

BRIEFING PAPER



SAFIT-II 2/2007

Services Trade Negotiations after WTO Hong Kong Ministerial: A South Asian Perspective

Selim Raihan and M A Razzaque*

The scope of services export for South Asian countries is largely concentrated in Mode 4. Though India has interest in all modes of services trade, the need for a greater cooperation within South Asia on Mode 4 is reasonably justified. There is also a need to come out with a common South Asian negotiating agenda on rules on services liberalisations. The South Asian countries lay special emphasis on submitting request lists and developing country specific strategies and action plans for the movement of natural persons under Mode 4.

This briefing paper focuses on the developmental elements in services trade negotiations from the perspectives of the South Asian countries' interest. It explores the development that has taken place since the Hong Kong Ministerial and provides for a way out for this region in the prevailing scenario.

Introduction

The service sector now constitutes about 50 percent of South Asia's gross domestic product (GDP) and is the second largest source of employment in the region. In all the South Asian countries, viz. Bangladesh, India, Pakistan, and Sri Lanka, the growth of the service sector has been faster than the overall GDP growth. Between 1995 and 2003, India registered an expansion of services value added by a staggering US\$108bn. The corresponding figures for Bangladesh, Pakistan and Sri Lanka are US\$9bn, US\$11bn and US\$3bn respectively.

The South Asian countries have also witnessed their service sector growing at a rate much faster than the world services output growth. During 2000-03, services in the South Asian region grew at an average rate of 6.7 percent per annum as against of only 3.3 percent in the world economy. More importantly, services trade has also become important for the countries in the region. The total value of service trade in 1995 was US\$26bn, which increased to US\$51bn in 2003, half of which was services exports.

India is by far the most prominent player in services trade amongst the South Asian countries. In fact, during the 1990s India had the highest growth of the services exports amongst the world economies. It has been estimated that between 1996 and 2000, India's revealed comparative advantage in services exports increased by 74 percent. India's services trade is also much more diversified compared to any other country in the region with business services, including software exports, finance, communication, management and consultancy service growing rapidly.

In general, low-skilled and semi-skilled workers dominate the labour endowment in Bangladesh, India, Pakistan, and Sri Lanka. Consequently, the export of

services from these countries is dominated by Mode 4, i.e. movement of natural persons. Apart from Mode 4, Mode 1, i.e. cross-border supply is important for India because of rapid growth in business process outsourcing (BPO) and Information Technology (IT) services, in which the country has a great comparative advantage. Mode 2, i.e. consumption abroad is becoming increasingly important for India.

In fact, India is an attractive place for temporary movement of people for medical treatment (health tourism) and for academic pursuit. India has also become an important regional destination for medical and educational services. India, Nepal and Sri Lanka also attract a large number of tourists and thus have tremendous scope to export travel and tourism services.

Services Trade in South Asia

Among the different services categories, South Asian success lies in the sectors like IT, BPO, tourism, banking, construction etc., especially in the manpower based services export. South Asian region is the second largest remittance recipient area in the world having a remittance-GDP ratio of 20 percent¹. In recent years, India has emerged as an important source of 'Call for Services' in business performance. From regional perspective, there are shifts towards business and various deregulated infrastructure services where private participation has increased considerably.

The contribution of the services trade in South Asian total trade is increasing over time, more than doubling in actual amount during 1995-2003 (from US\$26bn to US\$51bn). In terms of proportion, within 2000-03, services trade was on average one-fourth of the regional total trade flows.

* Assistant Professors, Department of Economics
University of Dhaka, Bangladesh.

Within South Asia, the growing importance of services trade is basically driven by the Indian comparative advantage in this sector. However, South Asian countries' large labour endowment, including low-skilled, semi-skilled, high skilled categories, places the regional comparative advantage in exporting labour based services under the Mode 4 of World Trade Organisation's (WTO's) General Agreement on Trade in Services (GATS), i.e. temporary movement of natural persons category.

From the statistical point of view, the contribution of services trade under Mode 4 is the lowest in world trade in services. The Mode 4 category has horizontal rather than sector specific commitments and that includes limitations for 100 countries as opposed to four countries for Mode 2. However, India is a dominant player in this narrow field too. Export of professionals, especially health workers and IT professionals from India is a significant portion of the international workers in the developed countries like Canada, US and Australia.

As a source country, India dominates in three major categories of manpower exports, specialty occupations (based on professional education, skills and experiences), registered nurses and entertainers in culturally unique programmes². Another significant portion of Indian migrants are the low-skilled or semi-skilled category, majority of whom are working in the Middle East countries like Saudi Arabia, Kuwait, UAE, Oman, Bahrain. In general, majority of these categories of workers are employed in construction related jobs or for domestic help.

About 1.2 million Sri Lankans are working abroad of which 70 percent is employed in the Middle East countries. The specialty of the Sri Lankan manpower export among the South Asian countries is the dominance of female migrants. In 2001, 68 percent of the 183,888 total migrants were female workers. There are both high skilled and low skilled migrants, but most of the female migrants are employed as housemaids, i.e. 56 percent of the total in 2001. Provisions for training programmes for the semi-skilled and low-skilled migrants under government initiatives are designed to promote foreign employment and the Sri Lanka Foreign Employment Bureau works for protecting the interest of the migrant workers.

According to the government estimates of 1999, about 3.18 million Pakistanis are working abroad, like other countries of the region; Middle East is the major destination for low skilled migrants from Pakistan. On the other hand, considering the high skilled and professional categories, Pakistan is an important source in the industrialised country markets, and was ranked 3rd in Canada.

In case of Bangladesh, the primary destination of the low and semi-skilled workers from the country is Middle East, although the choice for relatively skilled workers has been shifted to some East Asian countries like Malaysia. About 3.2 million Bangladeshi people are working abroad³ with major occupations being

construction labour, domestic maid, engineers, health workers and nurse. Bangladesh government regulates the outflow of workers through the Bureau of Manpower, Employment and Training, although there works unofficial channels of manpower export as well.

Existing Barriers and Scope of Liberalisation

Immigration regulations and barriers related to visa and work permit procedures are one of the major restrictions of services trade liberalisation, especially under Mode 4 of services trade. In most of the cases, no distinction has been made between temporary and permanent movement of workers and the process involves complicated, non-transparent and costly steps through labour market regulations. Even sometimes, temporary workers have to undergo a two-permit entry procedure: one for visa and the other for work permit. The restrictions and regulations get more demanding for the developing and least developed countries (LDCs) due to their existing administrative barriers. Moreover, service trade barriers for developing country suppliers are more binding than those for developed country suppliers in each other's market.

In terms of migration regulations, the developed countries are biased towards high skilled workers and it is relatively easier to obtain visa for intra-company transferees and those associated with establishment of commercial presence. In general, movement of low skilled workers is the most restricted one. There are barriers in terms of Economic Needs Test (ENT), which restricts the market driven process of free movement of natural persons. Lack of clearly established criteria of service providers make the process unpredictable, non-transparent and therefore create arbitrary barriers to Mode 4. In some cases, the host country discriminates foreign service providers against domestic service providers in terms of tax or some other requirements. Further, the services trade under Mode 1 or cross border service provision faces barrier with the application of some 'data protection laws' in some developed countries.

These barriers to service trade liberalisation, especially for the South Asian developing countries and LDCs are affecting their areas of comparative advantage. In addition to service categorisation and classification problems, commitments under Mode 4 are the least in WTO services negotiations and after the incident of 9/11, 2001, there is not much scope for considerable liberalisation in this regard.

Among the current initiatives, India proposed a GATS visa that is distinct from other visitors as a horizontal commitment. The country also requested elimination of all forms of ENT, labour market test and nationality and residency requirements. The initial communications included greater market access provisions beyond higher skilled categories, ensuring transparency, special administrative provision e.g. GATS visa, work permit etc.

Review of the Hong Kong Ministerial Outcomes

In the Hong Kong Ministerial Declaration, members agreed to intensify the negotiations on services ‘with a view to expanding the sectoral and modal coverage of commitments and improving their quality’. In this document, the service sector trade negotiations are placed from a development perspective for all the member countries. The Declaration specifies special provisions for the developing countries and LDCs. There are several interesting features associated with the Hong Kong Ministerial Declaration, including:

- Recognises that LDCs are not expected to undertake new commitments in services negotiations. This provision is to protect LDCs from liberalising sectors where they do not wish to make a commitment.
- Commits to developing methods for full and effective implementation of the Modalities for the Special Treatment for LDCs in the negotiations on Trade in Services, i.e. LDC Modalities, which should therefore be an important instrument and the basis for their participation in services negotiations.
- Propose to develop appropriate mechanisms for according special priority to sectors and modes of supply of export interest to LDCs [item 9 (a) in Annex C].
- Emphasises on assisting LDCs to enable them to identify sectors and modes of supply that represent development priorities. The full and effective implementation of the LDC Modalities also calls for providing targeted and effective technical assistance and capacity building for LDCs.
- States that amongst others the targeted technical assistance should be provided through the WTO Secretariat ‘with a view to enabling developing and LDCs to participate effectively in the trade negotiations’.
- Requests the members to develop disciplines on domestic regulation as mandated under Article VI: 4 of the GATS before the end of the current round of negotiation
- Makes members agree to pursue plurilateral approach to request-offer negotiations in addition to the traditional bilateral approach to negotiations.

Issues in the Services Trade Liberalisation

Operationalisation of Article IV of GATS

Article IV of GATS stresses that in order to increase the participation of the developing countries in world services trade there is a need to: (i) strengthen domestic services capacity of these countries and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis; (ii) improve these countries’ access to distribution channels and information networks; and (iii) liberalise market access in sectors and modes of supply of export interest to them. Such calls were re-emphasised in the Doha Development Round as well as in the July Framework. In the Hong Kong Ministerial, it was again highlighted to give particular attention to sectors

and modes of supply of export interest to developing countries.

It is, however, important to note that a large number of developing countries have been facing difficulties in identifying the sectors of their specific interests in the negotiations and the constraints to the expansion of their exports. Also, registering any meaningful liberalisation commitments in the negotiations has achieved little progress. There is a serious concern about the developing countries’ lack of capacity to evaluate the requests received from other member countries and the development of their own requests and offers.

With respect to formulating their own requests and offer the developing countries face the major challenge to determine their national policy objectives and the competitiveness of each sector or sub-sector. In case of the liberalisation of Mode 4 services, in the categories and skill levels of interest to developing countries, no real progress has been achieved so far. Even, no progress has been achieved with respect to streamlining or increasing the efficiency of processing mechanisms for visa and work permits.

LDC Modalities

One of the most important developments at Hong Kong Ministerial was the decision to pursue full and effective implementation of the Modalities for the Special Treatment for LDCs in trade in services. In March 2006, the LDC Group submitted a proposal to the Council of Trade in Services (CTS) in special session 13, aimed at creating a mechanism to accord special priority to market access in sectors and modes of LDC export interest. The proposal suggests the creation of a new mechanism which would allow Members to provide “non-reciprocal special priority... only to LDCs,” in areas of export interest to them. The LDCs proposal generated mixed reactions. Some developing countries were supportive of the LDCs proposal, notably the African group. However, some others were wary of the introduction of preferences in the context of the GATS, arguing that this would divert their markets.

Considering sectors and/or modes of supply of special interest of LDCs, there is a growing importance of temporary movement of natural persons under Mode 4. The growth of the services exports of LDCs on the whole, and of the South Asian LDCs in particular, is concentrated in this area with a large pool of low and semi-skilled labour force. However, services trade is the most restrictive one having horizontal commitments rather than sector specific and almost in all cases exhibit the ‘unbound’ note in the negotiation list. With the Hong Kong Ministerial Declaration, there emerged a hope for some negotiations towards Mode 4 liberalisation, but still there is no development in implementation procedures.

Market Access Problems

Among the four modes of supply, the Mode 4 is the most important one for the LDCs and the developing countries. However, market access under Mode 4 is the

most limited and still there has not been much progress achieved. In principle, a number of proposals have been placed relating to the liberalisation of labour market, albeit the basic causes of limitation includes the administrative barriers relating to immigration policies, quota on visas, mutual recognition of qualifications of the workers. Besides, barriers like economic needs tests or the local needs test also put constraints against the movement of labour in the developing countries and LDCs. Developing countries like India have their growing interest in negotiations regarding services trade under Mode 3 incorporating movement of professionals.

The Service Provider Visa (SPV) proposal placed for greater market access incorporates short term company visits, short term visits to fulfil contracts either as part of juridical entities or independently, and does not cover employment based movement. However, the emphasis of negotiation in the high skilled and at least minimally qualified persons neglects many LDCs and developing countries' comparative advantage.

To foster the negotiation under Mode 4 market access, it is the only way not to lower the skill category to make any progress. Therefore, the developing countries and the LDCs should prepare for submitting proposals highlighting the sectors of their interest for consideration by the negotiators focusing on issues like inclusion of the less skilled through contractual service suppliers under a new sub-category, addressing definitional and classification issues, non-uniform enforcement issues regarding SPV and to develop a revised model schedule to incorporate lower skill categories of service providers. At the same time, these countries should take into consideration the need for (and costs of) commitments to liberalise their own markets in response to their requests to other countries.

Technical Assistance

In the Hong Kong Declaration and in GATS Agreement, special emphasis has been given on the targeted technical assistance with a view to enabling the LDCs and developing countries to participate effectively in the negotiations. It has been clearly stated that amongst others, the targeted technical assistance should be provided through the WTO secretariat. However, there is no such initiative from the developed country members to consider the special priority sectors in relation to needs of the LDCs and the developing countries.

A more careful reading reveals that the development initiatives relating to market access are either objectives for commitments or, procedural under the request-offer approach. There is a lack of initiatives from the LDCs and developing countries to prepare a negotiable ground, and it is quite reasonable that without proper technical assistance these countries will not be able to come out with identifying areas most important for negotiation. In the case of evaluating or formulating requests and offers, there is a need to look into the kind of capacity available in the ministry and the technical assistance needed in these countries.

Domestic Regulations

Article VI of GATS is related to Domestic Regulation, which highlights the right of members to regulate and introduce new regulations, governing the supply of services within their territories in order to meet national policy objectives. In Hong Kong Ministerial, members have been asked to develop disciplines on domestic regulation as mandated under Article VI of the GATS before the end of the current round of negotiation.

In June 2006, developed and developing countries submitted what a WTO official characterised as a 'critical mass' of formal and informal proposals on a broad set of issues relating to the disciplines⁴. All the submissions stressed the need to strike a balance between respecting Members' right to regulate and curbing regulatory measures that could potentially undermine market access. One area where this tension exists is particularly evident in the sensitive debate over the so-called 'necessity test' for regulatory measures. While the GATS mandate stipulates that qualification and licensing requirements should not be "more burdensome than necessary to ensure the quality of a service", some members are concerned that such a test may constrain their ability to introduce regulations, which seek to implement national policy objectives that go beyond simply ensuring the quality of a service.

Many LDCs as well as developing countries lack established and well functioning regulatory and institutional frameworks. As for policy stance, there lies common position for the developing countries and LDCs as to place the need for adequate time to come up with appropriate domestic regulation policies considering the specific economic requirements and at the same time to ensure necessary technical assistance for capacity building.

Plurilateral Negotiations

Members in the Hong Kong Ministerial agreed to pursue plurilateral approach to request-offer negotiations in addition to the traditional bilateral approach to negotiations. Under the plurilateral negotiations, any member or group of members may present requests or collective requests to other members in any specific sector or mode of supply, identifying their objectives for the negotiations in that sector or mode of supply.

After the Hong Kong Ministerial, plurilateral meetings took place during March-April 2006 to discuss and negotiate the requests. Available information suggests that 22 collective requests were placed and discussed between *demandeurs* and *demandees*, i.e. the countries receiving the requests. Of these, 16 were sector specific, 3 were related to modes of supply (including Mode 4), and the final three were concerned about the elimination or reduction of existing exemptions from most-favoured-nation (MFN) treatment⁵. In computer and related services, and in those on Mode 4 and cross border services through Modes 1 and 2, India participated in the plurilateral requests. India received 15 requests in opening up the key sectors like, financial services,

telecom, energy, legal, maritime, retail, education, environment and construction. In the plurilateral meetings the plurilateral requests on Mode 4 involved the highest number of 15 developing countries, and none of the LDCs received any plurilateral requests, which is consistent with the Hong Kong Declaration that they are not expected to undertake new commitments.

At Hong Kong, the text on services (Annex C) was vigorously opposed by many civil society groups. Doubts and scepticisms were expressed particularly about the new plurilateral approach of negotiations. It is being feared that this new approach will erode the existing flexibilities under GATS and eventually lead to binding commitments by developing countries.

Developing Countries vs. LDCs in South Asia

To what extent South Asian LDCs (Bangladesh, Maldives and Nepal) can collaborate with their regional developing counterparts, namely India and Pakistan is an emerging concern. Given that India has witnessed rapid growth in Modes 1 and 2, and given that the prospect of liberalisation of Mode 4 is bleak, a shift in the emphasis in favour of Modes 1 and 2 can greatly jeopardise the negotiating position of South Asian LDCs.

Like other LDCs, South Asian LDCs are reluctant in undertaking negotiation initiatives and are mere observers in the request-offer approach. Even with the enhanced possibility of negotiations on a plurilateral basis, there has not been any attempt to consider plurilateral negotiations with India. With the current position of India, any type of progress in services trade

liberalisation will be its special interest and given the 'individual' flexibility for the developing countries, the country may shift its emphasis on Mode 4 liberalisation. This will enhance Indian growth, but virtually will have no impact on the economies of the South Asian LDCs. Given the situations, South Asian LDCs should try to consider Indian interest and to process joint negotiation schemes if possible.

Concluding Remarks

The need for a greater cooperation within South Asia on Mode 4 is reasonably justified. There is also a need to come out with a common South Asian negotiating agenda on rules on services liberalisations. The South Asia countries should conduct studies on the problems and prospects of services trade liberalisation, including the possibilities of greater cooperation among themselves in this regard. Special emphasis should be given to submitting request lists and developing country specific strategies and action plans for the movement of natural persons under Mode 4. Also, the supply-side constraints and bottlenecks should be addressed properly with a view to develop the request lists and the schedules of commitments on other prioritised sectors of trade in services.

The South Asian countries should ask for technical and financial assistance in this regard. However, targeted technical assistance should be provided through, *inter alia*, the WTO Secretariat, with a view to enable LDCs and developing countries to participate effectively in the negotiations.

Endnotes

- 1 Trade in Services and South Asia: An Aggressive Agenda", by Rupa Chanda (2005) in *South Asian Yearbook of Trade and Development*, Centad, New Delhi
- 2 "Movement of Natural Persons: A Case Study of South Asian Countries", CUTS (2004) Mimeo, Jaipur, India.
- 3 "Documenting the Undocumented: Female Migrant Workers from Bangladesh", by Blanchet, T., Razzaque, A. and Biswas, H. (2005), Mimeo, Academy for Educational Development and SWISS Agency for Development Cooperation.
- 4 *Bridges Weekly Trade News Digest*, Vol. 10, Number 24, June 28, 2006
- 5 *Bridges Weekly Trade News Digest*, Vol. 10, Number 10, March 22, 2006

This Briefing Paper is an abridged version of research report entitled "Services Trade Negotiations after WTO Hong Kong Ministerial: A South Asian Perspective" 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 on those of the author and therefore in no way be taken to reflect that of Oxfam Novib, The Netherlands.

© CUTS International 2007. This **Briefing Paper** is published by CUTS Centre for International Trade, Economics & Environment (CUTS CITEE), D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India. Ph: 91.141.228 2821, Fx: 91.141.228 2485, E-mail: citee@cuts.org, Web Site: www.cuts-international.org/www.cuts-citee.org. CUTS Briefing Papers are to inform, educate and provoke debate on specific issues. Readers are encouraged to quote or reproduce material from this paper for their own use, but as the copyright holder, CUTS International requests due acknowledgement and a copy of the publication.



CUTS CITEE