

Council for Trade in Services
Special Session

**SECTORAL AND MODAL OBJECTIVES
AS EXPRESSED BY MEMBERS**

Note by the Secretariat

Revision

At the informal meeting of the Special Session of the Council for Trade in Services on 6 October 2005, it was agreed that the Secretariat prepare an edited version of the Annex to the Report of the Chairman to the TNC (TN/S/20), to reflect the sectoral and modal objectives as expressed by individual Members. At a further informal meeting of the Special Session on 17-18 October, the Secretariat was asked to refine JOB(05)/237, on the basis of new comments and proposals by Members.

The purpose of the attached Annex remains to assist discussions on the refinement and further identification of specific ambitions of Members in the negotiations. The titles of sectors and modes of supply in which one or more developing country Members had expressed interest is marked by an asterisk.

ANNEX

Legal Services*

1. Some Members indicated their expectations that the following barriers would be addressed in the negotiations: limitations on partnership or association between foreign and domestic suppliers; restrictions on employment of domestically qualified lawyers; discriminatory limitations on the form of establishment; and limitations on the use of professional title as authorized by the foreign or domestic jurisdiction.
2. Several barriers were seen by Members as impediments particularly for the practice of foreign law and/or advisory services: the lack of mode 1 and 2 commitments; limitations on establishment as a branch; nationality requirements; and prior residency requirements.
3. Some Members stated that the *Joint Statement on Legal Services (TN/S/W/37)* provided a good guide to assist Members in scheduling legal services commitments, particularly in terms of definitions of terminology that could be used.

Other Professional Services*

4. Several Members emphasized the need for more commitments in modes 1 and 2 for professional services. A number of Members sought the reduction or removal of barriers, such as economic needs tests (ENTs) or federal and sub-federal regulations, facing persons supplying professional services through mode 4. Other Members indicated they were seeking unimpeded cross border access in professional services.
5. One Member said that removing barriers for independent professionals was important, as was removing joint venture and equity restrictions in mode 3; removing restrictions for mode 1 was also increasingly important. One Member stated that mode 4 commitments for engineers would facilitate a more liberal environment for the construction sector. Their objectives in that regard included: mode 1 commitments; mode 3 commitments which eliminate or reduce restrictions limiting the participation of foreign capital; and horizontal mode 4 commitments for all categories with a special emphasis on professionals on contract including independent professionals.

Computer and Related Services*

6. Some of the Members seeking commitments in this sector noted that, although trade restrictions were not common, schedules often did not reflect this absence of barriers, either because there were no bindings or because commitments were more restrictive than the *status quo*. A broad group of Members has defined its ambitions as obtaining commitments by Members on market access and national treatment, without limitations, on the sector as a whole (TN/S/W/38). Other Members that were not necessarily *demandeurs* indicated a willingness to make commitments. One Member proposed that obtaining commitments from a broad range of Members and improvements from key economies would be critical.
7. Some Members mentioned examples of restrictions that should be removed in existing commitments and offers. These included: "unbound" entries in mode 1; foreign equity limits in mode 3; and residency requirements or establishment prerequisites.
8. Regarding classification, a group of Members suggested committing at the two-digit level (CPC 84) would ensure coverage of all activities of the sector in schedules (TN/S/W/38). One Member has proposed the text of an understanding in this respect (TN/S/W/6, S/CSC/W/35).

Other Business Services*

9. Several Members expressed interest in obtaining commitments 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.

10. One Member said they shared Members' interest in management consulting and related services and advertising. In addition, they underlined that there seems to be broad recognition amongst Members that further liberalisation in other sub-sectors such as market research, maintenance and repair of equipment and technical testing and analysis services will also boost the performance and productivity of businesses across a wide range of sectors.

11. One Member said that "Other" business services, and services not included elsewhere, were the areas of export potential to them. This included, but was not limited to, beauty and physical well-being services, spa services, advertising services, specialty design services and trade fair and exhibition organization services.

Postal and Courier Services*

12. In terms of ambitions, some Members expressed interest in full commitments on all postal or courier services no longer subject to monopoly. Some particularly emphasized courier and express delivery services. One Member suggested committing on all segments not under universal service obligations. Some Members observed that many activities in these sectors were already open to competition. Some Members encouraged undertaking additional disciplines in schedules. Anti-competitive practices, cross-subsidies, universal service obligations, independent regulators and licensing were mentioned in this regard (TN/S/W/30). One Member proposed an example of such disciplines (TN/S/W/26). Another Member suggested the removal of MFN Exemptions listed on postal and related land transport services.

13. A group of Members suggested a common approach to address classification and scheduling concerns (TN/S/W/30). They pointed out that the CPC references created uncertainty concerning identical services supplied on a competitive basis by private entities and postal authorities. They suggested that each Member should: fully describe the committed activities; clearly delineate between competitive and reserved services; use a neutral classification to ensure that commitments on competitive areas apply to all suppliers, including postal entities; and clarify any relationship between these activities and commitments in other sectors (e.g. transport).

Telecommunications Services*

14. Many Members, whether *demandeurs* or not, recognized that liberalization of the sector had advanced considerably since the negotiations on basic telecommunications, leaving many recent developments outside the scope of existing commitments. Some Members observed that although telecommunications was included in many commitments and offers, market access and national treatment limitations remained common.

15. A broad group of Members stressed the important role of the sector and articulated their ambitions (TN/S/W/50 and JOB(05)/253). Their objectives include (a) significant commitments for all modes of supply; (b) removal of exclusive rights, economic needs tests, limits on types of legal entity and on foreign equity; (c) commitment to all provisions of the Reference Paper; (c) removal of MFN exemptions; and (e) wide coverage of the sector.

16. On classification, there were prevailing concerns that the CPC references for the sector were outdated. One Member also expressed concern that W/120 may not be comprehensive. Discussions were continuing on possible ways to achieve added clarity and certainty.

Audiovisual Services*

17. A group of Members presented a joint statement on audiovisual services (TN/S/W/49) in which they expressed great concern over efforts by some key participants in the negotiations to create an *a priori* exclusion for that sector. In addition, some Members said that they sought more commitments with respect to the production, distribution and projection of motion pictures/videos, as well as on sound recording, while others also expressed interest regarding the production and distribution of television programs. A Member 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. Some Members sought the removal of MFN exemptions in the sector.

18. Some Members believed that the classification of audiovisual services was in need of updating in order to ensure that offers reflect market realities. They also said that broadcast transmission of television programmes should not be considered an audiovisual service, but rather a communication service. One of these Members proposed the following modifications in order to reflect market realities: the term "home video entertainment", clarified to "include, but not limited to, video tapes and optical discs", should be substituted for "video tapes"; distribution of motion pictures and home video entertainment should be clarified to mean "licensing for exhibition, broadcast or other transmission"; radio and television services should be divided into two new sub-sectors: "radio and television production services" and "radio and television distribution services"; "radio and television distribution services" should be clarified to mean "licensing of radio and television programs"; it should be clarified that broadcast services relating to the networks over which programming is distributed for radio and television programs are covered elsewhere.

Construction and Related Engineering Services*

19. Some Members indicated that future offers should include the following elements: progressive elimination of limitations on foreign equity in mode 3; progressive elimination of discriminatory licensing or registration procedures for foreign service suppliers and of restrictions on the types of projects that can be undertaken by foreign service suppliers; revision and progressive elimination of joint venture and joint operation requirements for foreign service suppliers; progressive elimination of burdensome capital asset requirements.

20. One Member highlighted the importance of removing restrictions on the movement of natural persons (mode 4) in this sector. Another Member indicated that further commitments on engineering services, including on mode 4, would also facilitate a more liberal environment for the construction sector.

Distribution Services*

21. Some Members said that they were seeking commitments in all four sub-sectors (commission agents' services, wholesale trade services, retailing services, and franchising) in modes 1, 2 and 3. Exclusions for sensitive products should be minimized. One Member said that foreign equity limitations were a key barrier to be addressed. Another Member stressed the developmental role of this infrastructure sector and the importance of better access under mode 3 in wholesale and retail trade. Some Members observed that there should be an improvement to the low number of existing commitments and the dearth of quality offers.

Education Services*

22. The main focus of Members seeking new and improved commitments in this sector was on secondary, higher and tertiary education sub-sectors. In this connection, several Members identified a number of market access and national treatment impediments to trade in education services in all modes of supply. These impediments include restrictions on commercial presence, the use and import

of educational materials, the recognition of qualifications and the regulation of education services (Job (05)/203).

23. Members expressed various modal objectives.. In terms of mode 1, some Members called for the removal of restrictions on the use and import of educational materials, including material supplied online, as well as commercial presence requirements linked to the provision of distance learning. On mode 2, given that there are few actual restrictions on students studying abroad, some Members proposed that bindings be taken that reflect actual levels of liberalization. For mode 3, some Members requested that joint venture and minimum foreign equity requirements, as well rules on twinning arrangements which restrict the development of institution-to-institution arrangements, be kept to a minimum. Members highlighted other limitations including those on the number of foreign nationals represented on the board of educational institutions, the ability of foreign institutions to establish branch campuses within local institutions and the ability of education service providers to run onshore education programs in collaboration with local partners. In terms of mode 4, some Members requested commitments which permit the movement of education services suppliers. Some Members pointed also to other issues which are seen to affect all modes of supply, including the recognition of qualifications and ability of foreign institutions to directly market education services. In terms of qualification requirements, some Members proposed that references to quality and qualification requirements in schedules should be removed if they are neither discriminatory nor limit market access.

Energy Services*

24. One Member called for meaningful commitments, based on the CPC, for all the activities composing the energy sector and across all modes of supply. This Member referenced the Scheduling Guide for Energy (JOB(03)/89) tabled by some Members and encouraged Members to use it to undertake specific commitments in energy and energy-related services. Another Member indicated its interest for commitments, in the oil and gas sector, for exploration services, services incidental to mining, technical testing and analysis and toll refining services.

25. Some Members stressed the importance of the energy sector to economic growth and development, and the various beneficial effects of liberalizing market access in this sector (Room Document, 1 July 2005). They recalled that ownership of natural resources was outside the scope of the negotiations and that the GATS preserved Members' ability to regulate, *inter alia*, to ensure access to energy, reliability of supply, consumer and environment protection. In their view, the absence of a specific energy section in W/120 should not prevent Members from undertaking specific commitments as the *Guidelines for the Scheduling of Specific Commitments* (S/L/92) provided Members with the flexibility to achieve progress. Therefore, they encouraged Members to include energy services commitments in their offer and to engage in the negotiations.

Environmental Services*

26. Some Members indicated their expectation for substantially improving commitments in environmental services (Room Document, 17 October 2005). They recalled that the Doha Declaration made a specific reference to the liberalization of these services as a means of benefiting both trade, environment and development policies. WTO Members were encouraged to commit a high level of market access across sub-sectors. Mode 1 commitments were relevant and encouraged for all sub-sectors; they were important for advisory services. Members should undertake full commitments for mode 2. These Members called for ambitious commitments under mode 3, where barriers to commercial establishment should be removed. To the extent that a Member awarded exclusive rights contract, foreign services suppliers should be able to participate in the tender and operation of the services. Mode 4 commitments were also encouraged to ensure mobility of service suppliers such as remediation specialists, conservationists and geomatics professionals. They urged Members to undertake commitments across all the environmental services sub-sectors listed in CPC Prov., i.e.

9401 to 9409, and to consider the interplay with related services, such as construction, engineering, technical testing and analysis and management consulting services.

Financial Services*

27. Some Members indicated the main elements that should be included in future offers: use of the agreed definitions in the GATS Annex on Financial Services for scheduling commitments; commitments on commercial presence (mode 3) for all sectors, including the right to establish new and acquire existing companies, and in the form of wholly-owned subsidiaries, joint ventures or branches; commitments on cross-border supply (modes 1 and 2) in appropriate sub-sectors; for the previously mentioned modes, removal of discrimination between domestic and foreign suppliers regarding application of laws and regulations ("national treatment"), and removal of non-discriminatory limitations such as monopolies, numerical quotas or economic needs tests and mandatory cessions; transparency in the development and application of laws and regulations, transparent and speedy licensing procedures, and other regulatory issues.

28. One Member indicated that it sought further market access and national treatment commitments on modes 1 to 3 for financial services addressed to sophisticated customers, like reinsurance, asset management, and securities. Another Member indicated that it sought full commitments for the cross-border supply of marine and energy insurance services; while a third Member said that full cross-border commitments should be made on the provision and transfer of financial information and financial data processing.

Health Services*

29. Some Members indicated their interest in further liberalizing the health sector, and stressed the importance of removing limitations relating to non-portability of insurance schemes in order to facilitate mode 2 trade.

Tourism Services*

30. Several Members referred to the communication by a group of Members (TN/S/W23), and noted that it included a request for tourism commitments under mode 4.

31. On horizontal commitments, some Members requested that measures affecting commercial presence in the tourism industries be withdrawn, or that they make explicit reference that they do not apply to the tourism industries. They also requested Members ensure that conditions for purchase, lease or use of real estate were not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of specific commitments in tourism and travel related services.

32. Regarding MFN exemptions, one Member requested that measures inconsistent with paragraph 1 of Article II of the GATS pertaining to the supply of tourism and travel related services and/or of horizontal application not be applied to tourism and travel related services. Regarding specific commitments in tourism and related services, the Member requested that Members: not require compliance with economic needs tests; provide access on a commercial basis to computer reservation systems/global distribution systems according to transparent, reasonable and objective criteria; endeavour to ensure that their migration authorities facilitate the movement of tourists; not place limitations on the participation of foreign capital or requirements to establish specific types of legal entities; and facilitate the temporary entry of natural persons supplying services in this sector with respect to visa and temporary residency provisions. The competent authorities should take account of professional qualifications related to tourism services acquired in the territory of another Member, on the basis of equivalency of education and using qualification recognition methods.

33. That Member also requested full commitments (no limitations) for market access and national treatment for the following services: Hotels and restaurants (CPC 641-643); Travel agencies and tour operators services (CPC 7471); Tourist guides services (CPC7472); Other; Fishing license services (CPC 91131); Hunting license services (CPC 91131); and Spa Services (CPC 97029). Under additional commitments, one Member requested that there be cooperation for the sustainable development of tourism.

34. One Member recapitulated four key aspects of market access aspirations for tourism: facilitation of movement of natural persons supplying services in tourism and recognition of their qualifications; elimination of anti competitive practices and unfair competition; elimination of requirements for commercial establishment or presence being used as limitations on provision of services under modes 1 and 4; and elimination of nationality or residency requirements. In addition, the delegation attached importance to the removal of ENTs that were quite prevalent in the sector, especially in mode 3, and wished to pursue the removal of ENTs across all modes and sectors.

Maritime Transport Services*

35. A group of Members provided an assessment of the offers and their 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, and some at a less than *status quo*.

36. This group urged other Members to make commitments in accordance with the Maritime Model Schedule, with particular reference to the following points: commitments on International Freight Transport (less cabotage) (CPC7212) in mode 1, mode 2 and mode 3 (including elimination of cargo reservation under mode 1; elimination of restrictions on foreign equity participation under mode 3, nationality requirements of board members under mode 3, preferential taxation under national treatment; restrictions on right of establishment under market access, mode 3; restrictions on vessel registration under mode 3); commitments on a range of Maritime Auxiliary Services (modes 1, 2 & 3); additional commitments on the access to and use of port services, and on the access to and use of services necessary for the conduct of multimodal transport operation; elimination of MFN exemptions.

37. This group considered that a Member's level of development was an important consideration in the scheduling of commitments. Appropriate flexibility for individual Members in addressing the above elements in their commitments should be further considered taking into account the flexibilities provided in GATS Articles XIX and IV as well as the Negotiating Guidelines. That statement was supported by some other Members.

38. A Member 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.

Air Transport*

39. One Member, regretting the small number of offers in air transport services, thought there should be many more, including in those sectors explicitly listed in the Air Transport Annex. Another Member disagreed with this point, because it believed that commitments could be made in schedules only in those sectors explicitly within the scope of the GATS.

40. One Member recalled that one of a group of Members supported a broad interpretation of the Air Transport Annex, and that this group had presented a statement on this issue (TN/S/W/29). It urged all Members to make commitments in respect of aircraft repair and maintenance services; selling and marketing of air transport services; and computer reservation system (CRS), which were all services that Members considered to be covered by the GATS. In addition, this Member

encouraged others to commit in ground handling services which, in its view, did not directly affect traffic rights and were therefore also covered by the GATS. This statement was supported by some Members.

Other Transport Services*

41. One Member said that there should be many more offers on road and rail transport, particularly in mode 3. Another Member considered that any MFN exemption regarding road transport should be removed. Yet another Member stressed its interest in pipeline transport services.

Logistics Services*

42. Some Members indicated (JOB(05)/264) the following negotiating objectives: new or improved commitments with substantial coverage of services in Core Freight Logistics Services (Part I of the checklist contained in TN/S/W/20, including right to commercial establishment with no substantial limitations, with reference to particular modes of transport as necessary); new or improved commitments covering different modes of transport instrumental to logistics services in Freight Transport Services (Part II.(1) of the checklist under mode 1, 2 and 3 with no substantial limitations); new or improved commitments covering a wide range of activities in Other-related Logistics Services (Part II.(2) of the checklist including right to commercial establishment with no substantial limitations and commitments in other modes of supply as appropriate); and as far as practicable commitments in Non-Core Freight Logistics Services (Part III of the checklist) as well as accompanying additional commitments (also Part III of the checklist).

43. These members also indicated that they were considering the possibility of pursuing these negotiation objectives through multilateral and plurilateral approaches, supplementary to the bilateral request and offer approach. They recognized that flexibility should be allowed for individual developing country Members in taking commitments in different services sectors across the logistics checklist in the Appendix as well as in developing the content of such commitments, taking into account their development needs and priorities. They also encouraged least-developed country Members to consider making liberalization commitments.

44. One Member observed that progress had been incremental, but was still not inspiring, and emphasized the need for commitments on the land side aspects of port services, freight forwarding, ground transport, storage services, and computer services related to the provision of logistics services.

Modes 1 & 2*

45. Various Members emphasized their expectations for modes 1 and 2, and underlined the huge potential of cross border trade and consumption abroad; they noted that, unlike 10 years ago, electronic delivery was feasible in an increasing number of sectors and activities.

46. Some Members described the following objectives as needing to be met during the negotiations (Room document, 17 October 2005, also JOB(05)/214): (i) targeted sectoral commitments by developing a possible list of commercially meaningful and clearly specified sectors/sub-sectors, including, *inter alia*, professional services, business services, other business services, computer and related services, research and development services, tourism, part of education services, with the possible sensitivity of cross-border trade in some sectors to be recognized; (ii) in commercially meaningful sectors, Members should try and bind the existing levels of liberalization, in particular by removing commercial presence requirements and measures discriminating foreign services providers; (iii) similar levels of commitments in modes 1 and 2 whenever possible; (iv) Members should try and capture technological developments through various means, including two-digit classification and specific listing of new activities, and; (v) use of plurilateral approaches, such as a model schedule or a checklist. Some other Members supported these objectives.

47. Other Members added that mode 1 liberalization was also important in sectors such as telecommunications, transport, postal and courier, distribution, and financial services. Another Member said that other restrictions affecting cross-border trade, such as horizontal restrictions (especially subsidies) and MFN exemptions should be kept in mind.

Mode 3*

48. A group of Members presented a room document (1 July 2005) in which they urged Members to review their existing mode 3 commitments and to consider how these could be improved with a view toward enhancing the investment climate and attracting higher levels of commercial presence of foreign service providers. They said that it would be desirable that commitments in mode 3 include, in principle, the right to establish new and acquire existing companies, and the right to choose the form of joint ventures or branches, as well as the right to acquire real estate connected with the establishment of commercial presence. Commitments under this mode should also provide an appropriate level of legal certainty, for instance by removing or at least narrowing wide-ranging and unspecified economic needs tests and horizontal limitations. Another Member said that priorities were to enhance the level of foreign equity participation and to allow at least majority ownership, as well as to allow greater flexibility in types of legal entity. Furthermore, some Members stated that the lack of relevant commitments in this highly dynamic mode was out of touch with economic realities and had to be addressed.

Mode 4*

49. Some Members felt that significantly more work was still needed in the offers to extend coverage of mode 4 commitments to categories not linked to commercial presence. Some others called for the undertaking of commitments in all the four main categories of Business Visitors (BV), Intra-Corporate Transferees (ICT), Contractual Service Suppliers (CSS) and Independent Professionals (IP). One Member indicated that it was seeking more commitments on ICTs and "installers". Some Members suggested that the scope of commitments be expanded to cover also lower skilled natural persons.

50. Some Members called for the scheduling of mode 4 commitments to take place on the basis of common categories, using similar terminology and definitional parameters.

51. Some Members identified the 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. CSSs and IPs); (ii) removal of ENTs and quotas, or, as second best solution, basing ENTs on non-discriminatory and objective criteria contained in the schedules and increasing quota limits; (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, including wage parity requirements, but without prejudice to other employment laws, such as minimum wage requirements; and (vi) inclusion in the negotiations of rules on transparency and administrative procedures affecting entry and stay, especially regarding visas.

52. Concerning the periods of stay, some Members sought more generous time periods tailored to the specific needs of each category of natural persons. Some Members said that renewals should always be available and the related formalities should be less burdensome than those to obtain the first entry permit. Although some Members called for the elimination of citizenship and residency requirements, they also 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 undermined developing countries' comparative advantage in this mode of supply. Finally, some delegations called for more work in the area of domestic regulation affecting the entry and stay of natural persons, including to address the issues of transparency of visa requirements and procedures.

53. On the issue of transparency, some Members proposed the use of templates for providing readily available information on mode 4 trade, such as relevant legislation and administrative procedures.
