

BACKGROUND PAPER

# South Asian Positions in the GATS Negotiations – Some Reflections from CUTS Research

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## A. INTRODUCTION

One of the aims of CUTS GRC is to provide a forum for Geneva based trade diplomats to discuss topical trade issues. Considering the need to facilitate discussions on South Asian trade related issues in Geneva, two meetings since have been held at the CUTS Geneva Resource Center (CUTS GRC) for delegates of the missions of South Asian countries.

At the third meeting, which will be held in September 2009, the delegates of the missions of South Asian countries will discuss the services negotiations. CUTS GRC has prepared this background note to facilitate the discussion.

## B. BACKGROUND

### ***B.1 Aim of the Background Note***

The services sector was not included in the multilateral trading system till the inception of the Uruguay Round. Following the conclusion of the Uruguay Round, the General Agreement on Trade in Services (GATS) was the first initiative that aimed at the progressive liberalisation of trade in services.

During the Uruguay Round, commitments to liberalise services sectors were made by different countries. After the Uruguay Round, further liberalisation took place through some sectoral negotiations under the GATS.

This note is based on a recent research of CUTS International titled *“Domestic Preparedness for Services Trade Liberalisation: Are South Asian Countries Prepared for Further Liberalisation”*. This publication was edited by Mr. Selim Raihan and includes analytical country studies on the current situation of trade in services of the following countries: Bangladesh, India, Nepal, Pakistan and Sri Lanka.

The aim of the note is to provide relevant information based on the above mentioned CUTS publication that will allow the South Asian delegates to identify the services sectors in which their countries could further open up their market to bring larger economic benefit to them. The note will also provide information on services sectors that were found to be of a common interest to some of the South Asian countries analyzed.

### ***B.2 DDA Services Negotiations***

The substance and nature of the services negotiations in the Doha Round are quite different from those of the Uruguay Round. The Uruguay Round laid the ground rules for trade in services in the GATT, whereas the Doha Round focused on extending liberalization and complementing those ground rules.

During the course of the negotiations, WTO members have recalled and reaffirmed the negotiating mandates and objectives as stipulated in GATS articles IV and XIX, the Doha Ministerial Declaration and the Hong Kong Ministerial Declaration. As agreed upon by the members as well, the negotiations take place under the request-offer process model where members have participated actively.

In the Hong Kong Ministerial Declaration of 2005, particular attention to sectors and modes of supply of export interest to developing countries was highlighted. One of the most important developments of this declaration was the decision to pursue full and effective implementation of the modalities for special treatment of LDCs in trade in services. This means developing methods for effective implementation of the LDC modalities, including assisting LDCs to identify sectors and modes of supply that represent development priorities. Although the development of appropriate mechanisms was supposed to meet a specific deadline (July 31, 2006), there was no attempt to meet it.

It is important to note that a large number of developing countries and LDCs have been facing difficulties in identifying the sectors of their specific interest in the negotiations and the constraints to the expansion of their exports. Also, registering any meaningful liberalisation commitments in the negotiations has achieved little progress. With respect to formulating their own requests and offer, the developing countries face the major challenge to determine their national policy objectives and the competitiveness of each sector or sub-sector.<sup>1</sup>

For this reason it is important for South Asian countries to gather up and join their strengths in order to find a common goal to be pursued.

### ***B.3 Contents of the Background Note***

This note is structured in the form of the following charts:

- *Chart 1*: This is based on research as presented in CUTS publication and it is divided in three different columns. Column (A) contains the services sectors which could bring economic benefits through liberalisation (in case no commitments have been made) or further liberalisation (in case commitments have already been made). Column (B) informs the services sectors in which the countries analyzed are interested in requesting liberalisation to other WTO members. Column (C) reflects those sectors in Column (B) that are common to the countries referred in the chart.
- *Chart 2*: This chart refers to those sectors mentioned in Column (A) of Chart 1 under which commitments have already been made by the corresponding countries. The purpose of Chart 2 is to briefly show under which mode (Mode 1, Mode 2, etc.) commitments were made in the sectors or subsectors described.
- *Chart 3*: It shows the progress of the negotiations regarding the implementation of the LDC Modalities.

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1 Selim Raihan and M. A. Razzaque, "Services Trade Negotiations After WTO Hong Kong Ministerial: A South Asian Perspective", CUTS International Briefing Paper, SAFIT-II 2/2007, 2007.

## C. IMPLEMENTATION OF LDC MODALITIES

Within the South Asian countries, there are 4 LDCs. 2 of those LDCs are WTO members: Bangladesh and Nepal. Bangladesh joined the WTO as a founder member and benefited from the Special & Differential Treatment allowed for LDCs. During the Uruguay Round and subsequent sectoral negotiations, it has undertaken minimal commitments.

Nepal joined the WTO by accession in the year 2004. As a consequence of its accession negotiations, it has had to undertake many more commitments as compared to Bangladesh.

Bhutan and Afghanistan are currently at various stages of their accession negotiations. They may benefit largely from the experience of Bangladesh and Nepal. Also, all the 4 South Asian LDCs will benefit from the discussion to have LDCs modalities.

Based on formal documents available on the WTO website, Chart 3 depicts the background and progress on the implementation of LDC modalities. It is understood that a group of WTO members led by Norway has been attempting to make further and tangible progress on the implementation of the LDC modalities. This includes the drafting of a “Waiver” for WTO members to grant preferential treatment to services from LDCs. Details of these discussions or the draft decisions are not available with CUTS.

**Chart 1**

SOUTH ASIAN DEVELOPING AND LDCs IN TRADE IN SERVICES LIBERALISATION			
COUNTRY	(A) POTENTIAL SERVICES SECTORS TO OPEN UP FOR LIBERALISATION	(B) SERVICES WITH POTENTIAL TO REQUEST LIBERALISATION BY TRADING PARTNERS	(C) COMMON INTERESTS (BASED ON COLUMN B)
<b>Bangladesh</b>	<ul style="list-style-type: none"> <li>- Construction Sector (No commitments made under this sector yet)</li> <li>- Banking (No commitments made under this sector yet)</li> <li>- Insurance (No commitments made under this sector yet)</li> <li>- Travel and Transport (No commitments made under this sector yet)</li> </ul>	<ul style="list-style-type: none"> <li>- Computer-Related Services</li> <li>- Communication and Telecommunication Services</li> <li>- Distribution Services</li> <li>- Human Resource-Based Services Export</li> <li>- Mode 4: Movement of Natural Persons</li> <li>- Tourism</li> </ul>	<ul style="list-style-type: none"> <li>- Mode 4</li> <li>- Computer-Related Services</li> <li>- Communications</li> <li>- Tourism</li> <li>- Business Processing</li> <li>- Outsourcing</li> <li>- Telecommunication</li> </ul>
<b>India</b>	<ul style="list-style-type: none"> <li>- Legal Services (No commitments made under this sector yet)</li> <li>- Accountancy (No commitments made under this sector yet)</li> <li>- Education (Possible commitments already been made. It seems that in the revised offer India included higher education)</li> </ul>	<ul style="list-style-type: none"> <li>- Business Processing Outsourcing (BPO)</li> <li>- Education</li> <li>- Mode 4: Movement of Natural Persons</li> <li>- Enhancing Transparency and Decrease of the Discretionary Scope in the Application of Restrictions</li> </ul>	
<b>Nepal</b>	<ul style="list-style-type: none"> <li>- Insurance (Commitments already been made)</li> <li>- Banking (Commitments already been made)</li> <li>- Telecommunication (Commitments already been made)</li> </ul>	<ul style="list-style-type: none"> <li>- Mode 4: Movement of Natural Persons</li> <li>- Tourism-Related Services</li> <li>- Financial</li> <li>- Computer</li> <li>- Communications</li> </ul>	
<b>Pakistan</b>	<ul style="list-style-type: none"> <li>- Communication (Commitments already been made)</li> <li>- Financial (Commitments already been made)</li> <li>- Engineering, Construction and Architectural Services (Commitments already been made)</li> <li>- Tourism (Commitments already been made)</li> <li>- Oil and Gas (No commitments made under this sector yet)</li> <li>- Environment (No commitments made under this sector yet)</li> </ul>	<ul style="list-style-type: none"> <li>- Mode 4: Movement of Natural Persons</li> <li>- Exemptions</li> <li>- IT Services</li> <li>- Computer and Related Services</li> <li>- Cross-Border Supply</li> </ul>	

SOUTH ASIAN DEVELOPING AND LDCS IN TRADE IN SERVICES LIBERALISATION			
COUNTRY	(A) POTENTIAL SERVICES SECTORS TO OPEN UP FOR LIBERALISATION	(B) SERVICES WITH POTENTIAL TO REQUEST LIBERALISATION BY TRADING PARTNERS	(C) COMMON INTERESTS (BASED ON COLUMN B)
	<ul style="list-style-type: none"> <li>- Legal Services (No commitments made under this sector yet)</li> <li>- Accountancy (No commitments made under this sector yet)</li> </ul>		
<b>Sri Lanka</b>	<ul style="list-style-type: none"> <li>- Telecom (Commitments already been made)</li> </ul>	<ul style="list-style-type: none"> <li>- Business Processing Outsourcing (BPO)</li> <li>- Telecommunication</li> <li>- Retailing Services</li> <li>- Maritime Services</li> <li>- Tourism and Travel-Related Services</li> <li>- Mode 4: Movement of Natural Persons</li> <li>- Computer and Related Services</li> <li>- Air Transport Services</li> </ul>	

**Chart 2**

NEPAL, PAKISTAN AND SRI LANKA SERVICES SECTORS ALREADY COMMITTED													
COUNTRY	SECTOR / SUBSECTOR / SUBSECTOR	LIMITATIONS ON MARKET ACCESS				LIMITATIONS ON NATIONAL TREATMENT							
		MODE 1	MODE 2	MODE 3	MODE 4	MODE 1	MODE 2	MODE 3	MODE 4				
Nepal	Communication Services / Telecommunications / Basic Telecommunications	X	X	X	X	X	X	X	X	X	X	X	
	Communication Services / Telecommunications / Mobile Telecommunications Services	X	X	X	X	X	X	X	X	X	X	X	
	Communication Services / Telecommunications / Value-Added Telecommunications	X	X	X	X	X	X	X	X	X	X	X	
	Financial Services / Insurance and Insurance Related Services / Direct Insurance	X	X	X	X	X	X	X	X	X	X	X	
	Financial Services / Banking and Other Financial Services	X	X	X	X	X	X	X	X	X	X	X	
	Financial Services / Banking and Other Financial Services / Provision and Transfer of Financial Information, and Financial Data Processing and Related Software by Providers of Other Financial Institutions	X	X	X	X	X	X	X	X	X	X	X	X
	Financial Services / Banking and Other Financial Services / Advisory Services on All the Activities Listed	X	X	X	X	X	X	X	X	X	X	X	X
	Financial Services / Banking and Other Financial Services (Remaining Subsectors)	X	X	X	X	X	X	X	X	X	X	X	X
Pakistan	Communication Services / Telecommunications Service / Local, Domestic Long Distance and International Services, for Public / Voice Telephone Services	X	X	X	X	X	X	X	X	X	X	X	
	Communication Services / Telecommunications Service / Packet-Switched Data, E-mail, Internet and Intranet Services	X	X	X	X	X	X	X	X	X	X	X	
	Communication Services / Telecommunications Service / Circuit-Switched Data Transmission Services	X	X	X	X	X	X	X	X	X	X	X	
	Communication Services / Telecommunications Service / VSAT for Domestic Data Services	X	X	X	X	X	X	X	X	X	X	X	
	Communication Services / Telecommunications Service / Telex Services	X	X	X	X	X	X	X	X	X	X	X	
	Communication Services / Telecommunications Service / Telegraph Services	X	X	X	X	X	X	X	X	X	X	X	
	Communication Services / Telecommunications Service / Telex Services	X	X	X	X	X	X	X	X	X	X	X	
	Communication Services / Telecommunications Service / Telegraph Services	X	X	X	X	X	X	X	X	X	X	X	

Note: The Symbol "X" only indicates that a commitment has been made under the mode of the corresponding column where the symbol is located. In order to know the type of commitment it is necessary to refer to the official WTO schedules of commitments.

Cont. Chart 2

NEPAL, PAKISTAN AND SRI LANKA SERVICES SECTORS ALREADY COMMITTED													
COUNTRY	SECTOR / SUBSECTOR / SUBSECTOR	LIMITATIONS ON MARKET ACCESS				LIMITATIONS ON NATIONAL TREATMENT							
		MODE 1	MODE 2	MODE 3	MODE 4	MODE 1	MODE 2	MODE 3	MODE 4				
Pakistan	Communication Services / Telecommunications / Facsimile Services	X	X	X	X	X	X	X	X				
	Communication Services / Telecommunications / Private Leased Circuit Services	X	X	X	X		X					X	
	Communication Services / Telecommunications / Video Conferencing Tele-Medicine and Tele-Education Terminal end Services	X	X	X	X	X	X	X	X			X	
	Communication Services / Telecommunications / Trunk Radio Service	X	X	X	X	X	X	X	X			X	
	Communication Services / Telecommunications / Satellite Based Telephony Services, Including Value Added Services Operating Over Satellite	X	X	X	X	X	X	X	X			X	
	Financial Services / Insurance and Insurance-Related Services / Insurance / Life			X	X								X
	Financial Services / Insurance and Insurance-Related Services / Insurance / Non-Life			X	X								X
	Financial Services / Insurance and Insurance-Related Services / Insurance / Reinsurance Services and Retrocession	X			X								X
	Financial Services / Financial Services (excluding insurance) / Banking / Acceptance of Deposits and Other Repayable Funds from the Public in Pakistan			X	X							X	
	Financial Services / Financial Services (excluding insurance) / Banking / Lending of all Types Including Consumer Credit, Mortgage, Factoring, Credit and Financing Commercial Transaction			X	X							X	X
Financial Services / Financial Services (excluding insurance) / Banking / All Payment and Money Transmission Services Including Traveller Cheques and Banker's Draft (but excluding credit, charge and debit cards)			X	X								X	

Note: The Symbol "X" only indicates that a commitment has been made under the mode of the corresponding column where the symbol is located. In order to know the type of commitment it is necessary to refer to the official WTO schedules of commitments.



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NEPAL, PAKISTAN AND SRI LANKA SERVICES SECTORS ALREADY COMMITTED													
COUNTRY	SECTOR / SUBSECTOR / SUBSECTOR	LIMITATIONS ON MARKET ACCESS				LIMITATIONS ON NATIONAL TREATMENT							
		MODE 1	MODE 2	MODE 3	MODE 4	MODE 1	MODE 2	MODE 3	MODE 4				
Pakistan	Financial Services / Financial Services (excluding insurance) / Banking / Guarantees and Commitments			X	X							X	
	Financial Services / Financial Services (excluding insurance) / Banking / Trading, for own account only of: money market instruments; foreign exchange; transferable securities; other negotiable instruments			X	X							X	
	Financial Services / Financial Services (excluding insurance) / Banking / Participation in Issues of All Kinds of Securities Including only Public Underwriting and Placement as Agent and Provision of Services related to Such Issues			X	X							X	
	Financial Services / Financial Services (excluding insurance) / Banking / Settlement and Clearing Services for Negotiable Instruments (cheques, bills and promissory notes only)			X	X							X	
	Financial Services / Financial Services (excluding insurance) / Leasing			X	X					X	X	X	
	Financial Services / Financial Services (excluding insurance) / Asset Management: the Following Only: (a) Cash or portfolio management; (b) All Forms of Collective Investment Management; and (c) Custodial and Depository Services			X	X						X	X	X
	Financial Services / Financial Services (excluding insurance) / Financial and Investment Advisory Services			X	X						X	X	X
	Financial Services / Financial Services (excluding insurance) / Provision and Transfer of Financial Information Data	X			X								X
	Business Services / Engineering Services for Building Infrastructures, Harbours, Dams, Hydal Power, and airports, only			X	X							X	
	Business Services / Integrated Engineering Services			X	X							X	
Construction and Related Engineering Services / Construction Work for Civil Engineering for Bridges, Elevated Highways, Tunnels and Subways			X	X							X	X	

Note: The Symbol "X" only indicates that a commitment has been made under the mode of the corresponding column where the symbol is located. In order to know the type of commitment it is necessary to refer to the official WTO schedules of commitments.

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NEPAL, PAKISTAN AND SRI LANKA SERVICES SECTORS ALREADY COMMITTED												
COUNTRY	SECTOR / SUBSECTOR / SUBSECTOR	LIMITATIONS ON MARKET ACCESS				LIMITATIONS ON NATIONAL TREATMENT						
		MODE 1	MODE 2	MODE 3	MODE 4	MODE 1	MODE 2	MODE 3	MODE 4			
Pakistan	<b>Construction and Related Engineering Services / Construction Work for Civil Engineering for Waterways, Harbours, Dams and other Waterworks</b>			X	X				X			
	<b>Tourism and Travel Related Services / Hotels and Restaurants (including catering)</b>			X	X				X			X
	<b>Tourism and Travel Related Services / Travel Agencies and Tour Operator Services</b>			X	X				X			X
Sri Lanka	<b>Communication Services / Telecommunication Services / International Basic Voice Telecommunication Services</b>	X	X	X	X	X	X	X	X	X	X	X
	<b>Communication Services / Telecommunication Services / Domestic Local and Long-Distance Basic Telephone Services Covered: Mobile Cellular Services</b>	X	X	X	X	X	X	X	X	X	X	X
	<b>Communication Services / Telecommunication Services / Wireless Local Loop (WLL) to Provide Basic Telephony, Data Transmission, Payphone, Voice Mail and Facsimile</b>	X	X	X	X	X	X	X	X	X	X	X
	<b>Communication Services / Telecommunication Services / Public Payphone Services</b>	X	X	X	X	X	X	X	X	X	X	X
	<b>Communication Services / Telecommunication Services / Radio Paging Services</b>	X	X	X	X	X	X	X	X	X	X	X
	<b>Communication Services / Telecommunication Services / Data Communication Services</b>	X	X	X	X	X	X	X	X	X	X	X
	<b>Communication Services / Telecommunication Services / Other : Satellite-Based Services : GMPCS Services Supplied Through Own Gateways</b>		X	X	X	X	X	X	X	X	X	X

Note: The Symbol "X" only indicates that a commitment has been made under the mode of the corresponding column where the symbol is located. In order to know the type of commitment it is necessary to refer to the official WTO schedules of commitments.

Chart 3

TRADE IN SERVICES NEGOTIATIONS			
PROPOSALS AND COUNTER PROPOSALS MADE FOR THE IMPLEMENTATION OF LDC MODALITIES			
Country	Proposal	Document	Date
Republic of Zambia on Behalf of the LDC Group	Proposal of a mechanism to operationalize article IV:3 of the GATS. It was proposed the text of the "Understanding on Article IV:3 of the GATS" for its negotiation and adoption by the members. This mechanism is aimed at providing special priority to LDCs. According to paragraph 7 of the LDC Modalities and Paragraph 9 of Annex C of the Hong Kong Ministerial Declaration, this mechanism must be developed by the WTO members.	TN/S/W/59	28 March 2006
Republic of Zambia on Behalf of the LDC Group	In addition, the Group requested commitments in four categories: independent professionals, business visitors, contractual service suppliers, and others. In making this request, the Group noted that the current initial and revised offers remained unbalanced and continued to a large extent to link the provision of services to commercial presence in host countries and to corporate entities in source countries. Many offers still focused on categories of natural persons principally as intra-corporate transferees or independent professionals with high minimum qualifications. (This request may be found in document <b>Job (06)/155</b> )	TN/S/M/20	9 June 2006
European Communities (The US agreed with the EC proposal)	In arguing that they did not agree with the proposal made by the LDC group contained in document TN/S/W/59, they said that a possible idea of implementation could be a mechanism whereby the CTSS would review revised offers submitted in July 2006 to collectively identify sectors and modes of supply of interest to LDCs and assess whether special priority had been given to them. Such review mechanism could be usefully extended to different elements of the LDC Modalities and thus could allow for a common scoreboard. The US and Japan also proposed a consultative type of mechanism.	TN/S/M/21	29 June 2006
European Communities, US, Japan and Canada	Regarding the implementation of LDC modalities, the EC delegation presented a paper co-sponsored by the US, Japan and Canada. The new proposal provided that all Members notify, by September 2006, how they would grant "special priority" to LDCs in the negotiations, pursuant to Article IV:3 of the GATS. It also provides that a review of these notifications be conducted and that the Chairman of the Council for Trade in Services in Special Session compile a "list of best practices" in this regard. While the proposal was well-received by LDCs, other Members have expressed concerns regarding the use of "best practice" in this context. LDCs noted that time was short and that the Hong Kong Declaration had stipulated that a result be achieved by 31 July.	TN/S/29	26 July 2006
European Communities (Proposal made jointly with Canada, Japan and the	The mechanism proposed by the EC is an interactive mechanism containing the following features: first, each non-LDC Member table a report by 12 September indicating how it provided in its current offer special priority to LDCs. Second, the mechanism provided that LDC Members submit questions or make comments on those reports tabled by non-LDCs Members. Third, the Chair of the Council would be mandated, on the basis of a discussion in a dedicated session of the Council, to prepare a report presenting conclusions based on a collective assessment and, more importantly, on best practices. Non-LDCs Members would of course be encouraged to follow those best practices in finalizing their final offers	TN/S/M/22	6 Nov. 2006

**TRADE IN SERVICES NEGOTIATIONS**

**POROPALS AND COUNTER PROPOSALS MADE FOR THE IMPLEMENTATION OF LDC MODALITIES**

Country	Proposal	Document	Date
US)	foreseen for end of October. For the co-sponsors, this interactive and operational mechanism constituted an appropriate mechanism and implemented the provisions of paragraph 9(a) of the Hong Kong Ministerial. Of course this mechanism had to be distinguished from the general review of the LDC Modalities which was mentioned in paragraph 13 of the Modalities, and which was referenced in point 9(e) of Annex C. If this mechanism was endorsed, the EC for its part in preparing its report would intend to put a specific emphasis on actions taken regarding Mode 4.		
WTO Secretariat	Note by the Secretariat "Options to Implement the LDC Modalities". Of the options identified in this note, Members are of the view that a <b>waiver</b> , available to all Members, from the obligations of Article II, paragraph 1 of the GATS in respect of preferential treatment benefiting all LDC Members offers the most satisfactory outcome of this negotiation. Members shall strive to complete negotiations on the specific principles and characteristics of such a waiver before the revised offers are submitted, in accordance with the sequence of the timelines set out in paragraph 11 (e) of Annex C of the Hong Kong Ministerial Declaration. (Proposal mentioned by the Council for Trade in Services. Document <b>TN/S/34</b> from 28/07/2008).	<b>JOB(08)/8</b>	21 February 2008
Pakistan	Pakistan was interested only in the provision of new preferential market access to LDCs. It was necessary to ensure that the granting of special priority to LDCs did not prejudice the rights of other Members. As such, a <u>general waiver (as opposed to a waiver on case-to-case basis) might work to exclude developing country service suppliers, and work contrary to the development-oriented outcome of the DDA.</u> Pakistan believed that a reasonable outcome on the LDC Modalities was possible through the efforts and commitment by all Members, and encouraged an active engagement in this regard.	<b>TN/S/M/30</b>	11 June 2009