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From the Director's Desk



Dr. (Mrs.) Vijaya Katti

INDIA'S economic strength lies in its burgeoning services sector. Today, India is a prominent service based economy, about 55 per cent of its GDP coming from this sector. It has even more potential to contribute to its GDP provided comparative advantages in this sector are fully exploited, and this can only happen when the negotiations in this sector are carried forward in WTO with the bona fide intention of promoting free trade.

The importance of trade in services is well known to both, developed as well as developing countries. From the very beginning, therefore, the services have been taken as a separate negotiating group in line with the negotiating group on trade in goods. The contribution of services sector in total value added output is phenomenal in today's context, on an average two per cent of developed countries contribute to about 60 per cent of total value of output and a large chunk of developing countries even contribute significantly to their GDP. Such a huge contribution of services to various economies, therefore, underscores the need for a quick and a viable completion of negotiations.

Since 2000, services negotiations at WTO have been carried out on a bilateral request -offer framework. As this approach didn't advance the liberalization of services, the last WTO Ministerial at Hong Kong emphasized the need for a plurilateral approach. The plurilateral process intensified the negotiations in services as developed and developing countries actively participated in the process. It provided a platform for developing countries like India to bargain as a group. It enabled countries to prioritize their demands and have a better judgement of the likely demands of their trading partners. Such plurilateral negotiations haven't even produced any real outcome as the outcome directly depends on the willingness of developed countries like the US to liberalize the key sectors or modes of interest to developing countries like India.

V. C. Katti

Plurilateral Negotiations in Services

Implications for India

*Arpita Mukherjee**

Plurilateral negotiations were initiated in the Hong Kong Ministerial to supplement the bilateral request-offer process in the GATS. This paper discusses the key features of these negotiations and its implications for India. The plurilateral process intensified the negotiations in services, provided a platform for developing countries such as India to bargain as a group, enabled countries to prioritize their demands and have a better judgement of the likely demands of their trading partners. Although both developed and developing countries actively participated in the negotiations, the actual outcome would depend on the willingness of developed countries such as the US to liberalize key services/modes of interest to developing countries. In spite of the suspension of the Doha Round, plurilateral requests provided an opportunity to developing countries such as India to continue the process of domestic consultation for liberalization of the service sectors, identify regulatory deficiencies and initiate reforms.

THE position of a country in the WTO (World Trade Organization) negotiations in a particular sector is dependent on the performance and global competitiveness of that sector. Services today is the dominant sector of the Indian economy, accounting for more than 50 per cent of the GDP (Gross Domestic Product). India's trade in services has shown an upward trend. In 1995, India ranked 34th among the WTO member countries in exports of commercial services which improved to the 10th position by 2005.¹ Over the years, India has created a niche for itself as an exporter of knowledge-based services such as software and health. India has autonomously liberalized major service sectors and there is a significant need and scope for inflow of foreign direct investment and technical know-how, especially in the infrastructure sector. Thus, the country has both export and import interest in liberalization of trade in services and this is reflected in its negotiating position. From a defensive position in the Uruguay Round, where India had opposed even the inclusion of services in the WTO negotiations, India is a major proponent of service sector liberalization in the Doha Round.

The Doha Round of negotiations started with a request-offer approach as was given in the Negotiating Guidelines and Procedures (NGP) which was adopted by the WTO

members in March 2001. In this approach, countries make bilateral requests to their trading partners in areas of export interest but offers and commitments are multilateral. Prior to the Hong Kong Ministerial in December 2005, countries had submitted bilateral requests to their trading partners and some members made initial and revised offers. However, there was widespread dissatisfaction with the coverage and quality of offers and the slow progress of the negotiations.² Members questioned the efficiency of the bilateral request-offer approach and whether it should be supplemented by other negotiating methods. In this context, plurilateral negotiation was considered as one of the possible ways to speed up the negotiating process.

1. Hong Kong Ministerial

The Hong Kong Ministerial Declaration outlined the need to intensify negotiations towards achieving meaningful liberalization. The Annex C of the Declaration stated that in addition to the bilateral negotiations members can enter into plurilateral negotiations the results of which will be extended to all WTO members on an MFN (most-favoured-nation) basis. Although it was the first time when this approach received a limelight, the approach was not new to the GATS (General Agreement on Trade in Services)

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negotiations. Both Article XIX of the GATS and the NGP had recognized the role of plurilateral negotiations in addition to bilateral and multilateral negotiations. The timeline for submitting the plurilateral requests was 28 February 2005, for making a second round of revised offer was 31 July 2006 and for submitting the final draft schedule of commitments was 31 October 2006.

There were views both for and against selecting this complementary approach. The WTO members in favour of this approach including India believed that this would bring together a critical mass of developed and developing countries that are the main players in services negotiations. It would speed up the negotiating process and reduce the negotiating efforts since countries which are neither the demanders nor markets of export interest can be left out of the negotiating process. It would also help to identify the commonalities of interest in specific sectors/modes of export interest which would enable the target countries to have a better sense of the priorities of the requesting members. Some developing countries expressed concerns about this approach. They argued that developed countries as a group can exert pressure on developing countries to open key service sectors. Others, especially small developing countries, expressed concerns about the resources and capacity constraints in participating in the negotiations. Most of these concerns were taken care in the Annex C of the Ministerial Declaration which stated that the GATS architecture and flexibility for developing countries would be

preserved. The participation is voluntary and Annex C recognized the resource constraints of small developing countries.

2. Plurilateral Negotiations

The plurilateral negotiation process intensified after the Hong Kong Ministerial. Around 30-35 WTO members participated in the negotiations either as a requesting member or as part of the target group. The deadline of 28 February 2006 for submission of the requests was largely met. Around 22 collective requests were made including 16 requests pertaining to sectors/sub-sectors, three in modes of supply and three for elimination or exemptions of existing MFN. The sectoral requests covered all major service sectors including legal, architectural/engineering/integrated engineering, computer and related services, postal/courier including express delivery, telecommunications, audio-visual, construction and related engineering, distribution, education, environment, finance, maritime transport, air transport, logistics, energy and services related to agriculture. Plurilateral requests were made in Modes 1 and 2 (cross border trade and consumption abroad), Mode 3 (commercial presence) and Mode 4 (temporary movement of natural persons). Apart from a request which applies across the board to all scheduled MFN exemptions, there were specific requests for removal/reduction of existing MFN exemptions in audio-visual and financial service sectors respectively.

Many of the plurilateral groups were mixed groups with both developed and developing countries forming the requesting

and target groups. There were a few exceptions such as Mode 4 where developing countries formed the requesting group and the target group was developed countries. The developed countries made majority of the requests. For instance, Japan participated as requesting member in 13 sectors while the US, Australia and EU participated in 12 sectors each. Although developing countries have received more requests than their developed country partners, some of them played an active role in pushing forward their offensive interests. Mexico joined in 10 requests involving six sectors. India was the coordinator of request in Modes 1 and 2 and Mode 4. It co-sponsored request in computer and related services and architecture, engineering and integrated engineering. Even countries such as Malaysia which had a defensive position in services negotiations made requests in education and computer and related services. Developing countries such as Philippines, Indonesia, China, India, Thailand, Malaysia, South Africa and Brazil were some of the main recipients. None of the LDCs (least developed countries) received request and were almost out of the plurilateral negotiation process. This was consistent with the Hong Kong Ministerial Declaration which stipulated that they would not be expected to undertake new commitments.

A difference between the plurilateral and bilateral approach was that in most of the groups the requesting members were also the deemed recipients of the collective request. The countries were expected to bind what they were asking from the target

group. This would enhance the credibility of the request. There were no legal compulsions to be deemed recipients.³ Another difference with the bilateral approach was that the requests were more focused and groups could prioritize their demands. For instance, the plurilateral request on audio-visual services did not cover radio and television segment where most countries have imposed market access and national treatment restrictions due to security issues, sensitivity and cultural protection. In sensitive sectors such as distribution, target countries were given the flexibility to have a transition period for liberalization. In the plurilateral requests sensitivities of making commitments in sectors such as social sectors (education) have been taken into account.

The analysis of the plurilateral requests show that there has been no change in the basic negotiating strategy. For instance, the EU expressed reservation in participating in any requests addressing audio-visual and cultural services, and education, while the US is not keen to open up transport sectors. This had been their negotiating stance even in the Uruguay Round. It also shows that every country has some offensive and defensive interests.

Two rounds of plurilateral meetings were held in March/April and May 2006. In these meetings sectoral experts from different countries participated and there was intense discussion and sharing of information. Countries clarified their doubts on a number of issues such as sectoral classification and domestic policy regimes. Recipient countries started their domestic stakeholders'

consultations and some even hinted the extent to which they could meet the requests.

The success or failure of this approach would have been reflected in the revised offers which were due for submission on 31 July 2006. However, the Doha Round of negotiations were temporarily suspended on 24 July 2006 after the talks in agriculture (market access and domestic support) and NAMA (Non-Agricultural Market Access) between six major members - Australia, Brazil, the EU, India, Japan and the US broke down in 23 July 2006. Hence the revised offers were not tabled. It would now take some time for the negotiations to gain momentum.

3. Plurilateral Negotiations and India

India has been a major proponent of services liberalization and has supported the inclusion of plurilateral negotiation in the Hong Kong Ministerial Declaration. Since the beginning of this round, India has been pushing for improvements in commitments in Mode 4 and Mode 1 and this is reflected in its plurilateral requests. Specifically, India wants developed countries to bind their existing regime in all sectors in Mode 1 (barring sensitive ones) and offer commitments for CSS (contractual service suppliers) and IP (independent professionals) under Mode 4.

The plurilateral request in Mode 4 sought new improved commitments in CSS and IP delinked from commercial presence. It also clarified definitions and categories of CSS/IP for which commitments have been requested. The target group

of developed countries has been asked to remove/substantially reduce ENTs (economic needs tests). It stated that wage parity should not be a precondition for entry and the duration of stay should be one year or for the duration of contract (if longer) with the provision of renewal. It referred to transparency in Mode 4 commitments. In Mode 4, India is also pushing for developing disciplines on domestic regulations which is mandated in Annex C.

India coordinated the plurilateral request in Modes 1 and 2 which was submitted along with countries such as Chile, Mexico, Pakistan, Singapore and Switzerland to both developed and developing countries. The requesting group of countries provided a list of sectors/sub-sectors in which they would want their trading partners to undertake full market access and national treatment commitments. In the plurilateral request, commitments are sought at two-digit level for certain sectors such as computer-related services to take into account technological developments. Members have been requested to make commitments in such a way that it reflects commercially meaningful opportunities.

An analysis of the plurilateral requests show that the level of ambition has been reduced. For instance, in Mode 4 there is no request for service providers' visa or GATS visa. In Modes 1 and 2, the plurilateral request attempts to address some key concerns relating to cross-border trade such as a broader sectoral coverage and foreseeing future backlash but is less optimistic than a negative listing of commitments as was proposed by the Friends Group.

Since the revised offers have not been tabled it is difficult to analyze the impact of the plurilateral negotiations. However, the two rounds of plurilateral negotiations indicated that there would have been more binding commitments in Modes 1 and 2 which would be beneficial for countries such as India, which wants to secure a liberal market access condition for outsourcing. In Mode 4, some developed countries such as the EU and Australia indicated that they acknowledge the categories – CSS and IP and would offer some commitments in these categories. With the suspension of the round it is now unclear to what extent they would have committed and how they would have adjusted their work permit and visa regimes to undertake such commitments. On its part, India too was open to undertaking commitments in these two categories. However, India's most important trading partner – the US – expressed reservations in broadening commitments in Modes 1 and 2 and 4. Proponents in favour of plurilateral negotiations believe that India along with other developing countries could have exerted more pressure on the US through this approach, especially since other developed countries are prepared to undertake commitments, rather than doing that on an individual basis bilaterally.

On its part, India received requests in 14 sectors, Mode 3 and MFN exemptions for audio-visual services. During the two rounds of plurilateral negotiations, India made it clear that it would meet the request substantially in sectors such as construction and related engineering services, logistics,

energy and maritime. However, it would not be able to meet requests in certain sensitive sectors such as legal, retailing, and audio-visual services. India also indicated that it had already submitted one of the best revised offers in August 2005 and it would offer further commitments only if its trading partners positively respond to its requests especially in Mode 4 and Modes 1 and 2.

Overall, in the plurilateral negotiations there are some sectors/modes in which India has offensive interest, while it is defensive in opening up the others. Some of the sensitive sectors in India such as audio-visual, retail and legal services are the ones in which developed countries such as the US and the EU are pushing for greater market access commitments. The actual outcome of the negotiations would depend on how well each country balances its offensive and defensive interests and what it is willing to trade off for greater market access in countries of export interest.

The plurilateral requests provide opportunities for countries such as India to initiate domestic consultation and debate. In fact, the Ministry of Commerce and Industry has circulated consultation papers on liberalization of sensitive sectors such as education and legal services. This also provides an opportunity to initiate domestic reforms which are essential to remain competitive in a globalized world irrespective of whether the country offers multilateral commitments or not.

4. Conclusions

A major advantage of the plurilateral approach is that it intensified the services

negotiations, made it more focused, reduced negotiating time and effort and enhanced interaction and sharing of information among major players in the services negotiations. Developing countries such as India had a platform to articulate their interest in specific markets. As a group it increased their bargaining power in areas such as Mode 4. They also had a better judgment of the likely demands of their major trading partners and could formulate negotiating strategies accordingly. Countries such as India have been able to prioritize the requests and have a better understanding of the cross-sectoral and cross-modal trade-offs. The requests enabled countries to identify regulatory deficiencies and initiate domestic reforms.

The success or failure of the plurilateral negotiations would have been reflected in the revised offers. However, with the suspension of the WTO negotiations, it is difficult to predict its outcome. With countries such as the US not very keen in offering commitments in areas of export interest to developing countries such as India observers predict that Doha Round would be a low ambition round.

NOTES

¹ http://www.wto.org/english/news_e/pres06_e/pr437_e.htm.

² As of December 2005, only 69 initial offers and 30 revised offers were submitted.

³ It is important to note that US was not a requesting member in Mode 4 in any of the sectoral requests, it was however a deemed recipient. This was because the US Congress had not given a mandate to the US negotiators to discuss Mode 4.



India to Push for EU Professional Visa

INDIA will push for a separate category of visas for independent professionals and contractual service suppliers (CSS) in the European Union (EU) as part of the bilateral trade & investment agreement being negotiated. The country wants independent professionals to be given short-term visas for looking for contractual assignments in the EU. The trading bloc will be urged to delink issuance of visas to CSS from commercial presence.

The issue will be taken up with EU negotiators next week in a meeting of the India-EU high-level trade group in New Delhi. The group will be meeting for the first time after the proposed trade and investment agreement was given an official go-ahead at the EU Summit in Helsinki in October.

Official sources said that while India and the EU had agreed to the broad contours of a services agreement, specificities in areas like mutual recognition agreements (MRAs), professional visas and disciplines outside the multilateral General Agreement on Trade in Services (GATS) needed to be thrashed out.

At present, it is difficult for contractual suppliers who do not have an establishment in EU countries to get visas. While there is no formal restriction on the issuance of visas without commercial presence, officials point out that such applicants are not considered favourably. Independent professionals who want to go to the EU countries to look for assignments are also not issued visas. "If a separate category of individual professionals and contractual suppliers is created, EU will be obligated to give visas to such service providers," an official said.

Sources added that India was trying to push the case for a separate category of visas for individual professionals and CSS bilaterally with EU countries. The issue was discussed with French Foreign Trade Minister Christine Lagarde during her recent visit to India.

The India-EU trade and investment agreement envisages eliminating duties on 90 per cent of tariff lines in seven years, liberalizing all four modes of services, including movement of professionals, and providing national treatment for investors. India is the EU's 10th largest trade partner and contributes 1.5 per cent of total EU trade.

(The Economic Times, 12 December 2006)

Finmin Clearing Auto Route for FDI in Financial Services

Banks, SEs, NBFCs & Nidhi Cos among Beneficiaries from Easier Norms

NORMS governing the flow of foreign investment into financial services like banking and commodity exchanges could be eased soon. The Finance Ministry and the Department of Industrial Policy & Promotion (DIPP) have initiated consultations with RBI to permit automatic approval for allowing foreign direct investment (FDI) up to the sectoral cap in these key segments.

The review covers non-banking financial services (NBFC), nidhi companies and stock exchanges too, according to Government sources.

There had been a status quo on these segments after RBI said early this year that it would prefer to wait for some more time. It had also raised queries on FDI in banks and commodity exchanges. However, last week, Government officials held meetings with the financial services regulator on the issue.

While rationalization of the FDI policy at the beginning of this year put foreign investment on the automatic route for all transactions that require clearance by RBI, SEBI, IRDA or other regulators, norms specified under FEMA regulations do not permit such transactions in the case of financial services players like banks.

RBI has not notified the changes effected by the DIPP through Press Note 4 in the case of banks and commodity exchanges, sources said. Therefore, there will be no automatic clearance for such transactions. RBI wants decisions on FDI proposals in such sectors to be made after consultations with the Finance Ministry rather than grant an automatic clearance.

In other sectors which are covered by the automatic FDI clearance route, RBI does not put any proposal on hold.

"All proposals under the 'automatic' route are cleared unless there is any technical deficiency. However, the same principle cannot apply to sectors like banks and commodity exchanges," sources said.

A number of proposals for FDI in private banks through the automatic route have already been put on hold due to the policy disconnect. The first proposal to hit a roadblock due to this glitch was a proposal by IFC to pick up a stake in Federal Bank. RBI feels that FEMA regulations cannot be amended to allow such proposals to pass through automatically since it has to provide clearance for this under these regulations.

RBI had sought clarification on FDI in agriculture too since implementation of Press Note 4 through FEMA would have resulted in all areas of agriculture opening up to foreign investment. Subsequently, the Government clarified that FDI in agriculture would be restricted to certain categories only.

Officials said a similar clarification is now expected in the case of financial services. The final decision in this case would rest with the Finance Ministry as key areas like banking, commodity exchanges, stock exchanges, NBFCs and nidhi companies are involved. The Government has already initiated a separate debate on FDI in stock exchanges and it is expected that the foreign investment ceiling for this segment would be 49 per cent.

In the case of banks, FDI up to 74 per cent is allowed but such proposals required clearance by the Foreign Investment Promotion Board (FIPB) in the context of FEMA provisions. This clearance, which was always conveyed through the Department of Economic Affairs in the Finance Ministry, was done away with through Press Note 4.

Since implementation of this decision is hanging fire due to policy disconnect, the review by the Finance Ministry and DIPP is expected to sort out procedural glitches, preventing flow of FDI in these key sectors.

(*The Economic Times*, 4 December 2006)

Non-Tariff Barriers Curb Service Exports: Minister

"Developed Nations are Somehow Shying Away from India"

EVEN as India's engagement with the global economy has intensified, the Union Commerce and Industry Minister, Shri Kamal Nath voiced concern over the developed countries' attempts to raise non-tariff barriers on services exports from the country.

Speaking at a plenary session on "India's global growth agenda" at the India Economic Summit 2006, organized by the World Economic Forum, Shri Kamal Nath said the country's engagement with the global economy is likely to exceed \$400 billion this fiscal and targeted at \$500 billion next year. He highlighted that many issues on services exports are not related to migration. "If you want to send somebody from an IT services company in India to the US for one month for some software services, you can't. That's not immigration. This is a non-tariff barrier," he said.

Shri Kamal Nath said that the world of tomorrow is not going to be a world of tariffs, but of rules. "That is why World Trade Organization is important. We need it to tackle issues like non-tariff barriers," he said.

He said multilateral trade rules are important to India as it is to the US or the EU.

Globalization

On the issue of globalization versus protectionism, Shri Kamal Nath said greater

champions of globalization (developed countries) are now somehow shying away from India. "We, who are scared of globalization, are becoming proponents of globalization," he said.

The Satyam Computer Services Founder and Chairman, Shri Ramalinga Raju, highlighted the presence of non-tariff barriers in the developed world for services exports from the country.

Inadequate Avenues

"We are very concerned about the global developed markets not giving adequate opportunities for free flow of services. Non-tariff barriers are being imposed. These (non-tariff barriers) come by way of mixing the immigration issue with service delivery issues," Shri Raju said.

He pointed out that multilateral discussions are dominated by concerns around agriculture. "Agriculture concern is real, because it concerns 65 per cent of the Indian population. But we do have the right to say that the Commerce Ministry must do as much batting for 65 per cent of the opportunities, which is the services sector," he said.

The Confederation of Indian Industry President, Shri R. Seshasayee, said protectionism would not help the developed countries, as they will lose the market. The more you get competitive, the more you see the spectre of protectionism. In the overall interest, we need to pursue the agenda of globalization," he said.

(The Hindu Business Line, 28 November 2006)

"More Liberalization to Boost Growth in Retail, Banking"

Services Sector Growing at 7%: Ajay Dua

A more liberalized policy framework would help the services sector expand faster and propel the economy to achieve higher growth rates in the next few years.

Liberalization of the regulatory frameworks would be particularly relevant for sectors like retail and banking, the Secretary of the Department of Industrial Policy and Promotion, Dr Ajay Dua, said.

Addressing the inaugural session of the India Economic Summit 2006, Dr Dua said, "The services

sector accounted for around 54 per cent to the economy and in the next five years its share would go up to 60 per cent. The services sector is growing at seven per cent annually and can grow at a higher rate with further liberalization of regulatory framework."

The sectors that need more openness and a further liberalized regulatory mechanism are the ones like retail, banking, accounting and healthcare, he said and added that though the high growth rates are propelled by services and manufacturing, growth in the labour intensive sectors like footwear were not expanding in the desirable manner.

(The Hindu Business Line, 27 November 2006)

Small Services Earn India Big Bucks

Top Dollar: Forex Inflows from Not-so-Hot Business Services Gross \$12.9 bn in 2005-06

SEEMINGLY insignificant items such as business management and consultancy, advertising and trade fairs, legal advice and architectural & engineering services have earned the country a gross \$12.9 billion in 2005-06. Lost in the basket of miscellaneous services, the little known earnings from these streams make up for more than half of software services that are more widely talked about.

The contribution of these services to the Indian economy was revealed by a study on "invisibles" in India's balance of payments. These services under the head "Business Services" and include accounting and auditing services and environmental services (income out of trading in carbon credits) - earned the country a gross of \$12.9 billion in FY06 against \$23.6 billion from software services.

INFLOWS THROUGH BUSINESS SERVICES

| Year | Gross | Net |
|---------|--------|--------|
| 1999-00 | 643 | -509 |
| 2000-01 | 334 | -688 |
| 2001-02 | 519 | -982 |
| 2002-03 | 807 | -1,005 |
| 2003-04 | 1,206 | -1,254 |
| 2004-05 | 5,167 | -2,151 |
| 2005-06 | 12,874 | 2,471 |

Source: RBI.

And, for the first time, these services earned a surplus of \$2.5 billion compared to a deficit of \$500 million to \$2 billion annually over the past six years. According to sources at the central bank, individually many of these services earned insignificant amounts. But in the past few years, income has grown so much that it has become necessary to report them separately.

Architectural and engineering services, comprising predominantly engineering services raked in a net of \$3 billion in FY06. According to Nasscom, \$10-15 billion of the \$750 billion spent on engineering services globally is offshored. And, India corners about 12 per cent of this offshore market. This segment holds a lot of potential as the global spend on engineering services is expected to grow more than \$1 trillion, with outsourcing also expected to rise.

India has the single largest pool of engineering talent among emerging countries and is capable of taking on more work than Russia and China combined.

The current Indian graduate talent pool suitable for engineering services represents 28 per cent of the total in low-cost countries. But on the flip side, not all are equipped with the skill-set required to succeed in the market.

Another business service - management and consultancy generated \$1.6 billion in FY06. Of the 12 items classified as business services, eight are net forex earners while the deficit under two heads - advertising and trade services has significantly narrowed. Gross advertising revenue jumped from \$162 million in FY05 to \$435 million in FY06. As a result, the deficit under this head halved to \$172 million from \$352 million in the previous year.

Another area which has done well is environmental services. Net earnings, though small at present went up to \$8 million in FY06 from a mere \$1 million in the previous year.

With many polluting units (with emissions beyond the threshold level permitted by the Kyoto Protocol) in Europe committed to reduce their emission levels through purchase of credits from non-polluting units (those with emissions below the threshold level) from lesser developed countries, India has a strong potential in this area.

Besides software and business services, even financial services have emerged as net earners of foreign exchange. Net inflows on account of financial services amounted to \$1,087 million in 2005-06, according to the latest balance of payments figures.

Flows from financial services in the balance of payments are non-interest receivable and payable in respect of a financial entity. These essentially comprise brokerages, commissions and discounts earned by banks and other authorized dealers for various financial services rendered and guarantee fees on certain overseas borrowings.

(*The Economic Times*, 27 November 2006)

Traded Service Needs No Tax, Please

SHOULD the Government levy service tax on advice offered by management consultants in India to their clients abroad, say private equity firms contemplating acquisitions here?

Several tax administrators feel that such advice should attract service tax (*ET*, Nov 20). This would be a mistake and reflects the lack of clarity that still persists on identifying what constitutes export of a service.

If the buyer of the management consultant's advice, say the PE firm, has a permanent establishment in India, then there is little scope for confusion. The sale of advice is deemed, by administrative convention, a domestic sale, eminently eligible for levy of service tax.

When the buyer of the advice has no permanent establishment in India, and the payment is made in foreign exchange, there is no case for levying service tax on this bit of service export. The reason some tax authorities put forward for taxing such a service sale is that private equity firm uses the advice in India, thus rendering it a domestic sale, on the ground that when a service is consumed in India itself, it is not considered an export. This argument does not quite hold.

On receiving the consultant's advice on the suitability of an Indian company for acquisition by the private equity firm, there are a number of possible responses. If the advisory says don't buy, and the PE firm fails to execute an acquisition in India, it would definitely have used or "consumed" the advice.

If the advisory is positive on the acquisition, the PE firm could still decide not to go ahead with the acquisition, for reasons unrelated to eligibility of the target acquisition.

In that case also, the service exported from India would have been consumed. The use of the advisory consists, therefore, in management decision-making based on the advice rendered, not its execution.

This decision-making takes place abroad. When the PE firm receives a positive "buy" advisory and then goes ahead to purchase the target company in India, for any tax authority to rule that the advice has been consumed in India would be conflate execution with management decision-making. That would be an error.

In any case, it is time the Government brought taxation in line with the requirements of emergent trends in global trade. In the ongoing talks on trade in services at the WTO, one class of service trade is labelled as "consumption abroad", falling under the second of the four modes in which service exports take place, according to WTO convention. The foreign buyer of the traded service in question travels to the exporting country to consume that service there.

Tourism, the usual kind and the emerging medical variety, are obvious examples. For reasons of administrative convenience, such service exports have not been exempted from taxation.

When a tourist buys a tube of toothpaste, she pays sales tax. When she buys a hair-do from a largish seller of beauty services, she would pay service tax as well. In countries that have implemented a goods and services tax, often goods purchased locally and taken outside, that is, not consumed locally, are eligible for tax reimbursement. Rarely does this extend to services.

Take a specialized service like film editing or dubbing. It is consumed when the service is rendered. So, if someone comes to India to get films processed, or a tender document or a complex legal contract drawn up, India would be exporting services under Mode 2, but India's taxation policy would treat these transactions as domestic transactions.

What differentiates an export from a domestic transaction is whether the purchase is by a non-resident or not. Sale of a good or a service as a result of which foreign exchange accrues to the economy should be counted as an export.

As India's service exports grow in volume and complexity, there would be a need to tailor administrative convenience to the basic logic of commerce.

If a foreigner comes to India to buy a specialized service competitively priced in this country, that service sale has to be recognized as an export. Countries export goods and services, not taxes. So exported goods are shorn of taxes, by draw-back, exemption or other means. Traded services deserve similar treatment.

(The Economic Times, 22 November 2006)

Services Sector Sops Not at Our Cost, Says HRD Ministry

NO further offers under the General Agreement on Trade in Services (GATS), says the Ministry of Human Resource Development. The Ministry is clear that it doesn't want to allow use of concessions in the education sector as a bargaining chip for gains in other services sectors during negotiations. It argues that education services sector is one of the least committed sectors by other countries as well.

The Ministry of Human Resource Development is in the process of finalizing a paper that could well become the ministry's official response to the Department of Commerce consultation paper of higher education and GATS.

Calling for a conservative approach to GATS, the HRD paper suggests that "there is little reason for yielding anything beyond the already made offers, which too, appear currently more than were necessary." It makes the case that India should retain all the options in the education sector "to be exercised at a time most suitable in national interest."

The Ministry of Human Resource has argued that there is little reason to go beyond the offer that India already has made. "For one, GATS calls for progressive liberalization of regimes and offers made and accepted cannot be withdrawn." Further given that under GATS a country can't discriminate between trading partners, the paper argues, "that opening any sector today for any country would mean opening the sector for all countries under GATS."

The McKinsey-Nasscom report suggests that in return for concession in Mode 4 areas, India needs to open up several service industries such financial

services and education. On the possibility of such trade-offs, the Ministry is clear that national education policy must not be compromised as a *quid pro quo* for concession in other sectors.

In July, HRD Minister Shri Arjun Singh wrote to Prime Minister Dr. Manmohan Singh asking him to keep national interests in mind and ensure a broader discussion on the issue in the Cabinet, rather than a limited one by the Cabinet Committee on WTO Matters.

As per the GATS negotiations, there are four modes of education services. Mode 1 or cross border supply would cover distance education programmes offered by universities and open universities, and any education service provider.

In its July 2005 offer, India placed no limitation on access in this mode, except that service providers would be subject to regulations, as applicable to domestic providers in the country of origin. Mode 2 or consumption abroad, refers to travel by Indian students abroad for education, in this too no limitations had been placed.

Mode 3 or commercial presence presents the real problems. Here too the Indian offer didn't limit access, however, fees to be charged would be fixed by an appropriate authority so that it did not lead to charging capitation fees or profiteering.

Also, service providers would be subject to domestic regulation. In the case of foreign investors having prior collaboration in India, FIPB approval would be required. Mode 4 or movement of natural persons, access in this mode has been described as unbound.

(*The Economic Times*, 22 November 2006)

EU Lawmakers Pass Law to Boost Services Competition

EUROPEAN Union (EU) lawmakers broke down national barriers for lawyers, real estate agents, advertising executives, carpenters and other types of workers seeking to do business outside their home countries.

The law passed by the European Parliament in Strasbourg, France, seeks to spur growth in the greatest part of the EU's 11.4 trillion-euro (\$14.6 trillion) economy. Business groups have questioned

the effect of the measure after it was diluted to appease unions.

The lawmakers strengthened worker and environmental safeguards to ease Western European fears of low-wage, loosely regulated competition from the east. The approval papers over the rift opened a year and a half ago when French voters rallied against the spectre of the "Polish plumber" and rejected an EU constitution.

"The economy is important, stability is important, yes, but the most important thing is the people for whom we're creating these policies," Evelyne Gebhardt, the German Socialist sponsor of the measure in Parliament, said in debate. "We've ensured that the rights of the employees are at the forefront."

Critics of those changes included business groups as well as European Central Bank President Jean-Claude Trichet, who said on October 16 he "regretted the watering down of the first draft" of the services directive.

EU governments, whose ministers approved most of the wording in Wednesday's legislation in May, must give final approval before the law is adopted by the bloc's 25 countries within three years. "The adoption of this text is a good, if not last step in the right direction, for business and competitiveness as a whole," said Xavier Durieu, secretary general of the EuroCommerce trade group for retailers and distributors, in a statement. "The focus must now come back to the member states and their sense of responsibility in transposing fairly and evenly this text."

The law sweeps away economic needs tests and other barriers, leaving governments only limited grounds to bar service providers from elsewhere in the EU. Each country also must streamline administrative procedures, focused in a single point of contact for foreign businesses, and accept forms filed electronically. "This is crucial for fostering entrepreneurship and promoting growth and jobs," Charlie McCreevy, internal market commissioner, said in the Parliament. He hailed the agreement among the Parliament's biggest political groups as seeming impossible just a year ago, when trade unions and other opponents fought the initiative for eroding wages and labour standards.

(*The Financial Express*, 16 November 2006)

India Dynamic in Commercial Services, Says WTO

EVEN as India ran a trade deficit of close to \$40 billion in 2005, it showed a modest surplus in trade in commercial services of \$4 billion and moved up to the 11th and 13th slots among the leading exporters and importers in that sphere.

Merchandise Trade

In its International Trade Statistics released recently in Geneva, the World Trade Organization (WTO) said that among a group of 50 leading exporters in merchandise trade, India has reached 29th position accounting for \$95.1 billion, with a share of 0.9 per cent in world trade last year. This is up by 26 per cent compared to the previous year. Among leading importers in world merchandise trade, India has reached 17th slot, accounting for \$134.8 billion with a share of 1.3 per cent in world trade.

Commercial Services

In commercial services, with its inherent advantages in several services, India has improved its position by accounting for a share of 2.3 per cent in global trade among 40 leading traders last year by reaping receipts of \$56.1 billion. In the import of commercial services, India ranks 13th accounting for \$52.2 billion with a share of 2.2 per cent. The WTO describes India as a dynamic exporter among the leading commercial service traders, along with China, Brazil, Poland and Hungary.

EU as One Entity

India's ranking improves if the 25-member nation EU is taken as a single entity. Thus, India's ranking under this head (excluding intra-EU trade) in world merchandise trade goes from 29th to 20th slot with a share of 1.2 per cent in global trade in goods. This is a 26 per cent increase as compared to 2004. Among leading importers in world merchandise trade, India's ranking goes from 17th to 11th slot with a share of 1.7 per cent in global merchandise imports. This is up by 39 per cent as compared to 2004.

Similarly, in commercial services trade, India's exports with EU as one entity and excluding intra-EU trade shows vastly improved ranking. Thus in commercial services, India's export position among the leading countries moves to 6th slot from the 11th with 2.3 per cent share globally, while in

imports its ranking moves down from 13th to 7th place, accounting for 2.2 per cent share globally.

Price Factor

The 110-page report gives a synoptic picture of global trade developments across products and regions in 2005. It said price developments exerted a strong sway on global trade patterns last year. The further spurt in prices of fuels and mining products contrasted with the deceleration in export prices for agricultural products and manufactured goods. It said prices of all manufactured goods were held down by the price decline in electronic goods.

Largely due to price developments, merchandise trade expanded faster than commercial service trade for the third year in a row in 2005. The dollar value of world merchandise exports rose by 13 per cent to \$10.16 trillion and commercial services exports rose by 10 per cent to \$2.41 trillion in 2005.

Among the world's 50 leading merchandise exporters, the major suppliers of fuels and mining products increased their merchandise exports by at least one third; Russian Federation (33%), Saudi Arabia (44%), Iran (35%), and Venezuela (43%), Kuwait (57%) and Nigeria (36%).

China stands out among major traders exporting manufactured goods with an increase of its merchandise exports of 28 per cent in 2005. Iron & steel and chemicals showed an above average trade growth in manufactured goods, while automotive products, clothing and textiles encountered a below average growth in 2005.

However, the WTO report said the phase-out of the Agreement on Textiles and Clothing had a major impact on trade flows in those product groups last year with China, India and Pakistan enhancing their share in global exports of textiles and clothing, while suppliers from South and Central America and Africa are losing market share.

(The Hindu Business Line, 11 November 2006)

India's Booming Services Industry Upbeat

INDIA'S globally applauded services industry sees seven to eight per cent growth in July-December on expectations of new investments, repeat orders and expansion plans, an industry study reveals.

"The services sector expects a growth between seven and eight per cent from July-December and has major expansion plans," the Confederation of Indian Industry (CII) said in a report.

The first-ever Services Sector Business Outlook Survey conducted by the CII says 92 per cent companies are planning investments of over Rs 10 million (\$222,000) during the six-month period and 28 per cent plan investments of Rs 50 million (\$1 million) and above. Better sales, new projects, repeat orders and customers and billing rates are driving the positive outlook with as many as 60 per cent indicating that they are moving up the value chain.

A whopping 83 per cent voted new customers as the reason for the positive business outlook. The survey included companies engaged in business, communication, construction and related engineering services, distribution, education, environment, finance, health, tourism and travel, recreation, culture and sports.

With the services sector contributing 54 per cent to India's economic growth, the positive outlook has led 83 per cent respondents to expect a corresponding growth in employment opportunities.

"Things look bright on the export front as well," according to the survey. An 81 per cent of the respondents expect a rise in the value of exports, with new customers and billing rates during July-December adding to the optimism.

However, respondents feel that constraints on the movement of natural persons (by many of the countries) would remain unchanged, states CII.

One third of the respondents felt the constraints on the movement of natural persons may increase during the next six months and have called for measures to mitigate existing restrictions on such movement.

India and several developing countries have been pursuing the matter of greater freedom in the movement of people for employment through the WTO.

The CII survey says the service industry is also upbeat about the economy. More than half (54%) the respondents expect the GDP to grow at over 8.0 per cent during 2006-07. This reflects its performance during the first quarter of the current

financial year when it grew at 8.9 per cent compared to 8.5 per cent in the previous year. This is due to the buoyancy in the manufacturing and services sectors, states the CII.

(www.cionline.org, 6 November 2006)

Pact with EU could go Beyond FTA

Non-Tariff Barriers, Exporting Services and Movement of Professional in Spotlight

THE Trade and Investment Agreement (TIA) that India and the European Union have agreed to negotiate on is likely to go beyond a Free Trade Agreement and take into account various issues such as non-tariff barriers, export of services and movement of professionals between the two trading partners.

Currently, the EU is India's largest trading partner with bilateral trade valued at \$20 billion. But India contributes just 1.5 per cent of total EU trade and is the 10th largest partner for EU.

List of Recommendations

Recognizing the potential for increasing bilateral trade and economic exchanges, the High-Level Trade Group set by India and the EU last year has now made a comprehensive list of recommendations on trade in goods and services, investments and on technical and sanitary and phytosanitary barriers to trade, intellectual property rights and competition policy.

It has also been decided that the proposed TIA would cover over 90 per cent of the tariff lines of foreign trade.

Explaining the significance of the proposed TIA, a senior official told *Business Line* that despite trade liberalization and lifting of quotas, Indian exports have repeatedly got struck down in the EU, mostly on account of non-tariff barriers.

"Normally, these issues could have been sorted out at the WTO forum, but there is realization that progress at the WTO has become very difficult given the different positions being held by the US, the EU and the developing countries.

This has probably prompted the EU to relent from its earlier stand of going in for only multilateral negotiations to bilateral ones now," the official said.

Tariff Reductions

About the proposed tariff reductions, the official said India was already committed to reducing import tariffs and was also proposing FTAs with Asean and other countries.

“Already a significant part of Indian imports are on the zero-duty track and an agreement with the EU would only provide a road map for concessional imports in a phased manner,” he added.

CII Suggestion

According to the Confederation of Indian Industry, the two biggest areas that would need deeper negotiations would be mutual recognition agreements for Indian services in the EU and for technical standards for goods.

This would be important for higher access to the services market there through movement of professionals. Also, considerable work would have to be done to identify specific NTBs that impact the flow of goods and services, the CII said, and added that it would build a comprehensive list of such barriers that impact Indian goods and services trade.

(The Hindu Business Line, 15 October 2006)

India, EU Group Calls for All-Sector Liberalization

INDIA and the European Union should liberalize all segments of services trade, including movement of professionals, the high-level trade group (HLTG) set up for the proposed India-EU trade and investment agreement has said. National treatment for investors and elimination of duties on 90 per cent of tariff lines and trade volume in seven years time are also part of the group’s recommendations. The group would submit its report at the India-EU political summit following which a decision would be taken on commencement of negotiations.

Speaking to *ET*, sources said that negotiations may not begin immediately but would start early next year after the US elections were over and the WTO talks were back on track. “The US, it seems, is putting pressure on the EU to delay the negotiations as it feels that it might impact the revival of the Doha round of talks. Negotiations will begin in two-three months time,” a source said.

In the area of services, the HLTG has suggested facilitating the mutual recognition of professional qualifications in various sectors and related issues and liberalizing commitments in Modes 1, 2, 3 and 4 as well as exploring areas of mutual interest to facilitate the mutual recognition of professional qualifications in various sectors and related issues.

This would come as a shot in the arm for Indian professionals who would have easier access to the markets of the 25 EU countries.

In goods, the report suggests that duties should be eliminated on 90 per cent of tariff lines and trade volume within seven years of the entry into force of the agreement. Modalities for the treatment of sensitive products would be agreed, including review clauses and partial liberalization.

In investment, the HLTG has proposed improved market access and provision of national treatment to investors. However, it adds that the host and home states would retain their right to regulate.

According to sources, the national treatment was likely to be given on the basis of a positive list which would include an agreed number of areas. So, if India wants, it could exclude the entire financial services sector or parts of it like insurance.

(The Economic Times, 11 October 2006)

Services at Forefront as India, EU Plan CECA

NATIONAL treatment, mutual recognition of professional qualification and competition policy would initially be in focus, as India and Europe are set to commence talks for a Comprehensive Economic Cooperation Agreement (Ceca), Government said.

National treatment is extending the treatment that is being given to national companies to foreign companies too. It is a safeguard against negative discrimination for foreign companies. India is proactive about getting the national treatment for its companies in EU in the wake of several Indian companies taking over the EU companies, sources said.

An India-EU Ceca has the potential to dramatically change the pattern of India’s foreign trade, with the 20-country bloc being the single

largest trading partner of the country. India's trade with the EU doubled in the last five years, even as EU's share in India's foreign trade decreased by 5 per cent in the same period.

The proposal for India-EU trade and economic pact was recently taken up by European Parliament President Josep Borrell with Commerce and Industry Minister Shri Kamal Nath.

Shri Kamal Nath said Indian investment in European companies instead created a synergy by making European companies more competitive. For instance, the landing gear and doors of Airbus planes are being made in Bangalore adding to the competitiveness of Airbus.

However, the EU is expected to argue strongly in favour of a stringent competition policy to counter the possibility of Indian companies having a monopoly in certain sectors and also for creating a level-playing field for their companies.

The talks on mutual recognition agreement for professionals will be on the lines of such an agreement with Singapore. Official sources, however, said it would take 3-4 years to sign a Free Trade Agreement (FTA) between the two countries. The FTA would also comprise a dispute settlement mechanism.

"The EU is a high level cost economy, while India is a labour abundant economy. There are obvious complementarities and to exploit them, it would be useful to ink an FTA which is comprehensive enough to cover trade in goods, services and investment.

However, India is perceived to have an advantage in services. And therefore, we need to do our best to get the trade barriers removed, like signing a mutual recognition pact on professional qualifications," RIS Director General Nagesh Kumar said.

(*The Financial Express*, 7 October 2006)

Govt. to Commence Talks with US, UK on Opening Legal Sector

IN the first step towards facilitating the opening up of the country's legal sector to foreign lawyers, the Government has set up two working groups of legal experts to commence a dialogue with their counterparts in the US and the UK.

Commerce and Industry Minister Shri Kamal Nath said the objective of forming the groups was to allow lawyers to participate in talks and find out the problems and the areas of convergence before a final decision is taken on opening up the sector. Shri Nath said the UK group was formed under the India-United Kingdom Joint Economic and Trade Committee (JETCO), while the US group was under the India-US Business Council.

Shri Kamal Nath emphasized the need to amend the Partnership Act to allow Indian law firms to be multi-disciplinary and have more than 20 partners.

Prime Minister Dr. Manmohan Singh had called for opening up of India's legal sector. The Commerce Ministry, on its part, had already circulated discussion papers for opening up of legal services in preparations for taking a stand at a WTO discussion.

The Bar Council of India (BCI) Chairman Shri Jagannath Patnaik, told *FE* that the BCI was still opposed to the entry of foreign lawyers, directly or indirectly, by using Indian lawyers as cover for their practice. "The main reason why we do not have any disciplinary control of foreign lawyers," he said. The BCI, so far, has not participated in talks with the Government on the issue.

Supreme Court Bar Association President and senior counsel Shri M.N. Krishnamani said the formation of separate working groups for the US and the UK was a good idea. He said before allowing entry to foreign lawyers, the Government should ensure a reciprocal arrangement. Entry should be given to those foreign lawyers whose countries would allow Indian lawyers to practice in that country, he said.

Due to resistance from the BCI and a majority of lawyers, the Government has so far not taken any stance in legal services sector at the WTO. The Government has also not allowed FDI in the sector due to the same reason.

However, India has got requests from several countries like the US, the UK, Japan, Brazil and China to liberalize the legal sector for foreign law firms.

(*The Financial Express*, 7 October 2006)

High-Level Group for Services Sector in Offing

MOOTING the liberalization of the legal and education sectors, Prime Minister Dr. Manmohan Singh said the Centre was considering setting up a high-level group in the Planning Commission. The group will look into all aspects influencing the performance of the services sector and suggest policy measures to sustain its competitiveness.

The high-level group would comprise members from the Government, business and academia, Dr. Manmohan Singh said while addressing the Servin XPO, the International Congress and Exposition on Trade in Services.

"I hope the recommendations of this group will act as a road map for the services sector," he said. The Prime Minister said the service sectors yet to make a mark on the Indian economy were those which had not faced global competition and had a weak regulatory framework. "The Government has a job cut out for those sectors," he said.

Singling out the legal services sector in this context, he said, "With the increasing integration of the Indian economy with the global economy, we need expertise in international law, commercial law and third country law. For this, a more open legal sector is necessary."

The Commerce Ministry has already circulated consultation papers for the opening up of legal and educational services. Dr. Manmohan Singh said in the education services, the country needed huge investments to set up more universities and institutes. "We need a policy regime, which facilitates and promotes investment from both public and private sectors in education services," he said.

"I am told \$3 billion is spent annually by students going to study abroad. This could be easily retained in India if domestic educational facilities are expanded," Dr. Manmohan Singh said. He said health services was an emerging sector holding immense potential for the country.

Dr. Manmohan Singh said the country should exploit the opportunities in medical outsourcing and tourism. "For this, an accreditation

mechanism for hospitals and laboratories need to be established," he said, adding there was a need to develop standards that met international customer requirements. On the IT and BPO sector, he said by 2010, \$110 billion of business could be off-shored with India in a position to capture half this market.

He pointed out that services account for over 50 per cent of the country's GDP and that services exports, too, had increased and accounted for a third of India's total exports of goods and services.

"In fact it is services exports and foreign remittances that are keeping our current account deficit and our balance of payments in a comfortable position. The largest single item in our export basket is the remittances sent back home by workers in foreign countries," Dr. Manmohan Singh said.

(The Financial Express, 6 October 2006)

PM Favours Opening Up of Legal Sector

High Level Group Soon to Help Sustain Service Sector Competitiveness

THE Prime Minister, Dr Manmohan Singh, pitched for a "more open legal sector" in the country, stating that expertise in international law, commercial law and third country law is necessary as the Indian economy increasingly integrates with the global economy.

He also underscored the need for establishing an accreditation mechanism for hospitals and laboratories even while pointing out that health services are an emerging area that hold immense potential for India.

Addressing a special session at the International Congress and Exposition on Trade in Services, organized by the Federation of Indian Export Organizations (FIEO), Dr. Manmohan Singh said the country's educational system must be expanded to translate the "demographic dividend" into a "development dividend".

He also indicated that the Government would soon set up a high level group in the Planning Commission to look into all aspects influencing the

performance of the services sector and suggest policy measures that would need to be taken to sustain its competitiveness in the coming years. This group would consist of members from Government, business and academia and its recommendations are expected to act as a roadmap for this sector.

While indicating that offshoring was here to stay, the Prime Minister said that by 2010 as much as \$110-billion business could be offshored and that the country was in a position to capture half this market.

"The direct and indirect employment impact could exceed a crore job within five years. This could contribute an additional 1 per cent per year to our GDP growth," Dr. Manmohan Singh said.

He stressed the need to pay focused attention to factors that affect the competitiveness of each sub-sector. "Each sub-sector has its unique characteristics. These need to be identified and measures taken to improve the supply capabilities of each sub-sector", the Prime Minister said.

In education services, Dr. Manmohan Singh said that there is a need for greater investment, both by the private and public sectors. "I am told that more than \$3 billion is spent annually by students going from India to study abroad. This could be easily retained in India if we are able to expand educational facilities to meet everyone's needs," he said.

Services would continue to bear a proportionately larger burden of propelling the country's economy to a higher growth trajectory even as all efforts were being made to boost agricultural and industrial growth.

The Prime Minister said the success of the service sector "cannot be sustained if we do not improve our skill and knowledge base".

Meanwhile, the Commerce and Industry Minister, Shri Kamal Nath, said liberal commitments from developed countries in all modes, particularly in cross border supply and Mode 4, would strongly incentivise negotiations for developing countries and enhance the latter's ability to respond to plurilateral requests. He said that flexibility to developing countries in taking commitments is a must.

(*The Hindu Business Line*, 6 October 2006)

Service Exports Policy on Way

PRIME Minister Dr. Manmohan Singh said that the UPA Government will shortly put together a policy framework to open up services like health, higher education, and tourism to private and foreign investment, promote global competition and boost exports.

In order to finalize the policy to push up export of services, the Prime Minister will shortly constitute a high-powered committee under the Deputy Chairman of Planning Commission, Montek Singh Ahluwalia. Representatives from the Ministries of Commerce, Communications, Information Technology would be joined by officials from leading service providers, the academic community and exporters into the panel.

The panel will also examine the regulatory framework before the services are opened up to foreign competition. "It is service exports, as well as foreign remittances, which are keeping our current account deficit and our balance of payments in a comfortable situation," said Dr. Manmohan Singh, who was speaking at the International Exposition on Trade in Services organized by the Federation of Indian Export Organization (FIEO) and the Commerce Ministry.

"We need to take advantage of India's demographics reflected in the large number of people in the working age who will provide a skilled workforce to support the economic machine in Western economies," Shri Arun Maira, Chairman of the Boston Consulting Group, told *Hindustan Times*.

Former Planning Commission Member Shri N.K. Singh said regulatory issues, an enabling fiscal framework and administrative and procedural simplification were needed to boost export of services. "Seeking a symmetry between emerging demands and skills formation should be focused upon," Shri N.K. Singh told *HT*. The Prime Minister said investments in educational services would lead to retaining \$3.0 billion that students from the country spend on overseas education.

(*The Hindustan Times*, 6 October 2006)

Engg. Services Next Big Thing, but India May Miss the Bus

AFTER tweaking code, testing software, answering calls and processing documents, it's probably time for India Inc to look at engineering services outsourcing (ESO). And with good reason. Engineering services is a \$750 billion-a-year global industry and promises to be the next big frontier for offshore firms. While only \$10-15 billion of the \$750 billion is at present offshored, the potential is huge; about \$150-225 billion by 2020. Already, global companies in telecom, automotive, aerospace, utilities, construction and industrial machinery are looking at India to cut costs via ESO. India has the potential to corner a share of \$12 to \$16 billion by 2010, but the more likely scenario is a size of a mere \$3 to \$5 billion! To take a big bite of the ESO pie, India has to fight off competition from Israel, China, Canada, Mexico and Eastern Europe.

As in the case of BPO, companies chasing ESO might be saddled with low value, low margin business unless they aggressively fight for a share of the high value, high margin product and systems engineering market, says a Nasscom-Booz Allen Hamilton study on ESO.

When asked to elaborate on the reasons for the gap between potential market and what Indian might actually get, Nasscom Vice President Sunil Mehta told *ET*, "India's brand name is not as strong in ESO as it is in IT services and BPO. India needs to build significant manufacturing capability to tap the ESO space. If we miss it, lot of the ESO work could go to China, particularly in the telecom and embedded software space."

To support the engineering services market, India will need about a quarter million engineers by 2020. While the current engineer graduate base is adequate, it is not suitable for ESO tasks. Such services call for a good grasp of engineering fundamentals. To meet the demand, "we not only need to improve the quality of engineers but also the quantity," says Shri Mehta.

Despite the hiccups, companies like GM, Intel, Texas Instruments, Daimler Chrysler, Bosch, ABB, Bechtel, Caterpillar are sourcing engineering services from India *via* captive units or through third party providers like Satyam, Wipro and Infosys. Says Sid

Pai, Managing Director, TPI India (an advisory firm), "about 95 per cent of the work we do relates to IT and BPO and about 5 per cent is engineering services. The latter is growing as there is lot of interest among clients. Though in engineering services, it's early days yet and key driver is the cost arbitrage advantage that India offers."

(*The Economic Times*, 4 October 2006)

Singapore to Recognize Indian Professionals Soon

INDIA and Singapore are close to signing a mutual recognition agreement (MRA) on professional qualifications. The move is part of the India-Singapore Comprehensive Economic Cooperation Agreement (CECA), and will be the first of its kind India will have with any country in the services sector.

The two countries have already finalized a list of seven professions – chartered accountancy, cost accounting, company secretaryship, nursing, medicine, dentistry and architecture. "The agreement is expected to be signed in the next three to four months," an official said, adding concrete steps in this direction had already been taken.

An MRA will ensure that professional qualifications from Indian universities and institutes will be recognized by the partner country – in this case Singapore – for the professionals to practice there. Currently, many countries in the developed world put professionals qualified in India under various screening tests, before allowing them to practice.

"The agreement really removes the entry barriers. It's even bigger than getting a visa. Especially, when one takes into context the fact that it is so difficult for Indian professionals like doctors to practice in the US and Europe. They need to pass a series of tests, though they have degrees recognized in India," said Dr. Rajiv Kumar, Director and Chief Executive, Indian Council for Research on International Economic Relations.

"But now all those doctors can have a flourishing practice in Singapore. Even architects will bid for big projects there. But time has come for more services, like law and education, to be added to the bouquet. Indians can compete with anyone in those sectors. Some vested interests are creating all the fear," he added.

"The agreement is the first step. After subsequent reviews, we will like more services sectors to be added. There will be a gradual increase in the number of professionals going to that country from India. India can also benefit from the expertise of professionals from Singapore in some of these sectors," said Shri T.S. Vishwanath, Head of CII's International Trade Policy.

However, a section of the services industry wants the Government to ensure a level-playing field for Indian professionals by giving them adequate protection.

(*The Financial Express*, 4 October 2006)

Biz Services Exports Up 139% in Q1

INDIA'S exports of business services—comprising accounting, legal and auditing, management consultancy, tax consultancy and public relations services—jumped a phenomenal 139 per cent in Q1 this fiscal over Q1 of 2005-06 to \$4.55 billion.

"This is an encouraging trend. We expect export of services to grow by an average 30 per cent a year in the next five years," Commerce Secretary, Shri G.K. Pillai told *FE*. Many Indian auditing and consultancy firms had increased exposure to overseas markets in recent past, he added.

Even though India is yet to decide on when to open up legal and auditing services to foreign investment and participation, business services exports doubled to \$10.38 billion in 2005-06 over \$5.17 billion in 2004-05. But, Q1 of this fiscal is equal to 44 per cent of the total in 2005-06 and 88 per cent of the total in 2004-05. The maximum spurt is being witnessed in exports of financial services. In Q1 this fiscal, financial services exports were up 170 per cent to \$725 million. In 2005-06, such exports were up 232.8 per cent to \$1.7 billion against \$512 million in 2004-05.

(*The Financial Express*, 3 October 2006)

Commerce Ministry Sounds out Legal Eagles on Reforms

THE Commerce Ministry, which faces domestic opposition over the proposal to open the legal services sector to foreign law firms, has decided to catch the bull by its horns. Since its discussion paper

on liberalizing legal services did not elicit much of a response from its chief opponent — the Bar Council of India — the Ministry has sent copies of the paper to every member of the Council and has called for discussions.

Speaking to *ET*, official sources said that it was the Bar Council and not individual lawyers who were against liberalization. In fact, officials claimed that young lawyers just entering the profession were keen that the sector be opened up. "We have observed in our various interactions with law schools that youngsters are keen to embrace the new opportunities that liberalization is going to offer. We have to somehow convince the Bar Council," an official said.

According to the Commerce Ministry paper, the global legal services market is worth \$20 billion annually, which could be tapped by Indian firms which were extremely competitive and provided excellent services.

The paper added that Indian lawyers, with their knowledge of English and the common law tradition, should be able to capitalize on this growing trade in services. The discussion paper sought opinion on whether foreign legal consultants of foreign firms should be allowed into the country after carrying out domestic reforms. "We don't want to force our views on the Bar Council. We just want an honest discussion to take place," an official said.

The Commerce Ministry, which has not yet made any offers for opening up the legal services sector at the WTO, has received offers from a number of countries like the US, Brazil and China for liberalizing the sector.

(*The Economic Times*, 3 October 2006)

India Eyes Share in \$30 bn Global Trade in Education

Ministry Releases Paper on Opening Up Higher Education

CAN India use the negotiations under General Agreement on Trade in Services (GATS) as an opportunity to attract investment and explore export markets? How much flexibility can be given to foreign education providers in the areas of setting fees, admission, hiring of teachers, course and syllabi?

Whether compulsory self-disclosure by foreign and private education providers could be introduced to address the problems of misrepresentation? What are the barriers faced by the Indian educational institutions in opening campuses abroad?

These are some of the posers in a consultation paper released by the Commerce Ministry on opening up the higher and technical education in the country.

The paper recommends that India should have a foolproof regulatory framework to regulate foreign and domestic private players. It adds that a viable financing model with participation from both public and private sectors should be put in place.

The paper also expresses concern over the fact that only a miniscule 0.37 per cent of GDP is spent on higher education and the figure has been falling in recent years.

It says India has one of the lowest public expenditure on higher education per student at \$406 compared with China's \$2,728, Brazil's \$3,986, US's \$9,629 and Germany's \$11,948.

On the positive side, India tops the list of countries, with 17,973 higher education institutes, including 348 universities and 17,625 colleges. However, despite an incredible growth in the higher education sector, the total enrollment form only about 11 per cent of the relevant age-group (17-23) population, the paper says.

It points out that global trade in higher education is estimated at over \$30 billion per annum. While India figures in the list of major education importing countries along with China and Indonesia, the major exporting nations in the sector are the US, the UK, Australia, Canada and the New Zealand. Currently, 100 per cent FDI in higher education services on automatic route is permitted in India.

(*The Financial Express*, 9 September 2006)

Trends in Global Exports of Services

RECENT years have witnessed a rise in global services exports, with India, China, Japan and Ireland being the largest contributors. From US\$819.6 bn in 1990, global services exports rose to US\$2125.0 bn in 2004 and further to US\$2415.0

bn in 2005. India and China reported the strongest growth in services exports, followed by Ireland, Italy, Hong Kong and Japan. India's share in global services exports rose to 2.8 per cent in 2005 from 1.9 per cent in 2004, moving it up to tenth place in 2005. This was a significant jump of six places over the 2004 ranking, reflected in greater software exports and improved coverage of transactions.

India's services exports grew over 70 per cent in 2005 to US\$67.6 bn. This is the strongest growth recorded by any of the top ten global services exporters. The key determinants of this rise were India's software exports, which grew from US\$0.7 bn in 1995-96 to US\$23.6 bn in 2005-06, accounting for about 38.9 per cent of India's total services exports in 2005-06.

China's services exports more than doubled during the period 2001-05, from US\$32.9 bn in 2001 to US\$81.2 bn in 2005. China accounted for 3.4 per cent of global services exports and was ranked as the eighth largest services exporter in 2005. The US, UK, Germany, France and Japan continue to be the top five services exporters since 1990, together accounting for 37.3 per cent of the world's total

LEADING EXPORTERS IN WORLD TRADE IN COMMERCIAL SERVICES

| | | (per cent share in global exports) | | | |
|--------------|--------------------------|------------------------------------|------------|------------|------------|
| | | 1990 | 2000 | 2004 | 2005 |
| Rank in 2005 | Global exports (US\$ bn) | 819.6 | 1,472.2 | 2,125.0 | 2,415.0 |
| 1. | United States | 16.2 | 18.8 | 15.0 | 14.6 |
| 2. | United Kingdom | 6.6 | 7.8 | 8.1 | 7.6 |
| 3. | Germany | 6.3 | 5.6 | 6.3 | 5.9 |
| 4. | France | 8.1 | 5.5 | 5.2 | 4.7 |
| 5. | Japan | 5.1 | 4.6 | 4.5 | 4.4 |
| 6. | Italy | 5.9 | 3.8 | 3.9 | 3.9 |
| 7. | Spain | 3.4 | 3.6 | 4.0 | 3.8 |
| 8. | China | 0.7 | 2.0 | 2.9 | 3.4 |
| 9. | Netherlands | 3.5 | 3.3 | 3.4 | 3.1 |
| 10. | India | 0.6 | 1.2 | 1.9 | 2.8 |
| 11. | Hong Kong, China | 2.2 | 2.6 | 2.5 | 2.5 |
| 12. | Ireland | 0.4 | 1.1 | 2.2 | 2.3 |

Note: Commercial Services comprise transportation services, travel and other commercial services (such as communication, construction, insurance, financial, computer & information, royalty & licence fees and other business services).

Source: WTO.

services exports. Even though the US continues to be the top services exporter, its share in global services exports has been steadily declining in recent years from 18.8 per cent in 2000 to 16 per cent in 2003, and further to 14.6 per cent in 2005. As seen in the table, India, China and Ireland have registered a continuous rise in their share in global services exports. In India, services sector has emerged as the fastest growing sector in terms of exports, with implications on productivity, employment, trade and fiscal prospects for the economy. The services sector has contributed to structural transformation in terms of substantial value added and skill intensive services such as software. Indian services exports were US\$60.6 bn in 2005-06 as compared to US\$17.1 bn in 2001-02. Between 1970-71 and 2005-06, the share of services in GDP increased from 38.3 per cent to 53.6 per cent. Growth in services sector has provided considerable resilience to the overall growth of the Indian economy.

Reflecting the importance of services in GDP, their share in global GDP has risen from 61 per cent in 1990 to 68 per cent in 2003. The rise in share of services in GDP has been more rapid in case of low and middle-income countries, from 45 per cent to 53 per cent during 1990-2003. The services sector in India accounts for about 52 per cent of the GDP.

(Eximius Export Advantage, September 2006)

HRD Talks Tough as Commerce Ministry Yields on Campus

THE Human Resource Development Ministry has objected to the Commerce Ministry's proposal to alter India's offer on education services to the WTO.

In order to put brakes on the Commerce Ministry's plans to improve the offer on higher education, HRD Minister Shri Arjun Singh has written to Prime Minister Dr. Manmohan Singh asking him to keep national interests in mind and ensure a broader discussion on the issue in the Cabinet, rather than a limited one by the Cabinet Committee on WTO matters.

The current draft of India's offer on services proposes that while foreign educational institutions offering higher education will be subject to domestic

regulations, on matter of salaries for faculty and fixing fees, it should be left out of the purview of the University Grants Commission. The HRD Ministry has expressed its disagreement over the altered offer in education services. The Cabinet recently referred to a Group of Ministers, the foreign education providers bill which will bring all foreign education providers under the UGC umbrella.

The HRD Ministry says that it doesn't want to allow use of concessions in the education sector as a bargaining chip for gains in other services sectors during negotiations. It argues that education services sector is one of the least committed sectors by other countries as well.

Instead, the Ministry argues that commitments made through the revised offers of July 2005 far exceed what can be considered necessary in national interest. The Ministry suggests that there exists a strong case to actually withdraw India's earlier commitments.

As per the GATS negotiations, there are four modes of education services. Mode 1 or crossborder supply would cover distance education programmes offered by universities and open universities, and any education service provider. In its July 2005 offer, India placed no limitation on access in this mode, except that service providers would be subject to regulations, as applicable to domestic providers in the country of origin. Mode 2 or consumption abroad refers to travel by Indian students abroad for education; in this too no limitations had been placed.

Mode 3 or commercial presence presents the real problem. Here too, the Indian offer didn't limit access, however, fees to be charged would be fixed by an appropriate authority so that it did not lead to charging capitation fees or profiteering. Also, service providers would be subject to domestic regulation. In the case of foreign investors having prior collaboration in India, FIPB approval would be required. In the case of Mode 4 or movement of natural persons, the Government does not plan to bind its policy.

(The Economic Times, 17 July 2006)

India Warns of Backing Out on WTO Offers

INDIA has warned that it may withdraw some of its services offers if developed countries do not respond to its requests in the area of off-shore services (Mode 1) and movement of workers and professionals (Mode 4).

In a seminar on services negotiations at the WTO organized by ICRIER, Commerce Secretary Shri S.N. Menon said India was looking forward to a balanced outcome. He said India expected the offers, scheduled to be submitted next month, to correct the existing imbalance.

“We have not received satisfactory offers from our trading partners in our main areas of interests – mode 4 and mode 1. We may go back on the offers that we have placed on the table,” Shri Menon said.

On an optimistic note, however, he added that India expected cooperation from developed countries especially in movement of natural persons, which was of primary interest to India.

The Secretary explained that till developed countries improve their offers, it would be difficult for India to expand its offers by including new sectors and improving existing commitments.

WTO members are supposed to submit their revised offers in services by 31 July and their final schedules by October-end.

India has so far received 14 plurilateral requests for liberalizing a whole range of sectors, including telecom, financial services, energy, legal, maritime, retail, education, environment and construction.

(The Financial Express, 7 June 2006)

Services Talks: India Seeks Liberal Commitments

To Respond to Requests from Developed Countries

INDIA said that liberal commitments from the developed countries in areas of cross border supply and easier visa norms for movement of service personnel under WTO would strongly increase developing countries' ability to respond to requests

from the developed world on sectors such as legal, distribution (retail) and education.

Addressing an ICRIER seminar on Developing Countries and Services Negotiations, the Commerce Secretary, Shri S.N. Menon, said that flexibility to individual developing countries in taking commitments has to be fully preserved.

Services Negotiations

He said that this was necessary as a number of developing countries are in various stages of regulatory reform and that the levels of development of individual services sectors showed wide variation.

Services negotiations in the WTO have been proceeding following the request-offer approach. At the Hong Kong WTO Ministerial, the ministers had mandated that the bilateral request-offer process of services talks be supplemented by plurilateral approach to provide greater momentum to the negotiations. As a part of the plurilateral process, India has received 14 plurilateral requests. Some of the important plurilateral requests received by India are in sectors such as telecom, financial, maritime, legal, express delivery, education, environment, energy and construction services and distribution.

(The Hindu Business Line, 7 June 2006)

WTO for Easing Migration Norms for Professionals

THE WTO is looking at the possibility of introducing new regulations to ensure that the qualification requirements for migrating professionals and verification procedures imposed by member countries are not unduly burdensome.

Addressing a seminar organized by FICCI in New Delhi, WTO Director (Trade in Services Division) Dr. Hamid Mamdouh said the world body was examining the scope of introducing new regulations in the area of qualification requirement, and that it was proving to be a difficult task. “It is a very difficult procedure, as this is an area which is being protected zealously by a number of members. We certainly want that qualification requirements should not act as an unnecessary burden,” he said.

India, which is primarily interested in removing restrictions on the movement of workers from one country to another, is an advocate for better qualification requirement rules.

Dr Mamdouh said the extent to which countries were willing to move in the services negotiations would only be evident after the revised offers were submitted by 31 July. He said although members were quick to submit requests, when it came to making offers, they were very slow.

According to the schedule agreed upon during the Hong Kong Ministerial of the WTO, the final draft schedules are to be submitted by members before 31 October 2006.

(*The Financial Express*, 6 June 2006)

India Applies Brakes on WTO Proposals

INDIA will not improve its offers in services until other members of the WTO, including the EU and the US, respond favourably to its requests for liberalizing the movement of professionals and workers (Mode 4) and off-shore services like business process outsourcing (Mode 1).

It has also been decided that legal, retailing, education and audio-visual services will not be liberalized now, regardless of what other countries offer. All WTO members are expected to come up with another round of offers, in July this year, with the objective of concluding negotiations by the year-end.

Speaking to *FE*, officials said India had already made "ambitious" revised offers and there was no question of further improving until developed countries bettered their offers in Mode 1 and Mode 4. In Mode 4, India sought commitments in cross border supply of professional services, computer related services, other business services, health and education, tourism and financial data transfer.

The country also demanded transparency and relaxation in qualification and licensing procedures in various countries. In Mode 1, India wants developed countries to bind their commitments, at the existing levels, to ensure that in the future, they do not impose restrictions.

In both areas, the responses of developed countries have been less than satisfactory. India, together with some other developing countries, also made requests for liberalization under Mode 4 in the plurilateral discussions on services being held by about 35 countries, parallel to the multilateral request-offer process. In the plurilateral negotiations, India has received requests in 14 sectors, including telecom, finance, distribution, legal, postal and courier, energy and education. While India ruled out making offers in legal, retail, education and audio-visual, it is open to further liberalizing the other sectors provided its aspirations are taken care of by developed countries.

(*The Financial Express*, 1 June 2006)

More on Mode 4

An Offensive Position on Mode 4 is Right

INDIA'S proposal to the WTO for disciplining qualification norms for service providers is a positive step, as movement of natural persons (Mode 4) is a crucial concern for developing countries and failure to take an offensive position on this could mean a huge loss of opportunity. Especially given the highly defensive position of key developed countries.

In the post-Hong Kong talks in late March-early April, only one of the two exclusive requests by developing countries related to improved market access under Mode 4. Among other things, it asked that economic needs tests (ENTs, which allow foreign suppliers only if there's no domestic supplier) be removed or cut significantly. The response was (expectedly) over-cautious. But benefits to developing countries of developed country commitments are seriously limited without meaningful offers on Mode 4. Developing country service exporters continue to suffer ENT's requirements of nationality/residence, regulations, qualifications recognition, visas, wage parity, social security contributions, etc., especially for professional service providers under Mode 4 or cross border trade, as in business process outsourcing. On the other hand, limits set by developing countries, such as on foreign equity, have either been autonomously

liberalized or are in process; and GATS has allowed flexibility on this so far.

India wants qualification norms to be pre-established, publicly available and based on transparent criteria. But, significant gains will be tough, unless developing countries harden on developed countries' insistence that they commit more on opening up services especially under Mode 3 (commercial presence). Far more important is the latter's huge domestic resistance, based on security issues and growing animosity due to jobs lost to outsiders. The highly defensive strategy of developed country governments, purely defined by politics, is even to the detriment of their commercial interests of gaining more in Mode 3. If not on the WTO platform, perhaps strategies such as a comprehensive economic partnership that India now wants to pursue with the US and EU would deliver more tangible results.

(The Financial Express, 17 May 2006)

Take it Forward

Retain and Grow the Edge in Services Exports

THAT India has a human resource edge contributing to its success in export of services is well known, a fact corroborated in the latest World Trade report, according to which India has moved up from 16 to 10, while China has moved up from 9 to 8. In a clear recognition of the strides we've made in this area, the report describes the pace of progress as "considerable" for India (33% annual average growth during 2000-05) compared to "slight" for China, whose exports grew 22 per cent.

However, competition from China, a net importer of commercial services, unlike India, is hotting, especially in IT. Even as India's fast-growing ICT industry allows it the claim to becoming a global software superpower, says Gartner Research, China is becoming a critical source of low-cost labour for the growing offshore/"nearshore" service needs of US, European and Asian enterprises. And Chinese companies are aiming at qualifying for international standards.

Continued high-level investment in R&D and education is expected to contribute in China's growth into an ICT powerhouse in a decade. Even in other segments, China has seen some degree of liberalization across banking, insurance, telecom and transport services, dominated by state-owned enterprises for long.

India's edge so far has been due to low-cost educated manpower; it is a leader in the low and medium-technology areas. It is time for India to go up the value chain, for which both quality higher education and development of innovative capabilities are key. Not only for IT, but for the entire range of commercial services, education and skills training are necessary.

On market access, cross border supply of services (Mode 1) and movement of natural persons (Mode 4) are crucial. Hence, post-Hong Kong, it's time for comprehensive and fast-paced work on examining requests and offers and arriving at clear proposals in the ongoing talks. This must be coupled with domestic reforms on qualification and licensing requirements and processes to help our service suppliers overcome barriers to trade in the global markets and further efforts to lower transaction costs.

(The Financial Express, 9 May 2006)

FDI in the Services Sector

THE Importance of the services sector in economic growth has amplified with time. Higher average growth rate of the services sector compared to agriculture and industry has resulted in an improvement in its share in global GDP from 61 per cent in 1990 to 68 per cent in 2003. The share of the services sector in GDP has risen not only in case of high income countries (from 65 to 71 per cent), but also in case of low & middle-income countries (from 45 to 53 per cent) during 1990-2003. Particularly in India, the services sector, consequent to consistent high growth performance, accounts for the majority or 52 per cent of the country's GDP. Globally, increasing Foreign Direct Investment (FDI) flows into services have played a pivotal role in the growing trend. This is displayed by the significant growth in the share of service-oriented FDI in global FDI stock from around 25 per cent in early 1970s to more than 60 per cent at present.

FDI in services, both outflows as well as inflows, though dominated by the developed countries, is on a growing curve in case of developing countries also. The share of developing countries in global outward FDI stock has escalated from a modest 1 per cent in 1990 to more than 10 per cent in recent years, and currently more than a quarter of global service oriented FDI flows are directed to developing countries. The emergence of developing countries in global FDI flows into services could be partly explained by the widening horizon of services, which are increasingly attracting FDI. Earlier, FDI in services used to be concentrated in trade and finance. However, recent years have witnessed considerable growth in FDI in areas such as telecommunications. IT enabled services and electricity & water access to better information and communication technologies, educated manpower, and conducive institutional infrastructure have facilitated FDI into services in the destination countries. Countries have also liberalized their services FDI regimes, thereby attracting greater degree of inflows. Privatization programmes have also facilitated increasing number of mergers & acquisitions in the services sector. In fact, services accounted for more than 60 per cent of global cross border M&As by the end of 1990s.

FDI in services strengthens the financial resources of a country and facilitates transfer of technology. Services Transnational Corporations (TNCs) bring in hard technology such as plant and equipment, as well as soft technologies like information, knowledge, management and marketing skills. FDI into services also enhances export competitiveness of sectors such as tourism. In recent years, offshoring of services has emerged as a distinct feature in global services FDI flows. Offshoring is being done either through the establishment of foreign affiliates or by outsourcing a service to a third-party service provider. While offshoring benefits the sourcing country in terms of cost implications, it enhances export opportunities of the destination country. The growth in IT-related exports from India in recent years could be cited as an instance in this regard.

The Asian Experience

In tune with global trends, the share of services in Asia's FDI stock has risen from 43 per cent in

1995 to more than 50 per cent currently. The share is particularly prominent in case of Hong Kong (93%), Macau (87.4%), Pakistan (71.7%), Singapore (63.8%) Sri Lanka (59%) and Thailand (56.8%). It shows that Asian economies are considerably service-oriented and there exists an efficient infrastructure for services such as finance, telecommunication, commerce, ITES, tourism. It has been observed that majority of the service oriented FDI in Asia are directed to finance, transport, telecommunication, tourism and business services. Cross border M&A sales have contributed to the growth in services FDI in Asia with majority of such cases taking place in North-East and South-East Asia. Another important feature of the Asian story has been the increasing efforts towards attracting services FDI through regional integration. The gamut of trade agreements is being widened to Comprehensive Economic Cooperation Agreement (CECA), with liberalization of the services sector being an important constituent of the latter. The ASEAN India CECA, the Bay of Bengal Initiative for Multi-Sectoral, Technical and Economic Cooperation (BIMSTEC) may be cited in this regard. With such initiatives in place and in the offing, FDI inflows in services in India could be expected to increase substantially.

WTO and Services

Services are also an integral part of the WTO since their inclusion in the Uruguay Round of negotiations, which led to the General Agreement of Trade in Services (GATS). The negotiations are underway since December 2000 and participants in the services negotiations have been exchanging bilateral initial requests since June 2002. India submitted its revised offer covering 11 sectors and 94 sub-sectors in August 2005. India's revised offer covers commitments in new services. Commitments on FDI levels have also been enhanced in existing sectors such as computer related services, engineering R&D, technical testing, telecom, financial services, construction and related engineering services, and tourism services. Given the increasing importance of FDI in services, it is expected that GATS would play a crucial role towards liberalization of service FDI regimes and would contribute towards creating a conducive environment for further growth of FDI in the services sector.

(Eximius Export Advantage, March 2006)



BOOKS/ARTICLES NOTES

BOOKS

Trade in Services: Advantage India
by Shailendra Kumar, Bookwell Publications,
New Delhi, 2005.

ALL will agree that during the mid nineties the world economy as a whole witnessed an unparalleled growth of trade in services. Its growth and significance became so critical that major trading countries and interested parties brought it under the fold of WTO in 1995, thus establishing an agreement known as General Agreement on Trade in Services (GATS) to govern the conduct of entire world trade in services. Today world services trade stands at US\$ 2.10 trillion, a huge jump from its previous days. In fact in many developed countries, it accounts for more than 70 percent of their GDP and in a large number of developing countries it contributes in a sizeable manner, i.e., more than 50 percent to their GDP.

If trade in service- when visualized in terms of growth- has become the buzzword of present multilateral trading regime, its past in the fifties, sixties or early seventies wasn't so insignificant when one takes into account the services it provided in the sectors of transportation and communication. In fact such services have been in vogue for centuries and formed the backbone of industrial revolution, even modern days economies. These services never came under the ambit of direct trading because of its social and voluntary objectives, that it had to serve to the society and the state at large. The other disadvantage with this sector was that because of its peculiar characteristics such as non-quantification, non-storability and simultaneity of production and consumption, services couldn't become tradable, hence remained beyond the fringes of world trade. All this reasons three to four decades ago would have denied any trade officials or economists to

believe that services had anything to do with trade. Actually, trade in services was considered an oxymoron (Bhagwati and Hirsch, eds.).

Today's scenario is a complete turn around. Everything for trade. With the technological advancement and technological innovation, ideas and processes and their applications are getting converted into many unforeseen opportunities, and under a multilateral trading regime these opportunities are creating enormous wealth. Sectors like IT and outsourcing are leading the pack. India being a front runner in this sector is currently enjoying a competitive advantage over other countries. It is a proven fact that India's core strengths lie in services sector, especially in IT and software. But it is not to suggest that its core competence only lies in IT, rather can be expanded to many sectors where knowledge is the key input such as education, health, finance, tourism, accountancy and consultancy.

How India can face such challenges, convert plethora of opportunities into wealth creation and secure a competitive place over other economies in this fast changing dynamic world under a multilateral trading regime governed by WTO is vividly analysed and documented in this book.

The book in total has 16 chapters and encompasses a wide range of sectors. It has virtually dealt with almost all the service sectors under the sun. It goes beyond the traditional areas of finance, insurance, transport, communication and tourism to new and dynamic ones such as IT, electronic commerce, environmental, educational, maritime, energy, audiovisual, advertising and courier services. It assesses the growing implications of multilateral trade liberalization of services in India. It gives a comprehensive account of India's tradable service sector, its present opportunities and future potentials in the context of on-going round of service negotiations. The book has an exhaustive reference

and index section which proves to be helpful particularly when there is a lack of literature and data on the subject.

A striking feature of this book is its long and detailed chapterisation. Some of the chapters which provide useful insights need a special mention. To begin with, Chapter I which deals with international trade in services gives an interesting historical perspective about the trade in services and how it has politically, socially viewed earlier. A clear-cut sociological angle is established to understand the importance of services in post industrialized world and how for the first time it came to be recognized as an activity which is wealth creating in nature.

The Chapter IV titled GATS and its implications for India is analysed in a systematic way as it talks about in detail how the entire activity of services will be governed, and how domestic rules and regulations need to be framed or reframed keeping in mind the requirements of the directions, ways and means of world trade in services is conducted.

As India's economic prowess today lies on mode 4, the book has eminently discussed this burning issue in services negotiations by devoting one chapter. Chapter V which deals with movement of natural persons (Mode 4) takes into account the confusion hovering around the public debate about the migration and movement of natural persons. It forcefully argues in favour of India to demand speedy liberalization of world services trade on mode 4. It goes up to the extent to suggest that India can be a real agenda setter in services negotiations. The chapter also looks at the visa problems, rules and talks of how the movement of natural persons are getting curtailed due to the visa constraint.

Other notable feature of this book is its chapter XV on audiovisual, advertising, and courier services. The point is these services may have formed part of the ongoing negotiations, but are not adequately discussed and neither in the public focus. As they become the drivers of the new economy, there is an imperative need to take them to the board of negotiations. To that extent, the book has given some thoughts to the issue. The potential of this particular sector is clearly visible as world services trade is already technology driven.

The book in totality looks to be useful for people directly or indirectly concerned with the issue.

ARTICLES

Domestic Regulation and the WTO: The Case of Water Services in Developing Countries, by Colin Kirkpatrick, and David Parker, *World Economy*, October 2005, Vol. 28 Issue 10, pp. 1491-1508.

THE paper considers the relationship between national regulatory autonomy and GATS liberalization in water services, since trade liberalization of environmental services and water services in particular has been widely advocated as a means of increasing private sector participation in the water sector in developing countries.

The paper also reviews empirical evidence on the impact of private sector involvement in the provision of water services in developing countries, and a number of reasons why water privatization has been problematic in lower-income countries are identified, including transaction costs and regulatory weaknesses.

The study concludes that developing countries with limited regulatory resources should adopt a cautious approach to services liberalization by sequencing market liberalization measures to match the development of their regulatory institutional capacity.

GATS: Long-term Strategy for the Commodification of Education by Scherrer Christoph, *Review of International Political Economy*, August 2005, Vol. 12 Issue 3, pp. 484-510.

THE General Agreement on Trade in Services (GATS) covers cross-border provision of education. The negotiations which are underway to expand the scope of the liberalization commitments in GATS for educational services have indeed turned to be quite controversial among students, educational professionals and unions. This is shown in the fact that while all the WTO member countries had to sign GATS, only 53 of them have undertaken commitments in education.

The article describes the strategies that allowed education to be seen as a tradable commodity. It analyzes the specific role of GATS procedures and of the already existent GATS commitments in the process

of the commodification of education. It assesses the competitive lead of Anglo-Saxon providers.

It looks at what is at stake in the current round taking the case of the EU as an example. The EU stands for countries that have not yet made many commitments and are now under pressure to liberalize education. The article argues that the concerns about the future impact of GATS are to be taken seriously. In line with the spread of neo-liberal constitutionalism, GATS provides a political and legal framework for deregulation and privatization of education. GATS can be used to secure the power of capital in the long term by privileging private owners of educational services in relation to the public and to the actual providers of these services, the faculty.

Service Providers on the Move - A Closer Look at Labour Mobility and the GATS, *OECD Papers*, 2003, Vol. 3 Issue 2, p. 2.

THIS article deals with mode 4 of the GATS agreement, which concerns movement of natural persons. Global events like increased trade and investment, global business networks, skills shortages in developed countries, development of export capacity in skilled labour by developing countries signify the importance of the issue of labour movement among the WTO member nations. At the same time, the permanence of the GATS commitment and the fluctuating nature of labour markets make it a serious concern among them.

While new forces push for more labour mobility, concerns regarding the impact of temporary movement on domestic labour markets ask for caution. Though temporary movement is indeed different from migration, both are increasingly confused in public debate because of shortage of short-term as well as long-term labour in many countries.

The paper delves into this difficult issue, where temporary movement is important from the point of both the receiving and sending countries. Notwithstanding its small scale in total, temporary movement is very important for some industries and countries. The factor that the commitments in this mode are far more complicated than in some other modes adds to the difficulty. Length of stay is rarely specified and many commitments are subject to economic needs tests and a range of other measures such as quotas and pre-employment

requirements. Access can be further hampered by the lack of recognition, for qualifications obtained overseas and non-transparent or unduly burdensome licensing requirements.

This mode 4 offers an interesting range of challenges in terms of liberalization of trade in services, and the choice before the member nations is how to balance a range of factors in close cooperation with stakeholders at both the national and international levels.

The "Nature" of Environmental Services: GATS, the Environment and the Struggle over the Global Institutionalization of Private Law by Martin Weber, *Review of International Political Economy*, August 2005, Vol. 12 Issue 3, p. 456.

THE article advocates that as trade in services liberalization is proceeding, there has been a concerted effort to challenge and critically examine the implications and reality of GATS agreement in terms of its growing marketization. The area that the article focuses on is global ecology, which has remained a contentious issue in both the regional and multilateral contexts.

The relation of GATS with ecology can be termed as contradictory, in terms of the environmental implications of trade liberalization under GATS, *vis-a-vis* its own GATS Trade in Environmental Services Agenda (TIES). The writer terms the implications to be far reaching, and traces the origin of this contentious issue since its beginning, from the NAFTA negotiations, World Social Forum till it reached its summit in the Doha round of negotiations, which included the commitment to promoting environmental goals, pursuing the comprehensive positioning of WTO rules with reference to MEAs, and the re-affirmation of the fundamental compatibility of invigorated global trade and environmental objectives by making environmental services a part of its trade in services agenda.

The article also defines at length the various nuances of the nature of environmental services trade, starting from the difficulty in identifying such services, and other complexities related to definition of tradable commodity. It also explores the contradictions via a critical deconstruction, which aids the identification of sites of political engagement

vis-a-vis the substantiation of “global modernity” through economic integration.

The General Agreement on Trade in Services (GATS): What’s in it for Social Security?

by Nicola Yeates, *International Social Security Review*, Jan.-Feb. 2005, Vol. 58 Issue 1.

THIS article explores what bearing the GATS has, or will have, on social security policy and administration and what the effects might be. The “built-in agenda” of the GATS to liberalize services trade through subsequent rounds of negotiations emphasizes the need to monitor its implications on national security systems.

It explores the questions of impact through a review of legal, political and policy issues relating to the status of social security within the GATS and the consequences of applying the Agreement’s provisions to social security. The author also analyzes the International Labour Organization’s definition of social security which leaves out private and non-statutory schemes that are determined by market forces, while having a look at the provisions for public and statutory schemes.

The discussion distinguishes between the supply of social security services on the one hand and access to and use of social security services, on the other. It also distinguishes between substantive questions regarding the scope of the GATS and procedural issues regarding governments’ scheduling practices. However, the issue of competition between financial services providers is not clearly indicated in the GATS rules, which can be a major source of contention among countries.

The issue of social security for natural persons moving from one member country to another country on a temporary basis is important. One example of how complicated this issue can be is the Indian Government’s argument regarding this: “The developing countries’ professionals are being subjected to payment of social security contributions in the host country even though they are not eligible to get the benefits from such contributions since their period of stay under GATS is invariably lower than the minimum period required for such benefits to flow to them. The direct or indirect effect of all these limitations is to raise costs of entry and operation for service providers, reduce the scope for

technology and skill transfer, and force substitution of domestic with foreign service personnel.”

The legal uncertainty in safeguarding the interest of movement of natural persons and their social security is leading towards a lot of confusion and doubts in the minds of member countries. The article also highlights the difficulties of securing multilateral cooperation among countries with different levels of “development”, strategic interests and priorities, and social security systems.

GATS and Liberalization of Services: Implications for India

by Krushna Mohan Pattanaik, *Journal of Services Research*, April-September 2006, Vol. 6 Issue 1.

WITH trade in services emerging as a major source of economic growth despite internal constraints and external barriers, understanding the usefulness of domestic regulatory reforms for this sector is important. India’s need to focus on regulatory reforms in relation to services trade is the main focus of this article. It also throws light on what kind of trade barriers India observes in relation to services trade and their impact on this sector.

As analyzed by the author, trade barriers generally serve as protection against competitions. However, in terms of trade in services, it is the inefficiency of the government in dealing with outside competition which leads them to impose barriers, and such hindrances are liable to cause inefficiency.

Liberalization of services necessitates some short and medium term adjustment costs. To reap the benefits of liberalization and to deal with the problems that it might create in the short and medium term, liberalization of services must be accompanied by domestic reforms. The writer analyzes the example of mode 4 trade in services, which is movement of natural persons. Since developing countries have abundant labour, they should try for increased mobility of labour towards developed countries. Developed countries may seek to do mode 3 trade, being capital intensive. Therefore, if a developing country would strive to liberalize, they should liberalize their domestic investment regime to reap better benefits.

In India’s case, liberalization goes hand in hand with successful trade in services. Information technology, being fully liberalized service, reaps in

impressive returns whereas protected sectors like law and accountancy records lower rate of returns. Therefore, in this article, the writer lists some policy prescription for developing regulatory framework under which sector liberalization would not be totally unguarded, and would yet be market oriented. A level playing and fair regime is a must, according to the author, for registering significantly profitable trade in services.

Liberalizing Network Infrastructure Services and the GATS by M. Geloso Grosso, OECD Trade Policy Working Papers, No. 34, OECD Publishing, 2006, <http://econpapers.repec.org/scripts/>

THIS study reviews key issues in liberalizing network infrastructure services including telecommunications, postal/courier, energy, water and sewage in the national and multilateral contexts. The review is done in two parts. While Part I investigates how regulatory objectives can be achieved in liberalized markets by exploring experience with competition in several services sectors previously provided solely by governments, Part II deals with network infrastructure services and GATS in particular.

Liberalization of network infrastructure services in an international context is not easy, as they have enormous regulatory and economic implications, and is a concern for ensuring public policy objectives. The recent increase in trade in these services has in fact led to stronger competition. In developing countries, in particular, liberalization is seen as a way to increase investment and improve infrastructure performance. Due to lack of domestic capacity and finance, when developing country governments decide to open these services to competition, it usually includes a decision to accept foreign participation. The study presents concrete examples from both OECD and non-OECD countries of how governments have used various regulatory instruments to achieve public policy objectives.

Part II of the report suggests that, if appropriately designed, bound liberalization under the GATS can contribute to the advancement of these development goals. By creating a more transparent and predictable legal framework, the GATS can contribute to improve the investment climate and help attract FDI in these sectors. This can in turn provide needed capital and technical and managerial expertise to build and expand

the networks and services. If appropriately designed, bound liberalization under the GATS can contribute to the advancement of national objectives by improving investors' confidence when countries decide to allow private sector participation in these services.

Special and Differential Treatment under the GATS, OECD Trade Policy Working Papers, No. 26, OECD Publishing, 2006, <http://puck.sourceoecd.org/vl=15735643/cl=14/nw=1/rpsv/cgi-bin/wppdf?file=519x44h03t6l.pdf>

THIS report sets out the particular approach to special and differential treatment (SDT) in the General Agreement on Trade in Services (GATS). It presents some initial empirical evidence on the use and effectiveness of SDT provisions in the GATS, both in terms of market access in sectors of export interest to developing countries and services-related technical assistance.

A number of recent OECD studies are cited in the paper to underline the importance of services trade liberalization for developing countries. For example, OECD estimated the welfare effects of services liberalization in a range of developing countries and sectors, including air transport, telecoms, banking, distribution and professional services (OECD, 2005c), and the results suggest that with the exception of one country (Morocco), the gains to each country from unilateral services liberalization far exceed those from unilateral reform in agriculture and manufacturing. Since the production of many services is labour-intensive, it therefore is a potential source of comparative advantage for developing countries.

One hindrance towards liberalization of the services trade, felt by the developing countries is the adjustment costs associated with removing barriers and re-regulation, which immediately may be more visible than the gains. But such costs are moderate and the impact of liberalization on the economy is tremendous. Against this background, attention has focused on the utility and value of existing Special and Differential Treatment (SDT) provisions and the options for how they may be strengthened.

The paper identifies six services sectors of particular export interest to developing countries:

maritime services, health and social services, distribution services, computer and related services, audio-visual services, and construction and engineering services. In the other sectors barring audio-visual, developed countries have given more commitments compared to developing countries. However, under the GATS agreement, the countries have to date (with the possible exception of the sectoral negotiations on basic telecommunications and financial services) only experienced relatively limited market opening. The paper raises one important question as to whether the flexibility in the GATS is one of the main reasons for the lack of progress.

Inter-modal Linkages in Services Trade, by R. Chanda, *OECD Trade Policy Working Papers*, No. 30, OECD Publishing, 2006, <http://econpapers.repec.org/scripts/search.asp>

THE objective of this paper is to provide an integrated perspective on services sector trade and related multilateral negotiations under the GATS so that countries can better leverage cross modal and cross-subsectoral trade opportunities, address constraints in a holistic manner, and maximize the overall gains from services trade. This is discussed in the light of the four modes of supply under the GATS, namely cross-border supply, consumption abroad, commercial presence, and movement of natural persons, termed modes 1, 2, 3, and 4, respectively.

There is much evidence to indicate interdependence across these four modes in services trade. There are essentially two types of linkages, namely positive and negative linkages, which the author illustrates using evidence from companies, countries, and surveys, and from a wide range of services.

The paper is divided into six sections. After the introduction, Section 2 discusses the positive linkages across modes, providing examples from a range of sectors. Section 3 discusses the positive linkages that exist in the information technology (IT), business process outsourcing (BPO) and health services. Section 4 discusses substitution effects across modes. Section 5 discusses the negative linkages across modes in terms of intermodal distortions, and cross-cutting limitations. Section 6 concludes by outlining some domestic policy measures and strategies, as well as modalities for the GATS negotiations, which may help address the linkages across modes.

The extensive range of examples included, sector-wise and company-wise, to show how services are traded through multiple modes of supply offer a useful insight into how other companies can formalize their strategies to enter services trade and stand benefited to the maximum. The paper also lists some possible clusters and associated modes that could be considered to indicate groupings of services under GATS.

The Linkages between Open Services Markets and Technology Transfer, *OECD Trade Policy Working Papers*, No. 29, OECD Publishing, 2006, <http://titania.sourceoecd.org/vl>

THIS study analyzes the role of open services markets in the transfer and diffusion of technology from developed countries to developing countries. It then investigates how open services markets can reduce the cost of technology transfer and help to build better absorptive capacities.

Part 1 of the study highlights the interlinkages between the different modes of supply under the GATS and how this help in improving economic status of the receiving countries. When foreign firms create subsidiaries in the receiving economy, several types of linkages can be created with local firms either as suppliers (backward linkages) or customers (forward linkages), or even as competitors (horizontal linkages). Information and knowledge are likely to flow from foreign services providers to the local economy. This would point to the importance of interlink between all the four modes of supply which contributes to technology diffusion, and therefore, it is critical for trade policies to allow foreign technologies to enter the domestic market.

In Part II, the study investigates how open services markets can reduce the cost of technology transfer and help to build better absorptive capacities, illustrating it with examples from five services sectors that play a central role in the process: business services, telecommunications, financial services, higher education and training, and logistics services.

Part III analyzes the productivity gains from services trade liberalization and how open services markets encourage the diffusion of technology inside the receiving economy.

The paper also presents policy implications and future directions in this regard. ●



DOCUMENTS

Council for Trade in Services Special Session

Special Session of the Council for Trade in Services

REPORT BY THE CHAIRMAN TO THE TRADE NEGOTIATIONS COMMITTEE

Since my last report to the Trade Negotiating Committee in April, the Council for Trade in Services in Special Session met informally on 8 May, and formally on 24 May and 23 June 2006.

I. Review of Progress

1. Fifteen groups met for the second time from 15-23 May to continue plurilateral negotiations in accordance with Annex C of the Hong Kong Declaration. Intensive bilateral talks took place during this period as well. While Members continued to discuss technical issues and exchange information in a very positive spirit, they admitted that these meetings were not as productive as the previous round in March and April. They noted that lack of progress in other areas of negotiations (especially in agriculture and NAMA) had impact on the services negotiations. Although some Members stressed that the services negotiations were important in their own right and should go ahead in accordance with the Hong Kong mandate, others made it clear that their ability to make services commitments would depend on progress outside of the services negotiations. Nevertheless, Members all agreed that the momentum generated in the services negotiations should be maintained. A number of Members indicated that they were holding domestic consultations with a view to submitting their revised offers by the end of July, as set out in the Hong Kong Declaration.

2. Members noted that the implementation of the LDC Modalities was an important subject in the services negotiations. They particularly noted that mechanisms for accord special priority to LDCs under Article IV:3 of the GATS shall be developed

and completed before 31 July of this year as set out in the Hong Kong Declaration. They recognized that if they were to meet the deadline, they would need to agree on a text as soon as possible. While substantive discussions were held in both formal and informal meetings, based on the text submitted by the LDC Group, Members still had divergent views on a number of important issues relating to the implementation of the LDC Modalities. In addition, the delegation of Zambia on behalf of the LDC Group presented the Group's collective request in Mode 4, contained in Job (06)/155. The LDC Group requested Members to make commitments in four categories of natural persons, with each category applying to a number of specified sectors of export interest to this group.

3. With regard to the subsidiary bodies, the Chair of the Working Party on Domestic Regulation (WPDR) reported that Members had continued to hold substantive discussions on the proposals, including proposed legal texts, with regard to regulatory disciplines under Article VI:4 of the GATS with a view to fulfilling the Hong Kong ministerial mandate. While the submission of new and revised proposed texts generated considerable momentum in negotiations, the Working Party was still facing the arduous task of bridging important gaps among delegations on the content of the disciplines. The Working Party on GATS Rules (WPGR) continued its discussions on emergency safeguard measures,

subsidies and government procurement. While a number of issues had been raised and discussed, overall, there was not much change in the long-held positions on various issues. The Committee on Specific Commitments (CSC) took note of the Chairman's suggestion of editorial conventions for the submission of the second round of revised offers. The Committee also held discussions on the relationship between old and new commitments,

the scheduling issue of residency requirements, as well as classification issues.

II. Future Work

4. The next formal meeting of the Special Session of the Council for Trade in Services is to take place on 14 July 2006.

(TN/S/28, 31 July 2006; www.wto.org.)

Council for Trade in Services Special Session

Special Session of the Council for Trade in Services

REPORT BY THE CHAIRMAN TO THE TRADE NEGOTIATIONS COMMITTEE

1. The Hong Kong Ministerial Declaration instructs WTO bodies to expeditiously complete the consideration of proposals on S&D treatment and report periodically to the General Council, with the objective of ensuring that clear recommendations for a decision are made no later than December 2006. In the light of that decision I make the following report.

2. Since the Hong Kong meeting, the Special Session of the Council for Trade in Services has addressed the issue of S&D treatment at four formal meetings and two informal meetings. Members have continued to view this task as one of the most

important to be addressed by the Special Session in 2006. I have urged Members to contribute further thinking, and make new submissions on the issue of S&D treatment in the GATS.

3. At the formal meeting of the Special Session which took place on 14 July, the African Group presented a refined version of an earlier text on this issue. Delegations indicated that they would prefer to discuss the paper at the next meeting of the Council, once they had time to study its contents.

(TN/S/30, 31 August 2006; www.wto.org.)

Working Party on GATS Rules

Government Procurement in Services

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication, dated 19 June 2006, from the delegation of the European Communities is being circulated to the Members of the Working Party on GATS Rules.

1. In its communications on government procurement in services of July 2002, May 2003, May 2004 and June 2005, the European Communities (hereinafter the EC) submitted proposals for a framework that could be developed under the GATS, including an Annex to the GATS on procedural rules for government procurement and the possibility to make specific commitments in GATS Schedules to open up to international competition government procurement in services.

These communications underlined the flexibility of such framework and the benefits that could be drawn from it. The underlying principle would be that each WTO Member would undertake relevant government procurement commitments only in the sectors it wishes to open to international competition in accordance with the procedural rules laid down in the Annex.

2. In its communication submitted in May 2004 (S/WPGR/W/48), the EC gave concrete examples

showing that undertaking government procurement commitments under the GATS was feasible. In its communication of June 2005 (S/WPGR/W/52), the EC defined a set of procedural rules to be developed in an Annex to the GATS on government procurement in services.

3. The EC is hereby putting forward a new contribution that aims at proposing the text of this Annex to the GATS on government procurement in services. This contribution further builds upon the WTO Secretariat Note S/WPGR/W/49 on the government procurement provisions contained in economic integration agreements. As Singapore had underlined in its Statement of 24 November 2004, most of the agreements reviewed in that Secretariat Note contain procedural rules typically covering such topics as non-discrimination, valuation of contracts, technical specifications, procurement methods, qualification of suppliers, procedural rules regarding invitations to participate, time limits for tendering and delivery, tender documentation, and award of contracts. These elements provide the structure of an Annex to the GATS, and the EC communication of June 2005 has précised the types of rules that could be developed under the relevant headings.

4. Going one step further, the text of the hereby proposed Annex to the GATS on government procurement borrows as much as possible from the provisions contained in existing economic integration agreements and already in force. Given the need for the proposed provisions to be adapted to the situation of developing countries, as Singapore had emphasized in its communication of November 2004, a specific S&D regime taking into account the specific development, financial and trade needs of developing countries has been set up in Title 5.

I. Summary of the Proposed GATS Annex on Government Procurement in Services

Title 1: Objectives

5. The proposed text indicates that the Annex results from the negotiations mandated by Article XIII:2 of the GATS. It confirms that all the provisions of the GATS apply to government procurement of services, with the exception of Articles II, XVI and XVII (in accordance with Article XIII:1).

Title 2: Definitions

6. This Title defines a number of terms used in the text of this Annex, in particular open, selective and limited tendering procedures.

7. For the sake of clarity, it is précised that the term "procuring entity" refers only to entities listed in the Schedule of specific commitments of each Member, so that the procuring entities encompassed by the commitments of a Member are clearly defined.

Title 3: Scope

8. The scope of the Annex is defined in accordance with the wording of GATS Article XIII:1. For the purpose of clarity, since a number of provisions of the draft Annex relate to procedural rules affecting individual procurements of services, it is specified that any action by a covered procuring entity relating to government procurement falls under the scope of this Annex.

9. As suggested in the latest EC communication, the text includes a provision précising that this Annex covers government procurement of services, defined as government procurement contracts in which services are the primary subject of the contract.

10. The text states that Members have the possibility to negotiate and undertake commitments relating to government procurement of services in their Schedules of specific commitments.

11. The Annex states that, with the exception of the MFN clause, its provisions only apply to sectors in which specific government procurement commitments have been taken under the Schedule, with the limitations set therein. Thus, apart from the MFN treatment, the scope of these provisions is limited to contracts pertaining to the sectors and the procuring entities defined in each Member's schedule.

12. The case where a contract involves several service sectors, that raised discussions in the Working Party, is addressed through a specific provision.

13. A provision also excludes covered procurements intended to enable an activity when this activity becomes exposed to competition in a Member territory.

Title 4: Exclusions and Exceptions to this Annex

14. Article XIV and XIVbis of the GATS already include a range of exceptions, that do not need to be repeated in the Annex on government procurement. Parties to the GPA have negotiated additional exceptions, in particular in order to protect intellectual property or concerning measures based on social grounds. The proposed text provides for similar exceptions.

Title 5: Special and Differential Treatment for Developing Countries

15. It is recalled that the positive list structure of the GATS and the flexibility of the proposed approach, notably the possibility to schedule partial commitments including specific limitations, mean that WTO Members would retain full discretion about the coverage of the commitments they would undertake to open their government procurement markets to international competition. In addition to this "built-in flexibility", this Title provides for two other kinds of flexibilities helping developing countries to open up progressively their government procurement markets in the service sectors they see fit:

16. The first provision is the possibility for developing countries to make use of a price preference programme or an offset for a transitional period, under certain conditions. The second provision allows a developing country Member to apply an implementation period if necessary to bring its domestic regime into conformity with the provisions of this Annex provided it complies with basic principles of national treatment and non-discrimination. The use of these special provisions would have to be mentioned in the Schedule of specific commitments of the concerned Members.

Title 6: General Principles

17. The text provides for National Treatment, subject to the limitations indicated in a Member's schedule.

18. As suggested in the previous communications, the text provides for the application of the MFN treatment to government procurement in services. This provision would apply across the board as suggested through previous discussions held in the Working Party on GATS Rules.

19. This Annex provides for a one-off possibility to schedule MFN exemptions at the time of its entry into force, to take account of the fact that MFN exemptions relating to government procurement were not scheduled at the time of entry into force of the GATS because Article II GATS was not applying to government procurement. The scheduling of MFN exemptions relating to government procurement could follow the usual framework of the GATS lists of MFN exemptions, with an additional list attached to this Annex.

20. In addition, the suggested text includes an exception to the MFN principle to ensure that the more favourable treatment that GPA parties may accord to each others in the framework of the GPA regime is not extended on an MFN basis to non GPA parties.

21. A specific paragraph provides basic principles to ensure a proper use of electronic means, more and more commonly used in procurements.

22. Another general principle provided by the text is the absence of application of rules of origin for services supplied under government procurement different from the rules applied for the same services in the normal course of trade.

23. Like in many economic integration agreements, the suggested Annex includes a provision that prohibits offsets, except under the special and differential treatment for developing countries.

Title 7: Thresholds and Valuation Rules

24. Threshold values would be indicated in the Members' Schedules. Although the present framework is very flexible, the experience pleads for the existence of only two thresholds: one for construction services, and another one for all other services. In addition, the EC reiterates the practical interest of harmonized thresholds amongst Members.

25. The suggested Annex includes provisions common to most of economic integration agreements regarding the valuation of contracts. In particular, Members' procuring entities are not allowed to split or divide government procurement contracts with the intention of avoiding or circumventing the application of specific commitments for procurement above certain thresholds.

Title 8: Publication of Procurement Information

26. The text requires the publication of any measure of general application and general procedure covering government procurement in services in an official publication to be listed in the Schedule of specific commitments.

Title 9: Publication of Notices

27. Effective access to government procurement opportunities is closely linked to competitive and transparent procedural rules. This Title covers the publication of a notice of intended procurement and the information it should include.

28. The draft Annex provides the possibility of publishing notices of planned procurement, allowing service suppliers to be informed in advance of future procurements. As an additional flexibility, entities operating in the utilities sectors may use such a notice of planned procurement as a notice of intended procurement, under some conditions.

Title 10: Information on Intended Procurement

29. The proposed Annex indicates simple usual rules: the information made available should allow suppliers to submit tenders in a responsive manner. Besides, the procuring entity should reply to requests from suppliers for documentation or information.

30. The suggested text provides for simple and usual rules regarding technical specifications. These should allow tenders to provide a wide range of possible technical solutions. In particular, technical specifications shall be in terms of performance or functional requirements rather than design or descriptive characteristics, and based on recognized standards.

Title 11: Conditions for Participation

31. This Title provides for a set of common rules regarding non discrimination, transparency, and openness of the qualification process for suppliers.

32. Specific provisions address the case of selective tendering, with procedural rules regarding invitations to participate and examination of requests by suppliers for participation in a procurement.

33. The Annex allows multi-use lists of suppliers, under some conditions relating to applications for

qualification and inclusion in the list. Entities operating in the utilities sector are provided with an additional flexibility with the possibility to use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement under a few conditions.

34. Finally, the proposed text is intended to ensure that service suppliers are informed of the outcome of their requests for qualification, or of the termination of their qualification, with appropriate explanations upon request.

Title 12: Time Periods

35. The text provides for general principles governing the fixing of time periods by Members. In addition, it is suggested to adopt a common range of time periods. Taking into account the information provided by the WTO Secretariat about existing provisions on this matter in plurilateral or bilateral agreements, the text indicates as a general rule a minimum period of 40 days between the date of publication of the notice of intended procurement and the final date for the submission of tenders.

36. When the procuring entity requires suppliers to satisfy qualification requirements in order to participate in the procurement, a minimum period of 25 days is provided between the date of publication of the notice of intended procurement, and the final date for submission of applications to be invited to tender by suppliers. A period of 40 days is provided between the date of issuance of the invitation to tender and the final date for submission of tenders.

37. The text provides that these limits may be reduced in certain specified circumstances, but to no less than 10 days.

Title 13: Negotiation

38. As it is the case in some agreements, as highlighted by document S/WPGR/W/49, the Annex opens the possibility of conducting negotiations.

Title 14: Limited Tendering

39. The Annex allows the use of limited tendering, under conditions and circumstances closely circumscribed as it is the case in several economic

integration agreements: for example in the absence of suitable response to a prior procurement, situations of extreme urgency brought about by events unforeseeable by the procuring entity, and objective necessity or relevance to contract with a particular supplier.

Title 15: Treatment of Tenders and Contract Award

40. The text asserts basic principles relating to the procedures of treatment of tenders and the conditions to be met by the latter to be considered for award.

41. The general rule is that contracts are awarded either to the lowest tender or to the tender determined to be the most advantageous in terms of the specific evaluation criteria set earlier in the procurement notice or tender documentation. A range of possible award criteria is provided in the text.

Title 16: Transparency of Procurement Information

42. The proposed text is intended to ensure that tenderers are promptly informed of the outcome of the award process and have access upon request to explanations relating to the rejection of their tenders. In addition, procuring entities are required to publish a notice of contract award.

Title 17: Domestic Review

43. Without prejudging the outcome of ongoing discussions on Domestic Regulations, and for the purpose of specifically implementing GATS Article VI:2 for government procurement of services, a range of measures is provided under this Title, relating to challenges of a breach of the Annex by service suppliers. These measures are related to, but not only, the provision of a review procedure, consultations between a complaining supplier and the concerned procuring entity, designation of an impartial administrative or judicial authority to receive and review a challenge, judicial review of review bodies, procedures for interim measures, or corrective or compensation actions.

II. Conclusions

44. The EC looks forward to discussing this proposed Annex to the GATS on government procurement in services.

ANNEX TO THE GATS ON GOVERNMENT PROCUREMENT

Title 1: Objectives

1. Pursuant to the mandate given by Article XIII:2 of the Agreement, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting government procurement. With the exception of Articles II, XVI and XVII of the Agreement, and unless otherwise stated, all provisions of the Agreement are applicable to the matters regulated in this Annex.

Title 2: Definitions

2. For the purposes of this Annex:

- (a) *Commercial services* mean services of a type that are generally sold or offered for sale in the commercial market place to, and customarily purchased by, non-governmental buyers for non-governmental purposes;
- (b) *Limited tendering procedures* are those procedures where a procuring entity contacts a supplier or suppliers of its choice only under the circumstances specified in Paragraph 50;
- (c) *Multi-use list* means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;
- (d) *Notice of intended procurement* means a notice published by a procuring entity inviting interested suppliers to submit request for participation and tenders;
- (e) *Procuring entity* means an entity covered under specific commitments on government procurement in the Schedule of each Member;
- (f) *Offsets* in government procurement means any condition or undertaking that encourage local development or improve a Member's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions;
- (g) *Open tendering procedures* are those procedures whereby any interested supplier may submit a tender;

- (h) *Selective tendering procedures* are those procedures whereby, consistent with Paragraphs 37 and 38 and other relevant provisions of this Annex, only suppliers satisfying the conditions for participation may submit a tender.

Title 3: Scope

3. This Annex applies to laws, regulations, requirements, or any action by a covered procuring entity, concerning the procurement of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

4. For the purposes of this Annex, covered procurement includes the procurement of goods incidental to the supply of services if the value of these incidental goods does not exceed that of the services themselves, but not goods contracts *per se*.

5. In accordance with GATS Article XVIII, Members may negotiate commitments with respect to measures within the scope of Paragraph 3 and inscribe them in their Schedules.

6. With the exception of Paragraph 16, the provisions of this Annex apply to measures concerning procurement of services only in the sectors where specific commitments on Government Procurement have been undertaken according to a Member's Schedule of specific commitments, under the conditions and limitations set therein.

7. In case a single procurement contract involves more than one service sector, it shall be subject to the provisions of this Annex if all the service sectors concerned are covered by a Member's commitments pursuant to this Annex. In such a case, and where the provisions of this Annex provide for different obligations, it shall be subject to the provisions of the Annex applying to the predominant service sector concerned.

8. Procurements covered under a Member's specific commitments on government procurement and intended to enable an activity by a procuring entity shall not be subject to the provisions of this Annex if, in the Member in which it is performed, the activity is directly exposed to competition on markets. Each Member shall notify the Council for Trade in Services about such activities.

Title 4: Exclusions and Exceptions to this Annex

9. Nothing in this Annex shall be construed to prevent any Member from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition, or war materials, or to procurement indispensable for national security or for national defence purposes.

10. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Members where the same conditions prevail or a disguised restriction on international trade, nothing in this Annex shall be construed to prevent any Member from imposing or enforcing measures:

- (a) necessary to protect intellectual property; or
- (b) relating to services of handicapped persons, philanthropic institutions, or prison labour.

Title 5: Special and Differential Treatment for Developing Countries

11. In the implementation and administration of this Annex, Members shall take special consideration of developing countries' development, financial and trade needs and circumstances. In this context, there shall be appropriate flexibility for individual developing country Members for transitional measures as provided for under Paragraphs 12 and 13.

12. Based on its development needs, a developing country Member may adopt or retain one or more of the following transitional measures for a maximum period of 10 years, in accordance with a phase-out schedule, set out in its Schedule of specific commitments, and in a manner that does not discriminate among the Members:

- (a) a price preference programme, provided that the programme:
 - (i) provides a preference only for the part of the tender incorporating services originating in the developing country Member applying the preference or services originating in other developing countries Members that have preferential agreements with the developing country Member applying the preference; and

- (ii) is transparent, and the preference and its application in the procurement are clearly described in the notice of intended procurement covered by this Annex;
- (b) an offset, provided that any requirement for, or consideration of, the imposition of the offset is clearly stated in the notice of intended procurement and the notice inviting suppliers to apply for participation in procurement covered by this Annex;
13. In order for a developing country Member to bring its measures into conformity with this Annex, it may apply a specified implementation period, which shall be the period necessary for it to adopt measures relating to specific provisions of this Annex, provided that the developing country Member complies with Paragraphs 15 and 16.
14. Any developing country Member wishing to apply an implementation period under Paragraph 13 shall list in its Schedule of specific commitments the implementation period, and where applicable, specific procedural obligations and any interim measures that it will take with regard to those obligations.

Title 6: General Principles

National treatment and non-discrimination

15. With respect to all measures within the scope of this Annex and subject to any conditions and qualifications set out in its Schedule of specific commitments, each Member shall accord to services and service suppliers of any other Member treatment no less favourable than that it accords to its own like services and service suppliers.
16. (a) With respect to any measure within the scope of this Annex, each Member shall accord to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.
- (b) A Member may maintain a measure inconsistent with (a) provided that such a measure is listed at the date of entry into force of the present Annex. The list of such exemptions shall be added to this Annex.
- (c) By way of derogation from (a), where a Member which is also a Party to the Agreement on Government Procurement (GPA) grants, as a

result of its obligations under the GPA, more favourable treatment to services and service suppliers of another GPA Party than it does to WTO Members which are not GPA Parties, it shall not be required to grant such treatment to services and service suppliers of any other Member.

Conduct of procurement

17. A procuring entity shall conduct covered procurement in a manner that is consistent with this Annex, using methods such as open tendering, selective tendering and limited tendering.

Use of electronic means

18. When conducting covered procurement by electronic means, a procuring entity shall:

- (a) ensure that the procurement is conducted using information technology systems and software which are generally available and interoperable with commonly used information technology systems and software, including those related to authentication and encryption of information; and
- (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt, and the prevention of inappropriate access.

Rules of origin

19. For purposes of covered procurement, no Member may apply rules of origin to services supplied by another Member that are different from the rules of origin the Member applies at the same time in the normal course of trade to supplies of the same services from the same Member.

Offsets

20. With regard to covered procurement, procuring entities shall not seek, take account of, impose, or enforce offsets, except in the situation and under the conditions mentioned in Paragraph 12.

Title 7: Thresholds and Valuation Rules

Thresholds

21. The provisions of this Annex apply to any procurement contract of a value of not less than the relevant threshold indicated in the concerned Member's Schedule of specific commitments on government procurement.

Valuation

22. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Annex; and
- (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including premiums, fees, commissions, interest; and where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases. When procurement involves the supply of incidental goods or services in addition to its main object, the valuation of the procurement includes the valuation of these incidental goods or services.

Title 8: Publication of Procurement Information

23. Each Member shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clauses that is mandated by a law or regulation and is incorporated by reference in notices and tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public and that is listed in its Schedule of specific commitments.

Title 9: Publication of Notices*Notice of intended procurement*

24. For each intended covered procurement, except in the circumstances described in Paragraph 50, a procuring entity shall publish a notice of intended procurement inviting interested suppliers to submit tenders or, where appropriate, request for participation. Each such notice shall be published in the appropriate medium referred to in Paragraph 23, and shall be accessible during the entire period established for tendering for the relevant procurement.

25. Each notice of intended procurement shall include a description of the intended procurement, any conditions that suppliers must fulfil to participate in the procurement, the name of the entity issuing the notice, the address where suppliers may obtain all documents relating to the procurement, the time limits for submission of tenders or, where applicable, any time limits for the submission of requests to participate in the procurement, a list and brief description of any conditions for participation of suppliers, and the dates for delivery of the services to be procured.

Notice of planned procurement

26. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans. This notice should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

27. Entities operating in the utilities sector may use a notice of planned procurement as a notice of intended procurement provided that it includes as much of the information in Paragraph 25 as is available.

Title 10: Information on Intended Procurement*Tender documentation*

28. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall provide at least a complete description of the procurement, any conditions for participation of suppliers, all criteria to be considered in the awarding of the contract, and any other terms or conditions, including terms and conditions of payment.

29. Where procuring entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, procuring entities shall make promptly available the tender documentation at the request of any supplier of another Member.

30. Procuring entities shall promptly reply to any reasonable request for relevant information relating to the intended procurement, on condition that such information does not give that supplier an advantage over its competitors.

Technical specifications

31. In prescribing the technical specifications for the services being procured, a procuring entity shall, where appropriate:

- (a) specify the technical specification in terms of performance and functional requirement rather than design or descriptive characteristics;
- (b) base the technical specification on international standards, where such exists; otherwise on national technical regulations, recognized national standards, or building codes.

32. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should, where appropriate, include words such as "or equivalent" in the tender documentation and consider tenders of equivalent services that demonstrably fulfil the requirements of the procurement.

33. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.

Title 11: Conditions for Participation

General

34. Any conditions for participation in procurement shall be non discriminatory and limited to conditions essential to ensure that the potential supplier has the capability to fulfil the requirements of the procurement and the ability to execute the contract in question.

35. Nothing in this Annex shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations or conviction for serious crime such as participation in criminal organizations.

36. Procuring entities shall recognize as qualified suppliers all suppliers who meet the conditions for participation in a particular intended procurement. Procuring entities shall base their qualification decisions solely on the conditions for participation that have been specified in advance in the notice of intended procurement or in the tender documentation.

Selective tendering

37. A procuring entity that intends to use selective tendering shall, in the notice of intended procurement, invite suppliers to submit a request for participation and shall give a description of the intended procurement, the qualification requirements, the name and the address of the procuring entity, and the time-limits for the submission of the request to participate.

38. Where a supplier submits a request to participate, and all required documents relating thereto within the time-limit provided for in Paragraph 46, a procuring entity, whether or not it uses a multi-use list, shall examine the request and may not exclude the supplier from consideration in respect of the procurement on the grounds that the procuring entity has insufficient time to examine the application.

Multi-use lists

39. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is published annually, or made available continuously by electronic means in one of the appropriate media listed in the Schedule of specific commitments.

40. The notice referred to in Paragraph 39 shall include at least a description of the services for which the list may be used, the conditions for participation to be satisfied by suppliers, the name and address of the procuring entity, and the period of validity of the list as well as the means for its renewal or termination.

41. Procuring entities maintaining multi-use lists shall ensure that suppliers can apply for qualification at any time, and that all qualified suppliers are included in the lists within a reasonably short time.

42. Entities operating in the utilities sector may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

- (a) the notice sets out, in addition to the information required in Paragraph 40, as much of the information required in Paragraph 25 as is available and contains a statement that it constitutes a notice of intended procurement;
- (b) the procuring entity promptly provides to suppliers who have expressed an interest in a given procurement sufficient information to

permit them to assess their interest in the procurement;

- (c) a supplier having applied for inclusion in the multi-use list in accordance with paragraph 41 shall be allowed to tender in a given procurement, only if there is sufficient time to examine whether it satisfies the conditions for participation.

Information on procuring entities' decisions

43. A procuring entity shall promptly advise any supplier that requests qualification of its decision as to whether the supplier is qualified. Where a procuring entity rejects a supplier's application to qualify or ceases to recognize a supplier as qualified, the entity shall inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Title 12: Time Periods

44. Time-limits established by the procuring entities during a procurement process shall be sufficiently long to enable suppliers to prepare and submit requests for participation where appropriate, and responsive tenders, in relation to the nature and complexity of the procurement, the extent of subcontracting anticipated, the normal time for transmitting tenders by mail from foreign as well as domestic points, and the possibility for the procuring entities to send notices or give access to tender documentation through electronic means.

45. Except insofar as provided in Paragraph 47, procuring entities shall provide no less than 40 calendar days between the date on which the notice of intended procurement is published and the final date for the submission of tenders.

46. Where a procuring entity requires suppliers to satisfy qualification requirements in order to participate in a procurement, the entity shall provide no less than 25 calendar days between the date on which the notice of intended procurement is published and the final date to submit their application to be invited to tender and no less than 40 calendar days between the date of issuance of the invitation to tender and the final date for submission of tenders.

47. Under the following circumstances, procuring entities may establish a time period for tendering that is shorter than the periods referred to in Paragraphs 45 and 46, provided that such time period is sufficiently long to enable suppliers to

prepare and submit responsive tenders and is in no case less than 10 calendar days prior to the final date for the submission of tenders:

- (a) where a notice of planned procurement under Paragraph 26 has been published 40 days and not more than 12 months in advance;
- (b) in the case where the procuring entity procures commercial services, the procuring entity may reduce the time period referred to in Paragraph 45 to not less than 15 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation, and that tenders can be received by electronic means;
- (c) where a state of urgency duly substantiated by the procuring entity renders impracticable the periods specified in Paragraphs 45 and 46.

Title 13: Negotiation

48. A Member may provide for its procuring entities to conduct negotiations:

- (a) in the context of procurements in which they have indicated such intent in the notice of intended procurement; or
- (b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

49. A procuring entity shall:

- (a) ensure that any elimination of tenderers in negotiations is carried out in accordance with the evaluation criteria set out in the notices or tender documentation; and
- (b) when negotiations are concluded, provide a common deadline for the remaining tenderers to submit any new or revised tenders.

Title 14: Limited Tendering

50. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Members, or that protects domestic suppliers, a procuring entity may use a limited tendering procedure only in the following circumstances and subject to the following conditions, where applicable:

- (a) provided that the requirements of the tender documentation are not substantially modified,

- where no tenders were submitted or no suppliers applied to meet the conditions for participation, or where no tenders that conform to the essential requirements of the tender documentation were submitted or where no suppliers satisfied the conditions for participation;
- (b) where the services can be supplied only by a particular supplier and no reasonable alternative or substitute services exist for the following reasons:
- (i) the requirement is for a work of art;
 - (ii) the protection of patents, copyrights or other exclusive rights;
 - (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier of services that were not included in the initial procurement where :
- (i) a change of supplier for such additional services cannot be made for economic or technical reasons, such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and
 - (ii) such separation would cause significant inconvenience or substantial duplication of costs to the procuring entity;
- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the services could not be obtained in time under open or selective tendering procedures;
- (e) where a procuring entity procures a prototype or a first service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first service may include limited supply in order to incorporate the results of field testing and to demonstrate that the service is suitable for supply in quantity to acceptable quality standards, but does not include quantity supply to establish commercial viability or to recover research and development costs;
- (f) for new services consisting of the repetition of similar services which conform to a basic project for which an initial contract was awarded following an open or selective procurement method and for which the procuring entity has indicated in the notice of intended procurement concerning the initial service, that a limited procurement method might be used in awarding contracts for such new services;
- (g) in the case of a contract awarded to a winner of a design contest provided that:
- (i) the contest has been organized in a manner that is consistent with the principles of this Annex, notably as regards the publication of a notice of intended procurement; and
 - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.
51. Each Member shall ensure that, whenever limited tendering is used, the procuring entity shall maintain a record or prepare a written report providing specific justification for the contract awarded.
- Title 15: Treatment of Tenders and Contract Award**
52. Procuring entities shall receive and open bids from suppliers upon procedures and conditions guaranteeing the respect of the principles of transparency and non-discrimination.
53. To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be submitted by a supplier which complies with any conditions for participation.
54. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and whose tender is either the lowest price or the tender that the entity has determined to be the most advantageous solely on the basis of the requirements and evaluation criteria specified in the notices or tender documentation. In the latter case, award criteria shall be linked to the subject matter of the contract in question, and may include amongst others, quality, price, technical merits, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance and delivery period of completion.

55. A procuring entity shall not cancel procurement or modify awarded contracts in a manner that circumvents the obligations of this Annex.

Title 16: Transparency of Procurement Information

56. Procuring entities shall promptly inform tenderers of decisions regarding the award of the contract and, on request, in writing. Procuring entities shall, on request, provide any eliminated tenderer of the reasons for the rejection of its tender and of the characteristics and relative advantages of the selected tender.

57. Procuring entities shall promptly publish after the award of the contract a notice in an officially designated publication that may be an electronic or paper medium. Such notice would at least include a description of the services procured, the name and address of the procuring entity, the name and address of the successful tenderer, the value of the successful tender and the date of award.

Title 17: Domestic Review

58. Each Member shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a supplier may challenge a breach of this Annex, arising in the context of a covered procurement, in which it has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

59. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach of this Annex, each Member shall encourage the procuring entity and supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is prejudicial neither to the supplier's participation in ongoing or future procurement nor to the supplier's rights to seek corrective measures under the administrative or judicial review procedure.

60. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

61. Each Member shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge of a supplier arising in the context of a covered procurement.

62. Where a body other than an authority referred to in Paragraph 61 initially reviews a challenge, the Member shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity that is the subject of a challenge.

63. A review body that is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
- (b) the participants to the proceedings shall have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) the participants to the proceedings shall have access to all proceedings;
- (d) decisions or recommendations relating to supplier challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

64. Each Member shall adopt or maintain procedures that provide for:

- (a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing; and
- (b) corrective action where a review body has determined that there has been a breach of this Annex or compensation for the loss or damages suffered, which may be limited to the costs for the preparation of the tender or the costs relating to the challenge.

(S/WPGR/W/54, 20 June 2006; www.wto.org)

Council for Trade in Services
Special Session

Special Session of the Council for Trade in Services

REPORT BY THE CHAIRMAN TO THE TRADE NEGOTIATIONS COMMITTEE

The Council for Trade in Services in Special Session met on 7 April 2006.

I. Review of Progress

1. Members noted that the plurilateral request-offer negotiations had been proceeding very smoothly. Twenty plurilateral meetings took place from 28 March to 6 April between groups of requesting and requested Members, based on 22 collective requests submitted in accordance with paragraph 7 of Annex C of the Hong Kong Ministerial Declaration. Members agreed that these plurilateral meetings were very helpful in focusing on specific sectors and modes of supply. The exchanges between Members at these meetings were highly informative and constructive, including clarification of technical issues and information sharing on domestic regimes and regulatory structures. Members confirmed that both developed and developing Members, whether requesting or requested, had benefited from the substantive and frank discussion. The strong presence of capital-based sectoral experts proved to be very important in enhancing the value of the plurilateral meetings.

2. Members acknowledged that the momentum achieved in the plurilateral process should be maintained and should lead to substantive progress through the submission of revised offers by the end of July. For this purpose, they agreed that more effort and stronger engagement was needed, especially in capitals and at a higher level.

3. Members stressed the importance of follow-up to this round of plurilateral meetings. While the plurilateral process was very helpful, Members emphasized that the bilateral request-offer negotiations remained the main approach and were still strategically important for achieving the final results in the Doha Round. Members broadly supported the suggestion that another round of request-offer meetings, both plurilateral and bilateral, take place starting on 15 May, so as to keep the momentum and expedite the overall process of services negotiations.

4. With regard to the subsidiary bodies, the Chair of the Working Party on Domestic Regulation (WPDR) reported that Members had worked in both informal and formal meetings with a view to fulfilling the Hong Kong ministerial mandate. At these meetings Members held

substantive discussions on the proposals with regard to regulatory disciplines under Article VI:4 of the GATS. The Chair of the Working Party on Domestic Regulation urged Members to produce new and revised proposals with specific language or text as soon as possible as a first crucial step in the drafting process. The Working Party on GATS Rules (WPGR) continued its discussions on emergency safeguard measures, subsidies and government procurement. While a number of issues had been raised and discussed, overall, there was not much change in the long-held positions on various issues. The Committee on Specific Commitments (CSC) continued its examination on classification and scheduling issues. The Committee also held a preliminary discussion on the relationship between old and new commitments.

5. It is very encouraging that, since Hong Kong, the services negotiations have been proceeding in a most positive manner and in full compliance with the timelines agreed in the Hong Kong Ministerial Declaration. I am confident that the progress in the services negotiations will have a positive impact on negotiations in other areas.

II. Other Items

6. Under the agenda item "Implementation of the LDC Modalities", the delegation of Zambia on behalf of the LDC group submitted a communication proposing a mechanism to provide special priority to LDCs pursuant to Article IV:3 of the GATS. Canada and the United States presented their written responses to questions previously raised by the LDC group regarding the implementation of the LDC modalities. An informal meeting was scheduled to take place very soon to discuss further the issue of LDC modalities, especially the latest proposal made by the LDC group.

III. Future Work

7. As agreed, another round of request-offer meetings will take place from 15-23 May. A timetable for these meetings was produced and distributed to Members on 25 April. The next formal meeting of the Special Session of the Council for Trade in Services is to take place on 24 May 2006.

(TN/S/27, 26 April 2006; www.wto.org)



SELECT PUBLICATIONS

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डा० रवि शंकर, संतोष कुमार वर्मा (सम्पादक); 2005, ₹ 125/-
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