

**Council for Trade in Services
Special Session**

COMMUNICATION FROM CHILE, HONG KONG CHINA, INDIA AND MEXICO

Discussion paper on relevant issues for liberalisation of
Cross border supply in GATS negotiations

I. INTRODUCTION

1. Members may recall the joint statement Job (05)/90 by a group of Members in the last CTS - Special Session drawing on the deliberations in the Symposium on Cross Border Supply held in April 2005. This group of Members had identified several issues arising from the Symposium which would be relevant to the negotiations and on which it had requested continued discussions.

2. Proceeding from this statement, this discussion paper attempts to provide greater focus and specificity to the issues mentioned before. It is our understanding that focussed discussions on these issues based on the points raised would provide greater negotiating benefits.

II. SPECIFIC ISSUES FOR CONSIDERATION

A. LIST OF SECTORS OF COMMERCIAL IMPORTANCE

3. Developing a possible list of commercially meaningful and clearly specified sectors/sub-sectors/activities including those which capture the emerging business opportunities for purposes of taking commitments under GATS has been recognised. The presentations and discussions in the Symposium especially by the business community has clearly brought out the increasing importance of cross border trade in a number of sectors like professional services, business services, other business services, computer and related services, research and development services, health services, education services and tourism services. The emergence of new activities that may not be either specifically listed in the W/120 classification or may have emerged afresh has also been highlighted. Members may consider the most practical way of capturing such business opportunities through the schedules of commitments. Some possible alternatives are placed for consideration of Members:

- (a) Would it be useful to consider commitments at the two-digit level in certain key sectors for cross border supply – for example, would Members consider taking commitments at CPC 84 for computer and related services? It is observed that in many revised offers (in some initial offers also) Members have chosen to do so. Can similar two digit commitments be considered for other key areas like Other Business Services – CPC 87? A large number of activities covered by CPC 87 have promising opportunities in cross border trade and Members have also broadly taken commitments in these activities – would it be useful to cover all such activities through two digit commitments or alternatively, would Members find it more useful to list out all the sub-sectors/activities within CPC 87 that are commercially meaningful?
- (b) In case Members list out all the sub-sectors/activities within CPC 87, then the questions relating to coverage of certain activities would have to be addressed. For example, Telephone Call Centres is one of the major areas of cross border supply but

this is not specifically listed out within CPC 87 – the CPC 8790 includes Telephone Answering Services (87903) but does not specifically mention Telephone Call Centres. Do Members agree that in fact Telephone Call Centres are covered within Telephone Answering Services and if not, would it need to be specifically listed to provide adequate coverage? Could these also be considered as after-sales services in which case they would be an integral part of the commitments for the respective sectors to which this activity relates?

- (c) Would Members feel the need to consider the issue of taking commitments for the category “others” wherever this is becoming commercially relevant? Would this be a useful way of providing for new services or combination of existing ones that are emerging or could emerge in future? Or is it the view that a better way of capturing such activities is through specifically listing, wherever possible, the activities that one is aware of? Is such listing really feasible and a practical way of covering such activities?

B. NATURE OF COMMITMENTS IN CROSS BORDER SUPPLY

4. The importance of commitments in both modes 1 and 2 especially in areas where electronic delivery of services is taking place has also been noted as well as the continuing difficulties in clearly identifying which of these activities are in mode 1 or in mode 2. Could there be a practical way of overcoming this problem without necessarily needing to resolve the classification debate on modes 1 and 2 through the possibility of same level of commitments in both these modes in areas where trade is commercially meaningful? This may be without prejudice to any technical discussions that may be carried out on this issue. Members may wish to consider the feasibility of such an approach given that there may not be actual restrictions on both these modes. In many of the commercially meaningful areas referred to in point 1, Members have in fact taken similar commitments in both these modes. This is also increasingly important given the inter-linkages across modes which has been highlighted in the Symposium.

5. The other issue that is worth consideration is the kind of commitments in market access and national treatment (Articles XVI and XVII) that can be considered for cross border supply. As was noted in the Symposium, there are both fewer restrictions mentioned in the existing commitments and actual ground level restrictions in cross border supply and the best possible way of capturing this could be through full commitments in market access and national treatment for the selected sectors/sub-sectors. Would Members be comfortable with this approach in general?

C. LEVELS OF COMMITMENTS & NEGOTIATING APPROACHES

6. The gaps in the existing commitments and initial offers have already been acknowledged. It would be useful to analyse whether such gaps have been narrowed in the revised offers that are now being tabled. Would Members like to consider the possibility of supplementing the primary method of request-offer negotiations through some multilateral approach to allow broader and deeper commitments in sectors mentioned above? Given that two rounds of offers are almost on the table, would this be the most effective and time-saving method for promoting more liberal commitments? Based on all these factors, could Members consider the possibility of developing a Model Schedule for Cross Border Supply so as to provide a predictable and appropriate template for commitments?

D. SECTORAL SENSITIVITIES

7. Members may also like to consider how the sensitivities associated with some specific sectors for cross border supply need to be addressed in the context of developing any such multilateral approach. Would not the existing flexibility in scheduling commitments under GATS be able to take care of such sensitivities?

E. REGULATORY ISSUES

8. Members may like to consider the implications for undertaking commitments in Cross Border Supply, if any, on maintaining the balance between the right to regulate and ensuring that regulatory measures do not nullify/impair specific commitments. Would not the development of disciplines under Article VI:4 which would cover all modes of supply suffice given that such disciplines would aim to strike this balance? Are there any additional regulatory issues that Members consider relevant and can be addressed under these negotiations?

F. CONCLUSIONS

9. We believe that a detailed discussion on each of these issues would promote better understanding of the interests and concerns of Members and based on such discussions, we would like to come up with a specific negotiating proposal in the near future.
