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Disciplining domestic regulation: the World Trade Organization and the market for professional services

Patricia J. Arnold

School of Business Administration, University of Wisconsin-Milwaukee, P.O. Box 742, Mikwaukee, WI 53201, USA

Abstract

This paper presents an institutional analysis of the processes underlying the globalization of professional service and labor markets. Focusing on the accountancy sector, the research documents the ongoing efforts by non-market institutions, including transnational accounting firms and industry lobbies in Europe and the US, to create a global market for accounting and auditing services under the auspices of the World Trade Organization (WTO). The research shows how international trade agreements, specifically the *General Agreement on Trade in Services (GATS)* and the *Disciplines on Domestic Regulation in the Accountancy Sector*, are being used to eliminate domestic regulations that industry views as barriers to trade and investment, such as diverse national and sub-national licensing and qualification requirements, regulations limiting scope of practice and forms of business organization, and non-harmonized technical standards. The paper discusses the implications of theses trends for the future of domestic regulation and democratic forms of economic governance.

Introduction

Citizens and workers who are confronted with the negative social repercussions of globalization, such as job flight to low wage markets, global environmental destruction, and unstable international financial markets often feel powerless in the face of change. This sense of powerlessness is heightened by a contemporary mythology that portrays globalization as natural and inevitable—an impersonal and immutable force, akin to the weather, that is beyond human intervention and control; a force that workers and companies, alike, must adapt to and accommodate, and that nations are powerless to control or subordinate to goals such as sustainable economic development or greater social equity. The main thesis of this paper is that the contemporary forms of globalization and the constraints that global economic integration imposes on popular sovereignty are neither impersonal nor inevitable. To the contrary, global markets are politically constructed institutions that are shaped by non-market actors—including multinational corporations and industry trade lobbies—by means of international trade agreements. These trade agreements institutionalize treaty-based legal regimes that not only liberalize trade and investment, but also impose constraints on local autonomy, and hence on the capacity of democratic societies to govern their economies and regulate markets.

E-mail address: arnold@uwm.edu (P.J. Arnold).

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The paper develops this thesis through a case study of the World Trade Organization's (WTO) *General Agreement on Trade in Services (GATS)*, and its impact on professional service markets. The study shows how non-market institutions, including transnational accounting firms and industry lobbies in the United States and Europe, are exploiting the legal authority of WTO services agreement and the *Disciplines on Domestic Regulation in the Accountancy Sector (Disciplines)* to create a global market for accounting and auditing services. The analysis of the accounting sector further indicates that the transnational accounting industry's attempt to use the WTO's legal framework to dismantle domestic regulations that industry views as barriers to trade (such as diverse national and sub-national licensing and qualification requirements and non-harmonized technical standards) could, if unchallenged, limit local autonomy and the ability of national and sub-national regulators to effectively govern the accounting industry.

While situated within the accounting literature (Annisette, 2000; Caramanis, 2002; Chau & Poullaos, 2002; Cooper, Greenwood, Hinings, & Brown, 1998; Hopwood, 1997), this research has implications that extend beyond accounting. Since the *Disciplines* on domestic regulation of accountancy are likely to become the model for WTO rules in other sectors, an understanding of developments within the accountancy sector can inform other professional fields such as engineering, architecture, medicine, and law. [1] The sociological literature on professions (Abbott, 1988; Dezalay, 1995; Larson, 1977) has yet to fully understand and appreciate the impact of treaty-based legal regimes on local modes of regulating professions and the effect of free trade agreements on the market for professional labor.

More generally, the accountancy case presages trends in other transnational service industries ranging from banking and insurance to healthcare and education. Since the *Disciplines on Domestic Regulation in the Accountancy Sector* represent the WTO's first attempt to exercise its authority to impose disciplines on non-discriminatory domestic regulation under the GATS' controversial Article VI:4, [2] the accountancy sector is setting precedent that will delineate the scope of WTO's power over the domestic affairs of Member states. The case, thus, provides a window through which we can view the broader economic and political processes and institutional actors that are shaping contemporary forms of globalization.

This research shows that global markets are not the result of impersonal market forces, but specific actors who are working from deregulatory agendas that are not necessarily representative of broader societal interests. Since these actors are operating, largely within closed forums and without broad popular input, to develop binding international trade pacts that could limit local autonomy (Hegarty, 1997) and the ability of parliamentary majorities to govern the conduct of markets (Gowan, 2003), the case has important implications for the future of nationally based regulation, and the prospects of achieving democratic forms of economic governance. An analysis of the *GATS* indicates that the capacity of workers and citizens to regulate transnational capital and govern the economies in which they live is in danger of being compromised—not by abstract and immutable market forces—but rather, by concrete, politically negotiated, and therefore negotiable, treaty-based rules that impose constraints on domestic regulation.

Methods and objectives

The accounting literature (Arnold & Sikka, 2001; Caramanis, 2002; Cooper et al., 1998; Hanlon, 1994; Hopwood, 1997) recognizes the need for research aimed at a richer theoretical understanding of accounting's role in and relationship to the processes of contemporary globalization. Theoretical synthesis, however, cannot occur in the

[1] See Terry (2001) for an analysis of the applicability of the *GATS* to the legal profession.

[2] *GATS* Article VI:4 grants the WTO authority to develop disciplines on domestic regulation to ensure that licensing, qualification and technical standards are not more trade-restrictive than necessary.

absence of descriptive research that identifies precisely what these processes are. As Hopwood (1997, p. iii) notes:

> While accounting in action is now embedded in multi-national enterprises and multi-national audit firms, and subject to emerging forms of supranational regulation, accounting research still tends to focus on national contexts and thereby remains largely influenced by national traditions and schools of thought. One result is that we still have a rather crude notion of accounting diversity and the reasons for it, and rather minimal understanding of the nature and forms of international pressure for change.

Knowledge of emerging forms of supranational regulation, and the nature and form of international pressure for change can be illusive since globalization is a contemporary phenomenon that is enfolding even as we attempt to understand it. In the case of the WTO, a new round of negotiations on trade in services opened in 2000. The outcomes of the most recent negotiating round, known as the *GATS* 2000 Round, will not be known before 2005 at the earliest, and their significance may not be appreciated for years to come as the agreement is implemented and extended in future rounds of negotiations. The difficulty of obtaining relevant information about "accounting in action" is compounded by the fact that trade negotiations are conducted in closed sessions, access to WTO working party and dispute resolution proceedings is prohibited, and many documents related to current negotiations are restricted.

As a result, the task of compiling a working knowledge of the content and history of the WTO services agreement, and analyzing its significance for accounting and other professional services is a sizable research project in itself. This paper uses several data sources to address the substantial gap in our knowledge and understanding of the GATS process and its implications for professional services. The descriptive sections of the study rely extensively on primary source material drawn from the WTO archives; these documents include legal texts, decisions, reports, minutes and communiqués from WTO working parties and administrative bodies. [3] The section of the study that documents the accounting industry's involvement in the *GATS* process draws from industry trade publications and Internet sites maintained by private sector trade lobbies. Portions of the study that discuss the significance of the current *GATS* 2000 negotiating round draw from various sources of information, including initial negotiating requests and offers, [4] to identify the issues on the negotiation table that could impact the accountancy sector. The archival research is supplemented by unstructured participant interviews. [5]

The paper is organized to address three interrelated objectives: (1) to refute the conventional view that the globalization of accounting and other professional services industries is market driven, (2) to analyze of the implications of the *GATS* and the accountancy *Disciplines* for local sovereignty, that is the ability to effectively regulate auditing firms and financial reporting practices, and (3) to discuss the implications of the empirical findings for the accounting literature.

The first objective of the paper is to show how the record of lobbying by international accounting firms and industry organizations contradicts the conventional wisdom that attributes primacy to market forces in the process of globalization. The conventional wisdom, which we will call the market model of globalization, argues that technological change, notably advances in electronics and commuter technology, has spawned the

[3] Primary sources are referenced in the footnotes. WTO documents, including legal texts, proposals, reports, minutes and press releases, are archived in an on-line database maintained by the WTO, and available at www.wto.org. Referenced WTO documents are publicly available unless otherwise indicated in the footnotes.

[4] The USTR has released summaries of its initial negotiating offers and requests. Other documents related to the *GATS* 2000 negotiating round, including the European Union's initial requests, have been leaked, distributed widely and posted on the Internet. Footnotes references to these documents provide web addresses where the documents can be obtained.

[5] Interviews were used primarily to confirm the author's interpretation of primary source materials. Footnote references are given in cases where interviews were relied upon as the primary source of information.

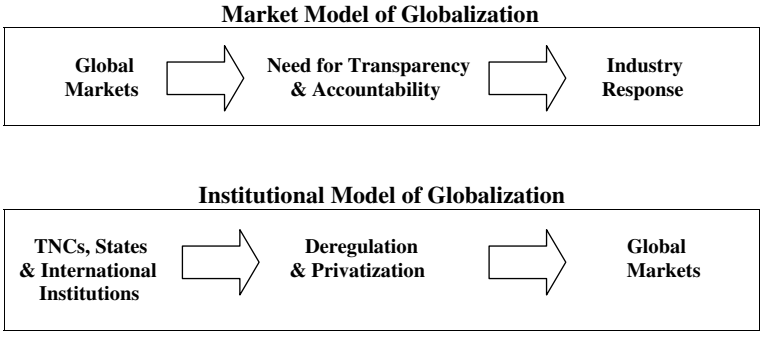

Fig. 1. Market versus institutional models of globalization.

development of global financial markets. Global markets, in turn, require transparency in financial reporting to function efficiently. Accounting and auditing, theoretically, serve the market's need for transparent financial information by mitigating agency problems and reducing transactions costs. The accounting profession plays a reactive role within this model; for markets to operate properly, the accounting profession supposedly must adapt and modernize in response to the globalization of finance and investment. This functionalist interpretation of accounting's role within global markets has been used to argue in support of adaptive responses ranging from global professional credentialing to adoption of international accounting standards. The market model views resistance to change on the part of national and sub-national regulators as an outmoded rigidity that must eventually give way to the imperative for market efficiency, and the ostensibly progressive and impersonal forces of globalization.

In contrast to the market model of globalization, the evidence presented in this paper supports an institutional theory of globalization by showing that the transnational accounting industry, working with and through states and international economic institutions, has worked proactively to create a global market for accounting and auditing services. The premises underlying the market and institutional models are contrasted in Fig. 1. Whereas the market model assumes that the process of globalization begins with market forces and ends with industry adaptation, the institutional model begins with the agency of states, corporate forms of capital (transnational corporations and industry lobbies), and international economic institutions (such as the WTO, IMF, OECD and World Bank) and culminates in the creation of global markets. Unlike the market paradigm, institutional theory (Granovetter, 1985) recognizes that economies are politically embedded in the sense that macro-economic outcomes are shaped by non-market institutions [6] through historical processes that are often politically saturated (Zukin & DiMaggio, 1990). In this view, globalization is not the product of impersonal or immutable forces; instead, global markets are politically constructed by the actions of non-market actors working from deregulatory agendas to promote privatization of state enterprises and dismantling of regulatory barriers to trade and investment.

The institutional framework provides a non-functionalist explanation of the transnational accounting industry's role in the process of globalization. As posited by the institutional model, this research shows that the accounting industry is not merely adapting reactively to the forces of market globalization. Instead, transnational accounting firms and industry lobbies in the United States and European Union whose interests in expanding export trade and direct foreign investment, align with those of other transnational ser-

[6] Non-market institutions can be broadly defined to include social, cultural and cognitive structures (including customs, norms, beliefs, law, and ideology) as well as macro-institutions such as states, TNCs, and other non-market economic institutions.

vice conglomerates, have played and continue to play a formative role in the globalization of professional service markets through its influence on the *GATS* process.

The second objective of the paper is to analyze the implications of the *GATS* and the accountancy *Disciplines* for the ability of national and local regulators to effectively govern financial reporting practices and the conduct of audit firms. A complex mix of ideological and institutional factors constrains the range of policy debate within trade ministries and international economic institutions (Stiglitz, 2002). Among these is the hegemony of the neoliberal thought, which rests on an unquestioned belief in market efficiency, free trade, and minimal government—assumptions that stifle inquiry into the potential social and political repercussions of trade liberalization. As a result, regulatory policy choices are at best limited—and at worst driven by what Stiglitz (2002, p. xiii) describes as a blend of ideology and bad economics that seems sometimes to thinly veil special interests. In accountancy, the neoliberal deregulatory agenda has dominated trade discussion to such an extent that the adequacy of industry self-regulation as a framework for global accounting and audit practice has been largely unquestioned in the *GATS* process.

Recently, Trolliet and Hegarty (2002, p. 22) challenged the accounting industry's misconception that it can regulate itself without external accountability and supervision. [7] While they suggest that absence of an adequate regulatory framework governing international accounting and audit practices may have negative repercussions for audit quality and public protections, they do not criticize the deregulatory aims of the *GATS* or the accountancy *Disciplines*. Although the US accounting scandals in the early 2000s, exposed the failure of industry-self-regulation as a basis for governing global auditing practice, there has been no substantive critique within the accounting literature of the potential for free trade agreements to impede effective regulation of financial reporting practices and auditing firms.

Outside the academy, an important international debate is being waged on the implications of free trade agreements for the environment, labor, consumer protections and democratic governance (Barlow & Clarke, 2001; Wallach & Sforza, 1999). Critics of the *GATS* (Sinclair, 2000; Sinclair & Grieshaber-Otto, 2002) contend that the WTO services agreement poses a threat to the future of public services (Pollack & Price, 2000) and will undermine the ability of state and local polities to effectively regulate economic activity within their own boarders (Gould, 2002). Trade ministries, the WTO (2001) and the OECD (2001), in turn, have denied these charges. Since industry views certain domestic regulations (e.g. diverse national and sub-national licensing and qualification requirements, restrictions of corporate forms of ownership, and non-uniform financial reporting and auditing standards) as barriers to trade in professional services, the question of whether free trade pacts will undermine existing domestic modes of regulating auditing and financial reporting practices, is especially relevant to accounting.

This research supports the contention of *GATS* critics that the WTO services agreement has the potential to undermine domestic regulation and local autonomy. The paper shows how extensively WTO deliberations on domestic regulation of accountancy enter into areas traditionally considered the province of domestic policy including, professional licensing, education, ethics, and standard setting. It further shows that industry calls for "regulatory reform" to ensure that national and sub-national laws that are "pro-competitive" and "least trade-restrictive", are not empty rhetoric, but concrete political objectives that are being given life and institutional form as they are brought to the negotiating table and worked into the details of WTO rules on domestic regulation. While the outcome of such processes can never be known with certainty, the analysis indicates that negotiations around apparently

[7] Trolliet works at the World Trade Organization. He served a Secretary to the Working Party on Professional Services, which developed the accountancy *Disciplines*. Hegarty is Regional Financial Management Advisor to the World Bank's Europe and Central Asia Region, and Chair of the Bank's Financial Management Sector Board's Private Sector Committee. Their views on accounting regulation are personal and should not be attributed to the WTO or the World Bank.

mundane and arcane trade regulations are likely over time to effect major change in accounting regulation by imposing external legal and institutional constraints on the ability of national and local regulators to effectively govern auditing and financial reporting practices and the conduct of accounting firms.

The final objective of the paper is to begin the process of theoretical synthesis by discussing the implications of the findings for the accounting literature and suggesting directions for further research. Prior research has shown that British accounting associations and more recently the US accounting industry has historically exercised control over the development of indigenous accounting professions in colonial and post-colonial societies (Annisette, 2000; Caramanis, 1999, 2002; Chau & Poullaos, 1998, 2002; Johnson, 1973). We encourage further research to examine how the predominance of Anglo-American interests in the *GATS*' deliberations on accountancy continues and diverges from this historical pattern. While this case study supports a theory of unequal exchange between nations at the center and periphery of the world economy, it also shows that the *GATS* affects the balance of political power, and hence social class relations, within the United States, Europe and other metropolitan centers. We, therefore, caution against interpreting the *GATS* simply as an instrument of geopolitical hegemony. Although the nation state remains the seat of social and political rights, nations in the north as well as the south are being stripped of their role in the governance of markets. This decoupling of economic and political governance, which Streeck (1996) refers to as the "fragmentation of sovereignty", has dangerous consequences for democracy in rich as well as poor nations.

Lastly, the empirical findings are framed within the context of the literature on the sociology of the professions (Abbott, 1983; Dezalay, 1995; Larson, 1977). We encourage further research to examine how current industry efforts to construct a global market for professional expertise under the auspices of the WTO both parallels and diverges from earlier attempts by occupational groups in industrialized countries to marshal the power of the state, control over a knowledge base, and cultural authority to constitute themselves as "professions" in national markets. Following Dezalay (1995), we argue that the internationalization of the market for professional services signifies more than an intra-professional jurisdictional dispute (Abbott, 1988) or micro-political "turf war" within the ranks of the professions. Because the globalization of professional services promises to radically restructure professional labor markets by facilitating the international mobility of professional labor, the offshoring of accounting work, and the decline of autonomous forms of professional work, the WTO negotiations on accountancy and other professional services have broad macro-political implications for labor markets in general that merit further research.

The World Trade Organization and accounting services

The World Trade Organization (WTO), along with the IMF and World Bank, has been a major institutional actor in the construction of global markets. Created in 1995 after the conclusion of the Uruguay Round of multilateral trade negotiations, the WTO was given unprecedented power to enforce international trade agreements through a binding dispute resolution mechanism. WTO dispute resolution panels adjudicate trade disputes between Member nations; the decisions of these bodies are binding and cannot be appealed outside the WTO. The WTO is also notable in that the scope of its authority extends beyond the traditional domain of trade in goods to encompass non-traditional matters such as agreements on intellectual property rights, [8] food and technical standards, [9] and trade in services—including professional services.

The WTO trade pact of particular concern to accounting and other professional services is the

[8] *Agreement on Trade-Related Aspects of Intellectual Property Rights.*

[9] *Agreement on the Application of Sanitary and Phytosanitary Measures*, and the *Agreement on Technical Barriers to Trade.*

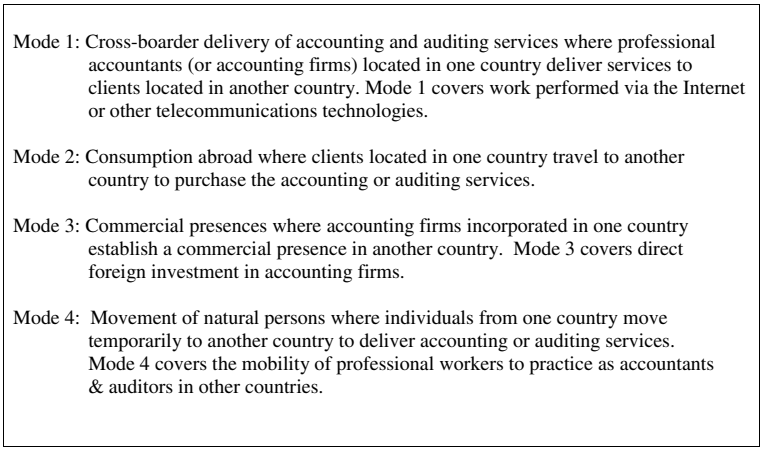

Fig. 2. *GATS* defines four modes of service delivery. Source: Adapted from *GATS* Article I.

General Agreement on Trade in Services (GATS). [10] The *GATS* is an existing trade agreement that is renegotiated periodically to extend its reach. The agreement's objective is to open the borders of the WTO Member nations to trade in all types of services, including accounting and auditing. [11] The *GATS* reach is extensive. It not only covers all types of services; it also applies to all possible modes of delivering services, including: (1) cross-border delivery, (2) consumption abroad, (3) commercial presence, and (4) movement of natural persons (Fig. 2 provides technical definitions of these four modes of service delivery). With respect to accountancy, the *GATS*' defines ''trade in services'' broadly to encompass accounting and audit services delivered across borders via electronic technologies, direct foreign investment in accounting and auditing firms, and the movement of professional workers across borders to practice as accountants and auditors. Nations can commit to liberalizing trade in accounting and auditing in any of the four modes of service by guaranteeing market access [12] and national treatment [13] to all WTO Members on a most-favored nation basis. [14] In short, the *GATS* provides the legal framework for creating a single market for accounting and auditing services, while the WTO provides the institutional and legal mechanisms for disciplining

[10] *General Agreement on Trade in Services* (*GATS*), Annex 1B of the Uruguay Round Final Act; hereinafter cited as *GATS*. The full legal text is available at www.wto.org.

[11] The *GATS* applies to professional services including: legal services; accounting, auditing and bookkeeping services; taxation services; architectural services; engineering services; integrated engineering services; urban planning and landscape architectural services; medical and dental services; veterinary services; and services provided by midwives, nurses, physiotherapists and para-medical personnel.

[12] In sectors where market access commitments are undertaken, WTO Members may not maintain or adopt laws that (1) limit the number of services suppliers via quotas, monopolies, or exclusive service suppliers, (2) limit the total value of services transactions, (3) limit the total number of services operations or the total quantity of service output, (4) limit the total number of natural persons that may be employed in a particular service sector, (5) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service, and (6) limit the participation of foreign capital in terms of maximum percentage limits on foreign shareholding or the total value of individual or aggregate foreign investment (*GATS*, Article XVI).

[13] National treatment means that treatment given a foreign service supplier is no less favorable than that accorded to domestic service suppliers. United States International Trade Commission (USITC), ''US Schedules of Commitments under the General Agreement on Trade in Services'', Investigation No. 332–354, August 1988, p. E-2; hereafter cited as USITC, 1988.

[14] Most-favored nation (MFN) is a trading status accorded to a nation wherein the terms and conditions of trade with that nation are as favorable as those with any other nation (USITC, 1988, p. E-2).

Member states who construct barriers to trade in services as it is broadly defined by the *GATS*.

An integrated global market for accounting services does not currently exist. Although the major accounting firms operate globally under a single name (e.g. Deloitte Touche, Ernst & Young, KPMG, PriceWaterhouseCoopers), they are not organized as centralized transnational corporations with foreign subsidiaries and branches. Instead, international accounting firms are organized as loose networks of affiliate partnerships located in different countries throughout the world. Although the core offices of the major firms are located in the United States and Europe, particularly the United Kingdom, their international affiliates are separate and independent legal entities whose activities are subject to the laws and professional obligations of the country in which they practice (Arnold & Sikka, 2001; Trolliet & Hegarty, 2002, p. 16). Industry views the existence of diverse national and sub-national professional licensing and qualification requirements, restrictions on ownership and forms of business organization, limitations on direct foreign investment, and the lack of consistency in accounting, auditing, educational, and ethics standards across jurisdictional boundaries stand as barriers to the consolidation of genuinely transnational professional service corporations.

The WTO services agreement has the potential to dramatically restructure the market for professional accounting services by facilitating direct foreign investment and consolidation of accounting firms, the mobility of professional labor and cross-border delivery of services. *GATS*' promise, however, has yet to be fully realized due, in part, to the *GATS*' so-called "bottom up" architecture. While many of *GATS* obligations including the provisions on dispute resolution and most-favored nation treatment are general obligations that apply ("top down") to all WTO Members, each WTO Member is able to decide ("bottom up"), in the course of negotiations, whether and the extent to which it will commit accounting and auditing services in any of the four modes to the *GATS* requirements for market access (Article XVI) and national treatment (Article XVII). Accordingly, different countries have made varying levels of commitments to liberalize trade in the accounting and auditing services. [15] Market access and national treatment commitments are inscribed in national "Schedules of Specific Commitments", which are annexed to the *GATS* ; the "Schedules" also specify any limitations on market access or national treatment commitments that a country chooses to maintain. [16] A large majority of countries that have scheduled commitments in the accountancy sector still maintain some form of market access and or national treatment limitation for one or more of the four modes of supply (Trolliet & Hegarty, 2002, p. 4). The United States, for example, has made commitments to open its borders to trade in accounting and auditing services delivered through all modes, except Mode 4 (movement of persons). The United States has also written some limitations into its *GATS* commitments in order to shield specific state-level accountancy laws that would otherwise be *GATS* illegal, such as residence requirements for CPA licensure and laws that limited ownership of accounting firms to persons licensed as accountants. [17]

In the initial Uruguay Round of the multilateral negotiations (1986–1994), many nations undertook limited commitments that served to lock in the status quo, but did not radically liberalize trade in services. The effect of locking in existing levels of liberalization, however, is non-trivial; once a country undertakes commitments in the accounting sector, they are binding and cannot be altered with impunity. From the perspective of institutional theory (Oliver, 1992; Scott, 2001; Tolbert & Zucker, 1996), one of the most significant aspects of a treaty-based legal regime is that it institutionalizes change; what was once the subject

[15] At the end of the Uruguay Round, 47 Members (counting the European Communities as one) took commitments in the accounting sector; subsequent accessions to the WTO have brought the total to 69 as of 2002 (Trolliet & Hegarty, 2002, p. 4).

[16] Specific commitments made by WTO Members in professional services (a sub-sector of Business Services), including commitments in accounting, auditing and bookkeeping can be found on the WTO Services Database at http://tsdb.wto.org/wto/WTOHomepublic.htm.

[17] WTO, United States of America-Schedule of Specific Commitments, GATS/SC/90, April 1994, p. 35.

negotiation and agreement becomes fixed and taken-for-granted—eventually free trade regimes, open borders and deregulation come to be seen as natural or inevitable.

GATS' legal framework contains provisions that make it difficult for nations to modify or withdraw commitments once they are undertaken; [18] accordingly, *GATS* effectively captures the market liberalization and privatization that took place during the 1980s and 1990s and makes it costly for governments to reinstate restrictions on market access or policies favoring local providers. By insuring that steps taken toward liberalization of trade in accounting services is not subject to regulatory backsliding, the *GATS* makes the path to global market integration unidirectional.

Heeter (1996, p. 3) a former Andersen partner and industry advisor to the USTR, [19] has stated that the *GATS* has already "paid dividends" in Greece where new restrictions in accountancy were "resisted on the basis of *GATS* commitments". When indigenous Greek auditors attempted to recapture control of the market after it had been liberalized in 1992, intense international political pressure was mobilized by the United States, the OECD and international accounting firms to successfully block the attempt (Caramanis, 2002). The Greek example illustrates that even in the absence of a formal legal ruling by a WTO dispute resolution body or the imposition of trade sanctions, international trade commitments can be leveraged informally to curtail efforts by national governments to re-regulate markets or reinstate policies that protect local providers once the accounting sector has been opened to international competition.

In addition to its power to lock in existing levels of liberalization, the *GATS,* includes a formal mandate to conduct successive rounds of negotiations aimed at "achieving a progressively higher level of liberalization" of trade in services. [20] The second round of service negotiations began in 2000 and is scheduled to conclude by 2005 at the earliest. [21] During the *GATS* 2000 Round, nations can agree to undertake new market access and national treatment commitments in the accounting and auditing sector, and/or remove limitations on prior commitments. Although these negotiations are being held in a closed forum, available documents indicted that accountancy is again on the negotiating table. For example, several trading partners have asked the United States to eliminate state residency requirements for CPA licensure, [22] and the European Union (EU) has indicated its intent to use the *GATS* 2000 negotiations to press for US recognition of international accounting standards. [23] The United States, in turn, has proposed

[18] While WTO Members may modify or withdraw commitments in it Schedule, the modifying Member must, upon the request of any Member whose benefits are affected, enter into negotiations aimed at reaching on agreement on any necessary "compensatory adjustment". If agreement is not reached between the modifying Member and any affected Member, the affected Member may refer the matter to arbitration. The modifying Member may not modify or withdraw is commitment until it has made compensatory adjustments in conformity with the findings of the arbitration (*GATS* Article XXI).

[19] Heeter represented Arthur Andersen on the Industry Sector Advisory Committee of Services (ISAC 13) which advices the Office of the United States Trade Representative (USTR) on trade matters. After Andersen's breakup, he continued to occupy that position as a representative of Deloitte and Touche, LLP (www.ita.doc.gov/td/icp/isac.html).

[20] *GATS*, Article XIX.

[21] At the Doha Ministerial Conference specific deadlines were set for the *GATS* negotiations. June 2002 was set as a deadline for WTO Members were to exchange requests identifying new commitments they wanted their negotiating partners to take. March 2003 was set as the deadline for Members to respond to requests and present their initial offers. Bilateral negotiations on initial offers and requests, and multilateral negotiations to draft new *GATS* rules were scheduled to conclude by the end of 2004. As of December 2003, only 62 (out of a total of 148) WTO Members had submitted formal negotiating requests and about forty had submitted offers (Gould, 2004). At this writing, it is unclear, whether the January 2005 deadline originally set for the conclusion of negotiations will be met.

[22] United States Trade Representative (USTR), Memorandum to State Points of Contact and the Intergovernmental Policy Advisory Committee on US offers under the General Agreement on Trade in Services, January 17, 2003. Requests by state are available at www.citizen.org/documents/GATS-requestsbystate.pdf.

[23] Restricted document. GATS 2000: Request of the EC and its Member State to the United States of America, 30 June 2002. Draft (March 2002) and final (July 2002) EC requests to the US and to 108 other WTO Members were leaked and are available at www.gatswatch.org/requests-offers.html and www.polarisinstitute.org/gats/main.html.

that other WTO Members formulate commitments in the accounting sector to eliminate a host of perceived regulatory barriers to trade in accounting services, including local equity requirements, residency requirements, taxes on repatriation of profits, and restrictions on ownership, control or form of organization permitted for foreign accounting firms. [24]

Because the *GATS* mandates successive rounds of trade negotiations aimed at progressive liberalization of trade in services, the agreement's potential to forge a single global market for accounting services cannot be judged solely on the basis on progress to date. In many respects, the *GATS* is a living document that is still being shaped. As yet, few trade disputes related to violations of the *GATS* agreements have been litigated before WTO dispute panels. As more comprehensive commitments are undertaken in successive negotiating rounds, we can expect more disputes, legal interpretations, and decisions that will illuminate the extent of the *GATS*' power to enforce free trade in accounting and auditing services. The extent of the *GATS*' power will be constituted not only in the process of ongoing negotiations, but also by the legal interpretations of dispute resolution bodies, and by the actions of WTO working groups as they implement the provisions of the existing agreement.

The WTO is currently poised to implement one of the most controversial provisions of the agreement, *GATS* Article VI:4 on domestic regulation. This article empowers the WTO to develop so-called "disciplines" to ensure that the domestic laws and regulations (specifically licensing and qualification requirements and technical standards) of WTO Members do not constitute unnecessary barriers to trade in services. The provision potentially gives the WTO extraordinary authority to intervene in the domestic affairs of its Member states in order to eliminate perceived regulatory barriers to international trade in services. Accounting and auditing has been selected as the first sector to be disciplined under Article VI:4. The *Disciplines on Domestic Regulation in the Accountancy* Sector [25] have been drawn up and are scheduled to become effective upon completion of the *GATS* 2000 negotiating round. [26]

The accountancy disciplines and the outcome of ongoing negotiations on domestic regulation are of enormous significance both within and outside the accounting profession. Accounting is likely to become the model for *GATS* disciplines in other professional services such as law, engineering, architecture, and medicine. The WTO Working Party on Domestic Regulation (WPDR) has considered using the accounting disciplines as a prototype for disciplines in other fields and/or as a model for developing horizontal disciplines that would apply to all professional services. [27] In its opening offer in the *GATS* 2000 negotiating round, the United States indicated its willingness to adopt disciplines similar to accountancy for the architecture and engineering professions. [28] More importantly, as the first sector to be disciplined under *GATS* controversial Article VI:4, the outcome of deliberations on the accountancy disciplines will set WTO precedent and define the parameters of the WTO's power over the domestic laws and regulations of Member states in general.

The transnational accounting industry's role in the WTO

Although widely accepted, the market-led view of globalization is based on assumptions that fail to appreciate the active role that institutional actors—such as states, corporate forms of capital, and international institutions like the International

[24] USTR, US Proposals for Liberalizing Trade in Services: Executive Summary, 1 July 2002 and WTO, Council for Trade in Services. Communication for the Untied States: Accountancy Services, S/CSS/W/20, 18 December 2000, p. 2.

[25] WTO, Disciplines on Domestic Regulation in the Accountancy Sector, S/L/64,17 December 1998. See Appendix.

[26] WTO Press Release, WTO adopts disciplines on domestic regulation for the accountancy sector, PRESS/118, 14 December 1998.

[27] WTO, Working Party on Domestic Regulation. Report on the Meeting Held on 17 May 1999, S/WPDR/M/1 14 June 1999.

[28] USTR, The United States of America—Initial Offer, 31 March 2003, p. 33; hereinafter cited as USTR, 2003. Available at www.ustr.gov/sectors/services/2003-03-31-consolidated_offer.pdf.

Monetary Fund (IMF), World Bank, and World Trade Organization (WTO)—have played in the creation of global markets. Global financial markets did not materialize in response to technological imperatives; they are the product of political agency and intent. Historically, the degree of financial liberalization has oscillated in response to political pressures. The golden age of liberalism, a period of relatively open global markets at the end of the 19th century, ended after the Great Depression of the 1930s (Polanyi, 1944). In the post-World War II period, nation states instituted Keynesian economic policies and political controls over the international movement of financial capital (Schor, 1992). In the 1980s and 1990s, these capital controls were dismantled, ushering in the current neoliberal period where once again capital is free to roam the world relatively unconstrained by national controls (Kapstein, 1994). This new phase of economic globalization is the product of the intentional policies of the United States to foster the development of global markets for investment and finance by promoting a neoliberal economic agenda worldwide. This US agenda, known as the "Washington Consensus" called not only for free trade and elimination of capital controls, but also for economic restructuring, deregulation and privatization of state-owned industries. IMF-imposed structural adjustment programs were employed to persuade reluctant nations to abandon social priorities in favor of open borders and investor-friendly economies (Stiglitz, 2002). Global financial markets, in other words, are not the product of impersonal or immutable market forces; to the contrary, contemporary forms of economic globalization have been politically constructed and implemented by the strong arm of a hegemonic nation state.

By focusing on the WTO's role in opening global markets, we begin to see agency and intent in the process of economic globalization. The WTO's administrative apparatus and dispute resolution power makes the trade organization a significant institutional actor in its own right; however, the WTO does not act autonomously. The trade organization's agenda and actions are heavily influenced by the interests of major nation states, such as the United States and members of the European Union, and transnational firms with operational bases within their borders. The dominant role of the major powers within the WTO, IMF, and World Bank is well documented (Stiglitz, 2002); multinational firms and corporate lobbies, in turn, exercise influence over the international trade agendas of their respective nations. As several scholars (Hirst & Thompson, 1996; Wood, 1995) have observed, transnational corporations are not "free floating agents"; to the contrary, they maintain strong links with their countries of origin (Cooper et al., 1998), and have the "potential to mobilize their national governments to influence the rules of the game at the global level to their own advantage" (Caramanis, 2002, p. 403).

The *GATS* services negotiations are no exception. The United States and European Union have played prominent roles in the services negotiations, and their negotiating positions have been, and continue to be, influenced by corporate trade lobbies (Roberts, 2000). In the services sector, the major international trade lobbies include the International Financial Services, London (IFSL) and its LOTIS Committee in the United Kingdom, the European Services Forum (ESF), and the US Coalition of Service Industries (USCSI). [29] These private sector interest groups were organized to promote free trade in services, formulate common positions and advise governments on the *GATS* negotiations. Their membership includes prominent multinational corporations such as Citigroup, Barclay's, Cigna, UBS (financial services), BT, AT&T, MCI (telecommunications services), Fedex, DHL, UPS (postal services), Hallibuton (energy services), and Deloitte & Touche, Ernst & Young, KMPG, and PriceWaterhouseCoopers (professional services). [30]

The Liberalization of Trade in Services (LOTIS) Committee, a committee of International Financial Services, London (IFSL), was created in

[29] Others include the Japan Services Network and the Global Services Network (Roberts, 2000).

[30] Membership lists are available at the following web sites: LOTIS (www.lotis.org), European Services Network (www.esf.be) and, US Coalition of Service Industries (www.usci.org).

the early 1980s to represent the interests of City of London financial and professional services firms in the initial round of *GATS* negotiations. The LOTIS Committee is recognized by the British Government as the voice of UK financial services industry on WTO matters, and has informal links with the European Commission, the OECD, and the WTO. [31] The European Services Forum was created in 1999 to represent Europe's major services firms and advised the European Commission on trade matters. Representatives of the Commission's Trade Directorate regularly attend meetings of the groups Policy Committee to discuss emerging developments in the *GATS* negotiations. Prior to 1999, the European Tradeable Services Network advised the European Commission during the Urguary Round of trade negotiations. The US Coalition of Service Industries was formed in 1982 to promote free trade in services; it played a role in the initial *GATS* negotiations and continues to lobby the US government on matters of trade policy.

The international accounting industry, [32] composed of the major international firms and industry associations, located in the United States and in Europe, participates in these influential corporate trade lobbies. Deloitte & Touche, Ernst & Young, KPMG, PriceWaterhouseCoopers, and the Institute of Chartered Accountants of England and Wales (ICAEW) are members of the IFSL. [33] Ernst & Young, KPMG, PriceWaterhouseCoopers, and the Federation des Experts Comptables Europeens (FEE) participate in the Europeans Services Forum. [34] PriceWaterhouseCoopers is a member of the US Coalition of Service Industries. [35] Deloitte and Touche, and PriceWaterhouseCoopers also serve in an official capacity as advisors to the Office of the US Trade Representatives through seats on the Industry Sector Advisor Committee on Services (ISAC 13). [36] Prior to its collapse, Arthur Andersen played an influential role in the *GATS* process though its membership on the LOTIS Committee, the European Services Network, the Coalition of Service Industries, and ISAC 13.

The transatlantic accounting industry has been involved in the WTO trade negotiations since the Uruguay Round was launched in 1986 (Hegarty, 1991). In 1990, the FEE, representing the accounting industry in Europe, proposed attaching an annex to the *GATS* to address issues specifically relevant to expanding trade in accountancy services. The US government subsequently submitted two proposals for an accountancy annex that included many of the ideas put forward by the FEE and the US accounting industry, including requests for (1) procedures and guidelines to promote mutual recognition [37] of professional qualifications, (2) recognition of the role of the International Accounting Standards Committee (IASC) [38] in developing international

[31] Descriptions the LOTIS Committee, ESN, and USCSI are taken from an article by LOTIS Chairman, Roberts (2000), and from the organizations' web sites.

[32] The core offices of the international firms and the most powerful accountancy associations (AICPA, FEE, ICAEW) reside in the US and in Europe. Thus, when we speak of the international accounting industry, we are not speaking of a genuinely "international industry", but rather of a transatlantic based industry with centers of power predominately in the US and Europe, especially the United Kingdom.

[33] www.lotis.org/about/directory.cfm.

[34] www.esf.be/002/001.html.

[35] www.uscsi.org/members/current.htm.

[36] www.ita.doc.gov/td/icp/isac.html.

[37] *GATS* Article VII stipulates that WTO Members "may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country" for purposes of fulfilling "standards for criteria for the authorization, licensing or certification of service suppliers". Such recognition can be based on agreements between countries (mutual recognition) or granted autonomously. However, "Members shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services". Article VII(5) further states that "wherever appropriate, recognition should be based on multilaterally agreed criteria", and Members are encouraged to "work in cooperation with relevant intergovernmental and non-governmental organizations toward the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

[38] Now the International Accounting Standards Board (IASB).

financial reporting standards, and (3) recognition of the International Federation of Accountants' (IFAC) role in developing international standards and guidelines on auditing, ethics and education (Hegarty, 1991, 1993).

In 1990, Hegarty, then Secretary General of the FEE, sought endorsements from the International Accounting Standards Committee (IASC) and the International Federation of Accountants (IFAC) of a resolution encouraging trade ministers and negotiators to include in the WTO trade agreement "a specific commitment to advance the development and use of International Accounting Standards in the presentation of published financial statements". IASC endorsed this resolution and a subsequent resolution in 1992 supporting the proposed annex on profession accounting services. [39]

In May of 1993, the major industry associations in the United States and Europe (the AICPA and FEE) organized a meeting in Geneva to discuss the *GATS* negotiations with representatives of the IFAC, IASC, and negotiators from the European Communities (EC) and 17 non-EC countries. At this meeting, negotiators told the industry that a special annex on accountancy services was not feasible, but their objectives could be met through other means (Hegarty, 1993). Those means became apparent when the WTO subsequently issued a key *Decision on Professional Services* (Hegarty, 1994; Trolliet & Hegarty, 2002). The WTO Council for Trade in Services adopted the *Decision* in March of 1995 in order to ensure continuation of work on liberalization of professional services. It mandated the creation of a Working Party on Professional Services (WPPS), and charged it with the tasks of developing guidelines for mutual recognition agreements and encouraging cooperation toward international standard setting. Most importantly, the WPPS was given a mandate to develop *Disciplines* on domestic regulation specifically for the accountancy sector. [40]

The choice of the accountancy sector as the first service sector to be disciplined under the *GATS'* controversial provision on domestic regulation (Article VI:4) was not accidental. It reflects the involvement of major transatlantic accounting firms and industry lobbies in the *GATS* process from its inception. The accounting industry remained an active participant throughout deliberations on the *Disciplines* ; for example, the IFAC appointed a special GATS Task Force to monitor the work of the WTO Working Party on Professional Services, comment on its proposals, and advance the industry's views in the process of writing the disciplines (de Bruijn, 1998). A spokesperson for Arthur Andersen, has also acknowledged that Anderson was part of an international accounting group that helped draft the accountancy disciplines. [41]

Progress toward developing disciplines on accountancy encountered some resistance from national regulators, and WTO Members who feared that large firms in the United States, United Kingdom and Australia would dominate a global accounting market. Those fears were not limited to developing countries; within Europe, France and Italy were concerned that foreign owned firms would swallow up large numbers of small partnerships and sole proprietors (WTO's 'weak tea', 1998). The transnational accounting industry has met resistance and has often been frustrated by the slow pace of progress within the WTO; nonetheless, it has not abandoned initiatives to employ the *GATS*' legal framework and the WTO's significant enforcement powers to create a global market for its services. In the *GATS* 2000 Round, for example, the LOTIS Committee targeted domestic regulation, mobility of labor, and mutual recognition as its three priorities for action in the accountancy sector. [42]

[39] Correspondence with David Cairns, former IASC member, dated 11/7/2003.

[40] WTO, Decision on Professional Services, adopted by the Council for Trade in Services on 1 March 1995, S/L/3, 4 April 1995.

[41] "WTO Pact Would Set Global Accounting Rules" by Anthony DePalma, *New York Times*, March 1, 2002, p. W1.

[42] International Financial Services, London, Accounting Services Update: City Business Series, October, 2003, available at www.ifsl.org.uk/uploads/CBS_Accountancy_Brief_2003.pdf; hereinafter cited as IFAL, 2003.

Implications for domestic regulation

While the transnational accounting industry has been influential in the WTO process, consumers of financial information, individual practitioners, small and medium sized accountancy firms, academicians, and regulators in many countries are only dimly aware of the extent to which the WTO's agenda impinges on decisions governing professional practice that have traditionally been the prerogative of domestic policy makers. *GATS'* reach is extensive. It applies to all "measures taken by central, regional or local governments and authorities, and non-governmental bodies in the exercise of powers delegated by central regional or local governments or authorities". [43] "Measures" have been defined broadly by the agreement to include laws, regulations, rules, procedures, decisions and administrative actions. [44] It is not uncommon in accounting for states to delegate power to professional associations or independent standards settings bodies, such as the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA) in the United States. These organizations, and their counterparts in other nations, are not exempt from the *GATS*. Professional licensing and qualification requirements and technical standards are affected irrespective of whether they are issued by national or sub-national governments, by professional associations holding delegated authority, or by quasi-governmental accountancy bodies.

The list of domestic regulations that industry and trade officials view as barriers to trade in accounting and auditing services is, likewise, extensive. Some examples include: [45]

- Citizenship or residency requirements for professional licensure.
- Restrictions on ownership and form of business organization (e.g. laws that limit ownership of accounting firms to licensed accountants, or prohibit corporate forms of accounting practice).
- Local hiring requirements or local equity requirements.
- Immigration laws restricting the mobility of personnel.
- Scope of practice limitations.
- National standards that diverge from international standards.

Elimination of these regulatory trade barriers would benefit major transatlantic accounting firms that export services, and facilitate their ability to expand and consolidate their global operations through direct foreign investment and acquisition of local firms. But, the benefits of deregulation are not necessarily shared equally by developing nations, or across social and occupational groups within exporting nations.

Removal of regulatory constraints on trade in accountancy services disproportionately benefits commercial interests in countries, like the United States, European Union, and Australia, that have highly developed accounting sectors which are capable of expanding globally and exporting accounting and auditing services. [46] In their historical study of center-periphery interaction between the ICAEW and the accounting associations in former British colonies, Chau and Poullaos (2002) show that local accounting associations resisted British domination of accountancy by leveraging the power of local states to protect indigenous accounting industries. Similarly, today, nations on the periphery employ measures such as local hiring requirements, local equity requirements, taxes on repatriation of profits, and citizenship or residency requirements to support development strategies. Local hiring requirements, for example, foster the development of local professional expertise and the requisite professional infrastructure for emerging economies. Without some means to protect and foster the growth of

[43] *GATS* Article I:3(a).
[44] *GATS*, Article XXVIII(a).
[45] See Hegarty (1997) and Trolliet and Hegarty (2002, p. 10).
[46] In the United Kingdom, exports of accounting services increased nearly fourfold from £178 m in 1996 to £701 million in 2002 after rising slowly in the first half of the 1990s; net exports rose from £50 to £461 during the same time period (IFAL, 2003).

domestic accounting sectors, smaller nations could find their accounting sectors dominated by US and European accounting firms that, as Cooper et al. (1998) note, may be more concerned with servicing their multinational clients than with developing local economies.

The elimination of regulatory obstacles to trade in accounting and auditing services has deregulatory effects that could also impair audit quality and the integrity of financial reporting in both developing and developed nations. Some of the trade barriers, targeted by industry and trade ministries, such as citizenship requirements for accounting licensure, blatantly discriminate against foreign accountants. Others such, residency requirements, while discriminatory, also serve to protect consumers from malpractice by making disciplinary control more practicable and by facilitating the ability to of injured parties to sue for negligence (Canadian Bar Association, 2000, p. 11). Restrictions on forms of ownership, form of business organization, and scope of practice, likewise, serve prudential purposes. Prior to deregulation in the 1990s, the United States and United Kingdom prohibited corporate forms of organization that limited accountants' professional liability for malpractice. In the wake of the Enron scandal, the United States enacted scope of practice limitations to restrict auditing firms from engaging in consulting services that breached auditing independence. [47] While these types of domestic regulations constitute barriers to trade if their *effect* is to restrict market access to foreign accounting firms that operate as multi-practice, limited liability corporations, they are also effective ways to regulate auditing practice and stem abuses in financial reporting.

Many of the perceived regulatory barriers to trade in accounting and auditing services listed above touch upon delicate domestic policy issues. Mobility of professional workers involves sensitive immigration issues that have implications for labor markets in both developed and developing nations, and the decision to adopt international accounting and auditing standards has implications for the integrity of financial reporting. While various constituencies disagree over how these issues should be resolved, there is a general presumption that they are matters of domestic public policy. International trade agreements, such as the *GATS* moves decision-making on these questions out of sphere of domestic policy and into the exclusionary arena of international trade negotiations.

Notwithstanding a plethora of unexamined policy implications, the *GATS* has set in place a negotiating framework and disciplinary rules for reducing or eliminating domestic laws and regulations that industry and trade ministries perceived as trade-restrictive. If WTO Members agree to undertake market access and/or national treatment commitments in the accountancy sector, they may not maintain or adopt domestic regulations that are incompatible with those commitments. [48] Market access commitments in Mode 4 (movement of natural persons), for example, are incompatible with restrictive immigration laws. Residency and citizenship requirements violate national treatment commitments, which guarantee foreign service suppliers treatment that is "no less favorable" than that accorded to domestic service suppliers. [49] Local equity requirements and prohibitions of corporate forms of ownership violate *GATS'* market access commitments, which stipulate that nations may not limit "the participation of foreign capital in terms of maximum percentage limits on foreign shareholding" or maintain "measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service". [50]

[47] The Sarbanes-Oxley Act of 2002.

[48] As noted previously, WTO Members may schedule limitations on their market access and national treatments commitments at the time those commitments are undertaken in order to preserve their right to maintain or adopt non-compatible domestic regulations. Scheduled limitations can be removed in the course of future negotiation to allow progressively higher levels of liberalization, but schedules may not be altered to modify or withdraw market access and national treatment commitments with impunity.

[49] *GATS* Article XVII. Treatment is "considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member".

[50] *GATS* Article XVI, Paragraph 2(e) and 2(f).

The *GATS*' implications for domestic regulation are often underestimated because of a common misunderstanding that the *GATS* will only affect domestic laws and regulations that discriminate against foreign firms. In fact, the services agreement does more than curb discriminatory laws such as citizenship and residency requirements; it also affects non-discriminatory domestic regulations (i.e. rules that apply equally to foreign and domestic firms). It does so in two ways. First, under the *GATS* market access provisions, non-discriminatory domestic laws can be construed as *de facto* discrimination if they inadvertently preclude foreign firms from competing in domestic markets. [51] Secondly, the *GATS* disciplines on domestic regulation apply to *non-discriminatory* domestic regulations. For instance, sub-national regulation of professional accounting (e.g. state-level regulation in the United States) has been construed as a barrier to trade because the need to comply with licensing regimes in multiple sub-national jurisdictions make it difficult for foreign firms to enter the national market. [52] Scope of practice limitations and restrictions on corporate forms of ownership, likewise, are potentially *GATS* illegal—even when applied equally to foreign and domestic firms—since the effect of such laws is to exclude foreign accounting firms that operate as multi-practice, limited liability corporations. Some analysts have even interpreted bans on advertising as discriminatory on the grounds that they disadvantage foreign firms that are new to the market and reliant on advertisement to establish their business presence (White, 1999, p. 22). Because the *GATS* can jeopardize an array of non-discriminatory domestic regulations, the agreement does more than merely create a level playing field for foreign competitors in domestic markets; it potentially curtails the ability of governments' to effectively govern the practice of accounting within their own borders.

The accountancy disciplines

An analysis of the *Disciplines on Domestic Regulation in the Accountancy Sector* illustrates the extent to which the *GATS* impinges on the authority of local and nationally based governments and non-governmental professional bodies to govern accounting and auditing practice. Fig. 3 summarizes the policy questions that the WTO Working Party of Professional Services (WPPS) addressed in the course of its deliberations on the accounting disciplines. [53] As these questions illustrate, the WTO agenda encroaches on a wide range of policy matters from issues that define the professional knowledge base (such as educational qualifications and the content professional examinations) to decisions about who can own accounting firms, and what services accounting firms can offer. The accounting profession as a whole is largely unaware that these questions, which are traditionally regarded as domestic policy issues, have been discussed and, in some cases decided, in closed meetings of WTO committees and without broad consultation with the various constituencies that are affected.

The *Disciplines on Domestic Regulation in the Accountancy Sector* (included in the Appendix)

[51] For example, the Glass Steagall Act, a landmark US banking law enacted in the post-depression era to protect the safety and integrity of the banking system, was challenged in initial *GATS* negotiations as a trade barrier. Although the law, which prevented the merger of commercial banks, investment banks and insurance companies, applied equally to domestic and foreign banks, it had the effect of barring major foreign transnational banks from entering the US market since they operated under forms that combined commercial and investing banking services. The US responded by making a formal commitment under the *GATS* to work toward repeal of the Glass Steagall Act. WTO, *United States of America Schedule of Specific Commitments Supplement 3*, Additional Commitments Paper II, WTO, GATS/SC/90/Suppl.3. The Glass Steagall Act was subsequently repealed by the Gramm-Leach-Bliley Act of 1999. In the current *GATS* 2000 negotiations, the US is offering to bind itself to the liberalization of the banking sector achieved by the Gramm-Leach-Bliley Act (USTR, 2003, p. 63).

[52] In the course of WTO deliberations on accountancy, the need "to obtain/renew the same license in every regional government" was identified as a barrier to trade. Restricted document: WTO, Working Party on Domestic Regulation, "Examples of Measures to Addressed by Disciplines Under GATS Article VI:4, Restricted document, JOB(01)/62, May 10, 2001".

[53] WTO, Working Party on Professional Services, Elements to be Addressed in Developing Disciplines for Professional Services: Accountancy Sector, S/WPPS/W/15, 20 June 1997.

On Qualification Requirements:
- Should regulators in all countries be required to follow the education standards for accounting developed by international accounting bodies?
- How should regulators determine equivalence or comparability of education and experience obtained in another jurisdiction?
- Can applications be granted at least partial credit for past education and experience obtained in another jurisdiction?
- How can regulatory authorities ensure that examinations will be fair and not overly burdensome?

On Licensing Requirements
- Who should determine the activities requiring licensing?
- Is it overly burdensome or restrictive to limit the activities or combinations of services that can be performed by companies?
- Are ethical codes, bonding requirements, residency requirements, requirements for membership in particular professional organizations, and mandatory audits by government agencies overly burdensome or restrictive measures?
- Should regulators be required to explain why the existing regulations are considered to be less burdensome than and more effective than alternative measures?

On Form of Business Organization:
- Are restrictions on ownership by unlicensed individuals or those not locally licensed more burdensome than necessary?
- Are prohibitions on corporate practice more burdensome than necessary?
- Are prohibitions on the use of international firm names, and requirements to form partnerships with local individuals more burdensome than necessary?

Fig. 3. Policy questions raised in WTO deliberations on the accountancy. Source: Adapted from WTO, Working Party on Professional Services, Elements to be Addressed in Developing Disciplines for Professional Services: Accountancy Sector, S/WPPS/W/15 dated 20 June 1997.

were adopted by the WTO's Council on Trade in Services in December 1998, but will not become effective until the conclusion of the *GATS* 2000 negotiating round. [54] Although the accounting industry was instrumental in the WTO's decision to select accounting as the first service sector to discipline and involved in drafting the disciplines, the industry is less than satisfied with progress to date. The International Federation of Accountants (IFAC) welcomed the adoption of the *Disciplines*, but complained that they did not go far enough toward achieving a free market in accounting services (IFAC welcomes WTO's rules for accountancy sector, 1999). Trolliet and Hegarty (2002, p. 8), similarly, argue that the accountancy disciplines are "a nicely balanced political compromise with limited legal clout which does not really challenge the regulation of the sector in most respects". Other commentators argue that the *Disciplines* merely insist that licensing requirements and exam standards be legitimate and transparent. [55]

While the *Disciplines* are not as far-reaching as the transnational accounting industry would like, the significance of the accounting disciplines should not be underestimated for several reasons. First, although the industry is dissatisfied with the *Disciplines,* as currently written, they are subject to change. The decision by the WTO Council for Trade in Services to adopt the accountancy disciplines authorized the Working Party on Professional Services (WPPS) [56] to continue work to:

> develop general disciplines for professional services, while retaining the possibility to de-

[54] WTO, Council on Trade in Services, Decision on Disciplines Relating to the Accountancy Sector, S/L/63, 15 December 1998.

[55] Joshua Ronen quoted in WTO Pact Would Set Global Accounting Rules (by Anthony DePalma), *New York Times*, March 1, 2002, p. W1.

[56] The Working Party on Professional Services (WPPS) was replaced in 1999 by the Working Party on Domestic Regulation.

velop or *revise sectoral disciplines, including accountancy* (emphasis added). [57]

The United States [58] and Australia [59] have already put forth proposals that would strengthen the disciplines in a number of respects. [60] Furthermore, crucial question of how the accountancy disciplines will be incorporated into the *GATS* remains to be decided in the course of ongoing negotiations. [61] Negotiators will decide whether the accountancy disciplines will be applied (top down) to all Members as a general obligation, applied only to Members who have made commitments in accountancy, or adopted voluntarily by Members in whole or in part. The decision on how the accountancy disciplines will be implemented will set precedent for future *GATS* Article VI:4 disciplines in other sectors.

Second, the transparency provisions of the *Disciplines* are not neutral. Although the term transparency, like harmonization, appears innocuous, rules on transparency could have a detrimental impact on the domestic governance. The transparency provisions do more than require that domestic regulations be publicly available; they also require that rulemaking processes be open. In this respect, transparency has as much to do with political access, as it does with access to information. The *Disciplines* (paragraph III:6) state, "when introducing new measures which significantly affect trade in accountancy services, (WTO) Members shall endeavor to provide opportunity for comment and give consideration to such comments before adoption". The United States proposed striking the word "endeavor to", which would make prior consultation an absolute requirement for all significant new regulations, rules, procedures or administrative actions affecting trade in accounting services. [62] While transparency requirements for prior consultation ostensibly apply to non-governmental consumer organizations as well as international commercial interests, disproportionate lobbying resources give advantage to commercial interests. In an international context, political transparency requirements have the effect of giving major transnational accounting firms and their state sponsors access to decision-making processes and a voice in the shaping of domestic regulation of smaller nations. Caramanis' (2002) research suggests that economically powerful WTO Members, such as the United States, are not hesitant to intervene in the domestic legislation of other Members on behalf of US-based international accountancy firms; transparency requirements will facilitate their ability to do so.

Finally, and most importantly, the *Disciplines* (paragraph II:2) include a controversial "necessity

[57] WTO, S/L/63, 15 December 1998.

[58] WTO, S/CSS/W/20, 18 December 2000.

[59] WTO, Council for Trade in Services Special Session, "Communication from Australia": Negotiating Proposal for Accountancy Services, S/CSS/W/62, 28 March 2001.

[60] As currently written, the Disciplines do not apply to "measures subject to scheduling under Articles XVI and XVII of the GATS". The US and Australian proposals would eliminate this language and blur an important legal distinction between measures that are governed by Article VI (Disciplines), and those subject to scheduling under Articles XVI and XVII (Market Access and National Treatment). The US proposal would also strengthen the wording of the Disciplines by replacing clauses such as "Members shall endeavor to" with imperatives such as "Members shall" (WTO, S/CSS/W/20, 18 December 2000). The USTR maintains that it is no longer pursuing its proposal (interview with Bernard Archer, USTR, April 4, 2003). The status of the Australian proposal is unknown.

[61] To date, the accountancy disciplines have only been adopted by decision of the Council for Trade in Service, and consequently do not have the same legal standing as the *GATS* (Trolliet & Hegarty, 2002). Under the authority of *GATS* Article VI:4, the accountancy disciplines could be implemented as a general obligation and applied (top down) to all WTO Members. In the *GATS* 2000 Round, however, the US proposed that WTO Members undertake additional commitments in accountancy by endorsing the disciplines as a reference paper (WTO, S/CSS/W/20, 18 December 2000). Trolliet and Hegarty (2002, p. 11) state that this way of incorporating the *Disciplines* into the GATS "leaves it up to each individual Member to integrate the regulatory principles, as a whole or partially, into its schedule of specific commitments". In their view, "(t)his would have the additional disadvantage, from a systemic point of view, of abandoning any chance of adopting the *Disciplines* as a set of regulatory principles integrated into the GATS general obligations". The questions of how the accountancy disciplines will be incorporated into the *GATS*, and to whom they will apply will be worked out in the course of negotiations (interview with Bernard Archer, USTR, April 4, 2003).

[62] WTO, S/CSS/W/20, 18 December 2000.

test'' that is designed to ensure that licensing requirements and procedures, qualification requirements and procedures, and technical standards:

> are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in accounting services. For this purpose, Members shall ensure that such measures *are not more trade-restrictive than necessary* to fulfil a legitimate objective (emphasis added).

Because the *Disciplines on Domestic Regulation in the Accounting Sector* represents the first attempt by the WTO to exercise its authority, under *GATS* Article VI:4, to subject domestic regulations governing services to a necessity test, the accountancy disciplines have been controversial outside the field of accountancy.

The Trans Atlantic Consumer Dialogue (TACD), a forum which represents 65 consumer groups in Europe and the United States, and is recognized by the United States and European Union as representing the consumer voice in transatlantic policy matters, opposes the imposition of ''necessity tests'' under the *GATS* rules. [63] The issue has proven so controversial that US trade representatives assured the TACD that they will be cautious about extending necessity testing to new WTO disciplines. [64] Nonetheless, the ''necessity test'' remains a feature of the accountancy disciplines, over TACD objection, and the United States has indicated its willingness to extend the accountancy disciplines to engineering and architecture during the current negotiating round. [65] If the accountancy disciplines survive the *GATS* 2000 Round with the necessity test intact, which appears imminent, an important WTO precedent will be set for necessity testing in other service sectors.

The accountancy disciplines have also drawn controversy within other professional fields. The Canadian Bar Association (CBA), in a review of the applicability of the accountancy disciplines to the legal profession, raised concerns about several provisions, including the necessity test. Referring to the use of necessity tests in other WTO treaties, the CBA (2002, pp. 9–10) writes:

> WTO dispute resolution panels under the General Agreement on Tariffs and Trade (GATT) have articulated a very high standard for the word ''necessity'' under Article XX of the GATT. A party must established there ''were no alternative measures consistent with the General Agreement or less inconsistent with it'' that could reasonably be expected to have attained the relevant objective. In the dozen or so cases which have been decided under Article XX, a member state's measure has never been upheld on the grounds of ''necessity''. Further, the burden of establishing necessity falls upon the party imposing the restriction...
>
> In light of the severe test imposed by the word ''necessity'', the requirements in Article I (of the accountancy disciplines) that regulatory measures not be more trade-restrictive than necessary to fulfil a legitimate objectives raises difficulty. Our view is that the legal profession should not have to prove the ''necessity'' of rules which it is convinced are required to preserve its integrity and protect the public.

The necessity test raises questions that go to the heart of local sovereignty and democratic rights. Who should determine what constitutes a ''legitimate purpose'' of domestic law? Who should decide and what criteria should be used to determine whether a law or regulation is ''more trade-restrictive than necessary''? In the case of the accountancy disciplines, the WTO, acting again in

[63] Trans Atlantic Consumer Dialogue *Recommendations on Trade in Services*, Document No. Trade-11-01, May 2001, available at www.tacd.org/cgi-bin/db.cgi?page=view&config=admin/docs.cfg & id=93.

[64] The US government told TACD in December 2001 that new disciplines under Article VI.4 may not be necessary. The TACD has asked the US to make its position consistent and oppose a necessity test for accountancy. Trans Atlantic Consumer Dialogue, *TACD 2002 Report Card*, October 2003, available at www.tacd.org/db_files/files/files-244-filetag.doc.

[65] USTR, 2003.

a closed forum, took upon itself the task of defining the legitimate purposes of domestic accounting regulation. The WTO Working Party on Professional Services (WPPS) defined the legitimate objectives of accountancy law and inscribed their definition into the text of the accountancy disciplines. [66] In the course of deliberations, the WPPS rejected a proposal by some delegations to include the "public interest" as a legitimate objective of regulation. Other Members considered the term "public interest" too broad and difficult to define precisely, and advocated for the narrower objective of "consumer protection". [67] In the end, Working Party struck a compromise and "consumer protection (including users of accounting services and the public generally)" was included in the list of legitimate objectives. Since the *Disciplines* are a legal text, slight variations in language may prove significant in future legal disputes. [68] Nonetheless, irrespective of whether the language proves broad enough to protect social objectives, the normative question remains as to whether the authority to define the legitimate purposes of accounting and auditing regulation, or domestic law in general, should rest in the hands of trade officials who act in closed forums and without public representation.

The "necessity test" also raises the sensitive question of who will decide whether a law or regulation is "more trade-restrictive than necessary"? And, what criteria will be used? The answer to the first question is clear. The prerogative to decide whether domestic laws violate the provisions of the *GATS* rests with the WTO. After the *Disciplines* become effective at the conclusion of the current negotiating round, if a WTO Member formally challenges another Member's accountancy laws on the grounds of necessity, the dispute will be handled under the WTO rules and procedures governing dispute settlement. [69] Under these rules, if a dispute cannot be settled thorough consultation, it is referred to WTO's powerful dispute settlement bodies. These bodies constitute a supranational judiciary that interpret the meaning of trade agreements and adjudicate disputes among trading partners; they are composed of persons appointed by the WTO whose deliberations are closed and whose decisions are binding with no appeal outside the WTO (Wallach & Sforza, 1999). Once the accountancy disciplines become effective, if these bodies rule that a WTO Member's accountancy licensing, qualifications or technical standards are unnecessarily trade-restrictive, the offending country would be forced to either modify its accountancy laws, or face trade sanctions.

The question of what criteria the WTO will use to determine whether domestic laws and regulations are "more trade-restrictive than necessary" is less clear. In the course of *GATS* deliberations, two criteria have been suggested: (1) international standards, and (2) the doctrine of proportionality. Each is problematic.

International standards: The accountancy *Disciplines* (paragraph VIII:26) stipulate that international standards shall be taken into accounting in determining necessity:

> In determining whether a measure is in conformity with the obligations under paragraph 2 (i.e. the necessity test), account shall be taken of internationally recognized standards of relevant international organizations applied by that Member.

Although the *Disciplines* do not define accounting standards or name the organizations responsible for standard setting, the deliberations of the WTO Working Party on Professional Ser-

[66] Article II(2) of the Disciplines state: "Legitimate objectives of accounting are, *inter alia*, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, and the integrity of the profession". WTO Document S/L/64, 17 December 1998. See Appendix.

[67] Restricted document: WTO, Working Party on Domestic Regulation, *Application of the Necessity Test: Issues for Consideration*, Informal Note by the Secretariat, Job No. 5929, 19 March 2001, paragraph 16–20.

[68] The Canadian Bar Association (2000, p. 10) expressed concern that that "legitimate objectives" can be interpreted broadly or narrowly by a dispute panel.

[69] *GATS* Article XXIII provides for recourse to the DSU, which is the Understanding on Rules and Procedures Governing Settlement of Disputes, Annex 2 of the Agreement Establishing the World Trade Organization.

vices (WPPS) makes the intent of the provision clear. The WPPS interpreted technical standards broadly to encompass all types of accounting standards—including auditing standards as well as financial reporting standards. According to the Working Party:

> There is no definition of technical standards in the GATS but the work carried out in the accountancy sector would suggest that standards in the area of trade in services apply not only to the technical characteristic of the service itself (e.g. specifying methods of financial reporting) but also to the rules according to which the services must be performed (e.g. defining the way a competent auditor should perform an audit including the type of checks he must perform, the way the work should be documented and so on). [70]

The WTO's broad interpretation of accounting standards also includes educational requirements, professional qualification standards and ethical standards. The WPPS writes:

> Ongoing work by the accounting profession in the area of international qualifications and educational guidelines could have implications for the work on qualification requirements. IFAC is involved in the preparation of ethical standards as well as international educational guidelines which cover continuing professional education; education and training requirements for accounting technicians; pre-qualification education, test of professional competence and practical experience of professional accountants; and professional ethics. Members might wish to consider whether these guidelines could be used as international standards for the purposes of assessing whether and to what extent qualification requirements might be considered to be unnecessary obstacles to trade in terms of Article VI:4. [71]

The WTO Working Party on Professional Services recognized the International Federation of Accountants (IFAC), which sets international auditing, educational and ethics standards, and the International Accounting Standards Committee (IASC), which sets financial reporting standards, as the standard setters for the accountancy sector. According to the WPPS:

> As membership of both IFAC and IASC is open to the relevant bodies of at least all Members of the WTO (though not all of them have joined yet), as both bodies issue international standards of relevance to international trade in accountancy services, and as IFAC has as its members bodies playing a regulatory role in their respective countries, given the traditional importance of self-regulation in most countries, IFAC and IASC are for the accountancy sector the bodies to which the GATS refers. [72]

The WTO Singapore Ministerial Declaration also officially recognized IASC (now the International Accounting Standards Board), the International Organization of Securities Commissioners (IOSCO), and the International Federation of Accountants (IFAC) and encouraged them to complete international standards for accountancy. [73]

In its deliberations on the accountancy disciplines, the WPPS considered using the WTO *Agreement on Technical Barriers to Trade (TBT)* as a model for incorporating international standards into the *GATS*. [74] The TBT Agreement contains language that requires the use of international standards, and establishes a presumption

[70] WTO, Working Party on Professional Services, The Relevance of the Disciplines of the Agreement on Technical Barriers to Trade (TBT) and on Import Licensing Procedures to Article VI.4 of the General Agreement on Trade in Services, S/WPPS/W/9, 11 September 1996, para. 18.

[71] WTO, S/WPPS/W/9, 11 September 1996, para. 25.

[72] WTO, Working Party on Professional Services, The Accountancy Sector: Note by the Secretariat, S/WPPS/W/227, June 1995, para. 116.

[73] WTO, Singapore Ministerial Declaration, adopted on 13 December 1996.

[74] See WTO, S/WPPS/W/9, 11 September 1996.

that national regulations that are in conformity with international standards do not create unnecessary barriers to trade. [75] Because of objections by some national regulators, the WPPS rejected the proposal to transpose the TBT model to the accountancy disciplines (Trolliet & Hegarty, 2002, p. 5). Instead, the *Disciplines* contain compromise language that allows WTO dispute panels to "take account" of international standards in determining necessity, but does not mandate use of international standards or contain a presumptive clause.

While the Disciplines do not go as far as the Technical Barriers to Trade Agreement to require harmonization [76] of financial reporting, auditing and other accounting standards, the reference to international standards is non-trivial. The language, which creates grounds for WTO dispute panels to *take account of* international accounting standards in determining necessity, may prove significant as the powers of the *Disciplines* are constituted in the course of future negotiations and by the decisions of dispute resolution panels. Developments outside the WTO will also play a role in this process. If consensus is reached on the adoption of international accounting standards outside the WTO framework, it will become more likely that WTO judicial bodies will recognize international standards in determining necessity, and that national regulators' objection to the TBT model, which mandates use of international standards, will lessen.

The use of international accounting standards as criteria for determining whether regulations are unnecessarily trade-restrictive radically changes the meaning and function of international standards. In conventional understanding, standards are usually considered benchmarks that establish a minimum floor on acceptable practice; necessity testing reverses this meaning. In the context of a necessity test, international standards become criteria for determining whether domestic rules are unnecessarily trade-restrictive. WTO Members whose domestic standards are more rigorous than international standards could have difficulty defending domestic laws against the charge that they unduly burdensome to trade. This means that international standards effectively set a ceiling, rather than a floor, on acceptable practice. Instead of promoting upward harmonization, the *GATS* necessity tests allows WTO dispute settlement bodies to use international financial reporting, auditing, educational, professional qualification and ethical standards to set an upper limit that prohibits countries from adopting more rigorous standards. In this way, the *GATS* anchors the decision to adopt international accounting standards into a legally binding commitment that may not be reversed with impunity if domestic policy makers subsequently determine that more rigorous auditing standards, stricter licensing or qualification standards, or more exacting financial reporting standards are needed to govern the accounting industry.

Proportionality and availability of less trade-restrictive alternatives: The European Union introduced the concept of proportionality into the WTO discussions as a criterion for assessing the necessity of domestic regulations subject to disciplines under Article VI:4. Proportionality involves a subjective cost–benefit analysis in which the costs of a regulatory trade barrier are assessed in proportion to the regulatory objectives pursued. In a communiqué to the WTO Working Party on Domestic Regulation, the European Union explains the meaning of proportionality as follows:

> A measure should be considered not more trade-restrictive/not more burdensome than necessary if it is not disproportionate to the objective[s] pursued. This means that the degree of trade-restrictiveness meeting the requirements of necessity will depend upon

[75] *Agreement on Technical Barriers to Trade*, Annex 1A of the Uruguay Round Final Act, Articles 2.4 and 2.5.

[76] Harmonization is the name given to the effort to replace the variety of standards and other regulatory policies adopted by nations in favor of uniform global standards. Consumer groups have argued that the *North American Free Trade Agreement (NAFTA)* and WTO trade agreements, such as the *Agreement on Technical Barriers to Trade (TBT)*, and the *Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)*, encourage international harmonization of technical and food standards in ways that threaten to lower public health and environmental standards (Public Citizen, 2000).

> and be assessed against, the specific objective[s] pursued. [77]

Although proportionality has been used in EU jurisprudence, its applications to international law would broaden the discretionary powers of WTO dispute resolution bodies. Legal scholars (Kennett, Neumann, & Türk, 2003) have questioned whether WTO judicial bodies should be vested with the authority to balance economic factors (trade benefits) against non-economic factors (objectives of domestic laws). Since these "balancing decisions" have traditionally been the prerogative of domestic legislators and courts, the use of the proportionality principle in determining necessity expands WTO authority at the expense of domestic decision-making (Kennett et al., 2003).

Moreover, "necessity" has been interpreted to mean that domestic laws and regulations cannot be justified if the same regulatory objectives can be met through *less trade-restrictive* measures. [78] In their calls for "regulatory reform", service industry trade lobbies routinely equate the notion of "pro-competitive" regulation with regulation that is "least trade-restrictive" and "least-burdensome" to business. As Gould (2002) demonstrates this deregulatory agenda is filtering into the WTO negotiations on domestic regulation through necessity testing. Trolliet and Hegarty (2002, p. 14) also note that EU jurisprudence on proportionality favors use of the *least trade-restrictive* measures.

> The most interesting aspects of the EU jurisprudence on proportionality from the point of view of regulatory reform are the way it addresses the cumulative effect of regulations in the home and host Member State as well as the host Member State alone, and the obligation to let less demanding provisions capable of achieving the same result prevail. A requirement can be justified only if no already existing provisions, in either the home or the host Member State, can achieve the same objective. Contrary to the text of the GATS or the Disciplines [on accounting], which remain silent in this regard, the [European] Court imposes that the least demanding measure always be favoured.

Under this interpretation of necessity, accountancy laws can be justified only if no less trade-restrictive alternative is available. This means, for example, that the provisions of the US Sarbanes-Oxley Act of 2002 could be vulnerable under a necessity test—since it could be argued that measures, which are "less trade-restrictive", are available and used in other WTO Member states to regulate the accounting industry (Gould, 2002). For example, it could be argued that international peer review is less trade-restrictive means of supervising auditing firms than mandatory government audits, or that disclosure of consulting fees is a less trade-restrictive means of preventing conflict of interest abuses than scope of practice limitations.

The necessity test in the *Disciplines on Domestic Regulation of Accountancy* provides a subtle but powerful institutional mechanism to prevent governments from interfering with international trade in accounting services. Its role is best understood within the context of a strategy for market integration that Hegarty (1997) calls "regulatory contracting-out". This strategy involves leaving regulatory authority in the hands of local states, while at the same time imposing external legal and institutional constraints to ensure that local rules do not have a distorting effect on trade. Rather than relinquishing authority to a supranational regulators, states regulators and local accounting bodies nominally continue to regulate accountancy, but the manner in which they do so even if non-discriminatory can be held up to external scrutiny if it has any distorting effects on trade (Hegarty, 1997). Although Hegarty (1997) was describing the evolution of European market integration, this strategy has also become the model for global market integration. The WTO, *GATS* and the accountancy disciplines promise to

[77] WTO, Working Party on Domestic Regulation, "Communication from the European Communities and Their Member States—Domestic Regulation, Necessity and Transparency", S/WPDR/W/14, 1 May 2001, para. 17.

[78] See Kennett et al. (2003) for a review of WTO jurisprudence on necessity testing and proportionality.

provide the requisite external scrutiny to insure that domestic regulations governing accountancy do not restrict international trade in accounting and auditing services. State and local governments and accountancy bodies will retain the right to regulate, but only to the extent that the regulations they adopt are compatible with the *GATS*. This means that domestic regulators lose a significant degree of flexibility and discretion; their choices are limited to rules that are non-trade-restrictive, or in the worst case to the least trade-restrictive measure available to achieve any given policy objective.

Theoretical implications

The accounting industry, represented by the major transnational firms and industry lobbies in the United States and Europe, have played an influential role in the *GATS* negotiations and the WTO work program to implement the disciplines on domestic regulation. In the process, a negotiating framework and disciplinary rules have been put in place that promise over time to dismantle regulatory barriers to trade in services in ways that will trump national laws and limit the autonomy of local and national regulators as the *GATS* evolves through successive rounds of future negotiations. From the perspective of a market model of globalization, harmonization of standards and constrains on domestic regulation are seen as a necessary response to the internationalization of markets. An institutional perspective, however, opens the question of whether the interests and objectives of the agents who are constructing global markets through the politics of harmonization are compatible with broader societal interests. In particular, as the first sector to be disciplined under *GATS*' controversial Article VI:4, the implementation of a necessity test in the accountancy *Disciplines* raises the broader political issue of whether treaty-based constraints on domestic regulation threatens to undermine democratic decision-making processes and the prospects for achieving democratic forms of economic governance.

Discussions of politics in the context of globalization (Hardt & Negri, 2000) are often inappropriately framed as involving choices between competing dualities: nationalism versus internationalism, national sovereignty versus global citizenship, nation states versus cosmopolitan democracy, unilateralism versus multilaterialism, and the state versus civil society. As a practical matter, social movements aimed at democratizing the process of globalization often combine national and international-based strategies. Concern about the threat that international trade agreements pose to domestic regulations is not rooted in a regressive nationalism or preference for nationally based political forms. Rather, it is based on the pragmatic understanding that global economic integration has not been accompanied by comparable political integration. In the absence of political integration, social and political rights remain vested in local and national polities. At the same time, international trade agreements, like the *GATS*, are stripping local polities and national parliaments of their role in regulating capital and governing the economy. Economic governance is being internationalized, while political and social rights remain localized. This decoupling of economic and political governance, which Streeck (1996) refers to as "fragmented sovereignty", poses a threat not only to the domestic regulation, but to potential for achieving democratic forms of economic governance.

These developments have significance for scholars who are attempting to understand how globalization will transform professional services and labor markets in developing economies. In the 1970s, Johnson (1973) challenged the ethnocentric manner in which the sociology of professions had previously ignored the experience of third world nations. His research shows that the historical development of professions in the third world differed fundamentally from that of the industrialized world. Rather than developing as autonomous, self-governing guilds, professional labor in colonial and post-colonial societies has been, and continues to be, subject to forms of social and occupational control from metropolitan centers, including that exercised by major British accountancy associations and more recently the US

accountancy industry. Extending Johnson (1973), a stream of accounting literature (Annisette, 2000; Caramanis, 1999, 2002; Chau & Poullaos, 1998, 2002) has traced patterns of unequal exchange resulting from Anglo-American influence over professional accountancy, as well as forms of resistance by indigenous occupational groups in countries such as South Africa, Trinidad and Tobago, and Greece.

The transatlantic accounting industry's attempt to employ international trade agreements to create a global market for their services can be read, in part, as a new chapter in a long history of Anglo-American control over professional accountancy. Gowan (2003, p. 23) argues that the WTO's evolving legal and institutional arrangements represent an attempt to consolidate a "new form of Atlantic/OECD hegemony over the populations and states of the world" by constructing treaty-based regimes that trump municipal laws and lock in neoliberal reforms (deregulation and privatization) in ways that cannot be overturned by parliamentary majorities. [79] This study has analyzed in some detail the legal and institutional arrangements that are being set in place by the *GATS* and shown how they can trump domestic laws to the disadvantage of developing nations by pre-empting laws designed to protect indigenous accounting industries, and by instituting transparency rules the give transnational accounting firms access to and a voice in the rulemaking deliberations of smaller nations. Caramanis (2002) has documented a concrete instance of this form of hegemony in his study of the international pressures that were exerted to prevent the Greek government from re-establishing a state monopoly over accounting services after the market was liberalized in 1992. As *GATS* is implemented and extended in successive negotiating rounds, further case study research is needed to show how international trade agreements will affect local accounting practices and institutions, and to examine whether and how WTO Members from nations outside the metropolitan center, such as India, Brazil and China, will seek to resist, co-opt, or accommodate transatlantic hegemony.

While such research promises to be fruitful, the findings of this study caution against interpreting the WTO agenda simply in geopolitical terms as an attempt by the developed nations of the north to dominate less developed nations of the south. To do so would neglect the important ways in which evolving international trade agreements affect politics and class relations in the United States, Europe and other metropolitan centers. International trade agreements apply to populations of the north well as the south; treaty-based regimes that constrain the ability of parliamentary majorities to institute social programs, regulate transnational capital, and effectively govern the economies in which they live have dangerous consequences for democracy in rich as well as poor nations. Moreover, while transnational corporations profit, workers in developed countries suffer the repercussions of global economic integration as manufacturing jobs, and more recently white-collar service jobs, are moved offshore. These trends remind us that economic hegemony is class-based phenomenon that cannot be adequately explained solely in terms of geopolitical power and the geopolitics of nation states.

The findings of this case study are also relevant to the sociological literature on the formation of professional labor markets in developed nations. The sociology of the professions long ago abandoned functionalist accounts of the rise of professions. Research in the field (Abbott, 1988; Armstrong, 1985; Covaleski, Dirsmith, & Rittenberg, 2003; Larson, 1977; Starr, 1982) has shown that occupational groups in industrialized nations constitute themselves as professions by leveraging state power to gain monopolies, by developing cultural authority, and by engaging in inter and intra-professional jurisdictional battles to consolidate and extend their professional status, symbolic capital, and monopoly rights. Globalization provides no grounds for reversion to a functionalist model that suggests the accounting industry is merely adapting to exogenous market changes in order to better serve multinational clients. To the contrary, as this study has shown, the accounting industry, represented by the major transatlantic

[79] See Gowan (2003) for a discussion of the competing interests of the United States and European Union in this process.

firms and industry lobbies, is actively attempting to leverage the supranational authority of the WTO to consolidate and extend its jurisdiction within a global market for accounting services.

While parallels can be drawn between the accounting industry's role in the *GATS* process and earlier attempts to carve out professional monopolies in national markets, this analysis of the WTO services agreements supports Dezalay's (1995) contention that the internationalization of the market for professional expertise should not be interpreted as merely a jurisdictional "turf battle", but rather as a major political confrontation, or a "class war", within the ranks of the professions. As Dezalay (1995, p. 336) notes:

> What is at stake is a redefinition, on an international scale, of a whole series of *pecking orders* established—and more or less stabilized—on a national basis. It is therefore not only the small minority of applicants for entry into this future transnational elite who feel concerned by such a stake, but also all of their fellows or colleagues whose symbolic capital risks finding itself brutally devalued or revalued on the new international market of professional qualifications in the process of being constituted.

The international accounting firms and industry lobbies, that are shaping WTO rules, represent an elite segment within the accounting profession—a segment whose interests align more closely with those of transnational capital and other multinational corporations than with small, nationally based accounting firms or the accounting workforce in general. Tinker (2002) has shown that international accounting firms constitute an elite faction within the US accounting workforce. His findings indicate that only 28% of all US accountants are qualified as CPAs; and, of these, nearly 80% are employed outside the Big Five accounting firms. Elite partners in these firms represent only 2.11% of all CPA's, and only a small fraction (0.58%) of the total accounting workforce in the United States. Similar patterns are likely to be found in other industrialized countries.

International trade negotiations are dismantling barriers to trade in professional services and transforming the structure of the accounting industry in ways that benefit a small, elite segment of the accounting profession. Historically, licenses to perform statutory audits have been granted only to locally established entities that are either owned or controlled by locally accredited professionals, and most countries have proscribed corporate forms of practice. In industrialized nations, these rules nurtured the growth of a cottage industry of small partnerships and sole proprietorships, and the organization of professions as autonomous, self-governing guilds. As these national regulations are dismantled, small and medium sized accounting practices become vulnerable to consolidation by large professional service conglomerates, and independent practitioners risk being swept into the corporate workforce.

International trade agreements promise to radically restructure the market for accounting labor. Harmonized licensing and qualification standards in conjunction with *GATS* commitments to allow movement of natural persons (Mode 4) in service markets will open national borders to allow licensed accountants to move freely from one country to another. This means not only that transatlantic based international accounting firms will be able to more easily move senior personnel around the world, but also that they will be able to bring accountants from lower wage labor markets into the United States and Europe to perform temporary work assignments (Roberts, 2000). *GATS* commitments to cross-border trade (Mode 1), in combination with mutual recognition agreements, will also make it possible to "offshore" professional work—i.e. to electronically transmit work to accountants located lower wage markets. For instance, negotiations have taken place between Italy and India to enable Indian professionals to acquire the Italian certification necessary to allow them to carry out in India on behalf of Italian clients, using communication technology, certain activities regulated in Italy (Trolliet & Hegarty, 2002, p. 11). Offshoring is not the offspring of advances in communications technology alone; it requires concomitant changes in domestic regulations to become politically fea-

sible. The WTO service negotiations are facilitating this process, and may eventually create a single global market for accounting labor, as well as an integrated market for accounting services.

The *GATS* will not force these changes full blown onto the scene when the current round of negotiations is complete. The transformation is a more complex and gradual process involving forces beyond the WTO. Indeed, many of the trends identified above are already visible. Hanlon (1994, 1999) has studied international mobility among Irish accountants; Trolliet and Hegarty (2002, p. 11) cite evidence of offshoring; [80] and, Tinker (2002) shows that financial service conglomerates such as American Express, TBS, Century Business Services, Merrill Lynch and other consolidators are already swallowing up small and medium sized accounting partnerships in the United States. International agreements are not the sole cause of these changes; their role is a subtle, but nonetheless important, one of institutionalizing change. *GATS* commitments will permanently lock in whatever market liberalization is achieved either in the course of WTO negotiations, or in private arrangements between accountancy bodies, assuring international financial service conglomerates a permanent place in domestic markets. Ongoing rounds of service negotiations will provide a forum for whittling away remaining barriers to trade in services and the mobility of professional labor. Disciplines on domestic regulation and necessity testing will, if allowed, limit the power of local and national polities to regulate the conduct of business; and thereby, protect transnational capital from the regulatory risk that parliamentary democracies will overturn neoliberal reforms. All of this is being directed not by the invisible hand of global markets, but by the very visible hand of international institution, nation states and transnational service industries under the auspices of the WTO.

The institutional model of globalization adopted in this study can be developed and extended through further research. Although this study has emphasized corporate agency, it also recognizes the role of hegemonic states and treaty-based legal regimes in the construction of global markets. Further research is needed to study the role of other institutions (such as the OECD and World Bank) and to explore how tensions *within* and *between* states, transnational services industries, and international regulatory institutions affect these processes. In the case of accountancy, further analyses of the micro-politics underlying the *GATS* negotiations is needed to determine whether the outcomes were influenced by internal conflicts within the accounting industry, and/or differences in the strategies for global expansion pursed by the international firms. Finally, additional research is needed to determine how the Enron/Andersen scandal, which has exposed the failure of industry self-regulation in the United States, will impact international regulation of accountancy and the *GATS* agenda.

While institutional analyses of the *GATS* negotiations can improve our understanding the micro-politics underlying the construction of global markets, the institutional model also needs to be developed from macro-political perspectives. As Dezalay (1995) argues the sociology of professions' (Abbott, 1988) emphasis on jurisdictional "turf battles" fails to appreciate the extent to which contemporary trends are embedded in politically saturated, macro-historical processes. Although the accountancy industry led other professions in the *GATS* negotiations, its actions were underpinned by broader political and economic struggles. The political construction of global markets for professional services is a derivative of the class-based, macro-political confrontations that have reshaped the global economy over the course of the past 25 years in accord with the Washington Consensus and its agenda of free trade, deregulation and privatization.

The actions and agenda of the transnational accounting industry mimics those of other

[80] As further evidence of offshoring, the Associated Press (February 22, 2004) reports a trend in the US toward offshoring tax preparation work. According the press report, Ernst and Young already sends some of its US tax returns work abroad. KMPG said that its executives were "continuing to explore" whether to use offshore accountants for preparation of US returns; PriceWaterhouseCoopers and H&R Block told reporters that they had no immediate outsourcing plans. (Tax Tactics: Foreign accountants do US tax returns, *Business with CNBC, at* www.msnbc.msn.com/id/4346068.)

transnational services industries that are promoting a deregulatory agenda that calls for "pro-competitive" regulation, "regulatory reform", "least trade-restrictive" and "least-burdensome" regulation. These concepts, along with calls for transparency and harmonization, are not merely ideological constructs; they are concrete political objectives that are being given life and institutional form as they are brought to the negotiating table and worked into the details of international trade agreements via mechanisms such as "scheduled commitments", "disciplines" and "necessity tests". The potential ramifications of international trade agreements for the ability of citizens, workers, and polities to govern the conduct of business are largely unappreciated outside narrow trade circles. It is hoped that this case study of the accountancy sector will encourage further academic research on emerging free trade agreements in order to advance our understanding of the institutional processes underlying globalization, and provide a basis for informed policy making and political action.

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Appendix

WORLD TRADE ORGANIZATION	S/L/64 17 December 1998 (98-5140)

Trade in Services.

Disciplines on domestic regulation in the accountancy sector

Adopted by the Council for Trade in Services on 14 December 1998

I. Objectives

1. Having regard to the Ministerial Decision on Professional Services, Members have agreed to the following disciplines elaborating upon the provisions of the GATS relating to domestic regulation of the sector. The purpose of these disciplines is to facilitate trade in accountancy services by ensuring that domestic regulations affecting trade in accountancy services meet the requirements of Article VI:4 of the GATS. The disciplines therefore do not address measures subject to scheduling under Articles XVI and XVII of the GATS, which restrict access to the domestic market or limit the application of national treatment to foreign suppliers. Such measures are addressed in the GATS through the negotiation and scheduling of specific commitments.

II. General provisions

2. Members shall ensure that measures not subject to scheduling under Articles XVI or XVII of the GATS, [81] relating to licensing requirements and procedures, technical standards and qualification requirements and procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in accountancy services. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, *inter alia*, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, and the integrity of the profession.

III. Transparency

3. Members shall make publicly available, including through the enquiry and contact points established under Articles III and IV of the GATS, the names and addresses of competent authorities (i.e. governmental or non-governmental entities responsible for the licensing of professionals or firms, or accounting regulations).

[81] The text of *GATS* Articles XVI and XVII is reproduced in an appendix to this document.

4. Members shall make publicly available, or shall ensure that their competent authorities make publicly available, including through the enquiry and contact points:

(a) where applicable, information describing the activities and professional titles which are regulated or which must comply with specific technical standards;
(b) requirements and procedures to obtain, renew or retain any licences or professional qualifications and the competent authorities' monitoring arrangements for ensuring compliance;
(c) information on technical standards; and
(d) upon request, confirmation that a particular professional or firm is licensed to practise within their jurisdiction.

5. Members shall inform another Member, upon request, of the rationale behind domestic regulatory measures in the accountancy sector, in relation to legitimate objectives as referred to in paragraph 2.

6. When introducing measures which significantly affect trade in accountancy services, Members shall endeavour to provide opportunity for comment, and give consideration to such comments, before adoption.

7. Details of procedures for the review of administrative decisions, as provided for by Article VI:2 of the GATS, shall be made public, including the prescribed time-limits, if any, for requesting such a review.

IV. Licensing requirements

8. Licensing requirements (i.e. the substantive requirements, other than qualification requirements, to be satisfied in order to obtain or renew an authorization to practice) shall be pre-established, publicly available and objective.

9. Where residency requirements not subject to scheduling under Article XVII of the GATS exist, Members shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were set, taking into account costs and local conditions.

10. Where membership of a professional organization is required, in order to fulfil a legitimate objective in accordance with paragraph 2, Members shall ensure that the terms for membership are reasonable, and do not include conditions or pre-conditions unrelated to the fulfilment of such an objective. Where membership of a professional organization is required as a prior condition for application for a licence (i.e. an authorization to practice), the period of membership imposed before the application may be submitted shall be kept to a minimum.

11. Members shall ensure that the use of firm names is not restricted, save in fulfilment of a legitimate objective.

12. Members shall ensure that requirements regarding professional indemnity insurance for foreign applicants take into account any existing insurance coverage, in so far as it covers activities in its territory or the relevant jurisdiction in its territory and is consistent with the legislation of the host Member.

13. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations. A concessional fee for applicants from developing countries may be considered.

V. Licensing procedures

14. Licensing procedures (i.e. the procedures to be followed for the submission and processing of an application for an authorization to practise) shall be pre-established, publicly available and objective, and shall not in themselves constitute a restriction on the supply of the service.

15. Application procedures and the related documentation shall be not more burdensome than necessary to ensure that applicants fulfil qualification and licensing requirements. For example, competent authorities shall not require more documents than are strictly necessary for the purpose of licensing, and shall not impose unreasonable requirements regarding the format of documentation. Where minor errors are made in the

completion of applications, applicants shall be given the opportunity to correct them. The establishment of the authenticity of documents shall be sought through the least burdensome procedure and, wherever possible, authenticated copies should be accepted in place of original documents.

16. Members shall ensure that the receipt of an application is acknowledged promptly by the competent authority, and that applicants are informed without undue delay in cases where the application is incomplete. The competent authority shall inform the applicant of the decision concerning the completed application within a reasonable time after receipt, in principle within six months, separate from any periods in respect of qualification procedures referred to below.

17. On request, an unsuccessful applicant shall be informed of the reasons for rejection of the application. An applicant shall be permitted, within reasonable limits, to resubmit applications for licensing.

18. A licence, once granted, shall enter into effect immediately, in accordance with the terms and conditions specified therein.

VI. Qualification requirements

19. A Member shall ensure that its competent authorities take account of qualifications acquired in the territory of another Member, on the basis of equivalency of education, experience and/or examination requirements.

20. The scope of examinations and of any other qualification requirements shall be limited to subjects relevant to the activities for which authorization is sought. Qualification requirements may include education, examinations, practical training, experience and language skills.

21. Members note the role which mutual recognition agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.

VII. Qualification procedures

22. Verification of an applicant's qualifications acquired in the territory of another Member shall take place within a reasonable time-frame, in principle within six months and, where applicants' qualifications fall short of requirements, shall result in a decision which identifies additional qualifications, if any, to be acquired by the applicant.

23. Examinations shall be scheduled at reasonably frequent intervals, in principle at least once a year, and shall be open for all eligible applicants, including foreign and foreign-qualified applicants. Applicants shall be allowed a reasonable period for the submission of applications. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations. A concessional fee for applicants from developing countries may be considered.

24. Residency requirements not subject to scheduling under Article XVII of the GATS shall not be required for sitting examinations.

VIII. Technical standards

25. Members shall ensure that measures relating to technical standards are prepared, adopted and applied only to fulfil legitimate objectives.

26. In determining whether a measure is in conformity with the obligations under paragraph 2, account shall be taken of internationally recognized standards of relevant international organizations [82] applied by that Member.

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[82] The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

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