

1

Introduction

‘...Global demand for knowledge-intensive services sectors (finance, business services, education and healthcare) is growing at breakneck speed; they face less competition than manufacturing from low-cost countries and suffer less than manufacturing from the rise in energy cost’. *Financial Times*, 17–18 September 2006.

Just a few decades ago a developing country was deemed to be successful when it reached the status of a NIC (newly industrialised country). The development model viewed economic progress as a transformation from exporting commodities to industrial goods. Services (the tertiary sector) were considered to provide support to the real economy. The prevalent belief about services was that they were not tradeable and could not be sent across borders like industrial products. The problem was compounded by the difficulty of obtaining proper statistics.

There are obviously some basic differences in trade in services and in goods. First, many services require proximity between the supplier and the consumer, and hence factor mobility is necessary for international transactions. Secondly, the limited scope for ‘border’ restrictions implies that domestic regulations have a much stronger influence on trade in services. A key difficulty is distinguishing between regulations that are necessary (and may even need to be strengthened) to achieve legitimate objectives – such as financial stability, competitive market conditions and universal service – and those that have a protectionist impact.¹

While world exports of services totalled US\$388 billion in 1980, by 2007 this figure had reached \$3 trillion. The share of exports by developing countries was obviously much lower than that of developed countries, but had nonetheless been rising by leaps and bounds (see table 1.1). The figures, while they may not reflect the precise situation,² do however reveal an interesting trend. Only a few developing countries are leading the pack. For example in 2007, the African, Caribbean and Pacific (ACP) countries exported only US\$67 billion out of a total of US\$848 billion.

Table 1.1: Value of exports of services³ US\$ (billion)

	1980	1990	2000	2005	2007
World	388	830	1,527	2,538	3,337
Developing countries	71	150	348	622	848
ACP	12	18	31	52	65
Mauritius	0.1	0.5	1.1	1.6	2.2

Source: UNCTAD Handbook of Statistics, 2008

The OECD expects services to grow in the coming years as companies outsource more of their functions, with less need for face-to-face contact due to their intensive use of information technology. These functions include work by clerks and computer operators, data handlers and claims processors, as well as programmers and certain types of scientists and engineers, i.e. both high- and low-skilled white-collar jobs. OECD estimates place the total number of jobs that could potentially be affected by domestic or global outsourcing at close to 20 per cent of employment in certain countries. According to OECD reports, the direct benefits of international sourcing are currently accruing to a number of OECD countries (e.g. Ireland and the Czech Republic) and non-OECD countries (e.g. India), which have become highly competitive in business services. Sourcing business services from lower-wage countries could reduce the prices of services as diverse as finance, transportation and health. Research⁴ carried out in 2005 by Walmsley and Winters found that if OECD countries were to allow temporary access to foreign service providers equal to just 3 per cent of their labour force, the global gains would be over \$150 billion – more than the gains from the liberalisation of all trade in goods.

Worldwide services exports increased almost nine fold between 1980 and 2007, driven mainly by ICT and finance.

According to Synergist, the global ICT/BPO/ITES industry (onshore and offshore outsourcing) was expected to reach \$850–900 billion in 2008, with BPO-ITES accounting for \$550 billion. The largest 20 BPO-ITES providers will together account for less than 25 per cent of total market share. The 2006 Global Insight Report on Outsourcing concluded that, by 2008, IT offshoring would account for roughly US\$125 billion in additional GDP for the USA annually, a US\$9 billion jump in real US exports, and a net increase of 317,000 jobs in the US. Increases in the rest of the OECD (EU, Japan and Singapore, Hong Kong, Korea and Taiwan) would imply those numbers increasing by 2.5 times. According to Gartner, a market research firm, the size of the global BPO-ITES market (excluding ICT) in 2007 was a much lower US\$173bn, of which US\$25bn would be outsourced to offshore contractors. Of this, India would account for US\$14bn in revenue. Both Gartner and Global Insight identified North America as the dominant market for ITES-BPO services, accounting for 60 per cent of the total market in 2006. The main BPO verticals for the US were telecommunications, financial services, healthcare and energy. Commonly outsourced processes include internal auditing, payroll, human resources, benefits management, contact centres/customer care/payments/claims processing, real estate management, and supply chain management.

The EU's ITES-BPO market accounted for 22 per cent of the global market in 2006, with the financial services sector consuming the largest amount of BPO-ITES services, followed by utilities and telecommunications. Human resources (HR), finance and accounting were the fastest growing service lines. The Asia Pacific ITES-BPO market accounted for 18 per cent of the global market in 2006. Given the relative infancy of this market, the region is expected to experience rapid growth over the

next few years. Growth will primarily be driven by costs reduction and the need to focus on core competencies. HR, finance and accounting are expected to be the key growth areas in the Asia-Pacific region in the years ahead.

The global international financial services sector generated revenues of US\$1.1 trillion in 2005, against world output of US\$44 trillion, with forecast growth by 2020 to reach US\$6.9 trillion against world output of US\$122 trillion by the same time. Although the global financial crisis is expected to change these absolute figures, the trend is likely to be the same. In addition, the regulatory framework is likely to be strengthened and should provide better guarantees for future growth.

There has also been an increase in the number of financial centres worldwide. Financial centres may be global, regional, ordinary or offshore. Global financial centres, like New York, London, Singapore and Hong Kong, serve a global market with the widest possible array of financial services. Regional centres, like Shanghai and Dubai, serve their region rather than their domestic market. Ordinary financial centres, such as Paris, Frankfurt and Tokyo, are non-global and non-regional and cater mainly to the needs of their national economies. Offshore financial centres, such as Switzerland and other tax havens, specialise in wealth management and tax management, with limited provision of international financial services.

The development of financial services centres has not been so widespread, though the volume of transactions has been increasing, possibly because some basic factors are essential for their development. First and foremost, there must be a high level of human capital with appropriate skills. Second, the telecommunications infrastructure should be world class and should ensure round-the-clock connectivity. This also implies that the energy sector should be well developed to ensure that there are no power outages or significant fluctuations. Third, there must be state-of-the-art IT systems. Fourth, the financial system must be well developed with liquid markets. Fifth, the regulatory framework has to provide for 'best in class' financial regime governance. It is also an advantage for a financial services centre to have a hinterland that is growing, as well an extensive network.

From the above discussion, it is clear that there is a global market for services and countries need to gear themselves up to be able to exploit these new opportunities. However, a different approach is required, where services are considered to be exportable and not just for local consumption. More importantly, policy-makers must cease to view some services, like healthcare and education, only as 'public goods'.

Health services exports can take several forms: they can be traded across borders as a result of technological improvements in telecommunications, e.g. medical transcriptions; consumers can travel abroad to benefit from medical and health services, e.g. in 2005 India welcomed 500,000 patients from abroad for medical treatment; private clinics can be opened in a foreign country; and finally doctors and medical staff may offer their services on a temporary basis in a foreign country.

The exports of healthcare services are often classified as 'health and wellness tourism'. This market, estimated at US\$40 billion worldwide, can be subdivided into four segments: i) medical tourism; ii) wellness and spas; iii) nursing and elderly care; and iv) research and diagnostic services. Medical tourism covers a comprehensive range of therapeutic services, including general surgery, orthopaedics, urology, gynaecology, ophthalmology, dialysis, cardiology and cardiac surgery. Other areas that have witnessed rapid growth in recent years are: cosmetic surgery, dentistry, and spas and wellness tourism (e.g. Ayurvedic medicine and acupuncture).

Moreover, a country can benefit from medical tourism if certain conditions are present. Apart from the obvious ones such as air access and appropriate infrastructure in terms of hotels, hospitals and spas, these include: portability of health insurance in target markets; respect for client privacy and confidentiality; institutions accredited by recognised bodies; ease of visa obtainment; recognition of professional standards; and a framework for malpractice insurance of out-of-jurisdiction personnel.

Similarly, the education industry is becoming increasingly global. Educational services can be exported via the internet (e.g. Indian teachers giving private tuitions in mathematics to American students); students can travel to a foreign country to obtain these services; universities can open branches abroad; and teaching staff can migrate on a temporary basis to provide services abroad. Exports in this sector have taken place from developed to developing countries over a long period of time. However, many developing countries, as well as small states like Malta and Cyprus, have also become exporters of educational services. At the same time, because of supply capacity constraints for some subjects like medicine and engineering in countries like the US and India, medical colleges have been set up in some Caribbean countries.

This growth in the exports of services has resulted from a combination of factors. First, technological improvements in telecommunications, in particular, and the advent of broadband technology have rendered possible the fragmentation of services. While the manufacturing process had been amenable to being broken up in specific operations, which could be performed in different places and then be brought together for assembly, this was not possible in the services sector because of the need for proximity between the consumer and supplier. However, great strides in ICT have led to more reliable telecommunications at a decreasing cost. Offshoring and outsourcing can be engaged in on a massive scale.

At the same time, business leaders have been searching for innovative ways to improve their competitiveness. Business schools have revisited 'small is beautiful', as the jargon in the 1980s pushed towards lean manufacturing, world-class manufacturing, focus on core business and business process outsourcing. Management philosophy at the enterprise level was ready to accept the avenues for rapid expansion that were being opened by the new technology, and the new international trading environment characterised by globalisation.

A third factor was the establishment of the World Trade Organization in 1995, which provided the institutional catalyst at the international level for placing trade liberalisation high on the agenda in a bid to build a 'level playing field'. Meanwhile, domestic regulatory reform in many OECD countries and some developing economies, as well as the emergence of a global labour market of highly skilled workers, provided the platform from which services could take off, especially as the basic framework was created with the General Agreement on Trade in Services (GATS).

What are services?⁵

A 'service' is better understood in contrast to 'merchandise', which refers to tangible goods while a service is intangible. However, services are embedded in many cases in merchandise trade, as they include activities such as distribution, marketing, design, communications, transport and insurance amongst others. It is interesting to note that the GATS does not provide a definition of 'services'. However, it defines the 'supply of a service' to include the production, distribution, marketing, sale and delivery of a service. The agreement covers all services sectors, except the core of air transport services (i.e. measures affecting air traffic rights and directly related services), and services provided in the exercise of governmental authority (i.e. services supplied neither on a commercial basis nor in competition with one or more service suppliers).

While defining trade in services in terms of four modes of supply, the GATS contains no definition of what actually constitutes a service. It is no different in this regard from its counterpart in merchandise trade, the General Agreement on Tariffs and Trade (GATT), which contains no definition of a good.

The 12 major categories in the list published by the World Trade Organization (WTO) in July 1991 and known as the 'W/120 list' are:

1. Business services
2. Communication services
3. Construction and related engineering services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health-related and social services
9. Tourism and travel-related services
10. Recreational, cultural and sporting services

11. Transport services

12. Other services not included elsewhere

These 12 sectors are sub-divided further into 155 sub-sectors.⁶ While all of these services could be included potentially in the schedules of commitments of WTO members, in reality binding commitments only apply in regard to those sectors or sub-sectors that are chosen specifically by the member.

The GATS defines four modes through which an international supply of a service can occur.

Mode 1: Cross-border supply

Cross-border supply takes place when a service is supplied 'from the territory of one member into the territory of any other member'. That is, the service is rendered by a resident in one economic territory to a resident of another economic territory and only the service 'crosses the border'. This is similar to trade in goods where the product is delivered across borders and the consumer and the supplier remain in their respective territories. Such supply of a service may be enabled by communication tools such as telephone, fax, Internet, courier or post. For example, a law firm delivering legal advice by phone to a consumer, a physician providing medical diagnosis to a patient via email, or a financial services supplier supplying portfolio management or brokerage services across the border. The boom in services exports originated for many low-cost countries with call centres. It has been roughly estimated that 35 per cent of world services trade are delivered via this mode.

Mode 2: Consumption abroad

Consumption abroad occurs when the service is supplied 'in the territory of one member to the service consumer of any other member'. That is, the consumer consumes the service outside his/her home territory: either the consumer or his/her property is abroad. Tourist activities such as visits to museums and theatres, or persons travelling abroad to receive medical treatment or to follow language courses are typical examples. Services such as ship repair abroad, where only the property of the consumer moves or is situated abroad, are also covered. It is estimated that between 10 and 15 per cent of world trade is found in this category.

Mode 3: Commercial presence

Commercial presence takes place through 'the supply of a service (...) by a service supplier of one member, through commercial presence in the territory of any other member'. GATS recognises that it is often necessary for services suppliers to establish a commercial presence abroad to ensure closer contact with the consumer at various stages of the production, distribution, marketing, sale and delivery, as well as after-sales, services. Commercial presence in a market abroad covers not only juridi-

cal persons in the strict legal sense, but also legal entities that share some of the same characteristics, such as representative offices and branches. Services supplied by a foreign-owned branch or subsidiary of a bank, medical services provided by a foreign-owned hospital and courses offered in its host country by a foreign-owned school are examples of supplies through commercial presence.

Commercial presence as defined in GATS means any type of business or professional establishment, including through the constitution, acquisition or maintenance of a juridical person, or the creation or maintenance of a branch or representative office, within the territory of a member for the purpose of supplying a service. In this case a juridical person has to be owned (i.e. the owner holds more than 50 per cent of the equity interest) or controlled (power to name a majority of its directors or otherwise to legally direct its actions). This is estimated to provide 50 per cent of world trade in services.

Mode 4: Presence of natural persons

Presence of natural persons occurs when an individual is temporarily present in the territory of an economy other than his/her own to provide a commercial service. GATS defines mode 4 as the supply of a service by 'a service supplier of one member, through presence of natural persons of a member in the territory of any other member'. Mode 4 is generally understood as covering contractual services suppliers, whether: (i) employees of a foreign service supplier; (ii) self-employed; (iii) intra-corporate transferees and foreign employees directly recruited by foreign established companies; or (iv) service sellers who enter the host country to establish contractual relationships for a service contract or persons responsible for setting up commercial presence. There is initially no actual service traded by category (iv). Mode 4 applies to service suppliers at all skill levels. The purpose of the stay in the territory of the member should be to supply a service. For example, mode 4 covers computer services delivered to the consumer either by an employee of a foreign computer company or by a self-employed computer consultant within the context of a services contract. Other examples include a computer programmer who is transferred temporarily to work abroad in the branch of his/her employer (intra-corporate transferee), a plumber present in a host country in order to work on a building site in the context of a services contract or a fruit picker going abroad to work temporarily in a farm in the context of a services contract between a foreign specialised employment agency (the employer of the fruit picker) and a host country farm (the client of the employment agency). This mode of supply contributes only between 1 to 2 per cent of world trade in services.

The different modes of supply are illustrated in the example below taken from the ICT sector (figure 1.1).

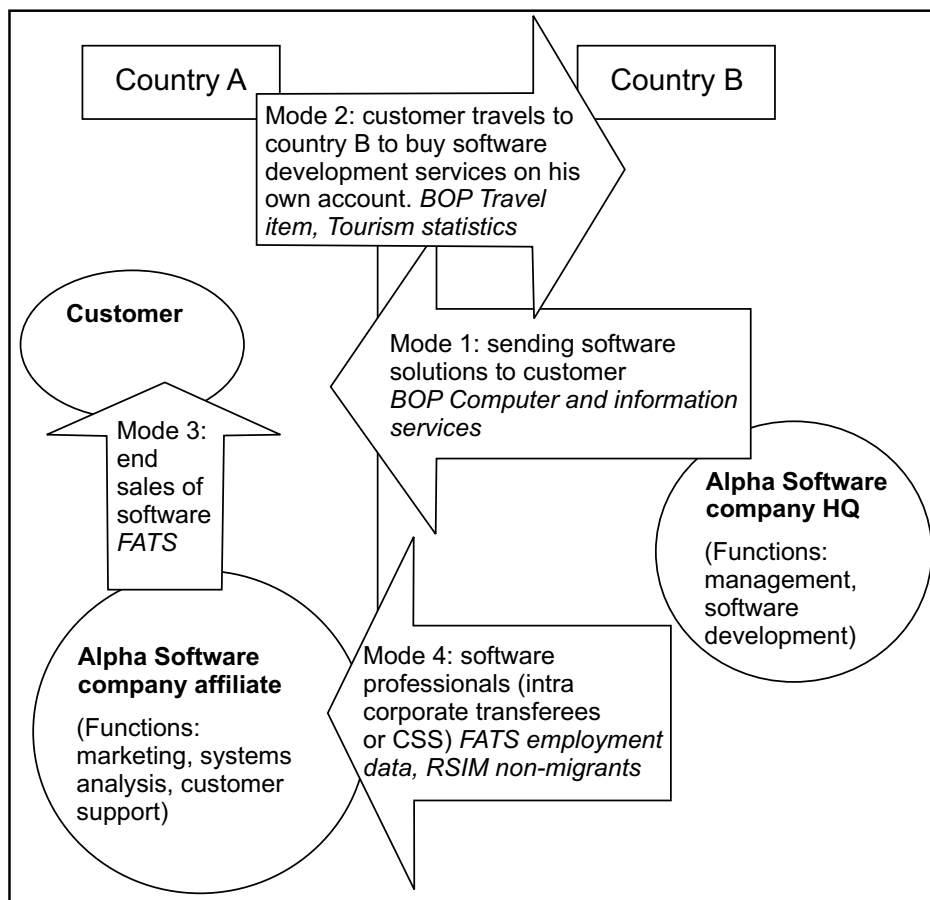


Figure 1.1: Global outsourcing of computer and software related services
 Source: WTO website

Barriers to trade in services

Whilst there is definitely a market for services globally and these provide an opportunity for many developing countries, in particular SIDS (small island developing states), to diversify their economic base by securing some market niches, countries must be aware of the need for domestic reforms to overcome potential constraints and barriers.

Internally some of the challenges faced are:

- Scarcity of skilled human resources
- Poor infrastructure

- High telecommunications costs
- Inadequate knowledge of product and market
- Lack of capacity in the public sector to adapt to the fast-changing international environment (i.e. the persistence of a control, as opposed to a facilitation, mindset)
- Governance issues
- Lack of economies of scale
- Poor trade in services statistics
- Language proficiency
- Inadequate institutional support (trade promotion agencies as well as private-sector institutions still focus on traded goods)
- Lack of co-ordination among private-sector suppliers of services

Services trade barriers, on the other hand, may either take the form of discrimination against foreign suppliers or the protection of incumbent providers against all new suppliers. These barriers can take the form of:

- Non-recognition of qualifications by states
- High costs of accreditation as only a few bodies are recognised
- Nationality and residency requirements,
- Restrictive visas and work permits
- Government procurement laws
- Slow and inadequate legal processes
- Lack of transparency – e.g. publication of regulations
- Excessively high fees for obtaining services
- Inadequate protection of intellectual property – copyrights and trademarks

The General Agreement on Trade in Services

Many of these issues, particularly those concerning the GATS, continue to be discussed at the WTO. The following section, which explains the state of play in early 2008, draws on a speech delivered by Dr Harsha V Singh, Deputy Director-General of the WTO, at a pan-Commonwealth conference on trade in services.

Under the GATS, WTO members have made legally binding commitments on trade in services at the multilateral level. The structure of GATS comprises two different types of disciplines. One is a general framework of disciplines, which applies to all services activities. The other consists of the schedules of commitments, one for each WTO member, which specify the extent and nature of market opening.

The general disciplines include non-discriminatory treatment among members (the famous most-favoured-nation principle), basic transparency obligations, as well as a number of 'good-governance' provisions, including the availability of legal remedies for service suppliers that are adversely affected by administrative decisions. The regime also allows various flexibilities.

These general disciplines imply that even with the absence of specific commitments, there are obligations under the GATS. For example, the most-favoured-nation or MFN obligation is a powerful discipline as it prevents discrimination among service suppliers of different nationality. It also helps all WTO members, in particular the smaller among them, to benefit from the market-access opportunities that may be negotiated between or autonomously provided by the 'heavyweights' in the system.

The schedule of commitments identifies the service sectors in which market access and national treatment are specifically provided, and also the various conditions under which such access is granted. The GATS is a highly flexible regime. Market access and national treatment obligations apply only in sectors where members have undertaken 'specific commitments'. It is thus possible for each member to adjust its international trade obligations to the particular policy objectives and constraints of individual sectors. Limitations scheduled by members thus typically provide a legal basis for numerical quotas on the number of suppliers or their transactions, foreign equity ceilings or joint-venture requirements, or the exclusion of foreign-owned companies from domestic subsidy programmes.

An important feature of the GATS is that commitments can be phased in over time, enabling members to make preparatory policy changes and/or institutional (including regulatory) adjustments within a transition period. Nor do commitments have to cover an entire service sector. For example, GATS commitments on legal services often exclude the practice of domestic law, covering international and other countries' law only. Members are not constrained to open their public services to competition, and they retain broad scope to regulate for quality and other legitimate policy purposes, even in sectors where they grant full market access and national treatment (the principle of treating foreigners and locals equally).

While the absence of a WTO commitment in a given sector does not mean that access to that market is closed, without such commitments no guarantees of access are offered by a member state. If any country wants to have a predictable path for market opening and, ultimately, growth and development, such guarantees are most valuable. This explains why some countries have autonomously scheduled such access commitments, especially in telecommunications, outside of any negotiating context. Some countries that used to adopt a defensive stance vis-à-vis the GATS, have become a driving force in services negotiations in recent years.

Professional services

In terms of professional services, by far the greatest number of GATS commitments is found in engineering, accounting, architectural and legal services, while the lowest are recorded for veterinary services and the services of midwives, nurses and physiotherapists.

Regarding the special challenges faced by developing countries for professional services, not all modes of services supply are equally relevant. While the commercial presence mode (mode 3) offers valuable guarantees for investors in services, and the consumption abroad mode (mode 2) is of great significance in certain sectors, such as tourism, it appears that modes 1 and 4 are of special interest to many developing country members.

The Internet revolution has dramatically increased the tradability of services cross-border (mode 1). Developing countries are capturing a growing share of the world market for such cross-border services, ranging from remote call centres to sophisticated software development. In addition to software, medical facilities may have their records or patient interviews digitally transcribed overseas, while accounts and other data-related services may also be carried out cross-border. These developments are taking place not only in countries such as China and India. In Africa, countries like Ghana, South Africa and Kenya have also made inroads. In South Africa, for example, there are more than 400 call centres, employing 200 persons each on average. In Malaysia, third-party call and contact centres have been growing at triple-digit rates year-on-year since 2000. Similarly, countries in the Caribbean are major providers of back-office services such as data processing. Given improvements in telecommunications and the reduced cost of skilled labour, this is an area for potential future growth.

Mode 4 is a major focus for developing country exporters, as they have comparative advantage in labour-intensive services and much of their service exports take place through this mode of supply. In addition, they may be interested in transfers of managerial and organisational skills, together with semi-skilled workers.

With respect to this mode, it is worth noting that the GATS is concerned with trade in services – not with migration. Thus, mode 4 covers the temporary movement of persons across borders only to the extent that the purpose of their movement is the supply of a service. Mode 4 does not cover jobseekers and the GATS does not apply to measures related to citizenship, residence or employment on a permanent basis. As long as this does not impair their GATS commitments, governments remain free to regulate the entry and temporary stay of people in their territory.

Examples of mode 4 are many. In legal services, exports from developing countries often take place through the cross-border movement of persons, either as self-employed professionals or as employees of foreign-established law firms. More than one million Filipino workers were estimated to be abroad in 2006, many employed in

professional services such as nursing, engineering, information technology and accounting. Similarly, in the last decade or so, Kenya has exported considerable quantities of professional services through the movement of its own professionals, especially to Southern African states, but also to developed countries. Likewise, Malaysian construction companies undertake projects such as roads, highways, housing, dams and power generation plants in countries as diverse as China, Vietnam, Chile, Argentina, Sudan and Namibia, while Malaysian architects design hotels, resorts, office buildings, factories and residential developments in countries like Vietnam, the Philippines, Australia and South Africa.

Of course, WTO members focus negotiations on market access through all the four modes. Consumption abroad and commercial presence (modes 2 and 3) are also seen as important, including by some Commonwealth member countries. Moreover, one particular track in services negotiations is dedicated to the development of disciplines with a view to improving the resilience, stability and predictability of domestic regulatory regimes.

WTO negotiations on services

To participate effectively in the WTO services negotiations, member states have to keep in mind the broader context, in particular:

- Stronger internal co-ordination and co-operation is needed than for other negotiations, given the diversity of interests and ministries involved;
- The process of negotiations is based on request and offer, which is time consuming;
- Several participants have emphasised parallelism with other key negotiating areas such as agriculture and industrial tariffs; and
- The recent proliferation of regional agreements risks diverting negotiating resources and attention.

These factors have led to the services negotiations moving at a slower pace than is desired by many. Nevertheless, the negotiations have moved beyond important milestones towards their final phase. First and foremost among these milestones is the Hong Kong Ministerial Meeting, in particular Annex C of the ensuing Declaration. It specifies common negotiating objectives and ambitions at an unprecedented level of detail for all four modes of supply. It also emphasises the need for full and effective implementation of the modalities for least-developed countries (LDCs), and to pursue work not only on market-access issues, but in rule-making areas as well. The Hong Kong Ministerial Declaration also clarifies that LDCs are not expected to undertake new commitments in the services negotiations. Further, for the market-access negotiations, Annex C opened a hitherto unused avenue to complement the time- and resource-consuming bilateral process, with plurilateral request-offer negotiations.

Though intense meetings have taken place periodically, the request-offer process still has some way to go. By the end of 2007, a total number of 71 offers had been received, covering 95 WTO members. Of these, 30 are revised offers. There are almost 20 developing country members (including a few Commonwealth countries) that still have to submit an initial offer.

Moreover, there is sense of disappointment concerning the 'quality' of offers, both in terms of new sector inclusions and improvements of existing commitments. The overall focus is on the sectors and modes that already dominate existing schedules, with relatively few significant changes in the pattern of bindings: sectors that had attracted a limited number of commitments in the past are not drawing many offers either – for example, education, health, distribution, postal-courier and road transport. While some progress has been made with respect to computer services, the level of new commitments and improvements for other professional services has so far been minimal.

In contrast, the plurilateral process had a promising start. Over 20 groups were organised to deal with collective requests in virtually all major service sectors and some cross-cutting issues such as cross-border trade (mode 1), commercial presence (mode 3), presence of natural persons (mode 4) and the legacy of MFN exemptions. For mode 4, there are two plurilateral requests, one from a broadly composed plurilateral group and another from LDCs only.

In these plurilateral negotiations, one group of WTO members requests the 'target' group to make new commitment or to further liberalise in a particular sector. Thus, membership of these groups may vary widely from sector to sector, depending on economic interest.

For Commonwealth countries, too, participation in plurilaterals is limited mostly to the main economic players in terms of market share. In other words, the developed country members are far more frequently involved than developing economies, both among requestors and respondents. Among the developing countries, Singapore is an exception. It is part of eight plurilateral requesting groups, and is the target of nine plurilateral requests. Otherwise, developing Commonwealth countries in the top rung of services exporters and importers generally have been associated with making few plurilateral requests, but are the target of a comparatively larger number of such requests. Thus, for instance, in the case of India, Malaysia, South Africa and Nigeria, they are respectively associated with requests by four, two, zero and zero plurilateral groups making requests, but are the targets of 14, 16, 14 and 7 plurilateral requests. Some smaller Commonwealth countries have also been the subject of requests, with Brunei Darussalam getting eight requests, Sri Lanka getting three, and Mauritius, Fiji and Namibia getting one request each.

This may indicate partly that the markets of these developing Commonwealth countries are seen to be attractive by others, but that these countries themselves do not take the initiative to seek market access from others in more sectors. This is even the

case in sectors that may provide such countries with opportunities to improve their market share. Thus, among the 20 plurilateral requests on various sectors or modes of supply, Commonwealth developing countries (with the exception of Singapore) have been part of the requesting group only in computer and related services (India, Malaysia and Pakistan only), education (Malaysia only), tourism (Mauritius only), cross-border or mode 1 (India only) and mode 4 (India and Pakistan only). Hence, the intensity of participation is low in general and tends to be more defensive than focused on seeking opportunities. This is even given the situation where considerable actual liberalisation has already occurred in domestic policies.

With specific reference to professional services, plurilateral negotiations have taken place for architecture, engineering and integrated-engineering services; computer and related services; construction and related engineering services; and legal services. Professional services are also part of the plurilateral negotiations on cross-border supply and mode 4. In these and other areas of services for which there are plurilateral requests, it is possible for various countries to seek better conditions from others for their own service suppliers, as well as for services supplied through a consortium of suppliers involving various countries.

One expressed reason for the lack of greater interest in services negotiations is the belief that they will not lead to a substantive result. It may however be that this judgement is partial and premature, since a large number of those making requests in the plurilateral process have done so with the understanding that they themselves would be in a position to offer that same request. Thus, since these requests are quite substantive, the potential results would also be substantive and available to all members (given the most-favoured-nation treatment mentioned above). Of course, this result could potentially be even more substantive with the active participation of more countries.

One reason for a number of developing countries to hesitate opening up their services sectors is the view that they first need adequate regulatory capacity. The argument is thus not against greater interlinkages with the rest of the world, but preparing for such interlinkages with strengthening their regulatory capacity. GATS offers a number of ways to enable governments to properly sequence reforms and to take precautionary measures. Member countries also retain broad latitude to regulate as required under domestic policy considerations. These aspects provide members with enough leeway to prepare and fine-tune their commitments and to phase them in over a transition period, including having time to strengthen their regulatory capacity. This flexibility should encourage further commitments.

Improved regulatory capacity is also important because good domestic regulation is often critical to realising the benefits of services liberalisation.⁷ While establishing or improving regulatory institutions may be costly and difficult, because regulation requires sophisticated skills in a world of rapidly changing technologies, adequate capacity in this area extends the scope of the market and the ability of domestic

entrepreneurs to compete in the world. Better regulatory regimes also provide confidence to domestic and international investors. Creating regulatory infrastructure for services may be as important as building roads and ports (physical infrastructure) for merchandise trade.

There is major scope for considering innovative methods for upgrading regulatory capacity, both by linking up with other regulators and institutions that can facilitate the process, and by devising a technical assistance programme to supplement these efforts. The 'Aid for Trade' initiative being emphasised at the WTO is important in this context. Aid for Trade presents a key opportunity for developing countries to address wide-ranging technical assistance issues, including those relevant for regulatory and other technical upgrading challenges of market opening in services, as well as for utilising available market opportunities domestically and abroad.

An important part of the GATS negotiations is member countries' focus on disciplines for domestic regulation. The current work of the negotiations is to develop such 'disciplines' being applicable to licensing and qualification requirements and procedures, and to technical standards. The objective is to ensure that domestic regulations do not impede the benefits of market opening. Essentially, WTO disciplines on domestic regulation do not replace national regulations or limit governments' scope for setting regulatory objectives, but are instead agreed rules regarding the creation and implementation of government-required regulations. Most WTO members expect the disciplines to be applied in sectors where GATS commitments have been made, and to apply to regulations that are not trade restrictions as defined in the GATS (i.e. restrictions to market access or national treatment limitations). After consolidating the various proposals for disciplines made by member states, the Working Party on Domestic Regulation was at the time of writing in the process of revising and editing the draft text of the disciplines in order to reach agreement among WTO members.

Another important possibility for accessing markets is through mutual recognition agreements (MRAs). Of course, MRAs may be difficult, time consuming and expensive to negotiate. This is another area where technical assistance would be useful. In the meantime, the existing GATS provision in Article VI:6 applies, which requires that 'In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member'. Of course, the negotiations of domestic regulations disciplines may help define what 'adequate procedures' actually means.

An important concern that is often expressed is the likelihood of imbalances when small developing countries negotiate bilateral agreements with much larger developed country trading partners. In this regard, an important feature of the WTO negotiations is that they take place within a framework of carefully established rules, designed to encompass flexibility and fairness to all participants. In addition, individual developing countries have the opportunity to form negotiating coalitions around

