.S. hospitals and companies have entered into agreements with Argentinean and

[19] Pan American Health Organization (PAHO), "Peru," "Chile," "Venezuela," "Colombia," "Bolivia," "Argentina," and "Paraguay," *Health Conditions in the Americas*, 1994, pp. 1-150.

Brazilian health care companies to establish private clinics and managed care networks in Argentina.[20] In other South American countries, prepaid health care companies are a relatively new development. In Colombia, Cosanitas S.A. of Spain, and a local health care company, Seguros Medicos Voluntarios, held a virtual monopoly on the Colombian managed health care services market during the 1980s. However, the situation changed five years ago, when several major Colombian private hospitals, financial institutions, and traditional insurance companies started to establish their own prepaid medical care systems. A Brazilian health care firm also entered the Colombian prepaid health care services market at about that time. Although such systems now cover approximately 2 percent of the total Colombian population, there has been no known entry by U.S. health care service companies. U.S. government officials there believe that Colombians would be well disposed to services offered by U.S. health care companies since a large number of Colombians have been treated in the United States, and many Colombian physicians have been residents in U.S. hospitals and institutions. Moreover, both the Colombian Government and industry have been concerned about containing rapidly increasing health care costs and recognize the U.S. health care services industry as a leader in prepaid health care with success in reducing costs.[21]

In Brazil, the health care system is undergoing considerable change, which made it impossible for the government to offer commitments during the Uruguay Round.[22] Constitutional amendments liberalizing foreign investment have yet to be implemented through legislation on health care, so existing law still holds that foreign investors are permitted to hold up to 50 percent equity and one-third of the voting rights of a Brazilian health care company.[23] Further change is anticipated, as the Brazilian health care system has come under sharp public criticism because public services are perceived to be of poor quality while private services are prohibitively expensive for most people.[24]

The health care system in Venezuela is relatively open to foreign participation, including foreign investment, although some barriers remain with respect to the recognition of professional qualifications.[25] While representatives of the Venezuelan Government declined to explain why no commitments were undertaken for health care services, they did observe that this sector was not discussed in any of the bilateral meetings that they held during the Uruguay Round.[26] Venezuela could represent an attractive market for U.S. health management organizations because it has a tremendous need for improving resource management and controlling medical

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[20] The Argentine firm Innovacion Medica, in association with U.S. Mercy International Health Services, University of Pittsburgh, Duke University Hospital and Health Network, Massachusetts General Hospital, and a Brazilian firm, Barcelo, is the only health group currently applying managed care practices in Argentina. More recently, the Argentine prepaid health care firm, Docthos, entered into an agreement with the John Alden National Hospital Network of the United States to establish another managed care network in Argentina. USDOC, "Argentina Health Care Systems, Privatization," *Market Research Reports*, Oct. 18, 1995, p. 7.

[21] USDOC, "Colombia Pre-Paid Health Care Services," *Market Research Reports*, Mar. 21, 1995.

[22] Brazil Health Ministry representative, interview by USITC staff, Brasilia, Brazil, Aug. 7, 1996.

[23] Ibid.

[24] Industry representative, interview by USITC staff, Sao Paulo, Brazil, Aug. 8, 1996.

[25] Venezuela trade ministry representative, interview by USITC staff, Aug. 13, 1996.

[26] Ibid.

costs.[27] However, the payment system and general commercial environment reportedly are in such a poor state that it would be very difficult for a U.S. company to be profitable. Price controls on pharmaceuticals create market distortions that have severely restricted supply, facilities cannot afford medical equipment, and the system has not developed a means of sharing resources.[28] Consequently, the state-owned facilities have severely limited resources and reportedly offer a poor level of care, but the privately-owned clinics are too expensive for ordinary citizens.[29] The health insurance system also provides limited coverage with caps on reimbursement, so only those with considerable wealth may receive the best level of care, and these individuals may be more likely to travel to the United States to receive treatment.[30]

Examination of Commitments on Health Care Services

As indicated in the previous section, trade in health care services principally transpires as consumption abroad and sales by foreign affiliates. There are minimal limitations on consumption abroad or on the cross-border supply of health care services.[31] The principal barriers to trade in health care services are limitations on the establishment of a commercial presence and the presence of natural persons.[32] Consequently, this section will focus on examining foreign commitments pertaining to commercial presence and presence of natural persons.

All the South American countries covered in this report continue to have measures that make it difficult for U.S. health care companies to establish a commercial presence in their markets.[33] Except for Bolivia, none of the subject South American countries scheduled GATS commitments[34] on any health care services and therefore have reserved the right to maintain, change, or add trade restrictions in the future (table 6-1). All of the South

[27] Industry representative, interview by USITC staff, Caracas, Venezuela, Aug. 13, 1996.
[28] Ibid.
[29] Industry representative, interview by USITC staff, Caracas, Venezuela, Aug. 12, 1996.
[30] Ibid.
[31] Although some trading partners' GATS commitments placed limitations on the cross-border supply of health care services, U.S. industry officials indicate that barriers in that mode are minimal and are not expected to significantly affect U.S. global competitiveness in the health care sector. U.S. industry analysts and officials, telephone interviews by USITC staff, and interviews by USITC staff, Washington, DC, Jan.-Mar. 1995.
[32] U.S. Government officials and industry representatives, in-person and telephone interviews by USITC staff, Mar. 1995.
[33] Industry analysts and representatives, interviews by USITC staff, Washington, DC, Jan.-Mar. 1995; and Santa Monica, Long Beach, Fountain View, and Los Angeles, CA, Mar. 8-10 and June 12-15, 1995.
[34] Paraguayan officials indicated to USITC staff that Peru did not offer commitments on health care services because it had not completed the required studies or consulations needed in order to offer commitments in health care services. Rigoberto Gauto, Minister of Business Commission, Government of Paraguay, Permanent Mission of Paraguay, Geneva, in letter to USITC staff dated July 17, 1996.

Table 6-1
Highlights of industry-specific restrictions on health care services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Bolivia	**HOSPITAL SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**HOSPITAL SERVICES:** **Market Access:** None **National Treatment:** None	**HOSPITAL SERVICES:** **Market Access:** None **National Treatment:** None	**HOSPITAL SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments.[4] **National Treatment:** • Unbound except as indicated in the cross-industry commitments.[4]	• CPC 9311

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.
[2] Argentina, Brazil, Chile, Colombia, Paraguay, Peru, Uruguay, and Venezuela did not offer commitments on health care services.
[3] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.
[4] Bolivia grants 1- or 2-year resident permits to foreign service providers who have an employment contract with a commercial presence.

American governments maintain significant powers over the actual administration of the health care systems within their own jurisdictions.[35]

Bolivia

Bolivia scheduled commitments that accord full market access and national treatment to foreign companies in the hospital service sector, provided that hospital services are supplied via consumption abroad or commercial presence. However, it offered no binding commitments with respect to cross-border supply and the presence of natural persons. Nor did it offer commitments with respect to other health care service sectors, including professional services such as physician, nurse, or dental services.[36]

Industry Opinion

U.S. industry representatives were disappointed in the lack of GATS commitments made by South American countries with respect to health care services.[37] They assert that the lack of such commitments by all countries, except Bolivia, does nothing to enhance the transparency of rules and regulations in each of the South American countries.[38] Furthermore, the small Bolivian market offers little in terms of market prospects for U.S. health care companies. The markets of most interest to U.S. health care service companies are Argentina, Brazil, Chile, and Colombia.

The various registration and certification provisions maintained by all subject trading partners on doctors, dentists, and other health care service professionals constitute additional burdens on U.S. health care services companies[39] that often employ, or would like to employ, U.S. or third-country health care specialists in foreign-based facilities.[40] Cross-industry commitments on the temporary entry and stay of personnel are not explicit enough to determine whether they

[35] PAHO, "Peru," "Chile," "Venezuela," "Colombia," "Bolivia," "Argentina," and "Paraguay," *Health Conditions in the Americas*, 1994, pp. 1-150.

[36] Peru, which offered no commitments with regard to health care services, indicated in its schedule that it generally applies no restrictions on the physical movement of people. However, it continues to have restrictions with respect to professional equivalency for professional positions, including for health care practioners. It further indicated that it would maintain such restrictions until it received reciprocity in the U.S. market, where it contends its health care practioners face numerous restrictions with respect to professional practice. Javier Paulinich, Minister, Deputy Permanent Representative, Geneva, in a letter to USITC staff dated July 30, 1996.

[37] Industry representatives, telephone interviews by USITC staff, Apr.-May 1996.

[38] Ibid.

[39] Despite such limitations, there is no evidence that the U.S. Government or industry has pursued mutual recognition agreements in this area. Industry representatives, telephone interviews by USITC staff, Apr.-May. 1996.

[40] The OECD is encouraging member countries to speed up efforts to inventory various national regulations pertaining to the movement of natural persons to provide a basis for further liberalization of the GATS in this area. OECD representative, telephone interview by USITC staff, Paris, July 20, 1995.

will positively affect health care personnel. In addition, no cross-industry commitments address the temporary entry and stay of independent (not associated with a corporation) health care providers. Finally, Venezuela listed an MFN exemption with respect to professional services, which includes services provided by physicians, veterinary surgeons, and pharmacists. The exemption permits Venezuela to employ the principle of reciprocity in its treatment of foreign professionals.

Summary

Cross-border exports should represent a growing portion of total health care service trade as incomes rise and travel to the United States increases.[41] However, the most significant opportunities for expanded health care service exports stem from the potential liberalization of rules and regulations that presently place limitations on the provision of health care services through both commercial presence and the presence of natural persons.

The GATS commitments in the health care sector made by Bolivia will likely be of limited value to the U.S. health care industry due to the lack of potential demand in that market. Further, since none of the other subject South American countries made any commitments in this area, their schedules provide no effective benchmarks and no improvements in terms of transparency.

[41] Industry representatives, telephone interviews and in-person interviews by USITC staff, Washington, DC, Jan.-Mar. 1995.

CHAPTER 7
Accounting Services[1]

Introduction

Accounting firms often provide accounting services in conjunction with other business services, including auditing, bookkeeping, tax consultation and tax representation, management consulting, and legal services. Trade data collected from accounting firms do not differentiate between accounting revenues and revenues generated from these related services. As a result, the following discussion of trade data encompasses these related services. However, the analysis of the commitments focuses on accounting services only.[2]

Nature of International Trade in Accounting and Related Services

International trade in accounting services principally transpires as sales through foreign-based affiliates. Reflecting the close relationship between accounting and other business services, trade data on sales by affiliates reflect revenues generated by accounting, bookkeeping, auditing, research, management, and other related services. By contrast, trade data on cross-border transactions reflect accounting, auditing, and bookkeeping services only.

U.S. accounting firms began to establish operations in foreign markets after the Second World War in order to continue business relationships that had originated in the United States. Accounting professionals believe that clients are best served through development of an intimate knowledge of local market conditions. In addition, there are fewer legal restrictions on servicing clients locally rather than across borders.[3] Foreign operations are established through wholly-owned branches or subsidiaries located abroad, or through the creation of partnerships or other affiliations with local firms in foreign markets. In a partnership arrangement, the foreign firm generally is owned by the foreign partners, not by the multinational firm with which it is

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[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following companies and organizations: Arthur Andersen and Company, Ernst & Young Inc, the International Federation of Accountants (IFA), and Price Waterhouse EC Services, SA.

[2] These trade data include services under U.S. Standard Industrial Classification (SIC) codes 872, accounting, auditing, and bookkeeping services; 873, research, development, and testing services; and 874, management and public relations services. The trade information that follows is provided by U.S. Department of Commerce (USDOC), Bureau of Economic Analysis (BEA), *Survey of Current Business*.

[3] Industry representatives, interviews by USITC staff, Washington, DC, May 25, 1995.

affiliated.[4] Because accounting firms feel it is important to establish a physical presence within the foreign markets they are serving, either through wholly-owned branch affiliates or through partnerships, the preferred mode of providing these services is through a commercial presence.

Cross-Border Transactions[5]

Cross-border trade data pertaining to accounting services reflect all services delivered by mail or through information networks, or by the temporary entry of an accountant to provide services to foreign clients. U.S. cross-border exports of accounting, auditing, and bookkeeping services totaled $142 million in 1994, and U.S. cross-border imports totaled $106 million, resulting in a $36 million U.S. surplus (figure 7-1).[6] This cross-border trade surplus fell by 13 percent annually, on average, from the $62 million surplus in 1990. During 1990-94, the average annual growth in U.S. imports, measuring 17 percent, exceeded that of exports, measuring 5 percent. Trade volume was irregular, marked by periods of decline as well as growth.

Sales by Majority-Owned Affiliates

Foreign affiliates of U.S. accounting firms generated revenues (U.S. exports) totaling $5.3 billion in 1993 (figure 7-2). In comparison, U.S.-based affiliates of foreign accounting firms generated sales (U.S. imports) of $1.6 billion. The resulting $3.7 billion U.S. surplus in affiliate trade represented a 5-percent average annual decline in the surplus during 1990-93, as U.S. exports grew considerably slower (2 percent on average) than U.S. imports (37 percent on average).

European affiliates of U.S. accounting firms generate by far the greatest share of total sales by foreign-based accounting affiliates. In 1993, European-based affiliates of U.S. firms captured 72 percent, surpassing affiliates in Canada, 8 percent, Japan, 6 percent, and Latin America, including other countries of the Western Hemisphere such as Mexico, 4 percent (figure 7-3).

U.S. accounting firms' affiliate sales in the Western Hemisphere south of the United States grew from approximately $134 million in 1991[7] to $198 million in 1993, at an average annual rate of 22 percent. Such growth exceeded the 5-percent average annual increase for

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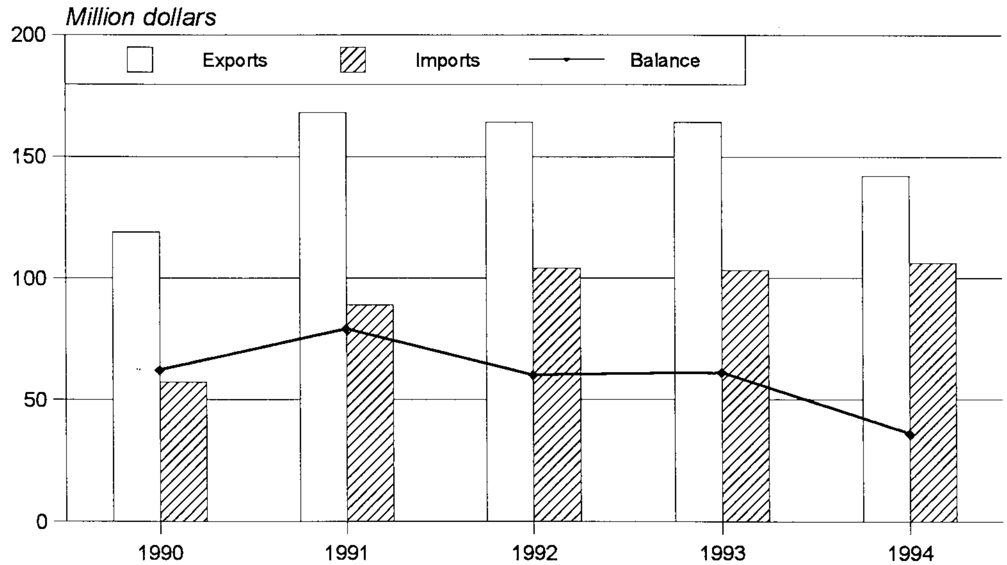
[4] In a partnership arrangement where the national firm is owned by the local partners and not by the U.S. multinational, sales by the firm are not recorded in U.S. trade statistics as sales by U.S. affiliates. As a result, available trade data may underestimate U.S. involvement overseas. Industry representatives, interviews by USITC staff, Washington, DC, May 25, 1995.

[5] Data on cross-border transactions pertaining to accounting and related services are not available on a regional basis.

[6] USDOC, BEA, *Survey of Current Business*, Sept. 1995, p. 76.

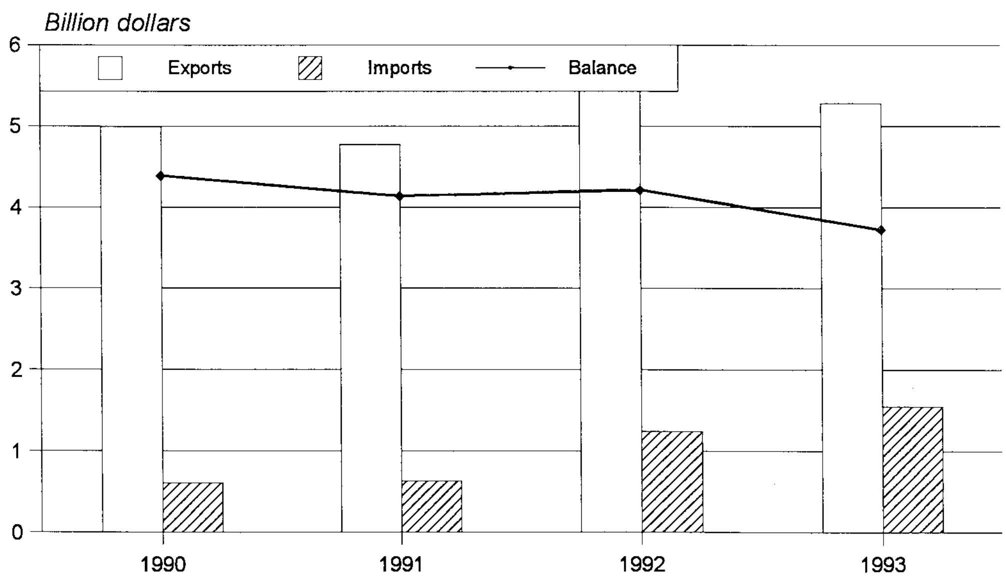
[7] Data for U.S. exports of accounting and related services in 1990 pertaining to this region are unavailable.

Figure 7-1
Cross-border trade in accounting and related services: U.S. exports, imports, and trade balance, 1990-94



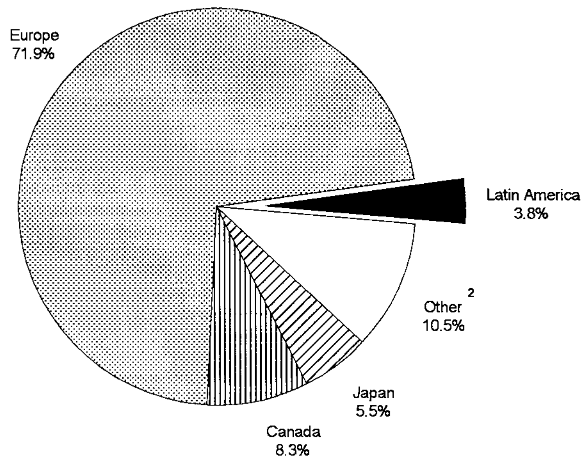
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Figure 7-2
Accounting and related services transactions by majority-owned affiliates: U.S. exports, imports, and trade balance, 1990-93



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Figure 7-3
Accounting and related services exports: Sales by majority-owned affiliates of U.S. firms, by principal markets, 1993



Total = $5.3 billion

[1] Includes the Caribbean region.
[2] Includes Africa, the Middle East, and other Asian and Pacific countries.
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

the same period in total U.S. exports by overseas affiliates of U.S. accounting firms. Increased affiliate sales south of the United States is largely the result of increasing activity by U.S. multinational accounting firms as foreign investment expanded, spurred by privatization of certain critical industries in South American markets.

Examination of Commitments on Accounting Services

Some of the more significant policies that affect affiliate sales of accounting services include: limitations on international payments and capital movements, movement of personnel, transfer of technology and information, nationality of personnel, professional certification and entry, intercorporate relationships, and use of firm name.[8] Restrictions on commercial presence[9] and on the presence of natural persons, the latter of which principally consist of nationality requirements and limits on the stay of accounting professionals in foreign markets, include some of these restrictive policies. Because most exports of accounting services are transacted by

[8] John Hegarty, "The Accountancy Profession," *Workshop on Professional Services*, Sept. 26-27, 1994, pp. 15-18.
[9] Limitations on commercial presence stipulate conditions under which foreign service suppliers may establish, operate, or expand a commercial presence, such as a branch, agency, or majority-owned subsidiary, in another country's territory.

foreign-based affiliates of U.S. firms, commitments on commercial presence and on the presence of natural persons have the greatest relevance for accounting firms.

Bolivia, Paraguay, and Uruguay did not offer any commitments on accounting services. A review of the remaining partners' commitments on accounting and related services under the General Agreement on Trade in Services (GATS) indicates that all made at least partial commitments pertaining to commercial presence. On the other hand, only Chile, Peru, and Venezuela scheduled substantial commitments on the presence of natural persons (table 7-1).

Argentina

Argentina scheduled full commitments on trade in accounting services through commercial presence, cross-border supply, or consumption abroad. Argentina preserved broad discretion with respect to permitting trade through the presence of natural persons. Argentina declined to specify permissible lengths of stay for foreign business persons in its cross-industry commitments, thereby making no binding commitment in this respect.

Brazil

Brazil scheduled limitations on commercial presence that restrict the participation of non-residents in enterprises controlled by Brazilian nationals. In addition, special registration requirements were included for accountants wishing to audit financial institutions and savings and loan associations. Brazil does permit affiliates of foreign firms to use the foreign name, however the name must be ceded to a locally established firm owned by Brazilian nationals. Limitations on cross-border supply were left unbound, except that a foreign service supplier again may cede its name to Brazilian professionals. Brazil, like Argentina, declined to specify permissible lengths of stay for foreign business persons, thereby preserving broad discretion with respect to regulating inbound flows of foreign service providers.

Chile

Chile scheduled no limitations on the establishment of a commercial presence,[10] although foreign accountancy firms are confined to providing financial auditing and accounting review services only.[11] Chile left limitations on cross-border supply and consumption abroad unbound. Limitations on the presence of natural persons were left unbound, too, except as indicated in the cross-industry commitments. Chile's cross-industry commitments indicate that senior and specialized personnel connected to commercial presences may stay in Chile for 2 years initially, and may extend their stay for 2 additional years.

[10] However, Chile requires that financial statements must be endorsed by a professional legally authorized to practice in Chile.

[11] Foreign accountancy firms appear to be proscribed from providing compilation services and other services such as attestations, valuations, and preparation of pro forma statements.

Table 7-1
Highlights of industry-specific restrictions on accounting services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Argentina	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound, except as indicated in the cross-industry commitments. **National Treatment:** • Unbound, except as indicated in the cross-industry commitments.	• CPC 862
Brazil	**Market Access:** • Unbound, except that a foreign service supplier may cede its name to Brazilian professionals. **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • Participation of non-residents in companies controlled by Brazilian nationals is not allowed. A foreign service supplier shall not use its foreign name, but may cede it to Brazilian professionals who will constitute and exercise full participation in a new company within Brazil. **National Treatment:** • Special registration requirements for accountants who wish to audit such companies as financial institutions and savings and loan associations. Brazilian accounting and auditing standards must be followed.	**Market Access:** • Unbound, except as indicated in the cross-industry commitments. **National Treatment:** • Unbound, except as indicated in the cross-industry commitments.	• CPC 862
Chile[4]	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound, except as indicated in the cross-industry commitments. **National Treatment:** • Unbound, except as indicated in the cross-industry commitments.	• CPC 86211, 86212

Table 7-1
Highlights of industry-specific restrictions on accounting services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Colombia	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • In public accounting companies, at least 80 percent of partners must be public accountants and the legal representative shall be a public accountant when all partners are public accountants. **National Treatment:** • Accountant registration is necessary, which requires Colombian nationality or Colombian residency for at least three years prior to the application, as well as fulfillment of one the following two requirements: 1) Possession of the degree of public accountant from a Colombian University, and demonstrated experience in activities relating to accounting in general of not less than 1 year, acquired simultaneously with or subsequently to the above studies, or 2) Possession of the degree of public accountant or an equivalent title that is a) issued by foreign institutions of countries with which Colombia has signed agreements on recognition of degrees, and b) endorsed by the duly authorized Colombian governmental body.	**Market Access:** Unbound **National Treatment:** Unbound	• CPC 862

Table 7-1
Highlights of industry-specific restrictions on accounting services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Peru	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • In order to provide accounting, auditing and bookkeeping services, foreign professionals must have their professional degrees officially recognized. They must also enroll in the relevant professional college in accordance with Article 5 of Law No. 13253 of September 11, 1959. Accounting, auditing, and bookkeeping services are governed by the College of Public Accountants. SBS Resolution 119-92 on the registration of companies for external auditing also applies. **National Treatment:** None	**Market Access:** • Unbound, except as indicated in the cross-industry commitments. **National Treatment:** • Unbound, except as indicated in the cross-industry commitments.	• CPC 86211-86213
Venezuela	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • Unbound, except as indicated in the cross-industry commitments. **National Treatment:** • Unbound, except as indicated in the cross-industry commitments.	• CPC 8621

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.
[2] Bolivia, Paraguay, and Uruguay did not offer commitments on accounting services.
[3] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.
[4] Financial statements must be endorsed by a professional legally authorized to practice in Chile.

Colombia

Colombia scheduled partial commitments on commercial presence. Market access measures require that at least 80 percent of partners must be public accountants and that the legal representative of the foreign firm shall be a public accountant when all partners are public accountants. In addition, Colombian nationality and Colombian residency are required for registry as an accountant. Colombia scheduled no limitations on consumption abroad, but left limitations on cross-border supply and the presence of natural persons unbound.

Peru

Foreign accountancy firms may provide only financial auditing, accountancy review, and compilation services in Peru. Peru scheduled a partial commitment on market access with respect to commercial presence, requiring that foreign accounting professionals have their professional degrees officially recognized and fulfill additional requirements, such as enrolling in a relevant professional college and complying with unspecified provisions of the College of Public Accountants and the Banking and Insurance Supervision Department. Peru scheduled a full commitment on national treatment with respect to commercial presence. Peru left limitations on cross-border supply and consumption abroad unbound, while the presence of natural persons was left unbound, except as indicated in the cross-industry commitments. Cross-industry commitments indicate that initial stays of up to 3 years are permitted, which may be extended for successive periods of up to 3 years thereafter.

Venezuela

Venezuela imposed no limitations on consumption abroad but left limitations on commercial presence and cross-border supply unbound. Industry-specific limitations on the presence of natural persons were left unbound, although cross-industry commitments allow administrative staff, managers, executives, specialists, and representatives negotiating contracts to remain in Venezuela for 1 year initially. Foreign business persons' stay may be reviewed on an annual basis thereafter.

Industry Opinion

Industry representatives believe that the GATS is a useful step toward full liberalization of trade in accounting services. The GATS does this by establishing the principle that regulation of domestic economic activity has international consequences, thereby laying the basis for the global harmonization of regulations.[12] The GATS also helps to promote trade liberalization by broadening the definition of "trade" to include movement of capital and people, critical issues for accounting firms. Many accounting professionals have expressed disappointment that signatories did not schedule commitments that provide for the mutual recognition of

[12] John F. Gay, Andersen Worldwide Inc., testimony before the USITC, July 18, 1996.

accounting credentials and the removal of exchange restrictions.[13] However, international accounting professionals are optimistic that through the activities of the Working Party on Professional Services, established in April 1994, the accounting profession and governments will coordinate domestic regulations on licensing credentials, recognition, and other professional standards.[14] Thus far, the working party has held four meetings, with additional meetings scheduled for later in 1996. A considerable amount of time has been devoted to the collection of data and analysis of regulation in the accounting sector. In the January 1996 meeting of the working party, a non-exhaustive list was compiled of priority issues for further consideration in later meetings.[15] Such issues included qualification requirements, licensing requirements, regulations on the establishment of commercial presence, nationality and residency requirements, professional liability and ethics, the temporary entry of natural persons, guidelines for the recognition of qualifications, and international accounting standards.

In the view of accounting executives operating in South America, the business climate there for accounting firms has improved significantly during the past decade as nations have liberalized their economies in order to attract foreign capital. As the environment for business in these markets improves, U.S. multinational accounting firms can be expected to continue increasing their participation.[16] U.S. firms presently operate in virtually all South American markets and it appears that, with few exceptions, restrictions in South America are no more severe than those in other world markets. Chile, Colombia, and Brazil are said to be among the least restrictive South American nations in terms of allowing entry to foreign multinational accounting firms.

According to some members of the U.S. accounting industry, South American nations did not go far enough in their GATS commitments to dismantle regulatory restrictions. Three nations failed to offer any commitments at all while the commitments that were offered by the other nations were simply standstill agreements that froze in place existing restrictions.[17] Finally, few subject trading nations offered commitments on auditing, taxation, computer-related services, and management consulting, areas of increasing activity for major integrated accounting firms. However, industry members still viewed the adoption of the accounting commitments positively given the rapid economic development that has occurred within many of these economies in recent years and the efforts of the accounting industry in South America to accommodate itself to these changes. Industry sources hope that South American markets

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[13] John Hegarty, "GATS: A Chance to Take the Lead," *Accountancy*, Feb. 1994, pp. 72-73 and representatives of European accounting industry, FEE, telephone interview by USITC staff, Washington, DC, Mar. 25, 1995.

[14] Organization for Economic Co-operation and Development (OECD) representative, interview by USITC staff, Paris, July 19, 1995; and industry representative, interview by USITC staff, Washington, DC, Mar. 25, 1995.

[15] Leonora de Sola Saurel, "The WTO Working Party on Professional Services: Tackling Domestic Regulatory Barriers to Trade," *CSI Reports: Occasional Paper* (Coalition of Service Industries), Mar. 1996.

[16] Industry representative, telephone interview by USITC staff, Washington, DC, May 2, 1996.

[17] John F. Gay, Andersen Worldwide Inc., testimony before the USITC, July 18, 1996.

will eventually adopt the model of trade liberalization included in the North American Free-Trade Agreement (NAFTA) agreements.[18]

Industry sources also believe that international trade in accounting services should continue to grow as firms operating internationally require the services of professionals to prepare worldwide accounting records and reports, and to provide expertise in such accounting-related fields as auditing, tax preparation, and management consulting.[19] Because U.S. multinational accounting firms are among the largest and most competitive in the global market for these services, these firms are expected to be among the principal beneficiaries of increasing trade with South American nations.[20]

Summary

The commitments negotiated under the GATS generally provide effective benchmarks.[21] All except three subject trading partners address accounting services in their schedules, listing partial or full commitments in most instances. In addition, most commitments scheduled by the subject trading partners have enhanced regulatory transparency.[22] Although major trade impediments still exist with respect to the establishment of a commercial presence and the presence of natural persons, accounting professionals feel these measures will be resolved eventually through efforts of the Working Party on Professional Services.

[18] Ibid.

[19] David L. McKee and Don E. Garner, *Accounting Services, the International Economy and Third World Development* (Westport, CT: Praegar Pub., 1992), p. 107.

[20] Richard Greene and Katherine Barrett, "Auditing the Accounting Firms," *Financial World*, Sept. 27, 1994, p. 31.

[21] Representative of U.S. accounting industry, telephone interview by USITC staff, May 12, 1996.

[22] Ibid.

CHAPTER 8
Architectural, Engineering, and Construction Services[1]

Introduction

Architectural, engineering, and construction (AEC) services[2] are three distinct, yet interrelated service industries that perform work for private and public sector clients. Architectural firms provide blueprint designs for buildings and public works, and may oversee construction projects. Architectural services include preliminary site study, schematic design, design development, final design, contract administration, and post construction services.

Engineering firms provide planning, design, construction, and management services for projects such as civil engineering works and residential, commercial, industrial, and institutional buildings. These firms also provide engineering design services for industrial processes and production.[3] Integrated engineering[4] includes consultancy and turnkey services. Turnkey services may include the assignment and coordination of work performed by consultants, contractors, and subcontractors from inception to completion of projects.

Construction services include pre-erection work, new construction and repair, and alteration, restoration, and maintenance work on buildings or civil engineering works. Such services can be carried out either by general contractors who complete all construction work for the owner of the project, or by specialty subcontractors who perform discrete parts of the construction work.

The United States is the leading foreign supplier of design and contracting services in the Latin American market. In 1995, leading U.S. design firms accounted for 44 percent ($365.9 million)

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[1] Among the individuals contacted by the USITC staff in preparation of this report were those affiliated with the following organizations: the United States Council for International Engineering Practice (representing the National Council of Examiners for Engineering and Surveying, the Accreditation Board for Engineering and Technology, and the National Society of Professional Engineers), the American Institute of Architects, and the American Consulting Engineers Council.

[2] Architectural and engineering services are included in the U.S. Standard Industry Classifications (SIC) 8711 and 8712; construction services are included in SIC 1622 and 1623.

[3] Included in engineering services are the undertaking of preparatory technical feasibility studies and project impact studies; preliminary plans, specifications, and cost estimates; final plans, specifications, and cost estimates; and services during the construction phase. Engineering service firms also may provide advisory and technical assistance to the client during construction to ensure that construction work is in conformity with the final design.

[4] Data specific to integrated engineering services are not available, but rather are reflected in aggregate data for the entire engineering profession. For the purposes of this discussion, therefore, integrated engineering services will not be discussed discretely.

of Latin American billings for design services.[5] The largest U.S. contractors accounted for 32 percent ($2.1 billion) of the total revenues generated by international construction projects in the Latin American market in 1994.[6] Although the Latin American market has been plagued by economic instability, which has been a deterrent to AEC services activity,[7] U.S. and foreign AEC firms have reported recent improvement in the region, particularly in Chile.[8] Many governments in Latin America are privatizing services and industrial sectors, thereby reducing reliance on the public sector for infrastructure and industrial development. One result of these changes reportedly has been greater business opportunities for U.S. and other foreign AEC service suppliers in Latin America. Economic stabilization and privatization could also drive construction activity in areas such as infrastructure (e.g., roads, power projects, ports) and industrial projects (e.g., auto plants in Brazil and petrochemical facilities in Venezuela), spurring greater interest in Latin American markets. As with entry into other foreign markets, however, careful evaluation of market conditions and prospects will help determine future U.S. AEC investment decisions in Latin America.[9]

Nature of International Trade in AEC Services

Trade in AEC services is predominantly undertaken by majority-owned affiliates located in foreign markets.[10] AEC firms that engage in international trade generally establish some type of affiliate, joint venture, or branch office in important foreign markets, as contracts are more likely to be awarded to firms that have a commercial presence.[11] These foreign-based U.S. affiliates can also benefit from the knowledge and networks of foreign national employees.[12]

[5] Among the top 10 design firms reporting billings in Latin America in 1995 were the U.S. firms of Foster Wheeler, The Louis Berger Group, Harza Engineering, and the Bechtel Group. The other design firms are headquartered in Finland, Canada, Italy, and the Netherlands. "The Top 200 International Design Firms," *Engineering News-Record*, July 22, 1996, pp. 34 and 37.

[6] Among the top 10 international contractors reporting revenues from the Latin American market in 1994 were the U.S. firms of Fluor Daniel Inc., The M.W. Kellogg Co., and the Bechtel Group Inc. Odbrecht, SA, a Brazilian contractor specializing in water projects, was among the top 10 international contractors in Latin America. The other leading international contractors are headquartered in the United Kingdom, Italy, Japan, and Spain. "The Top 225 International Contractors," *Engineering News-Record*, Aug. 28, 1995, pp. 36-42.

[7] U.S. industry representative, interview with USITC staff, Washington, DC, Aug. 15, 1996.

[8] Mr. Jose Guerra, testimony before the United States International Trade Commission, July 18, 1996. Mr. Guerra, representing the United States Council for International Engineering Practice, indicated during the Commission's public hearing that Chile presents one of the best opportunities for marketing U.S. engineering services.

[9] Information for this section from "The Top 200 Design Firms," *Engineering News-Record*, July 24, 1995, pp. 34-38, and "The Top 225 International Contractors," July 22, 1996, pp. 33-39.

[10] Architectural services are the least traded of the three services.

[11] Industry representative, interview by USITC staff, Washington, DC, Feb. 1, 1995.

[12] "The Top 400 Contractors," *Engineering-News Records*, May 20, 1996, pp. 37-47.

Cross-Border Transactions

Cross-border architectural, engineering, and construction exports increased at a 33-percent average annual rate, from $867 million in 1990 to $2.7 billion in 1994 (figure 8-1).[13] The rapid increase in cross-border trade reflects significant growth in construction activity in the Asia-Pacific region and may also be an indication of the increasing ability of AEC firms to operate from home bases through advanced computer-aided design and telecommunication capabilities.[14] The United States runs a notable trade surplus in cross-border trade in AEC services. The U.S. cross-border surplus has risen steadily from $697 million in 1990 to $2.4 billion in 1994, an average annual increase of 36 percent.

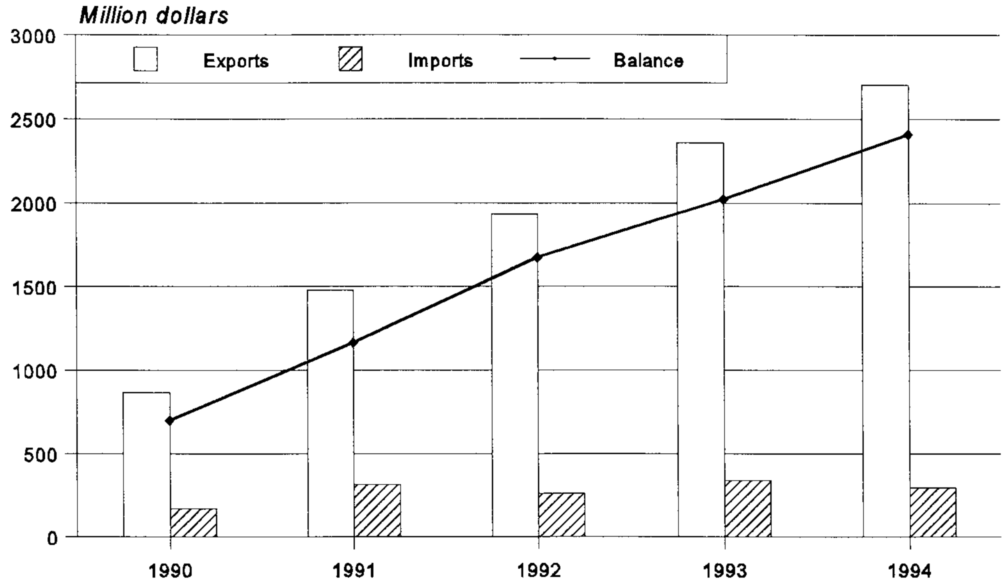
The leading export region for U.S. AEC firms in 1994 was the Asia-Pacific area, with 52 percent of cross-border sales (figure 8-2). Secondary export markets included Europe, with 13 percent ($356 million) of sales, and South/Central America with 12 percent ($334 million). Venezuela accounted for 53 percent ($176 million) of U.S. exports to South and Central America, and nearly 7 percent of total U.S. cross-border sales in 1994.[15]

[13] U.S. Department of Commerce (USDOC), Bureau of Economic Analysis (BEA), "U.S. International Sales and Purchases of Private Services," *Survey of Current Business*, Sept. 1995, p. 102. Cross-border data for U.S. exports of construction services are reported on a net basis, meaning that the data reflect "U.S. contractors' gross operating revenues from foreign projects less the sum of (1) U.S. merchandise exports included in gross operating revenues (which are recorded in the merchandise trade account of the balance of payments) and (2) foreign expenses, such as those for local labor or locally procured materials and supplies." In sum, net receipts measures that part of gross operating revenues retained by U.S. contractors. However, imports are only reported on a gross basis. Therefore, the U.S. surplus in cross-border trade is understated.

[14] The increasing use of the Internet and other electronic media as a method of cross-border supply is noted in the prehearing brief of the United States Council for International Engineering Practice, July 18, 1996, p. 7.

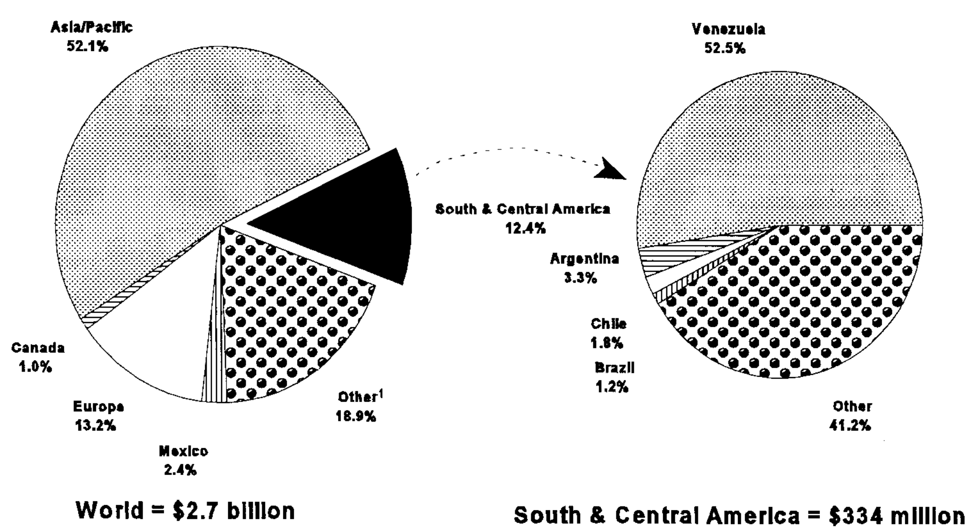
[15] USDOC, BEA, *Survey of Current Business*, Sept. 1995, p. 102.

Figure 8-1
Cross-border trade in architectural, engineering, and construction services: U.S. exports, imports, and trade balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Figure 8-2
Architectural, engineering, and construction services: U.S. cross-border exports, by principal markets, 1994



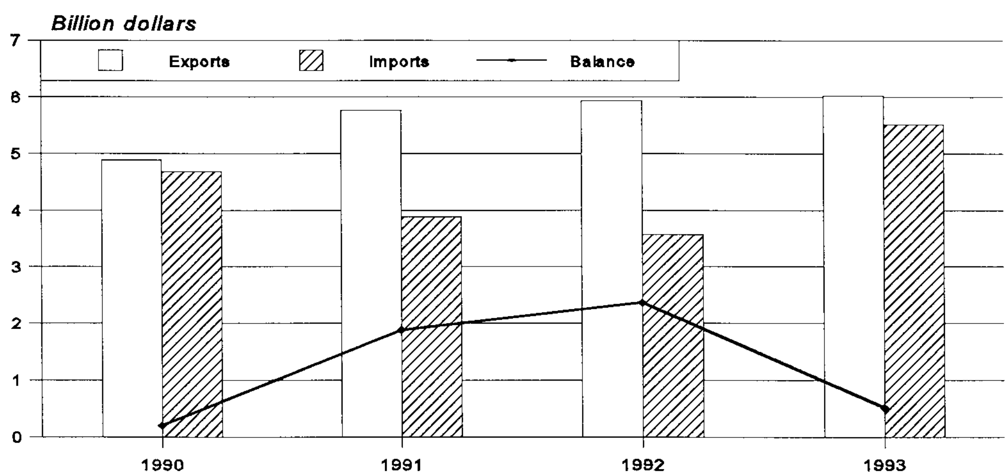
[1] Principally includes the Middle East, Africa, and the Caribbean.
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Sales by Majority-Owned Affiliates

Exports of AEC services by foreign-based affiliates of U.S. firms experienced steady growth during 1990-93 (figure 8-3). Architectural and engineering sales through foreign affiliates increased by an average annual rate of 7 percent, from nearly $4.9 billion in 1990 to $6.0 billion in 1993.[16] In 1993, the major regional market for sales by foreign affiliates of U.S. architectural and engineering firms was Europe, which accounted for over 75 percent ($4.5 billion) of such sales. South America accounted for less than 2 percent ($99 million) of architectural and engineering sales.[17]

Affiliate sales of construction services grew more gradually during 1990-93, by an average annual rate of 3 percent. Sales of construction services measured $5.6 billion in 1990, and $6.1 billion in 1993.[18]

Figure 8-3
Architectural and engineering service transactions by majority-owned affiliates: U.S. exports, imports, and trade balance, 1990-1993



Note.--Because import data for architectural and engineering services provided by construction firms are suppressed in 1992, the trade balance is likely overstated in that year.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, September issues for 1993-95.

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[16] BEA data pertaining to affiliate sales of architectural and engineering services also reflects sales of surveying services.

[17] USDOC, BEA, *Survey of Current Business*, Sept. 1993, p. 153; and Sept. 1995, p. 104.

[18] USDOC, BEA, *U.S. Direct Investment Abroad: Operations of U.S. Parent Companies and Their Foreign Affiliates*, July 1993, table III.F.3; and July 1995, table III.F.3. Figures for sales of construction services reflect the value of goods and services, and therefore are not comparable to affiliate sales of architectural and engineering services.

Examination of Commitments on Architectural, Engineering, and Construction Services

As noted, AEC services are principally supplied through sales by affiliates, although architectural and engineering services are also delivered on a cross-border basis. Therefore, limitations to commercial presence, such as investment restrictions, nationality requirements, restricted access to local utilities and institutions, and restrictions on types of corporate entities, all greatly affect the ability of U.S. firms to provide AEC services in foreign markets. Moreover, residency and nationality requirements may discriminate against certain U.S. service providers in foreign markets. Residency, nationality, or establishment requirements, and other restrictions on the use of services supplied from abroad can also inhibit cross-border trade in AEC services.[19] Barriers to these modes of delivery may be administered through government regulators and/or private sector professional associations, and may also be industry-specific, or apply across industries, such as foreign equity participation limits.[20] In summary, restrictions on commercial presence, the presence of natural persons, and cross-border supply are significant in light of the nature of trade in AEC services. Consumption abroad, in which the customer crosses into a foreign country to receive the service, is not a typical mode of delivery for AEC services.[21] Therefore, the following analysis will focus on commitments pertaining to commercial presence, cross-border supply, and the presence of natural persons.

With respect to cross-border trade, AEC commitments by the subject countries are generally restrictive, tending to limit market access and discriminate against foreign service providers (table 8-1). However, with the exception of Bolivia, Paraguay, and Uruguay, all South American countries under review offered some commitments in the AEC services sector as discussed in the following sections. Argentina and Venezuela provided the best coverage of AEC sectors, although they have opted to maintain certain limitations.

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[19] Examples of cross-border trade in AEC services include sending blueprints and designs via mail, telephone, or other means across national boundaries.

[20] "Issues Paper (Note by the Secretariat)," OECD Workshop on Professional Services, Paris, Sept. 26-27, 1995, pp. 8-9.

[21] Specific barriers to trade in AEC services include national prohibitions on competition; lack of transparency; problems associated with recognition of diplomas, professional licensing, and admission into national registers; competition from government and parastatal entities; subsidies and other discriminatory financial arrangements; lack of adherence to a qualifications-based selection process; and discriminatory guarantees, liability, and insurance requirements. "Engineering Consultancy and Related Professions," OECD Workshop on Professional Services, Paris, Sept. 26-27, 1994, pp. 9-13.

Table 8-1
Highlights of industry-specific restrictions on architectural, engineering, and construction services

	Mode of Supply[1]				
Country[2]	Cross-Border Supply	Consumption Abroad	Commercial Presence	Presence of Natural Persons	Comments[3]
Argentina	**Architectural and Engineering Services, Pre-Erection Work at Construction Sites, General Construction Work for Buildings, Assembly and Erection of Prefabricated Constructions, Special Trade Construction Work, Installation Work, Building Completion and Finishing Work, and Renting Services Related to Equipment for Construction or Demolition of Buildings or Civil Engineering Works, with Operator**: **Market Access**: • Foreign service suppliers must obtain recognition of their professional degree, enroll in the relevant college, and establish legal domicile in Argentina. **National Treatment:** None **Integrated Engineering Services and General Construction Work for Civil Engineering:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural and Engineering Services, Pre-Erection Work at Construction Sites, General Construction Work for Buildings, Assembly and Erection of Prefabricated Constructions, Special Trade Construction Work, Installation Work, Building Completion and Finishing Work, and Renting Services Related to Equipment for Construction or Demolition of Buildings or Civil Engineering Works, with Operator**: **Market Access:** • Foreign service suppliers must obtain recognition of their professional degree, enroll in the relevant college, and establish legal domicile in Argentina. **National Treatment:** None **Integrated Engineering Services and General Construction Work for Civil Engineering:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural and Engineering Services, Pre-Erection Work at Construction Sites, General Construction Work for Buildings, Assembly and Erection of Prefabricated Constructions, Special Trade Construction Work, Installation Work, Building Completion and Finishing Work, and Renting Services Related to Equipment for Construction or Demolition of Buildings or Civil Engineering Works, with Operator:** **Market Access:** • Foreign service suppliers must obtain recognition of their professional degree, enroll in the relevant college, and establish legal domicile in Argentina. **National Treatment:** None **Integrated Engineering Services and General Construction Work for Civil Engineering:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural and Engineering Services, Pre-Erection Work at Construction Sites, General Construction Work for Buildings, Assembly and Erection of Prefabricated Constructions, Special Trade Construction Work, Installation Work, Building Completion and Finishing Work, and Renting Services Related to Equipment for Construction or Demolition of Buildings or Civil Engineering Works, with Operator:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments. **Integrated Engineering Services and General Construction Work for Civil Engineering:** **Market Access:** Unbound **National Treatment:** Unbound	• CPC 8671, 8672, 511, 512, 514, 517, and 518.[4]
Brazil	**Architectural and Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound **Integrated Engineering Services, Special Trade Construction Work, Building Completion And Finishing Work, And Renting Services Related to Equipment For Construction or Demolition of Buildings or Civil Engineering Works, With Operator:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural and Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound **Integrated Engineering Services, Special Trade Construction Work, Building Completion And Finishing Work, And Renting Services Related to Equipment For Construction or Demolition of Buildings or Civil Engineering Works, With Operator:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural and Engineering Services:** **Market Access:** • Foreign service suppliers must join Brazilian service suppliers in a *consórcio*, a type of legal identity. **National Treatment:** None **Integrated Engineering Services, Special Trade Construction Work, Building Completion and Finishing Work, and Renting Services Related to Equipment for Construction or Demolition of Buildings or Civil Engineering Works, with Operator:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural and Engineering Services:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments. **Integrated Engineering Services, Special Trade Construction Work, Building Completion and Finishing Work, and Renting Services Related to Equipment for Construction or Demolition of Buildings or Civil Engineering Works, with Operator:** **Market Access:** Unbound **National Treatment:** Unbound	• CPC 8671 • CPC 86721, 86722, 86723, 86724, 86725, and 86729.[5]

Table 8-1
Highlights of industry-specific restrictions on architectural, engineering, and construction services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Brazil ***(continued)***	**Pre-Erection Work at Construction Sites, General Construction Work For Buildings, General Construction Work For Civil Engineering, Assembly And Erection of Prefabricated Constructions, And Installation Work:** **Market Access:** Unbound **National Treatment:** Unbound	**Pre-Erection Work at Construction Sites, General Construction Work For Buildings, General Construction Work For Civil Engineering, Assembly And Erection of Prefabricated Constructions, And Installation Work:** **Market Access:** Unbound **National Treatment:** Unbound	**Pre-Erection Work at Construction Sites, General Construction Work for Buildings, General Construction Work for Civil Engineering, Assembly and Erection of Prefabricated Constructions, and Installation Work:** **Market Access:** • Access granted 5 years after Agreement establishing World Trade Organization enters into force. **National Treatment:** None	**Pre-Erection Work at Construction Sites, General Construction Work for Buildings, General Construction Work for Civil Engineering, Assembly and Erection of Prefabricated Constructions, and Installation Work:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 511, 512, 513, 514, and 516.[6]
Chile	**Architectural And Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural And Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural And Engineering Services:** **Market Access:** None **National Treatment:** None	**Architectural and Engineering Services:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 86711 and 86712[7] • CPC 86725 and 86726 (specifically engineering design services relating to sanitary works, mechanical engineering design services, electrical engineering design services, chemical and process engineering design services, and environmental engineering design services).[8]
	Integrated Engineering And All Construction And Related Engineering Services: **Market Access:** Unbound **National Treatment:** Unbound	**Integrated Engineering and All Construction and Related Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	**Integrated Engineering And All Construction And Related Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	**Integrated Engineering and All Construction and Related Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	
Colombia	**Architectural, Engineering, And Integrated Engineering Services, Special Trade Construction Work, Building Completion And Finishing Work, And Renting Services Related to Equipment For Construction or Demolition of Buildings or Civil Engineering Works, With Operator:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural, Engineering, and Integrated Engineering Services, Special Trade Construction Work, Building Completion and Finishing Work, and Renting Services Related to Equipment for Construction or Demolition of Buildings or Civil Engineering Works, with Operator:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural, Engineering, and Integrated Engineering Services, Special Trade Construction Work, Building Completion and Finishing Work, and Renting Services Related to Equipment for Construction or Demolition of Buildings or Civil Engineering Works, with Operator:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural, Engineering, and Integrated Engineering Services, Special Trade Construction Work, Building Completion and Finishing Work, and Renting Services Related to Equipment for Construction or Demolition of Buildings or Civil Engineering Works, with Operator:** **Market Access:** Unbound **National Treatment:** Unbound	

Table 8-1
Highlights of industry-specific restrictions on architectural, engineering, and construction services

Country[2]	Mode of Supply[1]: Cross-Border Supply	Consumption Abroad	Commercial Presence	Presence of Natural Persons	Comments[3]
Colombia ***(continued)***	**Pre-Erection Work at Building and Construction Sites, General Construction Work for Buildings, General Construction Work for Civil Engineering, Assembly and Erection of Prefabricated Constructions and Installation Work:** **Market Access:** Unbound **National Treatment:** Unbound	**Pre-Erection Work at Building and Construction Sites, General Construction Work for Buildings, General Construction Work for Civil Engineering, Assembly and Erection of Prefabricated Constructions and Installation Work:** **Market Access:** None **National Treatment:** None	**Pre-Erection Work at Building and Construction Sites, General Construction Work for Buildings, General Construction Work for Civil Engineering, Assembly and Erection of Prefabricated Constructions and Installation Work:** **Market Access:** None **National Treatment:** None	**Pre-Erection Work at Building and Construction Sites, General Construction Work for Buildings, General Construction Work for Civil Engineering, Assembly and Erection of Prefabricated Constructions and Installation Work:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 511 • CPC 512 • CPC 51330 (specifically for dams and excluding waterways, harbors, and other waterworks) and 51372 (specifically for golf courses and excluding other sport and recreation installations).[9] • CPC 51570 (specifically for derrick operations).
Peru	**Architectural And Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound **Integrated Engineering and All Construction and Related Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural and Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound **Integrated Engineering And All Construction And Related Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural and Engineering Services:** **Market Access:** • Foreign professionals must have degrees officially recognized and enroll in relevant professional college. Degree provision may be waived in the case of reciprocal conventions. **National Treatment:** None **Integrated Engineering and All Construction and Related Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural and Engineering Services:** **Market Access:** • Unbound expect as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments. **Integrated Engineering and All Construction and Related Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	• CPC 86711, 86712, 86713, and 86714.[10] • CPC 86721, 86722, 86723, 86724, 86725, 86726, and 86727.[11]

Table 8-1
Highlights of industry-specific restrictions on architectural, engineering, and construction services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments**[3]
Venezuela	**Architectural, Engineering, and Integrated Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural, Engineering, and Integrated Engineering Services:** **Market Access:** None **National Treatment:** None	**Architectural, Engineering, and Integrated Engineering Services:** **Market Access:** Unbound **National Treatment:** Unbound	**Architectural, Engineering, and Integrated Engineering Services:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 8671 • CPC 8672 • CPC 8673 • MFN exemption restricts architectural services to national enterprises subject to reciprocity.
	All Construction and Related Engineering Services: **Market Access:** Unbound **National Treatment:** Unbound	**All Construction and Related Engineering Services:** **Market Access:** None **National Treatment:** None	**All Construction and Related Engineering Services:** **Market Access:** None **National Treatment:** None	**All Construction and Related Engineering Services:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC Section 5.[12] • MFN exemption restricts engineering services to national enterprises subject to reciprocity.

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.
[2] Bolivia, Paraguay, and Uruguay did not offer commitments in architectural, engineering, and construction services.
[3] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.
[4] Argentina's schedule does not address CPC 513 (general construction work for civil engineering) and 8673 (integrated engineering services).
[5] Does not include engineering design services n.e.c. (86726) and other engineering services during construction and installation phase (86727).
[6] Does not include CPCs 515 (special trade construction work), 517 (building completion and finishing work), and 518 (renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator).
[7] Does not include contract administration services (86713); combined architectural design and contract administration services (86714); and other architectural services (86719).
[8] Does not include advisory and consultative engineering services (86721); engineering design services for the construction of foundations and building structures (86722); engineering design services for mechanical and electrical installations for buildings (86723); engineering design services for the construction of civil engineering works (86724); other engineering services during the construction and installation phase (86727); and other engineering services (86729).
[9] Does not include civil engineering for highways (except elevated highways), streets, roads, railways, and airfield runways (51310); for bridges, elevated highways, tunnels, and subways (51320); for long distance pipelines, communication and power lines (cables) (51340); for local pipelines and cables and ancillary works (51350); for constructions for mining and manufacturing (51360); for stadia and sports grounds (51371); and for engineering works n.e.c. (51390).
[10] Does not include other architectural services (86719).
[11] Does not include other engineering services (86729).
[12] Includes architecture, town planning, and landscaping; civil engineering; structures, foundations, and roads; water supply and hydraulic engineering; maritime installations; soil mechanics, geotechnics, and geophysics; petroleum engineering; mining/mineralogical engineering; electrical engineering and telecommunications; instruments and control engineering; mechanical engineering; metallurgical engineering; chemical/process engineering; environmental engineering; industrial engineering; agronomical/forestry engineering; systems/computer engineering; and other fields of specialization falling within the above headings.

Argentina

Argentina scheduled more full and partial commitments regarding AEC services than any other South American trading partner. These commitments expand market prospects and improve the treatment of Argentine-based U.S. affiliates. Trade restrictions remain unbound only with respect to integrated engineering services and general construction work for civil engineering. Argentina scheduled no restrictions specific to other AEC services when they are provided across borders or through commercial presence, although the Argentine schedule does indicate that foreign providers of professional services must obtain recognition of their credentials, enroll in relevant colleges, and establish a legal residence in Argentina. Argentina declined to specify permissible lengths of stay for foreign business persons, thereby preserving broad discretion with respect to regulating inbound flows of most foreign AEC service providers.

Brazil

Brazil scheduled commitments on commercial presence and the presence of natural persons only, and only for certain segments of the AEC services industry. Engineering services excluded from these commitments -- and therefore subject to unbound restrictions -- are miscellaneous engineering design services and other engineering services during construction and installation phases (CPC codes 86726 and 86727, respectively).

Industry-specific commitments require that foreign architectural and engineering firms establish a commercial presence by forming a legal entity called a *consórcio*,[22] in which a Brazilian partner maintains leadership. Other forms of joint ventures are not permissible. Other industry-specific commitments restrict foreign firms' current access to certain construction service sectors.[23] Providers of these specific AEC services will be granted access to the Brazilian market in the year 2000, at which point they will receive the same treatment as domestic firms.[24]

Cross-industry restrictions on commercial presence also affect foreign provision of these AEC services. Investment restrictions require that all foreign capital invested in Brazil be registered with the Central Bank of Brazil to be eligible for remittances. The Central Bank establishes the procedures related to remittances and transfer of funds abroad. In addition, foreign service suppliers seeking juridical person status must be organized as a legal entity under Brazilian law.

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[22] A *consórcio* is a form of joint venture that is used mainly to render services. This joint venture type is neither a juridical person nor a form of capital association. It is a contract of two or more enterprises for the accomplishment of one specific undertaking. Each joint venture member maintains its respective organizational structure and identity.

[23] These sectors include pre-erection work at construction sites, general construction work for buildings and civil engineering, assembly and erection of prefabricated constructions, and installation work. Brazil's schedule does not list commitments specific to several other construction sectors, thereby permitting the application of unbound trade restrictions (see table 8-1).

[24] Brazil reportedly delayed its commitments on these AEC services in response to the U.S. position of maintaining relatively high tariffs on imports of orange juice. Brazil Foreign Ministry representative, interview by USITC staff, Brasilia, Brazil, Aug. 6, 1996.

Cross-industry commitments on movement of personnel are rather onerous. Foreign specialized technicians and highly qualified professionals may work under temporary contract with Brazilian firms. The contract must be approved by the Ministry of Labor subject to the foreign worker's qualifications for the particular business and a justification from the hiring firm explaining the need to contract with foreign professionals rather than those available in Brazil. Like Argentina, Brazil declined to specify permissible lengths of stay for foreign business persons, retaining broad discretion in regulating inbound flows of most foreign AEC service providers.

In addition, executive personnel appointed to affiliates of foreign companies in Brazil are subject to a number of conditions related to position verification and applicant qualifications. Such appointments are conditional to the provision of new technology, an increase in productivity, or a minimum investment in Brazil of $200,000, all of which affect foreign suppliers' ability to deliver AEC services. The criteria necessary to meet these conditions are not specified in the Brazilian Schedule, however, and this lack of transparency may also hinder the ability of U.S. AEC firms to conduct business optimally.

Despite these restrictions, U.S. firms are active in the Brazilian AEC services market.[25] Market conditions, however, are hampered by numerous and complicated regulations that reportedly cause delays and increase operating costs.[26]

Chile

Chile scheduled few commitments under GATS regarding the AEC services sector. For most AEC sectors Chile reserves the right to maintain or impose limitations on market access and national treatment. Chile's commitments pertain only to narrow segments of the architectural[27] and engineering[28] services sectors when provided through a commercial presence. Restrictions on cross-border supply, consumption abroad, and the presence of natural persons remain unbound. Significant sectors of the architectural and engineering industries were not addressed in the Chilean Schedule. These sectors include contract administration services (CPC code 86713), advisory and consultative engineering services (CPC code 86721), and engineering design services for civil engineering works (CPC code 86724), for example.[29]

Cross-industry commitments on commercial presence may restrict foreign firms' operations in these service areas. The commitments in the Chilean schedule apply to a commercial presence that is executed through the Foreign Investment Statute and is financed by external

[25] Industry representative, interview by USITC staff, Sao Paulo, Brazil, Aug. 9, 1996.

[26] Industry representative, interview by USITC staff, Caracas, Venezuela, Aug. 12, 1996.

[27] For architectural services, segments covered are advisory and pre-design architectural services and architectural design services (CPC codes 86711 and 86712).

[28] For engineering services, segments covered are engineering design services for industrial processes and production, and other specialty engineering services (CPC codes 86725 and 86726).

[29] See table 8-1 for a complete list of AEC services (and corresponding CPC codes) excluded from coverage.

capital. Authorization to provide such services through a commercial presence may take into account a variety of economic and national interest criteria. In addition, cross-industry limitations on national treatment stipulate capital repatriation time frames, activities in frontier zones, and staffing requirements for foreign service providers. Capital repatriation by foreign investors is permitted only three years after initial entry into the Chilean market.

Chile's cross-industry commitments relating to natural persons are applicable only to the AEC sectors listed in its schedule. Restrictions on natural persons limit transfers of senior and specialized personnel to those with a minimum of two years performing the same duties within the foreign parent company. In addition, employment of foreign natural persons by a foreign enterprise is limited to no more than 15 percent of total staff employed in Chile. Foreign personnel are admitted for a 2-year period, which can be renewed for another 2 years. Such personnel are subject to the Chilean labor and social security legislation in force.

Colombia

Like many other South American countries, Colombia's commitments concentrate on a narrow segment of the AEC services sector. These commitments are limited to specific construction services -- pre-erection work at construction sites, general construction work for buildings, general construction work for civil engineering,[30] assembly and erection of prefabricated constructions,[31] and installation work. Because of the targeted nature of these commitments, many significant AEC sectors may be subject to trade restrictions. These sectors include architectural, engineering, and integrated engineering services and miscellaneous construction services.[32]

Cross-border supply of the aforementioned construction sectors remains unbound, meaning Colombia has reserved the right to impose restrictions on this mode of supply. However, this action would have a greater impact on architectural and engineering services firms, which deliver a larger share of their services cross-border in the form of blueprints and drawings, for example, than on construction firms.

Colombia imposes no industry-specific restrictions on commercial presence for services treated by commitments, but foreign service providers are subject to cross-industry commitments related to foreign investment, taxes, unappropriated land, and special provisions for land acquisition on two Colombian islands. The most significant of these cross-industry commitments is the tax on profit remittances for foreign corporations, which creates an unattractive investment climate for these firms.

[30] Commitments for this sector are applicable only to construction work for dams and golf courses (part of CPC codes 51330 and 51372).

[31] Commitments for this sector are specific to derrick operations (listed in the Colombian Schedule as part of CPC code 51570).

[32] These are special trade construction work, building completion and finishing work, and renting services related to equipment for construction or demolition of building or civil engineering works, with operator.

Limitations on market access and national treatment by means of the temporary entry and stay of natural persons affect managers, legal representatives, and technical specialists. Cross-industry commitments restrict non-Colombian staffing levels to 10 percent of ordinary employees and to not more than 20 percent of skilled employees or specialists, administrative staff, or persons in positions of responsibility. Colombia also declined to specify permissible lengths of stay for foreign business persons, retaining broad discretion to regulate the entry and stay of most foreign AEC service providers. As with restrictions on these modes of supply in other South American countries, AEC service providers may be adversely impacted by the limitations placed on their operations.

Peru

Market access and national treatment for foreign AEC service providers are generally restricted in Peru. Except for certain architectural and engineering services,[33] Peru has reserved the right to maintain and impose restrictions on foreign supply of AEC services. Industry-specific commitments pertaining to commercial presence limit market access to foreign architects and engineers with officially recognized professional degrees (unless reciprocity is accorded). These service professionals must also enroll in the relevant professional colleges, albeit on a temporary basis.

Peru's cross-industry commitments on market access affect both commercial presence and the temporary entry and stay of natural persons in architectural and engineering services. Foreign nationals of GATS signatories may be permitted entry for 3 years, with renewal for successive 3-year periods possible. Foreign nationals may comprise no more than 20 percent of the total number of staff employed in a commercial presence, and their remuneration may not exceed 30 percent of the enterprise's total payroll. Multinational service enterprises, however, are not subject to these staffing allocations.[34]

Peruvian law stipulates that foreign investors and enterprises have the same rights as their domestic counterparts. Foreign investment must be registered with the competent national authority, and certain limitations exist concerning frontier land acquisitions by foreigners. In addition, Legislative Decree No. 757 establishes the rights, guarantees, and obligations applicable to domestic or foreign persons with investment in Peru. These decrees are intended to promote foreign investment in a multitude of economic sectors and enterprises.

[33] Only miscellaneous architectural and engineering services are excluded from these commitments (CPC codes 86719 and 86729).

[34] Criteria for meeting the terms of a "multinational service enterprise" are unavailable. There are other exceptions to these limitations, as well as exemptions foreign employers may request concerning specialized professional or technical personnel.

Venezuela

Venezuela is the only South American country to offer commitments for all AEC service sectors. Because Venezuela is one of the largest South American markets for AEC services, commitments regarding this sector would likely benefit U.S. service providers. However, Venezuela is also the only country to list an MFN exemption specific to AEC services. This exemption allows Venezuela to condition market access and regulatory treatment of foreign enterprises on reciprocity.

Venezuela has reserved the right to maintain or impose limitations on the cross-border supply of all AEC services, which has a greater potential effect on providers of architectural and engineering services. Venezuela has also reserved the right to impose restrictions on commercial presences that provide architectural, engineering, and integrated engineering services.

With respect to the movement of personnel, cross-industry commitments apply to all AEC services. Administrative staff, managers, executives, and specialists are subject to 1-year renewable periods of stay. However, certain supervisory positions must be held by Venezuelan nationals, 90 percent of the staff must be Venezuelan nationals, and total remuneration to foreigners, including manual workers and employees, may not exceed 20 percent of the payroll to personnel in either category. These restrictions have certain temporary exceptions that may be authorized by the Ministry of Labor under limited circumstances. Limitations on freedom of movement and personnel staffing may reduce foreign service providers' efficiency and competitiveness.

Despite the restrictions listed in the Venezuelan Schedule, the AEC services market is reported to be fairly open to foreign participation. In fact, competition is intense among international firms from Europe, Japan, and Brazil. One of the major industries attracting foreign AEC services providers is the petroleum sector. Venezuela released foreign investment restrictions pertaining to this sector in 1993. Infrastructure development is also expected to generate opportunities for foreign construction firms to participate in local projects.[35]

Industry Opinion

U.S. industry sources have indicated that they feel that the GATS improves prospects for trade in the AEC industry. U.S. industry sources have indicated, however, that the commitments are difficult to comprehend, and that it is difficult to assess where U.S. firms have gained ground and where they have lost.[36]

[35] Industry representatives, interviews by USITC staff, Caracas, Venezuela, Aug. 12, 1996, and Washington, DC, Aug. 15, 1995.

[36] Ibid.

U.S. industry sources have also remarked that government procurement procedures lack sufficient transparency and standardization. As a result, U.S. firms often find themselves at a disadvantage when bidding against firms from Europe and Asia that are not subject to the standards established by the Foreign Corrupt Practices Act. The development of national procurement codes with standardized procedures would enhance U.S. firms' prospects in many of these markets. In addition, U.S. industry representatives have noted that bureaucratic practices virtually demand that foreign firms affiliate with a local partner who can be effective when dealing with administrative issues and maintaining working relationships with government and industry representatives. While such arrangements often are commercially appropriate, they also may increase costs and diminish the level of control exercised by U.S. firms.[37]

Although South American markets may hold the prospect of greater opportunities for U.S. services providers, the small size of some of these markets could mitigate U.S. involvement. The level of U.S. participation in these markets will likely reflect, in part, the openness of economically important industrial sectors, such as mining, petroleum, and infrastructure.[38]

In response to concerns of various service industries on the international recognition of credentials, the World Trade Organization (WTO) established the Working Party on Professional Services in April 1994. The working party will first look at the accounting industry, but it is expected that the group will eventually explore mutual recognition of architectural and engineering qualifications.[39]

Summary

Despite the commitments offered by many South American countries in the AEC services sector, this market remains relatively restricted. Less than one-third of possible schedule entries were covered by full or partial commitments, and only about one-sixth of all commitments bind full market access and national treatment. Because sales by affiliates is the predominant mode of delivery for AEC services, commitments to liberalize commercial presence and the presence of natural persons have the greatest effect on AEC services trade. However, these modes of supply are subject to limitations in a majority of the South American countries under review.

In addition, commitments were often applicable to a narrow portion of the AEC sector, with significant AEC services excluded from coverage. The industry sector with the fewest commitments from the South American countries under review was integrated engineering services, which only Venezuela addressed. Special trade construction work, building

[37] Industry representatives, interviews by USITC staff in Washington, DC, Aug. 15, 1996, and Caracas, Venezuela, Aug. 12, 1996.

[38] Industry representative, interview by USITC staff, Washington, DC, Aug. 15, 1996.

[39] EU Commission official, interviews by USITC staff, Brussels, July 19, 1995; OECD representatives, interviews by USITC staff, Paris, July 19, 1995; and WTO officials, interviews by USITC staff, Geneva, July 24-25, 1995.

completion and finishing work, and renting services related to equipment for construction or demolition of buildings or civil engineering works (with operator) were the subject of commitments by only two countries, Argentina and Venezuela.

Argentina and Venezuela provided the best coverage of AEC sectors and modes of supply, often providing full market access and national treatment to many foreign providers of AEC services. Argentina offered full or partial commitments for about three quarters of all potential schedule entries, and more than one-half of Argentina's entries bind full market access and national treatment. Venezuela's full or partial commitments accounted for two-thirds of schedule entries, with less than one-half binding full market access and national treatment. Movement of personnel, one of the most important modes of supply for AEC services, remains subject to restrictions in both countries by means of cross-industry commitments. These restrictions generally affect the temporary stay of administrative personnel and specialists, and impose staffing requirements on AEC services providers. Commercial presence, however, was fully liberalized in most AEC service sectors for these two countries.

Of the remaining South American countries, Brazil, Chile, Colombia, and Peru covered less than one-half of the schedule entries, and bound full market access and national treatment in one-quarter or less of these entries. Bolivia, Paraguay, and Uruguay made no offers on AEC services, meaning restrictions may be maintained or imposed in the future.

With respect to the schedules' twin objectives of providing benchmarks and improving transparency, the results are mixed. These South American countries generally offered standstill agreements with the understanding that the GATS process would continue and evolve.[40] For those countries that provided broad sectoral coverage, particularly Argentina and Venezuela, the commitments present some effective benchmarks and improve transparency. However, for the larger group of countries with less comprehensive schedules, effective benchmarks have not been established and transparency has been enhanced only marginally.

[40] Brazil Foreign Ministry representative, interview by USITC staff, Brasilia, Brazil, Aug. 6, 1996.

CHAPTER 9
Advertising Services[1]

Introduction

The advertising services covered in this report include writing copy, developing artwork, designing graphics, and other creative work, as well as the placement of advertisements in periodicals, newspapers, radio, television or other advertising media for clients on a contract or fee basis.[2] U.S. firms are among the most competitive participants in the international advertising market.

Nature of International Trade in Advertising Services

Trade in this sector comprises both cross-border transactions and sales by foreign affiliates. Of these channels of delivery, sales by affiliates predominate because firms that establish a foreign commercial presence reportedly develop a keen understanding of the local media, consumer tastes, language, and culture, and thereby develop a competitive advantage over firms attempting to export advertising services from home offices. Many U.S. advertising firms have established offices overseas to serve affiliates of other U.S. companies. In 1993, sales by U.S. majority-owned advertising affiliates amounted to $3.5 billion, compared to $338 million earned through cross-border exports of advertising services.[3]

[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following organizations: J. Walter Thompson; McCann-Erickson Worldwide; Ogilvy & Mather; American Association of Advertising Agencies; Association of National Advertisers; International Advertising Association; International Business-Government Counsellors; Procter & Gamble; Ralston Purina; Xerox; and Pepsi Cola Company.

[2] Advertising services are captured under the U.S. SIC code 731.

[3] USDOC, BEA, *Survey of Current Business*, Sept. 1995, pp. 101, 104.

Cross-Border Transactions

U.S. cross-border exports of advertising services increased by an average annual rate of 32 percent during 1990-94, growing from $130 million to $399 million (figure 9-1).[4] Although U.S. cross-border imports rose at roughly the same rate as exports, the value of cross-border imports surpassed exports every year and the deficit in cross-border trade increased from $113 million in 1990 to $337 million in 1994. The growth in the cross-border deficit slowed from a 39-percent average annual rate in 1990-93 to 10 percent in 1993-94. Most cross-border trade in advertising services occurs with Europe, Canada, and the Asia and Pacific region. In 1994, countries in South and Central America, accounted for over 6.5 percent of total cross-border exports of advertising services (figure 9-2), the largest markets being Brazil and Argentina.[5]

Sales by Majority-Owned Affiliates

Sales by foreign-based affiliates of U.S. firms (U.S. exports) decreased by an average annual rate of 4.2 percent during 1990-93 from $4.0 billion to $3.5 billion (figure 9-3).[6] Sales by U.S.-based affiliates of foreign firms (U.S. imports) also slightly decreased from $2.7 billion in 1990 to $2.5 billion in 1993. The resulting annual trade surplus generated by affiliate transactions of U.S. advertising agencies declined from a high of $1.3 billion in 1991 to $1 billion in 1993. The South American trading partners addressed in this study accounted for less than 5 percent of the total affiliate sales of advertising services in 1993 (figure 9-4). The trade data indicate that, in marked contrast to the decline in total international sales, U.S. exports of advertising services to countries in the Western Hemisphere excluding Canada increased by an average annual rate of 22 percent during 1990-93. Sales by foreign-based affiliates of U.S. firms predominantly occur in Argentina, Brazil, and Colombia.[7] The increase in U.S. advertising exports is principally the result of rapid economic growth, which spurred demand for consumer products. However, increased taxes on imported goods discouraged advertising by multinationals in some South American countries.[8]

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[4] Ibid., p. 102.

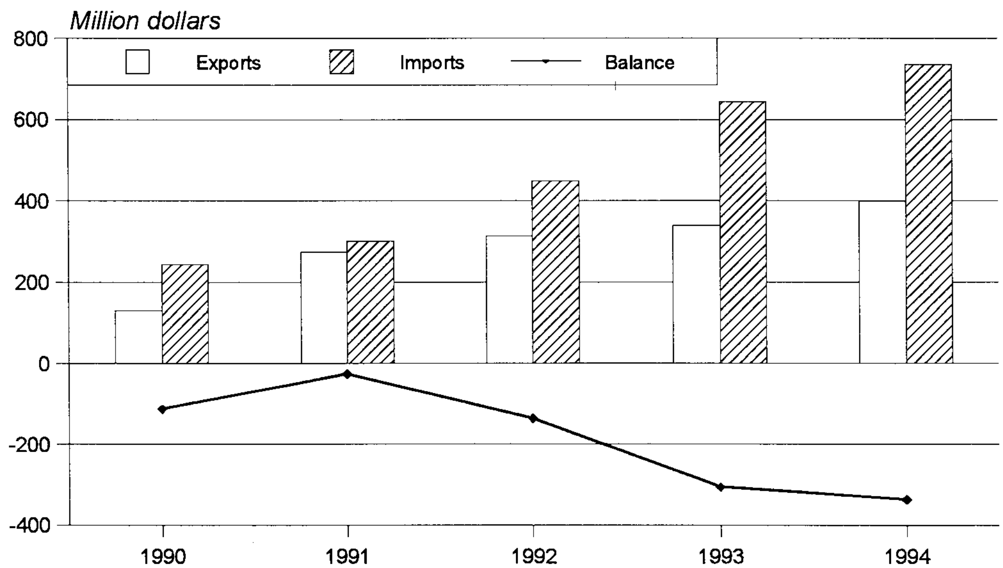
[5] Representative of U.S. advertising industry, telephone interview by USITC staff, Apr. 24, 1996.

[6] USDOC, BEA, *Survey of Current Business*, Sept. 1993, p. 153; and Sept. 1995, p. 104.

[7] Representative of U.S. advertising industry, telephone interview by USITC staff, Apr. 24, 1996.

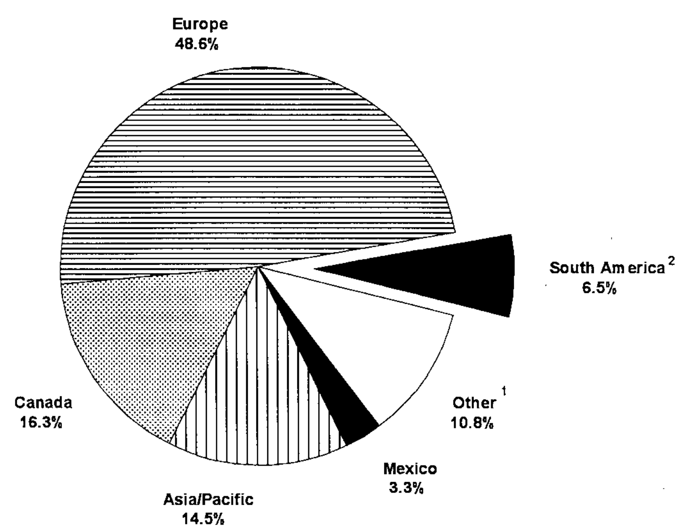
[8] Claudia Penteado, "Emerging Markets: Will Brazil's big boom backfire? Gov't aims to slow consumption," *Advertising Age International*, May 15, 1995, p. i-12.

Figure 9-1
Cross-border trade in advertising services: U.S. exports, imports, and trade balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1993, 1994, and 1995.

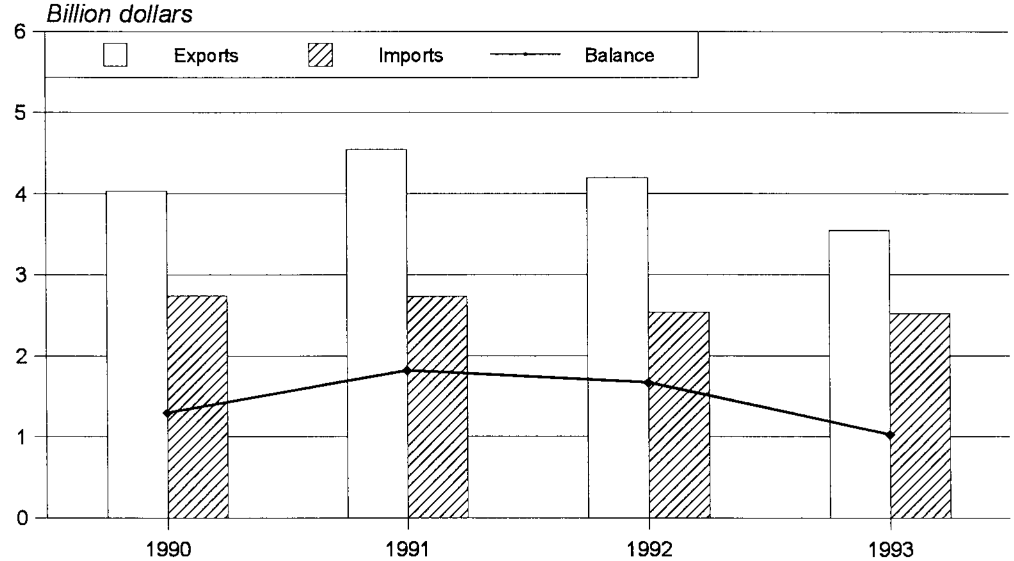
Figure 9-2
Advertising services: U.S. cross-border exports, by principal markets, 1994



[1] Principally includes the Middle East, Africa, and the Caribbean region.
[2] Includes trade with Central America.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

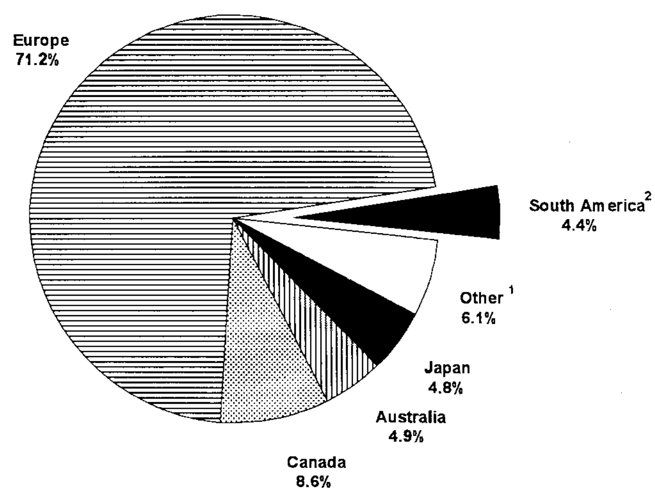
Figure 9-3
Advertising service transactions by majority-owned affiliates: U.S. exports, imports, and trade balance, 1990-93



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1993, 1994, and 1995.

Figure 9-4
Advertising service exports: Sales by majority-owned affiliates of U.S. firms, by principal markets, 1993

Total = $3.5 billion



[1] Principally includes the Middle East, Africa, Asia and Pacific countries, excluding Japan and Australia.
[2] Includes trade with Mexico, Central America, and the Caribbean.
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Examination of Commitments on Advertising Services

Advertising is overwhelmingly produced in the country for which it is intended. As noted, U.S. advertising firms mainly provide advertising services to overseas clients through foreign-based affiliates.[9] U.S. advertising firms also depend upon their ability to move personnel around the world to establish new offices, manage affiliates, or provide client-specific services, making restrictions on the temporary entry and stay of personnel especially burdensome. The types of employees most commonly transferred include managers, account executives, and creative personnel. Other significant trade barriers in advertising services may include local content requirements and other import restrictions on foreign-produced commercials, caps on foreign ownership and investment, and limitations on remittances of commissions and fees.

The commitments scheduled by South American trading partners reveal some limitations on the important modes of supply for advertising services (table 9-1). In cross-industry commitments, all subject countries left unbound restrictions on the presence of natural persons, except for various measures affecting managers, senior executives, and creative personnel.[10] With respect to industry-specific commitments, Brazil and Peru listed various limitations on establishing a commercial presence. Bolivia, Chile, Colombia, Paraguay and Uruguay did not offer any commitments on advertising services.

Argentina

Argentina's sector-specific commitments on advertising services provide for full market access and national treatment for all modes of supply except for the presence of natural persons. As stated, cross-industry limitations on the presence of natural persons were left unbound except for measures affecting managers, executives, and specialists. In addition, Argentina declined to specify the length of stay permissible for foreign business persons, thereby retaining considerable discretion in this respect. Argentina also scheduled limitations applicable to all services industries on the acquisition of land within 150 km of the national frontier and 50 km of coastal areas, but these restrictions do not present a substantial obstacle to foreign advertising firms.

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[9] P.W.A. Daniels, "The Internationalization of Advertising Services," *The Service Industries Journal*, vol. 15, No. 3 (London: Frank Cass, July 1995), p. 288.

[10] See appendix E for a detailed presentation of cross-industry commitments.

Table 9-1
Highlights of industry-specific restrictions on advertising services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Argentina	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 871
Brazil	**Market Access:** • Foreign participation in advertising films is restricted to 1/3 of footage. Larger participation contingent on use of Brazilian talent and production house. Portuguese language required in advertising films unless foreign language is required by the subject of the film. **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • Same limitations as those pertaining to cross-border supply. In addition, foreign ownership of companies established in Brazil is restricted to 49 percent of capital. Leadership must remain with Brazilian partners. Professionals are subject to the Brazilian Code of Ethics of Advertising Professionals. **National Treatment:** • Foreign producers are required to live at least 3 years in Brazil before being authorized to produce films.	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 871
Peru	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • Commercial advertising produced or created abroad and transmitted to Peru is subject to the same duties as foreign cinematographic films. Communication media transmitting commercial advertising produced or created outside Peru shall require guarantees of payment of the appropriate duties. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 87110, sales or leasing of advertising space or time; • CPC 87120, planning, creating, and placement services of advertisements. • Peru excluded CPC 87190, other advertising services including outdoor and aerial advertising services.

Table 9-1

Highlights of industry-specific restrictions on advertising services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Venezuela	**Market Access:** • None, only legal representation required **National Treatment:** • None, only legal representation required	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 87120, planning, creating, and placement services of advertisements.

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.

[2] Bolivia, Chile, Colombia, Paraguay, and Uruguay did not offer commitments on advertising services.

[3] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.

Brazil

Brazil scheduled partial commitments for advertising services provided through cross-border supply and commercial presence. Services provided via consumption abroad are unbound, as are services provided through the movement of natural persons, with some exceptions for senior managers and specialists. With respect to cross-border supply, Brazil offered commitments only on market access, leaving limitations on national treatment unbound. Brazil's schedule notes that foreign participation in the production of advertising film is restricted to one-third of footage, with larger participation subject to the use of local talent and production houses.[11] The schedule also lists a requirement that Portuguese must be used in advertising films unless the content requires another language. All of these limitations on cross-border market access also are applied to advertising services provided through a commercial presence. Additional limitations placed on commercial presence include a 49 percent cap on foreign ownership of advertising firms established in the country, a requirement that managerial control be held by Brazilian nationals, and a stipulation that foreign professionals are subject to the Brazilian Code of Ethics of Advertising Professionals. Foreign advertising firms wishing to establish a commercial presence in Brazil are also confronted with a national treatment limitation whereby they must reside in Brazil for 3 years prior to obtaining authorization to produce films.

As noted, with respect to the presence of natural persons, Brazil made cross-industry commitments only on selected types of business visitors, specifically specialized technicians, highly qualified professionals, managers and directors. The appointment of managers or directors must be related to the provision of new technology, an increase in productivity, or a minimum foreign investment of US$200,000 in Brazil by the foreign company. Managers and directors of foreign affiliates in Brazil must be designated to fill a vacancy position with full decision-making power. The firm also must demonstrate a link between the service provider in Brazil and its headquarters abroad, and prove that the manager or director in Brazil is performing his or her duties. Appointments of specialists or highly qualified professionals must be approved by the Ministry of Labor, which evaluates the compatibility of their qualifications with the industry of the employing company and the availability of such talent in Brazil. Brazil's cross-industry limitations also state that no less than two-thirds of all employees must be Brazilian. Brazil declined to specify permissible lengths of stay for foreign business persons, thereby reserving broad discretion in this respect.

Peru

The scope of Peru's commitments on advertising services is limited to the sale or lease of advertising space or time, and advertising planning, creation, and placement services. Other advertising services are excluded, such as outdoor and aerial advertising, and services related to the delivery of samples and other advertising materials. Peru's commitments apply only to advertising services provided through a commercial presence. Limitations on all other modes

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[11] The one-third of footage requirement reportedly exists, but is not actively enforced at present. Brazil Foreign Ministry representative, interview by USITC staff, Brasilia, Brazil, Aug. 6, 1996.

of supply are left unbound, with some exceptions to accommodate the presence of selected natural persons. With respect to advertising services provided through a commercial presence, Peru levies duties and requires payment guarantees for commercial advertising produced abroad and transmitted into the country. As for the presence of natural persons, Peru permits entry and stay for up to two consecutive 3-year periods. Foreign nationals may not constitute more than 20 percent of the employees of an enterprise and their combined earnings may not exceed 30 percent of the total payroll. Some exceptions may be made to the percentage requirements with respect to senior managers or specialized personnel.

Venezuela

Venezuela's commitments on advertising services are limited to the supply of planning, creating and placement services. Other advertising services are not addressed, suggesting that restrictions on such services are unbound. Venezuela's schedule provides full market access and national treatment for advertising services supplied through consumption abroad or through a commercial presence. With respect to cross-border supply, the only limitation is that foreign firms must retain local legal representation. Venezuela left restrictions concerning the presence of natural persons unbound except for senior administrative staff, managers, and specialists. These types of staff are permitted to stay in Venezuela for a renewable period of one-year. However, they may not constitute more than 10 percent of the number of employees of any enterprise and their remuneration may not exceed 20 percent of the total payroll. In addition, selected positions are reserved for Venezuelan nationals, such as the director of personnel and supervisors, subject to some exceptions.

Industry Opinion

Industry representatives indicate that they do not experience any barriers to doing business in South America that are so severe as to significantly impede their activities. Chile reportedly has the least restrictive market, however, other South American markets are not perceived as being substantially more restrictive.[12] Nevertheless, industry sources indicated that some regulatory measures do impede their ability to function optimally. For example, Argentina, Brazil, Paraguay, Peru, and Venezuela all require the use of local talent in the production of television commercials, and Argentina requires the use of "certified" television announcers with regulated salaries.[13] Such requirements limit the ability of advertising agencies to use films produced abroad and to select talent freely. In addition, Argentina and Brazil restrict comparative advertising, while Colombia taxes television commercials at different rates for foreign or mixed foreign-local productions.[14]

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[12] Industry representative, telephone interview by USITC staff, Washington, DC, May 31, 1996.
[13] Industry representatives, telephone interviews by USITC staff, May 3 and May 23, 1996.
[14] Industry representatives, telephone interviews by USITC staff, May 23 and May 31, 1996.

Summary

An examination of the schedules of commitments offered by South American trading partners suggests that most countries are relatively restrictive and few have made any significant progress toward establishing benchmarks and improving transparency. Argentina represents the primary exception because it scheduled full commitments to market access and national treatment for three out of the four possible modes of supply. To a lesser extent, the partial commitments scheduled by Brazil, Peru, and Venezuela enhance the transparency of their regulatory systems and provide some level of benchmarking. Although Chile reportedly has the most liberal market for advertising services among the subject countries, its failure to schedule commitments leaves it with considerable discretion to impose limitations at a later date.

CHAPTER 10
Legal Services[1]

Introduction

Legal services comprise legal advisory and representation services in various fields of law (e.g., criminal law), advisory and representation services in statutory procedures of quasi-judicial bodies, legal documentation and certification services, and other legal advisory and information services.[2] Recently, the legal service industry has experienced significant growth both in the United States and abroad, spurred primarily by increased demand from firms seeking advice on deregulation, corporate restructuring, and the emergence of new financial instruments.[3] In addition, changes in Federal and State law have created demand for legal services in areas such as product and personal liability, bankruptcy, family law, and civil rights.

Nature of International Trade in Legal Services

Legal services are traded in a variety of ways. U.S. law firms sometimes establish affiliates in foreign markets where longstanding clients from the home market have established operations. The affiliate's lawyers may become members of foreign bars, giving them the right to appear in local courts and to prepare advice on local law. However, most U.S. lawyers in foreign markets operate as so-called foreign legal consultants. Foreign legal consultants are members of a bar in the United States, but are not members of the bar in the foreign countries in which their clients reside. They variously provide legal advice to clients on U.S. law, international law, and third-country law, but are precluded from appearing in local courts or giving independent advice on local law.

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[1] Among the individuals consulted by USITC staff in preparation of this discussion were those affiliated with the following organizations: Masamichi Kono, Trade in Services Division, World Trade Organization (WTO); Richard Self, formerly Deputy Assistant United States Trade Representative for Services, U.S. Trade Representative's (USTR) Office, now in the USTR office, Geneva; Bonnie K. Richardson, formerly Director of Bilateral Services Negotiations for the Uruguay Round of Trade Negotiations, USTR; Steve Nelson, Dorsey & Whitney, American Bar Association; and the Bureau of Economic Analysis, U.S. Department of Commerce.

[2] Legal services are captured under the SIC code 811.

[3] Richard H. Sander and E. Douglass Williams, "Why Are There So Many Lawyers? Perspectives on a Turbulent Market," *Law and Social Inquiry: Journal of the American Bar Foundation*, Summer 1989, p. 435; and as seen in USITC, *Legal Services Industry and Trade Summary*, Feb. 1993, p. 1.

Cross-border provision of legal services is also possible. Individuals, acting alone or in the employ of U.S. law firms, may travel abroad occasionally to provide legal advice to clients. U.S. lawyers also may provide many routine legal services across national borders, using common telecommunication and telefacsimile devices.

Data for trade in legal services are only available on a cross-border basis.[4] In 1994, U.S. exports of legal services totaled $1.6 billion (figure 10-1).[5] On a regional basis during 1994, Europe was the largest export market for U.S. legal services, accounting for 54 percent ($847 million) of such exports, followed by Asian and Pacific countries, accounting for 28 percent ($428 million) (figure 10-2). South and Central American nations account for approximately $38 million, or 2.4 percent of total cross-border exports of legal services.[6] Within the region, Argentina, Brazil, Venezuela and Chile are the largest individual markets for legal services exports.

Both imports and exports of legal services have increased steadily since 1991, explained largely by the growth in world trade and investment.[7] As businesses expand abroad or into the United States, they need legal advice of all kinds, in such areas as investment and securities law, taxation, employment law, antitrust law, and intellectual property law. Imports of legal services, growing at an average annual rate of 21 percent during 1991-94, have increased at a significantly faster pace than exports, growing at an average annual rate of 6 percent. However, the increase in the dollar value of exports has been greater than that of imports, resulting in a growing surplus. In 1994, the U.S. trade surplus in legal services was approximately $1.1 billion.[8] The higher rate of export growth is largely explained by the relatively faster growth of the U.S. economy in recent years compared to foreign economies, and the desire of foreign attorneys to enter the U.S. market.

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[4] There is a disagreement within the legal community as to the exact size of affiliate trade. However, cross-border trade appears to be much larger. Peter D. Ehrenhaft, testimony before the USITC, June 7, 1995; and USITC staff interview with industry executive, interview by USITC staff, Washington, DC, Feb. 23, 1995.

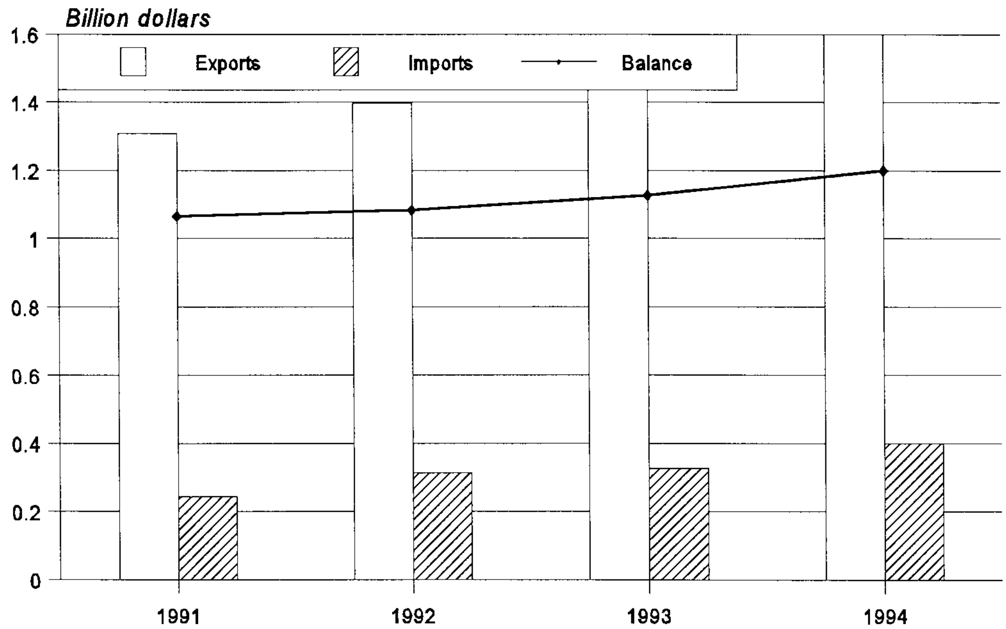
[5] USDOC, BEA, *Survey of Current Business*, Sept. 1995, p. 102.

[6] USITC staff estimates.

[7] In 1991, the BEA expanded its survey of legal services exports to capture previously unrecorded data.

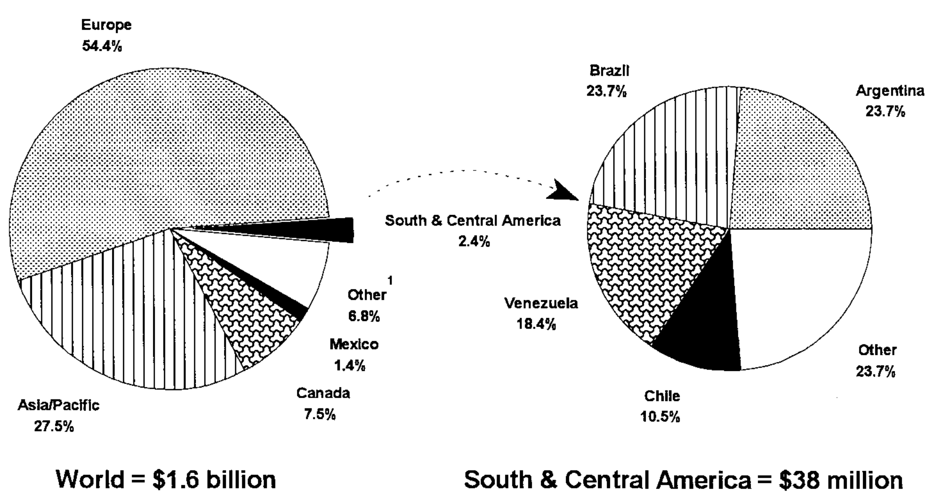
[8] USDOC, BEA, *Survey of Current Business*, Sept. 1995, p. 102.

Figure 10-1
Cross-border trade in legal services: U.S. exports, imports, and trade balance, 1991-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Figure 10-2
Legal services: U.S. cross-border exports, by principal markets, 1994



[1] Principally includes the Middle East, Africa, and the Caribbean.
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Examination of Commitments on Legal Services

Bolivia, Brazil, Paraguay, Peru, and Uruguay scheduled no commitments pertaining to legal services, and thus may impose restrictions on market access or national treatment in the future without penalty. However, it is possible that some of these countries have no current legal or regulatory restrictions on the importation of legal services and no plans to impose such restrictions. Brazil, for example, reportedly showed considerable interest in including legal services in its WTO schedule earlier in the Uruguay Round negotiations, but later dropped its interest and scheduled no commitments.[9] Conversely, Argentina, Chile, Colombia, and Venezuela did schedule commitments pertaining to legal services (table 10-1).

For cross-border legal services, advances in telecommunications have made seeking legal advice much simpler, and for practical purposes it is nearly impossible for governments to limit or prevent the reception of such advice or legal documents.[10] Rather, the greater concern within the U.S. legal community regards restrictions on establishing legal offices abroad for the purposes of rendering advice as a foreign legal consultant. Such restrictions, for example, can keep foreign firms from establishing an office with a local member of the bar. The legal profession reportedly encounters nontariff barriers such as restrictions on the movement of professional, managerial, and technical personnel; discrimination in the licensing process; and the lack of recognition of foreign qualifications.[11]

Commitments scheduled by the subject trading partners are most importantly restrictive with respect to commercial presence. In addition, all subject trading partners left limitations regarding the presence of natural persons unbound.[12] However, cross-industry commitments regarding the temporary entry and stay of natural persons provide important exemptions to these restrictions in certain instances.

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[9] USTR official, telephone interview by USITC staff, May 3, 1996.

[10] See Peter D. Ehrenhaft, Esquire, testimony before the USITC, June 7, 1995.

[11] USDOC, ITA, *Benefit to Service Industries of the General Agreement on Trade in Services* (Washington, DC: GPO, 1994), p. 14.

[12] An unbound commitment allows a country to maintain or impose measures that are inconsistent with market access and national treatment.

Table 10-1
Highlights of industry-specific restrictions on legal services

Country[2]	Mode of Supply[1]: Cross-Border Supply	Consumption Abroad	Commercial Presence	Presence of Natural Persons	Comments[3]
Argentina	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 861 • Includes legal advice activities on both domestic and international law.
Chile	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 86190[4] • Includes services provided by foreign legal consultants on public international law only.[5]
Colombia	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** Unbound[6] **National Treatment:** Unbound	• CPC 861[7] • Includes legal advisory services for foreign law and international law only.[8]
Venezuela	**Market Access:** Unbound **National Treatment**: Unbound	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound **National Treatment**: Unbound	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 861 • Includes legal advice activities on both domestic and international law. • In an MFN exemption, Venezuela indicates that nations having citizens working as foreign professionals in Venezuela must allow Venezuelan professionals reciprocal treatment in their countries.

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.

[2] Bolivia, Brazil, Paraguay, Peru, and Uruguay did not schedule commitments on legal services.

[3] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.

[4] This classification number is limited to auxiliary legal services not covered elsewhere in the legal classification section, such as escrow services and estate settlement services.

[5] All domestic Chilean legal advice or advocacy, whether in writing or formal procedure, is limited to licensed Chilean lawyers of Chilean nationality. The title of the Chilean commitment includes international commercial law as well as public international law. However, an explanatory footnote limits the commitment "solely and exclusively to matters relating to public international law."

[6] However, the cross-industry commitments of the Colombian schedule indicate that professional services providers, including legal services, have no restrictions on the entry and temporary stay of natural persons.

[7] The service specified is only a part of the total services included in this CPC.

[8] Foreign persons or firms may not offer legal services in regard to domestic Colombian law.

Argentina

Argentina makes the best offer in legal services of any of the subject trading partners. It offers market access and national treatment without limitation to foreign legal enterprises, and it permits foreign attorneys to provide a full range of legal services, for both domestic and international law. However, Argentina's commitment concerning the presence of natural persons permits it to exercise broad discretion regarding the entry of legal service providers. Argentina declined to specify permissible lengths of stay for foreign service providers, thus undertaking no binding commitment in this respect.[13]

Chile

Chile guarantees foreign legal consultants both market access and national treatment should they wish to establish a commercial presence to provide advice regarding public international law and international commercial law.[14] However, Chile did not offer legal service commitments pertaining to either cross-border supply or consumption abroad. With respect to the presence of natural persons, Chile permits the temporary entry and stay of senior and specialized personnel, which may include legal services providers, for a period of two years.

Colombia

Colombia guarantees unlimited market access and national treatment for legal advisory services delivered through cross-border supply and consumption abroad. However, Colombia's commitments permit foreign legal service firms to supply advice on foreign law and international law only. Limitations on commercial presence and the presence of natural persons are unbound.

Venezuela

Venezuela scheduled no commitments for either cross-border supply or commercial presence, the two principal modes of supplying legal services. With respect to the presence of natural persons, Venezuela appears to maintain broad discretion regarding the entry and stay of foreign attorneys by declining to specify permissible lengths of stay for foreign business persons. Venezuela also registers an MFN exemption that subjects foreign professionals to reciprocity provisions when practicing in Venezuela.

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[13] However, under the terms of the GATS, Argentina may not condition foreign service provider's entry in such a manner as to nullify the benefits conferred by its legal services commitments.

[14] The Chilean schedule is not clear as to whether the restriction applies only to public international law. See WTO, *Chile, Schedule of Specific Commitments,* General Agreement on Trade in Services, GATS/SC/18, Apr. 15, 1994, footnote 1, p. 5.

Industry Opinion

Throughout much of the GATS negotiations, the industry reports that it focused principally on the legal service offers tabled by the European Union and Japan. With the exception of a very few individuals, the U.S. legal services industry evinced little interest in South American GATS commitments.[15]

Relatively few American Bar Association (ABA) members, a few hundred at most, are involved in affiliate sales of legal services. To establish offices abroad is expensive and is largely confined to the largest U.S. legal firms. With the increased sophistication and ease of telecommunications, the relative importance of cross-border trade may now be advancing over affiliate trade.[16] This does not mean that affiliate trade is considered less important by large firms, but rather that the barriers to establishing a commercial presence are not sufficiently high for U.S. firms to devote time and effort to remove them in smaller South American markets. Also, competition is intense in many country markets. If a U.S. firm is already established in such a market it may oppose attempts to ease the entry of other U.S. firms that represent additional competition. Divergent views within its membership may help to explain the relatively modest efforts of the American Bar Association in regard to the GATS negotiations.[17]

Additionally, as with most professional services, the qualification and licensing requirements for providing legal services are influenced by the local professional associations. These requirements include limiting the practice of domestic law to nationals, as in Chile, or restricting the use of foreign names or trademarks in identifying the firm, as in Brazil.[18] The lack of harmonization of professional standards thus created a major obstacle to trade in legal services. To address this problem within the United States, the ABA adopted a resolution in 1993 urging the States to adopt a Model Rule for the Licensing of Foreign Legal Consultants. It is the view of the ABA that the Model Rule provides a balanced, fair, and appropriate basis on which lawyers from one country may practice in another.[19] The Model Rule, or an equivalent, is now believed to be operative in several U.S. States and under consideration in others. The ABA formally welcomes foreign lawyers to the United States and seeks the same treatment for U.S. lawyers abroad. It underscores that its interest in "foreign legal consultant" rules is driven less by the interest of U.S. lawyers to work in other countries and more by the ability of their clients to engage the services of competent lawyers in any jurisdiction where the clients' business takes them.[20]

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[15] Peter D. Ehrenhaft, testimony before the USITC, June 7, 1995. Also USITC staff telephone conversations with former USTR trade negotiators, May 3, 1996.

[16] Ibid.

[17] USTR official, interview by USITC staff, Washington, DC, May 10, 1996.

[18] Industry representative, USITC staff interview, Sao Paulo, Brazil, Aug. 8, 1996. Also, see "Unfair Trade?", *The American Lawyer*, Apr. 1994, pp. 53-56.

[19] Donald H. Rivkin and Peter D. Ehrenhaft, post-hearing letter from the ABA to the USITC, June 29, 1996, and also, see "Unfair Trade?", *The American Lawyer*, Apr. 1994, pp. 53-56.

[20] Ibid.

Summary

The schedule of commitments in legal services offered by Argentina was the most extensive and cleanest of any of the subject countries. The offers by Chile, Colombia, and Venezuela represent, to varying degrees, positive movement toward greater predictability and transparency in legal services trade. Conversely, the failure by Brazil to schedule any legal services commitments represents the largest disappointment to legal services providers. By declining to schedule such commitments, Brazil failed to establish effective benchmarks and to enhance regulatory transparency. The absence of commitments from the much smaller economies of Bolivia, Paraguay, Peru, and Uruguay is similarly disappointing to U.S. legal firms.

CHAPTER 11
Land Transportation Services[1]

Introduction

For the purpose of this study, transportation services are defined as: road transportation (both passenger and freight); railroad transportation (both passenger and freight); other transportation, such as pipeline transportation; auxiliary freight services, such as warehousing and the arrangement of transportation of freight and cargo; and other auxiliary services.[2] This report does not address air or maritime transportation services.[3] Air transport agreements continue to be bilaterally negotiated, and the GATS does not yet include a formal maritime agreement.

Nature of International Trade in Land Transportation Services

International trade in land transportation services comprises both cross-border transactions and sales by affiliates.[4] The nature of the transportation service to be provided usually determines the mode of delivery that is used. For some types of transportation services, geographic proximity (to the United States) determines whether or not a permanent commercial presence is required to provide the services. For example, a U.S. trucking firm would find it difficult to provide transportation in Brazil without a commercial presence there. However, a U.S. trucker could provide transportation to Canada with or without a commercial presence in that country.

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[1] Among the individuals consulted by USITC staff in the preparation of this report were those affiliated with the following organizations: the American Trucking Association; the Association of American Railroads; the Railway Progress Institute; the American Association of Port Authorities; the Federal Railroad Administration; the Federal Highway Administration; and the Census Bureau and the Bureau of Economic Analysis (BEA), U.S. Department of Commerce (USDOC).

[2] The corresponding U.S. Standard Industrial Classification codes are 40, railroad transportation; 41, local and suburban transit and interurban highway passenger transportation; 42, motor freight transportation and warehousing; 46, pipelines, except natural gas; 4731, arrangement of transportation of freight and cargo; 4741, rental of railroad cars; parts of 4785, fixed facilities and inspection and weighing services for motor vehicle transportation; and parts of 4922, natural gas transmission.

[3] These sectors were not included in the study request (appendix A).

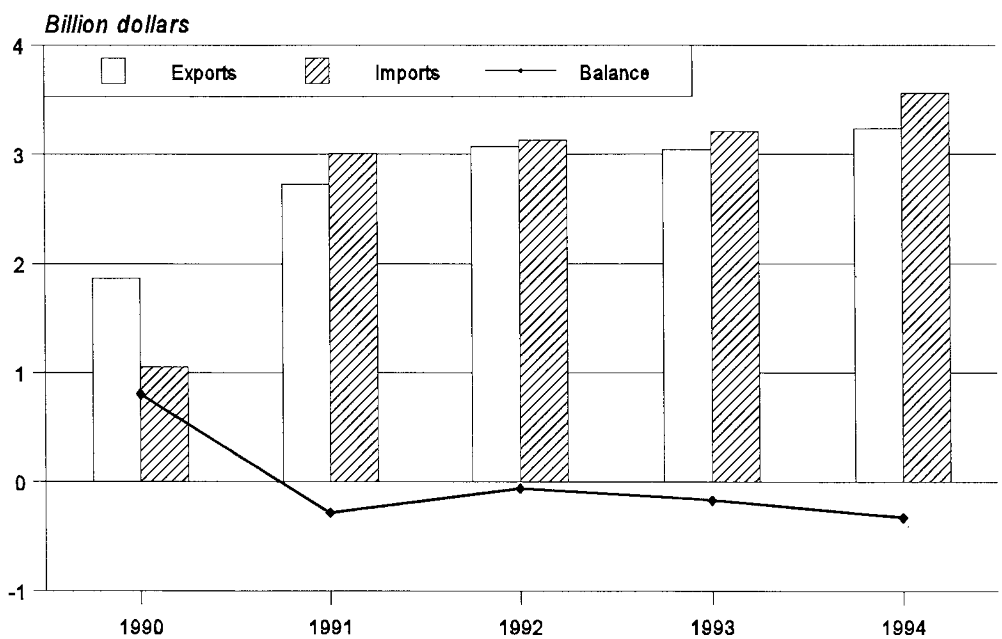
[4] It is possible that the goods transported never enter the country exporting and/or the country importing the service. For example, a service provider in country A (the exporter of the service) may have a contract with a firm in country B (the importer of the service) to transport goods from country C to country D.

For other transportation services, such as freight forwarding, a commercial presence is not necessary. These services involve only the arrangement of freight transportation. Because the modes of supply vary depending on both the type of service provided and the geographic location of the countries involved, it is not possible to determine the relative importance of cross-border transactions and sales by affiliates.

Cross-Border Transactions

The largest components of U.S. trade in land transportation services covered by this report include freight transportation by truck and rail, port services other than maritime, and auxiliary transportation services. In 1994, U.S. exports of these transportation services totaled \$3.2 billion (figure 11-1).[5] During 1990-94, cross-border exports increased by an average annual rate of 14.8 percent, but imports generally kept pace, resulting in a persistent U.S. trade deficit during 1991-94. Canada represents the largest market for U.S. exports of land transportation services, accounting for approximately 59 percent of total exports in 1994 (figure 11-2). The Asia-Pacific region is the second largest export market, with approximately 15 percent of total exports. Other smaller markets for U.S. land transportation services are Europe, South and Central America, and Mexico. The trading partners covered in this study accounted for just under 7 percent of U.S. cross-border exports of all land transportation services.

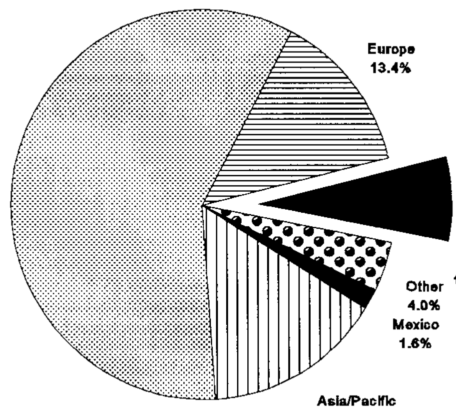
Figure 11-1
Cross-border trade in land transportation services: U.S. exports, imports, and trade balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

[5] USDOC, BEA, *Survey of Current Business*, Sept. 1995, p. 81.

Figure 11-2
Land transportation services: U.S. cross-border exports, by principal markets, 1994



Total = $3.2 billion

[1] Principally includes the Middle East, Africa, and the Caribbean.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Sales by Majority-Owned Affiliates

Data for sales by majority-owned affiliates are available only in a highly aggregated form. Sales of all transportation services to foreign persons by majority-owned foreign affiliates of U.S. companies totaled $6.8 billion in 1993.[6] This includes receipts for air and maritime transportation. For the purposes of this study, the portion of this figure attributable to land transportation is estimated at less than $350 million in 1993.[7] Imports of all transportation services (including air and maritime) through sales by majority-owned U.S. affiliates of foreign companies totaled approximately $9.0 billion in 1993. Country or regional breakouts are not available because certain data have been suppressed to avoid disclosing confidential information. The trade deficit in affiliate sales of all transportation services reached $2.3 billion in 1993, down from $2.8 billion in 1989.

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[6] USDOC, BEA, *Survey of Current Business*, Sept. 1995, p. 104.

[7] USITC staff estimate.

Examination of Commitments on Land Transportation Services

As noted, land transportation services are provided to foreign consumers through cross-border trade and sales by overseas affiliates. The types of trade barriers common in this industry vary according to the type of transport service, although limitations to commercial presence, such as investment barriers, nationality requirements, and establishment restrictions affect the ability of most U.S. transportation service providers to enter foreign markets. In addition, land transportation service providers are affected by the lack of standardization of operational rules and regulations, which was not addressed under the General Agreement on Trade in Services (GATS). Freight forwarders and customs brokers are subject to restrictive licensing requirements, customs brokers often are subject to nationality restrictions, and cabotage (i.e., domestic point-to-point service) is usually reserved for domestic providers.

Only Brazil and Uruguay scheduled commitments regarding land transportation services. The scope of commitments scheduled is narrow, and the commitments address different subsectors of the land transportation service industry in many instances. Limitations on foreign service providers are most numerous with respect to cross-border supply, commercial presence, and presence of natural persons (table 11-1). However, cross-industry commitments regarding temporary entry and stay of natural persons sometimes soften restrictions placed on the movement of persons.

The GATS commitments do not appear to reflect the existing regulatory climate in each country. For example, foreign companies in Paraguay may establish a commercial presence so long as they provide for local representation and abide by local operational regulations, but these restrictions are not represented by GATS commitments.[8] Other countries are more open to land transportation services than their schedules indicate. In actual practice, Venezuela does not maintain restrictions on foreign participation in land transportation services provided through a commercial presence.[9] However, Venezuela chose not to schedule any commitments in this sector. Additionally, Brazil is implementing an ambitious privatization program that permits and encourages foreign participation in road and rail transportation services and eventually may include participation in airports and ports.[10]

Brazil

Brazil made several transportation service commitments, but retained broad limitations on market access for certain federally regulated transportation undertakings. In addition,

[8] Permanent Mission of Paraguay to the WTO, facsimile transmission, July 17, 1996.

[9] Venezuela Trade Ministry representative, USITC staff interview, Caracas, Venezuela, Aug. 13, 1996.

[10] Brazil Transportation Ministry and State of Sao Paulo Transportation Ministry representatives, USITC staff interviews, Brasilia and Sao Paulo, Brazil, Aug. 7-8, 1996.

Table 11-1
Highlights of industry-specific restrictions on land transportation services

	Mode of Supply[1]				
Country[2]	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[3]**
Brazil	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** Unbound **National Treatment:** Unbound	**Market Access:** • None for pipeline transport, cargo handling, and storage and warehousing services. For road transport services, foreign participation is limited to 1/5 of the voting shares of Brazilian companies engaged in this activity. For rail freight services, governmental authorization is required; such authorization is discretionary, and the number of new suppliers may be limited. **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 741, cargo handling • CPC 742, storage and warehousing • CPC 7139 , pipeline transport, excluding hydrocarbon products • CPC 71121, 71123, and 71129, rail freight • CPC 71231, 71233, and 71239, road freight
Uruguay	**Market Access:** None **National Treatment** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** • Unbound except as indicated in the cross-industry commitments **National Treatment:** • Unbound except as indicated in the cross-industry commitments	• CPC 742, storage and warehousing, excluding fiscal storage and warehousing

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.
[2] Argentina, Bolivia, Chile, Colombia, Paraguay, Peru, and Venezuela did not offer commitments on land transportation services.
[3] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.

government authorization is required for rail freight services. Authorization is discretionary, and the number of new suppliers may be limited. For road transportation services, foreign participation is limited to one-fifth of the voting shares of Brazilian companies engaged in this activity. Brazil scheduled no limitations on providing pipeline transport and cargo handling services (other freight services) through commercial presences.

With respect to all other land transportation services including road and rail, Brazil has left restrictions unbound, allowing it to maintain or impose measures inconsistent with full market access and national treatment. In addition, Brazil has retained broad discretion with respect to permitting the entry and temporary stay of foreign business persons.

In addition to restrictions stated in the national schedule, Brazil listed a most-favored-nation (MFN) exemption specific to transportation services. This MFN exemption applies to the cross-border supply of land transport services, and indicates that, with respect to the international transport of passengers and freight, Brazil extends national treatment only to authorized suppliers of signatories to the International Land Transport Convention.[11]

Uruguay

Uruguay made commitments on storage and warehouse services, scheduling no limitations on market access or national treatment, except with respect to the presence of natural persons. Uruguay declined to specify permissible lengths of stay for foreign business persons, thereby retaining broad discretion pertaining to services supplied through the presence of natural persons. With respect to all other transportation services, Uruguay left restrictions on all modes of supply unbound, allowing it to maintain or impose measures inconsistent with full market access and national treatment.

In addition to restrictions stated in the national schedule, Uruguay listed a MFN exemption specific to transportation services. This MFN exemption, like Brazil's, applies to the cross-border supply of land transport services, and indicates that with respect to the international transport of passengers and freight, Uruguay extends national treatment only to authorized suppliers of signatories to the International Land Transport Convention.

Industry Opinion

U.S. firms and associations that provide land transport services have indicated that the existing GATS commitments principally codify only a few of many existing restrictions in and a range of approaches to regulations concerning safety and operations. Differing land transport.[12] Restrictions include limits on the use of both foreign and private capital, regulations between countries can lead to delays, higher costs, and logistical problems. There is an acknowledged need for a certain level of regulation in transportation, particularly with respect to infrastructure, equipment technology, and training; however, improved commercial integration

[11] Signatories include Argentina, Brazil, Bolivia, Chile, Paraguay, Peru, and Uruguay.
[12] Industry representatives, interviews by USITC staff, Washington, DC, May 8, 1996.

and regulatory transparency will contribute to more efficient transportation systems.[13] Harmonization of operating standards has been cited as an important factor in liberalizing trade in transportation, and industry representatives have suggested that the exchange of information regarding operating requirements for transportation systems and services could contribute to harmonization of such standards.[14]

As observed in the discussion of distribution and courier services found in chapters 3 and 5, difficulties with customs clearance procedures appear to be widespread throughout South America, with adverse implications for U.S. providers of distribution, courier, and transportation services. For example, U.S. service providers in Argentina are subject to monopolistic warehousing practices that result in inequitable service charges.[15] Argentina also reportedly uses different customs clearance processing procedures for express shipments and traditional shipments of cargo. Similarly, there are ongoing confrontations with Brazil regarding postal and customs regulations, particularly with respect to Brazil's imposition of numerous customs requirements that are burdensome, time-consuming, and costly.[16]

For the most part, there is little industry consensus on specific GATS commitments because of their limited scope and disparate nature. Industry representatives indicate that restrictions on commercial presence need to be addressed, particularly those that concern right-to-establishment for road transport operations.[17] However, the land transport sector supports the GATS and is pleased that negotiations recognized the critical role that land transport plays in international trading relations.[18] U.S. industry representatives believe that U.S. companies with innovative distribution, communications, and technological expertise will benefit from opportunities to establish businesses in Europe, Asia, and Latin America.[19] Generally, land transport liberalization by distant trading partners is likely to have limited impact on U.S. cross-border trade in transportation services, because geographic proximity is an important competitive advantage in many land transportation service sectors.[20]

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[13] Transportation Panel, Summary of Proceedings, Western Hemisphere Trade and Commerce Forum, Denver, CO, July 1-2, 1995, found at Internet http://americas.fiu.edu/denver/moving.txt.

[14] Harmonization of freight carriage regulations likely would include requirements for a uniform bill of lading, uniform insurance documentation, port clearances, harmonization of customs and port procedures, use of IMO standards, electronic data interchange, and uniform weights and standards for trucks and containers. Ibid.

[15] Prehearing Brief of Federal Express Corp., submitted to the USITC, investigation No. 332-367, July 12, 1996, pp 39-40.

[16] Industry representatives, telephone interviews by USITC staff, May 8, 1996.

[17] Ibid.

[18] The main objective of the U.S. land transport industry in the GATS was to ensure that the applicable provisions negotiated under the NAFTA were upheld in the multilateral negotiations. Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13), *Report on the Uruguay Round Multilateral Trade Agreements*, Jan. 15, 1994, pp. 21-22.

[19] Industry Sector Advisory Committee on Services for Trade Policy Matters, p. 22.

[20] Industry representatives, interviews by USITC staff, Washington, DC, Jan. 18, 1995.

Summary

Overall, the United States' trading partners in South America scheduled few commitments that will significantly ease trade restrictions pertaining to land transportation services. Trading partners that have scheduled commitments regarding road and rail transport have retained some ability to regulate new suppliers. The subject trading partners' commitments provide a rough framework for future liberalization but do not, in general, appear to provide comprehensive benchmarks or improve transparency. In addition, the commitments do not accurately reflect current market conditions in South America, which are evolving rapidly as a result of deregulation and privatization programs.

CHAPTER 12
Travel and Tourism Services[1]

Introduction

For the purpose of this report, travel and tourism is defined as travel away from home, for 1 night to 1 year in duration. This chapter covers the services that business travelers and tourists purchase, ranging from the direct supply of food and lodging to intermediary services provided by travel agents, tour operators, and tourist guides.[2] It excludes air transportation services, which are governed by various bilateral agreements.

Nature of International Trade in Travel and Tourism Services

The most important mode of supply of international travel and tourism is consumption abroad, because it accounts for the greatest volume of trade. Consumption abroad depends upon the visitor's ability to leave one's country, complete the visit abroad, return home, and obtain the means of payment for tourism services purchased abroad.[3]

Expenditures by foreign travelers who visit the United States are reported in balance of payments data as U.S. cross-border exports. Conversely, expenditures by U.S. citizens visiting other countries enter the U.S. balance of payments as cross-border imports. Although travel and tourism services are traded mainly through cross-border channels, affiliate trade also takes place when parent firms establish foreign affiliates that provide travel agency and other travel services.

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[1] Among the individuals consulted by USITC staff in preparation of this report were those affiliated with the following organizations: American Hotel and Motel Association, American Society of Travel Agents, HFA Hospitality, The Jefferson Group, Sabre Venezuela, United Airlines, U.S. Tour Operators Association, and the International Trade Administration, U.S. Department of Commerce (USDOC) and the Federation of Hotel, Restaurants, Bars, and Similar Establishment of Sao Paulo, Brazil.

[2] For the purpose of this report, the travel and tourism sector consists of services purchased during travel from travel and tourism related industries, which fall under several different U.S. Standard Industrial Classification (SIC) codes. Lodging is captured by codes 701, 703, and 704; eating and drinking establishments, by code 581; travel agencies, by code 4724; tour operators, by code 4725; and tourist guides, within code 7999, amusement and recreation services, not elsewhere classified.

[3] "Tourism and the General Agreement on Trade in Services (GATS)," World Tourism Organization, Madrid, Apr. 1994.

Cross-Border Transactions

In 1994, the U.S. travel and tourism industry generated a $16.8 billion cross-border trade surplus (figure 12-1), accounting for 42 percent of the total cross-border services trade surplus. Receipts of $60.4 billion from travel and tourism trade represented 40 percent of total U.S. service exports,[4] while U.S. travelers abroad spent an estimated $43.6 billion. Cross-border exports in travel and tourism grew at an average annual rate of 9 percent during 1990-94.[5] A relatively weak dollar compared to other major currencies and a low inflation rate in the United States increased the flow of inbound tourists. Visitors to the United States from Europe and Asian/Pacific countries accounted for 33 percent and 30 percent, respectively, of U.S. travel and tourism cross-border receipts in 1994, followed by visitors from South and Central America (13 percent), Canada (10 percent), and Mexico (8 percent) (figure 12-2).[6] Of the travelers visiting the United States from South and Central America, 24 percent came from Brazil, 15 percent came from Venezuela, and 14 percent came from Argentina.

Sales by Majority-Owned Affiliates

Data on affiliate trade in travel and tourism are available only for the lodging industry, and reflect lodging, food, and beverage services offered in hotels, motels, and similar establishments. Foreign affiliates of U.S. lodging firms generated revenues (U.S. exports) totaling an estimated $1.9 billion in 1993 (figure 12-3).[7] However, sales by foreign affiliates of U.S. lodging establishments decreased irregularly at an average annual rate of 9 percent during 1990-93. The largest export markets for foreign affiliates of U.S. lodging firms are Europe (47 percent), Latin America and other countries of the Western Hemisphere south of the United States (25 percent), and Canada (9 percent) (figure 12-4).

With respect to U.S. imports, foreign lodging companies with travel- and tourism-related investments in the United States earned an estimated $5.3 billion in 1993,[8] with sales increasing at an average annual rate of 8 percent during 1990-93. Strong imports reflect foreign ownership of several widely recognized hotel systems in the United States. For example, because Holiday Inn is a British-owned firm, all purchases of services from Holiday Inn in the United States are counted as imports. The U.S. deficit in travel and tourism trade by affiliates doubled from $1.7 billion in 1990 to $3.4 billion in 1993.[9]

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[4] USDOC, Bureau of Economic Analysis (BEA), *Survey of Current Business*, Sept. 1995, pp. 76, 81.

[5] USDOC, BEA, *Survey of Current Business*, Sept. 1993, pp. 125-126, and Sept. 1995, pp. 78-81.

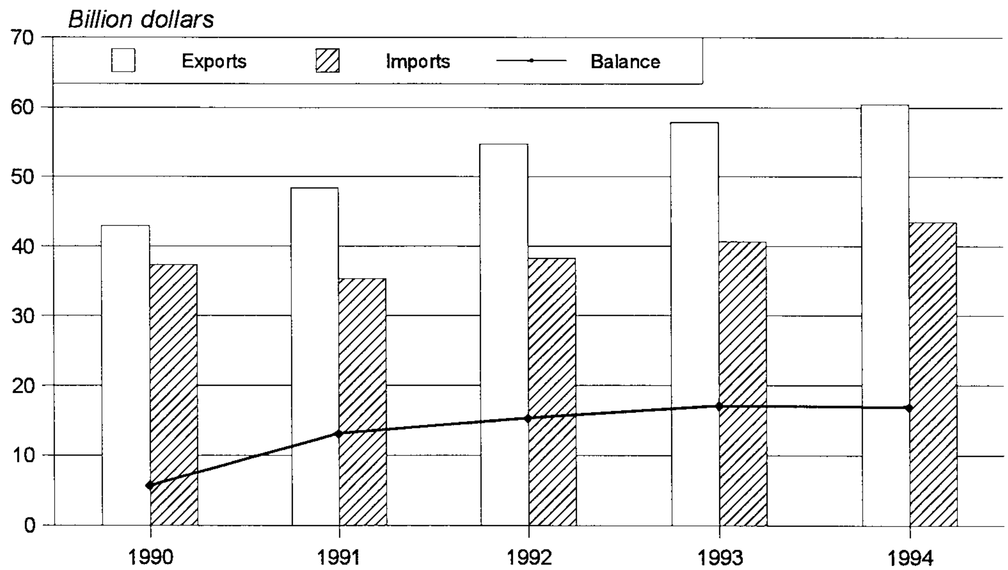
[6] USDOC, BEA, *Survey of Current Business*, Sept. 1995, p. 81.

[7] Ibid., p. 104.

[8] These figures do not include travel agencies and tour operators.

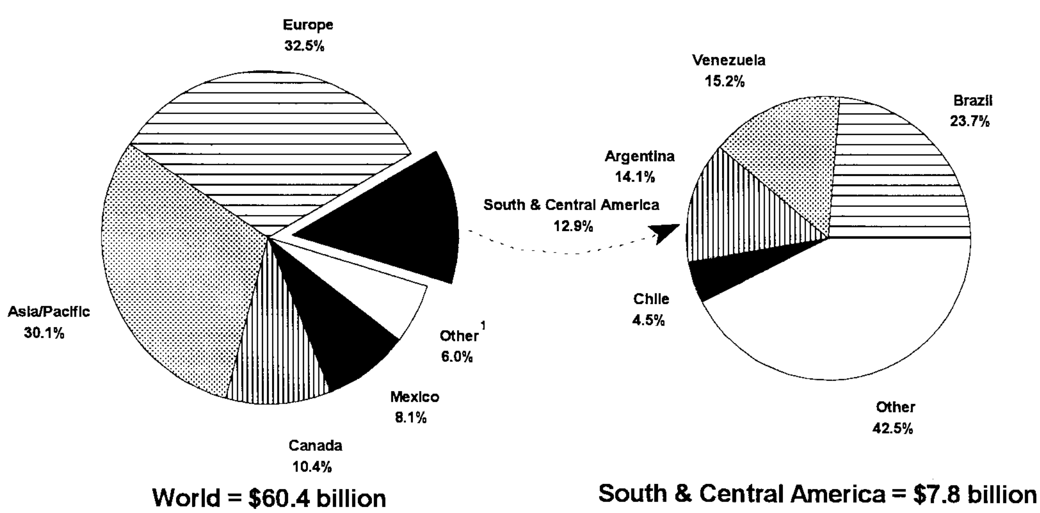
[9] USDOC, BEA, *Survey of Current Business*, Sept. 1992, pp. 129, 131; Sept. 1993, pp. 153-156; Sept. 1994, pp. 135-138; and Sept. 1995, pp. 104, 105.

Figure 12-1
Cross-border trade in travel and tourism: U.S. exports, imports, and trade balance, 1990-94



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1992, Sept. 1994, and Sept. 1995.

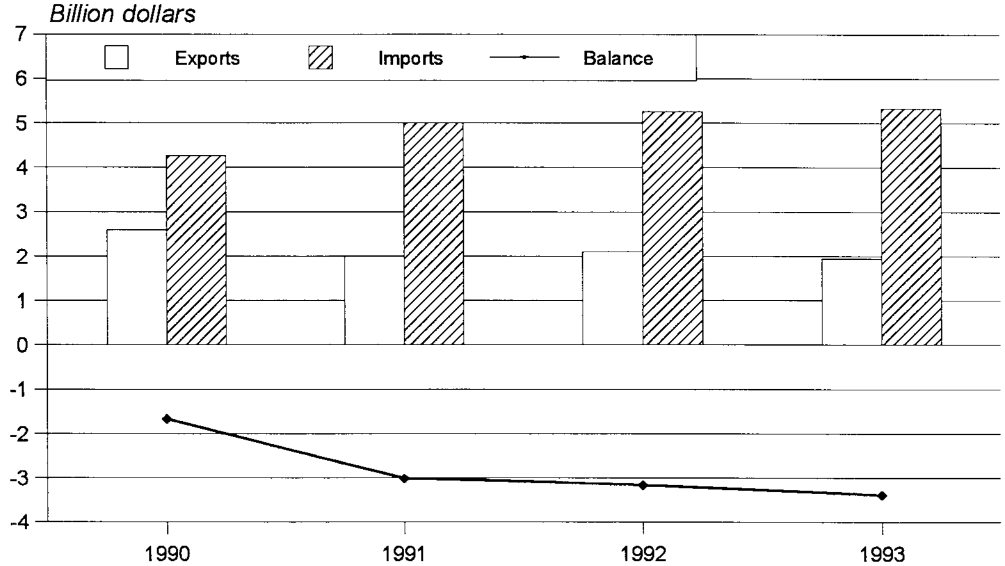
Figure 12-2
Travel and tourism: U.S. cross-border exports, by principal markets, 1994



[1] Principally includes the Middle East, Africa, and the Caribbean.

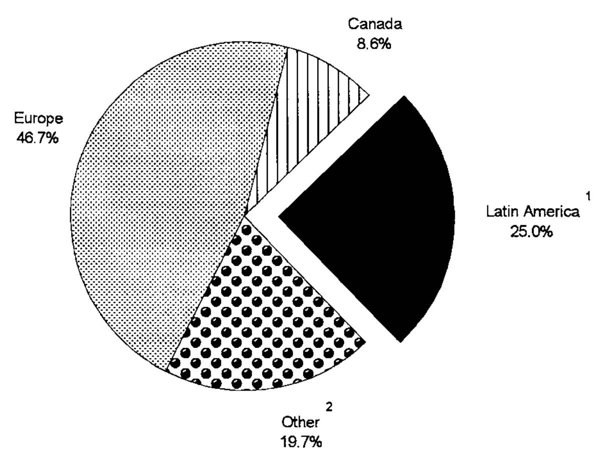
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Figure 12-3
Travel and tourism transactions by majority-owned affiliates: U.S. exports, imports, and trade balance, 1990-93



Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1992, Sept. 1994, and Sept. 1995.

Figure 12-4
Travel and tourism exports: Sales by majority-owned affiliates of U.S. firms, by principal markets, 1993



Total = $1.9 billion

[1] Includes the Caribbean region.
[2] Includes Africa, the Middle East, and Asian and Pacific countries.
Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1995.

Examination of Commitments on Travel and Tourism Services

Trade in travel and tourism is generated mainly by tourists who cross borders and stay in hotels, eat at restaurants, and take tours. As noted previously, an open regulatory regime for consumption abroad is important with respect to facilitating travel overseas. The schedules of Argentina, Chile, Paraguay, and Uruguay bind full market access and national treatment for travel and tourism services consumed abroad. Several other countries scheduled restrictions on consumption abroad on a single travel and tourism subsector, most frequently tourist guide services. While South American trading partners impose virtually no restrictions on the movement of tourists to destinations outside their borders, during the time when national schedules were drafted some partners imposed foreign exchange controls, indicated on the schedules as cross-industry commitments, that may have inhibited discretionary travel abroad.

To a lesser extent, firms establish a commercial presence in foreign countries to sell travel and tourism services to foreigners. Restrictions on foreign investment, long prevalent in certain South American countries until the early 1990s, have been largely eliminated, except in border or coastal areas. Such investment restrictions along coasts or borders typically are included in countries' schedules as cross-industry measures and are established for reasons of national sovereignty and defense rather than as limitations intended to inhibit foreign travel and tourism firms specifically from establishing commercial presence.

Overall, the schedules of commitments on travel and tourism services submitted by Argentina, Chile, and Uruguay appear to impose the fewest formal restrictions on foreign providers of travel and tourism services (table 12-1). Paraguay's schedule is partially restricted especially with regard to travel agency and tour operator services. The following discussion focuses on the cross-industry commitments[10] and on the industry-specific commitments made with respect to consumption abroad, commercial presence, and the presence of natural persons.

Argentina

Argentina scheduled few limitations on travel and tourism services, and therefore is considered to have one of the most open regulatory regimes. Argentina did leave unspecified limitations on the presence of natural persons unbound, maintaining broad discretion regarding the temporary entry and stay of natural persons. Argentina's only stipulation with respect to commercial presence, contained in its cross-industry commitments, left unbound the acquisition of land in frontier areas.

[10] A detailed table of cross-industry commitments is presented in appendix E.

Table 12-1
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply[1]				
Country	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[2]**
Argentina	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 641-643 (hotels and restaurants - including catering). • CPC 7471 (tour operators, travel agencies). • CPC 7472 (tourist guide services). • "Other" services (unspecified): Detailed information not provided.
Bolivia	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 641-643 (hotels and restaurants).
	TRAVEL AGENCIES: **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCIES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCIES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCIES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 7471 (tour operators, travel agencies).
	TOURIST GUIDE SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	• Bolivia did not offer commitments on Tourist Guide Services.

Table 12-1
Highlights of industry-specific restrictions on travel and tourism services

Country	Mode of Supply[1] Cross-Border Supply	Consumption Abroad	Commercial Presence	Presence of Natural Persons	Comments[2]
Brazil	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** • Brazilian firms operating in the Amazon and North-eastern regions benefit from certain tax credit incentives. Other incentives are limited to firms with majority of capital held by Brazilian citizens or legal entities.	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 641 (hotels). • CPC 642 (restaurants).
	TRAVEL AGENCIES AND TOURIST GUIDE SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCIES AND TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCIES AND TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCIES AND TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	• Brazil did not offer commitments on Travel Agency Services or Tourist Guide Services.
Chile	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** • Unbound due to lack of technical feasibility. **National Treatment:** • Unbound due to lack of technical feasibility.	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 64110, 64120, 64193, 64195 (hotel lodging, motel lodging, apartment-hotels, camping services). • CPC 64210, 64220, 64230, 64310, 64320 (full restaurant services, meal serving service in self-service facilities, caterer services, bars with or without entertainment). • CPC 74710 (tour operators and travel agencies). • CPC 74720 (tourist guide services). • Consumption abroad: Subject to foreign exchange control measures.

Table 12-1
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply[1]				
Country	Cross-Border Supply	Consumption Abroad	Commercial Presence	Presence of Natural Persons	Comments[2]
Colombia	**LODGING SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**LODGING SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 641 (hotels).
	FOOD SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	**FOOD SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**FOOD SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**FOOD SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	• Colombia did not offer commitments on Food Services.
	TRAVEL AGENCIES: **Market Access:** None **National Treatment:** None	**TRAVEL AGENCIES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCIES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCIES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 74710 (travel agencies and tourism).
	TOURIST GUIDE SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	• Colombia did not offer commitments on Tourist Guide Services.

Table 12-1
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply[1]				
Country	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[2]**
Paraguay	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound except for senior managerial personnel, with staff training programs. **National Treatment:** • Unbound except for senior managerial personnel, with staff training programs.	• CPC 641-643 (hotels and restaurants).
	TRAVEL AGENCIES: **Market Access:** None **National Treatment:** None	**TRAVEL AGENCIES:** **Market Access:** None **National Treatment:** None	**TRAVEL AGENCIES:** **Market Access:** • Operators for tourism in the country, defined as enterprises providing services for tourism in Paraguay by travelers from abroad. **National Treatment:** Unbound	**TRAVEL AGENCIES:** **Market Access:** • Unbound except for senior managerial personnel, with staff training programs. **National Treatment:** • Unbound except for senior managerial personnel, with staff training programs.	• CPC 7471 (tour operators, travel agencies).
	TOURIST GUIDE SERVICES: **Market Access:** None **National Treatment:** None	**TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**TOURIST GUIDE SERVICES:** **Market Access:** • Unbound except for specialists, defined as suitable persons exercising the profession of tourist guide. **National Treatment:** • Unbound except for specialists, defined as suitable persons exercising the profession of tourist guide.	• CPC 7472 (tourist guide services).

Table 12-1
Highlights of industry-specific restrictions on travel and tourism services

Country	Mode of Supply[1] Cross-Border Supply	Consumption Abroad	Commercial Presence	Presence of Natural Persons	Comments[2]
Peru	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Suppliers of services wishing to operate lodging and/or restaurant establishments must be registered and licensed with the relevant authority as stipulated under Supreme Decree No. 006-73-IC/DS, No. 021-93-ITINCI, and No. 118-90-PDM. Gaming casinos may be established only in premium class restaurants and lodging establishments. **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 6411, 6412, 64191, 64192, 64193, 64194, 64195 (hotels, motels, children's holiday camps, holiday centers and holiday homes, letting of furnished accommodations, youth hostel and mountain shelters, camping and mobile homes (trailer parks)). • CPC 6421, 6422, 6423 (meal serving with full restaurant service, meal serving in self-service facilities, and catering).
	TRAVEL AGENCIES: **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCIES:** **Market Access:** Unbound **National Treatment:** Unbound	**TRAVEL AGENCIES:** **Market Access:** • In conformity with Supreme Decree No. 021-92-ICTI, travel and tourist agencies may operate as wholesalers, retailers, or both, provided that they register in the Unified Register and submit a joint, irrevocable and unconditional bond in an amount equivalent to 20 Tax Units (Unidades Impositivas Tributarias) in the case of wholesalers and 10 tax units in the case of retailers. When an enterprise engages in both types of activity simultaneously, the fidelity bond shall be in the amount of 25 tax units. **National Treatment:** None	**TRAVEL AGENCIES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 7471 (tour operators, travel agencies).
	TOURIST GUIDE SERVICES: **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	• Peru did not offer commitments on Tourist Guide Services.

Table 12-1
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply[1]				
Country	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[2]**
Uruguay	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES, FOOD SERVICES, TRAVEL AGENCIES, AND TOURIST GUIDE SERVICES:** **Market Access:** • Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 641-643 (hotels and restaurants, including catering services providing meals from outside). • CPC 7471 (tour operators, travel agencies). • CPC 7472 (tourist guide services).
Venezuela	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None **TRAVEL AGENCIES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None **TRAVEL AGENCIES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** None **National Treatment:** None **TRAVEL AGENCIES:** **Market Access:** None **National Treatment:** None	**LODGING SERVICES AND FOOD SERVICES:** **Market Access:** • Preference given to graduates of Venezuelan tourism institutes. Unbound except as indicated in the cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments. **TRAVEL AGENCIES:** **Market Access:** • Preference given to graduates of Venezuelan tourism institutes. Unbound except as indicated in cross-industry commitments. **National Treatment:** • Unbound except as indicated in the cross-industry commitments.	• CPC 641-642 (hotel and resort operators, including restaurants). • CPC 6471 (wholesale tourism services, travel agencies).

Table 12-1
Highlights of industry-specific restrictions on travel and tourism services

	Mode of Supply[1]				
Country	**Cross-Border Supply**	**Consumption Abroad**	**Commercial Presence**	**Presence of Natural Persons**	**Comments[2]**
Venezuela-Cont.	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	**TOURIST GUIDE SERVICES:** **Market Access:** Unbound **National Treatment:** Unbound	• Venezuela did not offer commitments on Tourist Guide Services. • Auxiliary tourism enterprises: CPC 83101, 951, 963, 964, 9701, 9702. Commitments are the same as those scheduled on Lodging Services and Food Services.

[1] The term "None" in any of the columns below signifies that a country commits to maintain no limitations on market access or national treatment. The term "Unbound" signifies that a country has made no commitments on market access or national treatment.
[2] Where possible, this column identifies the services covered by the applicable United Nations' Provisional Central Product Classification (CPC) code. A complete list of CPC codes examined in this study may be found in appendix D.

Bolivia

Bolivia scheduled full commitments to lodging, food and beverage, and travel agency and tour operator services for consumption abroad and commercial presence, but left restrictions on tourist guide services unbound for all modes of supply. Bolivia's cross-industry commitments state that foreign firms that engage in trade on a regular basis must establish subsidiaries. Certain other subject countries, compared with Bolivia, provided for more diversified forms of establishment. As to the presence of natural persons, Bolivia's schedule specifies that foreign managers, executives, and specialists may obtain 1- to 2-year residence permits, but that such persons may constitute no more than 15 percent of an enterprise's total personnel. Measures affecting other types of employees remain unbound.

Brazil

Brazil's schedule lists some of the most stringent restrictions on travel and tourism services. The country did make full commitments on commercial presence with regard to market access for lodging services and food services.[11] However, Brazil left restrictions on travel agency services and tourist guide services unbound for all modes of supply, as well as lodging services and food services when delivered through consumption abroad. Brazil scheduled two national treatment limitations with respect to commercial presence for lodging service and food service firms. Brazilian firms operating in certain remote regions can receive tax credit incentives, and Brazil extends other incentives only to firms with a majority of capital held by Brazilian citizens or legal entities. Furthermore, cross-industry limitations appear to restrict foreigners' ability to provide travel and tourism services in Brazil. Brazilian law does not recognize partnerships and proprietorships, and precludes foreign service providers from organizing in Brazil under these forms of establishment. Cross-industry requirements wherein companies must justify the need to contract foreign professionals and technicians, subject to approval by the Brazilian Ministry of Labor, may inhibit the movement of natural persons. Finally, subsidies remain unbound for all modes of supply, suggesting that Brazil reserves the right to support domestic industries through subsidies, which could constitute violations to national treatment principles.

[11] Beverage services, however, were not included in Brazil's scheduled commitments on travel and tourism services.

Chile

Chile scheduled few limitations on travel and tourism services.[12] However, it left limitations on the presence of natural persons unbound, except for provisions in the cross-industry commitments for selected personnel. Among the numerous requirements pertaining to these workers, however, are residency or domicile requirements. Additional cross-industry requirements with regard to foreign workers stipulate that at least 85 percent of an enterprise's employees must be Chileans, except in the case of small firms. The types of commercial presence to which the schedule applies include only corporations (open or closed), private-limited companies, and subsidiaries, which under Chilean law are the equivalent of agencies of corporations. Finally, limitations exist on real estate acquisitions in frontier areas.

Colombia

Colombia's schedule is moderately liberal. There are no restrictions in the sector-specific commitments on lodging services or travel agency services when delivered through consumption abroad or commercial presence. However, Colombia left restrictions on foreign provision of food and beverage services unbound and the nature of its commitments on tourist guide services is uncertain. In its cross-industry commitments, Colombia scheduled limitations with respect to its tax on remittances of profits by foreign corporations, but considers this tax compatible with provisions of the GATS. In the islands of the San Andres and Providencia Archipelago, the acquisition of real estate by foreigners, as well as immigration and human settlements, are governed by "special provisions," which are not specified in the schedule. Finally, the cross-industry commitments set forth require minimum proportions of Colombians to be staffed at various levels of responsibility, for firms with more than 10 employees. The latter requirement presumably applies to domestic as well as foreign-owned firms.

Paraguay

Paraguay committed to a relatively open regime with respect to travel and tourism services. No restrictions are scheduled with regard to lodging services, food and beverage services, or tourist guide services, as relates to consumption abroad and commercial presence. The government permits market access to travel agencies and tour operators that provide services in Paraguay to foreign travelers through a commercial presence. However, Paraguay left unbound national treatment limitations on travel agency and tour operator services delivered through commercial presence. Paraguay also left unbound measures pertaining to the presence

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[12] Differing from the other trading partners examined in this report, Chile included in its national schedules specific commitments on computer reservation systems (CRS) services under Auxiliary Air Transport Services. Although the other countries made no separate provision for CRS services, these services are believed to be included in the other countries' schedules within travel agency and tour operator services, because CRS services pertain to the provision of travel information, the arrangement of passenger transportation, and ticket issuance services. Chile made full commitments on CRS services delivered through cross-border supply and commercial presence, which are the primary modes through which CRS services are delivered. Chile left unbound CRS services delivered through consumption abroad, the incidence of which is believed to be minimal.

of natural persons, except for those defined as senior managerial personnel, with staff training programs, in lodging services, food and beverage services, and travel agency and tour operator services. Similarly, Paraguay left restrictions unbound pertaining to natural persons delivering tourist guide services, except for those "specialists" defined as suitable persons exercising the profession of tourist guide. As noted previously, Paraguay did not include cross-industry commitments in its schedule.

Peru

Peru's schedule appears to be restrictive on travel and tourism services. Restrictions on all such services are unbound when supplied through consumption abroad, which is the most important mode of supply pertaining to traveling abroad. Restrictions on foreign provision of beverage services and tourist guide services are unbound for all modes of supply. Lodging services, food services (not including beverage services), and travel agency and tour operator services supplied through commercial presence are subject to market access measures affecting registration[13] and licensing, but no national treatment restrictions are indicated. Cross-industry limitations cite a legislative decree[14] that provides that foreign investors and the enterprises in which they participate have the same rights and obligations as domestic investors, with the only exceptions being laid down in Peru's Political Constitution and the previously noted legislative decree. Also with regard to private investment, the schedule cites a legislative decree[15] that specifies the rights, guarantees, and obligations applicable to all domestic and foreign persons owning investments in Peru in order to ensure freedom of initiative and existing or future private investment in all economic sectors, forms of enterprise or contracts permitted by the constitution and legislation. Peru's cross-industry commitment pertaining to natural persons indicates that certain foreign service providers may obtain 3-year work permits, which may be renewed at 3-year intervals.

Uruguay

Uruguay's commitments on travel and tourism services are among the most liberal. The country bound full market access and national treatment for all such services delivered through consumption abroad and commercial presence. Furthermore, no cross-industry limitations are scheduled with respect to commercial presence. Uruguay did not specify permissible lengths of stay for managers, executives, and specialists, suggesting that it retains broad discretion with respect to regulating the entry of foreign service providers.

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[13] Any supplier of services with the intention of operating a lodging and/or restaurant establishment must apply for enrolment in the Unified Register to which Supreme Decree No. 118-90-PDM refers, according to Peru's schedule. Travel and tourist agencies must, in addition to enrollment, submit a joint, irrevocable and unconditional bond, which is executed automatically and permanently in force issued by a financial and/or insurance company to the satisfaction of the Ministry of Industry, Tourism, Integration and International Commercial Negotiations. Additionally, Supreme Decree No. 021-92-ICTI sets forth the criteria by which travel agency and tour operator services may operate.

[14] Legislative Decree No. 662, Law on the Promotion of Foreign Investment.

[15] Legislative Decree No. 757, Framework Law for the Promotion of Private Investment.

Venezuela

Venezuela's commitments on travel-related services are relatively liberal, with several caveats. Full market access and national treatment are accorded to foreign providers of lodging services, food (although not beverage) services, and travel agency and "wholesale tourism" services, except when delivered through the presence of natural persons. However, restrictions on foreign provision of beverage services and tourist guide services remain unbound for all modes of supply. Venezuela's schedule also includes full commitments, similar to those on lodging services, with respect to various auxiliary tourism enterprises, including services such as private car leasing and rentals, sports and other recreation, museums and culture, hairdressing, drycleaning, and other services yet to be clarified. Additionally, a measure pertaining to "holiday camps" stipulates that only foreigners who have been residents in Venezuela for more than five continuous years may own and operate such camps. For most travel and tourism services, natural person limitations are unbound, except for cross-industry measures affecting entry and temporary stay. Preference is given to graduates of Venezuelan tourism institutes at all levels of employment, but foreigners are said to be as able as Venezuelans to enroll and earn a degree from the tourism institutes.[16]

Industry Opinion

U.S. industry representatives report that, in practice, South American markets are substantially free of market access and national treatment barriers to trade with respect to travel and tourism services.[17] World tourism industry data appear to support such perceptions. International passenger arrivals to South America were said to increase by 8 percent in 1994, more than double the world average, with strong proportional growth over the previous year in arrivals and receipts recorded for large countries such as Argentina and Brazil as well as smaller countries such as Uruguay and Bolivia.[18]

U.S. sources indicate that South American market openness contrasts with experiences in many of these markets prior to the 1990s,[19] and industry representatives are hopeful that opportunities for foreign investment will proliferate. U.S. and South American sources indicate substantially increased opportunity for investment by U.S. firms such as Choice, Hilton, Hyatt, Marriott, Radisson, and Sheraton, as tourist areas are developed both inland and

[16] Venezuelan Government official, interview by USITC staff, Caracas, Venezuela, Aug. 13, 1996.

[17] Industry representatives, telephone interviews by USITC staff, June 10, 1996.

[18] "1994 Good Year for Tourism in South America," *WTO News*, World Tourism Organization, Madrid, July 1995, p. 6.

[19] For example, since 1990, the Brazilian Government has eliminated impediments to foreign travel erected for over two decades which attempted to limit foreign exchange fluctuation by controlling foreign travel by Brazilians. See USDOC, International Trade Administration, "Brazil - Discretionary Pleasure Travel to the USA," market research report, Mar. 21, 1995, National Trade Data Bank.

along vast beaches.[20] In certain markets, an emerging South American middle class with greater discretionary income and incentive to travel is expected to buoy growth in such services especially within South America but also to destinations outside the region. Industry sources regard lower- to mid-priced hotel chains as a major area for future growth, as indigenous South American chains have few such properties and U.S. hotel companies primarily have built 4- and 5-star luxury hotels.[21] Collateral improvements in infrastructure such as roads are considered important to sustaining tourism growth.[22] In certain South American countries, travel to other countries including the United States is considered easier and more affordable than travel within the country.[23]

Summary

Travel and tourism services are reasonably unimpeded with respect to trade barriers, including those on foreign investment and personal freedom to travel and pay for such services, when compared to most other service industries. Argentina, Chile, Paraguay, and Uruguay committed to full market access and national treatment for all travel and tourism services with respect to consumption abroad, which is uppermost in importance to trade in such services. In contrast, Brazil and Peru left market access and national treatment unbound with respect to consumption abroad.

Only three countries placed commercial presence restrictions on lodging services. Similar restrictions on food and beverage services were slightly more prevalent, especially on beverage services, which were left unbound by three countries that had nevertheless bound commitments on food services. Tourist guide services received the fewest commitments of all the travel and tourism services, as five countries left restrictions on tourist guide services unbound for all modes of supply.

In general, regulatory transparency appears to be partially accomplished, but lack of clarity in administrative procedures and changing regulatory measures present problems for certain subsectors in travel and tourism services. Overall, the goal of benchmarking was substantially achieved with regard to the schedules of Argentina, Chile, and Uruguay, moderately achieved in relation to Bolivia, Colombia, Paraguay, and Venezuela, and mostly lacking in the case of Brazil and Peru.

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[20] Industry representatives, interview by USITC staff, Sao Paulo, Brazil, Aug. 9, 1996, and telephone interview by USITC staff, June 10, 1996. See also, USDOC, International Trade Administration, "Argentina - Tourism Services," market research report, Apr. 19, 1995, National Trade Data Bank, and, "Tourism - New Directions," *Latin Trade*, Mar. 1996, pp. 36, 38.

[21] Industry representative, interview by USITC staff, Sao Paulo, Brazil, Aug. 9, 1996.

[22] Industry representatives, telephone interviews by USITC staff, June 1996.

[23] Industry representative, interview by USITC staff, Sao Paulo, Brazil, Aug. 9, 1996.

CHAPTER 13
Summary

Introduction

The preceding chapters examine the schedules of commitments submitted to the World Trade Organization (WTO) by nine South American countries under the General Agreement on Trade in Services (GATS). The chapters explain the commitments made by these countries and identify the benefits and limitations of the commitments with respect to U.S. service providers. The discussions conclude with statements as to the relative restrictiveness of the subject trading partners' markets and the extent to which relevant commitments provide benchmarks[1] and improve regulatory transparency.[2]

This chapter provides a summary of the report's contents and findings, beginning with an overview of the nature and intent of the GATS framework and national schedules. Afterward, this chapter highlights significant aspects of the South American schedules. Aspects of cross-industry commitments, industry-specific commitments, and most-favored-nation (MFN) exemptions are discussed separately.

GATS Overview

As noted in chapter 1, the GATS basically comprises a framework, national schedules of commitments, annexes, and ministerial decisions. In the Uruguay Round, the Group Negotiating on Services (GNS) first developed a framework of general disciplines and obligations pertaining to trade in services, as signatories to the General Agreement on Tariffs and Trade (GATT) had done some 50 years ago with respect to trade in goods. Parties to the GATS designed the framework as a mechanism for challenging trade-impeding measures. Such measures generally limit foreign firms' market access or accord these firms treatment less favorable than that accorded domestic firms. Signatories to the GATS believe that removal of trade restrictions in an economic sector that generally accounts for more than 60 percent of

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[1] Benchmarks comprise full and partial commitments. Full commitments are obligations to accord foreign firms full market access and national treatment. Partial commitments are obligations to accord foreign firms at least some degree of market access and/or national treatment subject to specified limitations. Where GATS signatories have scheduled full and partial commitments, they may introduce trade-impeding measures only if they are willing to compensate aggrieved parties. Where trade impediments remain unbound, no benchmarks have been established, and signatories may introduce trade-impeding measures without penalty.

[2] Transparency exists when the nature and extent of all trade-impeding measures are explained in their entirety, with precision and clarity.

gross domestic product and 50 percent of employment in the world's largest economies will promote global economic growth.[3]

The GATS framework is complemented by national schedules that specify, primarily on an industry-by-industry basis, whether and to what degree foreign firms will be accorded market access and national treatment. Ideally, national schedules serve two immediate purposes. First, they provide benchmarks that identify export opportunities and trade impediments specific to service industries and modes of delivering services. In the context of the GATS, these benchmarks also discourage countries from imposing further restrictions, or making existing restrictions more burdensome. Second, national schedules provide regulatory transparency, supplying information regarding the nature and extent of trade-impeding measures.

Overview of South American Countries' Schedules

The following discussion summarizes the degree of transparency and the extent of benchmarking found in South American schedules. The discussion begins with a summary of cross-industry commitments, proceeds to a summary of industry-specific commitments, and concludes with a summary of MFN exemptions. The summaries indicate that, in general, South American schedules are lacking in terms of transparency and benchmarking, although there are significant differences between countries.

Cross-industry Commitments by South American Countries

Countries were not required to schedule cross-industry commitments and the GATT Secretariat provided no formal guidelines for presenting them. However, eight of the nine subject countries scheduled such commitments, and these commitments generally address the same issues. The cross-industry commitments offered by South American countries, like those presented by most countries, generally present restrictions that affect the establishment of a commercial presence and the presence of natural persons. Table 13-1 highlights the major cross-industry commitments made by South American countries.

Restrictions that affect commercial presence generally involve investment. These include limitations on the purchase of land, usually in selected areas such as along the coastline or near territorial borders or in relation to mineral rights; requirements concerning the form of business establishment, such as requiring foreign firms to incorporate in the host country as

[3] World Bank and United Nations Centre on Transnational Corporations, *The Uruguay Round: Services in the World Economy* (World Bank: Washington, DC, 1990), pp. 29-31; and Geza Feketekuty, *International Trade in Services: An Overview and Blueprint for Negotiations* (Cambridge, MA: Ballinger Publishing Co., 1988), pp. 191-195.

Table 13-1
Highlights of cross-industry commitments

	Mode of Supply	
Country	**Commercial Presence**	**Presence of Natural Persons**
Argentina	• Acquisition of land within 150 km of borders and 50 km from coastal areas may be restricted.	• Senior managers, executives and specialists may enter under unspecified terms and conditions. Such terms and conditions may not nullify the benefits conferred by industry-specific commitments.
Bolivia	• Foreign enterprises required to establish subsidiaries in order to engage in trade on a regular basis. • Foreigners may not own soil or subsoil within 50 km of frontiers.	• Committed only to permit the temporary entry and stay of senior managers, executives and specialists. • The number of foreign employees of an enterprise may not exceed 15 percent of total. • One- or two-year residence permits are granted, subject to the requirements of an employment contract associated with commercial presence.
Brazil	• All foreign capital invested in Brazil must be registered with the Central Bank of Brazil to be eligible for remittances. • Foreign service suppliers must incorporate in Brazil with the appropriate Entities' Public Registry (EPR). Joint ventures may be established subject to certain conditions.	• Specialized technicians, highly qualified professionals, managers and directors, subject to approval and justification of need. Terms of entry may not nullify the benefits conferred by industry-specific commitments. • Companies in communications, land transportation, commercial stores in general, commercial offices, insurance, advertising, hotels and restaurants must employ at least two Brazilians for every three employees. • Managers and directors appointed to affiliates of foreign companies established in Brazil will be granted access, subject to certain conditions, provided that the transfer is related to the provision of new technology, an increase in productivity, or a minimum investment of US$200,000 in Brazil (amount may be adjusted in the future to correspond with this 1993 US$ value).
Chile	• The commitments in the schedule extend only to externally financed suppliers of services who establish a commercial presence in Chile as corporations, open or closed, private-limited companies, and subsidiaries. • Authorization to deliver services through a commercial presence may take into account the contribution of the commercial presence to Chile's integration into the world market, and the effects of commercial presence on local market conditions. • Foreign investors may transfer abroad their capital three years after the date of entry. • The purchase of land within 10 km of the frontier and 5 km from the coast and in Arica province may be restricted.	• Committed only to permit transfers of senior and specialized personnel for a period of two years which can be extended for two more years. Personnel admitted under these conditions will be subject to the provisions of the labor and social security legislation in force. • At least 85 percent of the staff employed by a supplier of services established in Chile must be Chilean. For businesses other than professional services, an exception may be made for enterprises with fewer than 15 employees.
Colombia	• Foreign investment is allowed in all sectors of the economy except for activities relating to national defense and the processing and disposal of toxic, hazardous or radioactive waste not produced in Colombia. • Unappropriated land along the Colombian coastlines and in the border regions with neighboring countries may be awarded solely to Colombians by birth. Unappropriated land thus acquired cannot be transferred to foreigners. • In the islands of the San Andres and Providencia Archipelago, the acquisition of real property by foreigners, as well as immigration and human settlements, are governed by special provisions for which all relevant reservations are established. • A tax on remittances of profits of foreign corporation applies.	• Managers, legal representatives and technical specialists in sectors other than professional services may enter. Terms of entry may not nullify the benefits conferred by industry-specific commitments. • Colombian nationality required for at least 90 percent of the staff of ordinary employees and not less than 80 percent of the skilled employees or specialists, administrative staff or persons in posts of responsibility for employers with a staff larger than 10.

Table 13-1
Highlights of cross-industry commitments

	Mode of Supply	
Country	**Commercial Presence**	**Presence of Natural Persons**
Paraguay	No commitment.	No commitment.
Peru	• Foreign investments must be registered with the competent national authority. • Foreign investors and enterprises in which they participate have the same rights and obligations as domestic investors and enterprises, except for the provisions in Peru's Political Constitution and in Legislative Decree No. 662.[1] • In connection with property, Peru's Political Constitution stipulates that foreigners may not own mines, land, woodland, water resources, fuel or energy sources within 50 km of the frontier, whether individually or as a company, on penalty of transfer of the rights thus acquired to the State.	• Peru permits entry for a period of not more than three years, which may be extended for successive periods of not more than three years, to nationals of GATS member countries providing services and employed by service providing companies. • Foreign nationals may not comprise more than 20 percent of the total number of staff employed by the enterprise, and their remuneration may not exceed 30 percent of the total payroll, with some exceptions.
Uruguay	None.	• Managers, executives and specialists may enter. Terms of entry may not nullify the benefits conferred by industry-specific commitments.
Venezuela	None.	• Committed only to permit the temporary entry and stay of sellers of non-financial services; administrative staff, managers and executives; and specialists, who are permitted renewable stay of one year. Foreign nationals will be subject to the restrictions laid down in the current labor law and future amendments, with some exceptions. At present, these laws are: - Chiefs of industrial relations, chiefs of personnel, captains of ships or aircrafts, supervisors or any person exercising similar functions must be Venezuelan nationals. - At least 90 percent of the personnel of an enterprise must be Venezuelan nationals. - The total remuneration paid to foreigners, including both manual workers and employees may not exceed 20 percent of the total remuneration paid to personnel in either category.

[1] Legislative Decree No. 622, Law on the Promotion of Foreign Investment, provides that foreign investors and enterprises in which they participate have the same rights and obligations as domestic investors and enterprises, subject to exceptions specified in Peru's Constitution.

Source: Compiled by the staff of the U.S. International Trade Commission.

a subsidiary; limitations concerning the repatriation of capital and the remittance of profits; and investment registration and approval requirements, which may include subjective economic needs tests.[4]

As was customary among all GATS signatories, restrictions that apply to the presence of natural persons are stated in relation to selected types of personnel, usually senior managers, executives, and specialists. Measures affecting other types of employees remain unbound. Bolivia, Chile, Peru, and Venezuela specify permissible durations of stay, which range from 1 to 3 years. Argentina, Brazil, Colombia, and Uruguay decline to specify permissible lengths of stay. In these instances, no binding is undertaken with respect to length of stay, but these countries may not impose conditions that nullify the benefits accorded to foreign service providers by industry-specific commitments.[5] Regulatory bodies in these countries presumably exercise considerable discretion in determining when the benefits of industry-specific commitments are nullified. Hence, the approach taken by these four countries limits transparency. Paraguay's schedule is similarly non-transparent with respect to temporary entry and stay, as Paraguay scheduled no commitments regarding the presence of natural persons.

Industry-Specific Commitments by South American Countries

GATS signatories were provided with many opportunities to establish benchmarks and enhance transparency by scheduling industry-specific commitments. By scheduling a full commitment with respect to one mode of supplying a particular service, countries could indicate that they impose no restrictions on such trade, thereby establishing a benchmark and enhancing transparency. By scheduling a partial commitment, which requires a country to specify the nature of the restriction in place, a country could once again establish a benchmark and enhance transparency. In scheduling a full or partial commitment, a country recognized that under the terms of the GATS, it could reverse itself and introduce trade-impeding measures only if it were willing to compensate aggrieved parties. By undertaking no commitment, countries could decline to establish benchmarks and make no contribution to regulatory transparency. The absence of a commitment leaves trade limitations unbound, allowing a country to retain unspecified restrictions or impose unspecified restrictions without penalty.

Impediments to trade in services are usually manifest in regulations that restrict or deny foreign service providers market access or national treatment. For this reason, national schedules require each GATS signatory to indicate whether it is undertaking a full commitment, partial commitment, or no commitment with respect to both market access and national treatment. Further, because the GATS recognizes four modes of supplying services, signatories are required to indicate the nature of their undertaking with respect to each mode of supply, yielding

[4] Economic needs tests assess the impact of new market entrants on the indigenous industry. Such assessments may result in a negative determination if market entry is considered likely to have a detrimental effect on market structure, profitability, population density, geographic distribution, and job creation. However, thresholds for meeting these criteria are not specified and may be subject to different interpretation on a case-by-case basis.

[5] GATT Secretariat, *Scheduling of Initial Commitments in Trade in Services: Explanatory Note*, Nov. 30, 1993 (MTN.GNS/W/164/Add.1).

8 entries for each industry, 55 of which fall within the scope of this report. Thus, this report examines 440 schedule entries made by each of the subject countries; i.e., undertakings with respect to 2 distinct types of potential limitations (those that limit market access or national treatment), for each of 4 modes of supply (cross-border supply, consumption abroad, commercial presence, or presence of natural persons), in 55 industries (2x4x55=440).

To compare the extent to which countries have established benchmarks and improved transparency, Commission staff summed each South American country's full and partial commitments, and those of the European Union, Japan, Canada, and Mexico, and expressed them as a share of the 440 schedule entries.[6] The resulting shares are depicted along the horizontal axis in figure 13-1,[7] where countries furthest from the origin - Canada and the European Union - appear to have accomplished more in terms of establishing benchmarks and enhancing transparency.[8] Among South American countries, Argentina appears furthest from the origin, undertaking full and partial commitments in 44 percent of its schedule entries. Venezuela and Colombia trail Argentina in terms of benchmarking and transparency, both entering full or partial commitments 20 percent of the time. Other South American countries have undertaken commitments in 5 to 18 percent of their schedule entries, thereby comparing less favorably in terms of benchmarking and transparency.

To indicate where GATS signatories are in terms of guaranteeing unrestricted trade in this report's subject industries, the share of schedule entries represented by full commitments is depicted along the vertical axis of figure 13-1. Again, developed countries tend to compare favorably, and Argentina leads other South American countries, undertaking full commitments with 31 percent of its schedule entries.

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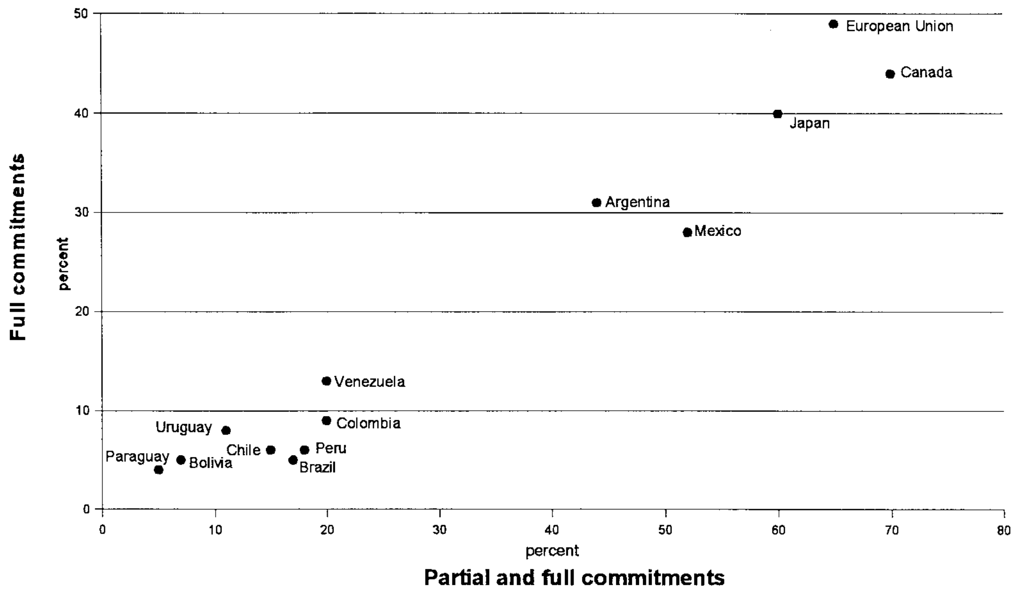
[6] This quantitative analysis of the schedules draws upon work presented in Bernard Hoekman, *Tentative First Steps: An Assessment of the Uruguay Round Agreement on Services*, paper presented at The Uruguay Round and the Developing Economies Conference of the World Bank, Washington, DC, Jan. 26-27, 1995. Further details pertaining to this quantitative analysis are provided in the annex that immediately follows this chapter.

[7] For the purposes of figures 13-1 and 13-2, all partial commitments have been given an equivalent score in the interest of simplicity and clarity. Whereas all partial commitments establish similar, unambiguous, and legally enforceable benchmarks, such commitments vary appreciably in the extent to which they enhance transparency. Therefore, figures 13-1 and 13-2 indicate along the horizontal axis the share of schedule entries that establish benchmarks and *improve* transparency, rather than the share of entries that establish benchmarks and *provide complete or similar degrees* of transparency.

[8] For more information on the schedules submitted by the United States, the European Union, Japan, Canada, and Mexico, see USITC, *General Agreement on Trade in Services: Major Trading Partners' Schedules of Commitments*, USITC publication 2940, 1995, and USITC, *U.S. Trade Shifts in Selected Industries: Services*, USITC publication 2969, 1996.

Figure 13-1
Shares of total possible schedule entries, by country

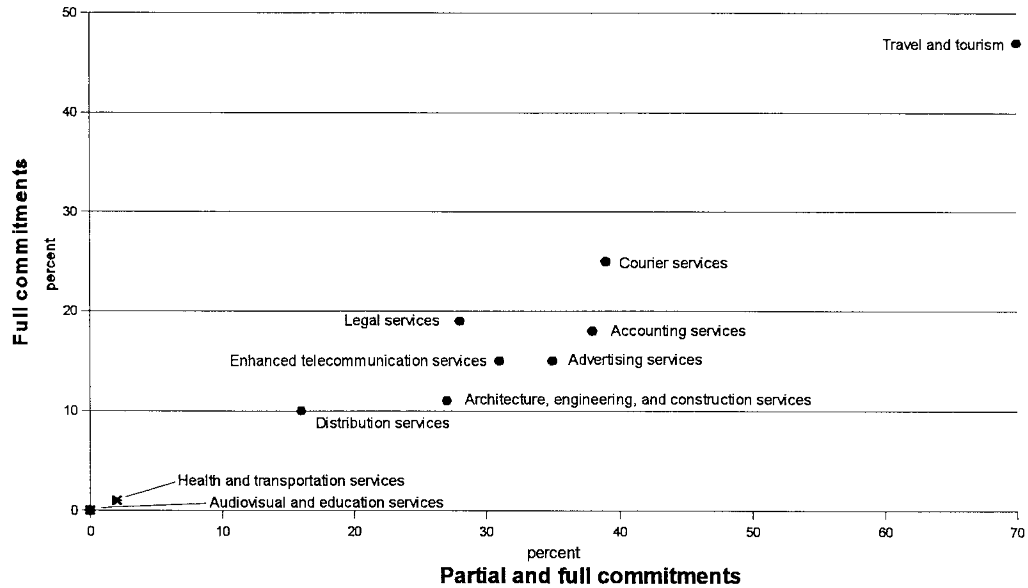


Source: Compiled by the staff of the U.S. International Trade Commission.

The extent to which South American countries, taken as a group, established benchmarks and enhanced transparency differed significantly by industry. Figure 13-2 shows, along the horizontal axis, that the subject countries undertook commitments (full and partial) in 70 percent of their combined schedule entries pertaining to travel and tourism services. Full commitments, reflected along the vertical axis, represented 47 percent of South American countries' schedule entries regarding these services. The large number of commitments scheduled with respect to travel and tourism reflect initiatives to encourage inbound tourism, a significant source of foreign exchange in many economies.

Other subject service industries did not fare as well. As noted in chapter 1, South American countries scheduled no commitments on audiovisual and education services. Consequently, South American countries did not establish benchmarks or enhance transparency in these industries. Health care and transportation services received only slightly better coverage, with commitments undertaken in only 2 percent of the applicable schedule entries. Poor coverage of these industries reflects the strong interest of national governments in maintaining domestic control over sectors important to public health and safety. In recent years, many of the subject countries have begun to explore deregulation and privatization programs that may substantially alter the competitive environment in these industries. However, such programs were in the early stages of development as the Uruguay Round concluded, making it difficult for negotiators to schedule any binding commitments at that time.

Figure 13-2
Shares of total possible schedule entries, by industry



Source: Compiled by the staff of the U.S. International Trade Commission.

MFN Exemptions

MFN exemptions describe existing regulatory measures that do not conform to the most-favored-nation principle, in that they accord preferential treatment to selected countries. Such measures principally affect land transportation and audiovisual services (table 13-2). With respect to land transportation services, most of the subject countries participate in regional agreements that accord preferential treatment to contiguous countries. For example, Colombia accords preferential treatment to members of the Andean Road Freight System and Uruguay accords preferential treatment to members of the International Land Transport Convention. Since these agreements generally focus on land transport between South American countries, an area in which U.S. transport companies have expressed little interest due to geography, U.S. land transport companies are not significantly affected by discriminatory treatment. Moreover, in countries where land transport services are the subject of commitments, the effect of the MFN exemptions is muted as U.S. firms would receive no less than the minimum levels of market access and national treatment specified in the commitments.

With respect to audiovisual services, the MFN exemptions generally allow countries to accord preferential treatment to countries with which they presently have, or may have in the future, co-production agreements. The stated purpose of such agreements is to encourage the development of the local industry and, perhaps, to minimize the cultural impact of foreign-produced works. Regardless, the effect of such preferential agreements on U.S.

Table 13-2
Most-favored-nation (MFN) exemptions pertaining to subject industries[1]

Country	Services affected	Description of Measures
Bolivia	Land transportation	National treatment accorded preferentially in international transportation of passengers and freight (including combined road-rail transport) reserving transportation rights among the parties or through the territory of the contracting party concerned.
	Audiovisual services	National treatment accorded preferentially for co-produced cinematographic works in accordance with existing or future agreements.
Brazil	Land transportation	National treatment accorded preferentially to cargo and passenger transport suppliers from countries that are members of the Agreement on International Land Transport.
	Audiovisual services	National treatment for motion pictures accorded preferentially to countries with which Brazil maintains a co-production agreement.
Chile	All services	Investment dispute settlement procedures apply only to members of existing or future bilateral treaties on the protection of investment.
	Land transportation	National treatment accorded preferentially to cargo and passenger transport suppliers from countries that are members of the Agreement on International Land Transport.
	Audiovisual services	National treatment accorded preferentially for co-produced works in accordance with existing or future cinematographic co-production agreements.
Colombia	Telecommunication services	National treatment with respect to commercial presence is granted only to value-added service suppliers from Andean Group countries.
	Land transportation	Preferential treatment accorded to service providers from countries that are members of the Andean Road Freight System.
	Audiovisual services	Preference accorded to members of existing or future co-production agreements for the cinema or television, in particular with regard to distribution, access, and financing conditions.
Peru	All services	Preferential treatment accorded to countries with which Peru maintains a reciprocal labor agreement, a dual nationality agreement, or other bilateral or multilateral agreements relating to the movement of natural persons.
	Land transportation	Preferential treatment is granted to members of the Andean Group with respect to carriage of freight by road; international transport of passengers by roads; multi-modal transport; and freedom of access to freight originating within the subregion, including cabotage.
	Audiovisual services	Preference accorded to Latin American artists interpreting Latin American themes in recreational, cultural and sporting services.
Uruguay	All services	Preferential treatment accorded to investors from countries with which Uruguay maintains bilateral investment promotion and protection agreements.
	Land transportation	National treatment accorded preferentially for authorized cross-border suppliers from member-countries of the International Land Transport Convention.
Venezuela	Professional services	National treatment for professional services governed by special laws, some of which require reciprocity. Applies in particular to physicians, engineers, lawyers, architects, veterinary surgeons, pharmacists, and economists.
	Distribution services	Preferences accorded on the basis of bilateral agreements for the distribution and marketing of petroleum and petroleum products, advisory services, and the exchange of technology.
	Audiovisual services	Preference accorded to service providers from countries that are members of co-production agreements. Preference accorded to service providers from countries that are signatories to the Ibero-American Cinematographic Integration Agreement, the Latin American Cinematographic Co-production Agreement, and the Agreement on the Creation of a Latin American Cinematographic Common Market. Preference accorded to amateur radio service providers from countries that are members of the Inter-American convention on radio amateur services ("Lima Convention"). Preference accorded to amateur radio service providers from countries with which Venezuela maintains bilateral agreements on radio amateurs.

[1]Argentina and Paraguay listed no MFN exemptions.
Source: Compiled by the staff of the U.S. International Trade Commission.

audiovisual service providers is likely to be minimal, particularly since the ability of these trading partners to enforce the exemptions is somewhat dubious at present and likely will decline further over time. The Annex on Negotiations on Basic Telecommunications, in conjunction with many full and partial commitments pertaining to enhanced telecommunication services, may permit foreign firms to provide certain audiovisual services over telecommunication networks and ubiquitous information networks such as the Internet. The ability and willingness of any government to monitor services provided over such networks is questionable. Thus, any adverse effects on U.S. audiovisual service suppliers may be short-lived owing to technological advances, global networking, and the deregulation of information networks.[9]

Conclusion

The participation of the South American countries in the GATS scheduling process is significant in light of the apparent reluctance of some South American countries to address services trade within the framework of the GATT at the beginning of the Uruguay Round. While the schedules of commitments presented by South American countries clearly are not as comprehensive as those offered by developed countries, the schedules do provide a foundation for potential trade liberalization in future rounds of negotiations. Since the conclusion of the Uruguay Round, a number of South American countries have continued to endorse liberalization by participating in the extended negotiations regarding financial and basic telecommunication services.

With respect to South American countries, the achievements of this first round of the GATS represent only modest movement toward liberalization. The subject countries have scheduled few commitments, suggesting that U.S. service providers are likely to realize few immediate benefits in the South American market. However, the schedules of commitments do provide benchmarks where few or none had been established before, and offer some improvement in regulatory transparency. As a result, these commitments mark the beginning of a process that will likely be beneficial to U.S. firms over the long term.

[9] U.S. Government official, interview by USITC staff, Washington, DC, Aug. 14, 1995; and EU Commission official, interview by USITC staff, Brussels, July 19, 1995. It is unclear whether ongoing negotiations pertaining to basic telecommunication services will directly affect the foreign provision of audiovisual services in a significant manner.

CHAPTER 13
Annex

Methodology

In chapter 13, figures 13-1 and 13-2 summarize the extent to which South American countries scheduled full and partial commitments. The following discussion first identifies the principal difficulties encountered in quantifying these aspects of the national schedules and indicates how these difficulties were resolved. Thereafter, the discussion further delineates the methodology employed to derive the quantitative indicators found in these figures, and provides examples of how the indicators were calculated. The annex concludes with a tabular presentation of the data presented in figures 13-1 and 13-2.

Treatment of Miscellaneous Service Groupings

The service industries of interest to the United States Trade Representative correspond to 62 industries specified in the GATT Secretariat's *Services Sectoral Classification List* (see annex table 13-A-1). Staff reduced the number of industries to 55 by discarding 7 miscellaneous groupings for which commitments scheduled by the subject trading partners were not comparable. The seven discarded groupings appear as "other" services under distribution services, education services, enhanced telecommunication services, audiovisual services, health care services, transportation services, and travel and tourism services.[10]

Hence, the figures 13-1 and 13-2 display shares calculated on the basis of 55 industries, or 440 possible schedule entries.[11] This does not alter the relative standing of the subject trading partners in figures 13-1 and 13-2, but it does result in slightly higher shares in both figures.

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[10] The miscellaneous groupings were included in the GATT Secretariat's list so that offers could be broadened at the discretion of GATS signatories.

[11] For each of the 55 distinct service industries, trading partners could make 8 entries: 4 with respect to market access (one for each mode of supply), and 4 with respect to national treatment.

Table 13-A-1
GATT services sectoral classification list

Number	Subject Industry	Subsector
	Distribution services	
1.		Commission agents' services
2.		Wholesale trade
3.		Retailing
4.		Franchising
5.		Other[1]
	Education services	
6.		Primary education services
7.		Secondary education services
8.		Higher education services
9.		Adult education
10.		Other[1]
	Communication services:	
11.	Land-based courier services	(none)
	Enhanced telecommunication services	
12.		Electronic mail
13.		Voice mail
14.		On-line information and data base retrieval
15.		Electronic data interchange
16.		Enhanced/value-added facsimile services
17.		Code and protocol conversion
18.		On-line information and/or data processing
19.		Other[1]
	Audiovisual services	
20.		Motion picture, video tape production and distribution
21.		Motion picture projection services
22.		Radio and television services
23.		Radio and television transmission services
24.		Sound recording
25.		Other[1]
	Health care services	
26.		Medical and dental services
27.		Veterinary services
28.		Services provided by midwives, nurses, et. al.
29.		Hospital and other health care facilities
30.		Other human health services
31.		Other[1]
	Professional services:	
32.	Legal services	(none)
33.	Accounting services	(none)
34.	Advertising services	(none)
	Architecture, engineering, and construction	
35.		Architectural services
36.		Engineering services
37.		Integrated engineering services
38.		General construction work for buildings
39.		General construction work for civil engineering
40.		Installation and assembly work
41.		Building completion and finishing work
42.		Other

Table 13-A-1
GATT services sectoral classification list

Number	Subject Industry	Subsector
	Transportation services:	
	Rail transport	
43.		Passenger transport
44.		Freight transport
45.		Pushing and towing services
46.		Maintenance/repair of rail transport equipment
47.		Supporting services for rail transport services
	Road transport	
48.		Passenger transport
49.		Freight transport
50.		Rental of commercial vehicle with operator
51.		Maintenance/repair of road transport equipment
52.		Supporting services for road transport services
	Services auxiliary to all modes of transport	
53.		Cargo-handling services
54.		Storage and warehouse services
55.		Freight transport agency services
56.		Other
57.	Other transport services[1]	(none)
	Travel and tourism services	
58.		Hotels and restaurants (excl. catering)
59.		Catering
60.		Travel agencies and tour operators
61.		Tour guide services
62.		Other[1]

[1]Entries for these subsectors were discarded from the calculations.
Source: General Agreement on Tariffs and Trade, *Services Sectoral Classification List* (MFN.GNS/W/120).

Treatment of Entries Referencing Cross-Industry Commitments

Throughout the national schedules, many industry-specific commitments reference cross-industry commitments.[12] This occurs in almost all cases with respect to commitments addressing the presence of natural persons, and occasionally with respect to commitments on commercial presence. For instance, when identifying limitations that apply to the presence of natural persons, trading partners routinely make the following entry: "unbound, except as indicated in the cross-industry commitments." Because this entry grants some degree of market access and national treatment by allowing certain foreign service providers to enter markets under conditions specified in the cross-industry commitments, these entries have been recorded as partial commitments.[13] They are less restrictive than "unbound" entries that provide no exemptions.

Similarly, all subject trading partners have made use of an entry that reads "none, except as indicated in the cross-industry commitments." These entries have been recorded as full commitments. Certain trading partners employed this language for the sake of transparency, but the additional language is not necessary. Under the GATS scheduling methodology, cross-industry commitments are applicable to all entries showing full or partial commitments.

Table 13-A-2

Table 13-A-2 expresses the number of full commitments as a share of the total entries made by each trading partner. Composite shares reflect overall restrictiveness by trading partner (bottom row) and by industry (right-hand column). The composite share of each South American trading partner in table 13-A-2 is presented graphically along the vertical-axis in figure 13-1. The composite share calculated on an industry-by-industry basis in table 13-A-2 is presented graphically along the vertical axis in figure 13-2. The higher the share, the less restrictive the market. Partial commitments are not reflected in the shares appearing in table 13-A-2 because they vary too much in terms of restrictiveness.

For example, the first cell of table 13-A-2 reflects Argentina's full commitments regarding distribution services. For the purposes of this discussion, the distribution services industry consists of four subsectors: commission agents' services, wholesaling, retailing, and

[12] Cross-industry commitments are referred to as "horizontal" commitments in the schedules.

[13] Such partial commitments occur in approximately 25 percent of all industry specific schedule entries, reflecting the fact that almost all countries chose to present measures relating to the presence of natural persons as cross-industry commitments.

franchising.[14] Argentina's full commitments number zero with respect to commission agents' services, six for wholesaling, six for retailing, and six for franchising, for a combined total of 18 full commitments. Since there are 4 subsectors comprising distribution services, and 8 possible entries within each subsector,[15] there are 32 entries applicable to distribution services. Hence, full commitments account for 56 percent of all of Argentina's entries applicable to distribution services.

Composite shares for trading partners were derived in a similar manner. In Argentina's schedule, full commitments in all of the subject industries totaled 136. Dividing the number of full commitments by Argentina's 440 total possible entries results in a composite share of 31 percent.

Composite shares for the subject industries reflect a similar methodology. For example, the nine South American countries made a total of 288 entries with respect to distribution services. Full commitments on distribution services scheduled by the subject trading partners number 28, accounting for 10 percent of total entries.

Table 13-A-3

Table 13-A-3 expresses the number of full and partial commitments as a share of the total entries made by each trading partner for each industry. Composite shares have been calculated for each trading partner (bottom row) and each industry (right-hand column). These composite shares are represented graphically along the horizontal axis in figures 13-1 and 13-2. The higher the share, the greater the extent of benchmarking. Both full and partial commitments identify trade-impeding measures and prohibit trading partners from making these measures more restrictive. Hence, both act as benchmarks.

For example, the first cell of table 13-A-3 reflects Argentina's full and partial commitments regarding distribution services. As in the previous discussion, the distribution services industry consists of four subsectors: commission agents' services, wholesaling, retailing, and franchising.[16] Argentina's full commitments number 18, and partial commitments number 6 with respect to all of these subsectors, for a combined total of 24. Since there are 32 entries applicable to distribution services, full and partial commitments account for 75 percent of all of Argentina's entries applicable to distribution services.

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[14] The subsector entitled "other distribution services" was omitted from the calculations. This has the effect of reducing the total possible entries under the major heading of distribution services by eight.

[15] Schedule entries correspond to modes of supply. Four entries are made with respect to market access, and four more are made with respect to national treatment.

[16] The subsector entitled "other distribution services" was omitted from the calculations. This has the effect of reducing the total possible entries under the major heading of distribution services by eight.

Composite shares for trading partners were derived similarly. In Argentina's case, full and partial commitments to all the subject industries totaled 192. Dividing this number by Argentina's 440 total possible entries results in a composite share of 44 percent.

Composite shares for the subject industries reflect a similar methodology. The nine subject countries made 288 entries with respect to distribution services. Full commitments number 28 and partial commitments number 17, for a combined total of 45 full and partial commitments, which is equivalent to 16 percent of the subject countries' total entries pertaining to distribution services.

Table 13-A-2
The share of schedule entries binding full market access and national treatment

(Percent)

Industry	Argentina	Bolivia	Brazil	Chile	Colombia	Paraguay	Peru	Uruguay	Venezuela	Composite share, by industry
Distribution services[1]	56	0	19	0	0	0	13	0	0	**10**
Education services[1]	0	0	0	0	0	0	0	0	0	**0**
Communication services										
Enhanced telecommunication services[1]	75	0	0	14	25	0	25	0	0	**15**
Courier services	75	0	50	0	0	0	0	50	50	**25**
Audio-visual services[1]	0	0	0	0	0	0	0	0	0	**0**
Health care services[1]	0	10	0	0	0	0	0	0	0	**1**
Professional services										
Accounting services	75	0	0	25	25	0	13	0	25	**18**
Architecture, Engineering, and Construction services	44	0	8	0	6	0	3	0	41	**11**
Advertising services	75	0	0	0	0	0	13	0	50	**15**
Legal services	75	0	0	25	50	0	0	0	25	**19**
Transportation services[1]	0	0	5	0	0	0	0	5	0	**1**
Travel and tourism services[1]	75	38	6	50	44	69	9	75	56	**47**
Composite share, by trading partner	**31**	**4**	**5**	**6**	**9**	**5**	**6**	**8**	**13**	**10**

[1]Calculations for this industry exclude a subsector for miscellaneous services, for which commitments were not comparable across subject trading partners.
Source: Compiled by the staff of the U.S. International Trade Commission.

Table 13-A-3
The share of schedule entries binding full and partial market access and national treatment

(Percent)

Industry	Argentina	Bolivia	Brazil	Chile	Colombia	Paraguay	Peru	Uruguay	Venezuela	Composite share, by industry
Distribution services[1]	75	0	41	0	0	0	25	0	0	**16**
Education services[1]	0	0	0	0	0	0	0	0	0	**0**
Communication services										
Enhanced telecommunication services[1]	100	0	0	43	63	0	75	0	0	**31**
Courier services	100	0	75	0	0	0	0	100	75	**39**
Audio-visual services[1]	0	0	0	0	0	0	0	0	0	**0**
Health care services[1]	0	15	0	0	0	0	0	0	0	**2**
Professional services										
Accounting services	100	0	38	50	50	0	50	0	50	**38**
Architecture, Engineering, and Construction services	75	0	38	13	38	0	13	0	66	**27**
Advertising services	100	0	63	0	0	0	50	0	100	**35**
Legal services	100	0	0	50	50	0	0	0	50	**28**
Transportation services[1]	0	0	14	0	0	0	0	7	0	**2**
Travel and tourism services[1]	100	56	25	75	63	97	38	100	75	**70**
Composite share, by trading partner	**44**	**5**	**17**	**15**	**20**	**7**	**18**	**11**	**20**	**17**

[1]Calculations for this industry exclude a subsector for miscellaneous services, for which commitments were not comparable across subject trading partners.
Source: Compiled by the staff of the U.S. International Trade Commission.

APPENDIX A
REQUEST LETTER

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

1905

Office of the Secretary
Int'l Trade Commission

APR 5 1996

The Honorable Peter S. Watson
Chairman
U.S. International Trade Commission
500 E Street, SW
Washington, D.C. 20436

Dear Mr. Chairman:

I wish to express my appreciation for the Commission's transmittal of the report, *General Agreement on Trade in Services (GATS): Examination of Major Trading Partners' Schedules of Commitments*, received by my office on December 15, 1995. The GATS is one of the major accomplishments of the Uruguay Round, providing a framework that disciplines government regulation of trade and investment in service industries and obligates signatory countries to establish schedules of commitments. These schedules indicate the extent to which signatory countries accord market access and national treatment to foreign service providers on an industry-by-industry basis. The Commission's study provides a clear, concise summary of the commitments that our major trading partners have included in their GATS schedules and the benefits of these commitments to U.S. service providers. It will also provide useful input for future trade-liberalizing service negotiations.

In this regard, additional assessments of foreign commitments pursuant to the GATS are of interest to my office. A clarification of the schedules and an evaluation of the opportunities afforded U.S. service providers by additional trading partners' commitments would be of great value. I therefore request, pursuant to authority delegated by the President under section 332(g) of the Tariff Act of 1930, that the U.S. International Trade Commission conduct a follow-on investigation that (1) examines the content of schedules of commitments for the countries specified below, explaining the commitments in non-technical language; and (2) clearly and concisely identifies the potential benefits and limitations of such commitments.

The Commission's follow-on report should examine sector-specific and horizontal commitments pertaining to the following services in Argentina, Bolivia, Brazil, Chile, Colombia, Paraguay, Peru, Uruguay, and Venezuela:

- distribution services (defined as wholesaling, retailing, and franchising services);
- education services;
- communication services (defined as enhanced telecommunication, audiovisual, and courier services);
- health care services;
- professional services (defined as accounting, advertising, and legal services);
- architectural, engineering, and construction (AEC) services
- land-based transport services (defined as rail and trucking services); and
- travel and tourism services.

The Commission is requested to deliver this report no later than December 13, 1996. Discussions regarding the feasibility and timing of an additional follow-on report examining commitments pertaining to the services mentioned above in Australia, Hong Kong, India, Indonesia, Korea, Malaysia, New Zealand, the Philippines, Singapore, and Thailand should be held upon delivery of this report.

It is the intent of this office to make the Commission's reports available to the general public in their entirety. Therefore, the report should not contain any confidential business information.

The Commission's assistance in this matter is greatly appreciated.

Sincerely,

Michael Kantor

APPENDIX B
FEDERAL REGISTER NOTICE

Background

On March 14, 1996, a petition was filed with the Commission and the Department of Commerce by Brush Wellman, Cleveland, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of beryllium metal and high-beryllium alloys from Kazakhstan. Accordingly, effective March 14, 1996, the Commission instituted antidumping investigation No. 731–TA–746 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 26, 1996 (61 FR 13213). The conference was held in Washington, DC, on April 3, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 6, 1996. The views of the Commission are contained in USITC Publication 2959 (May 1996), entitled "Beryllium Metal and High-Beryllium Alloys from Kazakhstan: Investigation No. 731–TA–746 (Preliminary)."

By order of the Commission.

Issued: May 8, 1996.

Donna R. Koehnke,

Secretary.

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metal and high-beryllium alloys that are alleged to be sold in the United States at LTFV.

[Investigation No. 332–367]

General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments

AGENCY: International Trade Commission, Department of Commerce.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: May 6, 1996.

SUMMARY: Following receipt on April 9, 1996, of a request from the Office of the United States Trade Representative (USTR), the Commission instituted Investigation No. 332–367, General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION: Information on service industries may be obtained from Mr. Richard Brown, Office of Industries (202–205–3438) and Mr. Christopher Melly, Office of Industries (202–205–3461); economic aspects, from Mr. William Donnelly, Office of Economics (202–205–3223); and legal aspects, from Mr. William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

As requested by the USTR in a letter dated April 5, 1996, the Commission, pursuant to section 332(g) of the Tariff Act of 1930, has instituted an investigation and will prepare a report that (1) examines the content of foreign schedules of commitments under the General Agreement on Trade in Services (GATS), explaining the commitments in non-technical language; and (2) seeks to identify the potential benefits and limitations of foreign commitments. Also as requested, the Commission will focus on sector-specific commitments scheduled by Argentina, Bolivia, Brazil, Chile, Colombia, Paraguay, Peru, Uruguay, and Venezuela with respect to the following industries:

- distribution services (defined as wholesaling, retailing, and franchising services);
- education services;
- communication services (defined as enhanced telecommunication, courier, and audiovisual services);
- health care services;
- professional services (defined as accounting, advertising, and legal services);
- architectural, engineering, and construction (AEC) services;
- land-based transport services (defined as rail and trucking services); and
- travel and tourism.

In addition, the Commission will examine horizontal commitments relevant to the specified industries, such as those regarding investment and temporary entry and stay of foreign workers. As requested by the USTR, the Commission plans to deliver its report to the USTR by December 13, 1996.

The investigation is a follow-on to Commission Investigation No. 332–358, General Agreement on Trade in Services: Examination of Major Trading Partners' Schedules of Commitments, requested by the USTR on December 28, 1994, also under section 332(g) of the Tariff Act of 1930. In that report, the Commission examined the commitments scheduled by the European Union (EU), Japan, Canada, and Mexico with respect to the industries delineated above. The initial report, USITC Publication 2940, was published in December 1995, and is available on the ITC Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on July 18, 1996. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., July 5, 1996. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., July 5, 1996. The deadline for filing post-hearing briefs or statements is 5:15 p.m., August 1, 1996. In the event that, as of the close of business on July 5, 1996, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after July 5, 1996, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on August 1, 1996. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: May 7, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–12182 Filed 5–14–96; 8:45 am]

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[Investigations Nos. 731–TA–726, 727, and 729 (Final)]

Polyvinyl Alcohol from China, Japan, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured or threatened with material injury by reason of imports from China, Japan, and Taiwan of polyvinyl alcohol (PVA),[3] provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States,[4] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[5]

Background

The Commission instituted these investigations effective October 5, 1995, following preliminary determinations by the Department of Commerce that imports of PVA from China, Japan, and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of November 9, 1995 (60 FR 56614). The hearing was held in Washington, DC, on March 26, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 6, 1996. The views of the Commission are contained in USITC Publication 2960 (May 1996), entitled "Polyvinyl Alcohol from China, Japan, and Taiwan: Investigations Nos. 731–TA–726, 727, and 729 (Final)."

By order of the Commission.

Issued: May 9, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–12184 Filed 5–14–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–237]

Production Sharing: Use of U.S. Components and Materials in Foreign Assembly, 1992–95 (U.S. Imports Under Production Sharing Provisions of Harmonized Tariff Schedule Heading 9802)

AGENCY: United States International Trade Commission.

ACTION: Opportunity to submit written statements in connection with the 1996 report, and retitling of investigation.

EFFECTIVE DATE: May 6, 1996.

SUMMARY: The Commission has prepared and published annual reports on production sharing under this series since 1986. The Commission plans to publish the next report in December 1996, which will cover U.S. import data on production sharing for the years 1992–95.

FOR FURTHER INFORMATION CONTACT: Questions about the production sharing report may be directed to the project leader, Adam Topolansky, Office of Industries (202–205–3394) or the assistant project leader, Ms. Jennifer Rorke, Office of Industries (202–205–3489). For information on legal aspects, please contact Mr. William Gearhart, Office of General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

The initial notice of institution of this investigation was published in the Federal Register of September 4, 1986 (51 FR 31729). The report has been published in the current series under investigation No. 332–237 annually since December 1986. The report, originally entitled "Imports Under Items 806.30 and 807.00 of the Tariff Schedules of the United States, 1982–85," has undergone a number of changes in the title to reflect adoption of the Harmonized Tariff Schedule (HTS) and modification to the provisions in heading 9802 of that schedule. HTS provision 9802.00.60 involves tariff treatment for metal of U.S. origin processed in a foreign location and returned to the United States for further processing; provision 9802.00.80 involves tariff treatment for imported goods that contain U.S.-made components.

As in past years, the report will provide an analysis of developments in U.S. imports under the production sharing provisions of tariff heading 9802 focusing on shifts in trade and product mix, and trends by principal country sources and industry groups. The report will also assess U.S. production generated as a result of foreign assembly, the use of production sharing by foreign manufacturers, the effect of the North American Free-Trade Agreement (NAFTA) on U.S. parts producers, and developments in the global integration of specific industries. The report will also provide information on how companies involved in production sharing in Mexico have changed their operations in response to NAFTA.

Written Submissions

No public hearing is planned. However, interested persons are invited to submit written comments concerning the 1996 report. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked "Confidential Business Information" at

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Watson, Vice Chairman Nuzum, and Commissioner Rohr dissenting.

[3] The imported product subject to these investigations is PVA, which is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of PVA hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from the scope of the investigations is PVA covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVA covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of these investigations.

[4] Prior to Jan. 1996, PVA was provided for in subheading 3905.20.00 of the Harmonized Tariff Schedule of the United States.

[5] Commissioner Newquist and Commissioner Bragg, who find that an industry in the United States is threatened with material injury, further determine pursuant to 19 U.S.C. § 1673d(b)(4)(B), that they would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

APPENDIX C
GLOSSARY OF TERMS

APPENDIX C

GLOSSARY OF TERMS

Benchmarks : Benchmarks are commitments that identify trade-impeding measures and under the terms of the GATS, prevent these measures from becoming more onerous in the future.

Bound commitment: A commitment that cannot be made more restrictive in the future; only further liberalization is permitted (unless an agreed penalty is paid). See measure.

Commercial presence: One of four possible modes of delivering services to foreign consumers, whereby a service supplier establishes any type of business or professional establishment in the foreign market. Commercial presence comprises entities such as corporations, trusts, joint ventures, partnerships, sole proprietorships, associations, representative offices, and branches. See modes of supply.

Commitment: An agreement regarding a measure, usually regarding market access and national treatment, that affects international trade in services. Commitments are listed in national schedules and identify service sectors and modes of supply that are affected. See bound commitment, unbound measure, full commitment, partial commitment, standstill commitment, rollback commitment, and sector-specific commitment.

Consumption abroad: One of four possible modes of delivering services to foreign consumers, whereby the consumer, or the consumer's property, receives a service outside the territory of the home country, either by moving or being situated abroad. See modes of supply.

Cross-border supply: One of four possible modes of delivering services to foreign consumers, whereby the service is transported beyond the home country of the service supplier to the foreign consumer. Cross-border supply may entail transportation by mail, telecommunications, or the physical movement of merchandise embodying a service (e.g., a diskette storing information) from one country to another. The mode is "cross-border" when the service supplier is not present within the territory where the service is delivered. See modes of supply.

Cross-industry commitment: Commitment that applies to international trade in multiple service sectors. Typically, cross-industry commitments include limitations on market access or national treatment. Cross-industry commitments appear at the beginning of the national schedules where they are referred to as "horizontal commitments."

Full commitment: This is recorded in the national schedule of a country that wishes to impose no limit on market access or national treatment in a given sector and mode of supply. In the national schedules, a full commitment is reflected by the word "none" (meaning no limitations) in the entry for the relevant service sector and mode of supply.

Home country: The country in which the service supplier is based. See host country.

Host country: The country in which services are rendered by a foreign service supplier, in the form of a natural person or commercial presence. See home country.

Juridical person: Any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately- or governmentally-owned. Juridical persons include any corporation, trust, partnership, joint venture, sole proprietorship, or association. Branches and representative offices are not included.

Limitations on market access: The column on a country's GATS schedule that lists the restrictions on specific modes of supply (cross-border supply, consumption abroad, commercial presence, or presence of natural persons) that apply to conducting a services business in the Member country for the given sector or subsector.

Limitations on national treatment: The column on a Member's GATS schedule that lists the restrictions on specific modes of supply (cross-border supply, consumption abroad, commercial presence, or presence of natural persons) that apply to how foreign services companies are treated in comparison to domestic ones in a given sector or subsector.

Measure: A law, regulation, rule, procedure, decision, or administrative action that affects trade in services. Measures may pertain to: (1) the purchase of, payment for, or use of a service; (2) a service supplier's access to, and use of, services which are available to the general public; and (3) a service supplier's ability to establish a presence, including a commercial presence, in a host country.

Modes of supply: Means of delivering services to foreign consumers. Modes of supply are defined on the basis of the origins of the service supplier and consumer, and the degree and type of territorial presence which they have at the moment that the service is delivered. There are four modes of supply: (1) cross-border supply; (2) consumption abroad; (3) commercial presence; and (4) presence of natural persons. See definitions of each for more information.

Most-Favored-Nation (MFN): Trading status accorded to a nation wherein the terms and conditions of trade with that nation are as favorable as those granted any other nation. The MFN obligation in Article II of the GATS states that the most favorable treatment actually accorded in all sectors, whether the subject of a commitment or not, must also be accorded to all other Members.

Most-Favored-Nation (MFN) exemption: Specific exceptions to the MFN obligation are included in each Member's "List of MFN Exemptions."

National treatment: Treatment of a foreign service supplier that is no less favorable than that accorded to domestic service suppliers.

Natural person: A person who is a national of a country under the law of that country (e.g., persons eligible to hold a passport of that country), or in the case of a country which does not have nationals (e.g., territories), a person who has the right of permanent residence under the law of that country.

Partial commitment: This is recorded in the national schedule of a country that wishes to impose some limits on market access or national treatment in a given sector and mode of supply. Unless otherwise stated, the limitations presented in the national schedule are the only limitations that apply to a specific mode of supplying the service.

Presence of natural persons: One of four possible modes of delivering services to foreign consumers, whereby one individual, acting alone or as an employee of a service supplier, provides a service while present in a foreign market.

Rollback commitment: A type of bound commitment wherein a country maintains some, but not all, currently existing regulations that limit market access or national treatment in a given sector and mode of supply. In the national schedules, a rollback commitment will describe the remaining measures that are inconsistent with free market access and national treatment.

Supply of a service: The production, distribution, marketing, sale, and delivery of a service.

Standstill commitment: A type of bound commitment wherein a country maintains all existing regulations that limit market access or national treatment in a given sector and mode of supply. In the national schedules, a standstill commitment will describe the measures that are currently inconsistent with free market access and national treatment.

Sector-specific commitment: Legally enforceable commitment affecting trade in a specific service sector. They generally specify limitations regarding market access or national treatment.

Transparency: Transparency exists in a commitment when the nature and extent of all regulatory impediments to trade are explained in their entirety, with precision and clarity.

Unbound measure: A measure that may be inconsistent with market access or national treatment that can be made more restrictive in the future. In the national schedules, an unbound measure is reflected by the word "unbound" in the relevant service sector and mode of supply. In the event that a service sector or mode of supply is unbound, a new measure that is inconsistent with market access and national treatment may be introduced in the future. The word "unbound" may be accompanied by an asterisk if a particular mode of supply is not technically feasible.

APPENDIX D
CONCORDANCE OF INDUSTRY CLASSIFICATIONS

Concordance of industry classification

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
1. BUSINESS SERVICES	
A. Professional services	
a) Legal services	Group 861: Legal services *Subclass 86119*: Legal advisory and representation services in judicial procedures concerning other fields of law *Class 8612*: Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc. *Class 8613*: Legal documentation and certification services *Class 8619*: Other legal advisory and information services
b) Accounting, auditing, and bookkeeping services	Group 862: Accounting, auditing, and bookkeeping services *Subclass 86212*: Accounting review services
d) Architectural services	Class 8671: Architectural services *Subclass 86711*: Advisory and pre-design architectural services *Subclass 86712*: Architectural design services *Subclass 86713*: Contract administration services *Subclass 86714*: Combined architectural design and contract administration services *Subclass 86719*: Other architectural services
e) Engineering services	Class 8672: Engineering services *Subclass 86721*: Advisory and consultative engineering services *Subclass 86722*: Engineering design services for the construction of foundations and building structures *Subclass 86723:* Engineering design services for mechanical and electrical installations for buildings *Subclass 86724:* Engineering design services for the construction of civil engineering works *Subclass 86725*: Engineering design services for industrial processes and production *Subclass 86726:* Engineering design services, not elsewhere classified *Subclass 86727*: Other engineering services during the construction and installation phase *Subclass 86729:* Other engineering services
f) Integrated engineering services	Class 8673: Integrated engineering services *Subclass 86731*: Integrated engineering services for transportation infrastructure turnkey projects *Subclass 86732*: Integrated engineering and project management services for water supply and sanitation works turnkey projects *Subclass 86733*: Integrated engineering services for the construction of manufacturing turnkey projects *Subclass 86739*: Integrated engineering services for other turnkey projects
h) Medical and dental services	Class 9312: Medical and dental services
i) Veterinary services	Group 932: Veterinary services
j) Services provided by midwives, nurses, physiotherapists and para-medical personnel	*Subclass* 93191: Deliveries and related services, nursing services, physiotherapeutic and para-medical services

Concordance of industry classification--*continued*

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
F. Other business services	
a) Advertising services	Group 871: Advertising services
2. COMMUNICATION SERVICES	
B. Courier services	Class 7512: Courier services *Subclass 75121*: Multi-modal courier services
C. Telecommunication services	
f) Facsimile services	Class 7521: Public telephone services Class 7529: Other telecommunication services
h) Electronic mail	Class 7523: Data and message transmission services
i) Voice mail	Class 7523: Data and message transmission services
j) On-line information and data base retrieval	Class 7523: Data and message transmission services
k) Electronic data interchange	Class 7523: Data and message transmission services
l) Enhanced/value-added facsimile services (including store and forward, store and retrieve)	Class 7523: Data and message transmission services
m) Code and protocol conversion	*No corresponding CPC*
n) On-line information and/or data processing (including transaction processing)	Group 843: Data processing services
D. Audiovisual services	
a) Motion picture and video tape production and distribution services	Class 9611: Motion picture and video tape production and distribution services *Subclass 96112*: Motion picture or video tape production services
b) Motion picture projection service	Class 9612: Motion picture projection services *Subclass 96121*: Motion picture projection services
c) Radio and television services	Class 9613: Radio and television services
d) Radio and television transmission services	Class 7524: Program transmission services
e) Sound recording	*No corresponding CPC*
f) Other	*No corresponding CPC*

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES	
A. General construction work for buildings	Group 512: Construction work for buildings *Subclass 5121*: Construction work for one- and two-dwelling buildings *Subclass 5122*: Construction work for multi-dwelling buildings *Subclass 5124*: Construction work for commercial buildings *Subclass 5127*: Construction work for educational buildings *Subclass 5128*: Construction work for health buildings
B. General construction work for civil engineering	Group 513: Construction work for civil engineering Class 5131: Construction work for highways (except elevated highways), streets, roads, railways, and airfield runways Class 5135: Construction work for local pipelines and cables, ancillary works
C. Installation and assembly work	Group 514: Assembly and erection of prefabricated constructions Group 516: Installation work *Subclass 5161*: Heating, ventilation, and air conditioning work *Subclass 5162*: Water plumbing and drain laying work *Subclass 5163*: Gas fitting construction work *Subclass 5164*: Electrical work
D. Building completion/finishing work	Group 517: Building completion and finishing work
E. Other	Group 511: Pre-erection work at construction site Group 515: Special trade construction work Group 518: Renting services related to equipment for construction or demolition of building or civil engineering work, with operator
4. DISTRIBUTION SERVICES	
A. Commission agents' services	Group 621: Commission agents' services
B. Wholesale trade services	*Subclass 61111*: Wholesale trade services of motor vehicles Group 622: Wholesale trade services Class 6222: Wholesale trade services of food, beverages, and tobacco
C. Retailing services	Class 6111: Sales of motor vehicles *Subclass 61112*: Retail sales of motor vehicles Class 6113: Sales of parts and accessories of motor vehicles Class 6121: Sales of motorcycles and snowmobiles and related parts and accessories Group 613: Retail sales of motor fuel Group 631: Food retailing services Group 632: Non-food retailing services Class 6329: Other specialized retail sales of non-food products Group 633: Repair services of personal and household goods
D. Franchising	Class 8929: Other non-financial intangible assets

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
5. EDUCATIONAL SERVICES	
A. Primary education services	<u>Group 921</u>: Primary education services *Subclass 9211*: Preschool education services *Subclass 9219*: Other primary education services
B. Secondary education services	<u>Group 922</u>: Secondary education services *Subclass 9221*: General secondary education services *Subclass 9222*: Higher secondary education services *Subclass 9223*: Technical and vocational secondary education services
C. Higher education services	<u>Group 923</u>: Higher education services *Subclass 9231*: Post-secondary technical and vocational educational services *Subclass 9239*: Other higher education services
D. Adult education services	<u>Group 924</u>: Adult education services, not elsewhere classified
E. Other education services	<u>Group 929</u>: Other education services
8. HEALTH RELATED AND SOCIAL SERVICES, *excludes those subsectors listed in section 1A(h-j), under Business Professional Services. (see page G-2)*	
A. Hospital services	Class 9311: Hospital services
B. Other human health services, *excludes CPC "93191: Deliveries and related services, nursing services, physiotherapeutic and para-medical services."*	*Subclass 93123*: Dental services Class 9319: Other human health services *Subclass 93193*: Residential health facilities services other than hospital services *Subclass 93199*: Other human health services, not elsewhere classified
D. Other	*No corresponding CPC*
9. TOURISM AND TRAVEL RELATED SERVICES	
A. Hotels and restaurants, *includes catering services*	<u>Group 641</u>: Hotel and other lodging services Class 6411: Hotel lodging services Class 6412: Motel lodging services *Subclass 64192*: Holiday center and holiday home services *Subclass 64193*: Letting services of furnished accommodations *Subclass 64194*: Youth hostel and mountain shelter services *Subclass 64195*: Camping and caravanning site services <u>Group 642</u>: Food serving services Class 6421: Meal serving services with full restaurant service Class 6422: Meal serving services in self-service facilities Class 6423: Caterer services, providing meals to outside <u>Group 643</u>: Beverage serving services for consumption on the premises Class 6431: Beverage serving services without entertainment Class 6432: Beverage serving services with entertainment
B. Travel agencies and tour operators services	Class 7471: Travel agency and tour operator services
C. Tourist guides services	Class 7472: Tourist guide services
D. Other	*No corresponding CPC*

Concordance of industry classification--*continued*

GATT Secretariat's Services Sectoral Classification List	United Nations' Provisional Central Product Classification System (CPC)
11. TRANSPORT SERVICES	
E. Rail transport	
a) Passenger transportation	Class 7111: Rail passenger transportation
b) Freight transportation	Class 7112: Rail freight transportation
F. Road transport	
a) Passenger transportation	*Subclass 71211*: Urban and suburban regular transportation *Subclass 71213*: Interurban regular transportation Class 7122: Other non-scheduled passenger transportation *Subclass 71221*: Taxi services *Subclass 71222*: Rental services of passenger cars with operator *Subclass 71223*: Rental services of buses and coaches with operator
b) Freight transportation	Class 7123: Freight transportation *Subclass 71231*: Transportation of frozen or refrigerated goods *Subclass 71232*: Transportation of bulk liquids or gases *Subclass 71233*: Transportation of containerized freight *Subclass 71234*: Transportation of furniture
c) Rental of commercial vehicles with operator	Class 7124: Rental services of commercial freight vehicles with operator Class 7213: Rental services of seagoing vessels with operator
G. Pipeline transport	
b) Transportation of other goods (excluding fuel)	Class 7139: Transportation of other goods
H. Services auxiliary to all modes of transport	
a) Cargo handling services	Class 7411: Container handling services Class 7419: Other cargo handling services
b) Storage and warehouse services	Group 742: Storage and warehousing services
c) Freight transport agency services	Group 748: Freight transport agency services
d) Other	Group 749: Other supporting and auxiliary transport services
I. Other transport services	*No corresponding CPC*

Source: GATT Secretariat's *Services Sectoral Classification List* (MTN/GNS/W/120).

APPENDIX E
CROSS-INDUSTRY COMMITMENTS

Cross-Industry commitments[1]

	Mode of Supply[2]			
Country	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Argentina	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment**: None	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** Acquisition of land is unbound within 150 km of borders and 50 km from coastal areas. **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Subsidies	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Temporary Entry and Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound except for senior managers, executives and specialists.[3] **National Treatment:** Unbound except for senior managers, executives and specialists.[3]
Bolivia	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** Foreign enterprises are required to establish subsidiaries in order to engage in trade on a regular basis. **National Treatment**: None	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** The state establishes specific conditions for concessions to individuals relating to the soil and subsoil, including lake and river waters. **National Treatment:** Foreigners may not own soil or subsoil within 50 km of frontiers.	**Market Access:** None **National Treatment:** None
	Subsidies	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Temporary Entry and Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound except for managers, executives, and specialists. The number of foreign employees of an enterprise may not exceed 15 percent of total. **National Treatment:** Unbound except for managers, executives and specialists. One- or two-year residence permits are granted, subject to the requirements of an employment contract associated with commercial presence.

Cross-Industry commitments[1]

	Mode of Supply[2]			
Country	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Brazil	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** All foreign capital invested in Brazil must be registered with the Central Bank of Brazil to be eligible for remittances. The Central Bank establishes procedures related to remittances and transfer of funds abroad. Foreign service suppliers must incorporate in Brazil with the appropriate Entities' Public Registry (EPR).[4] A joint venture may be accomplished by a capital association through the formation of any type of business organization as set forth in the Brazilian law (usually a Private Limited Liability Company - *Limitada* - or a Corporation - *Sociedade Anonima*). A joint venture may also be carried out through a *consorcio*, which is neither a juridical person nor a form of capital association.[5] **National Treatment**: None	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Subsidies	**Market Access:** Unbound **National Treatment:** Unbound for subsidies for research and development	**Market Access:** Unbound **National Treatment:** Unbound for subsidies for research and development	**Market Access:** Unbound **National Treatment:** Unbound for subsidies for research and development
	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None

	Mode of Supply[2]			
Country	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Brazil--(continued)	Temporary Entry and Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound, except for specialized technicians, highly qualified professionals, managers and directors. Foreign specialized technicians and highly qualified professionals may work under a temporary contract with legal entities, whether of national or foreign capital, established in Brazil. Their contracts must be approved by the Ministry of Labor taking into account the compatibility of their qualifications with the area of business in which the company is engaged, and the need to contract such professionals and technicians in relation to similar professionals and technicians available in Brazil. Companies in communications; land transportation; commercial stores in general; commercial offices; insurance; advertising; hotels and restaurants must employ at least two Brazilians for every three employees. Managers and directors appointed to affiliates of foreign companies established in Brazil will be granted access under the following conditions: designation of a position with full decision-making power; vacancy of such position; existence of associate link between the service provider in the Brazilian territory and its headquarters abroad; and proof by the service provider in Brazil that the manager or director is performing his duties after receiving the visa. Appointment of such managers or directors must be related to the provision of new technology, increase in productivity or the foreign company must have invested a minimum amount of US$200,000 in Brazil (amount may be adjusted in the future to correspond with this 1993 US$ value). All other requirements, laws and regulations regarding entry, stay and work shall continue to apply. **National Treatment:** Unbound except as indicated under market access.

Cross-Industry commitments[1]

	Mode of Supply[2]			
Country	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Chile	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** The commitments in this Schedule extend only to externally financed suppliers of services who establish a commercial presence in Chile as corporations, open or closed, private-limited companies, and subsidiaries. Authorization to deliver services through a commercial presence may take into account the contribution of the commercial presence to Chile's integration into the world market, and the effects of commercial presence on : a) economic activity, including the effect on employment, on the use of parts, components and services produced in Chile and on exports of services; b) productivity, industrial efficiency, technological development and product innovation in Chile; c) competition in the sector and other sectors, on consumer protection, on the smooth functions, integrity and stability of the market, and on the national interest. **National Treatment**: Foreign investors may transfer abroad their capital three years after the date of entry.	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound for land within 10 km of the frontier and 5 km from the coast and Arica province. **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Subsidies	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Temporary Entry and Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound except for transfers of senior and specialized personnel[6] who have been employed by the organization for a period of at least two years immediately preceding the date of their application for admission performing the same type of duties in the parent company. Such transfers are admitted temporarily for a period of two years which can be extended for two more years. Personnel admitted under these conditions will be subject to the provisions of the labor and social security legislation in force. **National Treatment:** Unbound except for the categories of natural persons listed under market access. At least 85 percent of the staff employed by a supplier of "professional services" established in Chile must be Chilean. At least 85 percent of the staff employed by a supplier of services established in Chile must be Chilean, except for enterprises with fewer than 15 employees.
Colombia	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** Foreign investment is allowed in all sectors of the economy except for activities relating to national defense and the processing and disposal of toxic, hazardous or radioactive waste not produced in Colombia. **National Treatment**: None	**Market Access:** None **National Treatment:** None

Cross-Industry commitments[1]

	Mode of Supply[2]			
Country	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Colombia--(continued)	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** Unappropriated land along the Colombian coastlines and in the border regions with neighboring countries may be awarded solely to Colombians by birth. Unappropriated land thus acquired cannot be transferred to foreigners. In the islands of the San Andres and Providencia Archipelago, the acquisition of real property by foreigners, as well as immigration and human settlements, are governed by special provisions for which all relevant reservations are established. **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Subsidies	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** A tax on remittances of profits of foreign corporation applies. **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Temporary Entry and Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound except for managers, legal representatives and technical specialists in sectors other than professional services. Colombian nationality required for at least 90 percent of the staff of ordinary employees and not less than 80 percent of the skilled employees or specialists, administrative staff or persons in posts of responsibility for employers with a staff larger than 10. **National Treatment**: Unbound except as indicated under market access.
Paraguay	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Subsidies	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Temporary Entry and Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
Peru	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** Foreign investments must be registered with the competent national authority. **National Treatment**: Foreign investors and enterprises in which they participate have the same rights and obligations as domestic investors and enterprises, except for the provisions in Peru's Political Constitution and in Legislative Decree No. 662.	**Market Access:** None **National Treatment:** None

	Mode of Supply[2]			
Country	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Peru-- (continued)	Real Estate	**Market Access:** None **National Treatment: None**	**Market Access:** In connection with property, Peru's Political Constitution stipulates that foreigners may not own mines, land, woodland, water resources, fuel or energy sources within 50 km of the frontier, whether individually or as a company, on penalty of transfer of the rights thus acquired to the State. **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Subsidies	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Temporary Entry and Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Peru permits entry for a period of not more than three years, which may be extended for successive periods of not more than three years, to nationals of GATS member countries providing services and employed by service providing companies included in this Schedule. Foreign nationals may not comprise more than 20 percent of the total number of staff employed by the enterprise, and their remuneration may not exceed 30 percent of the total payroll. These percentages do not apply in the following cases: - The foreign national is the spouse, parent, child or sibling of a Peruvian citizen, - The personnel of foreign enterprises providing international transport under a foreign flag and foreign registration; - Foreign personnel working in multinational service enterprises or multinational banks subject to the legal regulations applicable to these specific cases; - Foreign investors who keep a minimum of five tax units (*Unidades ImpositivasTributarias*) during the term of the contract; and - Artists, athletes or other suppliers of services taking part in public performances in Peru for a maximum of three months each year. Employers may request exemption from the percentages concerning the number of foreign workers and their proportion in the enterprise's payroll for specialized professional or technical personnel in the following cases: managerial or administrative personnel involved in new business activities or in reconversion; specialized personnel recruited for teaching purposes; personnel of public or private enterprises with a State contract; and in any other case provided for in a Supreme Decree as a result of special expertise. **National Treatment:** None
Uruguay	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Subsidies	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None

Cross-Industry commitments[1]

	Mode of Supply[2]			
Country	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Uruguay--(continued)	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Temporary Entry and Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound, except for measures affecting managers, executives and specialists.[3] **National Treatment:** Unbound, except for measures affecting managers, executives and specialists.[3]
Venezuela	Investment	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Real Estate	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Subsidies	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None
	Taxation	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None

	Mode of Supply[2]			
Country	**Category**	**Cross-Border Supply**	**Commercial Presence**	**Presence of Natural Persons**
Venezuela *(continued)*	Temporary Entry and Stay of Natural Persons	**Market Access:** None **National Treatment:** None	**Market Access:** None **National Treatment:** None	**Market Access:** Unbound except for sellers of non-financial services; administrative staff, managers and executives; and specialists, who are permitted renewable stay of one year. Foreign nations will be subject to the restrictions laid down in the current labor law and future amendments. At present, these laws are: - Chiefs of industrial relations, chiefs of personnel, captains of ships or aircrafts, supervisors or any person exercising similar functions must be Venezuelan nationals. - At least 90 percent of the personnel of an enterprise whether employees or manual workers, must be Venezuelan nationals. - The total remuneration paid to foreigners, including both manual workers and employees may not exceed 20 percent of the total remuneration paid to personnel in either category. The Ministry of Labor may authorize temporary exceptions to the above provisions in the case of: - No Venezuelan personnel available for activities that require special technical skills; - Immigrants enter the country under contract with the Government. - Small- and medium-sized enterprises recruiting foreign personnel. Preference will be given to persons either with children born on Venezuelan territory, married to Venezuelan nationals, who have established their domicile in Venezuela, or who have the longest period of residence in the country. **National Treatment:** Unbound except as indicated under market access.

[1] Only the cross-industry limitations that apply to the services covered in this report are included in this table. Please refer to the original commitments for a comprehensive listing of all cross-industry limitations.

[2] Consumption abroad is not included as a mode of supply in this table because restrictions on investment, real estate, subsidies, and taxation are not applicable to consumption abroad.

[3] Managers are defined as persons with an enterprise or organization who primarily direct the organization, whether department or subdivision of the organization. They supervise and control the work of other supervisory, professional or managerial employees. They have the authority to hire and fire or recommend hiring/firing or other personnel actions (such as promotion or leave authorization). They exercise discretionary authority over day-to-day operations. This does not include first line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the production of the services. Executives are persons within an organization who primarily direct the management of the organization. They exercise wide latitude in decision making and receive only general supervision or direction from higher level executives, the board of directors or stock holders. Executives would not directly perform tasks related to the provision of the service or services of the organization. Specialists are persons within an enterprise or organization who possess knowledge at an advanced level of expertise and who posses proprietary knowledge of the organization's service, research equipment or management.

[4] The juridical persons referred to as "sole proprietorship" and "partnership" in Article XXVIII, item (1) of the General Agreement on Trade in Services are not recognized under Brazilian law.

[5] A *consorcio* is used mainly with major contracts for rendering services. It is a contract of two or more enterprises for a joint accomplishment of one specific undertaking. Each associate in a *consorcio* maintains its respective organizational structure.

[6] Chile provides the following definitions for senior and specialized personnel: Senior personnel are those executives who come under the direct supervision of the board of directors of the enterprise established in Chile and who, *inter alia,* direct the management of the organizations, a department or subdivision, or direct other supervisory, professional or managerial employees. Specialized personnel are those highly qualified persons indispensable to the supply of the service because of their professional knowledge, technical expertise, proprietary knowledge of the organization's services, research equipment, techniques or management, or the non-availability of such specialized personnel in Chile.

Source: World Trade Organization, General Agreement on Trade in Services (GATS), Argentina: Schedule of Specific Commitments (GATS/SC/4), Apr. 1994; GATS, Bolivia: Schedule of Specific Commitments (GATS/SC/12), Apr. 1994; GATS, Brazil: Schedule of Specific Commitments (GATS/SC/13), Apr. 1994; GATS, Chile: Schedule of Specific Commitments (GATS/SC/18), Apr. 1994; GATS, Colombia: Schedule of Specific Commitments (GATS/SC/20), Apr. 1994; GATS, Peru: Schedule of Specific Commitments (GATS/SC/69), Apr. 1994; GATS, Uruguay: Schedule of Specific Commitments (GATS/SC/91), Apr. 1994; GATS, Venezuela: Schedule of Specific Commitments (GATS/SC/92), Apr. 1994.

APPENDIX F
MOST-FAVORED NATION (MFN) EXEMPTIONS

Most-favored-nation (MFN) exemptions

Country/Region listing MFN Exemption	Services to which Exemption Applies	Description of Measures Inconsistent with MFN principle	Countries Awarded Preference	Duration of Preference	Reason for Listing MFN Exemption
Bolivia	Audiovisual services	National treatment accorded preferentially for co-produced cinematographic works in accordance with existing or future agreements.	All countries with which bilateral or multilateral agreements are in force.	Subject to the duration of the agreement concerned.	To promote artistic and technical works.
	Land transportation	National treatment accorded preferentially in international transportation of passengers and freight (including combined road-rail transport) reserving transportation rights among the parties or through the territory of the contracting party concerned.	All countries with which bilateral or multilateral agreements are in force.	Indefinite.	To promote regional integration.
Brazil	Audiovisual services	National treatment for motion pictures accorded preferentially to countries with which Brazil maintains a co-production agreement.	Germany, Italy, Portugal, Argentina, France, Angola, Colombia and Mozambique.	Indefinite.	To promote cultural exchange and to facilitate access to financial resources.
	Land transportation	National treatment accorded preferentially to cargo and passenger transport suppliers from countries that are members of the Agreement on International Land Transport.	Argentina, Bolivia, Chile, Paraguay, Peru and Uruguay.	Indefinite.	To facilitate transport among neighboring countries within the "Southern Cone" region on the basis of reciprocal treatment for service suppliers.
Chile	All services	Investment dispute settlement procedures apply only to members of existing or future bilateral treaties on the protection of investment.	Germany, Switzerland, and Spain.	Subject to the duration of the treaty covered.	To promote investment.
	Audiovisual services	National treatment accorded preferentially for co-produced works in accordance with existing or future cinematographic co-production agreements.	France.	Subject to the duration of the agreement concerned.	To promote artistic and technical works.
	Land transportation	National treatment accorded preferentially to cargo and passenger transport suppliers from countries that are members of the Agreement on International Land Transport.	Argentina, Bolivia, Brazil, Paraguay, Peru and Uruguay.	Subject to the duration of the convention.	To promote regional integration.
Colombia	Audiovisual services	Preference accorded to members of existing or future co-production agreements for the cinema or television, in particular with regard to distribution, access, and financing conditions.	Belgium; member countries of the Latin American Agreement on Cinematographic Co-Production; other countries.	Unlimited.	To protect the principle of the agreements concerned.
	Land transportation	Preferential treatment accorded to service providers from countries that are members of the Andean Road Freight System.	Andean Group countries.	Unlimited.	To promote regional integration.

Most-favored-nation (MFN) exemptions

Country/Region listing MFN Exemption	Services to which Exemption Applies	Description of Measures Inconsistent with MFN principle	Countries Awarded Preference	Duration of Preference	Reason for Listing MFN Exemption
Colombia ***(continued)***	Telecommunication services	National treatment with respect to commercial presence is granted only to value-added service suppliers from Andean Group countries.	Andean Group countries.	Indefinite.	To promote regional integration.
Peru	All services	Preferential treatment accorded to countries with which Peru maintains a reciprocal labor agreement, a dual nationality agreement, or other bilateral or multilateral agreements relating to the movement of natural persons.	No countries specified.	Indefinite.	To promote cooperation, investment, reciprocity, and dual nationality.
	Audiovisual services	Preference accorded to Latin American artists interpreting Latin American themes in recreational, cultural and sporting services.	Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, Dominican Republic, Cuba, Haiti, Ecuador, Bolivia, Brazil, Chile, Uruguay, Paraguay, and Argentina.	Indefinite.	To promote Latin American co-operation and cultural values.
	Land transportation	Preferential treatment is granted to members of the Andean Group with respect to carriage of freight by road; international transport of passengers by roads; multi-modal transport; and freedom of access to freight originating within the subregion, including cabotage.	Andean Group countries: Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay.	Indefinite	To promote regional integration.
Uruguay	All services	Preferential treatment accorded to investors from countries with which Uruguay maintains bilateral investment promotion and protection agreements.	Countries with which Uruguay has investment promotion and protection agreements.	Indefinite.	To improve conditions of legal security for foreign capital investment in Uruguay.
	Land transportation	National treatment accorded preferentially for authorized cross-border suppliers from member-countries of the International Land Transport Convention.	Argentina, Brazil, Bolivia, Chile, Paraguay, and Peru.	Indefinite.	To facilitate transport among neighboring countries of the "Southern Cone" on the basis of reciprocity.

Most-favored-nation (MFN) exemptions

Country/Region listing MFN Exemption	Services to which Exemption Applies	Description of Measures Inconsistent with MFN principle	Countries Awarded Preference	Duration of Preference	Reason for Listing MFN Exemption
Venezuela	Audiovisual services	Preference accorded to service providers from countries that are members of co-production agreements.	Chile.	10 years, with automatic extension.	None stated.
		Preference accorded to service providers from countries that are signatories to the Ibero-American Cinematographic Integration Agreement, the Latin American Cinematographic Co-production Agreement, and the Agreement on the creation of a Latin American Cinematographic Common Market.	Brazil, Argentina, Ecuador, Cuba, Mexico, Nicaragua, Peru, Panama, Dominican Republic, Colombia, Spain, and Italy	Indefinite.	None stated.
		Preference accorded to amateur radio service providers from countries that are members of the Inter-American convention on radio amateur services ("Lima Convention").	All OAS member countries which are automatically members of the CITEL	Indefinite	None stated.
		Preference accorded to amateur radio service providers from countries with which Venezuela maintains bilateral agreements on radio amateurs.	Germany, Spain, Portugal, Sweden	Indefinite	None stated.
	Distribution services	Preferences accorded on the basis of bilateral agreements for the distribution and marketing of petroleum and petroleum products, advisory services, and the exchange of technology.	Germany, France, Brazil, Central American and Caribbean countries.	Indefinite.	None stated.
	Professional services	National treatment for professional services governed by special laws, some of which require reciprocity. Applies in particular to physicians, engineers, lawyers, architects, veterinary surgeons, pharmacists, and economists.	Unspecified.	Indefinite.	None stated.

Source: World Trade Organization, General Agreement on Trade in Services (GATS), Bolivia: Final List of Article II (MFN) Exemptions (GATS/EL/12), Apr. 1994; GATS, Brazil: Final List of Articles II (MFN) Exemptions (GATS/EL/13), Apr. 1994; GATS,Chile: Final List of Article II (MFN) Exemptions (GATS/EL/18), Apr. 1994; GATS, Colombia: Final List of Articles II (MFN) Exemptions (GATS/EL/20), Apr. 1994; GATS, Peru: Final List of Article II (MFN) Exemptions (GATS/EL/69), Apr. 1994; GATS, Uruguay: Final List of Articles II (MFN) Exemptions (GATS/EL/91), Apr. 1994; GATS, Venezuela: Final List of Article II (MFN) Exemptions (GATS/EL/92), Apr. 1994.

APPENDIX G
CALENDAR OF WITNESSES APPEARING AT THE PUBLIC HEARING

CALENDAR OF PUBLIC HEARINGS

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject	:	GENERAL AGREEMENT ON TRADE IN SERVICES: EXAMINATION OF SOUTH AMERICAN TRADING PARTNERS' SCHEDULES OF COMMITMENTS
Inv. No.	:	332-367
Date and Time	:	July 18, 1996 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main hearing room 101, 500 E Street, S.W., Washington, D.C.

ORGANIZATION AND WITNESS

PANEL 1

The Freeman Company, Chevy Chase, Maryland

Harry L. Freeman, President

PANEL 2

Stewart and Stewart
Washington, D.C.
on behalf of

Federal Express Corporation, Memphis, TN

Warren A. Goff, Managing Attorney, International Regulatory Affairs

Jimmie V. Reyna--OF COUNSEL

-MORE-

PANEL 3

U.S. Council for International Engineering Practice (USCIEP), Alexandria, Virginia

Jose I. Guerra, P.E., Jose I. Guerra Inc., Consulting Engineers

PANEL 4

Andersen Worldwide, Washington, D.C.

John F. Gay, Senior Manager, Office of Government Affairs

-END-

APPENDIX H
LIST OF COMPANIES, ASSOCIATIONS, AND GOVERNMENT AGENCIES INTERVIEWED BY COMMISSION STAFF

APPENDIX H

LIST OF COMPANIES, ASSOCIATIONS, AND GOVERNMENT AGENCIES INTERVIEWED BY COMMISSION STAFF

Service Industries

Accounting services
Arthur Andersen and Company
Coopers and Lybrand
Deloitte and Touche
Ernst and Young International
International Federation of Accountants
KPMG Peat Marwick
Piernavieja, Perez, Porta, Cachafeiro and Associates, Venezuela

Advertising services
American Association of Advertising Agencies
BBDO Worldwide
International Advertising Association
J. Walter Thompson
McCann-Erickson Worldwide
Ogilvy and Mather
Pepsi-Cola Company
Procter and Gamble
Xerox Corporation

Architecture, Engineering, and Construction services
Accreditation Board for Engineering and Technology
American Consulting Engineers Council
American Institute of Architects
Bechtel, Venezuela
Dowell/Schlumberger, Brazil
National Council of Examiners for Engineering and Surveying
National Society of Professional Engineers
United States Council for International Engineering Practice

Courier services
Airborne Courier Conference of America
Courier Magazine
DHL Worldwide Corporation
Federal Express Corporation
Transvalcar, Venezuela
United Parcel Service

Distribution services
Avon Products
Brownstein, Zeidman, and Lore
Home Depot
International Franchise Association
International Mass Retail Association
J.C. Penney
Liz Claiborne
Wal-Mart

Enhanced Telecommunication services
AT&T
COMSAT
Electronic Data Systems (EDS)
Lockheed Martin
MCI
Sprint International/Global One

Health Care services
American Hospital Association
Beverly Enterprises
Charter Medical
Columbia/HCA Healthcare
Federation of American Health Systems
Hillhaven
Humana
Johns Hopkins University Hospital
Manor Healthcare
Massachusetts General Hospital
Mayo Clinic
Pacific Health
Paracelsus Healthcare
Pro Salud, Venezuela
Tenet Healthcare
UCLA Medical Center

Legal services

American Bar Association
Baker and McKenzie
Bryan Cave
Morgan, Lewis, and Bockius
White and Case
Donovan, Leisure, Newton and Irvine
LeBoeuf, Lamb, Greene & MacRae
Oppenheimer, Wolff & Donnelly

Transportation services

American Association of Port Authorities
American Trucking Associations
Association of American Railroads
National Customs Brokers and Forwarders Association of America
Railway Progress Institute

Travel and Tourism services

American Hotel and Motel Association
American Society of Travel Agents
Federation of Hotels, Restaurants, Bars and Similar Establishments of the State of Sao Paulo, Brazil
HFA Hospitality
The Jefferson Group
Sabre Venezuela
U.S. Tour Operators Association
United Airlines

General

American Chamber of Commerce, Sao Paulo, Brazil
Coalition of Service Industries
Commercial Federation of the State of Sao Paulo, Brazil
Economic Institute of the Commercial Association of Sao Paulo, Brazil
U.S. Chamber of Commerce
Venezuelan-American Chamber of Commerce, Caracas, Venezuela

Governmental Agencies
Argentine Mission to the World Trade Organization
Bolivian Mission to the World Trade Organization
Brazilian Mission to the World Trade Organization
Chilean Mission to the World Trade Organization
Colombian Mission to the World Trade Organization
Department of Health and Human Services
Federal Highway Administration
Federal Railroad Administration
Foreign Ministry, Brazil
Foreign Trade Institute, Venezuela
Health Care Financing Administration
International Trade Administration, Department of Commerce
Ministry of Health, Brazil
Ministry of Transportation, Brazil
Paraguay Mission to the World Trade Organization
Peruvian Mission to the World Trade Organization
Transportation Secretariat, State of Sao Paulo, Brazil
United States Trade Representative
Uruguayan Mission to the World Trade Organization
U.S. Consulate, Sao Paulo, Brazil
U.S. Embassy, Brasilia, Brazil
U.S. Embassy, Caracas, Venezuela
Venezuelan Mission to the World Trade Organization

International Organizations
Organization of American States
United Nations
World Trade Organization