

**COMMUNICATION FROM INDIA**

Proposed Liberalisation of Movement of Professionals under  
General Agreement on Trade in Services (GATS)

The attached communication has been received from the delegation of India with the request that it be circulated to Members of the Council for Trade in Services.

**I. OBJECTIVE OF THE PAPER**

1. The objective of this paper is to assess the nature of liberalization that has taken place in Mode 4 under the existing GATS framework and the extent to which the objectives of Article IV of GATS have been operationalized through liberalization in this mode, of significant export interest to developing countries. This paper then identifies the key barriers to the movement of Professionals and the specific problems with the existing commitments undertaken by Member countries. Finally, it suggests possible strategies and approaches to achieving meaningful liberalization in this area which is of great relevance to many developing countries and could contribute to effective implementation of Article IV of GATS.

**II. EMPIRICAL ASSESSMENT**

2. There is considerable asymmetry in commitments between different modes of supply with minimum level of commitments having been taken by developed countries in mode 4, which is of primary interest to the developing countries. For instance, horizontal commitments in mode 4 are subject to limitations in the case of 100 countries as opposed to only 4 countries for mode 2. The effectiveness of even these limited commitments is further reduced through a host of limitations and administrative hurdles.

3. Further, the number of aggregate entries for the main categories scheduled in the horizontal commitments are as follows:

(a)	Intra-Corporate Transferees	135
(b)	Business Visitors	70
(c)	Executives, managers and specialists	104
(d)	Independent contract suppliers	3

4. Only 12 Members have made commitments in the category of independent Professionals, including those providing services within a service contract. In other words, existing commitments are largely linked to commercial presence which is of very limited use to developing countries who are interested primarily in movement of independent professionals and other persons.

### **III. SPECIFIC PROBLEMS WITH THE COMMITMENTS**

#### **1. Nature of commitments**

(a) Horizontal: Commitments in mode 4 are primarily horizontal and these horizontal commitments are subject to many kinds of limitations. Further, they are bound for only a small subset of service personnel related to commercial presence and at higher levels and very few commitments extend to independent movement. The existing commitments also suffer from lack of clarity and uniformity in some aspects. The personnel categories are either not well defined or differ widely in their scope and coverage.

(b) Sectoral: The sectoral commitments for most Members are Unbound and refer to the commitments filed under the horizontal schedules. And the horizontal commitments in turn are subject to many conditions and limitations as mentioned above. Mostly, they make the commitments even more restrictive, allowing no predictable market access at all in the sectors of interest to developing countries.

5. Thus, the extent of liberalization in mode 4 is quite limited given the fact that not only have important sectors (where professional movement is important) been left out by many countries in their scheduling exercise, but that even when such sectors have been scheduled, partial commitments with critical limitations exist.

#### **2. Other Limitations**

##### **(a) Administrative Procedures**

6. The administrative and procedural problems effectively rule out market access for developing country professionals.

##### *(i) Restrictions on the entry and stay of service providers*

7. One important restriction to the movement of natural persons originates in immigration and labour market policies of individual countries. Temporary movement of labour is not separated from permanent movement of labour and therefore comes under the purview of immigration legislation and labour conditions. These restrictions range from strict eligibility conditions for application and processing of visas and work permits and limitations on the length of stay and transferability of employment in the overseas market. All of these restrictions raise the direct and indirect costs of entering the foreign market, thereby eroding the cost advantage of foreign service suppliers.

8. Wage parity is another restrictive eligibility condition which negates the cost based advantage of developing countries in exporting labour-intensive services. Wage parity is an important part of the labour certification process in many countries and constitutes an administrative hurdle delaying issuance of work permits and visas.

9. There are also constraints in the form of quantitative limits on visas in important developed countries for movement of professionals.

10. Restrictions also apply to natural persons after they enter the foreign market such as limitations on the transferability of work permits and mobility of the provider after he enters the host country. There are also limits on the duration of stay for service providers.

(ii) *Requirement for Economic Needs Test*

11. Major entry barriers exist in the form of Economic Needs Tests (ENT), Local Market Tests and Management Needs Tests to ascertain the need for entry as well as the number to be allowed to enter. The ENTs are artificial barriers preventing free movement of labour. Further, the conditions on which they are based have not been clearly specified and defined, leaving complete discretion in their application thereby reducing the predictability and certainty of the commitment. Use of such discretionary ENTs is widespread and in only three out of a total of 54 cases have criteria been specified in the schedule

(b) Recognition of qualifications and licensing requirements

12. The ability of professionals to supply services in developed country markets is also adversely affected by the lack of recognition of professional qualifications and licensing requirements. These requirements may either prevent market access for the foreign service provider causing a rejection of the work permit or visa application, or may limit his scope for work to specific activities once he enters the overseas market, preventing him from practising.

13. Article VII of GATS provides for Mutual Recognition Agreements (MRAs) and also provides opportunity to Members to participate in negotiations to such Agreements. However, the provisions of Article VII remain largely unused.

14. Developing countries have normally been kept outside the ambit of such MRAs, they being limited to developed countries. Besides, Members are not complying with notification requirements under Article VII:4. Members have also not informed in advance regarding opening of negotiations and interested Members are not getting adequate opportunity to participate in them. All this has greatly reduced the scope for qualifications being recognised, leading to complete discretion and lack of multilateral/bilateral norms.

(c) Payment of Social Security Taxes without corresponding benefits

15. The developing countries' professionals are being subjected to payment of social security contributions in the host country even though they are not eligible to get the benefits from such contributions since their period of stay under GATS is invariably lower than the minimum period required for such benefits to flow to them.

16. The direct or indirect effect of all these limitations is to raise costs of entry and operation for service providers, reduce the scope for technology and skill transfer, and force substitution of domestic with foreign service personnel.

#### **IV. STRATEGIES & APPROACHES TO EFFECTIVE LIBERALIZATION**

17. Given the unsatisfactory nature and extent of liberalization in Mode 4, alternative approaches and strategies need to be adopted in this Round for bringing about effective market access in this mode, thereby contributing significantly to the operationalization of Article IV: 1(c) of GATS.

## 1. Improving the Structure of Commitments

### (a) Horizontal Commitments

- Horizontal Commitments to specifically include category of Individual Professionals in addition to the various categories that currently exist. Consequently, delinking of commitments with mode 3 is to be achieved.
- Relevant criterion for determination of eligibility to a particular category needs to be clearly specified.
- Uniform definitions and coverage of broader service personnel categories included in the horizontal commitments need to be drawn up for bringing about greater certainty in these commitments.
- Further expansion in the scope of categories covered by Horizontal Schedules by defining coverage of "other persons" and "specialists" to include middle and lower level professionals by specifying relevant criteria

### (b) Sectoral Commitments

- Specific Sectoral / sub-sectoral commitments needs to be taken in addition to the horizontal commitments for Professional and Business Services where movement of professionals is important
- Sectoral commitments should be detailed and specific in terms of:
  - Measures applicable to individual sectors
  - Categories for which commitments apply
- All limitations, conditions etc. relevant to the individual sector/sub-sector to be clearly laid down in sectoral schedules.

### (c) Finer Classification of Categories

- Dis-aggregated categories of Service providers in Sectoral Schedules to be clearly specified relevant to the market needs and potential for each sector/ sub-sector.

In order to achieve this objective, one approach that is suggested is the super-imposition of International Standard Classification of Occupation (ISCO-88) of ILO on the WTO Services Sectoral Classification List- MTN/GNS/W/120. The ISCO has established an internationally adopted classification of 9 major occupational groups.

For purposes of illustration and also the fact that this paper seeks to focus on Professionals, Annex- "A" to this paper indicates how this superimposition can be done for the Occupational Category Professionals in so far as it relates to Professional Services Sector of W/120. Professionals are included in two Major Groups covered by ISCO-88:

- Major Group 2: Professionals
- Major Group 3: Technicians and Assistant Professionals

- Commitments may be made by Members with respect to the specific sectors/sub-sectors as contained in W/120 buttressed by specific occupational categories relevant to these sectors/sub-sectors as contained in ISCO-88 as indicated in Annex "A".

## **2. Removal of Existing Limitations:**

### **(a) Economic Needs Tests (ENT)**

- Need for establishment of Multilateral Norms to reduce scope for discriminatory practices in use of ENT.
- Clear criteria to be laid down for
  - Applying such tests
  - Establishing norms for administrative and procedural formalities
  - Specifying how results of such tests would restrict entry to foreign service providers.
- Fewer occupational categories to be made subject to such tests and consensus achieved on such categories.
- Specific suggestion is to exclude applicability of ENTs to specified occupational categories of Professionals as contained in ISCO-88 under the relevant sectors/sub-sectors of W/120.
- In sectors/sub-sectors and Occupations where applicability of ENT is not excluded, its application should be based on Multilateral Principles laid out in "Reference Paper on Use of ENT".

The various Principles that such a Reference Paper should address could be:

- Definition of ENT
- Criteria (Qualitative / Quantitative) for introduction of ENT
- Procedures for application
- Guidelines for administration of ENT
- Transparency & Full Availability of information
- Duration & Review of ENT application
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### **(b) Administrative Procedures Relating to Visas, Work Permits**

18. Multilateral guidelines/norms are necessary to tackle this area as it negates even the limited market access available.

- The member countries should try to have a more transparent and objective implementation of visa and work permit regimes in future.
- Temporary service providers should be separated from permanent labour flows, so that the normal immigration procedures would not hinder the commitments made for temporary movement. This could be achieved either by introducing a special GATS Visa for categories of personnel covered by horizontal and sectoral commitments undertaken by a Member in mode 4 under GATS or through a special sub-set of Administrative Rules and Procedures within the overall immigration policy framework.

- The conditions for entry & stay in the case of both these alternatives should obviously be less stringent than for permanent immigration.
- The above would be possible if the aforementioned recommendations on specificity, finer classification and wider coverage of personnel categories and transparency are reflected in the sectoral and horizontal commitments so that minimum discretion and greater degree of certainty is achieved.
- The main features would include:
  - Strict time-frames within which visa must be granted (2-4 weeks maximum);
  - Flexibility for visas on shorter notice for select categories of service providers;
  - Transparent and streamlined application process;
  - Mechanisms to find out the status of applications, causes of rejection, and requirements to be fulfilled;
  - Easier renewal and transfer procedures;
  - GATS visas for select Companies for use by its employees deputed abroad temporarily;
  - Adequate in-built Safeguard mechanisms to prevent entering into permanent labour market;

(c) Introducing Norms to Address Social Security Issues

- Bilateral Totalisation Agreements need to be entered into by Members for overcoming this problem.
- Exemption from such contributions for developing country professionals so that their comparative advantage is not affected

(d) Strengthening GATS Norms and Disciplines on Recognition of Qualifications

- (i) *Implementing existing Notification Requirements under Article VII of GATS providing for MRAs between Members.*

19. India has already made a statement before the Council for Trade in Services (CTS) in its meeting held on 6/10/2000 on this issue. The operational features that would be involved are :

- Prompt compliance by all Members with Notification Requirements laid down in Articles VII:4(a), (b) & (c)
- Full text of existing MRAs on recognition to be made available immediately to the WTO Secretariat and circulated amongst all Members. This should be done automatically in all future cases
- Effective opportunities to be provided to developing country Members to join in negotiations for establishment of MRAs
- CTS to regularly monitor implementation of all the above requirements

(ii) *Establishment of Multilateral Norms to facilitate MRAs among Member countries*

- Norms for Professional Service sectors where no formal accreditation or licensing procedures are required
  - Suitable example is Software Services. In this case, criteria should be laid down for minimum professional experience and minimum professional education. The idea is to lay down minimalistic international standards to reduce discrimination or excessive discretion.
- Norms concerning equivalence of work-related and academic qualifications
  - This would seek to draw an equivalence between on-the-job experience and academic degrees so that this could facilitate entry requirements for specific sectors.
- Norms concerning broad- based equivalence
  - Granting recognition through broad-based equivalence of qualifications and standards. For this purpose, it is necessary to establish bridging mechanisms in case of divergence of requirements and existing standards between host and home countries.
  - Compensatory system based on Local Adaptation Periods and Aptitude Tests for recognition in host country needs to be developed without requiring actual harmonization of standards and qualifications between the host and home countries.
- Norms Concerning temporary licensing
  - Provisions for temporary licensing to practice in the host country where such licensing procedures are absent in home country e.g. in the case of Engineering profession.
  - Procedures and Sectors where such norms could be applicable to be multilaterally determined.
- Establishment of Bilateral MRAs to be facilitated through this framework

**V. MODALITIES AND ADMINISTRATIVE PROCEDURES FOR EFFECTING SUCH LIBERALIZATION**

- Special Session of CTS should discuss this as a horizontal issue as it is one of the most important ways to operationalize Article IV on increasing participation of developing countries in world Services trade. It should feature permanently on its Agenda.
- CTS should regularly monitor implementation of Article VII with respect to notification requirements and also special opportunities provided to developing countries to enter into such MRAs with developed countries.

- The Committee on Specific Commitments (CSC) should oversee the implementation of existing specific commitments relating to Mode 4 as laid down in the "Decision on Terms of Reference for CSC - S/L/6 dated 24.11.1995".
  - Specifically, the Administrative Procedures involved in granting visas, work permits etc. are required to be administered in a reasonable, objective and impartial manner according to Article VI:1. Such administrative procedures significantly impact the actual working of the commitments undertaken on Mode 4 and hence, may be discussed in CSC so as to achieve the objectives laid down in Article VI:1



**ANNEX-A**

**Superimposition of ISCO-88 of ILO relating to category of Professionals on the Professional Services sector of Services Sectoral Classification list-MTN/GNS/W/120**

<b>W/120 Service sector classification</b>	<b>International Standard Classification of Occupations (ISCO-88)</b>	
1A. Professional Services	Major group 2: Professionals	
a. Legal Services	242	Legal professionals
	2421	Lawyers
	2422	Judges
	2429	Legal professionals not elsewhere classified
b. Accounting, Auditing and Book-keeping Services	241	Business Professionals
	2411	Accountants
	Major Group 3: Technicians & Associate Professionals	
	343	Administrative Associate Professionals
	3433	Book Keepers
d. Architectural Services g. Urban Planning & Landscape Architectural Services	214	Architects, Engineers and related professionals
	2141	Architects, town and traffic planners
	2149	Architects not elsewhere classified
e. Engineering Services f. Integrated Engineering Services	214	Architects, Engineers and related professionals
	2142	Civil engineers
	2143	Electrical engineers
	2144	Electronics and telecommunications engineers
	2145	Mechanical Engineers
	2146	Chemical engineers
	2147	Mining engineers, metallurgists and related professionals
	2148	Cartographers and surveyors
	2149	Engineers and related professionals not elsewhere classified
h. Medical and Dental Services	222	Health professionals (Except Nursing)
	2221	Medical Doctors
	2222	Dentists
	2229	Health professionals (except nursing) not elsewhere classified

<b>W/120 Service sector classification</b>	<b>International Standard Classification of Occupations (ISCO-88)</b>	
	322	Modern Health Associate Professionals
	3221	Medical Assistants
	3222	Sanitarians
	3223	Dieticians & Nutritionists
	3224	Optometrists & Opticians
	3225	Dental Assistants
	3229	Modern Health Associate Professionals not elsewhere classified
<b>i. Veterinary Services</b>	222	Health Professionals
	2223	Veterinarians
	322	Modern Health Associate Professionals
	3227	Veterinary Assistants
<b>j. Services provided by midwives, nurses, physiotherapists and paramedical personnel</b>	222	Health Professionals
	2224	Pharmacists
	223	Nursing & Midwifery Professionals
	2230	Nursing & Midwifery Professionals
	322	Health Associate Professionals
	3226	Physiotherapists & Related Associate Professionals
	3228	Pharmaceutical Assistant
	323	Nursing & Midwifery Associate Professionals
	3231	Nursing Associate Professionals
	3232	Midwifery Associate Professionals
<b>B. Computer and related Services</b>	213	Computing professionals
	2131	Computer systems designers and analysts
	2132	Computer programmers
	2139	Computing professionals not elsewhere classified
	312	Computer Associate Professionals
	3121	Computer Assistants
	3122	Computer Equipment Operators