

**Council for Trade in Services  
Special Session**

**SPECIAL SESSION OF THE COUNCIL FOR TRADE IN SERVICES**

Report by the Chairman to the Trade Negotiations Committee

The Council for Trade in Services in Special Session met on 27 and 30 June, and 1 July 2005.

**I. REVIEW OF PROGRESS**

1. Members overwhelmingly reiterated that the services negotiations form one of the three pillars of market access in the single undertaking and said that balance among these three pillars would need to be found at the TNC. They also re-affirmed the main negotiating bases – GATS provisions, the Doha Development Agenda, the Negotiating Guidelines, and the July Package – as essential for preserving the flexibility of the GATS and preventing the creation of imbalances in the negotiations.

2. On the number of offers, since the formal meeting in February, 17 new initial offers were tabled, and since end May, 24 revised offers. The total number of initial offers presented is 68, representing 92 Members.<sup>1</sup> Not including least-developed country Members, some 24 offers remain outstanding, and including LDC, 55 initial offers remain outstanding.<sup>2</sup>

3. I updated the factual assessment, given at the February cluster, on the state-of-play of offers submitted to date. Overall, although the numbers have improved, the quality remains poor. For most sector categories, a majority of the offers do not propose any improvement. If the current offers were to enter into force, the average number of sub-sectors committed by Members would increase only from 51 to 57. Likewise, less than half of the schedules would contain commitments of any kind in sectors such as distribution, postal-courier, or road transport. There is thus no significant change to the pre-existing patterns of sectoral bindings. As well, less than half of the offers envisage improvements to horizontal commitments on mode 4. With respect to MFN exemptions, only 15 offers propose improvements; some 400 exemptions would remain. These figures do not give information about the quality of what is offered nor the economic importance of the sectors covered. Ultimately, this can only be assessed by the Members concerned.

4. Notwithstanding the fact that the number of offers has improved since my last report, it was widely acknowledged that the overall quality of initial and revised offers is unsatisfactory. Few, if any, new commercial opportunities would ensue for service suppliers. Most Members feel that the negotiations are not progressing as they should. It is clear that much more work will be necessary in order to bring the quality of the package to a level that would allow for a deal.

5. A considerable number of Members recognised that the request-offer method alone is not producing the desired results. The resource-intensive and time-consuming nature of this method of

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<sup>1</sup> The European Communities' offer is counted as representing 25 Member States.

<sup>2</sup> Please see Annex 2.

negotiation was stressed. Many delegations stated that, in order to hasten progress, Members should explore all negotiating methods available within the parameters of Article XIX of the GATS and the Negotiating Guidelines, i.e. bilateral, plurilateral and multilateral approaches. The role of possible indicators to measure and promote progress in the negotiations was raised by some Members, while others expressed concern that these would undermine the negotiating flexibility granted by the GATS and create or maintain imbalances.

6. On rules, progress has been reported on disciplines on Domestic Regulation and I believe that the Working Party on Domestic Regulation (WPDR) should be able to provide some elements for disciplines before Hong Kong. With respect to work on GATS Rules, a number of Members underlined the central importance they attach to a successful outcome on Emergency Safeguard Measures (ESMs). Others said that a candid evaluation of what could be achieved at this stage would be necessary. A few Members recalled their suggestions to facilitate the information exchange on subsidies. Views remain divergent with respect to work on government procurement.

7. A lot of attention was given to identifying Members' expectations in the round and their assessments of the state-of-play. In response to a Note by the Chairman<sup>3</sup>, delegations outlined their expectations on market access and rules negotiations, and provided detailed individual assessments on: the specific barriers their services suppliers face, the dearth of offers in sectors and modes of particular interest, the need for improved clarity of commitments in terms of scheduling and classification, and achievements or lack thereof in the rules negotiations. Several groups of Members provided their assessments of various sectors, modes and MFN exemptions. A group of recently acceded Members expressed their views on the extensive nature of their existing commitments.

8. This exercise was very helpful in identifying Members' expectations for these negotiations, including specific information on the levels of bindings sought in each sector and mode. Given the particular nature of the request-offer method, the negotiating process needs to be informed by a more general view of Members' ambitions in specific sectors and modes of supply in order to promote a satisfactory and balanced outcome. While the information participants provided will need to be further refined in the coming months, at this stage, it nonetheless gives a general profile of the package of results Members seek. A summary of the specific information given by delegations is contained in Annex 1.

9. Delegations reiterated the importance of the Modalities for the Special Treatment for LDCs and for increased LDC participation in the negotiations. In this regard, LDCs recalled the crucial role of targeted technical assistance.

10. On Consideration of Proposals on Special and Differential Treatment Provisions, continued interest was expressed by the *demandeurs* and it was proposed that I pursue consultations. In line with the relevant portions of paragraph 1(d) of the July Package, my report to the General Council, prepared on behalf of the Special Session, is contained in document TN/S/21.

## II. OTHER ITEMS

11. With respect to the Assessment of Trade in Services, a substantive discussion was held on the basis of a submission from Cuba, contained in document TN/S/W/44, relating to services liberalization in under-developed economies. A presentation from UNCTAD on a recent publication entitled "Trade in Services and Development Implications" referred, *inter alia*, to UNCTAD's "development benchmarks", and its assessment of trade in services, as well as the role of infrastructure services, liberalization in modes 1 and 4, and increased investment and technology transfer for developing countries.

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<sup>3</sup> JOB(05)/99.

12. Under the agenda item Implementation of the Modalities for the Special Treatment of LDC Members in the Negotiations on Trade in Services, a substantive discussion was held on the basis of a recent submission by the LDC Group (Job(05)/114). The paper outlines a four-step process for the implementation of the Modalities, and focuses on the first step, namely information gathering on the programs and initiatives of Members in promoting the objectives in the Modalities. LDC expectations include: realising LDC export opportunities in mode 4, appropriate mechanisms for effective access for LDC exports, and measures aimed at increasing LDC participation in trade in services. Delegations responded favourably to this paper and a few requested more time to study it.

13. Under the item Proposals Relating to the Negotiations under Article XIX, discussion was based on new submissions or room documents related to financial services, mode 4 commitments and economic needs tests, transparency of horizontal mode 4 commitments, construction and related engineering services, telecommunications services and cross-border supply of services.

14. Under a separate item, the Council agreed to task the Secretariat with preparing a series of notes as an information tool meant to assist delegations in their consideration of sector and mode-specific issues raised in the negotiations.

15. The OECD made a presentation on a recent study entitled "Managing Request-Offer Negotiations under the GATS: the case of environmental services". The presentation touched upon the changing characteristics, regulatory frameworks, classifications and public policy issues related to environmental services.

### **III. FUTURE WORK**

16. In general, Members are dissatisfied with the lack of progress in the negotiations. They have pointed out that the offers present virtually no new business opportunities and, in most cases, do not even capture existing levels of liberalization. In this regard, it is to be recalled that Article XIX:1 mandates that "Members shall enter into successive rounds of negotiations [...] with a view to achieving progressively higher levels of liberalization." The same is echoed in the Negotiating Guidelines.

17. Members recognised that a tremendous amount of work remains to be accomplished, both in Geneva and capitals, in the short period of time prior to the Sixth Ministerial Conference. I would also recall that the Special Session is required, pursuant to the July Package, to provide a full report to the TNC with possible recommendations for the purpose of the Sixth Ministerial Conference. Therefore, part of the effort after the summer break must be directed towards developing the recommendations that the Special Session could make, with a view to facilitating substantial improvement in coverage and quality of offers and progress in the rule-making areas.

18. A number of ideas and proposals have been put forward to address the current situation. I therefore intend to engage in intensive consultations on a broad range of issues including, but not limited to, the following:

- further identification of expectations by Members in all areas of negotiations,
- means of intensifying the request-offer process,
- use of complementary approaches as proposed by Members within the parameters of the GATS and the Negotiating Guidelines,
- implementation of the Modalities for the Special Treatment for LDCs in the Negotiations,
- consideration of category II proposals on S&D treatment provisions, and

- targeted technical assistance.

19. The Chairs of the relevant subsidiary bodies will wish to engage in consultations to intensify work in their respective areas, with a view, *inter alia*, to providing inputs for the review of progress by the Special Session as foreseen in Annex C of the July Package.

20. With respect to the review of progress, it is my intention at the next formal meeting to again organize the review of progress on the basis of an in-depth assessment by Members. This would give delegations the opportunity to supplement and refine their expectations and individual assessments. In the light of this discussion I will update, as appropriate, the summary contained in Annex 1 in future reports to the TNC.

21. The next cluster of services meetings, including a meeting of the Special Session, will be held from 19-30 September 2005. It is also foreseen, in accordance with the July Package Decision, that the Special Session will review progress for the purpose of the Sixth Ministerial meeting. An appropriate date will be decided for such a review.

## ANNEX 1

22. This Annex contains a summary, prepared under my own responsibility, of the sectoral, modal, rules-related and other discussions held under the review of progress. Each section is structured as follows: participants' negotiating expectations, their assessments of the state-of-play and some factual information drawn from the presentation I made during the meeting. This information consists of the number of offers that propose improvements in each of the sector categories indicated, broken down by developed and developing country Members. In this connection, the appropriate flexibility accorded to developing countries in Article XIX:2 and paragraph 12 of the Negotiating Guidelines should be recalled. The figures are unrefined aggregates, and as has been rightly pointed out by a number of delegations, in no way can substitute for Members' individual assessments of the value of their trading partners' offers. Nonetheless, the figures do give an approximate notion of the number of Members willing to undertake commitments in various sectors and modes. The quality of these offers can only be determined by individual Members.<sup>4</sup>

### Legal Services

23. Three delegations provided a detailed assessment on Legal Services, while several others mentioned Legal Services only in passing, or referred broadly to their interests in professional services. They indicated their expectation that the following barriers would be addressed in the negotiations: citizenship requirements, partnership/association restrictions, restrictions on employment of locally qualified lawyers, prior residency requirements, and lack of Mode 1 and 2 commitments.

24. In assessing the offers submitted to date, one delegation noted that progress had been made with regard to the use of uniform terminology, and another spoke of some improvement, which was well below what would constitute critical mass. One delegation noted that of 24 requests it made, only 2 Members had met its request in full and 3 in part. The absence of any commitments/offers by some Members was noted by these three delegations, as was the observation that those who had made offers on Legal Services had made only limited offers or improvements, which did not lead to effective market access. One Member expressed concern that certain other Members were not really engaging in the negotiations in legal services.

*17 offers propose improvements in the legal services sector (8 of the 10 developed Member offer and 9 of the 58 developing Member offers).*

### Other Professional Services

25. A number of Members referred to professional services in the context of their comments on trade in mode 1, mode 2 and mode 4 or domestic regulation. In total, 11 Members indicated their interest in this sector. Three Members identified barriers, such as economic needs tests (ENTs) or federal and sub-federal regulations, facing persons supplying professional services through mode 4. Another indicated it sought commitments to ensure unimpeded cross border access in professional services.

26. In assessments of the state-of-play in professional services, one participant deplored a lack of engagement, while two others, acknowledging nevertheless some progress on the terminology used in schedules, said that a critical mass lacked in architecture, accounting and engineering services.

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<sup>4</sup> The EC offer, covering 25 Members, is counted as one. All 68 initial offers are taken into account; the four most recent revised offers are not included. Also indicated are how many of the offers, by sector, are from developed economy Members (out of a total 10 offers submitted) and from developing economy Members (out of a total of 58 offers submitted).

*28 offers have been made in other professional services (i.e. other than legal services) (8 of the 10 developed Member offers and 20 of the 58 developing Member offers). More specifically, 15 offers have been made in accounting, auditing and bookkeeping services, 14 in architectural services, and 16 in engineering services.*

#### Computer and Related Services

27. A cross-section of Members cited achieving a higher number of quality of offers in computer and related services as among their negotiating priorities. These services were also one of the priority areas emphasised by Members that aim to improve commitments on cross border supply, given the sector's importance both as a cross-border export and as a facilitator of access. Most of the Members seeking commitments in this sector noted that, although trade restrictions were not common in reality, schedules often did not reflect the existing trade environment, either because there were no bindings or because commitments were more restrictive than the *status quo*. Most of these Members called for full commitments, i.e. no limitations, on the entire range of computer and related services.

28. In assessing the state-of-play, the restrictions mentioned in existing commitments and offers included: "unbound" entries in mode 1, foreign equity limits in mode 3 as well as residency requirements or establishment prerequisites. Regarding coverage, one technique proposed to achieve broad coverage of the sector in schedules was to commit at the two-digit level (CPC 84). A related suggestion was to commit in an open-ended manner on "other" computer and related services. It has been suggested that, at a minimum, obtaining *status quo* commitments from a broad range of Members and improvements from key economies would be critical. Given the ambitions expressed in this sector, Members expressed disappointment about the offers tabled thus far.

29. Other Members, although not necessarily *demandeurs* for liberalization, indicated a willingness to make commitments or improvements in recognition of the sector's role in economic development and enhancing domestic Information Technology (IT) capabilities.

*32 offers have been made in the computer and related services sector (5 of the 10 developed Member offers and 27 of the 58 developing Member offers).*

#### Other Business Services

30. Two developing country Members expressed interest in other business services, and particularly in management consulting services and advertising services. They sought improvements in these two sub-sectors, especially by developed Members.

31. One participant noted that few commitments had been made by developing Members in these areas. Others spoke more generally about their interest in business services.

*37 offers have been made in other business services (i.e. other than professional and computer services) (9 of the 10 developed Member offers and 28 of the 58 developing Member offers), including 7 in advertising services and 12 in management consulting services.*

#### Postal and Courier Services

32. A number of Members characterized postal or courier services as a top priority, however, their focus varied. Some expressed interest in commitments on all postal or courier services no longer subject to monopoly, while others put the emphasis on courier or express delivery services. One delegation suggested that Members commit in all segments not under universal service obligations. Courier services were also a key sector for Members interested in logistics services. In terms of ambitions, one delegation sought full commitments on modes 1 and 3 from a critical mass of

economies for express delivery and courier services. There was also a tendency among *demandeurs* to favour additional regulatory disciplines or other forms of clarification, for example, of the relationship between public and private sector suppliers that both provide services in competition.

33. In assessing the progress made to date, a number of delegations pointed to classification and scheduling issues, which may have prevented some participants from offering commitments. First, UN Central Product Classification (CPC) references do not reflect current market realities, but instead, define postal services as those provided by public entities and courier services as those provided by private entities. Some delegations suggested resolving this issue through notations in schedules that recognize the overlapping functions of both groups in supplying competitive services. Second, it was observed that the role of "public service responsibilities" or "universal services obligations" do not appear to be clearly delineated in the context of commitments. Some suggested clarifying this issue through entries in schedules or some form of regulatory undertakings or understandings.

*14 offers have been made in the Postal and Courier services sector (6 of the 10 developed Member offers and 8 of the 58 developing Member offers).*

#### Telecommunications Services

34. Telecommunications services were cited as a sector in which virtually all developed Members as well as a number of developing economies have expectations for progress. Many delegations indicated their interest in commitments covering the full range of telecom services in schedules. They also identified a number of barriers to be addressed, including the reduction or elimination of mode 3 limitations, particularly foreign equity limits, and the adoption of the Reference Paper. Some Members also emphasized the importance of full commitments on modes 1 and 2, and the need to address exclusive rights and economic needs tests. In addition, there was some support for the removal of the MFN exemptions currently applied to telecommunications. Moreover, many Members, whether *demandeurs* or not, recognized that liberalization of the sector had advanced considerably since the conclusion of the negotiations on basic telecommunications, leaving many recent developments outside the scope of existing commitments.

35. In assessing progress, one delegation observed that, in spite of telecommunications being subject to many commitments and offers, market access and national treatment limitations remained common. In addition, proposals were made to define more clearly the scope and coverage of commitments in this sector and, thus, add certainty. Although there was a prevailing view that the UN CPC references for telecommunications were out of date and that there did not yet exist a common view on possible alternatives or on whether the GATS classification list and the Chairman's "Note on scheduling of basic telecommunications services" remained viable options.

*34 offers have been made in the telecommunications sector (8 of the 10 developed Member offers and 26 of the 58 developing Member offers).*

#### Audiovisual Services

36. The delegations of Hong Kong China, Japan, Mexico, Chinese Taipei and the United States presented a joint statement on audiovisual services (TN/S/W/49) in which they stressed the economic importance of the sector. More specifically, one delegation said that it sought more commitments in particular with respect to the production, distribution and projection of motion pictures/videos. Another delegation identified the sector as one of its key areas of interest and called for commitments on modes 1 to 3 that reflected the level of *de facto* openness currently granted.

37. The co-sponsors expressed serious concern over efforts by some key participants to create an *a priori* exclusion for that sector. Noting that only few offers had been made, they stressed the Agreement's flexibility in adjusting commitments to national policy objectives.

*6 offers have been made in the audiovisual sector (1 of the 10 developed Member offers and 5 of the 58 developing Member offers).*

#### Construction and Related Engineering Services

38. In outlining its expectations for this sector, one delegation wanted the following restrictions to be addressed: foreign equity limitations, including limitations on majority ownership, and discriminatory procedures or requirements for foreign companies, including discriminatory licensing, registration and joint-venture requirements. Cuba circulated an assessment of offers in the sector, highlighting the generally deficient commitments as well as the restrictions imposed on the movement of natural persons in this sector (TN/S/W/45).

39. A few Members had calculated the level of response, in terms of offers, to the requests they had addressed to trading partners. Two Members indicated separately that only 20 per cent of their requests had been fully or partially met. In one case, 40 per cent of the addressees had kept foreign equity limitations and 20 per cent joint-venture or partnership requirements. Another Member had focused its requests on full market access and national treatment commitments for all construction services under mode 3 and on related mode 4 commitments; less than 20 Members had met these requests. One other developing Member noted the absence of full commitments in the offers tabled by developed Members.

*23 offers have been made in the construction and related engineering sector (6 of the 10 developed Member offers and 17 of the 58 developing Member offers).*

#### Distribution Services

40. In expressing their expectations, various Members noted the particular importance of distribution services in the negotiations and the need for greater progress. A participant said that commitments in all four sub-sectors were key. Another stressed the developmental role of this infrastructure sector and the importance of better access under mode 3 in wholesale and retail trade. One delegation expressed dissatisfaction with product exclusions in schedules and emphasized the need for improvements on mode 3, in particular with regard foreign equity limitations, and on mode 1.

41. In assessing the current situation, many observed the low number of existing commitments and the dearth of quality offers. One participant reported that only 8 per cent of its requests had been met in full or in part.

*21 offers have been made in the distribution services sector (8 of the 10 developed Member offers and 13 of the 58 developing Members offers).*

#### Education Services

42. Four delegations stated that the offers tabled to date were very few in number and limited in scope, with the exception of some developing countries. One Member acknowledged some modest improvements in offers and outlined its continued interest in commitments on higher, adult and other educational services; these could include a carve-out for subsidies.

*18 offers have been made in the education services sector (4 of the 10 developed Member offers and 14 of the 58 developing Member offers).*

### Energy Services

43. In terms of expectations in the negotiations, a group of countries circulated a room document in which they stressed the importance of the energy sector to economic growth and development, and the various beneficial effects of liberalizing market access. They stressed that ownership of natural resources was outside the scope of the negotiations and insisted that the GATS preserved Members' ability to regulate, *inter alia*, access to energy, reliability of supply, and consumer and environmental protection. Several Members stressed the growing importance of undertaking specific commitments in energy services. One Member called for meaningful commitments, based on the CPC, for all activities composing the energy sector and across all modes of supply.

44. In its assessment of progress, one Member considered that the limited offers made, both by developed and developing Members, did not reflect the importance of the sector. The view was expressed that the absence of a section on energy in W/120 should not prevent Members from undertaking specific commitments. Attention was drawn to the "Scheduling Guide" proposed by a group of delegations aimed at assisting Members to undertake specific commitments. Although the revised offers contained some limited progress, there was still scope for improvement.

*12 offers have been made on energy services (4 of the 10 developed Member offers and 8 of the 58 developing Member offers).<sup>5</sup>*

### Environmental Services

45. Two delegations indicated their expectation for increased liberalization of environmental services. One explained that environmental services benefited both importer and exporter economies, and recalled that the Doha Declaration made a specific reference to the liberalization of these services as a means of benefiting both trade and environment. This delegation sought further commitments, particularly in mode 3, but also in modes 1 and 2, since these modes were relevant for advisory services and helped to transfer technical know-how.

*21 offers have been made in the environmental services sector (7 of the 10 developed Member offers and 14 of the 58 developing Member offers).*

### Financial Services

46. A statement by a group of Members (TN/S/W/43) explored ways to address the poor quality of proposed commitments. One of the co-sponsors indicated as its main expectations for the improvement of offers: use the classification contained in the Annex on Financial Services; commitments on commercial presence (mode 3) for all financial services, including the right to establish new and acquire existing companies and to freely choose the most appropriate legal form (including direct branching); commitments on cross-border supply (modes 1 and 2) on appropriate sub-sectors; and a focus on transparency in the development and application of laws and regulations. Another Member indicated that it sought full commitments for the cross-border supplies of marine and energy insurance services as well as of "provision and transfer of financial information and financial data processing".

47. In assessing the offers submitted to date, a number of participants expressed disappointment since their offensive interests had not been addressed. One delegation stated that proposed

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<sup>5</sup> For ease of reference and given the absence of an agreed classification of this sector, this evaluation looks at offers in "pipeline transportation of fuels", "services incidental to mining", or "services incidental to energy distribution".

commitments in insurance services did not improve on the current poor commitments, and that offers in banking and other financial services were far from capturing the many existing open regimes. One Member acknowledged that some schedules already provided for a high level of commitments in this sector; however, some participants with poorer commitments had made no offers or no meaningful offers. A number of participants echoed comments that many offers did not capture existing levels of liberalization.

48. Referring to criteria used in assessing the offers, one participant reported that it had submitted 17 requests; in insurance, close to 30 per cent of the Members concerned had kept foreign equity ceilings; over 20 per cent had maintained restrictions on certain business lines and/or nationality requirements for the composition of boards of directors; and slightly less than 20 per cent did not allow the establishment through branches. On banking and other financial services, 35 per cent of the Members to whom requests had been addressed had kept restrictions on the form of establishment and/or restrictions on new establishment or initial entry; close to 30 per cent maintained restrictions on the composition of boards of directors; about one-fifth had kept foreign investment ceilings in non-bank financial institutions and/or restrictions on the expansion or on the number of branches. Another Member indicated continued severe limitations on mode 3, including restrictions on legal form (e.g. direct branching), limitations on foreign equity participation, and discriminatory licensing requirements.

*32 offers have been made with respect to insurance and insurance-related services (all developed Member offers and 22 of the 58 developing Member offers). 30 offers have been made with respect to banking and other financial services (all developed Member offers and 20 of the 58 developing Member offers).*

#### Health Services

49. Three developing country Members indicated their interest in further liberalization of the health sector, one of which stressed the importance of supplying these services through modes 1 and 2, including through insurance portability.

*10 offers have been made in the health services sector (all of the developing Member offers).*

#### Tourism Services

50. Several Members reiterated their interest in tourism services without formulating specific expectations. Two participants highlighted that they sought commitments in mode 4 related to this sector.

*27 offers have been made in the tourism services sector (6 of the 10 developed Member offers and 21 of the 58 developing Member offers).*

#### Maritime Transport Services

51. The delegation of Japan delivered an oral statement, on behalf of a group of Members, that provided an assessment of the offers and the group's expectations in maritime transport services. In the view of the group, only a limited number of quality offers had been submitted, which was far from satisfactory. Twenty-one of 61 offers included no offer on maritime transport, 13 Members offered to commit on maritime transport for the first time, but some at a less than *status quo*, and 15 offered to improve existing commitments. Another delegation noted that the absence of some participants' best offers from the 1995-96 extended maritime transport negotiations in the current round, as required by a Council decision contained in S/L/24, would need to be corrected.

52. A number of delegations flagged their disappointment with the quality of offers in transport services, including one recently-acceded Member that compared the offers to the level of its existing commitments. In one delegation's view, despite the increase in the number of offers, the quality remained insufficient and not in-line with the importance of this sector as a key facilitator of world trade. Another noted that only a small percentage of offers proposed commitments in this sector. While acknowledging that some good offers covered infrastructural services and included maritime and logistics, one Member noted that negotiators had shunned difficult issues thereby reducing scope for trade-offs. Another delegation recalled the use of sectoral "packages" of commitments in the 1995-96 extended negotiations; this method that could be extended well beyond maritime. One Member observed that some major partners in the negotiations had not offered commitments in this sector.

*24 offers have been made in maritime transport services (including maritime auxiliary services) (7 of the 10 developed Member offers and 17 of the 58 developing Member offers).*

#### Other Transport Services

53. A number of Members stated that offers for logistics services and services auxiliary to all modes of transport were slightly more encouraging than those for maritime. Nevertheless, more was needed. One delegation observed that progress had been incremental, but was still not inspiring and emphasized the need for commitments in freight forwarding, ground transport, storage services, and computer services related to the provision of logistics services.

54. One delegation deplored the very small number of offers in air transport services, including in those sectors explicitly listed in the Air Transport Annex. Another indicated its disappointment with the lack of offers on road and rail transport, particularly in mode 3. One delegation stressed its interest in pipeline transport services.

*14 offers have been made in air transport services (6 of the 10 developed Member offers and 8 of the 58 developing Member offers), 13 in road transport services (6 of the 10 developed Member offers and 7 of the 58 developing Member offers), and 9 in rail transport services (4 of the 10 developed Member offers and 5 of the 58 developing Member offers). 13 offers (4 of the 10 developed Member offers and 9 of the 58 developing Member offers) have been made in services auxiliary to all modes of transport (not including maritime auxiliary services).*

#### Modes 1 & 2

55. Various Members emphasized their expectations for modes 1 and 2, and underlined the huge potential of cross border trade. Full liberalization of IT and telecommunication services would contribute to the realization of this potential.

56. In assessing the progress made to date, one participant considered the offers on mode 1 to be insufficient; there were still large gaps in important sectors. While cross-border trade had become feasible in many sectors, unlike 10 years ago, this was not reflected in the offers. There were continued indications that a binding was not possible because of technical infeasibility or mode 1 remained subject to various restrictions, such as the need to establish a commercial presence. One participant said Members should lock-in current open regimes to prevent protectionist backlash in sectors such as business services, R&D, computer services, management consulting services, telephone answering services, etc. One delegation noted that commitments under mode 1 needed to be complemented with commitments under mode 2. Another considered that it was premature to decide whether Members had to advance in a concerted manner with respect to mode 1.

### Mode 3

57. In addition to the expectations that had been expressed in a sector context, Australia, Canada, European Communities, New Zealand, Norway and United States presented a communication recalling the importance of mode 3. A few Members stated that the lack of relevant commitments on this highly dynamic mode was out of touch with economic realities and had to be addressed. One Member highlighted that the focus would need to be on barriers such as restrictions on the form of legal establishment, real estate ownership and broadly defined ENTs.

### Mode 4

58. In outlining their expectations for Mode 4, several Members said they considered this mode as their main area of export interest in services and a fundamental element to ensure a balance in terms of comparative advantage among developed and developing countries in the services negotiations. Many Members felt that significantly more work was still needed in the offers to extend coverage to categories not linked to commercial presence. Some Members also suggested that the scope of commitments be expanded to cover also lower skilled natural persons.

59. Several Members identified specific expectations they held for improvement of Mode 4 commitments, which included addressing the following: (i) broader coverage of categories not linked to commercial presence (*e.g.* contractual service suppliers (CSSs) and Independent Professionals (IPs)); (ii) removal of ENTs and quotas, (a few referred to basing ENTs on non-discriminatory and objective criteria in schedules), and increasing quotas; (iii) extension of periods of stay and the possibility of renewal; (iv) removal of limitations such as citizenship and residency requirements; (v) removal of labour market conditions; and (vi) inclusion in the negotiations of rules on transparency and administrative procedures affecting entry and stay, especially regarding visas.

60. Regarding the periods of stay, Members sought more generous time periods tailored to the specific needs of each category of natural persons. Some Members said renewal should always be available and the related formalities for renewal less burdensome than those to obtain the first entry permit. Although many Members called for the elimination of citizenship and residency requirements, some Members expressed appreciation for those offers that converted citizenship requirements into residency requirements. Some Members argued that the application of certain conditions, such as wage parity, should be avoided given that they undermine developing countries' comparative advantage in this mode of supply. Finally, many delegations called for more work in the area of domestic regulation affecting the entry and stay of natural persons.

61. Some participants noted that two recent proposals on categories of natural persons (TN/S/W/31 and TN/S/W/32) had been used to prepare some of the offers, leading to improved quality and clarity of commitments.

62. On the issue of transparency, Canada and Australia presented proposals aimed at improving the transparency of Mode 4 commitments. The proposals provided templates for providing ready available information on Mode 4 trade, such as relevant legislation and administrative procedures.

63. In assessing the state-of-play in Mode 4, many participants welcomed the improvements made in some offers, which included coverage of new categories not linked to commercial presence, such as contractual service suppliers and independent professionals, the expansion in the coverage of intra corporate transferees and business visitors, the elimination of some restrictions, such as economic need tests and nationality requirements, and the extension of the periods of stay. Nevertheless, many delegations felt that the quantity and quality of Mode 4 offers fell short of expectations, in terms of the categories of natural persons subject to a commitment and issues of interest to developing countries, such as key market access and regulatory concerns.

64. An informal communication presented by India on behalf of Bolivia, Chile, Colombia, Dominican Republic, Guatemala, India, Indonesia, Mexico, Pakistan, Peru, Philippines and Thailand outlined proposed parameters for an assessment of Mode 4 offers. While some improvements had been made on the inclusion of categories of natural persons not linked to Mode 3, offers did not adequately address the categories of main interest for developing countries, namely contractual service suppliers and independent professionals, *inter alia*. Many ENTs had not been removed or improved and no work had been done to address the issues of transparency of visa procedures.

65. Cuba presented a paper assessing the offers on Mode 4 submitted to date. It concludes that the proposed results on Mode 4 fall short of the requirements of GATS Article IV. It observed that qualification requirements, visa procedures and conditions on entry and stay have not been addressed.

#### Most-Favoured-Nation Exemptions

66. Some delegations touched on the question of the removal of MFN exemptions in the negotiations. They emphasised that the removal of MFN exemptions lists was an important element in the negotiations and that as such it should be considered as a objective. These delegations noted that MFN exemptions often undermined the effect and scope of market access commitments and might also have a chilling effect on future commitments. They expressed disappointment at the fact that out of more than 400 existing exemptions, thus far only a handful had been deleted in the offers.

#### GATS Rules

67. A number of Members underlined the central importance that they attach to progress on the issue of an emergency safeguard measures, stressing that a successful outcome should be part of a balanced package on services. Some Members recalled their longstanding concerns with respect to such a mechanism and others said that a reality check of what might be achieved or not was required. Recognizing the importance attached to the issue by some Members, a delegation said that it was time to move beyond the impasse and explore ways in which movement might be possible. Another delegation emphasized the need to explore other alternatives, including perhaps interim ones; concrete examples of how a safety valve could be devised for liberalization commitments had to be presented.

68. Some Members noted that they hoped to see further substantive work in the context of the discussions on subsidies. More specifically, they underlined the lack of progress on the exchange of information and recalled proposals made in that regard as well as on a provisional definition of subsidy. However, it was also noted that more intensive discussions are needed concerning the scope and content of the information exchange and the provisional definition of subsidy. One Member said that guidance might be sought from Ministers on the information exchange if the mandate in that regard was unfulfilled. On government procurement, a few Members noted the relevance of work in this area, including on transparency aspects. A number of Members reiterated their concerns about the scope of the negotiating mandate, stressing that it should not include market access issues. Some Members called for an evaluation of the state-of-play and a realistic assessment of the scope for progress in the rules areas.

#### Disciplines on Domestic Regulation

69. Many delegations said there was good progress in the Domestic Regulation negotiations, and that momentum was building for a meaningful result in time for the Hong Kong Ministerial. Some delegations said, however, that there was a need at this point to focus the work of the WPDR through means such as an outline of possible elements, or a thematic outline, that would be realistic but not prejudice the final outcome. For several delegations it was important that the WPDR better organize its work to facilitate focused discussion and hence the development of disciplines pursuant to Article VI:4.

70. The outcome of the negotiations had to reflect, for many delegations, a proper balance between the right to regulate and the need to ensure that commitments were not impaired. Several delegations stressed the importance of having disciplines on all aspects of Article VI:4. A number of Members stressed the importance of rules on transparency. Some delegations added that disciplines in domestic regulation should facilitate mode 4 commitments, ensuring that technical standards and licensing procedures were not burdensome to comply with, and establishing effective mechanisms to recognise foreign qualifications.

#### Scheduling and Classification Issues

71. During the review of progress, several delegations mentioned the importance of clear, comparable, and predictable commitments, and emphasized that further work was needed in order to arrive at a common understanding in the area of scheduling. A number of delegations referred to the need to conduct more specific work on ENTs. It was also highlighted that the on-going work on scheduling issues would help Members in the preparation of their offers and the evaluation of others. With regard to classification, it was noted that unambiguous classification was necessary to improve clarity and legal certainty, and thus the value, of commitments. A number of Members stressed the importance of resolving scheduling and classification issues and that work should be pursued actively in the CSC.

## ANNEX 2

Twenty-four developing country Members have not submitted an initial offer: Antigua & Barbuda, Armenia, Belize, Botswana, Cameroon, Congo, Côte d'Ivoire Ecuador, Former Yugoslav Republic of Macedonia, Georgia, Ghana, Kuwait, Kyrgyz Republic, Moldova, Mongolia, Namibia, Nigeria, Oman, Papua New Guinea, Romania, South Africa, Swaziland, Venezuela, Zimbabwe.

Thirty-one LDC Members have not submitted an initial offer: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Democratic Republic of Congo, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Zambia.

Twenty-four Members have submitted a revised offer: Australia, Bahrain, Brazil, Canada, Chile, China, Colombia, European Communities, Egypt, Hong Kong China, Iceland, Japan, Korea, Liechtenstein, Mexico, New Zealand, Norway, Peru, Singapore, Surinam, Switzerland, Chinese Taipei, United States, Uruguay.

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