

India & The WTO

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The Uruguay Round brought the services sector, for the first time, into the fold of multilateral trade negotiations. According to the **General Agreement on Trade in Services (GATS)**, the **Most Favoured Nation (MFN)** and “**transparency**” (viz. publication of all laws and regulations) are the two obligations that apply to all services. The commitments, viz., market access and national treatment apply to services that are to be opened up according to specific negotiated commitments only, subject to conditions incorporated in the schedule of commitments. The Agreement covered all the four modes of delivery of a service, including cross-border supplies, “commercial presence” and “movement of natural persons”. **The General Agreement on Trade in Services is coming up for review in the year 2000.** Preparations for the negotiations would involve deciding the market access that we can give and the market access that our services would like to have in other countries. This involves filing of schedules in respect of 12 major sectors and 161 sub-sectors. Preparatory work in this regard has already been initiated. **Movement of Natural Persons, especially professionals, is of special importance to us as India enjoys a distinct comparative advantage in this area covering a whole range of services from computer and related services to hotel, health, engineering, construction and other professional services. The process of economic liberalisation involving opening up of capital intensive services such as banking, telecommunications etc., must be matched by increased access for the temporary movement of our professional people in services of export interest to us.** However, hardly any commitments have been made by developed countries in regard to the fourth mode for delivery of services under GATS i.e. movement of natural persons. Negotiations on this will also form part of GATS negotiations in 2000. Excerpted alongside are the highlights of issues and India's concerns in the area of services, as outlined in a paper circulated by India in the General Council of the WTO.

Services Negotiations : Issues and India's concerns

Article XIX of the General Agreement on Trade in Services (GATS) clearly provides that WTO Members shall enter into successive rounds of negotiations, beginning no later than 1 January 2000, with a view to achieving progressively higher level of liberalisation in the area of services.

Experience of GATS so far

The first point to note is that the experience of GATS we have had so far is limited to three years. **The Singapore Ministerial Conference*** noted that fulfilment of the objectives agreed at Marrakesh for negotiations on the improvement of market access in services had proved to be difficult. However, since then, **negotiations in the Basic Telecommunications and in Financial Services have been successfully concluded. In Professional Services, we are close to completing the work in the accountancy sector. However, we regret to note that in the one area of tremendous importance to developing countries in general and India in particular, i.e. Movement of Natural Persons, the results have been**

**The First Ministerial Conference of the World Trade Organisation (WTO) was held in Singapore in December, 1996.*

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most unsatisfactory. If the mandated negotiations to commence in the year 2000 are to have any meaning at all for developing countries, this area of Movement of Natural Persons must figure prominently. But more on that later. Like the delegation of Australia, we too believe that the negotiations on the Safeguards, Government Procurement and Subsidies may be folded into the next round of negotiations.

In the three years that have gone by, it is also important to ask the question, has the participation of developing countries increased in the Services area as foreseen by Article IV ? **Article IV had provided that the goal of increasing participation of developing countries would be accomplished through strengthening of their domestic services capacity, through improved access to distribution channels and information networks and through the liberalisation of market access in sectors and modes of supply of export interest to developing countries. Regrettably action in these three areas has been far from meaningful leading to inadequate participation of developing countries in this crucial area.**

As is well known, the GATS is based on a positive list of commitments undertaken by individual Members in the form of Schedules. Therefore, Members undertake market access commitments in sectors of their choice as provided for under Article XVI of GATS. This fundamental feature, therefore, will no doubt govern also the mandated negotiations due to commence in January 2000. To properly evaluate the value of specific commitments, considerable work on classification and statistics must be undertaken. This information must also be made available mode-wise.

Progressive liberalisation to secure balance of rights and obligations

The mandate of the negotiations due to commence in January 2000 may be found under part IV of GATS entitled "progressive liberalisation" in Article XIX. The notion of "progressive liberalisation" involving a gradual approach is, therefore, fundamental to the new round of negotiations. **This process of liberalisation, besides being progressive, shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.** The new mandated negotiations, if they are to be successful, must be mutually

advantageous to all WTO Members and must preserve the balance of rights and obligations. The GATS framework was agreed upon after careful consideration and keeping in mind the interests of all participating countries in order to preserve the overall balance of rights and obligations. We would, therefore, not favour any change in the present architecture of GATS involving the four modes of supply.

Article XIX also provides that the **process of liberalisation to be launched in the mandated negotiations must take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. It further provides that there shall be appropriate flexibility for individual developing country Members for opening fewer sectors,** liberalising fewer types of transactions, progressively extending market access in line with their development situation and when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to earlier by us in Article IV aimed at increasing participation of developing countries.

Mandated negotiations from 2000: India's approach

It is against this background that India approaches the mandated negotiations in Services due to commence in January 2000. It calls upon the developed WTO Members to approach these negotiations, conscious of their responsibilities and obligations towards the developing countries enshrined in the GATS.

An important aspect relating to the mandated negotiations is the choice of sectors. This is important because the choice will determine to a great extent whether or not developing countries will benefit from these Services negotiations. It will also determine to what extent the objectives of Article IV are realised.

In this context, India **continues to emphasise the primordial importance of mode four i.e., Movement of Natural Persons.** Detailed reasoning as to why this is important for us has been presented by India at various meetings. Suffice it to say that the commitments by developed countries in this area in the mandated negotiations will determine the

overall balance of rights and obligations of countries like India.

The major problem in this area that India faces vis-a-vis commitments by developed countries is the insistence by the latter on what is known as an **economic needs test (ENT)**. **The ENT is a huge trade barrier to the Movement of Natural Persons as service suppliers. ENT detracts from the predictability of trade and nullifies the commitments otherwise undertaken in the form of market access.** So, one of the things that India would look forward to in these negotiations **is the total elimination of ENT** from the horizontal commitments of developed Member States. In the alternative, the ENT must, at a minimum, be based on transparent and objective criteria.

Yet another barrier to trade through Movement of Natural Persons is the administration of the visa regime. Thus, efforts must be made to **streamline visa regimes** when related to trade-related Movement of

Natural Persons. In this context, the notion of GATS visas based on automatic entry or multiple entry of long duration must be explored by developed country Members.

Sectors of interest to India

Sectors of interest to developing countries such as India would broadly include, but not be limited to, Computer and Related Services; Professional Services; Health Related and Social Services; Tourism and Travel Related Services; Transport Services; Other Business Services; Construction and Related Engineering Services and Audio-visual Services.

In conclusion, subject to the conditions mentioned in Article XIX and the objectives mentioned in Article IV, India approaches the mandated negotiations due to commence in January 2000 with the hope that the outcome will promote the interests of all WTO Members, particularly the developing country Members and will secure an overall balance of rights and obligations.

(Excerpts from the statement made by India in the General Council of the WTO in November '98 on the forthcoming Services negotiations)

Delivery of Services - The four modes

The General Agreement on Trade in Services (GATS) defines four modes of delivery of services- **cross border movement of service products i.e.** services supplied from one member country to another (e.g. international telephone calls); **movement of consumers to the country of importation i.e.** services supplied in the territory of one member to the consumers of any other (e.g. tourism); **commercial presence i.e.** services provided through the presence of a commercial entity of one member in the territory of any other (e.g. banking); and **movement of natural persons i.e.** services provided by individuals of one member in the territory of any other (e.g. consultants etc).

(Text of papers presented by India in the WTO -III)

Need for Greater Market Access for Movement of Professionals

The export of services contributes significantly to the export earnings of developing countries by way of wage income, fees, honorarium and other remittances. It often finances their international payment imbalances and is an alternative route for generating income, growth, employment, savings and alleviating poverty. Services have high growth potential for many developing countries. Just as developed countries have surplus capital to invest, most of the developing countries have surplus of skilled, semi-skilled and unskilled workers. While developed countries have comparative advantage in exporting capital intensive services, developing countries have comparative advantage in exporting labour intensive services involving movement of personnel.

Developed countries have been generally apprehensive about allowing higher market access for even skilled and semi-skilled personnel from developing countries as they fear that it may lead to immigration of such service providers to their countries. These fears of developed countries are unfounded as immigration is not an issue as the market access is being sought for temporary periods and the stays are for definite duration.

Barriers to Movement of Skilled Personnel

However, at present, there are **a number of visible and invisible barriers to the movement of skilled personnel** for temporary periods. These include:

- a) Entry restrictions for certain sectors/categories of natural persons.
- b) Restrictions on duration of stay of natural persons.
- c) Conditions for entry and other related requirements.
- d) Economic needs test, labour market tests, management needs test etc.

- e) Quantitative restrictions by way of number, fixed proportion of total employment, fixed proportion of total wages etc.
- f) Restriction on capital transfers.
- g) Prohibition against foreigners obtaining local qualifications.
- h) Tax discrimination.
- i) Requirement of Government approval.
- j) Requirement of work permits/residency/citizenship.
- k) Recognition of professional qualification by importing country.
- l) Restriction by way of minimum investment requirements.

The above visible and invisible barriers hinder free competition, and result in increased cost for provision of services. Freer access to the service providers would help consumer in getting services at a lower price. For instance, as a result of high labour costs, there is a general lack of availability of after sale service in the developed nations, which means costlier replacement syndrome rather than the cheaper repair route.

General Agreement on Trade in Services

General Agreement on Trade in Services (GATS) established a multilateral framework of rules and principles for trade in services with the view to expand such trade under conditions of transparency and progressive liberalisation. **One of the most significant aspects of the GATS has been that it is designed on the “modes of supply” approach with ‘movement of natural persons’ being one of the four modes. The other three modes are cross border, consumption abroad and commercial presence.** The GATS was so structured at

the instance of developing countries so as to provide a degree of symmetry in the obligations between the movement of capital and movement of labour. **However, the specific commitments undertaken by the developed countries have offered little to the developing countries in terms of opening their markets or facilitating the administrative arrangements or providing national treatment in the area of Movement of Natural Persons. The commitments made till date do not benefit developing countries in any significant manner because:**

- i) **The present commitments are largely restricted to business visitors & intra corporate transferees.** There are very limited commitments for qualified specialist personnel. Even where commitments are made for qualified specialist professionals they cannot move in individual capacity but should be employees for specified duration of the juridical person in the other country.
- ii) **The movement of personnel is linked to commercial presence and few developing countries are in a position to benefit from commercial presence mode of supply because of high capital requirement for establishment in developed countries,** lack of technology and inherent comparative disadvantage.
- iii) Onerous conditions have been attached to the commitments thereby significantly reducing their value.
- iv) **The categories of professionals do not prominently figure in the commitments whereas in actual practice there is considerable global trade in these labour services.**

In Article IV of GATS there is a clear obligation to increase participation of developing countries in sectors and modes of supply of export interest to them. However, the post Uruguay Round experience reveals that the marginal commitments made by developed countries do not incorporate the export interests of the developing countries. The inherent

imbalance in GATS and the basic asymmetries in trade in services between developed & developing countries have got further accentuated with increased level of commitments from developing countries in the spillover negotiation on basic telecommunication services & financial services where developing countries hardly had any demands from the developed countries. GATS appears to be becoming merely an exercise in fostering greater capital movement with most of the commitments being made in the commercial presence mode.

Need for a Separate Agreement for Freer Trade in Services

Thus, in order to have increasing participation of developing countries in trade in services, **there is a need for greater freedom of trade in services through movement of personnel particularly for professionals.** **The developing countries** which have distinct comparative advantages in delivery of such services owing to their large stock of human intellectual capital and their past and continuing investments in education and training, **should be free to exploit their comparative advantage.** Any restrictions on the means of delivery of these services constitute an unreasonable restraint on free global trade in services. As GATS has not succeeded in addressing interests of developing countries in trade in services, there is a need for a separate agreement for freer trade in services through Movement of Natural Persons. This would also prove beneficial to developed countries by providing them access to professionals such as doctors, nurses, software experts etc. at much more competitive prices. Such an agreement could embody following broad principles :

- i) **The rules should be transparent.**
- ii) **Each contracting party should publish and make freely available procedures applicable for movement of personnel and the country entry procedures.**

- iii) There should not be any additional tariff/tax or other regulatory restrictions on the nationals of foreign countries that do not simultaneously and with equal force apply to its own nationals.
- iv) There is a need to standardise/harmonise internationally, requirements of qualification/work experience in the interest of equity. In order to do so, a multilateral initiative at the WTO must be undertaken for the purpose of creating international standards (benchmark) which would serve as guiding principles in bilateral negotiations on mutual recognition.
- v) **There should not be any quantitative limitations (i.e. number of visas) on temporary movement of professionals,** just as there are to be no quantitative limitations on trade in goods.
- vi) Fees, charges etc. applicable to residents and/or citizens with a view to providing social security nets or retirement benefits should not apply as there is only temporary movement of professionals rather than permanent residence or citizenship.
- vii) Salary and wage comparisons with residents and/or citizens should not be used as trade restrictive measures.
- viii) There should not be unreasonable limitations on repeat delivery of services using the same professionals.
- ix) **There should be no non-tariff barriers by way of requirements for the passing of local competency examination or local certification by medical boards or the like,** except on an international standard basis for which such certification can be reasonably expected to be available in the home country of the deliverer of services.
- x) There should not be any regulatory restrictions on the movement of professionals from developing countries to developed countries more burdensome than those applicable in the obverse case.
- xi) The issue of civil and criminal liabilities, if any, arising out of the stay and work of a professional service provider in a foreign country, and the mode of dealing with such liabilities should be clearly and equitably established.

To sum up, the same principles of transparency, absence of quantitative restrictions, minimisation of tariff and non-tariff barriers, national treatment and MFN should be embodied in the multilateral disciplines on delivery of trade in services through movement of personnel, particularly professionals.

Trade in Services: Opportunities and Constraints

Project commissioned by Commerce Ministry

The Ministry of Commerce has commissioned a research project on "Trade in Services: Opportunities and Constraints" by the Indian Council for Research on International Economic Relations (ICRIER). The project is meant to work on 9 important broad services sectors for the forthcoming Services negotiations in the year 2000 to find out:

- (a) Extent of market access that can be allowed in respect of Indian market;
- (b) Extent of market access that is needed by Indian service industry in other markets; and
- (c) Schemes to promote export of services in areas in which India has a comparative advantage.

The 9 important services sectors include:

1. Financial Services
2. Telecommunication Services
3. Air Transport Services
4. Maritime Transport Services
5. Tourism Services
6. Medical and Health Services
7. Computer and Related Services
8. Consultancy Services (Accounting and Auditing, Legal, Construction and Engineering Services)
9. Movement of Natural Persons: As a horizontal issue

The project is expected to be completed shortly.

Services - New Opportunities for Expansion of Exports

Business Implications of GATS Arrangement

The GATS is the first step towards the liberalisation of trade in services under an international legal framework. Global trade in services has taken a big leap forward, growing at a rate of 10 percent per annum. A major factor that has significantly influenced the growth of trade in services is the emerging demand for a range of business services. Increasingly in-house activities of business firms are getting highly specialised and are splintering off to outside business firms possessing expertise and requisite skills, for example, legal services.

ASSESSMENT OF BENEFITS

Service Imports

- An opportunity for collaboration with foreign suppliers.
- Benefits of contact points.
- Procurement of technological inputs for the domestic industry.
- Expansion of info-communication services among developing countries.

Service Exports

- New export opportunities.
- The link of commitments with domestic legislation.
- Increased opportunities for natural persons to provide services.
- Importance of adopting a juridical personality.
- Expansion of trade among developing countries.

It is difficult to quantify the potential trade effects of liberalisation in the service sector. This can be attributed to:

- No equivalent of customs duties in the service sector. Protection is granted through domestic regulations.
- Lack of sufficient data needed to estimate the trade effects under different modes of supply.

However, the liberalisation commitments undertaken by member countries and the disciplines imposed by GATS lead to new opportunities for international trade. The ultimate beneficiary of the agreement is the business community, which tends to gain in terms of widening market base and competitive efficiency.

The opening of the financial services sector shall facilitate establishment of more foreign banks, insurance companies and securities firms. Besides, introduction of better info-communication systems can significantly influence the domestic working environment.

The likely new opportunities for expansion of exports in view of India's competitive advantage could be business services, including management consultancy services, computer services, professional services, etc. Besides export opportunities in educational services, tourism and travel services, could be exploited. The ratification of SAPTA has opened new opportunities in service exports among neighbouring countries, especially

in areas like construction, engineering, transport services, communications and health services.

One of the major handicaps of the service industry in developing countries is their lack of information about commercial and technical aspects of services they want to obtain. GATS provides establishment of contact points from which such information can be obtained by interested service organisations. Besides, it opens new opportunities for collaboration with foreign service providers. Appropriate information regarding these service suppliers facilitates the selection and acquisition decision process.

GATS provisions shall benefit the business community in terms of increased opportunities for natural persons to provide services. In some sectors, India has a competitive advantage in skill intensive industries. The horizontal commitments which countries have adopted shall provide new opportunities for technically and professionally qualified persons, without having to establish an officer or any other form of commercial presence.

GATS has lot of scope for further improvement and its provisions provide an opportunity for further negotiations. Continuing negotiations are necessary to ensure expansion of such trade, and the increasing involvement of developing countries.

(Excerpts from "Indian Industry's Guide to WTO" published by CII in association with the Rajiv Gandhi Institute for Contemporary Studies, April 1999).

General Agreement on Trade in Services (GATS)

(Excerpts from “Indian Industry's guide to the World Trade Organisation” by Bibek Debroy and P.D. Kaushik, published by Confederation of Indian Industry (CII) & the Rajiv Gandhi Institute for Contemporary Studies- April, 1999)

MAIN FEATURES

- First multilateral agreement to provide legally enforceable rights to trade in all services.
- No tariff and other generalised protection mechanisms are applied to services.
- Four principal modes of providing international services, i.e. cross border supply, consumption abroad, commercial presence and movement of natural persons.
- Allows members to choose the services, and limit the degree of provisions, in which they make market access & national treatment commitments.
- One-time opportunity for members from MFN exemptions for transitional period of 10 years, with a review after 5 years, by the year 2000.
- Mutual recognition of qualifications, which should not be discriminatory and substitute for protectionism.
- No restrictions on transfer of money on account of payment for services supplied.
- Permission for governments to negotiate over specific commitments in Annexes-movement of natural persons, financial services, telecom services, air transport.

THE GATS FRAMEWORK

- **All services** are covered by GATS.
- **MFN treatment** * applies to all services, except the one-off temporary exceptions.
- **National treatment**** applies in the areas where commitments are made.
- **Transparency** in regulations, inquiry points.
- **Regulations** have to be objective and reasonable.
- **International payments** are normally unrestricted.
- **Individual countries' commitments** are negotiated and put on binding commitments.
- Progressive liberalisation through further negotiations.

* Favour one, Favour all. The GATS agreement states that if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO Members.

** Equal treatment for foreigners and one's own nationals - only where the Member has made a specific commitment.

Monthly update from PMI*/Geneva

(15th May 15th June, 1999)

GENERAL COUNCIL

An Intersessional Meeting of The General Council was held on 7-8 June on the preparatory process for the 1999 Seattle Ministerial Conference providing opportunity to the delegations to discuss in an interactive way, the various proposals submitted till now and to present new proposals. India introduced four proposals agreement-wise on Anti Dumping, Subsidies and Countervailing Measures, Sanitary and Phyto-sanitary Measures and on Trade Related Investment Measures. While introducing these agreements, India highlighted the concerns and problems that have been faced by India and other developing countries in the implementation of these agreements and hence, the need for the WTO to first alleviate these implementation concerns before embarking upon any new issues and commitments in the forthcoming Seattle Ministerial Conference.

WORKING GROUP ON TRADE AND COMPETITION

A meeting of the Working Group on Trade and Competition Policy was held on 10-11 June 1999 to carry forward the work of the Working Group as envisaged by the General Council in its December 1998 decision taken to continue the educative work that it had been undertaking pursuant to the Singapore Ministerial Declaration. The discussion in the Working Group focused around the issues (a) the relevance of fundamental WTO principles of national treatment, transparency and MFN to competition policy and vice versa; (b) approaches to promoting cooperation and communication among Members, including technical cooperation; and (c) the contribution of competition policy to achieve the objectives of the WTO including promotion of international trade. Members introduced their papers on these agenda items and a thorough discussion was held. In its intervention we stated that the discussions had shown the relevance of WTO principles and the fact that

most domestic policy regimes followed these principles and had incorporated them in the national legislation. We supported the US in stating that there is no need for multilateral rules at this stage, as against the EU which was pressing for such multilateral rules. We agreed that a factual report of the proceedings of the Working Group be made to the General Council.

COMMITTEE ON TECHNICAL BARRIERS TO TRADE

The Committee on Technical Barriers to Trade held a Symposium on Conformity Assessment Procedures in the first week of June 1999. Experts and institutions related to Conformity Assessment, the world over, participated in the event. India was represented by a participant from the Bureau of Indian Standards.

INTEGRATED DATA BASE (IDB)

At its meeting held on 31 May 1999, the Market Access Committee adopted comprehensive guidelines for the dissemination of the electronic Integrated Data Base. The IDB has been put into operation with effect from 1 June 1999 with access to all WTO Members, as well as those acceding country applicants that have been providing submissions to the IDB .

ELECTRONIC COMMERCE

The General Council, at its meeting held on 15 June 1999, conducted an interim review of the progress in the implementation of the on-going Work Programme on Electronic Commerce. It considered the information provided by the subsidiary bodies, namely, the Council for Trade in Goods, the Council for Trade in Services, the Council for Trade-Related Aspects of Intellectual Property Rights and the Committee on Trade and Development, on issues relevant to them, and agreed to look into all aspects of the Work Programme in July 1999.

**Permanent Mission of India, Geneva*

Schedule of Meetings at the WTO, Geneva : July 1999*

1/7/99	:	Dispute Settlement Body
1/7/99	:	Committee on Rules of Origin
1-2/7/99	:	Committee on Regional Trade Agreement - 23rd Session
2/7/99	:	Council for Trade in Goods
6/7/99	:	Committee of Participants on the expansion of Trade in Information Technology Products
7/7/99	:	Special General Council (3rd Ministerial Conference)
7-8/7/99	:	Committee on Trade and Development
7-8/7/99	:	Committee on Sanitary and Phyto-sanitary Measures
7-8/7/99	:	Council for TRIPS
9/7/99	:	Working Party Accession of Albania
12/7/99	:	Sub-Committee on Least Developed Countries
12-14/7/99	:	Trade Policy Review Body (United States)
12-14/7/99	:	Committee on Technical Barriers to Trade
13/7/99	:	Committee on Rules of Origin
15/7/99	:	General Council
16/7/99	:	Committee of Participants on the expansion of Trade in Information Technology Products
19/7/99	:	Working Party Accession of Moldova
19-20/7/99	:	Council for Trade in Services
19-21/7/99	:	Textile Monitoring Body
19-21/7/99	:	Trade Policy Review Body (Bolivia)
20/7/99	:	Working Party on Domestic Regulation
21/7/99	:	Committee on Specific Commitments
21/7/99	:	Committee on Trade in Civil Aircraft
21/7/99	:	Committee on Subsidies & Countervailing Measures
22/7/99	:	Working Party on Accession of Vietnam
23/7/99	:	Committee on Specific Commitments
26/7/99	:	Dispute Settlement Body
28-29/7/99	:	Special Session of the General Council
28/7/99	:	Working Party Accession of Georgia

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