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A QUICK GUIDE TO THE GATS AND MODE 4

Julia Nielson and Daria Taglioni
Trade Directorate, OECD

*Background document for Day 1, “What is the relationship between Trade & migration?”
Session 1: Trade and migration contexts*

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Julia Nielson and Daria Taglioni
Trade Directorate, OECD

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PART I. BACKGROUND

I. What is the GATS?

1. The General Agreement on Trade in Services (GATS) is a multilaterally agreed framework agreement for the trade in services which applies to all 148 WTO Members. It has three main objectives:

- **To progressively liberalise trade in services** through successive rounds of negotiations which should aim at promoting the interests of all members of the WTO and achieving an overall balance of rights and obligations.
- **To encourage economic growth and development** through liberalisation of trade in services, as the GATT does through the liberalisation of trade in goods;
- **To increase the participations of developing countries in world trade in services** and expand their services exports by developing their export capacity and securing export opportunities in sectors of export interest to them.

2. The agreement has a wide scope and applies to all services supplied on a commercial basis. It excludes most air transport services as well as services supplied in the exercise of governmental authority (defined as service supplied neither on a commercial basis nor in competition with one or more service suppliers).

3. The agreement includes both rules and a framework for countries to make commitments to open particular service sectors to foreign suppliers. These market opening commitments are referred to as “specific commitments” and set out the service sectors in which foreign suppliers will be permitted and the conditions under which they will be permitted.

4. Accordingly, the GATS is divided in two parts. The first part of the GATS consists of general obligations, as well as some obligations which apply only where commitments for particular sectors are made. An example of a general obligation is the “Most Favoured Nation” or MFN requirement, which requires WTO Members to treat all other WTO Members as well as they treat their most favoured WTO Member. That is, treatment offered to one WTO Member must be extended to all other Members. (There are some exceptions to MFN, see paragraph 28 and Box 1 below).

5. Some transparency requirements are also general obligations (e.g., the requirement to publish or otherwise make publicly available at the national level all relevant measures of general application which pertain to the agreement). Other transparency requirements apply only where a commitment has been made (e.g., the requirement to notify other WTO Members via the WTO Council for Trade in Services¹ of any new or changes to existing laws etc which significantly affect trade in services covered by a

¹ The Council for Trade in Services is a body made up of representatives of all WTO Members. It normally meets around 4 times per year. The WTO Secretariat Trade in Services Division serves as the Secretariat to that body and its subsidiary bodies: the Working Party on Domestic Regulation; the Committee on Financial Services; the Working Party on GATS Rules and the Committee on Specific Commitments.

commitment). Another example of these types of obligations is the requirement that, in sectors where specific commitments are undertaken, measures of a general application affecting trade in services be administered in a reasonable, objective and impartial manner (Article VI.1).

6. The second part of the GATS sets out the framework under which countries decide which service sectors they want to allow foreign suppliers to enter, and under what conditions. The commitments made under this framework are referred to as “specific commitments”. The commitments undertaken by each WTO Member are contained in individual schedules of commitments which are annexed to the GATS. The text of the GATS and the schedules of commitments for each WTO Member are available on the WTO website at www.wto.org.

7. For the purposes of making commitments, a list of 12 service sectors and around 160 sub-sectors was developed. The Services Sectoral Classification List (MTN.GNS.W/120, known as “W/120”) includes cross-references to the United Nations Central Product Classification (Provisional CPC). While its use was not obligatory, many WTO Members used W/120 in making their GATS specific commitments.

8. As a further tool for making market-opening commitments, the GATS also sets out 4 possible modes, or ways, in which services can be traded between WTO Members. Mode 1 (cross-border supply) is where the service crosses the border (e.g., a Mexican architect faxes a plan to a client in Japan). Mode 2 (consumption abroad) is where the service is consumed in the territory of the service supplier (e.g., a Mexican tourist goes to Japan for a holiday; a ship pulls into a foreign port for repairs). Mode 3 (commercial presence) is where the service supplier establishes a commercial presence in another WTO Member to provide the service (e.g., a Mexican architecture firm opens a branch in Japan). Mode 4 is where an individual service supplier moves temporarily to another WTO Member for the purposes of supplying a service (e.g., a Mexican architect visits Japan for 6 months to supervise construction of the building she designed).

9. Mode 3 and mode 4 are, in a sense, counterparts. When the agreement was being negotiated, developed countries argued for the inclusion of investment in services (i.e., movement of capital) and, in response, developing countries insisted on similar treatment for movement of labour. This led to the development of “commercial presence” (mode 3) and “presence of natural persons” (mode 4) in the agreement [Mattoo (2003)].

II. What is mode 4?

10. The movement of labour from one country can vary along several lines - length of stay, level of skills and nature of the contract. A person can move for one day or permanently; be relatively unskilled or be a specialist in a particular field; move as an independent professional or be transferred from company headquarters in one country to a branch office in another country [Mattoo, 2003]. The question of which aspects of these variations are covered by GATS mode 4 is discussed below.

(i) Who is included in mode 4?

11. Technically, mode 4 is defined in Article I.2(d) of GATS as being “the supply of a service... by a service supplier of one Member, through presence of natural persons of a Member in the territory of another Member”. This definition applies to nationals as well as, in certain circumstances, permanent residents, of WTO Members seeking to supply services abroad (permanent residents are covered where the Member does not have nationals or accords substantially the same treatment to permanent residents and nationals) [Article XXVIII(k)].

12. Further elaboration is provided in the GATS Annex on Movement of Natural Person Supplying Services under the Agreement. The Annex applies to “measures affecting natural persons who are service

suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service". The first category is clear - "natural persons who are service suppliers of a Member" covers self-employed or independent service suppliers who obtain their remuneration directly from customers. However, there is some confusion about what is covered by the second category ("natural persons of a Member who are employed by a service supplier of a Member").

13. The WTO Secretariat background note on mode 4 [1998] has noted that this wording could be read to suggest that foreigners *employed by host country companies* are also included under mode 4. However, as Article I.2(d) seems to cover only *foreign employees of foreign firms established in another Member*, the Secretariat background note suggests that foreigners working for host country companies would fall under GATS mode 4 if they worked on a contractual basis as independent suppliers for a locally-owned firm, but would not necessarily seem to be covered if they were employees of that firm.

14. Nonetheless, a number of GATS specific commitments (i.e., the market opening commitments made by WTO Members) actually refer to short-term *employment*. As specific commitments also form an integral part of the GATS, there is thus a certain degree of legal uncertainty with regard to coverage [Karsenty, 2000]. This situation can be further complicated by the fact that some WTO Members deem almost all types of foreign temporary workers to be employees for the purposes of bringing them under domestic labour law (with implications for their wages, conditions and social protection).

15. Generally, GATS mode 4 is seen as covering:

- persons providing services where a foreign service supplier obtains a contract to supply services to the host country company and sends its employees to provide the services;
- independent service providers abroad: an individual selling services to a host country company or to an individual;
- persons employed abroad by foreign companies established in the host country (but excluding nationals of the host country).

(ii) What is temporary?

16. Mode 4 encompasses natural persons providing services in any of the services sectors on a "temporary" or non-permanent basis. However, further clarification may also be required on the issue of "temporary". There is no standard definition of temporary in the GATS and, for the purposes of specific commitments, WTO Members are free to interpret the term as they wish, and to set varying definitions for different categories of service providers. In practice, many WTO Members' specific commitments distinguish between:

- "business visitors" - i.e., short-term stays of a few months (often limited to 3 months), with no remuneration received in the host country;
- temporary movements of between a few months to a few years, including:
 - existing employees transferred within the same foreign controlled company (intra-corporate transferees, generally limited to 2-5 years)
 - service suppliers on specific term contracts with foreign or nationally owned firms

- self-employed service providers whose remuneration is wholly or only partly received in the host country [Arkell, 1998].

17. While "temporary" may not be defined positively in the GATS, it is defined negatively - i.e., permanent migration is explicitly excluded. The Annex of Movement of Natural Persons Supplying Services under the Agreement states that GATS does not apply to measures affecting individuals seeking access to the employment markets of a Member nor to measures regarding citizenship, residence or employment on a permanent basis. The Annex also states that, regardless of their obligations under the Agreement, Members are free to regulate the entry and stay of individuals in their territory provided that the measures concerned "are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment". The operation of visa requirements for natural persons from some Members but not others is not *per se* regarded as nullifying or impairing such benefits.

18. However, some commentators have queried the GATS' distinction between service providers and persons entering the labour market in a country. They argue that, given that temporary entry under GATS commitments can last for up to 3 years (or in some cases longer), the service provider has in effect entered the local labour market, even though they are not applying for citizenship, as they are providing a service which a local person could probably do [Young, 2000].

(iii) What is a service supplier?

19. The GATS only covers services and service suppliers, but it may not always be easy to know what constitutes the supply of a service. For example, should fruit-pickers be viewed as temporary agricultural labourers (outside the scope of mode 4) or as suppliers of fruit-picking services? The answer may in part depend upon how broadly WTO Members interpret the scope of the category "services incidental to agriculture" in the Services Sectoral Classification List (W/120).

20. Equally, tasks performed on a fee or contract basis, without ownership of the inputs or outputs, are sometimes deemed to be services, even when they would appear to be technically manufacturing in nature. For example, a factory which receives a ream of fabric and a contract to sew 300 shirts is a supplier of tailoring services, whereas a factory which owns the cloth and produces 300 shirts which it then sells under its own mark is a textile manufacturer. In the world of increased out-sourcing of activities along the production chain, there is some debate over to the extent to which activities previously classified as manufacturing can now be broken down into, and classified as, services. There is thus some scope for differing interpretations on what constitutes a service.²

21. Further, while technically, mode 4 includes service suppliers at all skill levels, in practice WTO Members' commitments have been generally limited to the higher skilled - managers, executives, specialists - although these terms are generally not further defined.

(iv) Summary

22. While there is no single, clear definition of mode 4, a useful approach might be to consider both *duration* and *purpose* of stay. That is, mode 4 service suppliers:

² It has been questioned whether it makes sense, including in terms of the commercial reality of firms supplying both goods and services, to limit labour mobility solely to service suppliers [Feketekuty, 2000]. Indeed, a growing number of regional trade agreements apply mobility provisions not only to service suppliers, but also to providers of goods and investors.

- gain entry for a specific purpose (to fulfil a service contract as self-employed or an employee of a foreign service supplier);
- are normally confined to one sector (as opposed to workers who enter under general migration or asylum programs who can move between sectors); and
- are temporary (i.e., they are neither migrating on a permanent basis nor seeking entry to the labour market).

23. These elements, however imperfect, could help to distinguish mode 4 temporary service suppliers from wider groups of temporary workers (see Table 1).

Table 1: Summary of mode 4 coverage

Included	Excluded	Differences of view exist
Temporary movement (temporary is undefined)	Permanent migration (residence, citizenship or employment on a permanent basis)	
Related to the supply of services	Persons working in non-service sectors – e.g., agriculture, manufacturing	Scope of activities included in “services incidental to agriculture” (e.g., temporary agricultural workers or suppliers of fruit-picking services?) or services incidental to manufacturing”
All skill levels included (but in practice commitments to date are limited to the highly skilled)		
Foreign employees of foreign companies established in the host country	Domestic (nationals of host country) employees of foreign companies established in the host country	Foreign employees of domestic companies
Business visitors Intra-corporate transferees Contractual service suppliers (self-employed or as employee of a foreign service supplier)	Persons seeking to enter the employment market	

III. How does the GATS operate?

(i) What is a commitment?

24. GATS commitments are guaranteed minimum treatment offered to other WTO Members; countries are always free to offer better treatment if they wish, but they cannot offer worse. Commitments are binding – that is, they cannot be changed without paying compensation to other Members (this takes

the form of a commitment for access in another area of equal value to the one being changed or withdrawn). Commitments are also MFN – that is, the access offered is open to suppliers from all other WTO Members (i.e., you can't offer access to suppliers from some WTO Members and not others – subject to the exceptions set out in paragraph 29 below).

25. Commitments can be made for each sector or sub-sector and, within this, for each mode of supply. For example, under “legal services”, commitments can be made for “foreign legal consultants”, with some access granted under mode 3 and mode 4, but not mode 1. Alternatively, commitments can be made “horizontally”, covering a single mode of supply across all sectors listed in the schedule. Horizontal commitments apply to all sectors listed in the schedule unless otherwise clearly specified at the sectoral level (e.g., a country's schedule specifies that its horizontal mode 4 commitment does not apply to legal services). Most commitments for movement of service suppliers under Mode 4 are horizontal, rather than sectoral, reflecting existing migration regimes³.

(ii) What are market access and national treatment?

26. For each service sector or sub-sector, and for each mode of supply within that, countries make commitments as to the level of “market access: and “national treatment” they will offer. Read together market access and national treatment commitments inform a foreign supplier about the access they will have to the WTO Member's market and any special conditions that will apply to them as foreigners. In making commitments, a WTO Member has three main choices:

- A commitment to provide full market access and/or national for a particular mode - that is, to maintain no restrictions - indicated in the schedule by "None".
- No commitment to provide anything on national treatment and/or market access for a particular mode, this is indicated by "Unbound" (i.e., no bound commitment undertaken).
- Partial commitments for market access and/or national treatment, with the remaining restrictions listed in the schedule.

27. There are 6 types of restrictions on access to their market for a given service that countries need list in their commitment if they want to use them. These restrictions can apply to both nationals and foreigners or only to foreigners. These **market access** restrictions are:

- Restrictions on the number of service suppliers, including in the form of monopolies or exclusive service suppliers;
- Restrictions on the total value of service transactions or assets;
- Restrictions on the total number of service operations or the total quantity of service output;
- Restrictions on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ;
- Restrictions on or requirements for certain types of legal entity or joint venture for the supply of a service;

³ It should be noted that a WTO Member's mode 4 commitments cover the acceptance of foreign service suppliers into its territory, not the sending of its own nationals abroad as service suppliers.

- Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

28. **National treatment** means that foreign services and service suppliers are granted treatment no less favourable than that accorded to like national services and service suppliers. This can mean formally identical or formally different treatment - the key requirement is that it does not modify the conditions of competition in favour of services or service suppliers who are nationals instead of foreigners. National treatment can also cover both *de jure* and *de facto* discrimination; that is, even if a measure applies to both foreigners and nationals it may still be discriminatory if its *effect* is to discriminate against foreign suppliers. However, national treatment does not require a Member to compensate for any inherent competitive disadvantage which results from the foreign character of the relevant service or service suppliers.

29. A key consideration in national treatment is whether the services or service suppliers are “like”. The GATS, like other WTO Agreements, does not define “like” and panels under the WTO dispute settlement system have tended to approach the issue of “likeness” on a case-by-case basis, taking into account, *inter alia*, consumer perceptions of the degree to which a particular good is like, and its substitutability.

30. WTO Members are free to make no commitment on national treatment, or to provide partial national treatment provided they list the measures they maintain which discriminate in favour of nationals in their schedule. Unlike for market access, there is no specific list of the types of measures that have to be scheduled; Members must judge whether a measure breaches national treatment and therefore should be scheduled. A measure may not be considered discriminatory if it is genuinely open to both national and foreigners to fulfil it – e.g., a requirement for a degree of proficiency in a certain language need not be discriminatory if it is genuinely possible for foreigners to be able to learn the language and achieve the required level of proficiency. Some examples of the types of measures which would need to be listed in the schedule as limitations on national treatment include: eligibility for subsidies reserved to nationals; the ability to lease or own land is reserved to nationals; and citizenship requirements for professionals;

(iii) What are the options in making commitments?

31. In making commitments, WTO Members have a number of choices:

- They can exclude an entire sector (e.g., health services) or parts of a sector (e.g., everything other than general nursing) from their commitments. WTO Members are free to define the sector as they wish – they can refer to a list developed for the GATS negotiations (the Services Sectoral Classification List, see paragraph 13 above), or the United Nations Central Product Classification to which this GATS list refers, or they can use their own definitions;
- They can exclude some modes of supply. For example, a WTO Member may decide to permit its nationals to study abroad (mode 2) but not permit foreign university lecturers to teach in its territory (mode 4).
- They can place limits on the “market access” they offer (e.g., they can limit the number and type of foreign computer professionals and the activities in which they can engage)
- They can discriminate against foreign providers in favour of nationals (e.g., by placing additional conditions or requirements on foreign computer professionals, or restricting some activities or benefits to national computer professionals);

- They can discriminate amongst foreign suppliers (i.e., they can give better treatment to suppliers from some countries) if they have an MFN exemption for the relevant service. Countries had a one-off opportunity to claim exemptions from MFN at the time they joined the GATS (information on MFN exemptions related to mode 4 is included in Box 1 and Annex I). Countries which are party to regional trade agreements are also able to discriminate in favour of other members of those agreements.
- They can commit to providing less access than they currently actually provide (e.g., a country may commit in the GATS to allowing 40 000 foreign professionals to provide services temporarily each year, but may in practice under their national law allow 100 000 to enter). Because a commitment is a binding guarantee of minimum treatment, countries often commit to less than they currently offer to leave themselves room to manoeuvre (in the example above, to change the national law to drop the number from 100 000 to 50 000). Indeed, many current GATS commitments represent significantly less openness than actually exists in the country concerned.
- They can commit to liberalize at a chosen future date to give themselves time to ensure that the necessary regulatory frameworks are in place (e.g., they can commit to allowing foreign lawyers to work in their territory, but only from 2010).
- Developing countries have additional flexibility to liberalize fewer sectors and to attach conditions to access offered. Additionally, other Members should facilitate their participation in trade, including by liberalizing modes and sectors of interest to them, and should establish special contact points to provide information to developing country service suppliers.

IV. What has been achieved so far on Mode 4?

32. Even by the modest standards of services liberalisation in the Uruguay Round, little was done on liberalising the temporary movement of service suppliers. Most countries made only limited commitments on mode 4. GATS commitments are also guaranteed *minimum* treatment, so countries tended to be conservative, with most committing to a more restrictive regime than they were - or are - actually employing. Key features of the commitments on mode 4 are outlined in Box 1 below.

Box 1: What is the current picture of mode 4 commitments?

Skill levels: While mode 4 technically covers all skill levels, commitments are generally limited to the higher skilled (managers, executives, specialists). The majority of commitments concern executives, managers and specialists, with around half relating explicitly to intra-corporate transferees. Only 17% of all horizontal entries cover low skilled personnel (e.g., "business sellers") and only 10 countries have allowed some form of restricted entry to "other level" personnel [Chanda, 1999]. Further, general terms used in commitments such as "managers" or "business visitors" are not defined, leaving considerable scope for interpretation and discretionary action by officials.

Horizontal rather than sectoral commitments: Commitments on mode 4 generally apply the same conditions to all service sectors, with no greater access given in sectors of particular relevance to mode 4 (e.g., professional services). Most of these horizontal commitments generally take the form of "unbound except for..." and then state special access conditions for particular types of labour (level of skill, type of occupation) and purpose of their movement (e.g., establishing a commercial presence).

More restrictive: Fewer commitments have been made in mode 4 than for other modes of supply, by both developed and developing countries. There are very few cases of full commitments, and fewer cases of partial commitments, than for other modes of supply. While overall, developed countries have scheduled commitments in 50% of service sectors and developing countries in 11% of service sectors, sectors where mode 4 is important (e.g., professional and health services) tend to have fewer commitments.

Length of stay: There is no standard definition on what classifies as "temporary" movement. Only about one third of commitments include any specified duration of stay and these are mostly for intra-corporate transferees (generally 2-5 years) and business visitors (generally 3 months).

Economic Needs Tests (ENTs): Economic needs or labour market tests are found in 50 cases. They are mostly scheduled as part of horizontal commitments (sector-specific ENTs appear in medical, dental and hospital, entertaining and financial services) and generally apply to specialist personnel, or highly qualified professionals, managers and executives. 23 countries have made commitments that, for certain categories of natural persons, ENTs will *not* apply (generally those related to mode 3 establishment, and to persons holding management positions or experts with specialised knowledge of the company). Few countries comply with the requirement for information as to ENT criteria.

Other Restrictions: These include: quotas on the number of foreign suppliers, the proportion of total employment met by foreigners or the proportion of senior staff (80 cases); pre-employment requirements (i.e., person must already be employed, over 100 cases); technology transfer requirements (i.e., training of local staff, mainly included by developing countries, 32 cases); restrictions on geographic and sectoral mobility or mobility between firms (10 cases).

MFN Exemptions: There are 38 MFN exemptions relevant to mode 4, of which 32 are preferential agreements and the rest are reciprocal (or, in 2 cases, preferential and reciprocal - see Annex I). Where measures have been specified in detail, they relate to, for example, granting of work permits, waiving of ENTs or improved access for certain activities. Beneficiary countries covered are not always identified, but factors listed include traditional sources of supply, geographical zones, regional organisations and language.

Wage parity and strike clauses: 50 countries have scheduled conditions relating to domestic wage legislation, working hours and social security (this does not include general references to domestic legislation, and there may be more Members with such requirements in practice). In 22 cases, countries have reserved the right to suspend commitments in the event of a labour dispute (this seems to apply mainly to intra-corporate transferees at senior levels).

Source: WTO Secretariat, 1998; Chanda, 1999; and Young, 2000.

33. Against this backdrop, expectations are running high amongst some WTO Members for more meaningful progress on mode 4 in the current round of services negotiations. The structure of those negotiations, and the progress to date on mode 4, is outlined in Part II below.

PART II. THE CURRENT NEGOTIATIONS

I. The story so far...

1 January 2000: the negotiations commence

34. The services negotiations formally commenced on 1 January 2000. Even though the 1999 WTO Ministerial Conference in Seattle had failed to launch a broader round of trade negotiations, new negotiations on services and agriculture were already mandated under the agreements reached in the Uruguay Round. For services, this mandate is contained in GATS Article XIX, which requires Members to enter into successive rounds of negotiations, the first beginning not later than five years from date of entry into force of the WTO (i.e., from 1 January 1995).

March 2001: the Negotiating Guidelines agreed

35. GATS Article XIX also requires Members to establish negotiating guidelines and procedures for each round of services negotiations. In March 2001, WTO Members reached agreement on guidelines for the current negotiations (see Annex II). Separate guidelines covering Least Developed Countries (LDCs) were finalised in September 2003 (see Annex II)⁴. These guidelines note that LDCs have identified movement of natural persons as service suppliers under GATS mode 4 as important to them and state that members shall to the extent possible consider undertaking commitments to provide access, taking into account all categories of natural persons identified by LDCs in their request.

December 2002 – the WTO Ministerial Conference in Doha

36. The Doha Development Agenda (DDA) endorsed the work already undertaken, reaffirmed the negotiating guidelines and procedures, and established some key elements of the timetable for the negotiations. These were:

- Deadline for the submission of initial requests for specific commitments: **30 June 2002**
- Deadline for the submission of initial offers for specific commitments: **31 March 2003**
- Stock taking on all GATS-related matters: **WTO Ministerial Conference, Cancun 2003**
- Overall deadline for the negotiations: **1 January 2005**, as part of the DDA single undertaking.

37. Two terms need some short explanation. First, the word "initial" reflects the reality that the negotiating process is a succession of requests and offers (see Box 2 for an explanation of the request-offer process). Initial requests are not necessarily exhaustive and countries can come back with further requests at a later stage. Equally, an initial offer can be subject to change — i.e., it can be scaled up or down, with Members remaining free to withdraw their initial offer at any stage during the negotiations. Individual WTO Members are also under no obligation to make either requests or offers in the negotiations, should they choose not to.

38. Second, the “single undertaking” means that all negotiating subjects are concluded as part of a single package at the same time. The idea of a single undertaking is to help all countries find a balance of interests in the outcome of negotiations, with countries able to balance concessions granted in some areas against gains made in other areas.

10-14 September 2003: the WTO Ministerial in Cancun

39. With the failure of the WTO Ministerial Conference in Cancun, the overall deadline of the DDA negotiations of 1 January 2005 now looks unlikely to be met. Much will depend on whether efforts to restart the negotiations in the coming months, including a possible meeting of senior trade officials from WTO Members in December 2003, meet with success.

⁴ While developing countries self-select in the WTO, LDC status is based on inclusion in the United Nations list of 49 LDCs.

II. What is on the table on mode 4 in the GATS negotiations?

(i) *Phase one: general negotiating proposals*

40. In the first phase of the negotiations – roughly between their commencement on 1 January 2000 and the WTO Ministerial in Doha in 2002 — a number of members tabled general proposals outlining their interests in the services negotiations (these proposals are all available at www.wto.org). Out of approximately 126 proposals in total, 6 proposals were tabled on mode 4 by Canada, Colombia, the European Communities and its member states, India, Japan and the United States (mode 4 was also included in a general proposal from Kenya).

41. These proposals contained a number of ideas about how to improve mode 4. Most ideas either sought to increase market access (mostly developing country proposals) or to increase the effectiveness of existing market access (supported by most major developed countries). The main ideas include:

- *Greater clarity and predictability in WTO Members' commitments:* e.g., by (i) agreeing common definitions for the main categories of personnel included in many WTO Members' commitments, including by reference to the International Standard Classification of Occupations (ISCO-88); many Members refer to "executives, managers, specialists", but there is no common understanding of who is covered by these categories; (ii) providing information on economic needs tests (i.e., where entry of foreigners is subject to an assessment of needs in the domestic market), such the criteria used, the responsible authorities, likely time frame for determinations and record of recent decisions.
- *Greater transparency:* existing access is not always used because service suppliers lack information on the necessary requirements and procedures. WTO Members could provide one-stop information on all relevant procedures and requirements via a dedicated web-site covering all WTO Members; via notifications to the WTO, or by creating a one-stop contact point at the national level. Other suggestions include prior consultation on regulatory changes, timely responses to applications and the right of appeal.
- *GATS visa:* to facilitate entry of mode 4 service suppliers, including by avoiding the detailed visa procedures currently required in many countries (often not separated from permanent migration). The visa would be issued rapidly, time-limited, cover both independent service suppliers and intra-corporate transferees, include appeal rights and be backed up by a bond, with sanctions for abuse.
- *More market access:* (i) Commitments for particular service sectors of high demand (e.g., information and communications technology, professional services) rather than the current standard treatment for mode 4 entry across all sectors. (ii) Better access for some groups, in particular intra-corporate transferees, via "blanket" applications by companies or by charging companies for streamlined processing (including via a GATS visa). (iii) More access for other types of skilled, but not necessarily highly skilled, personnel such as "technical support personnel" or "non-professional essential personnel" or for trainees (future executives).

(ii) *Phase two: requests and offers*

42. To date, **initial requests** have been received from about 35 WTO Members. As requests are communicated between the WTO Members concerned (see Box 2), and not via the WTO Secretariat, there is no central collection point for requests. It is thus not possible to have an exact number of requests, nor to have an overview of their content. While some WTO Members have made their requests — or

summaries of their requests — public, others have chosen not to. It is the decision of individual WTO Members whether or not to make their initial requests public.

43. Some WTO Members issued summaries of the requests they received. For example, the EU indicated that over half the requests it received from developing countries included reference to mode 4; and that of the 26 requests the EU received on mode 4, 24 came from developing countries. The EU also has its own offensive interests in mode 4, and has made requests of India, Ecuador, Peru, Philippines Malaysia and Morocco as well as other developing countries to improve their commitments under mode 4 [Niessen, 2003].

44. In terms of **initial offers**, to date, 37 WTO Members have submitted initial offers. They are: Argentina, Australia; Bahrain; Bolivia; Canada; Chile; China; Chinese Taipei; Colombia; Czech Republic; European Communities and its Member States; Fiji; Guatemala; Hong Kong, China; Iceland; Israel; Japan; Republic of Korea; Liechtenstein; Macao, China; Mexico; New Zealand; Norway; Panama; Paraguay; Peru; Poland; Singapore; Slovak Republic; Slovenia; Sri Lanka; St Kitts and Nevis; Switzerland; Thailand; Turkey; United States and Uruguay.

45. Of these offers, 12 have been derestricted by the Member concerned and are publicly available on the WTO website (in the TN/S/O document series)⁵. 6 others are available via national or other websites⁶. It is the decision of the individual member whether or not to make their initial offer public.

46. Of the 18 offers which were publicly available, **offers on mode 4** have been made by **9 WTO Members**: Argentina; Canada; the European Communities and its Member States; Hong Kong, China; Japan; New Zealand; Norway; Slovenia and Switzerland. Highlights include:

- ❑ *Argentina*: Additional categories have been added for **businessmen, professionals and specialists; and representatives of foreign enterprises**. Managers, executives and specialists have been brought under the heading of “**intra-corporate transferees**”. Additional commitments have been made for all these groups noting the possibility of multiple entries being granted. **Businessmen** cannot receive remuneration in Argentina nor directly sell services to the public and are granted 90 day stay, extendable for a further 90 days. **Professionals and specialists** are either (i) persons carrying out professional or technical activities irrespective of whether or not these are remunerative, who are granted 15 days stay, extendable for a further 15; or (ii) persons providing services to a natural or juridical person in Argentina as permanent employees or freelancers, who have a 1 year stay, extendable for further 1-year periods as long as they remain a contracted employee. Similar conditions apply to **managers, executives and specialists entering as intra-corporate transferees**. **Representatives of foreign enterprises** are persons who receive remuneration from abroad; they cannot provide services in Argentina under a contract which links them to an enterprise established in Argentina. They are granted stays of 1 year, extendable for further 1 year periods for as long as they retain the status of contracted employee.
- ❑ *Canada*: **Business visitors** now admitted also to supply after-sale and after lease services and labour market tests are not required. Entry and stay is specified as being for a period of up to 6 months with the possibility of extensions. **Intra-corporate transferees** must now have been employed for one year within the immediately preceding three year period. Definitions of

⁵ As at 29 October, offers were available in this series from: Australia; Canada; Chile; the European Communities and its Member States; Iceland; Japan; Liechtenstein; New Zealand; Norway; Slovenia, Turkey and the United States.

⁶ Additionally, on the Internet we located offers from Argentina, Hong Kong China, Panama, Paraguay, Switzerland and Uruguay.

executives, managers and specialists have been clarified. Labour market tests have been removed for intra-corporate transferees, but work permits are required. The period of stay for managers and executives is equivalent to the period of transfer, with extensions possible provided temporary residency status is maintained and demonstrated. Similar conditions apply for specialists, but the entry and stay, including extensions, must not exceed 5 years. Conditions have also been clarified for **professionals**, who are no longer subject to labour market tests. Work permits are required and period of stay is for an initial period of 1 year or the time necessary to complete the contract, whichever is less and extensions are possible. Senior computer specialists are limited to 10 per project. **Spouses and common-law partners** of qualifying intra-corporate transferees or professionals are a new category and are not subject to labour market tests.

- ❑ *European Communities and its Member States*: Additional horizontal and sector specific commitments. Definitions of **intra-corporate transferees** clarified and extended to include **graduate trainees** (persons with a university degree transferring for career development or training purposes). **Business visitors** in certain categories are permitted for a stay of up to 90 days in any 12 months without application of an economic needs test. Certain restrictions removed for individual Member States. In the category of **contractual service suppliers, employees of juridical persons** are permitted stays of up to 6 months (cumulative) in any 12 month period are permitted. Contracts may be for up to 12 months. Qualification requirements apply, as well as at least 3 years professional experience in the sector. Additional sectors have been included such as book-keeping services, related scientific and technical consulting services, maintenance and repair of equipment, and environmental services. Commitments are subject to the application of a numerical ceiling (modalities and level to be determined) except where otherwise indicated for a specific sub-sector, and except in Denmark, Italy, Netherlands, Sweden and the UK (with the exception of computer and related services in the UK). For **independent professionals who are contractual service suppliers** access is subject to the following conditions: the persons must be engaged in the supply of a service as self-employed; they must have a bona fide contract for a period not exceeding 12 months; the entry and stay shall be for a cumulative period of not more than 6 months in any 12 month period or the duration of the contract, whichever is less; qualification requirements and 6 years professional experience in the sector apply. Applies to: architectural services, urban planning and landscape architecture; engineering and integrated engineering services; computer and related services; management consulting services; services related to management consulting; translation services. Commitments are also subject to numerical ceilings (modalities and level to be determined) except in Denmark, Netherlands, Sweden and the UK (except for computer and related services in the UK).
- ❑ *Hong Kong China*⁷: Turned previous attachment to the schedule into a horizontal commitment. Applies to **intra-corporate transferees who are managers, executives or specialists**; detailed definitions are provided for each category. All must have been employed by their employer for at least 1 year prior to entry and may not change employer without in HKC without approval. The commitment applied only to bona fide business establishments and the number of persons who may enter shall be reasonable having regard to the size and nature of the business operation. Commitments are limited to temporary stay, with appropriate authority granted prior to arrival. Stays are limited to one year in the first instance, extendable up to a total of 5 years.
- ❑ *Japan*: Time period of one to three years specified for **intra-corporate transferees**, which now also includes transfers to representative offices. Specific treatment for legal, accounting or

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It is unclear whether this actually represents any new offer, or simply a tidying up of the existing access set out in the attachment.

taxation service suppliers qualified under Japanese law for a period of one to three years which may be extended. A new category for **natural persons who are engaged on the basis of a personal contract** with a public or private organization in Japan for activities which require technology and/or knowledge at an advanced level pertinent to physical sciences, engineering or other natural sciences; or activities which require knowledge at an advanced level pertinent to jurisprudence, economics, business management, accounting or other human sciences; or activities which require specific ways of thought or sensitivity based on experience with foreign cultures. A stay of one or three years is permitted.

- ❑ *New Zealand*: Executive and senior managers as **intra-corporate transferees, specialists and/or senior personnel, and specialist personnel** have, in addition to an initial period of a maximum of 3 years, a further period of stay up to a maximum of three years, providing the need for the worker still exists. Specialist personnel in occupations included the Immigration Service's Occupational Shortages List are not subject to a labour market test. **Service suppliers** are now also permitted for the purposes of establishing a commercial presence in New Zealand.
- ❑ *Norway*: temporary entry, stay and work for managers and executives, specialists as **intra-corporate transferees** (provided that the service supplier is the corporation to which these are attached) increased from a two to four year period. Requirement that service be in certain specific sectors removed.
- ❑ *Slovenia*: Removal of the reference to the "business visa" requirement for **intra-corporate transferees**.
- ❑ *Switzerland*: Periods of stay for **essential personnel** have been extended from 4 to 5 years. Experience requirements for persons employed by foreign companies for more than one year where that company has a contract to provide services in Switzerland have been reduced to 3 years from 5. Additional service sectors are included for coverage: legal consultancy, auditing services, technical testing and analysis services and maintenance and repair of aircraft. Additionally, two restrictions are indicated as being under consideration for review: authorizations being subject to measures fixing the overall numbers of work permits; and measures limiting professional and geographical mobility within Switzerland.

Box 2: what are request and offer negotiations?

Requests

Under request-offer negotiations, each WTO submits requests to its trading partners. These requests can be made to other Members individually or to groups of Members. While some countries tailor their requests to specific trading partners, others have submitted nearly identical, general requests to a number of countries.

Requests can take the form of:

- a request for the trading partner to make commitments in a new sector (i.e., a sector not already included in its schedule).
- a request to remove an existing restriction or to reduce its level of restrictiveness (e.g. if a country has a foreign equity limitation of 49% in a given sector, another WTO Member may request that limit to be removed altogether - i.e., that 100% equity be allowed - or that it be raised to 75%).
- a request to remove an existing MFN exemption;

- a request to make an additional commitment in its schedule covering particular regulatory practices aimed at making sure that liberalisation is effective. For example, additional commitments were used in the negotiations on telecommunications for countries to commit to providing an independent regulator for the sector.

The exchange of requests as a process has traditionally been purely bilateral, with countries communicating directly with one another. The WTO Secretariat does not normally have a role to play.

Offers

In the next stage, WTO Members submit offers in response to all the requests they have received. Countries usually prepare a single offer in response to all requests received. Countries may choose not to offer anything in response to some requests, or not to satisfy all points in some requests, and they are free to do so. The choice of what to offer is a decision of each WTO Member. Some countries have already indicated that they will not be making requests or offers on particular sectors (notably, health and education) in the current round of negotiations.

For the sake of clarity, WTO Members have submitted their initial offers in the form of a revision to their existing schedule of commitments, with changes indicated in strike-out and bold.

While requests are addressed bilaterally to negotiating partners, offers are traditionally circulated multilaterally (i.e., to all WTO Members). This is because, under the MFN rule, access offered to one WTO Member is automatically offered to all WTO Members. Given this, the offer is shown to all WTO Members, and even Members which did not initially make any requests can consult and negotiate with a country that has submitted an offer. Equally, some countries may choose not to submit their own requests, judging that their interests are covered by others' requests and knowing that whatever those other countries manage to negotiate in terms of access will automatically be extended to them under MFN (e.g., some countries may not use scarce administrative resources preparing a services request of the US if Brazil or the EC are going to request the same thing).

The submission of offers can also trigger further requests, including by countries which had not yet submitted requests, and then the process continues and becomes a succession of requests and offers. As with most types of negotiations (e.g., pay negotiations), initial requests can be ambitious, and initial offers more minimal, with a compromise emerging in the process of negotiation.

Source: adapted from WTO website

III. Rules negotiations

47. In addition to the negotiations on specific commitments, there are also negotiations related to some of the main rules, or disciplines, under the GATS which were left unfinished when the agreement was first developed in 1994. The key areas left outstanding mainly concern general disciplines, or rules and include four main areas: a possible emergency safeguard (Article X); government procurement (Article XIII); possible disciplines on trade distorting subsidies (Article XV) and possible disciplines on certain types of domestic regulation (Article VI:4). They are explained individually below.

48. These negotiations are all due to be concluded prior to the conclusion of the negotiations on specific commitments, with the exception of the emergency safeguard which is due to be agreed by 31 March 2004.

(i) *Emergency safeguard negotiations (Article X)*

49. A safeguard is a mechanism that allows WTO Members to temporarily suspend their commitments in the event of unforeseen and negative consequences for domestic suppliers. While such mechanisms exist for goods trade, there is currently no safeguard for services. GATS Article X mandates negotiations on the question of an emergency safeguard. Negotiations have been underway since 1996, but the original deadline has been extended several times and is now 15 March 2004.

50. Progress in the negotiations has been slow both because of differences of view amongst WTO Members on the desirability of a safeguard, and technical and conceptual difficulties in developing safeguard for services. The nature and coverage of any safeguard mechanism is still to be determined. A number of developing countries have indicated that the quality of any offers they would make would be influenced by whether or not any commitments they ultimately undertook would have access to an emergency safeguard.

(ii) Government procurement (Article XIII)

51. A number of important GATS provisions currently do not apply to government procurement. In particular, three key provisions do not apply: WTO Members are not bound to treat all other WTO Members equally (i.e., MFN does not apply) and commitments on market access and national treatment in a sector do not cover government procurement. Government procurement is defined in GATS as “the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale”.

52. GATS Article XIII mandates negotiations on government procurement in services within two years of the entry into force of the WTO Agreement (i.e., within 2 years of 1 January 1995). However, to date, there has been relatively limited interest in these negotiations for a number of reasons, including: the greater priority placed by a number of WTO Members on concluding the safeguard negotiations, and the parallel efforts to develop a multilateral agreement on transparency in government procurement applying to both goods and services.

(iii) Subsidies (Article XV)

53. There are currently no specific disciplines on subsidies under the GATS⁸, and understanding of the issue is still at an early stage. This is reflected in the language of Article XV, which states that Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Article XV mandates Members to enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade distortive effects of subsidies.

54. Article XV does not condemn subsidies per se, indeed, it states that the negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing countries, for flexibility in this area.

55. Article XV also mandates that Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers. In 1996, a questionnaire developed asking WTO Members to identify any subsidies they thought were relevant. However, the survey has had relatively few responses, including because Members have experienced difficulty in identifying what might constitute a subsidy, and a subsidy with trade-distortive effects - in services. Work on subsidies under Article XV is still at a relatively early stage.

(iv) Certain types of domestic regulation (Article VI.4)

56. Article VI.4 mandates the development of any necessary disciplines to ensure that non-discriminatory measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. That is, these measures should be:

⁸ Although it should be noted that discriminatory subsidies should be scheduled as a limitation on national treatment in sectors where commitments are being made.

- based on objective and transparent criteria, such as competence and ability to supply the service;
- not more burdensome than necessary to ensure the quality of the service;
- in the case of licensing procedures are not in themselves a restriction on the supply of a service.

57. These disciplines *do not* exist as yet. Progress on Article VI.4 has been very slow and there are different views amongst WTO Members on sort of disciplines should be developed. Some Members argue that any disciplines should only focus on increasing transparency, and that any “necessity test” is itself not necessary. Others argue that other WTO Members should be free to challenge requirements they feel are trade restrictive and be able to suggest other – equally effective and reasonably available but less burdensome – ways of achieving the same objective. Some Members have also expressed concern that a necessity test could allow other WTO Members to “second-guess” the decisions of national regulators; others argue that a necessity test would only look at whether there were other, equally effective and reasonably available but less trade restrictive, ways to achieve the same objective.

ANNEX I: MFN EXEMPTIONS AFFECTING MOVEMENT OF NATURAL PERSONS

A. EXEMPTIONS WITH COMPREHENSIVE SECTORAL COVERAGE

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
1. Austria	Switzerland	Waiving of visa requirement and other measures	Indefinite	
2. Brunei	Traditional sources	Preferences for entry and stay	Indefinite with periodic national review	
3. Cyprus	EU Member States	Permission for limited numbers of EU nationals to be employed or to exercise professions in specific occupations in accordance with criteria to be established unilaterally or in future agreements with EU	Until the time of full EU membership	
4. Portugal	Angola, Brazil, Cape Verde, Guinea Bissau, Mozambique, Sao Tome and Principe	Waiving of the nationality requirement for the exercise of certain activities and professions	Indefinite	
5. France	Francophone African countries, Algeria, Switzerland and Romania	Facilitation of access procedures for the exercise of certain services activities	10 years	
6. United Kingdom	Members of the British Commonwealth	Waiving of the requirement of a work permit for citizens having a grandparent born in the UK	Indefinite	
7. EC and/or Member States	Switzerland	Measures with the objective of providing for the movement of all categories of natural persons supplying services	Indefinite	Reference to a progressive process
8. EC and certain Member States	San Marino, Monaco, Andorra, Vatican State city	Right of establishment for natural (and legal) persons, waiving the requirement of work permits	Indefinite	

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
9. EC Member States	States in Central, Eastern and South-Eastern Europe including Russia, Ukraine, Belarus and Georgia, and in the Mediterranean basin	Guarantee of work permits in limited number for temporary contract work	Indefinite or, for certain countries, until an economic integration agreement is concluded or completed	All sectors (principally construction, hotel and catering). Reference to a broader initiative
10. Italy	States in Central Eastern and South Eastern Europe and in the Mediterranean Basin	Guarantee of work permits for seasonal workers	Indefinite	
11. Egypt	Greece, Iraq, Jordan, Libya, Qatar, Sudan, United Arab Emirates, Yemen and possibly other countries	Full national treatment	As long as the agreements remain in force	
12. Indonesia	Malaysia, Singapore, Brunei Darussalam, Papua New Guinea, Australia	Measures concerning movement of personnel (semi-skilled workers). Limited access to low level occupations	Indefinite	
13. Jamaica	Caricom Members: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Montserrat, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago	Waiving of work permits	Indefinite	
14. Liechtenstein	Switzerland	Mutual granting of temporary stay and permanent residency	Indefinite	
15. Liechtenstein	EC and EFTA countries	Preferential treatment of persons from traditional recruiting areas with regard to permits for entry, stay and work (applies to persons other than the essential persons appearing in the schedule of commitments).	Indefinite	
16. Liechtenstein	All countries	Reciprocity concerning the "right of presence of natural persons"	Indefinite	
17. Malaysia	All countries	Differential treatment for measures affecting the movement of semi-skilled and unskilled workers on a regional, religious and cultural basis	Indefinite	
18. Malta	European Union Countries	Preferential treatment in the granting of licences and permits to provide services	Indefinite	Reference to the integration process into the EU
19. New Zealand	Kiribati	Most favourable entry conditions possible for up to 20 nationals each year	Indefinite	
20. New Zealand	Tuvalu	Most favourable entry conditions possible for up to 80 nationals each year	Indefinite	

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
21. Panama	Guatemala, El Salvador, Nicaragua, Costa Rica, and Honduras	Preferential treatment for suppliers of services of different kinds	Indefinite	
22. Panama	United States	Preferential treatment for suppliers of services under the Panama Canal Treaties	Indefinite	
23. Peru	All countries	Waiving the limitations of: three years as maximum duration, 20% of the total number of employees and 30% of the payroll	Indefinite	
24. Philippines	"All countries" /countries with whom a treaty on entry rights for traders and investors has been concluded	Waiving labour market test and simplifying entry procedures	Expiry or termination date of the bilateral treaties	
25. Sierra Leone	Mano River Union and ECOWAS countries	Full national treatment	As long as agreements remain in force or are extended	
26. Singapore	"Traditional sources"	Measures regarding unskilled, semi-skilled, and skilled persons except specialists and professionals. (Purpose: prevent overpopulation and maintain social order)	Indefinite (periodic national review)	
27. Solomon Islands	Members of the Melanesian Spearhead Group: Vanuatu, Papua New Guinea	Waivers for measures affecting the entry and temporary stay of natural persons	Indefinite	Reference to an ongoing process
28. Sweden	Switzerland	Measures with the objective of providing for the movement of all categories of natural persons supplying services	Indefinite	Reference to a progressive process
29. Switzerland	Liechtenstein	See 14.	Indefinite	
30. Switzerland	EC and EFTA countries	See 15.	Indefinite	
31. Tunisia	"All countries" (probably with whom Tunisia has or will have agreements)	Bilateral social security agreements: extension of social security and health benefits to citizens of other countries	Not specified	
32. Turkey	Libya	Restrictions on the transfer of premiums for long-term insurance schemes and on employment of foreign-workers by foreign companies is waived (not applied de facto).	Indefinite	
33. Turkey	All countries	Consulate duties: if the amount of the consulate duties collected from Turkish nationals by any country is higher than the amount written in the tariff list, the consulate duties collected from the nationals of that country will be increased reciprocally.	Indefinite	

WTO MEMBERS	BENEFICIARIES	TREATMENT COVERED	DURATION	OTHER REMARKS
34. USA	All countries with whom the United States has a friendship, commerce and navigation treaty, a bilateral investment treaty; or certain countries described in Section 204 of the Immigration Act of 1990	Movement of persons for trade and investment: issuance of "treaty trader or treaty investor non immigrant visas" to nationals of the countries concerned engaged in substantial trade in services or in developing an investment.	Indefinite	

B. SECTOR-SPECIFIC EXEMPTIONS

WTO MEMBER	SECTOR CONCERNED	BENEFICIARIES	TREATMENT COVERED	DURATION
1. New Zealand	Interpretation services	Japan and other countries with whom such arrangements may be desirable	Most favourable entries conditions if employment for up to two years as interpreters in tourism related industries.	Indefinite
2. Switzerland	Distribution services	EFTA members	Granting of work permits without certain limitations to employees of companies (commerce in goods) from EFTA countries	Indefinite
3. Thailand	Services mentioned in the US -Thailand Treaty of Amity and Economic Relations	USA	National treatment to U.S. citizens to provide the services mentioned in the Treaty	10 years
4. USA	Maritime transport	Countries that prohibit longshore work by crew members aboard U.S. vessels	Restrictions on performance of longshore work when making U.S. port calls by crews of foreign vessels owned or flagged in countries that similarly restrict U.S. crews on U.S. flag vessels.	Indefinite

Source: WTO, 1998

ANNEX II: NEGOTIATING GUIDELINES

I. The Guidelines for the Negotiations⁹

58. GATS Article XIX requires Members to establish negotiating guidelines and procedures for each round of services negotiations. These guidelines, agreed in March 2001, include the following key elements:

- Reaffirmation of some of the general principles of the GATS, including governments' right to regulate and to introduce new regulations on the supply of services in pursuit of national policy objectives and their right to specify which services they wish to open to foreign suppliers and under which conditions.
- Reaffirmation of the principle of flexibility for developing and least-developed countries, as well as an undertaking that progress in the negotiations would be reviewed to check the extent to which Article IV (Increasing Participation of Developing Countries) was being implemented and to suggest ways and means of promoting the goals of that Article.
- Due consideration to be given to the needs of small and medium-sized service suppliers, particularly those of developing countries.
- No *a priori* exclusion of any service sector or mode of supply. This does not mean that all countries must make requests or offers or liberalise any particular sector, simply that no sector or mode is in principle excluded. This reflects partially the interest of developing countries in mode 4 (temporary movement of natural persons as service suppliers) and their concern on the limited commitments that were made on this mode in the Uruguay Round, as well as the interests of a range of other countries in maritime services, where negotiations were suspended at the end of the Uruguay Round without any result and in audiovisual services.
- Establishment of the request-offer process as the main method of negotiation (see Box 2).
- Establishment of indicative deadlines for the negotiations on rules (see below). The emergency safeguard was due to be completed by 31 March 2003, with negotiations on domestic regulation (Article VI:4), government procurement and subsidies all to be concluded prior to the conclusion of negotiations on specific commitments.

59. Article XIX also requires that, for the purposes of establishing the guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the agreement, including those set out in paragraph 1 of Article IV (i.e., which relate to increasing the participation of developing countries in world trade, including via the

⁹ See "Guidelines and Procedures for the Negotiations on Trade in Services", adopted by the Special Session of the Council for Trade in Services on 28 March 2001, S/L/93, dated 29 March 2001. Available at www.wto.org.

negotiation of specific commitments in sectors and modes of supply of export interest to them). Assessment remains a standing item on the agenda of the Council for Trade in Services.

II. Negotiating Guidelines for Least Developed Countries¹⁰

60. GATS Article XIX also required the development of negotiating guidelines for the special treatment of least developed countries. These guidelines were agreed on 3 September 2003 and, together with the general guidelines for the negotiations outlined above, form the basis for the negotiations and are designed to ensure the maximum flexibility for LDCs. The main points include:

- Members shall take into account the serious difficulty of LDCs in undertaking negotiated specific commitments in view of their special economic situation and shall exercise restraint in seeking commitments from LDCs.
- LDCs shall have flexibility to open fewer sectors, liberalise fewer types of transactions and progressively extend market access in line with their development situation. LDCs shall not be expected to offer full national treatment, nor are they expected to undertake additional commitments on regulatory issues which may go beyond their institutional, regulatory and administrative capacities.
- Members shall give special priority to providing effective market access in sectors and modes of supply of export interest to LDCs and LDCs should indicate their priorities in this regard;
- Members shall take measures in accordance with their individual capacities aimed at increasing the participation of LDCs in trade in services. These could include, for example, reinforcing import/export programmes and strengthening programmes to promote investment.
- Given that LDCs have identified movement of natural persons as service suppliers under GATS mode 4 as important, members shall to the extent possible consider undertaking commitments to provide access, taking into account all categories of natural persons identified by LDCs in their request;
- the specific interests and difficulties of LDCs shall also be taken into account in the development of GATS rules;
- targeted and coordinated technical assistance and capacity building programmes shall continue to be provided to LDCs to help strengthen their domestic services capacity, build institutional and human capacity and enable to undertake appropriate regulatory reforms. Assistance shall also be provided for them to carry out national assessments of trade in services.

¹⁰

See “Modalities for the Special Treatment for Least Developed Country Members in the Negotiations on Trade in Services” adopted by the Special Session of the Council for Trade in Services on 3 September 2003, TN/S/13, dated 2 September 2003. Available at www.wto.org.

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