

GATS: A NON-FREE MINE OF OPPORTUNITIES

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International trade in services is stimulating economic growth and overhauling the parameters of globalisation of the world economies including our attitudes, thinking and socio-economic goals. It has thrown open immense opportunities for reaping benefits of services revolution and services trade but at a price. GATS is an integral part of the monitoring and regulatory body WTO. Externalities flowing from it cannot be wished away even by non-Members. However, GATS comprises a lengthy, highly complex and involved set of documents with a frequent use of slippery phraseology, thereby focusing on the need to highlight their salient features particularly from the viewpoint of developing countries like India which are at an inherent disadvantage in their negotiations with the developed ones. Services trade poses immense conceptual and quantification problems. Even the coverage by GATS suffers from several deficiencies.

I- Introduction

General Agreement on Trade in Services (GATS) is an integral part of the World Trade Organization (WTO) vide "ANNEX 1B. General Agreement on Trade in Services and Annexes". GATS has far reaching implications for the emerging new world economic order in general and for developing countries in particular. It is both an institutional and legal set-up with binding obligations for the Member countries, and presents a wide spectrum of opportunities coupled with both open and hidden costs.

GATS comprises a lengthy, highly complex and involved set of documents with a frequent use of slippery phraseology and, therefore, with an inherent danger of creating non-actual impressions. However, even non-member (and therefore non-signatory of GATS) countries cannot remain immune to the externalities generated by GATS.

GATS is not a bundle of unmixed costs or benefits. Along with both hidden and obvious pitfalls, it offers a bunch of uncharted opportunities, provided the Member countries use its provisions with dexterity, binding obligations and escape routes. A wise stance of any developing country would be the one in which it takes into account the ground realities of the emerging new world order and tries to optimize, to the extent feasible,

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the net outcome. To this end, understanding the basics of GATS is necessary because of the following two reasons:

- (a) GATS comprises a voluminous set of documents which need to be viewed and interpreted within the overall framework of the WTO of which it is an integral part. Its stated aims include the creation of a regime of monitored, rule-based, orderly, progressively liberalized, expanding, transparent, and globalised system of trade in services; and
- (b) The developed countries are prone to take advantage of their superior bargaining power and negotiating skills to the detriment of the interests of the developing countries.

Therefore, there is a lot at stake for both developed and developing countries, and it is imperative for all stake holders to be familiar with its essential contents and implications for optimising their respective gains. In what follows, an attempt is made to wade through the swamp of texts of GATS (read in the context of WTO framework) with their in-built intricate (and sometimes ambiguous) terminology, highlighting the signposts, binding obligations, constraints, opportunities, and the like so as to identify what is relevant for a developing country like India in defining its stance. However, it does not aim at prescribing any precise policy components for India—particularly because it is not possible to do so on account of the fluidity of the situation, dynamism of the economies of the Member countries, and the on-going process of “negotiations” comprising “offers of commitments” and “requests” put forth by them.

The rest of the article is divided into six sections. Section-II looks at the relevance of GATS in the context of Services Revolution engulfing the world economies, and theory and facts relating to trade in services. Section-III covers the origin and objectives of GATS including the determinants and pattern of international trade in services. The structure of GATS and inter-country negotiations are highlighted in Section-IV. A brief evaluation of GATS is contained in Section-V. Section-VI provides comments on the Indian stance towards GATS and is followed by Section-VII of Conclusion.

II- Relevance of GATS

In spite of several unavoidable imperfections of an institution which combines several functions like that of facilitating the evolution of a

legal framework of a global and liberalized system of international trade in services, justification for having GATS lies in the expected flow of net positive externalities from it. The fact is that trade in services is bound to grow even without GATS, but net benefits from this trade can expectedly be optimised with its help.

2.1- Services Revolution

The place of GATS is an ongoing process of globalisation and related issues should be viewed in the context of the 'age of services revolution' through which we are passing. This revolution has not only changed the way we live and work but has also transformed our goals and attitudes. It is an undeniable fact that services lie underneath most economic activities and are frequently intermixed with tangible products. They have come to account for around 68% of world GDP and are expected to increase this share still further. International trade in services is also witnessing an exponential growth. In 2006, it was estimated at \$2.8 trillion though this estimate does not cover all services listed in GATS. It is also an undeniable fact that trade in services is growing much faster than trade in merchandise, implying the opening up of new opportunities *albeit* counterbalanced by associated challenges.

Trade in services also plays a key role in international economic integration. In the absence of a streamlined, equitable, and sufficiently free trading system in services, the process of both globalisation and economic growth are bound to suffer.

2.2- Lack of a Definition

Though it is difficult to define the term "services" (even GATS does not define it), the meaning assigned to *trade in services* is "*sale and delivery of intangible products, as against that of the tangible ones or the merchandise*". When this trade crosses national borders, that is, the suppliers and buyers do not belong to the same country, it is termed international trade in services. GATS is concerned with this form of trade in services.

2.3- Theory and Facts

Traditional economic theory confines itself only to domestic trade in services on the assumption that they do not enter cross-barter trade.¹ Correspondingly, even in official policy formulations, hardly any

¹ The fact, however, is that a limited cross border trade in services was always there. There was also a limited cross-border mobility of labour.

attention is paid to this phenomenon, except measures relating to international mobility of productive resources. But over time, some significant developments including the following can no longer be ignored.

- Contribution of services in national income of a typical modern economy happens to be quite large. This phenomenon is also visible in a developing country like India which is not industrially advanced but in which service sector is outstripping the manufacturing one;
- With a technological revolution in telecommunication, information, electronics, and so on, international trade in services is registering an exponential growth. This is being further helped by an explosive growth in the financial products and services. It is commonly believed that international trade in services is rapidly approaching \$4 trillion per annum;
- It is now widely recognised that a major portion of trade in merchandise entails trade in services as well. The former is not possible without the latter. An increasing volume and variety of products are becoming non-classifiable as 'pure merchandise' or as 'pure services'; and
- In international trade in services, the suppliers need not always cross the borders of their own countries.

As of now, the share of services in global trade is far below their share in GDP and employment of trading countries. But, service trade is bound to increase rapidly because we are living in an age of service revolution fed by a horde of forces like rapid advances in telecommunications, digital technology, and the like, with their contribution to domestic economic growth, employment, distribution, and infrastructure. For trade in services, space is shrinking or vanishing while the number of internationally "tradable" services is registering a rapid increase. In addition, growth in financial services is not only contributing to these developments but is also being recognised as essential for sustaining the same.

These facts underline the following:

- An immense scope for expansion in global trade in services so as to exploit its growth and employment potential;

- The need to ensure that global trade in services is fair and rule-based as between trading countries so as to counter-balance their unequal bargaining strength; and
- The need for an institutional framework for monitoring and regulating this trade, and for providing adequate safeguards where they are needed.

GATS was touted as an infallible device for achieving these objectives. In practice, however, the ideal of a flawless institutional system is a far-fetched dream, but even a sub-optimal one is better than its total absence. In the latter case, economically and politically powerful countries enjoy a greater freedom to misuse their clout. *Growing importance of services in the economies of the developed countries prompted them (under the leadership of USA) to seek a more liberalised and rule-based regime of international trade in services. And their efforts to this end resulted in the incorporation of GATS within the WTO with the provision that trade in services would be progressively liberalised and that developing countries would also be increasingly "participating" in them (that is, they would also "open up" and "facilitate" trade in services, thereby allowing their freer imports). It is noteworthy that the developed countries are able to ensure that, while fully enjoying positive externalities of GATS, negative externalities borne by them are reduced to negligible magnitudes. To this end, they deploy large teams of expert negotiators backed by legal inputs. They use their dexterity in negotiations by resorting to sector-wise discussions and other devices, and are able to turn the non-quantification of barriers to service trade to their advantage. In contrast, the developing countries find that it is not possible to escape the negative externalities of service trade, emerging from the politico-economic clout of the developed countries by not joining GATS. Their salvation lies in optimising the net outcome to the extent they can. In the new regime, their only option is to resign themselves to a status of junior partners, and endeavour to make the best of it. It, however, must be added that, for the developing countries also, it can be a positive-sum game—depending upon their capacity in the fields of negotiations, implementation, domestic policy framework, and the like.*

2.4- Research Coverage

Researchers have been attracted to the inherent core-importance of international trade in services and its concomitant impact on (a) 'domestic fiscal and regulatory space' (which in some cases is construed as a measure of an erosion of national sovereignty of the Member

countries), (b) the problems of quantification of externalities (that is, the impact on growth and welfare) of liberalised international trade in services, the contents of which depend upon and vary with several determinants, and (c) the issues related to the ongoing inter-Member negotiations, and the consequences thereof.

Their investigations have also generated a voluminous load of case studies. However, comparatively little attention has been paid to the role of *non-economic forces* in services trade and investment policies. In a way, this is inevitable because ground reality is always an admixture of both 'economic' and 'non-economic' compulsions of the Member countries.

2.5- Determinants of Volume and Pattern of Trade in Services

Trade in services has always been an integral part of cross-border trade. Recent services revolution and several other factors have accelerated the growth rate of trade in services. In the process, however, conceptual and policy problems associated with their quantification and formulation of policy measures have gained strength.

- Share of services in GDP of most economies at different stages of development has been growing. Several of them are jumping the conventionally accepted sequence of stages of economic growth in which growth of service sector is supposed to follow that of manufacturing. Even in India, service sector is contributing more than 60% of GDP;
- Modern economies are experiencing an explosion in the volume and variety of services, (a 'service revolution'). Numerous technological innovations and attitudinal changes are contributing to this. In the process, the trading costs of not only services but also of merchandise have fallen;
- Increasing differentiation is becoming an integral feature of the service sector and services are being bundled with merchandise; and
- Research shows that services trade substantially adds to growth rate, international flow of productive factors including FDI and technology, and is thus of benefit to both the developed and developing countries.

III- Origin and Objectives

3.1- Origin

The concept of GATS was marketed by developed countries with the plea that a rule-based promotion of international trade in services would generate an array of beneficial externalities (including economic growth and social welfare) for the Member countries.

All Agreements contained in WTO, including Agreement on Trade in Services (GATS), are an integral part of WTO. It is obligatory for every Member country of WTO to accept all Agreements contained in it together with obligations flowing from Ministerial declarations and decisions. The agreement to create WTO was signed in Marrakash on April 15, 1994 and it came into existence on January 1, 1995. WTO itself was a restructured version of the General Agreement on Tariffs and Trade (GATT), achieved after prolonged negotiations known as the Uruguay Round. While GATT covered a multilateral trading system *only for merchandise*, Uruguay Round sought to bring about a radical change therein. It aimed at extending its coverage beyond trade in merchandise, strengthening its legal and institutional framework, including a dispute settlement mechanism, and providing a framework of a new world economic order.

The envisaged framework of WTO sought adherence to *certain principles* like greater integration of the economies of individual countries, compatible domestic policies and greater freedom of trade. It also aimed at creating a monitoring and regulatory framework covering several upcoming fields of international economic relations, with particular emphasis on trade in services and associated issues. That way, it simultaneously aimed at a regulated, monitored, and globalised world economic order. To this end, WTO incorporated several new ingredients like making it obligatory for all the Member countries to accept all the agreements, declarations, and decisions of WTO. It bears re-iteration that all members of WTO are also bound by the provisions of all agreements contained in it. Clause- 4 of the "Marrakash Agreement" (the "Final Act" establishing WTO) states that "The representatives agree that the WTO Agreement shall be open for *acceptance as a whole*, by signature or otherwise, by all participants pursuant to Article XIV thereof." By implication, the Member countries also accept the position that the proposed institutionalised regime of international trade in goods and services as also constituent agreements and legal provisions of WTO would spell beneficial growth and welfare effects for them.

3.2- Objectives

GATS recognises the growing importance of trade in services and aims at utilising this phenomenon for the growth and development of the economies of the Member countries while aiming at (a) establishing a multilateral framework of principles and rules for expansion of trade in services with transparency and progressive liberalisation, (b) achieving a progressive liberalisation through *a process of negotiations* while securing an overall balance of rights and obligations and giving due respect to national policy objectives of Member countries, (c) securing *increasing participation of developing countries* in trade in services, supplemented by an expansion in their service exports, (d) accommodating least-developing countries, and (e) providing an international forum for dispute settlement.

IV- Structure of GATS

GATS is an integral part of WTO contained in Annex 1-B comprising all the Articles of this Agreement and its Annexes. The Provisions, Ministerial Declarations, and Decisions pertaining to WTO (and therefore to GATS) are binding on all the Members in addition to the "schedule of commitments" agreed to by them.

No member has the right to sign only some Agreements of WTO selectively and opt out of others. A country can become a Member of WTO only on accepting all Agreements comprising it and obligations flowing from them. However, GATS itself is structured on a "positive list" approach, that is, no service is covered by it unless it is specifically agreed to be covered by a Member country.

Leaving aside the administrative structure of GATS, it may be noted that it has two Parts. Part-I is the text of the Agreement, Articles, and Annexes, while part-II comprises *schedules* of time-bound specific commitments undertaken by Members. The text part applies uniformly to all the Members, while schedules are time-bound self-commitments agreed to in negotiations between Members. The negotiations themselves are a process of offers and requests made by Members. This process also involves the "participation" (read commitments offered) by developing countries.

GATS Articles comprise six Parts; namely, (a) Scope and Definition, (b) General Obligations and Disciplines, (c) Specific Commitments, (d)

Progressive Liberalisation, (e) Institutional Provisions, and (f) Final Provisions.

The Annexes of GATS are as follows; namely, (a) Annex on Article II Exemptions, (b) Annex on Movement of Natural persons Supplying Services Under the Agreement, (c) Annex on Air Transport Services, (d) Annex on Financial Services, (e) Second Annex on Financial Services, (f) Annex on Telecommunications, and (g) Annex on Negotiations on Basic Telecommunications.

4.1- Scope and Definition

The scope (coverage) of the GATS is very exhaustive. It applies to all measures by Members that affect trade in services. The term measures covers all measures taken by the government (central, regional or local) of a Member country or any non-government statutory authority.

The Agreement also applies to all services except those which are supplied in the exercise of governmental authority, that is, which are supplied neither on a commercial basis, nor in competition with one or more service suppliers. By implication, GATS allows Member countries to regulate the supply of services in pursuit of their respective national policy objectives.

4.1.1- Service and Trade in Services

GATS does not define a service (tradeable or otherwise) but describes trade in it. It describes four MODES or forms in which a service may be traded between a supplier of one Member country and the buyer of another Member country, including the sale of foreign affiliates that have been sold in the host country. In the words of GATS: *For the purposes of this Agreement, trade in services is defined as the supply of a service: (a) from the territory of one Member into the territory of any other Member; (b) in the territory of one Member to the service consumer of any other Member; (c) by a service supplier of one Member, through commercial presence in the territory of any other Member; (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.*

These tersely described four Modes of supply of a service may be elaborated in four modes as follows:

Mode-1. In this Mode, the traded service flows from the territory of the supplier's country to that of the buyer's (consumer) country. Examples

of this Mode would include a teacher sending study material to students in another country, consultation provided by a professional like a doctor or an architect to his clients in other countries, etc. In this case, instead of merchandise, traded services cross the border from the supplier country to the consumer country.

Mode-2. In this Mode, the consumer of a service moves into the territory of another Member country to consume the service. Examples of this form of trade include tourist services, hotel, restaurant, and transport services, and, in some cases, repairs of ships, aircraft, and so on.

Mode-3. In this Mode, the service supplier of a Member country establishes a territorial presence (a legal presence) in another Member country with a view to providing some service(s). Such a legal presence may be effected in the form of a joint venture, a subsidiary, a branch office, or representatives, etc. in the host country.

Mode-4. This Mode involves presence or movement of natural persons or human beings, as distinct from legal persons like organisations. This Mode refers to the export of manpower such that a service is delivered through persons of the supplier country temporarily entering the territory of another Member country. This Mode is of great importance to the service suppliers as it involves a physical movement of labour (either as independent individuals or as employees of the employers in importing or exporting countries). Concerns also crop up relating to issues of both legal and illegal migration, rights of residence and citizenship, and so on. It is noteworthy that GATS covers only temporary movement and not citizenship, residence or employment on a permanent basis in the importing country.

The foregoing classification of traded services, though very broad, is neither exhaustive nor unambiguous for two reasons.

(a) Incomplete Coverage

The list of tradeable services (contained in WTO document MTN.GNS/W/120) was provisionally and hurriedly compiled on the 10th of July, 1991, long before the conclusion of the Uruguay Round. This classification lists the tradable services into 12 Sectors, Sub-sectors, and Individual Services as follows: (1)- *Business services*, with 6 sub-sectors, and 46 services; (2)- *Communication services*, with 5 sub-sectors and 24 services; (3)- *Construction and engineering services*, with 5 sub-sectors and 5 services; (4)- *Distribution services, such as commission agents,*

wholesale and retail trade and franchise, with 5 sub-sectors and 5 services; (5)- *Education services*, with 5 sub-sectors and 5 services; (6)- *Environment services*, with 4 sub-sectors and 4 services; (7)- *Finance (including insurance and banking) services*, with 3 sub-sectors and 17 services (with a further sub-classification of one service into 7); (8)- *Health services*, with 4 sub-sectors and 4 services; (9)- *Tourism and travel services*, with 4 sub-sectors and 4 services; (10)- *Recreation, Cultural and Sporting services*, with 5 sub-sectors and 5 services; (11)- *Transportation services*, with 9 sub-sectors and 36 services; (12)- *Other services not elsewhere classified*.

This coverage is clearly not at all exhaustive and admits of a frequent expansionary revision, particularly in the light of ongoing expansion and diversification of economic activities. However, in spite of some communications to WTO in this respect, the above-said list stands unrevised. This provides both a much needed flexibility and a flawed escape route in inter-Member negotiations. There is also a section of opinion according to which this ambiguity helps developed countries with economic and political clout to drive greater advantage from negotiations which run on the pattern of offers and requests made by Member countries. They are further helped by an explosive growth in differentiation of services.

(b) *Overlapping Modes*

Factually speaking, it is not possible to enumerate and unambiguously classify entire trade in services into these four Modes, particularly on account of a continuous expansion in their number and variety. Moreover, trading of a given service may partly fall into more than one Modes and may also be tagged on to the movement of merchandise. For example, when a customer buys a software CD of a Microsoft Programme, it involves both buying a physical product and a service. Similarly, an Indian software firm may first despatch a software solution to a customer and then send one or more of its employees to install the same, and even run it for the buyer firm for some period. In the process, the employees of the seller Indian firm would also be "buying" various services of the country they go to (hotel, restaurant, sightseeing, transport, entertainment, and so on). The overlapping of Modes creates an understandable confusion in the negotiations between Member countries in which they make requests and offer commitments. This ambiguity also harbours the possibility of violating the principle of transparency in negotiations between Member countries.

There is an explosive growth in the volume and variety of services. They are getting increasingly differentiated to suit specific needs of the consumers. This phenomenon is being supplemented by new devices and techniques used by service suppliers to capture market and enhance profitability, such as franchise, re-labelling the same service, outsourcing services which come bundled with the merchandise, and so on. The picture gains more complexity with the prolific growth of financial services.

4.2- General Obligations and Disciplines

While providing some escape clauses in cases of genuine needs and difficulties, this Part of GATS imposes a large number of binding obligations upon its Members including the following:

(a) *Most-Favoured-Nation Treatment/Market Access.* In self-explanatory words, the text of GATS says that "With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country."

(b) *Transparency and Disclosure.* GATS prescribes various measures to be taken by a member country whereby its actions, policies, and the like would become well known and publicised (or at least available). However, a Member country is not obliged to provide confidential information.

(c) *Increasing Participation of Developing Countries.* This is a very significant component of GATS. The term *Participation* here means offering commitments to open up service sectors to imports and international competition. It radically transforms the pre-WTO position whereby the developing countries are allowed to benefit from the rule-based liberalised trade in services only by offering to open up their service sectors to international competition in a transparent manner and redefine their domestic policies to this end. The expression used for this purpose is quite pleasant and implies that developing countries are very eager to oblige but need some form of "assistance". However, the real intention is to *make* the developing countries accept the terms and conditions of the powerful developed Member countries. Article IV of GATS puts it as follows:

The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to (i) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia*, through access to technology on a commercial basis, (ii) the improvement of their access to distribution channels and information networks, and (iii) the liberalization of market access in sectors and modes of supply of export interest in them.

The Article goes on to enlist other steps associated with the above-mentioned objective.

(d) *Economic Integration*. This Article allows the Member countries to enter, subject to some detailed pre-conditions and additional permissions, into mutual agreements for liberalising trade in services on a mutual basis. However, such an agreement should not provide for *a priori* exclusion of any mode of supply.

(e) *Labour Markets Integration Agreements*. This Article also permits the Member countries to establish full integration of the labour markets between them provided such an agreement exempts citizens of the parties to the agreement from requirements of residency and work permits and provided the contents of the agreement are conveyed to the Council for Trade in Services.

(f) *Recognition*. This Article covers the standards or criteria of the Member countries for the authorisation, licensing or certification of service suppliers, as also recognising their education, experience and expertise, etc. Though the Article provides for non-discrimination, it factually provides full discretion to the Member countries. Consequently, it acts as a double-edged sword. Its provisions can be used by a Member country as a bargaining tool or even for outright denial of entry of some services from identified countries. Developing countries are more prone to suffer from the provisions of this Article. India, in particular, finds that a number of its professional categories have to earn additional qualifying degrees from developed countries before they can take up jobs there even on a temporary basis.

(g) *Domestic Regulation*. Consequent to sector-specific commitments, a Member country has to undertake corresponding domestic measures (legal, administrative, policy ones, and others) so as to facilitate the

fulfilment of its obligations flowing from these commitments and root out any obstacles in their way.

(h) *Monopolies and Exclusive Service Suppliers.* Each Member country is to ensure that they are not allowed to hinder the fulfilment of its commitments.

(i) *Business Practices.* Though the Agreement says that exporters of services are to be prevented from pursuing business practices which restrict competition in importing countries, some MNCs are reported to have violated this code of conduct with impunity.

(j) *Emergency Safeguards.* Member countries are permitted to evade some of their obligations for reasons of balance of payments, and the like, but only temporarily for three years.

In this context, it is noteworthy that *the Agreement is silent about capital convertibility of a currency* and talks only about current account transactions. This provides a safety valve for a Member country whose currency is not universally demanded as a reserve currency, since with capital convertibility it runs the risk of international bankruptcy. India and China were saved from the financial disaster which struck several Asian countries in 1997-98, because they did not have capital convertibility. Unfortunately, in India, frequent reports are released by the RBI and endorsed by the Ministry of Finance favouring a phased shift towards complete capital convertibility. It goes without saying that such a dangerous course should be shunned.

(k) *Government Procurement.* Article XIII relating to Government Procurement exempts procurement by governmental agencies of services purchased for governmental purposes and not with a view to reselling them commercially or using them in the supply of services for commercial sale, from the provisions of GATS relating to Most Favoured Treatment, Market Access, and National Treatment, but only temporarily for an initial period of two years. After the lapse of this period, the Members are obliged to enter into mutual negotiations even on these matters. Observers claim that this weakens the policy options of the Member countries and is of special disadvantage to the developing countries.

(l) *Exceptions.* However, exceptions to the above-mentioned provisions are provided in the cases of security of a country; maintenance of public

order; protection of the life and health of humans, plants and animals; protection against fraudulent practices; and protection of fundamental interests of society.

(m) *Subsidies*. As in the case of agriculture, GATS prohibits the use of trade-distorting subsidies.

4.3- Specific Commitments

This part reiterates the obligations of the Members to commit themselves to Market Access and National Treatment. Under the former a Member undertakes to implement its schedule of commitments without several possible forms of limitations defined in Article XVI. Under the latter, according to Article XVII, a Member country is to accord "treatment no less favourable than that it accords to its own like services and service suppliers." It is noteworthy, however, that developed countries, while insisting that developing countries strictly adhere to the prescription of 'national treatment', are themselves reported to violate this prescription frequently.

4.4- Progressive Liberalisation

This part obliges the Members to enter into periodic and successive rounds of negotiations so as to achieve a progressively higher level of liberalisation, that is, increasing effective market access. As an incentive to the Member countries, it is provided that, to the extent possible, such negotiated commitments would also try to accommodate the national objectives and developmental problems. However, negotiations are to take place along pre-established guidelines

This part also imbibes some elements of compulsion for reluctant negotiators as also for those Members who propose modifications or withdrawals.

4.5- Institutional Provisions

This part provides for various institutional arrangements for the monitoring and implementation of the provisions of GATS like the Council for Trade in Services and the Dispute Settlement Body, with their respective areas of jurisdiction. This part also covers the fields like "technical assistance" to developing countries and "Relationship with Other International Organizations".

4.6- Final Provisions

This part provides much-needed elaboration of various provisions and

definitions of various terms used in GATS, so as to provide a firm and objective basis for their legal interpretation. It also contains the following Annexes²: (1) *Annex on Article II Exemptions*, (2) *Annex on Movement of Natural Persons supplying Services Under the Agreement*, (3) *Annex on Air Transport Services*, (4) *Annex on Financial Services*, (5) *Second Annex on Financial Services*, (6) *Annex on Negotiations on Maritime Transport Services*, (7) *Annex on Telecommunications*, and (8) *Annex on Negotiations on Basic Telecommunications*.

4.6.1- Negotiations

GATS negotiations process is a "request-and-offer" one. Each Member decides (a) what it wishes to request of its trading partners, (b) in which sectors it will offer opening commitments, and (c) the way it would respond to the requests made by other Members to it.

Inter-alia, it also has the discretion to choose the Mode/Modes of delivery of services with its own specifications. GATS also allows plurilateral requests and offers in which the Members work on the "best case scenario". It is noteworthy that GATS gives its Members enough leeway to fine-tune their offers and requests for reaching at agreed conclusions. This is a great help in an era of global uncertainty and apprehensions. It is also noteworthy that Members are not legally obliged to open public services to competition and free trade, though such a stand (particularly by a politically and economically weak country) may lead to undesirable consequences.

Officially, WTO decisions are based upon "one country one vote" rule. However, in practice, most decisions are arrived at by consensus amongst Members which tends to conform to the will of the Members with sufficient clout. Thus, the ground reality is that they result from a process of informal negotiations between small groups of countries in which the developed countries have an inherent advantage. The developing countries are frequently bypassed or induced to present a disjointed front. This has a tendency to produce an unfair version of a free trade system.

It is noteworthy that the interests of negotiating Member countries differ between different Modes and are conditioned by their economic and political realities. Viewed this way, the outcome of GATS negotiations is

² According to Article XXIV, "The Annexes to this Agreement are an integral part of this Agreement"

expected to be more than likely to be a discriminatory as between the developed and developing countries, particularly when the former are frequently reported to safeguard their vested interests vehemently.

V- Evaluation

A meaningful evaluation of GATS should focus on an assessment of its achievements from the viewpoint of its Members. For example, developing countries like India, with abundant skilled labour, are more interested in exploiting Mode 4, while developed countries have a tendency to resort to various tactics in stemming off the tide of labour immigration. To this end, they often resort to various WTO provisions and "safeguards" citing "reasons" like "sweat labour" and "sanitary and phyto-sanitary" issues, or "inadequate" domestic policy measures by the labour-exporting countries. Since the interests of developed countries are well protected for the reasons mentioned above, it is natural to give a comparatively greater attention to the pitfalls and gainful opportunities for the developing countries. GATS has all the potential of a rich source of both benefits and costs for them; only they have to be aware of their fluidity and acquire the capacity to optimise the outcome.

5.1- Hurdles faced by GATS

Even when approached with objectivity and integrity by all the Member countries, GATS faces some inherent problems which defy an easy and satisfactory solution. In particular, they include the following:

- There are conceptual and *de facto* difficulties in separation of trade in services from that in merchandise for the purpose of implementation of the provisions of GATS;
- Trade in services has linkages with TRIPS and Patents, etc. In addition, they serve as underpinning of all other forms of trade, FDI, technology transfer, migration, and so on;
- Service sector faces peculiar problems of a proper economic accounting. For example, the competitive advantage of a country in different service sub-sectors is intermixed with the pricing of its productive resources like labour and capital. Consequently, a country may simultaneously have a competitive advantage in some sub-sectors, co-existing with a competitive disadvantage in some others. Moreover, this is a fluid phenomenon;

- Trade barriers in services pose peculiar and difficult problems of quantification;
- Ever increasing volume, variety, and differentiation of services come in the way of conclusive and equitable conclusions of negotiations between Member countries. These difficulties are further fed by the WTO rule that “nothing is agreed until everything is agreed”;
- Member countries often find that their “schedules” (commitments) militate against their domestic ‘fiscal and political’ space and frequently come in conflict with the vested interests; and
- Liberalisation of trade in services has to face several, *albeit* uneven, hurdles within the respective territorial jurisdictions of the Member countries. They include administrative and other hurdles in the form of domestic laws, procedural problems, delays, inapt and inefficient administration, and the like.

5.2- *Benefits and Costs*

By its very nature, benefits of GATS can be reaped only at a price, and this price is claimed to be higher for the economically poorer and politically weaker Member countries. Moreover, obligations of Members regarding liberalisation of trade in services have a variety of implications for each Member country.

5.2.1- *Benefits*

Potential benefits of GATS include the following:

- (a) It is claimed that a liberalised regime of trade in services contributes to not only the productive efficiency of the services sector itself but also adds to the total factor productivity (TFP) of the economy. On the other hand, a costly service infrastructure hinders economic growth;
- (b) Trade in services and merchandise supplement and feed upon each other and collectively add to the growth of GDP and employment in trading countries;
- (c) Growing trade in services facilitates international economic integration by depressing trading costs of merchandise;

- (d) Travel time for some services, such as, consultation (medical and others) is extremely short and shrinking. This helps in acceleration of economic growth and enhanced welfare;
- (e) Compared with the tangible sector, adjustment costs in the services sector are lower; and
- (f) Researchers claim that expanded trade in services through transfer of technology and the like aids in quickening the pace of industrialisation of developing countries and thus in improving the utilisation of their surplus productive resources like labour. Liberalised trade in services also helps in re-allocation of manufacturing facilities by MNCs in developing countries.

5.2.2- Costs

- (a) Factually speaking, GATS is unable to provide a level-playing ground for developing countries. The phraseology used in GATS is frequently slippery and misleading. For example, Article IV, covering an increasing participation of developing countries, is intended to compel them to give concessions, and open up services to international competition. It says that “the increasing participation of developing countries in world trade shall be *facilitated* through negotiated specific commitments...”, “the liberalisation of market access in sectors and modes of supply of export interest to them”.

In effect, it means that the Member countries with developing economies would be “made” to accept the principles of open trade in services, even at the cost of their domestic interests. It should be recalled that developing countries inherently suffer from weak bargaining strength compared with that of the developed countries. Moreover, developing countries are ill-equipped to conduct negotiations.

- (b) The service sectors of the developed countries are better developed and organised, and are more efficient. They are better able to enter into oligopolistic arrangements to the detriment of the developing countries.
- (c) Any loss of employment in developed countries because of re-allocation of manufacturing and service centres in developing countries is a short-term phenomenon and confined to some

specific categories of labour. In the long run, the developed countries gain from the use of cheaper labour and other productive resources of the developing countries.

- (d) Specific commitments made once cannot be withdrawn easily; and
- (e) National policy measures by a Member country are allowed only if they do not come in conflict with its commitments. However, developed countries are frequently reported to misuse the provisions of sanitary and phyto-sanitary measures.

5.3- Concluding Remarks

1. With the passage of time, developing countries are experiencing enhanced benefits from GATS for various reasons including the following: (a) a growing share of service sector in their GDP, (b) an expansion in international trade in services and growing demand for the import of labour-intensive services into developed countries with the associated phenomena like enhanced outflow of capital and technology from the developed into developing countries, and (c) identification of several areas where developing countries enjoy a competitive edge in service exports; and
2. However, developing countries should not remain passive participants in these developments. They must endeavour for a more equitable distribution of gains from trade in services, and should mould their policy and measures in accordance with this objective.

VI- Indian Stance

India, like several other developing countries, finds that GATS presents a fluid scenario of a mixture of opportunities and pitfalls with a lack of level playing field. It is facing several barriers against the export of its services such as cumbersome labour certification procedures, quantitative and other restrictions imposed in the name of 'sweat labour', 'child labour', 'sanitary and phyto-sanitary' conditions, 'data privacy laws', and several others.

Still, in line with the changing factual position, Indian stance towards GATS has seen a sea-change over time. In the beginning, like several other developing countries, India had deep apprehensions about the impact of GATS on its economy and social welfare. However, rapid

changes in its viewpoint towards GATS have been witnessed in the wake of its adoption of a policy of liberalisation and globalisation, and a radical transformation of its economy. It now recognises the potential of substantial gains from some forms of trade in services.

Shares of the service sector in India's GDP and external trade have increased over time, with the former now exceeding 60%. Correspondingly, a huge deficit in its merchandise trade is substantially reduced by a surplus in service trade. In 2006-07, as against a deficit of Rs. 2,93,758 crore (up from Rs. 2,29,426 crore in 2005-06) on merchandise trade, services recorded a surplus of Rs. 1,47,804 crore (up from Rs. 1,05,619 crore in 2005-06), thus causing a reduction in the merchandise deficit of around 50% (up from 46% in 2005-06). Even within the invisibles, the share of services has been increasing (around 71% in 2006-07 as against 70% in 2005-06). Though, currently, share of India in global exports of services is quite negligible (around 1.4% as against a still smaller share of 0.9% in merchandise exports), service exports are a major and growing source of foreign exchange, contribute to its economic growth, and induce inflows of foreign capital.

Given the service sector's role in speeding up integration of the Indian economy with rest of the world, GATS has gained an added significance for India. It should endeavour to ensure that its gains from trade in services exceed its losses from it though the outcome is likely to remain sub-optimal in the near future. Admittedly, it is a difficult task for several reasons including stubborn attitude of developed countries in several respects and a dogged protection of their self-interest.

A wise course for India lies not in opting out of GATS but accepting ground realities and making a sincere effort at optimising its gains to the extent possible while reconciling to the fact that any outcome in the foreseeable future is bound to be below an ideal one.

Given that India is to be in GATS, its policy framework should rest on three basic planks: (1) The path of liberalisation of trade in services should be chalked out with an eye on safeguarding its socio-economic fabric, particularly in the field of financial, health, and educational services; (2) Its offers for negotiations and accepted commitments should be designed to lay a firm foundation for future growth of the Indian economy; and (3) Liberalisation of trade in services by India must be meaningfully backed by appropriate reforms within the domestic economy and institutionalisation of their regulatory systems.

VII- Conclusion

GATS is an integral part of WTO vide "Annex IB" and no Member of WTO can opt out of it, implying acceptance of all entailed obligations, Ministerial Declarations, and Decisions. It provides for monitoring, regulating, and dispute settlement arrangements relating to international trade in services. GATS covers all services with the exception of only those which are supplied in exercise of governmental authority, that is, which are supplied neither on a commercial basis nor in competition with one or more service suppliers. Member governments are also obliged to have a transparent policy, and accord 'national treatment' to foreign service suppliers. By implication, a Member government has to restructure its domestic policy in line with its time-bound "scheduled commitments" while being allowed to safeguard its essential national interests. GATS "scheduled commitments" are the outcome of a process of offers and requests made in the inter-Member negotiations.

Existence of GATS and its externalities cannot be wished away, particularly in view of the service revolution and its impact on economic growth and emerging parameters of globalisation. Factually speaking, every Member country is expected to fend for itself and try to make the best of the circumstances. However, like most other agreements of WTO, GATS documents are lengthy, involved, and frequently interspersed with skilfully crafted phraseology. This poses a need to highlight its relevant essentials, particularly from the view point of developing countries like India since they suffer from some inherent disadvantages in negotiations with the developed ones.

GATS also suffers from some additional deficiencies. It is not able to define a tradable service or develop a good methodology of quantification of barriers in service trade. Instead, it describes four modes of supplying a traded service and lists the tradable services in 12 sectors with their sub-sectors and individual (or groups of) services. Even these have multiple deficiencies which are *not* being addressed by GATS.

Service trade has some inherent conceptual and quantification problems which are yet to be solved satisfactorily, such as the segregation of services and merchandise components of trade, and quantification of linkages of services trade with FDI, TRIPS, and technology transfer, etc. and of barriers in service trade.

Developing countries like India suffer from a weak bargaining strength vis-à-vis developed countries on account of several reasons like lack of economic and political clout, negotiating skills, and the like. As such, their best strategy is to aim at optimum exploitation of opportunities offered by GATS at the minimum cost to their own socio-economic fabrics. They should develop their negotiating skills, strategies, and capacities, particularly in view of the fact that developed countries are prone to taking advantage of their bargaining strength in creating an unfair imbalance in their own favour.

India's pragmatic stance towards GATS is understandable. Its focus of interest has undergone a radical transformation in line with the changing domestic and international situation. In view of the ever-changing international scenario and service revolution, it is not feasible to recommend a specific, component-wise detailed structure of Indian approach in its negotiations with other GATS Members. However, it may be suggested that Indian policy should not lose sight of three basic requirements: (a) Its basic socio-economic interests should be protected, particularly in the fields of finance, health, education, and infrastructure; (b) Negotiations and accepted commitments should be in harmony with its growth objectives; (c) Its domestic reforms should re-designed to strengthen its position in the global comity of nations.

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