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TRADING UP

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Developing Countries and Trade in Services

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In this Issue...

Developing Countries and Trade in Services

Editorial

Capacity Building on Services Issues: An Imperative

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Capacity Building on Services Issues: An Imperative

The Doha Development Round is moving towards finality. The agriculture divide between the US and the EU is close to being bridged. For the most part, the biggest concern for developing countries in agriculture negotiations remains the ability to ensure that the flexibilities (special products, special safeguard mechanism) are not diluted. On NAMA, the extent of tariff reduction by developing and developed countries continues to be debated and the coming weeks will provide some direction to this unresolved issue.

Unlike negotiations in agriculture and NAMA, GATS negotiations appear to be relatively less controversial and of lower profile for member countries. The rules negotiations, specifically on emergency safeguard measures, subsidies, government procurement and domestic regulation are moving with varying degrees of success. It is unlikely that some of these would even remain on the table. The silver lining is provided by domestic regulation negotiations, wherein the draft text is ready and no major surprises are expected. The plurilaterals have intensified and there appears a higher degree of specificity in what members want. The LDCs are not expected to make any commitments in the current Round, hence a certain degree – albeit not adequate – of special and differential treatment is enshrined.

The services negotiations are equally characterised by poor understanding amongst member countries regarding the impact of services liberalisation. Compared to agriculture and NAMA where numbers play an important role, services issues are barely debated on brass tacks. An attempt by some countries to hijack the services agenda, at the cost of ignorance of others, will in the long term, result in insurmountable problems. Hence it is a timely call for countries to invest in improving their capacities on trade in services.

Services sector is important for all South Asian countries. The sector contributes more than 50 percent of South Asia's GDP and employs around 35 percent of its population in the organised sector. The sector has grown on an average of six percent since 2000. Growth in services has been accompanied by a manifold rise in the trade in services, particularly since the early 1990s when most of the countries of the region adopted domestic reforms and encouraged liberalisation and privatisation of services.

However, there is very little credible work that is being conducted on the subject. Centad has tried to fill this gap. 'Trade in Services and India: Prospects and Strategies', Centad's publication on services is one such attempt. In addition working papers and Yearbook papers on services have added to the debate on the subject. This issue of Trading Up focuses on 'trade in services'. In the current issue, an attempt is made to increase the ambit of people interested in this critical issue by simplifying services debates for the aware but lay reader. The interviews carry views of experts on issues in GATS negotiations and how the South Asian region can benefit from services liberalisation. The articles, as always, explain in a lucid language the concerns relating to the negotiations as well as the SAARC framework on services.

In subsequent issues, Trading Up will undergo a revamp, in aesthetics and content. It is timely to focus on global debates that are related to trade, such as environment and labour. We urge you to write to us regarding your preferences on the themes that Trading Up should address. As always, your support is solicited in our endeavour to carry development debates to the man on the street.

Dr. Samar Verma
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GATS Negotiations & Developing Countries: Dark Cloud with a Silver Lining!

Parashar Kulkarni

Since 2006, the focus of the WTO negotiations has predominantly been on its biggest hurdles – Agriculture and NAMA. Amidst the tussle on tariffs, subsidies, coefficients and flexibilities, the services negotiations seem to have been sidelined, the implicit understanding being that once the 'big' issues are sorted out, services will follow suit. But this may be far from reality.

In the services negotiations, the single most important agenda for developing countries is liberalising temporary movement of natural persons – Mode 4 in GATS jargon. Currently, it remains the least liberalised mode in GATS. For instance, the modal coverage of EU's GATS commitments are above 50 percent for Mode 1, Mode 2 and Mode 3, whereas it is almost zero for Mode 4. Such modal bias in

The Empty Table !

the commitment structure is clearly visible under the GATS, irrespective of country groupings (i.e. developed/developing). Since Mode 4 is linked to sensitive issues such as immigration and labour market regulations, this tendency is unlikely to change in the foreseeable future. In fact a reverse tendency towards greater protectionism is showing up over the last couple of years in the US and the EU alike. For instance, in May 2007, two US senators asked several Indian IT firms to explain their use of the H-1B visa programme. The letter sent to the firms stated that it appears more and more that companies are using H-1B visas to displace qualified American workers.

In November 2000, India made a submission to the Special Session of the Council for Trade in Services (CTS-SS), proposing an independent GATS Visa for easing mobility of short-term professionals. However, it was shelved by the US and the EU before any serious discussion could take place amongst the Members. The EU and US have specifically stated that they do not have the mandate to negotiate any visa-related matters. The US commitment of 65,000 visas in GATS, and similar commitments in regional trading agreements, has led to an outcry amongst the US polity on how trade policies are restricting immigration policies. The US Congress has specifically instructed the United States Trade Representative (USTR) not to negotiate immigration issues (which, according to them, include the GATS Visa) in any future trade agreements.

Some developing countries are patting their backs that their services competitiveness has progressed beyond Mode 4, to outsourcing (Mode 1/cross border supply) for instance. However, a protectionist wave is visible across developed countries in Mode 1 also. Since 2004, a number of US states have passed laws banning state outsourcing. During the same time a number of sting operations followed which brought to limelight security lapses, credit card frauds, etc. in emerging outsourcing hubs like India – an unusual coincidence.

Member countries of the WTO are permitted to apply regulations relating to data protection, prevention of fraud, consumer safety etc. These regulations are classified as general exceptions, to which GATS disciplines do not apply. As discussed above, the number of sting operations and actual fraud investigations in South Asian countries provide adequate evidence to legalise most forms of protectionism in Mode 1, which can be classified as exceptions to GATS.

In cases where the GATS does result in disciplining regulations, Members retain the option of redrawing their schedules, as initiated by the US subsequent to losing the Gambling Dispute to Antigua.

While the environment surrounding services trade provides enough reason for perturbation, the negotiators are rather pleased to push the negotiations on the backburner. Currently, the services negotiations are proceeding on two tracks – the rules negotiations (disciplines) and the plurilateral negotiations (market access).

The Rules Negotiations

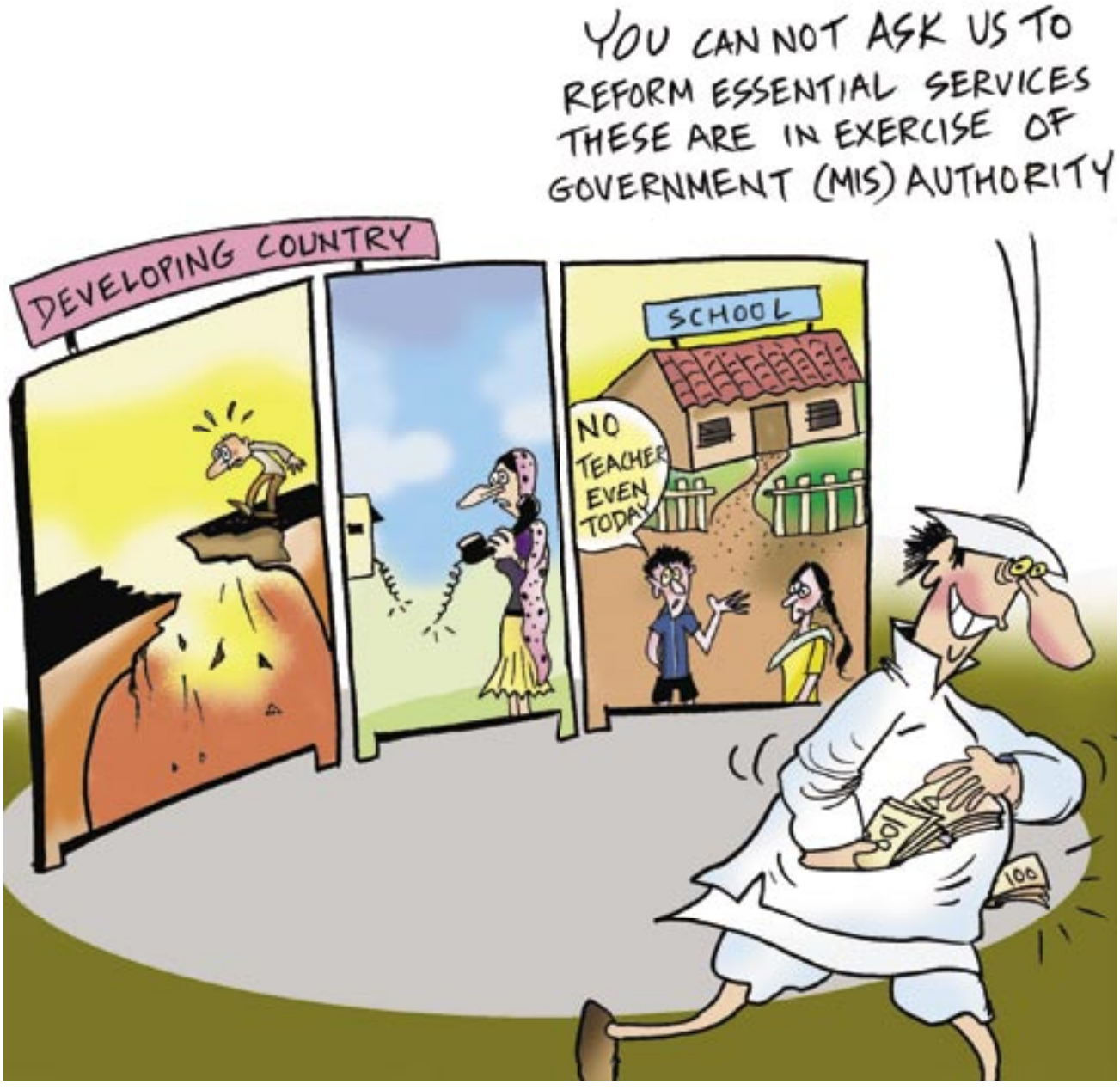
The rules negotiations comprise negotiations on Emergency Safeguard Measures, Subsidies, Government Procurement and Domestic Regulation. Amongst these, only the Domestic Regulation (DR) disciplines (Article VI.4) are expected to conclude before the conclusion of the Doha Round, since the rest continue to be debated on the basic issue of desirability. The draft text on DR attempts to develop disciplines on technical standards; qualification requirements and procedures; licensing requirements and procedures; that are applied to foreign service providers.

One of the biggest concerns of developing countries in DR disciplines is the possible inclusion of a 'necessity test' in some form. Necessity tests can be used to validate a certain domestic measure, the criteria being that the measure is necessary for the fulfilment of a certain objective, and that an alternative and less restrictive measure could not have achieved the same goal. Given the evolutionary state of regulations in developing countries such a requirement imposes an additional burden on regulators constrained by capacity and resources. In addition, the domestic regulation disciplines require Members to institute judicial and administrative tribunals that address the remedial needs of affected foreign suppliers. The draft text (Article VI.4) introduces requirements relating to single window procedures for licensing, appeal frameworks, appropriate timeframes for regulatory procedures, all of which require substantial financial resources, investment in technology and capacity building of regulators. Given that most developing

countries have not effectively linked their domestic reform agenda with GATS negotiations, these disciplines may result in discrimination against domestic suppliers. For instance, fast track tribunals may provide priority access to foreign service suppliers over domestic suppliers for the sake of being GATS compliant.

The Plurilaterals

The second track in services negotiations, the plurilateral request-offer involve a process wherein a select group of Members come together and table a request to another set of Members (including themselves) to liberalise a sector based on broad specifications. In most plurilaterals, Members are typically asked to adopt a model schedule which includes liberalisation commitments on the entire sector (and not simply a sub-sector), removal of existing 'market access' and 'national treatment' limitations across Modes 1, 2 and 3 and non-inclusion of any 'economic needs tests'. Since the requesters are deemed recipients of the plurilaterals, a high degree of legitimacy is perceived in the requests. In early 2006, approximately 21 plurilateral requests across a range of modes (Modes 1, 3 and 4) and sectors (distribution, education, logistics, telecommunications, financial, etc.) were tabled. However, not all countries were adequately represented in the plurilateral negotiations. Since the Hong Kong Ministerial Declaration (HKMD) mandated that LDCs were not expected to make any commitments in the Doha Round, they were largely left out of the plurilateral



GATS Without GUTS !

negotiations. The LDCs did not make a single request; nor did they actively engage in operationalising any special and differential treatment (S&DT) clauses in the GATS such as that of 'special priority' (Article IV.3 of the GATS, which calls for special priority for LDCs to implement GATS disciplines). In early 2007, plurilateral meetings across a cluster of services sectors are being held in Geneva. These are characterised by a greater degree of specificity in requests compared to the earlier rounds of plurilateral requests put forward in 2006.

The Way Ahead

The discussion so far has come close to framing the service negotiations as a road to perdition. Undoubtedly this may represent a lot of pessimism. Developing countries do have scope to negotiate a more balanced outcome. A coalition driven negotiating focus on key issues will go a long way in ensuring this balance.

First, given that scheduling in Mode 4 is close to zero, developing countries will need to ensure that sectoral requests in the plurilaterals also incorporate Mode 4 liberalisation, which is seldom the case now. In spite of the developed countries refusing to negotiate on GATS-visa issues, the proposal on GATS visa should be supported by developing countries and mainstreamed in the negotiations. It should be emphasised that the GATS visa does not deal with immigration issues but eases the movement of short-term contractual service providers. For movement of skilled professionals, Article VII of the GATS on Recognition needs to be operationalised to promote mutual recognition and equivalence procedures. Article VII.6 specifically calls for adequate procedures to be made available for verifying competence of professionals for committed sectors. In addition, Article VII.2 specifically required countries to provide adequate opportunity to other interested members to negotiate their accessions to agreements that promote mutual recognition and harmonisation of qualifications. An international body similar to Codex Alimentarius can be explored for standardising some elements of service sector qualifications.

Second, technical and financial assistance needs to be operationalised for developing countries in general and LDCs in particular. Article IV of the GATS calls for increasing participation of developing countries in services trade by strengthening the domestic services capacity of developing countries through access to technology on a commercial basis. For LDCs, the financing can be arranged through the 'Aid for Trade' package. Article IV also mandates establishment of contact points in developed countries to facilitate access for developing country suppliers. However such access points have either not been set up or are inadequate in promoting access for developing country suppliers. The GATS Council should conduct a review of the current state of 'contact points'.

Third, the US Gambling Dispute reveals that resourceful Members like the US have also been unable to take into account all concerns while drafting their GATS schedules. It is unlikely that the schedules of developing countries are devoid of such problems. The Mexico Telecoms Dispute reveals that no country has scheduled any development conditions in their telecommunications schedule. The scheduling process in the Uruguay Round was inadequately understood, largely carried out by foreign consultants and hastily done. Alternatively, it was a mere replication of developed country schedules. The more cautious developing countries simply adopted a minimalist approach, recognising their capacity constraints. In the current Round, developing countries should negotiate for a one-time revision of schedules without being subject to compensation (under Article XXIII). Unless such a provision is made, the GATS will simply reinforce the 'race to the bottom' in terms of domestic regulation. Countries may not be in a position to schedule sub-federal legislations or sectoral legislations in detail. In case of disputes, stronger Members will simply redraw their schedule, as is being done by the US. The issue of predictability of disciplines and measurability of liberalisation will be rendered meaningless unless countries devote time to conduct sectoral assessments, understand their domestic regulatory structures and then schedule sectors using the flexibilities provided by the GATS.

Finally, there is an urgent need to ensure that implementation of GATS disciplines and the domestic reform agenda are synchronised. Emphasis on improving the quality of institutions as well as that of regulations is evident across

(Contd. on page 25)

Barriers to Foreign Direct Investment in Services in South Asia

Rashmi Banga

Foreign direct investment (FDI) in services has been an important mode of import of services in the South Asian region. South Asian countries have attracted more than US $ 30 bn of FDI in 2005. The services where FDI has concentrated include telecommunication, transport, construction and financial services. Most of the countries in South Asia have liberalised equity restrictions on FDI in services sectors to encourage trade under Mode 3, i.e., trade through commercial presence. 100 percent equity is allowed in many services sectors in many countries. With the growing inward FDI in services many issues have come to the forefront of policy making. One of the important issues is that of attracting FDI in services where it is most desired i.e., services sectors where domestic capabilities are limited and demand exceeds supply e.g., transport and telecommunications services.

Taking a stock of liberalisation of services that has taken place in different countries of the region in different services sectors we find that substantial unilateral liberalisation has taken place in under Mode 3 in Sri Lanka, Pakistan and Bangladesh. India is yet to embark on this path of unilateral liberalisation. Except for computer and information services and transport (Road), in most of the services 100 percent foreign equity is not allowed in India.

Though countries are attempting to attract FDI in many of their services, by liberalising services, the share of the region in global FDI in services is still less than two percent. One of the reasons for this is the existence of barriers to FDI in South Asian countries in spite of no restriction on equity ownership.These restrictions may apply at the point of entry, stretching from mere notification requirements to outright prohibition of FDI; others may target at the operations of the firms; while yet another category may restrict in the area of ownership and control. Also, the restrictions may vary with the nature of services, For example, in distribution services, restrictions may include performance requirements, zoning regulations, advertisement restrictions, etc. In professional services, restrictions used are generally of the nature of nationality and residency requirements, lack of recognition of foreign qualifications. Therefore, even if equity restrictions are removed there may be other restrictions that may not allow inflow in FDI into services sectors. Some of the existing barriers to FDI in services in different countries are as follows:

Sri Lanka has opened its services sector to foreign investment. Foreign ownership of 100 percent of equity is allowed in a range of service sectors such as banking, insurance, telecommunications, tourism, stock brokerage, the construction of residential buildings and roads, the supply of water, mass transportation, production and distribution of energy, professional services and the establishment of liaison offices or local branches of foreign companies. However, some of the restrictions that exist which restricts FDI in services even when 100 percent equity is allowed are: Foreign commercial banks are allowed to open branch offices in Sri Lanka, subject to an economic needs test and approval by the Central Bank. Foreign investors are allowed to hold 100 percent equity in local banks, subject to limits on individual share ownership. Currently, there are only twelve foreign commercial banks operating in Sri Lanka, including one US bank. The government has recently privatised the state-owned insurance companies. However, resident Sri Lankans are prohibited from obtaining foreign insurance policies except for health and travel.

Pakistan generally permits foreign investment in services, subject to certain provisions including a minimum initial capital investment of $150,000 (investment requirements are higher in financial services – see below). Recent changes in the government's investment policy permit foreign investors to hold up to a 100 percent equity stake and allow 100 percent repatriation of profits. The government has opened the insurance market as one of its financial sector reforms. Foreign investors are allowed to hold up to a 51 percent equity share of companies operating in the life and general insurance sectors. Foreign investors are also required to bring in a minimum of $2 mn in foreign capital and raise an equal amount of equity in the local market. The government issued a new insurance law in 2000 that raised capital adequacy standards and enhanced policyholder protections. The government permits only the parastatal National Insurance Company to underwrite and insure public sector firms.

Table 1: Extent of Liberalisation in Mode 3 in Selected Services			
Countries	**Substantially Liberalised (100% equity)**	**Moderately Liberalised**	**Less than Moderately Liberalised/ Restricted**
Sri Lanka	Banking, Insurance, Telecommunications, Tourism, Construction,Transport (Road), Professional services.	Shipping and travel agencies; freight forwarding; higher education; mass communications;	Non Bank Money Lending, Retail trade with capital investment of less than $1 mn, Secondary education, air transportation, coastal shipping,
India	Computer and information services, Transport (Road).	Telecommunications, Banking, Insurance Air Transport, Construction	Retail trading, railways, real estate, Professional services like Postal, Accountancy, etc.
Pakistan	Telecommunication, Banking services, legal and engineering consultancy services,Transport, Construction Computer and information services.	Insurance,	—
Bangladesh	Transport,Telecommunications, Construction, Computer and information services, Banking and Insurance services	—	Railways
Nepal		Banking, Insurance, Telecommunications, Computer and information services, Tourism	Personal Business Services Consultative services

Source: Various ministry web sites in different countries.

Private sector firms must meet their reinsurance needs within the country. If domestic insurance companies cannot meet their reinsurance needs only then these companies can seek outside reinsurance facilities. Market domination in the insurance sector may pose a significant barrier to entry. The state-owned State Life Insurance Company holds over 76 percent of the life insurance market, although that number has been declining over the past several years. Five major domestically-owned companies account for 78 percent of the general insurance (property, casualty, and health) market.

Foreign professionals can provide legal and engineering consultancy services with 100 percent equity participation. This reflects a change made in 2004 that eliminated the prior requirement that Pakistanis hold 40 percent local equity for five years and reduced the minimal capital requirement for investment in these services from $300,000 to $150,000. A legal consultant need not be licensed to practice law in Pakistan. Foreign lawyers, however, may not appear in court or otherwise formally litigate cases unless licensed, even if they work with local lawyers. The Islamabad-based Pakistan Bar Council licenses attorneys in Pakistan, and no de jure prohibition exists against the admission of foreign lawyers into the bar. Similarly, foreign doctors must, like their local counterparts, register with the Pakistan Medical and Dental Council, and foreign engineers must register with the Pakistan Engineering Council, in order to practice their respective professions in Pakistan.

Bangladesh adopted a number of policies and provided generous incentives to attract foreign direct investment

(FDI) into the country and it perhaps has the most liberal FDI regime in South Asia. Due to the favorable policies adopted by the government many sectors have attracted FDI. The telecommunication sector has emerged as the most attractive sector for FDI. Favourable policies of the government include: a tax holiday for five to seven years; income tax exemption for 15 years for the experts of foreign enterprises; protection from double taxation; exemption from duty for importing machinery and spare parts for 100 percent export-oriented units; eligibility for full working capital loans from the local banks on banker-client relationship; the option for foreign firms or joint ventures not to sell their shares through public issues; and protection from expropriation by the state under Foreign Investment Promotion and Protection Act of 1980. Expatriates' work permits are easily obtained and unhindered remittance of dividends, capitals, gains on capital etc. are allowed. The Government has eliminated the licensing system and simplified government approval procedure for investment in Bangladesh.

Bangladesh is also a signatory of the Multilateral Investment Guarantee Agency insuring investors against political risk. As a member of World Intellectual Property Organisation (WIPO) and World Association of Investment Promotion Agencies (WAIPA) the country further safeguards the interest of foreign investment. Standard dispute settlement procedures are followed in case there is any dispute with the government or with any private party. If the foreign investors feel that their rights have been violated, they can file writs with the High Courts.

With respect to India, many sectors of the Indian economy are still only partially open to foreign investment. The Indian government continues to prohibit or severely restrict FDI in certain politically sensitive sectors, such as retail trading, railways, and real estate. At the same time, the GoI has liberalised other aspects of foreign investment and eliminated various government approvals. Some of the barriers that exist in professional services are that only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India, if their home country provides reciprocity to Indian firms. Internationally recognised firm names may not be used, unless they are comprised of the names of proprietors or partners, or a name already in use in India. Many construction projects are offered only on a non-convertible rupee payment basis. Only government projects financed by international development agencies permit payments in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Foreign firms may only participate through joint ventures with Indian firms.

There are several reasons why developing countries, on average, remain restrictive on FDI in services or have other barriers to investments in services. Apart from the sensitivity of services with cultural, social, distributional or strategic significance, there are economic concerns. First, countries restrict FDI to avoid the risk of foreign investors out competing domestic investors. Services where domestic investors are not able to cater to the growing demand or where domestic service providers do not have the ability or capacity to provide the required quality of services are where least barriers exists.These are also the services sectors where the governments are encouraging FDI.These include infrastructure services like telecommunication services. Second, (as pointed out in WIR 2004) services FDI that involves the sale of public utilities to foreign firms raises complex issues related to privatisation and the regulation of natural monopolies. Countries without the necessary regulatory framework may lose by rushing into liberalisation, particularly when a reversal of the liberalisation is hard to achieve or when liberalisation has "systemic implications", as in the case of the financial industry.Third, entry by large service TNCs involves competition policy considerations, and many host countries may not feel ready to deal with the technical and legal issues involved. Industries that are characterised by a lack of competition are also likely to be subject to more regulations. Fourth, it is difficult to assess the impact of liberalisation of a particular service sector, especially if it employs a large number of unskilled people. In such cases, e.g., distributive services, it becomes important to undertake in-depth study prior to the decision of allowing foreign firms. Many countries may lack the will or expertise to undertake such analysis. Finally, since a number of services are closed to foreign investors, are monopolies and, in any event, need to be regulated, it is frequently difficult to put in place domestic regulations.

The above reasons for barriers to FDI in services indicate that though services sector has provided ample opportunities of trade and growth to the region it has also in the process of liberalisation exposed economies to competition in a sector, which has been predominantly under public monopoly for a long time. Lack of domestic competitive skills may erode domestic investments in some services. It may also lead to higher prices of services that were earlier

available at a subsidised rate under government ownership. The rise in prices may translate into higher inflationary pressures reducing the overall welfare of the economies. To circumvent such spirals it is important for the region to have appropriate domestic regulations in place, which will assure better quality of services at affordable prices. Clear domestic regulations increase the transparency in the system and encourage foreign direct investment. To sustain the momentum of growth in services trade of the region, there is a need to make conscious efforts to improve the competitive advantage of the region as a whole. Inclusion of trade in services in SAFTA may help in attracting FDI in services in the region and leading to higher intra-regional trade. Access to more efficient services can lead to higher growth in productivity in other sectors, which in turn can improve the overall competitive strength of the region.

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FDI Liberalisation: A Race to the Bottom !

Developed Countries are Playing Duck and Dive

Professor Yash Tandon, Executive Director of South Centre, Geneva talks about the GATS negotiations and their implications for developing countries.

Centad: The Doha Round is expected to result in an aggressive outcome in GATS. This is further propelled by the strong interest displayed by emerging economies of the South. At this moment, what are the biggest risks in services negotiations for developing countries?

Yash Tandon: It has been said that services is the real commercial deal in the Doha Round. Developed countries look at the Round as entailing their having to make concession as opposed to gaining market share in agriculture. This is particularly the case for China, India and Brazil. In trade in industrial products, they see a level of increment in market share through the reduction of tariffs by developing countries. However, it is increased market access opportunities in services that stand to make the greatest contribution to increased global trade. It is for this reason that many developed countries have a large level of ambition in services. From the plurilateral negotiations that have characterised the services negotiations in the post Hong Kong Ministerial Declaration period, it can be seen that in sectors such as energy services, logistics, transport, professional, audio-visual, financial and telecommunications, developed countries are the major demanders.

The challenges that this brings for developing countries are many fold. To start, because of the concessions, however minimal, these developed countries make in agriculture, they will have to justify this to their constituents through increased commitments in services — greater market access particularly in large developing countries like China, India and others. Developing countries have to be mindful that this pressure is on, and check it through taming the push to make overly burdensome commitments, especially as they would be best to know that the real issues that have stalled agriculture negotiations in the Doha Round are far from resolved. When one considers that these developing countries will also be losing market share, or traditional markets through preference erosion, the situation gets all the more concerning.

Another key risk is the potential to give up a lot of market access, and get nothing comparable in services. Developing

Mode 4 ! No Score !

countries have an interest in greater commitments in the construction sector, health, tourism, Mode 1 (for outsourcing), and especially the movement of natural persons. A group of developing countries spearheaded by India tabled the plurilateral request on Mode 4 in which they asked for some critical issues such as the de-link between Mode 3 and Mode 4 commitments. The LDCs have articulated, through a proposal, their interests in the liberalisation of market access for movement of natural persons in the categories of semi-skilled workers. Developed countries are playing duck and dive on Mode 4. Europe repeats that the issue is too politically sensitive, while the USTR does not even have a mandate to negotiate Mode 4 - clearly stripped of it by congress. Increasingly, it becomes clearer that developing countries may not achieve Mode 4 in the Doha Round. The risk is that an opportunity to deliver on development will have been missed, for a while to come.

A big risk potentially coming out of the services negotiations is the imminent loss of the prerogative to regulate in the public interest through negotiations in the working party on domestic regulation. Through such tests as what is necessary to ensure the quality of the service, and nothing more, as the yardstick for what regulation will be WTO compatible, are under test. This is particularly worrying for developing countries because a country may not only have commercially efficient yardsticks behind its regulation but other critical considerations such as meeting universal access to basic service obligations.

The absence of any real momentum in the possibility of establishing an Emergency Safeguard Mechanism (ESM) strips developing countries of the potential tool that they can use to protect their services sectors. Albeit temporarily, from negative and unanticipated results, of an upsurge resulting from liberalisation.

Centad: The GATS negotiations are being conducted on both: the disciplines as well as the improvisation of schedules through 'request-offer'. In each of these approaches, how should developing countries balance their market access interest with the protection of domestic policy space?

Yash Tandon: In order to balance between market access and protection of domestic policy space, countries should utilise fully the allowable limitations in the GATS. Art. XIX of the GATS is clear when it talks about the need for progressive liberalisation

to take fully into account the national development policies of countries as well as their right to regulate. In Art. XIX: 2 developing countries are allowed to open fewer sectors, transactions, and when making their markets open to foreign services suppliers, to attach conditions there-to, which can lead to the attainment of national policy objectives. This can be interpreted to mean that developing countries need only open their markets in situations where arising from their own individual national assessments, such a move is adjudged necessary for national development. When they do, they can attach conditions to this liberalisation. Some practical examples would include limitations on number of players, conditions for joint ventures, limitations on minimal value of capital, limitations allowing for a certain number of locals to be employed. Developing countries can also tactfully push more S&D in domestic regulation disciplines, so that on the ground, they have a lot more space to maneuver, and regulate in the public interest. In any case, the market access offers have to be conditional on the overall outcome of the DDA and developing countries should assess this, then make a decision whether to bind the commitments, vis-à-vis what else is being got from other aspects of the negotiations.

In terms of Rules disciplines, the negotiations taking place under the auspices of the working party on domestic regulation probably pose the greatest challenge to developing countries in terms of loss of domestic policy space. It is one thing for a country to open up a sector, quite another to open a sector, and lose the power to regulate the way in which players are operating in line with national development plans and objectives. While developing countries are also very ambitious in terms of the services negotiations leading to enhanced market access, it is critical that they carefully craft rules on domestic regulation, which are development friendly, as these will apply to market access commitments. It is therefore proposed that developing countries push for:

- Tight disciplines on DR to be implemented by developed countries so as to enhance utilisation of market access commitments especially on issues such as qualification requirements and procedures, and technical standards.

- Best endeavor obligations on the part of developing countries to fulfill these obligations. In the event that this fails, to push for overall transparency being the major force behind the disciplines as opposed to overly hard and strict obligations for developing countries. This for example would entail issues like mandatory publication of laws and regulations that affect commitments made in the most convenient manner e.g. through a national gazette, official newspaper, journal, or through the internet, if appropriate.

- Mandatory provision of technical assistance and support for capacity building for design and development of regulatory capacity from a sectoral and modal perspective.

Centad: GATS is largely considered to be an Agreement without preferential treatment for developing countries. Is there scope for operating S&DT in GATS?

Yash Tandon: The GATS is very much viewed as an Agreement that has preferential treatment for developing countries. All this can be seen from the preamble of the Agreement, Article IV, V: 3, XIX to mention a few. As such, from a strictly legal and even negotiation viewpoint, there is unlimited scope for the more preferential treatment of developing countries. Article IV has strong provisions on special treatment for developing countries aimed at increasing their participation in international trade in services. Some of the provisions in this very article are the subject of negotiation, as for instance Art. IV:3, which obligates developed countries to give special priority to LDCs in implementing requirements for improving market access through sectors and modes of export interest, strengthening domestic services capacity, access to distribution channels and others. One way being proposed is to introduce an understanding on Article IV: 3 that allows members to secure certain markets for LDCs, or give them special priority in accessing them, without being in contravention of the GATS. There is nothing in the GATS that blocks special and differential treatment for developing countries, quite the contrary and in order to operationalise this, it will take concrete proposals from the intended beneficiaries to define in more concrete terms what S&DT they want.

Centad: During the Uruguay round, GATS was largely considered to be an agenda of developed countries. However in the Doha Round, a small number of developing countries are showing aggression, resulting in differences between developing countries? Do you think that in the Doha Round, GATS negotiations will oppose a risk to South-South solidarity?

Yash Tandon: There are a number of developing countries that have great ambitions in market access and domestic

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Services under SAFTA: Is there Anything for Bangladesh?

Ananya Raihan

Background

In the backdrop of faltering multi-lateral negotiations in the WTO, the world is facing a surge in regional and bilateral trade liberalisation efforts. South Asian countries are also not exception to that. All South Asian countries are involved in negotiations on various regional and bilateral trading arrangements. While SAFTA agreement came into action in 2006 with the delinquent attitude of Pakistan, South Asian neighbours have been progressing with an agenda for inclusion of services under the trade liberalisation framework of SAFTA. During the 13th SAARC Summit held in Dhaka (12-13 November 2005) the SAARC Heads of State or Government first recognised the potential of trade in services. As a follow-up to that interest, they called for a study to see how services could be integrated into the SAFTA process. At their 14th Summit (New Delhi, 3-4 April 2007) also, the leaders stressed that to realise its full potential, SAFTA should integrate trade in services.They also called for finalisation of an agreement in the services sector at the earliest. Based on the outcome of the study there is a possibility that the SAFTA agreement is going to expand its scope by inclusion of services sector, followed by investment. The initiative of inclusion of services is based on the perception that the services sectors in South Asia have more complementarities than the trading in goods.

Time to Wake Up !

Service sector contributes more than 50 percent of GDP of all South Asian countries except Afghanistan. Growth rates of service sector in most of the South Asian countries are higher than the growth rates of their respective GDPs. Service trade, however, accounts for only one percent of total trade of all South Asian LDCs. Another common feature of services trade in South Asia is that all countries earn a significant amount of foreign exchange through remittances, sent through so-called temporary movement of natural persons (TMNP) under Mode 4.

The problem in understanding the potential of services trade among the South Asian countries primarily lies in the fact that there is a severe dearth of comparable statistics on services trade within South Asia. A number of countries do not maintain data at sectoral and sub-sectoral level following the IMF BMP 5 format. The classification of services sector is not uniform in these countries. While tariff is the prime element of liberalisation of trade in goods, domestic regulation is the prime element in liberalisation of trade in services. Unfortunately, the dearth of information also prevails here. Apparently, in some South Asian countries there is a situation of over-regulation of the services sector, whereas in others there is a legal vacuum. Bhutan is an example of a country, where there are no clear cut rules for services trade, both domestic and global. Furthermore, conflicting and overlapping regulatory practices also prevail in most of the South Asian countries. In the above context, understanding the potential of services trade in the South Asian context is a difficult task.

Importantly, other than India and Sri Lanka, all South Asian countries were very conservative in terms of liberalisation commitments during the Uruguay Round. In contrast, as a late-entrant to the WTO, Nepal had to undertake significant liberalisation commitments in services under the GATS during its accession into the WTO in 2003. This happened despite the flexibilities in terms of market opening that the LDCs are entitled to enjoy as per the special LDC-modalities for the services trade negotiations. In the process of offer-request negotiations during the Doha Round, participation by SAARC members is insignificant. As a result, the Doha process also did not help the countries to understand the true potential of trade in services within this region.

On the other hand, services sectors in the South Asian countries are generally wide open under autonomous liberalisation and on account of an aggressive drive for attracting foreign direct investment. For example, almost all sectors of Bangladesh except military, atomic energy, forestation, and secret printing service are open to foreign competition.

India is relatively more prepared in terms of understanding about the domestic regulations and offensive interest as thorough home work has been done during the Uruguay and Doha Rounds of negotiations under the WTO.

While LDCs could avoid taking significant commitment under the GATS for market opening, within SAFTA they may be required to undertake significant commitments. In this context, probably Nepal is in a better situation, as it can maintain commitments at least at the level of commitments undertaken under the WTO.

Although there is significant difference in types of market opening, all South Asian countries were vocal about market access in Mode 4 under the GATS. Probably Mode 4 will be one of the offensive interests of all South Asian countries. It will be interesting to observe whether countries among themselves are ready to open the market in Mode 4. Currently, Sri Lanka and Nepal have relatively flexible visa regime whereas India is apprehensive that opening the border for the neighbours may generate a surge of migration from Bangladesh and security threat from both Bangladesh and Pakistan. In such circumstances, possibility of meaningful market opening under SAFTA remains a big question.

As regards technicality of inclusion of services in SAFTA, it is not clear yet, whether there would be a separate agreement on trade in services among SAARC countries, or SAFTA agreement would be amended for inclusion of service clauses. Any services agreement framework is complex. Thus, formulation of text for any type of agreement, whether as a part of SAFTA, or as a separate agreement, will be a time consuming task.

Finally, while any progress in trade liberalisation under SAFTA largely depends on the warmth of relationship between India and Pakistan, it is hard to believe that inclusion of services sector in the SAFTA framework would be of any exception.

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South Asia Needs to Adopt Best Practices in Regulation

Dr. Saman Kelegama, Executive Director, Institute of Policy Studies, Sri Lanka speaks to Centad regarding how South Asian countries can benefit from services trade

Centad: Services comprises over 50 percent of the economy of most South Asian countries. However, only a few countries have been able to harness trade gains from the sector. What are the current barriers to enhance services trade within South Asia? What are the measures necessary to reduce these barriers?

Saman Kelegama: Yes, compared to the proportion of services in the GDP, the trade in services in South Asia is very low. If we look at the global picture it is estimated that although 60 percent of global output is in services, only 20 percent of global trade is in services. Compared to the global output to trade in services ratio (3:1), the South Asian ratio will indicate much lower trade in services compared to the output.

The reasons are easy to comprehend – South Asia was a late comer in implementing trade liberalisation policies and gradually integrating with the world economy. Further, domestic regulations that govern the services (licensing, standards, restrictions, etc.) still remained in many South Asian countries despite liberalisation of trade. In other words, trade liberalisation was mainly confined to goods and not services. South Asia got a wake-up call in regard to liberalisation of services in 2000 when GATS negotiations on services liberalisation started.

The barriers for services liberalisation are many. The complex regulations governing services are well entrenched in the South Asian economies. Dismantling the outdated regulations, reforming certain other regulations and introducing new market-friendly regulations is a complex time consuming exercise. It needs stakeholder consultation and educating the public on the pros and cons of services liberalisation. The relative lack of connectivity, both in terms of transport infrastructure and the lack of communications infrastructure, undermines trade in services. For instance, business process outsourcing could play a far greater role if there was improved telecommunications connectivity both within countries and linking the region.

Sometimes high intensity of trade in goods among countries can trigger services liberalisation. For example, after the India-Sri Lanka Bilateral Free Trade Agreement (ILBFTA) increased the intensity of trade between the two countries, it automatically triggered measures by both governments to facilitate the movement of business people and tourists. Sri Lanka implemented visa at

arrival for Indian citizens in January 2002 and India gave more destinations for Sri Lankan Airlines in India. This has led to large flow of tourism between the two countries. The point I am trying to make is that if SAFTA works and stimulate a lot of trade among the South Asian countries, it will automatically trigger services liberalisation among South Asian countries.

So the answer in short is to show the people the benefits of further trade liberalisation, then there will be less resistance to gradual liberalisation of the restrictions governing services.

Centad: The South Asian region faces competition from a large number of developing countries in South-east Asia, Eastern Europe and South America. Governments are required to be proactive in building domestic infrastructure and increasing competition. What should be the domestic policy agenda for South Asian countries to benefit from trade in services?

Saman Kelegama: The domestic capabilities should be strengthened to benefit from services liberalisation. In other words, what we expect of liberalisation of services is not services from a neighbouring country completely wiping out a domestic service sector but such liberalisation leading to increased competition (just as in the case of goods) and leading to lower prices and better quality services to the consumer.

If we take Mode 4 liberalisation, especially professional services, we find that in many South Asian countries the regulatory framework governing such services to be weak or not well defined. For example, the Medical Council of a particular South Asian country may not have an Act of Parliament or even if an Act exists, registration procedures, recognition policy of foreign professionals, etc., may not be well defined. These areas need to be developed for signing a Mutual Recognition Agreement (MRA) between two countries or among all South Asian countries for the movement of professionals under Mode 4.

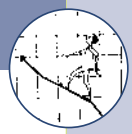
South Asian countries need to enhance the capacity of their respective Departments of Commerce with technical and human resources. It is the Department of Commerce that has to initiate the liberalisation of services and therefore has to communicate with the stakeholders and educate them on what capabilities need to be developed before opening up of a particular service sector for regional competition.

Centad: It is suggested that if services trade is included in SAFTA, India is most likely to amass all the benefits. How can other South Asian countries expect to gain from the services liberalisation at the regional level?

This is largely an unfounded fear. I recall that before the ILBFTA was signed in 1998 it was said that Sri Lanka will be swamped by Indian goods and all the SMIs in Sri Lanka will get wiped out of the market. We now have seven years of experience (ILBFTA came into operation in 2000) with the ILBFTA and nothing like that has happened. When working out an FTA or an RTA we can always build-in our concerns to the framework governing it. In the case of the ILBFTA we took note of the asymmetry between the two countries and accordingly had a different tariff phase out timetable for the two countries (India having a shorter period), different negative list (India having a shorter list), differentiated rules of origin (more favourable for Sri Lanka) and so on. In fact, the trade ratio between the two countries reduced from 10.3: 1 in 1999 to 3.3: 1 in 2005 and Sri Lankan exports to India grew much faster than vice-versa.

In the case of services, the governing framework can be formulated in a similar way making use of the flexible GATS framework of 'offers' and 'requests'. Schedules for Market Access and National Treatment for the four Modes can be prepared according to the individual countries comfort level. If a South Asian country feels that Mode 4 liberalisation should be restricted with India it could do so when preparing schedules. In fact under the proposed India-Sri Lanka Comprehensive Economic Partnership Agreement (ILCEPA) Sri Lanka has linked Mode 4 to Mode 3 to start with. In other words, movement of natural persons from India will be initially linked to commercial presence and will later be considered for de-linking once the Sri Lankan professional groups get their act together. However, where shortages exist in the labour market in Sri Lanka such as nurses to work in the hospitals in the conflict zone and English teacher trainers island-wide, Sri Lanka is considering Mode 4 liberalisation for India without any attachments. Even without ILCEPA in place Sri Lanka has many Indian services in the tourism, health, education, transport, without any threat to domestic service providers. So the answer is that it is not correct to say that India will reap all the gains from services liberalisation.

(Contd. on page 31)



LDCs and Services

Centad Team

Services Exports

Services exports of all 50 LDCs = US$ 20 bn x 125 = US$ 2.5 trillion = Services exports of the EU

Services exports of all 50 LDCs = US$ 20 bn x 39 = US$ 775 bn = Services exports of the US

Share of LDCs in Global Services Trade = 0.44 percent in 2004 = 1/2 x Share of LDCs in 1980 (0.83 percent)

Source: Based on Human Development Report 2006, UNDP

Communication Services

Number of telephones per 1,000 people in LDCs = 9 x 67.3 = 606 = Number of telephones per 1,000 people in the US

Number of cellular subscribers per 1,000 people in LDCs = 28 x 22 = 616 = Number of cellular subscribers per 1,000 population in US

Number of Internet users per 1,000 people in LDCs = 8 x 79 = 630 = Number of Internet users in the US

Source: Based on Human Development Report 2006, UNDP

Energy Services

Per capita consumption of electricity in LDCs = 114 kilowatt hours x 123 = 14057 = Per capita consumption of electricity in the US

Percentage of total energy requirements coming from traditional fuel consumption for LDCs = 78.3 % = 26 times that of US (3 percent)

Source: Based on Human Development Report 2006, UNDP

Health Services

Per capita health expenditure in LDCs	=	US$ 76	x	75	=	US$ 5711	=	Per capital health expenditure in the US
Number of physicians per 100,000 people in LDCs	=	18	x	14	=	256	=	Number of physicians per 100,000 people in the US
Population using adequate sanitation facilities in LDCs	=	35 percent						

Source: Based on Human Development Report 2006, UNDP

Health if Wealth !

Key Facts on the Services Sector in Select South Asian Countries

Indicator	Bangladesh	India	Nepal	Pakistan	Sri Lanka
Services as % of GDP	53	53.6	40.8	53.3	55.7
Services as % of Total Trade	4.8	33.7	31.9	11.4	20.7
Trade in Services as % of GDP	5.3	8.2	12.4	8.4	17.1
Average growth of services sector (2001-2005)	5.5	7.9	2.8	5.3	5.2
Labour Force in Services (% of population)	38.4	27.5	18	43.2	50.9
Contribution of Tourism Industry in GDP (%)	3.7	5.3	8.2	6.3	9.6
Fixed and Mobile Phone Subscribers (per 1,000)	71	128	26	116	235
Electric Power Consumption (kilo watt hour per capita)	114	457	69	425	344
% of Paved Roads (1997-2000)	9.5	57.3	30.8	59	81
Improved Sanitation Services (% of population covered))	NA	59	62	92	98
Improved Water Access (% of population covered)	NA	86	90	91	79
Internet Users per 1,000 people	3	55	4	67	14
School enrollment, primary (% net)	90	90	NA	68	97
Remittances as % of GDP	7.08	3.26	17.00	4.16	10.00

Source: World Development Indicators 2006, World Bank KAM Indicators 2006

Simplifying GATS

Centad Team

1. How are services traded?

Services differ from goods in a number of ways. One of the key differences is in terms of the immediacy of the relationship between supplier and consumer. Many services are non-transportable, i.e. they require the physical proximity of supplier and customer. For international trade to take place in such non-transportable services either the consumer must go to the supplier or the supplier must go to the consumer.

In order to capture the complex nature and diverse forms of international transactions in services, the GATS adopted a novel approach of classifying the entire gamut of services trade into the following four modes:

Mode 1: services supplied from one country to another (e.g. services provided across countries through telecom network), officially known as 'cross-border supply'.

Mode 2: consumers or firms availing of a service in another country (e.g. tourism), officially called 'consumption abroad'.

Mode 3: a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially known as 'commercial presence'.

Mode 4: temporary movement of service providers either in an individual capacity or as part of an establishment to provide the service overseas (e.g. consultants providing services abroad in individual capacity), called 'movement of natural persons' in GATS jargon.

During the Uruguay Round negotiations, the 'would-be' Member countries of the WTO drew up the 'Services Sectoral Classification List' (WTO Document MTN.GNS/W/120), generally referred to as W/120, on the basis of the 'United Nations Central Product Classification' (UNCPC). This list covers 161 service activities under 12 broad sector heads: business (including professional and computer); communication; construction and engineering; distribution; educational; environmental; financial; health; tourism and travel; recreational, cultural and sporting; transport and other services not included elsewhere.

2. What is the basic purpose of the GATS?

The WTO rules on trade in services, embodied in the General Agreement on Trade in Services (GATS), aim at creating a basic framework for disciplining the trade in services by WTO member countries. Trade-related measures in the field of services consist of laws, regulations, administrative actions and decisions affecting the purchase, payment or use of a service or the presence of foreign service suppliers. The GATS also seeks to achieve commitment of WTO Members to provide improved market access and national treatment obligations in different modes of supply of services. The aim of the GATS is to apply common rules to the delivery of services in national economies for foreign service providers and to reduce barriers to trade in services over time. The principle underlying the GATS is that opening up of services trade makes the sector concerned more competitive, boosts overall economic efficiency and improves the quality of services provided.

Under the GATS, Member governments list the sectors they want to liberalise or guarantee foreign suppliers the right to provide the service domestically. For each sector so listed in a Member's schedule of GATS commitments, the Member is free to liberalise only parts of a sector and can specify the level of market access and the degree of national treatment it is willing to allow under each of four modes of services trade.

3. What are the basic obligations under the GATS?

The structure of the GATS broadly comprises four main elements:

- 'General Obligations', i.e. a set of general provisions, principles and rules that largely apply across the board to all measures affecting trade in services.

- A set of 'specific commitments' that applies only to service sectors and sub-sectors that are enlisted in the GATS schedule of a Member country of the WTO.

- An understanding that periodical negotiations will be undertaken with the aim of progressive liberalisation of trade in services.

- A set of attachments and annexes that takes into account sectoral specificities and ministerial decisions pertaining to the implementation of the Agreement.

(i) General Obligations

The most generally applicable provisions of the GATS are those of MFN and Transparency.

MFN Treatment: Under Article II of the GATS, Members are required to extend immediately and unconditionally to services or services suppliers of all other Members 'treatment no less favourable than that accorded to like services and services suppliers of any other country'. This is known as the MFN treatment. This amounts to a prohibition, in principle, of preferential arrangements among groups of Members in individual sectors or of reciprocity provisions, which connect access to benefits to trading partners granting similar treatment. The scope of the MFN clause under the GATS is, however, less expansive than its counterpart in the GATT. This is because, although MFN is a general obligation, the GATS contains an annex allowing the Member countries to invoke exemptions to MFN. The coverage of MFN for each GATS Member is therefore determined by a so-called negative list. Such exemptions from unconditional MFN treatment do not exist under the GATT. Members were allowed to seek such exemptions before the GATS entered into force. New exemptions can only be granted to new Members at the time of WTO accession or, in the case of current Members, by way of a waiver under Article IX (3) of the Marrakesh Agreement that established the WTO. All exemptions are subject to review. Further, the GATS allows groups of Members to enter into economic integration agreements that liberalise trade in services between or among the parties to such an agreement, provided certain conditions are met.

Transparency: GATS members are required, inter alia, to publish all measures of general application and establish national enquiry points mandated to respond to other members' information requests. Other generally applicable obligations include the establishment of administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers.

(ii) Specific Commitments

'Specific Commitments' applies only to those services sectors which are scheduled by a Member in its GATS commitments and not to all services sectors covered by the GATS. The provisions pertaining to the 'Specific Commitments' lay down the framework following which the Member countries are supposed to commit themselves to liberalising trade in services. Two main pillars of the 'Specific Commitments' are obligations regarding National Treatment (NT) (Article XVII) and the provisions pertaining to Market Access (MA) (Article XVI). The provisions included under these two categories are aimed at creating transparency vis-à-vis the barriers that foreign service providers may face in a Member country of the WTO.

Market Access: Under 'Market Access', access (for each mode of supply) is to be no less favourable than what is specified in a Member's schedule. Furthermore, for all those sectors for which MA commitments are undertaken by a Member, six types of MA restrictions are, in principle, prohibited. However, although prohibited in principle, if a Member wants to impose one or more of these six categories of restrictions on MA, it may do so as long as it specifies them in its schedule of GATS commitments. These MA limitations relate to:

- the number of foreign service suppliers allowed,

- the value of transactions or assets,

- the total quantity of services output,

- the number of natural persons who may be employed,

- the type of legal entity through which a service supplier is permitted to supply a service,

- the extent of foreign capital participation.

National Treatment: A commitment to national treatment implies that the Member concerned does not operate

discriminatory measures benefiting domestic services or service suppliers. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of the Member's own service industry. Again, the extension of national treatment in any particular sector may be made subject to conditions and qualifications. Members are free to tailor the sector coverage and substantive content of such commitments. The commitments thus tend to reflect national policy objectives and constraints, overall and in individual sectors.

(iii) Article XIX.1

Article XIX.1 mandates entering into successive rounds of negotiations, beginning no later than five years from the date of entry into force of the WTO Agreement and periodically thereafter. Such negotiations should be aimed at achieving a progressively higher level of liberalisation. However, Article XIX.2 clearly states that the process of liberalisation 'shall' take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.

(iv) Annexes and Attachments

The fourth important element of the GATS is a series of annexes and attachments added at the end of the legal text. The annexes comprise regulatory principles agreed upon in specific sectors and decisions on specific issues. The purpose of these annexes and attachments is to outline procedural and implementation issues in these areas and to establish a timeframe for future discussions on specific issues.

4. Are services important for developing countries?

Services currently represent two-thirds of the world gross domestic product (GDP). The share of value-added services in GDP tends to rise significantly with the level of income of countries standing at 69 percent on average in high-income countries (73 percent in the US), against 55 percent and 44 percent respectively in middle- and low-income countries. Services are a high employment generating sector and employ as much as around 40 percent and 70 percent of the workforce in developing and developed countries, respectively.

Although large Organisation for Economic Cooperation and Development (OECD) countries dominate global trade in services, developing countries top the list of countries that are most specialised in exports of services as a source of foreign exchange. Exports of services from developing countries doubled during 1990-1999. During the last decade, exports of services were among the top five sources of foreign currency income i.e. foreign exchange inflows for 90 developing countries and were among the top export revenue earners in 38 countries (including 19 LDCs). It is estimated that services are the largest recipients of international investment flows, accounting for just over half of global outflows.

Services now contribute more than 50 percent of South Asia's GDP and employ around 35 percent of its population in the organised sector. The sector has grown on an average of six percent since 2000. Growth in services has been accompanied by a manifold rise in the trade in services, particularly since the early 1990s when most of the countries of the region adopted domestic reforms and encouraged liberalisation and privatisation of services. Both exports and imports of services since then has increased in the region, however, imports have grown faster (5.7 percent) than exports of services (3.9 percent).

5. Are there any development benefits of liberalising services?

The services sector is the largest and fastest-growing sector of the world economy. According to the World Bank, services generally account for over 50 percent of GDP in developing countries, and are the fastest growing sector in many LDCs. Indeed, developing countries generally stand to make gains from services liberalisation, despite a perception in much of the developing world that they will lose out because their domestic service industries are inefficient and non-competitive. For all economies, the gains from more open trade in services are substantially greater than those from liberalising trade in goods. There are several reasons for this. Levels of protection in services trade are higher than for other areas, and services are occupying an ever-larger share of the economy. Liberalisation of services has strategic importance for other sectors such as agriculture and manufacturing, for which services are inputs. Competitive services industries such as telecommunications, banking and transportation are critical if other sectors of national economies are to be competitive. Efficient and competitive services not only provide a direct benefit to consumers but provide

vital support for overall economic development. Lower transaction costs, more transparent regulations and more reliable access to services also benefit consumers and attract longer-term investment. The poverty-reducing impact of services liberalisation is also of importance and works through the following channels — direct impact on growth that in turn reduces poverty, employment creation and direct poverty alleviation effects. Increased access to services like education, health and telecommunications as a result of the liberalisation of the services sector would in itself be a move towards meeting United Nations Millennium Development Goals (MDGs).

6. Are there concerns regarding liberalisation of services?

Although there has been significant unilateral trade liberalisation, most countries have so far been wary of engaging in multilateral talks in services. One reason is that it is difficult to make deep legislative and regulatory changes needed to open services markets in the context of international trade negotiations. More importantly, scope for reciprocity within service sectors has been drastically curtailed by the unwillingness of industrialised countries to consider greater openness where developing countries have comparative advantage, notably, in the supply of services through the movement of persons (Mode 4). The WTO July 31st Framework Agreement on Services incorporates the specific recommendations of the Special Session of the Council for Trade in Services. Member states were urged to 'ensure a high quality' of trade-liberalising offers, particularly in sectors and Modes of export interest to developing countries, with special attention given to least-developed countries'.

Supply-side constraints and inadequate infrastructure also pose a severe constraint to developing countries, particularly the South Asian region, from realising the welfare gains from trade in services. First, there is lack of data on services trade, which makes it difficult or impossible for developing countries to assess the effects of past or future liberalisation. Lack of data also made it impossible to fulfil a General Agreement on Trade in Services (GATS) condition that there be a proper evaluation of effects of services liberalisation before embarking on new negotiations. It also hinders efforts to develop safeguard mechanisms against the negative effects of liberalisation on developing countries.

Specific concerns from liberalising of services under GATS emerge from the structure of GATS. For instance instruments, which are required to protect domestic services sector in case of injury, namely Emergency Safeguard Measures, are currently absent in the GATS and are under negotiation. Further, the extent of disciplining under domestic regulation (Article VI) is unclear. Current jurisprudence has led to introduction of limiting approaches such 'necessity tests' to validate whether domestic regulations are objective and not more burdensome than necessary on foreign suppliers. The Telecoms Dispute between US and Mexico clearly suggested that countries that have scheduled commitments without incorporating flexibilities may be unable to introduce development oriented policies at a later date.

(Contd. from page 7)

GATS Negotiations & Developing Countries: Dark Cloud with a Silver Lining!

a number of GATS articles. Article VI.4 calls for objectivity, impartiality and transparency in regulations. Article III requires regulations to be publicly available. Additional disciplines expected under Article VI.4 would require regulations to be subject to public scrutiny, and be applied in the least trade restrictive manner. To an extent, the GATS disciplines do provide members an additional tool to work on their biggest regulatory problems – opacity, corruption, vested interests and institutional inertia. It will be a wasted effort, if foreign suppliers were to largely pocket the gains of administrative reform, while the domestic industry would continue to suffer at the hands of legacy institutions.

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Glossary

Centad Team

Bottom-up Approach: One of the key flexibilities embedded in the GATS is the discretion that a Member country of the WTO enjoys in deciding which of the services sector it wants to schedule for undertaking liberalisation commitments under the GATS rules. This is often termed as a 'positive list' approach or a 'bottom-up' approach.

Contractual Services Suppliers (CSS): Simplistically speaking, it refers to employees of a foreign based company or partnership who travel to another country temporarily for short periods of stay in that country in order to perform a service pursuant to a contract.

Denial of Benefits: Denial of benefits for services is similar to rules of origin for goods. In the context of trade agreements, denial of benefit clauses are typically used to deny the benefits of the agreement or its specific chapters to services suppliers of non-members.

Emergency Safeguard Measures (ESM): Emergency Safeguard measures are well-established trade defence mechanisms in the sphere of goods trade under the purview of the GATT/WTO. These measures allow an importing country, which is a Member of the WTO, to temporarily suspend its commitments when imports are shown to be causing serious injury to domestic producers of like or directly competitive goods. Article X of the GATS mandates Members to enter into 'multilateral negotiations on the question of Emergency Safeguard Measures (ESM), based on the principle of non-discrimination'. This negotiation on ESM in the context of services is expected to be similar in utility to the Agreement on Safeguards under the GATT (Article XIX).

GATS: The General Agreement on Trade in Services (GATS) is the first multilateral agreement dealing with trade in services. It came into being with effect from 1st January, 1995 (along with all other WTO Agreements) as an outcome of the Uruguay Round (1986-94) of multilateral trade negotiations, which culminated into the formation of the WTO. The GATS is a sort of a framework agreement comprising a set of binding rules and disciplines to govern the entire gamut of the services trade. It covers 161 service activities under 12 broad sector heads.

GATS Commitment: This is the legal term describing the scope of the specific obligations a country enters into regarding liberalisation of services trade under the GATS. One of the key flexibilities embedded in the GATS is the discretion that a Member country of the WTO enjoys in deciding which of the services sectors it wants to schedule for undertaking liberalisation commitments under the GATS rules. Part III of the legal text of the GATS includes certain provisions on 'Specific Commitments' that apply only to those services sectors, which are scheduled by a WTO Member in its GATS commitments and not to all services sectors covered by the GATS. Two main pillars of the 'Specific Commitments' are obligations regarding National Treatment (NT) (Article XVII) and the provisions pertaining to Market Access (MA) (Article XVI). It is possible for the Members not to grant full MA and deny NT by inscribing limitations on MA and/or NT. This is done by recording such conditions and qualifications in the schedule under the horizontal section of commitments and/or under the sector-specific commitments corresponding to each of the four modes of services trade. The WTO Members may also choose to make commitments, which are outside the scope of MA and NT as defined in the GATS. These are called Additional Commitments (Article XVIII). This provision provides scope for making commitments in such regulatory areas as licensing, qualifications and standards applicable to services. A commitment, once undertaken under the purview of the GATS, cannot generally be rolled back (unless an agreed compensation is paid) to be less comprehensive. Only further liberalisation is permitted compared to the level of commitment undertaken in a scheduled sector for a particular mode of services trade.

General Obligations: Part II of the legal text of GATS titled 'GENERAL OBLIGATIONS AND DISCIPLINES' consists of a series of general concepts, principles, and rules that are largely applicable across the board to measures affecting trade in services. The most generally applicable provisions of the GATS are those of Most

Favoured Nation (MFN) and Transparency. Some of the other GATS provisions included under the 'General Obligations and Disciplines', are not really general in the true sense of the term, since their applicability is often subject to certain qualifications. For instance, the provisions on Domestic Regulation (Article VI) are applicable only to those sectors in which a Member has undertaken 'specific commitments'. In the case of Government Procurement (Article XIII) also, there are exceptions to the applicability of MFN, Market Access, and National Treatment provisions under specified conditions. Furthermore, there are exceptions to the Market Access, National Treatment and MFN provisions for measures taken to protect public order, life, for national security reasons and the like.

GATS Schedule: This is the schedule that lays down the GATS-commitments undertaken by a WTO Member, voluntarily or through negotiations. This is in some sense the GATS-counterpart of the tariff schedules of WTO Members under the purview of the General Agreement on Tariffs and Trade (GATT). In its schedule, a Member is said to have made a 'Full' commitment on the MA/NT in a sector or across the board (i.e. horizontal) in a particular mode of supply of service, if the corresponding entry reads 'None'. In other words, an entry of 'None' in the schedule of a Member means that it is committing itself to not having in place any measure, which violates the MA/NT for a particular mode of supply either in a specific sector or across the board. The term 'Unbound', when inscribed in a Member's schedule, implies that 'no commitment' is made. In other words, the Member retains the right to impose restrictions in the sector(s) for that particular mode of service delivery. The rest of the entries, which include specification of certain restrictions and limitations, are referred to as 'partial commitments'.

GATS Visa: Select member countries of the WTO (including India) have proposed the creation of a GATS visa that would allow workers to work temporarily in any other WTO-Member country on the basis of the employment law of the worker's home country.

Horizontal and Sector-specific Commitments: The 'specific commitments' of the GATS have a distinctive structure given the 'modal' approach of classifying services trade. For each specific sector scheduled by it, a Member makes commitments on Market Access (MA) and National Treatment (NT), for each mode of services trade, under what are known as sectoral schedules of commitments. Members also make MA and NT commitments across the board for all the sectors included in its schedule with respect to each mode of services in what are known as horizontal schedules of commitments. The 'horizontal commitments' could complement, override, or qualify the 'sector-specific commitments'. Hence, both sectoral and horizontal schedules have to be read together to understand the extent and the nature of commitments undertaken in a particular sector.

Licensing Procedures: Licensing procedures are administrative or procedural rules that a natural or juridical person, seeking authorisation to supply a service, including the amendment or renewal of a licence must adhere to, in order to demonstrate compliance with licensing requirements of a country (where the service is to be provided).

Licensing Requirements: Licensing requirements are substantive requirements, other than qualification requirements, with which a natural or juridical person is required to comply in order to obtain, amend or renew authorisation to supply a service.

Modes of Supply: This refers to the means of delivering services to foreign consumers. Modes of supply are based on the origins of the service supplier and the consumer, and the type of territorial presence that both have when the service is delivered. There are four Modes of services supply:

Mode 1 (Cross-border Supply) refers to delivery of services across countries, i.e. without the physical proximity of the service provider and the consumer. Examples of Mode 1 services include Business process outsourcing (BPO); services provided across countries through telecom network; physical movement of merchandise embodying a service (e.g. a diskette storing information) from one country to another.

Mode 2 (Consumption Abroad): The consumer receives a service outside his country either by moving or being situated abroad. Repair services done on equipments shipped to a different country; people seeking medical treatment abroad; tourism etc. are examples of Mode 2 services.

Mode 3 (Commercial Presence) embraces supply of services by a service provider of one country through

commercial presence in the territory of another country. In other words, it involves the establishment of representative offices, branches, subsidiaries, joint ventures, partnerships, etc. in the overseas market, analogous to Foreign Direct Investment (FDI) in services.

Mode 4 (Movement of Natural Persons) refers to the temporary movement of service providers either in an individual capacity or as part of an establishment to provide the service overseas. For example, a US accounting firm providing accounting services in Italy by sending its US-based employees to Italy on a temporary basis is trading service under Mode 4.

Mutual Recognition Agreements (MRAs): MRAs in services enable the qualifications of professional services suppliers to be mutually recognised by signatory member countries, hence facilitating easier flow of professional services providers.

Qualification Procedures: Qualification procedures are administrative or procedural rules of a country that a 'natural person' from another country must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service in the former country.

Qualification Requirements: Qualification requirements are substantive requirements of a country relating to the competence of a 'natural person' from another country to supply a service, and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service in the former country.

Request-offer Approach: In line with the 'built-in' agenda of the GATS regarding successive rounds of negotiations towards achieving progressive liberalisation in the services trade, a new round of services negotiations, termed 'GATS 2000', was launched in January 2000. The 'Guidelines' for these negotiations (reached in March 2001) stipulated the 'request-offer' approach as the main method of negotiating new 'specific commitments' on Market Access, National Treatment and Additional Commitments.

The 'GATS 2000' negotiations were subsequently subsumed into the 'Doha Development Agenda'. In line with this mandate of the 'Guidelines', the Market Access negotiations on services initially proceeded on the basis of a bilateral 'request-offer' approach'. In this approach, a country requests other countries to undertake commitments in sectors and modes of commercial interest. The process continues with a view to submitting revised requests and subsequent offers by all the Members until the commitments can be adopted as final schedules. Hence, the bilateral 'request-offer' approach involves a process of repeated reiteration – offer, negotiations, revision, resubmission, etc.

Later, the Hong Kong Ministerial Declaration (HKMD) of December 2005 mandated the adoption of a plurilateral 'request-offer' approach as a complementary method of negotiations with the aim of expediting the market access negotiations on services. In this approach, a group of WTO Members (called 'demandeurs') may place a collective request directly on a country, which is the target of that request. A plurilateral request may be focused on a specific sector or a particular mode. As per the HKMD, a recipient country of a plurilateral request is 'obliged' to 'consider' that request while submitting a new round of 'revised offers'. However, the offer emanating from a plurilateral request is to be given on an MFN basis to all the WTO Members and not only to the 'demandeurs' of that particular request.

Services Sectoral Classification List (W/120): During the UR, the 'would-be' Member countries of the WTO drew up the 'Services Sectoral Classification List' (WTO Document MTN. GNS/W/120), generally referred to as W/120, on the basis of the 'United Nations Central Product Classification' (UNCPC). This list covers 161 service activities under 12 broad sector heads. Notably, the GATS, however, has adequate flexibility ingrained into it to accommodate newer categories of services within its purview. Moreover, it is not necessary for the Member countries to stick to the W/120 classification for making their GATS commitments. However, most Members have done so during the Uruguay Round. Member countries, however, have the liberty to clarify definitions. In due course, as the UNCPC has undergone changes due to technological developments, some countries have also taken this into account while making their offers in the Doha Round.

Technical Standards: Technical Standards are measures that lay down the characteristics of a service or the manner in which it is supplied.

Trade in Services and India: Prospects and Strategies

Benny Kuruvilla

Rupa Chanda (Ed). (2006). 'Trade in Services & India: Prospects and Strategies'. Wiley India, New Delhi. December.

Rupa Chanda has been championing the GATS (General Agreement on Trade in Services) cause in India with an evangelical zeal since the services negotiations were launched in 2000 as per the WTO mandate. Lately, much of Chanda's ardour for the GATS has rubbed off on India's trade policy makers. Unfortunately for them, the services talks continue to be bogged down by crisis (due to lack of movement in agriculture, the main stumbling block of the Doha Round) and disinterest (mostly from smaller developing countries who now understand the GATS text better and don't believe they have much to gain from its style of services liberalisation).

This edition is an initiative of Centre for Trade and Development (Centad), the New Delhi based think-tank. Chanda who teaches Economics at the Indian Institute of Management in Bangalore also provides the overview piece. The initial chapters touch on cross-cutting issues such as FDI and labour mobility. The next set provides useful information on infrastructure, professional and social service sectors. The last section elaborates on preferential agreements pertaining to services trade.

India is today, arguably, the only really proactive developing country in the GATS negotiations. At the Hong Kong WTO Ministerial in December 2005, it infamously broke ranks with long-standing allies and supported, and in fact, drafted key sections of Annex C that sanctioned the plurilateral method (a group of countries jointly demanding market opening from trading partners) for market access negotiations in services. Much of this buoyancy comes from its expected gains in labour mobility (or Mode 4 in GATS speak). The chapter (by Shailendra Kumar and Amba Pande) on 'Movement of service providers: Opportunities and challenges for India' is especially insightful and provides useful data and analysis on India's status in terms of labour movement and its interests in the GATS.

Chanda in her overview piece draws on this chapter and the one on accountancy to make the case for the *'significance of Mode 4 liberalisation if India has to truly benefit from globalisation of services'.* But this belies the experience of GATS so far, and some of the analysis from the chapter by Kumar and Pande. Current negotiations at the GATS clearly indicate that Mode 4 progress, if at all any, will pertain largely to highly skilled workers. The advantage for countries such as India, other developing and Least Developed Countries (LDCs) is in the movement of low skilled workers and the possibilities for that are clearly minimal given the trend of GATS Mode 4 commitments.

For instance, India's advocacy on Mode 4 with the United States of America (US) pertains to an increase in the H-1B visa quota. H-1B visas, doled out annually by the US Congress to various US companies, cover highly skilled speciality occupations such as computer, accountancy, engineering, medical, management and consultancy and are the most common form of temporary professionals in the US. Indian IT companies bag the majority of these visas for contractual work for US firms such as Microsoft and IBM. Business lobbies in India such as NASSCOM (National Association of Software and Service Companies) and the CSI (Coalition of Services Industries) in the US have been pushing hard for an increase in the quota and for binding a higher number in the GATS. As yet, the US has not increased its meagre Uruguay Round quota of 65,000.

Analysis of political economy issues, such as Commerce Ministry officials batting for industry lobbies in India and the US and peddling it as national interest, is missing and that is disappointing.

The chapter on health services (by K M Gopa Kumar and Nirmalya Syam) throws light on some of the erroneous

Uruguay Round commitments made by Indian bureaucrats. They argue that India's lack of limitation on National Treatment in Mode 3 (FDI) in hospital services could jeopardise subsidies given to domestic hospitals. The chapter underscores the point that in crucial social services such as health it is important to ensure regulatory robustness to deal with private players and maintain flexibility. Since neither has been done (there is no regulatory authority to oversee the functioning of health care providers so as to ensure equitable access to health care for all) they make the valid point that India should not make binding commitments in the sector anymore.

With little sign of progress in the GATS, India has predictably jumped into what is being called the 'Asian noodle soup' of bilateral and regional trade agreements. The Commerce Ministry is actively looking at incorporating services and investment liberalisation in all of its BTAs and RTAs and the last chapter (by Parashar Kulkarni and Biplove Choudhary) is a must read to get a sense of the present state of play. The 2005 Comprehensive Economic Cooperation Agreement (CECA) with Singapore is analysed in detail. The CECA has a controversial investment chapter, which is expected to benefit outward investment from India and inward FDI into India. Legally binding investment chapters in multilateral, regional and bilateral fora have been viewed with scepticism by most developing countries and the developmental implications of the investment in the CECA are not examined. The mercantilist ambitions of India's services companies are being pandered to but the authors rightly predict that the Singapore route could also be used for inward FDI into India by countries such as Japan. Investment provisions in GATS or in BTAs like the CECA essentially provide guarantees into areas not strictly in the realm of trade policy (national treatment can now apply to subsidies thanks to India's flawed Mode 3 hospital services national treatment commitment). Such commitments could lead to regulatory difficulties in terms of market access and national treatment with serious developmental implications.

But despite some gaps like the ones mentioned above, the book makes for a compelling read and is of benefit to anyone monitoring India's so called 'services century'.

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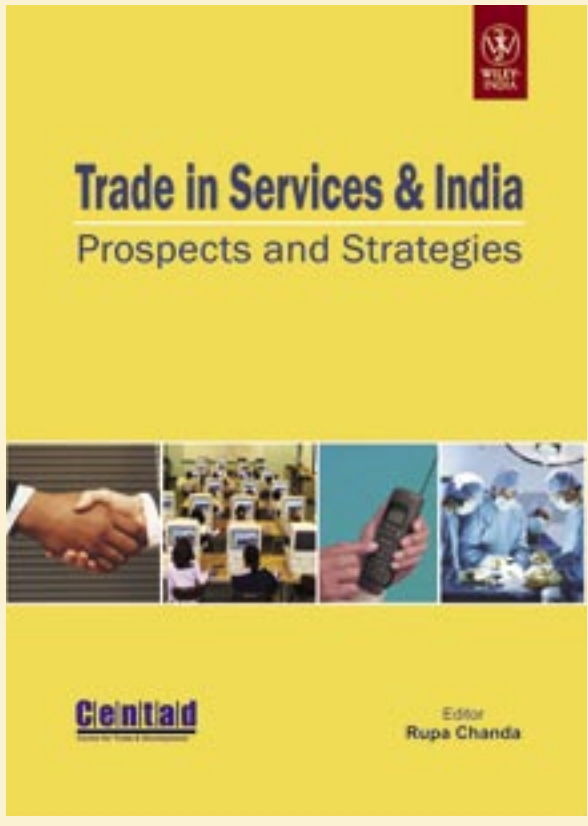

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South Asia Needs to Adopt Best Practices in Regulation

South Asian countries should also look to use regional liberalisation as an opportunity to share with India the large volumes of services exports she is enjoying. For instance, in the BPO sector, Bangladesh has already taken steps to subcontract some of the work given to major Indian service exporters. Other South Asian countries can adopt a similar approach, and thereby see India as an opportunity rather than a threat. At the same time investments in human and physical capital need to be made in order to maximise gains from liberalisation. English language education, telecommunications connectivity and improved transport networks (aviation in particular) are priority areas that are essential for effective utilisation of a liberal services regime.

Centad: South Asia is amongst the worst performers in human and economic development indicators in the world. This clearly suggests that the state of public services, infrastructure services and utilities is abysmal. What broad policy directions do you suggest for reform of these sectors in South Asia?

Saman Kelegama: South Asia has to look at international best practices because services are different and what works in a particular service sector may not work in another service sector. For example, privatisation may produce positive results in the telecommunication sector but not produce the same results in the water supply sector. South Asia has to look at the Private Public Partnership (PPP) or Performance Contract or Franchise model very closely for some public utilities like water supply, electricity, etc. Of course, the PPP model needs a good regulatory framework and to formulate such a framework good human resources should be mobilised. The reform process will be facilitated by a well developed capital market.

Centad: South Asian LDCs are known to suffer from trade problems such as excessive dependency on few products and low value addition. What forms of preferential treatment is necessary to ensure that South Asian LDCs gain from services liberalisation in the region?

Saman Kelegama: Preferences to LDCs can be built in to the schedules that the non-LDCs (India, Pakistan and Sri Lanka) prepare when services liberalisation come into effect under SAFTA in a future date. For example, under Mode 4 more market access can be offered by non-LDCs in the schedules they prepare for LDCs. The 'denial of benefits' (the equivalent of rules of origins for trade in goods) can also be relaxed by non-LDCs for the LDCs when formulating the services liberalisation framework. If politically feasible, non-LDCs can engage in unilateral liberalisation of services in certain sectors where they have developed an effective regulatory framework. For instance, Sri Lanka has implemented a visa on arrival policy for all SAARC citizens unilaterally. LDCs can benefit from such measures. Another unilateral measure that South Asian non-LDCs can consider implementing is 'open skies' policy for LDC airlines. India has already implemented this policy for all SAARC countries. Such measures can go a long way in assisting LDC services exports.

(Contd. from page 14)

Developed Countries are Playing Duck and Dive

regulation, and yes, this does not go well for the majority that is mostly on the defensive in these negotiations. This situation is not unique to services. In the case of preference erosion in agriculture and industrial products, the fight is really between and amongst developing countries. As such, overall, Doha is bringing out real tensions that threaten the rubric of South-South solidarity. What is necessary is for countries of the South to have a realistic stock-take of what is really at stake in the Doha negotiations overall. Analyse in terms of numbers how much is there to gain, vis-à-vis the losses. A candid process of this nature will lead to the conclusion that there is a lot of rhetoric, but quite little to gain. While there is a lot to gain on the part of developed countries: they keep the spending on agricultural subsidies, extend and increase market share for industrial products, force greater market access commitments in services, get streamlined movement of their goods through customs processes….and present a façade of new money for aid for trade. These are the realities of the Doha Round. Is it worth breaking South-South solidarity for?

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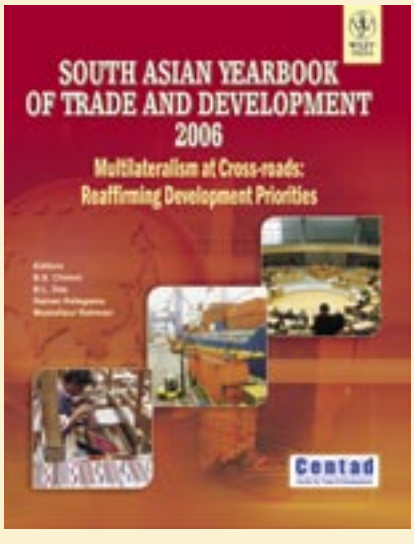

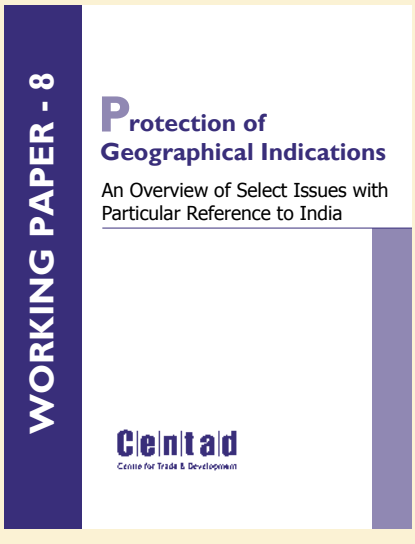

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