BRIEFING PAPER

CUTS International

No. 4/2007

India's Interests in the Doha Round of Negotiation on "Services"

Chandan Mukherjee*

Introduction

The Doha Round of trade negotiation of the World Trade Organisation (WTO) was suspended in July 2006. The ongoing talks cover liberalisation of trade in services, including its relationship with domestic regulation, rules on emergency safeguards mechanism, services subsidies, and disciplines on government procurement of services. Since November 2006, the Special Session of the Council for Trade in Services of the WTO Members has began mapping out a strategy for taking forward the services negotiation.[1]

India has always been a major player in liberalisation of trade in services. The initiation of the Doha Round of negotiation is expected to provide India a good opportunity to push forward its agenda on services. This Briefing Paper attempts to highlight India's interests on services from the Doha Round of trade negotiation.

The Doha Round of Services Negotiation

The Doha Round of negotiation on services was launched at the fourth WTO Ministerial Conference in Doha in November 2001.[2] Article 15 of the Doha Ministerial Declaration of the WTO Members takes into consideration that a majority of the Members are developing and least developed countries and so "negotiation on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries".[3]

The Doha mandate considers the work already undertaken in the negotiation, initiated in January 2000 under Article XIX of GATS, and a large number of proposals were submitted by the WTO Members on a wide range of sectors and on several horizontal issues as well as on temporary movement of natural persons. It reaffirms the Guidelines and Procedures for the negotiation adopted by the WTO Council for Trade in Services on March 28, 2001 as the basis for continuing the negotiations, with a view to achieve the objectives of GATS, as stipulated in the Preamble, Article IV and Article XIX of that GATT 1994 Agreement. It was stipulated in the Doha mandate that participants shall submit initial requests for specific commitments by June 30, 2002 and initial offers by March 31, 2003.[4]

Accordingly, with the time frame set for the negotiation, many WTO Members started submitting their initial bilateral requests at the end of June 2002. India received requests from around 25 countries, including some major developed and developing countries on a large number of sectors such as distribution (retail a courier), telecommunication, energy, environmental services, financial services, education and travel, computer and related services and business services etc.

In return, India submitted requests to more than 60 countries including some of the major developed countries on sectors such as architectural services, audio visual services, computer and related services, tourism and travel related services, health, and maritime transport services across various modes, with significant focus on Mode 4 (temporary movement of natural persons).[5]

However, by 2003 it became clear that the negotiation on services had not gathered much momentum. A majority of WTO Members did not adhere to the March 31, 2003 revised deadline to submit their "initial offers". In some cases, the quality of offers was not good.

The July 2004 Package

Given the slow progress of the 'request-offer' process, the Special Session of the Council for Trade in Services re-interated in the July 2004 Framework Agreement of the WTO Members that Members who had not yet submitted their initial offers must do so at the earliest. It stipulated May 2005 as the deadline for submission of "revised offer" while urging Members to submit the outstanding "initial offer" at the earliest.

With a view to providing effective market access to all Members and in order to ensure a substantive outcome, the Framework Agreement further states, "Members shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to be given to least-developed countries". The July Framework also mandates that "Members shall aim to achieve progressively higher levels of liberalisation with no *a priori* exclusion of any service sector or mode of supply."

The Hong Kong Ministerial Declaration

The Hong Kong Ministerial Declaration puts forward an aggressive agenda for services. The Declaration includes key provisions like negotiation towards achieving a progressively higher level of liberalisation, intensification of negotiation by expanding sectoral and modal coverage of the commitments and improving their quality, and that particular attention needs to be given to sectors and modes of export interests of developing countries.

* *Assistant Policy Analyst, CUTS International*

With the support of Oxfam Novib

Moreover, the Ministerial Declaration made a provision for negotiation on a voluntary plurilateral basis as another negotiating method. It was mandated that WTO Members would submit their plurilateral requests by February 28, 2006 and a second round of revised offers is to be submitted by July 31, 2006. The final draft schedules of commitments were mandated to be submitted by October 31, 2006.[6]

Services Liberalisation and India

India's negotiating position on liberalisation of trade in services has undergone a paradigm shift since the Uruguay Round of trade negotiation. India, once having a defensive interest, has taken an offensive stance through autonomous liberalisation of many of the service sectors. This significant change in India's approach to liberalisation of services trade can be attributed partly to the growing importance of the services sector in the Indian economy.

The share of this sector in gross domestic product has increased significantly from 38 percent in 1970-71 to 60 percent in 2005-06. The Annual Report 2005-06 of the Reserve Bank of India states that services sector has recorded a growth rate of 10.3 percent, contributing to almost three-fourths of overall real GDP growth.

Being endowed with a huge number of skilled, semi-skilled and unskilled workforce, India from the beginning of the Doha Round of negotiation on trade in services has an offensive interest in Mode 1 (cross-border supply) and Mode 4 (temporary movement of natural persons).

The Present State in India

Cross-border supply of services (Mode 1 of the General Agreement on Trade in Services) involves no physical movement of service providers across borders. A most prevalent form of cross-border supply of services is outsourcing, whereby some operations of a firm such as business process, non-core back-office operations are outsourced to service providers in other countries and delivered back to the outsourcing firm through the use of Internet, voice and other satellite-based communication systems.

Trade under Mode 1 has emerged as one of the main drivers of India's services-led growth in recent years. Within a short span of time India has also moved up the value chain in regard to outsourcing business and is now a major destination for knowledge process outsourcing (KPO, which is different from BPO) for legal analysis, financial analysis, bio-informatics, etc.

India has emerged as one of the best outsourcing locations due to ready availability of highly skilled talent pool at a relatively low cost (see Box 1), and also on account of its improved infrastructure. However, India's exports under Mode 1 are highly concentrated in a few countries with UK and US having a market share of 14 percent and 71 percent, respectively. With rise in wage rates and inflation in the country, India is facing competition from countries like China, The Philippines, Hungary, Poland, Romania, which are increasingly capitalising their resources to become a favoured outsourcing location.

Consumption abroad (Mode 2 of GATS) occurs when a consumer goes overseas to consume a service. India has high potentiality to offer health and education services to foreign consumers. Its comparative advantage in offering healthcare services is mainly due to the availability of highly qualified healthcare professionals at a relatively low cost. This has helped India to attract patients from western and neighbouring countries. According to a McKinsey report India would be in a position to generate healthcare tourism to the tune of US$2.2bn by the year 2010.[7]

> **Box 1: Outsourcing: Advantage India**
>
> The cost advantages of offshoring to India are significant. It costs less than US$7,500 annually to hire a call centre agent in India (cost to company) as compared to US$19,000 in the United States and US$17,000 in Australia. It is also estimated that the average annual salary of graduates in India is just US$2,400 as compared US$2,900 in The Philippines and US$19,500 in Ireland. Moreover, with a favourable exchange rate with the US Dollar (*vis-à-vis* Indian Rupees), BPO service providers are able to pass on these benefits to the customers, making it one of the more attractive destinations.
>
> *Source: The Evolution of BPO in India, PricewaterhouseCoopers, April 2005*

Indian institutions of higher education are now attracting students from Africa and neighbouring countries. The number of foreign students studying in India as estimated in 2001-02 was 8145. But absence of adequate in-campus facilities such as libraries and equipment along with archaic curricula has prevented India from taking full advantage in this regard.

In tourism, India is yet to emerge as a major international player. Tourism industry is growing slowly and tourist inflow is low (2.5mn in 2005) as compared to other Asian countries. The tourism sector has, however, grown in terms of employment generation. In 2004, this sector employed 5.6 percent of the total labour force of India.

Mode 3 of GATS implies commercial presence (foreign direct investment), which consists of setting-up of legal entity and movement of capital. There has been a large inflow of FDI into India since early 1990s and the country has been among the top ten FDI destinations. Over the years, FDI into India has shifted increasingly from the manufacturing sector towards services sector. However, this FDI inflow into services is concentrated in a few sectors such as telecommunications, consultancy services, financial services, hospitals and diagnostic centres, hotels and tourism.[8]

Liberalisation of India's services sector can be classified into three broad categories. Sectors like software and other computer related services, telecommunications, tourism, maritime services are substantially liberalised. Sectors like banking, insurance, construction and related engineering services and health are those where the policy regime is moderately liberal with some explicit barriers. Sectors like accountancy, legal services, retail distribution, postal and rail transport has experienced little reform and has remained more or less closed to foreign direct investment.[9]

Mode 4 of GATS is about temporary movement of natural persons (workers, including professionals). It means temporary cross-border movement of a service supplier to provide a particular service in another country. Remittances from overseas Indians has emerged as a stable source of foreign exchange inflows to the country. Today, remittances account for 3.08 percent of the country's GDP – a sharp rise from 0.7 percent in 1990-1991 (see Table 1). Apart from software professionals providing temporary services in other countries, India has comparative advantage in a wide variety of other professions such as business services, health, engineering, accountancy, management and construction services.

Table 1: Remittances to India as Percent of GDP, 1990-91 to 2005-2006

Year	Remittances (US$bn)	Percent GDP
1990-1991	2.10	0.70
1995-1996	8.50	3.22
2000-2001	12.85	2.84
2001-2002	15.40	3.29
2002-2003	16.39	3.39
2003-2004	21.61	3.69
2004-2005	20.25	3.03
2005-2006	24.55 (projected)	3.08

Source: Invisibles in India's Balance of Payments, Reserve Bank of India Bulletin, November 2006

India's Concerns

With respect to trade in services through Mode 1, it is being observed that political unrests are growing in many major developed countries. For instance, while in 2003 only four bills restricting offshore outsourcing were introduced in the US, in 2004 this number increased to 40 bills at the federal level and 200 bills in states. Moreover, India's trade in services through Mode 1 is restricted to a few countries and therefore, any policy change and/or economic downturn in these countries will negatively impact the Indian outsourcing sector. The current ambit of outsourced jobs to India is also narrow, in comparison to the country's ability to provide a wide range of such services.

In India, one of the major barriers in attracting greater number of medical tourists from other countries is the lack of portability of health insurance. For example, in US government reimbursement of medical expenses to its citizens is provided for medical services taken from licenced and certified facilities in the country itself. In EU countries, public insurance does not cover elective care received abroad. Canada makes an exception only for cancer treatment in some neighbouring US states.

In regard to allowing more foreign direct investment on specific service sectors, there are several important factors like importance of the sector to the economy in terms of its contribution to output and pattern of employment, quality of existing domestic regulations and degree of competitiveness of domestic service providers. Protection of uncompetitive domestic providers (on political grounds) and lack of domestic regulation are preventing India from taking full advantage of liberalisation on trade in services.

Finally, India's concerns on Mode 4 are as follows.

- Mode 4 commitments are primarily horizontal and subject to many limitations including commitments on small sub-sets of service personnel related to commercial presence and a few commitments are extended to independent movement of workers. The existing commitments are also not well defined, including lack of clarity and uniformity.
- Indian professionals in other countries are required to appear for Economic Need Tests (ENTs) and Labour Market Tests (LMTs), which hamper effective market access.
- Licensing requirements and lack of recognition for professional qualification (obtained in India) adversely affect the ability of Indian professionals to provide services abroad. These requirements limit and/or prevent market access for foreign service providers often causing rejection of work permits and/ or visa applications.
- Indian professionals are subjected to payment of social security contributions in countries like US, even though these professionals are not entitled to much of the benefits from such contributions since their period of stay is mostly lower than the minimum period required to be eligible for such benefits. Direct or indirect effects of such a policy raise costs of entry.
- Movement of professionals for temporarily providing services in countries like UK is linked with setting up of office/firm in that country and thereby linking commitments under Mode 4 with Mode 3 commitments.
- There is quantitative restriction on movement of professionals through capping of the number of HI-B visas available to professionals for moving to US for providing services. Independent professionals who want to go to EU countries are not issued visa.

Conclusion

India needs to pursue greater market access commitments on the part of WTO Members in cross-border supply of services and negotiate with them to bind their existing regime in this regard. India also needs to ask for commitments from other WTO Members on a wide range of sectors including professional services, computer-related services, health services and education for cross-border supply.

Gain from trade through Mode 2 is significant, especially in terms of foreign exchange earnings. Recently, India has penned an agreement with Malaysia on "visa-on-arrival" and similar steps are to be taken with many other countries. India also needs to address domestic regulatory and infrastructural barriers, which restrict its potentiality under Mode 2.

So far India has a combination of offensive and defensive interests in Mode 3. India, in its conditional initial revised offer, has stated that any offer in Mode 3 depends on market access that is provided to India in its areas of interest – that is under Mode 1 and Mode 4.

In recent years, it has been observed that liberalised sectors such as telecommunications, computer-related services, business services, hotels and restaurants have performed well in terms of employment generation and in generating government revenue.

India could think of opening accountancy services to the extent of allowing 26 percent FDI.[10] However, some issues as expressed by Indian chartered accountants like restricting the number of foreign partners to 20, the concept of partnerships based on limited liability are to be addressed. As a reciprocal arrangement, India could ask for "mutual recognition" of certificates and other degrees of Indian accountancy professionals in other countries so that their movement becomes easier.[11]

India could also think of opening the legal sector in phased manner.[12] Similarly, India could think of opening architectural services in a phased manner and under Mode 3. However, foreign equity participation should be allowed with caps and it needs to be conditioned upon the transfer of latest technology. India could also think of raising FDI caps in sectors such as banking, insurance from its existing unilateral commitments.

India could justifiably open sectors such as distribution (retail and courier) on the ground that when organised retailing by domestic private players is allowed, it may not have much impact when foreign players are also allowed. By opening these sectors, India could bargain for greater commitments in Mode 1 and Mode 4. Given the sensitivities of these sectors, unilateral liberalisation may precede multilateral commitments on India's part. Furthermore, some restrictions like minimum capital requirement, sourcing of raw materials can be put to regulate FDI in the retail sector.

In Mode 4, India's interests can be summed up as follows.

- India is of the view that broader and deeper commitments under Mode 4 should be an important element in the process of liberalisation of trade in services in general. Horizontal commitments should specifically include a category of individual professionals apart from what already exists.
- India's interest in Mode 4 also includes disciplining qualification norms for service providers. Qualification norms need to be pre-established, publicly available and based on a transparent application of criteria. There must be mutual recognition of qualification of professionals through proper implementation of notification requirement as under Article VIII of GATS.
- India has asked for removing (or cutting significantly) ENTs, as provided under Article XVI of GATS. Clear and transparent criteria also need to be laid down for applying such tests and a fewer occupational categories are to be subjected to such tests. Moreover in sectors/sub-sectors where ENT is to be used, its application should be based on multilateral principles.[13]
- India has asked US to raise the number of temporary work permits for highly skilled professionals (under H-IB visa category) from the existing cap of 65000 per year. India has clarified that temporary movement of workers under Mode 4 of GATS is not immigration. India also wants to push for separate categories of visas for independent professionals and contractual service suppliers in EU countries. Moreover procedural aspects related to issuance of visa by these countries are to be simplified.
- India wants that short-term migrants to US and other countries receive back their pension benefits and social security contributions or such professionals be exempted from such social security contributions.

In short, India has an offensive interest in Mode 1 and Mode 4. India could also commit to liberalise FDI under Mode 3 to some extent. Since India is adopting unilateral liberalisation to enjoy more gains from liberalisation on trade in services before committing any further on Mode 3, domestic economic, social and political concerns should weigh the extent of market access on services that it receives from US, EU and other countries.

Endnotes

1 Current State of Negotiations, WTO Services Negotiations, December 2006, Department of Foreign Affairs and Trade, Government of Australia http://www.dfat.gov.au/trade/negotiations/services/gats_news/gats_state_of_play_1206.html
2 WTO Doha Ministerial Declaration; November 20, 2001; WT/MIN(01)/DEC/1 http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#services
3 GATS Negotiations and India: Evolution and State of Play, Working Paper 7, Centre for Trade and Development. New Delhi: 2007
4 World Trade Organisation, http://www.wto.org/
5 WTO Negotiations on Trade in Services: A Backgrounder, Department of Commerce, Ministry of Commerce and Industry, Government of India http://commerce.nic.in/wto_sub/services/backgrounder_services.pdf
6 WTO's Hong Kong Conference-1, Economic and Political Weekly Commentary, December 24, 2005, http://www.epw.org.in/showArticles.php?root=2005&leaf=12&filename=9494&filetype=html
7 Chanda, Rupa, Trade in Services and India: Prospects and Strategies, Centre for Trade and Development, New Delhi: 2006
8 *Op. Cit.* Page 5
9 The World Bank, Sustaining India's Services Revolution: Access to Foreign Markets, Domestic Reforms and International Negotiations, Washington DC: 2004
10 Relax Norms for CAs before FDI, The Hindu Business Line, 10th July 2005 http://www.thehindubusinessline.com/2005/07/10/stories/2005071001740300.htm
11 This issue (mutual recognition) is not restricted to the accountancy sector alone.
12 Government sets up panel to open up legal services, The Hindu Business Line, 7th October 2006 http://www.thehindubusinessline.com/2006/10/07/stories/2006100704360100.htm
13 Focus WTO, Vol. 8, No. 4, Indian Institute of Foreign Trade, New Delhi: Nov-Dec. 2006

This Briefing Paper is researched and written for CUTS Centre for International Trade, Economics & Environment under the Phase-II of the project 'WTO Doha Round & South Asia: Linking Civil Society with Trade Negotiations' (SAFIT-II) funded by Oxfam Novib, The Netherlands. The views expressed in this paper are those of the author and therefore, in no way be taken to reflect that of Oxfam Novib, The Netherlands.