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POTENTIALS FOR THE LIBERALISATION OF TRADE IN SERVICES AMONG CEFTA 2006 PARTIES

Inputs for the Chairmanship Programme. Suggestions and Recommendations Concerning the Conduct of Regional Negotiations on Trade in Services

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Abbreviations

ASEAN	Association of South-East Asian Nations
BiH	Bosnia and Herzegovina
CEFTA 2006	Central European Free Trade Agreement 2006
CPC	Central Product Classification
EU	European Union
FYROM	Former Yugoslav Republic of Macedonia
GATS	General Agreement on Trade in Services
ICT	Information and Communication Technologies
IMF	International Monetary Fund
IT	Information Technology
MFN	Most-favoured-nation
NT	National treatment
UN	United Nations
UNMIK/Kosovo	United Nations Interim Administration Mission in Kosovo (UNMIK) on behalf of Kosovo in accordance with United Nations Security Council Resolution 1244/99
WTO	World Trade Organisation

Summary

The purpose of this Second study is to logically complement the First study which is subtitled "Identifying Opportunities, Gains and Foundations for the Launching of Negotiations", as a more concrete guide in principle, with an aim to assist the CEFTA 2006 Parties to formulate an agreed platform for negotiations.

It contains some suggestions on the adoption of basic decisions, suggestions on the possible and achievable ambitions, and suggestions on the methodology of negotiations, with respect to relevant articles of the GATS. It also identifies some challenges and issues to be taken into account, especially in the preparation phase.

The study includes some general and specific recommendations which can serve as a basis for discussion among the CEFTA 2006 Parties. These, of course, are fully autonomous in deciding which direction to take, what are their realistic ambitions and how to achieve them. They are free to seek alternative solutions and modify ambitions in conformity with their actual market situations.

Hopefully, this study reveals some of the ambitious but nevertheless realistic policy and negotiating options. The process of negotiations itself has to be based on quite a number of decisions. Unfortunately, government agencies, of which quite a few would need to be involved in the coordination of national negotiating positions, are ***largely unfamiliar with the GATS principles and the intricacies of services negotiations***. Furthermore, government representatives are poorly acquainted with activities of companies of their own or foreign countries in the international services trade. There are other handicaps, such as the ability to deal with non-economic considerations of more liberalised services trade, to conduct a regulatory or trade impact assessment. Apart from the obvious education and training, there are other ways to overcome these handicaps, for instance, by ***including a broader base of stakeholders and professional associations in some phase of the negotiating process***, which is important from a conflict of interest point of view and receiving relevant information.

This study does not, however, have all the answers to all the questions. Perhaps it opens new ones and intentionally does not deal with the question of the management of what obviously needs to be a ***well planned and executed process of negotiations***, if it is intended for it to bring tangible and irreversible results in a reasonable time. This issue has been raised in the second meeting of the Working Group on Trade in Services and some options have already been rejected *a priori*. As the study shows, the question of preparations for negotiations is a very important part of activities that

have to precede the formal launch of negotiations. Therefore, the CEFTA 2006 Parties will have to seek and find the most suitable and mutually acceptable solutions with only one absolutely necessary requirement: ***efficiency***.

A very important and useful part of the preparatory process would be ***informal, substantive and open discussions and exchanges of views***, especially when proposed commitments may lead to significant policy or institutional reforms. In the process of negotiation the CEFTA 2006 Parties will, in effect, be ***reshaping the way how services will be traded*** and treated between them and will inevitably be opening the way to alliances and synergetic activities, tailored to the region.

In this process the Parties will have a wide range of choices which all together will determine the scope and depth of negotiations not only in terms of the number of sectors or subsectors but especially in terms of very specific commitments. The question of the legal form of a regional services trade agreement, or possibly a number of agreements, will be one of such major choices.

Governments hold the key to services market integration. Any agreement on services can bring very many side-benefits not only for the firms but for the government authorities themselves. It may improve their institutional capacities and abilities to formulate and implement policies. Through regulatory reform they can achieve better regulation and governance.

Introduction

The preparation of regional services trade negotiations is an exercise of both skilled adaptation and approximation, planning, consulting, a balancing act when defining specific objectives and noting specific and contradictory interests, both internally and externally. However, the CEFTA 2006 Parties will need to agree in advance on the principal common objectives, having in mind, that the negotiations are regional in nature.

The Preamble to the General Agreement on Trade in Services (GATS), among other things states that "*negotiations (are) aimed at securing an overall balance of rights and obligations, while giving due respect to national policy objectives*". At the very heart is the commitment, central to this balance, that negotiating parties agree on specific liberalisation measures for the supply of services within their territories, which they would apply in a non trade-distorting manner, reasonably and impartially, and objectively. The CEFTA 2006 Parties could and should adhere to these principles in the implementation of a regional agreement or agreements in the area of services trade.

The CEFTA 2006 Parties are committed to negotiate in the area of trade in services between themselves and achieve a more open regional trading area by removing impediments and tackling obstacles and solving challenges, beyond the strictly formal dimensions of such an enterprise and opt for more ambitious goals leading to an overall improvement of the national services regimes, compatible with the principles espoused by the European Union.

Within the World Trade Organisation (WTO) regional agreements on trade in services are defined by GATS Article V, which is entitled "Regional Economic Integration", which sets out the criteria what constitutes an acceptable regional agreement on services. It has been proven in many cases that more open economies, for both goods and services, and especially the smaller economies, grow faster and reap greater benefits in the longer term, especially with greater clarity of rules and higher market predictability. Services have a greater potential for growth. Smaller domestically oriented companies have better opportunities to venture into the regional market and develop the capacity and confidence to compete beyond the region.

The advent of the information society has brought about a complete restructuring of the international economy by contributing a great deal to a more or less borderless global economy. In this environment the distinction between the domestic and

foreign markets has been significantly reduced. Companies are in a much better position to learn to seek market opportunities, to capitalise on the emerging regional markets in services, to focus on quality, timeliness, and standardised delivery, and thereby reduce the costs of services production and delivery. All this is very much conditional on more relaxed, predictable and generally friendly regulatory environments. An unsuitable regulatory environment is cost-creating rather than rent-creating. A more liberal environment increases the flow of business to business services and enables the expansion of a client base.

The study comprises 5 sections:

1. Initial Agreements on Rules and Principles;
2. Measuring the Impacts of Services Liberalisation and Economic Effects of Greater Services Exports;
3. Negotiating Methods;
4. Criteria for the Choice of Sectors, Sectoral and Modal Ambitions;
5. Preparations for Negotiations.

Each section provides specific solutions and options, identifying the most optimal approaches. The legal aspects, institutional and organisational challenges of the negotiations are provided. The experience of the Association of South-East Asian Nations (ASEAN) on negotiating a regional agreement on trade in services that has opted for a GATS plus approach has also been included in the study. This free trade area and the approaches that were used by the ASEAN Members could serve as a good basis in negotiations for CEFTA Parties.

1 Initial Agreements on Rules and Principles

The following four CEFTA 2006 Parties are members of the World Trade Organisation (WTO): Albania, Croatia, Macedonia FYR, Moldova. Three other Parties are in the process of accession to the WTO, and UNMIK/Kosovo has not yet begun a process of accession to that organisation. The first four Parties are obliged to observe the General Agreement on Trade in Services (GATS) as a basis for a so called regional integration agreement in services, while other three Parties have implicitly accepted such an obligation by engaging in services negotiations with Members of the WTO in the process of accession and by making offers on services commitments.

Regardless of the above, the CEFTA 2006 Parties, who have committed to negotiate a regional agreement on trade in services, should nevertheless, as a matter of principle confirm that the basis for their negotiations will be GATS Article V and other relevant articles, as well as definitions on the basis of GATS Article XXVIII. This means that the criteria of GATS articles will guide them in terms of scope and depth of the negotiations, that they accept to notify an agreement or agreements that will be concluded to the Council for Trade in Services.

The second basic unanimously accepted commitment should be to negotiate on the basis of the GATS plus principle which generally means higher levels of trade liberalisation in services in the way that horizontal issues are treated, in terms of expanded sectoral and subsectoral coverage, regarding additional commitments, sectors or subsectors not previously scheduled or offered, in terms of new or more specified services activities and improved or broader commitments regarding the modes of supply. In addition, the parties to the negotiations could improve the connection of services trade to other policies, such as investment, educational, health, cultural, policies, etc. In other words a regional agreement on the trade in services could and should not only reflect commercial reality and represent a serious effort to remove specific barriers, but reflect a forward view of a regional market development.

As an example of a more or less successfully negotiated regional agreement on trade in services, the Association of South-East Asian Nations (ASEAN) has opted for a GATS plus approach, ultimately aiming for a services free trade area and a free trade community. The means to achieve that aim is the gradual expansion of their rights and obligations, beyond their existing GATS schedules in the WTO. They agreed to schedule new commitments and improve the existing ones, take a far-reaching approach and offer new services or sectors that are more specified in terms of

activities, which either have not been scheduled under the GATS or have not been otherwise foreseen. The ASEAN has taken a very pragmatic and tailor-made approach in the satisfaction of mutual economic interests.

In other words, a GATS plus commitment means deeper and wider market concessions, technically they can be reflected in "locking in" broader bindings, by converting "unbound" to "bound", by dropping residency and reciprocity requirements, by modifying procedures, narrowing the GATS Article II exemptions or eliminating them, by introducing regulations where they are lacking, by offering complimentary packages of concessions covering related or connected services, by adopting harmonised disciplines and by harmonising procedures for authorisations, licenses, etc. The CEFTA 2006 Parties are autonomous in their choice of sectors and subsectors, the methods of negotiations, but would need to respect the provisions of the GATS related to "measures", the "supply of services" and others.

The GATS Article V is an exception to GATS Article II (Most-Favoured Nation Treatment (MFN)). It "allows" Members to become party or enter into an agreement liberalising trade in services between and among parties to such an agreement under specified conditions. Any agreement under the preview of this article is required to have "substantial sectoral coverage" in terms of the number of sectors, and "substantially all trade in services" in terms of volume and modes of supply. This basic criteria still allows considerable flexibility in the choice of sectors and the scope and depth of final commitments. The approach could be on a subsectoral basis and on the basis of services activities. The agreement or agreements must provide for the absence of all discrimination in the sense of GATS Article XVII (National Treatment (NT)) with the allowed exceptions under GATS Articles XI (Payments and Transfers), XII (Restrictions to Safeguard the Balance of Payments), XIV (General Exceptions), and XIV bis (Security Exceptions). It is also understood that any agreement or agreements should not, in respect of any Member outside of that agreement, raise the overall level of barriers to trade in services within respective sectors or subsectors, compared to the level prior to such an agreement.

There is an additional GATS Article V bis, titled "Labour Markets Integration Agreements" which again "allows" Members of the WTO to choose to deal with mode 4 issues in a separate agreement, by which a complete mobility of labour could be agreed (without any distinction between skilled or unskilled labour). This can be simply done by dropping residency and work permits requirements. In practice, however, mutual recognition agreements are the common tool to deal with the selective mobility of skilled labour and professional services suppliers. Almost all governments have some type of autonomous system for the recognition or verification of qualifications of foreign suppliers and acceptance of professional credentials. WTO Members must comply with GATS Article VII, which is related to the rules regarding recognition.

It is not likely that CEFTA 2006 Parties would opt for the application of GATS Article V bis. However, they may and should agree to apply GATS Article VII

much more extensively and conclude mutual recognition agreements or one agreement on a regional basis, thus treating the issue of recognition, in connection with authorisation and licensing systems, as a horizontal issue, and also harmonise their procedures and criteria. They may opt to use the ASEAN example and conclude multiple agreements for selected skills and professions in connection with sectoral negotiations. The Parties, in any case, need to complement sectoral liberalisation with liberalisation in the area of the modes of supply. In accordance with GATS Article VII, the Parties could recognise achievements not only through education but through experience as well. Commonly, knowledge gained through experience is not recognised in formal authorisation procedures, although experienced personnel could be much more valuable assets in real-life situations. Paragraph 1 of Article VII contains the formulation: "Members may recognise the education or experience obtained".

It is hereby recommended that CEFTA 2006 Parties consider GATS Article VII as the basis for major improvements in the area of recognition and streamline their qualifications requirements and recognition procedures and considerably increase the mobility within the regional services market, especially in professions where there is an evident lack of highly-skilled labour, such as engineers, experienced project managers and (engineering) consultants, skilled information-communication technologies specialists, etc.

Regarding the question of determination of a legal form of an agreement or a set of agreements, the Parties are completely autonomous in the choice of the most suitable and practical solution. There are several options that the Parties have available. Keeping in mind that the services negotiations are complex and time-consuming, they would inevitably need to be gradual and progress by stages.

Therefore, a single framework agreement should be considered with subsequent annexes, in order to secure results and progress, possibly locking it in and allowing for early implementation. A specific sectoral agreement, for example in the area of road and rail transport, can be agreed before the overarching agreement on services is fully negotiated, and applied when ratified by a specified number of Parties. The Parties may choose on a substantial addition to the CEFTA 2006 on services, at least regarding the basic principles and rules, and attach detailed schedules of commitments. Whatever option is chosen, at the end of the day, any agreement or set of agreements, need to satisfy the criteria of GATS Article V and be (as a package) capable of examination in the Council for Trade in Services in accordance with paragraph 7(a) and 7(b) of Article V.

The diction of GATS Article V implies a single or separate agreement. ASEAN Member States opted for a framework agreement on services, followed by a three-year cycle of negotiations to open up trade in services in specific sectors and conclude subsequent sectoral agreements, annexed to the basic framework agreement, through several rounds of negotiations. Such an approach allows for new sectoral negotiations to be proposed, at any time. The current round of negotiations

is dealing with logistical services. It was agreed that financial services would be negotiated separately because of certain sensitivities. To add further flexibility to these negotiations, the ASEAN group pragmatically agreed to allow different speeds of liberalisation, as long as the process is transparent and reported. To complement the sectoral agreements, the ASEAN group concluded seven mutual recognition agreements in the following areas: engineering, nursing, architecture, surveying qualifications, medicine, dentistry, and a framework agreement on accounting. It is enough for the services providers to be registered and certified in one of the member states to be recognised in another member state. By such an approach, the ASEAN group desires to ensure the flow of skilled professionals. This has, of course, other implications, such as tax treatment, social security, etc.

The ASEAN group has also agreed on implementation issues. Signed packages of commitments detail how each party would liberalise each of the sectors and subsectors on the basis of commitments that have been made. ASEAN members, in the process of sectoral negotiations have opted for a request/offer approach. The process of negotiations began by an exchange of information on each other's GATS commitments and currently applied services regime. They have agreed on a common sub-sector approach, when at least four of the members made commitments, i.e. Most-Favoured Nation commitments (MFN) that benefit all the members. A modified approach allows a lower threshold of three or more members, in combination with a "minus-x" formula. Two or more members may proceed with an agreed services sector liberalisation, without extending the concessions to the other members. These may join the sectoral agreement when ready to do so.

Institutional arrangements should be such to serve and satisfy the purposes of negotiations. To use the ASEAN example, a coordinating committee was established that discusses questions of further work. Six working groups have been established in the following areas:

1. business services (the most numerous);
2. construction (growth enhancing);
3. healthcare (public interest);
4. maritime transport (common interest);
5. telecommunications and IT services (keeping up with global developments);
6. tourism (regional interest).

In addition, a so called caucus on educational services has been established. There are additional working committees of senior government officials who have certain mandates. The sectoral working groups prepare the ground for the work of the senior officials. The ASEAN group does not have an overarching body to supervise the negotiations or, thereafter, implementation of the agreements.

One of the key principles to be applied prior to formal negotiations is transparency. This principle is closely related to the question of the starting levels of negotiations

and the question how to deal with differences in existing levels of liberalisation, having in mind two things: a) the CEFTA 2006 Parties, who are Members of the WTO, have considerably progressed since 2006 in legislative development and regulatory reform; b) other CEFTA Parties are involved in on-going negotiations, on services, at different levels, and have yet to develop legislation. There is another and further area that is relevant and that is the identification of existing barriers to trade in the area of services. This process may influence other negotiations in terms of transparency.

It is recommended that CEFTA 2006 Parties should combine existing GATS Schedules of commitments and the most current offers in the process of accession to the WTO, with full disclosure of current measures that affect the trade in services, including administrative decisions and actions, at all levels of government, and in addition, rules of economic and professional associations which, by law, have functions that influence the delivery of services by foreign suppliers. This implies an internal regulatory audit of each of the CEFTA 2006 Parties, including labour-market regulations.

By sector, it is recommended to list specific sectoral requirements which are not immediately apparent but significantly impact on the services trade, and especially for all the sectors, a list of valid authorisation, licensing and other systems that are based on an application and administrative approval process, especially, if they are based on a mixed competence and several stages of the process, when more than one authority is involved and failure to respond to applications may constitute a significant barrier for the supply of services.

It is obvious that the so called negotiating platform for the CEFTA 2006 Parties would need to envision a well-planned and efficiently executed process, with sufficient political support and national capacities and coordination not only to avoid internal conflicts of interest, but conflicts in competence, when one government body cannot override another body. These situations are common in policy-making.

2 Measuring the Impacts of Services Liberalisation and Economic Effects of Greater Services Exports

The issue of the statistical challenge in the services trade has already been dealt with in general in the First study referred to earlier. This section is dealing with the need to adapt data collection to the purposes of services trade negotiation, i.e. especially to the GATS modes of supply perspective.

Many of the CEFTA region companies already developed export capabilities in services and are directed to the market of the European Union and beyond. The volumes and specific destinations of this trade, however, are not precisely known or even followed, since services reporting capabilities have not been developed to any level of precision. Even the much more developed economies have difficulties in this respect.

In the case of CEFTA 2006 Parties and the prospect of extended services trade negotiations it is important to have a more precise picture of the services trade within and without the region, and among themselves. In order to increase the volume of this trade and seek its greatest advantages, each CEFTA Party would need to know which services sectors or subsectors and companies within them that are competitive, innovative, and have a significant market position or are capable to play a leading role. It is, undoubtedly, a major challenge to develop cost effective methods of data collection and impose the discipline for receiving responses from the companies that are surveyed.

The CEFTA Parties rely on the IMF's Balance of Payments Manual as an indicator of their foreign services trade. By some estimates roughly 50% of the services trade is either underreported or unreported and it is estimated that at least 9% of the goods trade embodies services, which are hidden. Some of the reasons for insufficient data coverage of services are the following:

- The linkage of services exports to the exports of goods (such as maintenance, assembly, financing and even transport);
- Internal services trade with foreign affiliates;
- A failure to capture intra-corporate trade;

- A lack of mechanisms to capture export activities in the broad category of "other commercially traded services", which covers business, professional services and other services except transport and tourism (and for example a business/financial service gaining in importance in the region, offered by foreign-owned companies – the leasing of goods).

The greatest number of small and medium-sized companies are engaged in this "other services" category of business; manufacturers buy and sell between 10% and 20% of services as inputs in the manufacturing and business process or as after sales service, either domestically or abroad, and affiliate company trade, i.e. intra-corporate business accounts for over 80% of cross-border trade (modes 1 and 2) and through subsidiaries (mode 3).

In the course of consultations in the CEFTA Party capitals it was evident that it was not customary to track services exports at company levels, which also applies to investments related to the delivery of services at the bilateral level (within the region), which makes a realistic assessment of the intra-regional trade very difficult and unreliable. Organisational problems, lack of trained staff, the cost of such data collection were some of the reasons for no effort in this regard, combined with the reluctance of companies to reveal their services trade transactions.

A relevant score card to assess the realistic economic power of the services companies related to exports of services would be:
- Average revenues in a sector, subsector;
- Average number of employees;
- Value added per employee;
- Number of companies engaged in services exports in a sector, subsector;
- Net income from exports of services per sector and payments for imports of services per sector or subsector;
- Most frequent nature of services transactions with other CEFTA 2006 Parties.

It could prove necessary to engage services industry and economic associations in collecting relevant data from their members. Services firms often are not aware what constitutes a service export. It may be clear when they have a contract to supply a service from their home base to clients abroad, but it is less clear when specific modalities of services deliveries are involved. The problem lies in the lack of familiarity with the GATS concept of the modes of supply. An improved data collection system can serve to calculate the actual benefits from the services trade, such as net income, increased employment, increased investment, development of new exports in services, foreign client base, etc.

Upon the beginning of services trade negotiations the need for more specific data will inevitably arise to avoid improvisation and inflexibility where it would not be justified. Above all, it will be necessary for the purposes of formulation of a request and offer in the process of negotiations to disaggregate a set of product categories, based on the Central Product Classification (CPC), for miscellaneous business,

professional and technical services so that at least 70% of the services trade is identified correctly. Some international organisations have developed model survey approaches that may help modify the current practices.

Regarding the data collection for an impact analysis, most often it is the responsibility of the national statistics offices. Such data collection is challenging because the methodology of data collection is not adapted to the flow of services that trade agreements address. Data collection is typically focused on populations of service industries, and on cross-border trade (modes 1 and 4) and very little on other modes of trade. Surveying one particular service industry may not give a complete picture of export activity for reasons given above.

3 Negotiating Methods

The Offer and Request approach as the principal method of services trade negotiation

Whether the model of negotiation is bilateral, plurilateral or multilateral, or a modified cluster approach, the offer/request method is applicable in each of these cases.

The differences lie in technicalities. In bilateral negotiations, the very nature of such negotiations means that offers and requests are directed at each party to the negotiations separately, perhaps secretly. The offers and requests can be different on a party to party basis, or uniform for all the parties, which still be bilaterally negotiated. There is more latitude and choice for the party making the offer/request, in terms of substance, in terms of timing the negotiations meetings, and in giving priority to some parties over others, in conferring benefits in a discriminatory manner. Apart from other disadvantages of a bilateral approach to services negotiations, in the end it may lead to uneven and in transparent results and to exclusions, of benefits and of some parties. It also creates difficulties for the final assessment of the results of negotiations.

In plurilaterally and multilaterally concepted negotiations offers and requests are exchanged between all the parties concerned, without exclusions, unless a party chooses not to participate. Transparency is much greater, which doesn't mean that offers/requests cannot be differentiated. But they are made openly. Consequently, a much better balance of rights and obligations can be achieved at the end of the negotiating process and a win-win situation is more feasible.

The offer/request method offers very many substantial and technical flexibilities as well as in satisfying different ambitions in different sectors and subsectors, for example: a party may choose to offer a blanket list of measures to be reformed or adopted, it may apply GATS Article XVIII and offer additional incentives-commitments which could mean an offer to phase-in market openings and improvements in the future. This can be useful and productive for a smoother transition towards a greater market opening and structural adjustments. On the request side there may be a particular difficulty in quantifying (regulatory) barriers to trade and investment, since there are no formulas, coefficients or thresholds in the services negotiations as there are in the agricultural and non-agricultural market access negotiations. Besides, one type of concession to one party may not have the same value for another party.

In any case, the offer/request approach would contain commitments that the offering party is willing to bind and the requesting party requires to be bound. Therefore, the offer/request approach embodies a considerable number of policy parameters and layers of impediments, which are greater if sectoral coverage is broader. Many of the impediments may be narrowly sectoraly addressed or more broadly covered and could relate to a host of regulatory measures that affect the quality and certainty of access to, and presence in, the services markets.

On the other hand, in dealing with agreed horizontal issues, a more lateral approach may be more appropriate, especially in a plurilateral or multilateral context. Specific "side issues" can well fit into requests, in which the requesting party could, for example, ask another party to abolish specific subsidies, increase access to government procurement, reveal state aid, and prevent practices contrary to the rules of fair competition. However, on the request side it would be necessary to be realistic and to have sufficient and properly relevant information. A pro forma request would miss its main purpose. Government officials would be pressed to decide how to formulate offers and requests and would need to know what to expect in return. It is important to increase the capacity and ability of government officials to understand the intricacies of trade law and negotiations skills and distinguish legitimate issues of trade negotiation from purely domestic matters that do not lie within the perimeters of trade.

In connection with regional services negotiations two questions may arise which may inevitably influence the conduct and outcome of negotiations:

1. How and what to bind as a commitment, when the existing regulatory situation is legally unclear, i.e. the regulators do not consider the existing regulation to be adequate or sufficiently developed, or it may be absent, or they may not be prepared to accept any legal obligations;
2. How to correlate commitments with other obligations and processes, such as the ongoing WTO accession negotiations, the integration process with the European Union, and how to factor in some of the EU legislation, such as the Services Directive and the Professional Qualifications Directive.

The planned changes in domestic legislation that directly or indirectly affects services may be a valuable part of the overall offers, especially, if it may improve market access and national treatment. It may also be the substance of mirror requests. An offer could propose to eliminate or modify MFN exemptions. Specific sectors and subsectors can be combined with the modes of supply at the offer stage or be an important part of any request. A request may focus on excess capacity and newly-developed services. Formulating a request can prove to be a much bigger challenge than formulating an offer for lack of relevant information. In formulating a request it may not be enough to address horizontal and sector-by-sector limitations but may be necessary to address the whole-regulatory and institutional set-up which would underpin the various commitments and obligations. The key question would

also be whether the institutional set-up in a Party is sufficient to warrant a full bona fide implementation of obligations.

In formulating an offer/request there is a number of factors to take into account, such as the actual strengths and weaknesses of domestic services suppliers, availability of skilled labour, economic diversification needs, attraction of investments, foreign exchange earnings, transfer of technologies and better business practices, in other words, the same criteria as would be used in the initial choice of the negotiating sectors and subsectors.

In the plurilateral and multilateral context of negotiations, in order to cover specific issues or for clarification purposes, bilateral meetings need not be entirely excluded. It could be argued by the more developed parties that they prefer bilateral meetings to be able to put forward more specific and offensive requests. They can serve to improve the coordination of mutual sectoral interests or for the formulation of joint proposals by more than on party. Otherwise a bilateral approach so far in international negotiations has clearly demonstrated to be taxing in terms of resources and time required for the parties to conclude any stage of negotiations. It may also mean that a party does not have enough experts available to conduct bilateral negotiations in different sectors. The Uruguay Round of multilateral trade negotiations adopted the offer/request approach as the dominant method of opening up services markets, however, in the course of the negotiations, and especially since the year 2000 in the Doha Round, this approach provided limited progress which led to a decision at the Hong Kong ministerial conference of the World Trade Organisation in 2005 to supplement, where practicable the bilateral offer/request approach with more plurilateral negotiations. The results of which could then be extended to all WTO members on an MFN basis.

The plurilateral approach could start with a set of negotiating objectives in a given sector or better still, cluster of sectors. If all CEFTA 2006 Parties decide to participate then it becomes a multilateral approach, meaning that whatever is decided becomes a binding commitment for all the Parties. The more the common objectives are significant and far-reaching and unanimously supported, the more credible will be a regional reform coalition of the services industries. The plurilateral/multilateral approach can be a significant advantage over the bilateral negotiations. On the one hand it economises on human resources and time needed to negotiate and at the same time can better attract all the stakeholders into the process. This can produce common-denominator results rather than precaution induced outcomes, avoiding sector-by-sector, country-by-country bartering of commitments and can substantially reduce the transaction costs of negotiations.

An interactive offer/request process can create benchmarks and the means to achieve better policy coherence. It would be up to each CEFTA 2006 Party to identify which measures it wishes or does not wish to address, the plurilateral/multilateral approach can also allow for a useful policy dialogue between the trade officials, sectoral regulators and officials of other government agencies. On the basis of such a

dialogue the parties may opt for an alternative method of model schedules or the cluster approach for interrelated sectors and subsectors, as long as they are transparent enough for the identification of agreed obligations.

If the offer/request process is chosen as the main vehicle for the negotiations and the parties opt for a plurilateral/multilateral approach, in which all the parties make offers/requests to each other, the process would need to be properly staged to allow for initial offers and requests, for responses and revised offers and requests and actual negotiations. It may prove to be difficult to determine at what stage the process can be considered as concluded or sufficiently exhausted.

The negotiators would need to be well informed of their national positions through consultations within the government and with stakeholders and be able to portray them productively to other parties in a way that it supports the process of negotiations, rather than creates obstacles.

4 Criteria for the Choice of Sectors, Sectoral and Modal Ambitions

The CEFTA 2006 Parties may initially opt for a limited number of sectors "to test the waters". These sectors can be those that are seen to be of major importance economically, on the other hand they may be such that are seen as "easy", less problematic, where some interaction among the Parties has already taken place at different levels and contexts. In view of economic integration interests, some sectors may be obvious, such as transport and energy-related services, especially, when they combine with other economic interests such as investments and infrastructure development.

On the other hand some sectors for some of the Parties are sensitive, such as education, and media services, real estate, research activities. Yet, the choice of other sectors that are fast growing, such as business and professional services, and information-communication technology related services, could dramatically increase the flow of services.

In consultations in the capitals of the CEFTA Parties, the following preferences were most often expressed: transport services, especially road and rail freight transport; financial services, especially insurance; information-communication services, especially computer-related services; construction, and legal services, and tourism.

Looking at the ASEAN experience and its choice of services for negotiation, we can see that this group of nations has been very pragmatic in its choices. In all the services sectors or subsectors there is a strongly expressed common interest, such as logistics, maritime transport, engineering, medical, dental and nursing services, architectural, construction, accounting, telecommunications and IT services. Apart from business opportunities there is also an underlying public interest to enable the free flow of services. Financial services sector was seen as sensitive and set aside for separate treatment, due to fears of certain negative impacts on national interests, such as takeovers, acquisitions and mergers. The ASEAN group established a tourism working group and an education services caucus. Sectoral negotiations have been complemented with seven mutual recognition agreements which give specific weight to the common interest of an exchange of skilled labour and to the flow of highly-skilled professional talent.

It is almost impossible to fix any set of criteria for a choice of priority sectors for negotiation. For some CEFTA Parties the lack of competition in a given sector, within national borders, was indicated as a problem, for others, the poor quality of services, low standards, lack of accountability etc., was seen as a problem. In these cases it was seen that a more liberal regional market could correct certain market anomalies and deficiencies, which, for example the regulators are unable to correct or are not authorised to do so. On the other hand, it was also pointed out that there are caveats to choosing some sectoral negotiations. In liberalising, for example, the insurance market, although there are doubtless interests for new products and services, such liberalisation can be possible only if efficient national control institutions and mechanisms are developed for consumer protection and to prevent unethical business practices. Therefore, parallel institutional reform may become necessary.

There is a number of elements that should be considered that can importantly influence the choice of sectors or subsectors, such as high added value, possibilities for an economy of scale, extra regional competitive advantages, cheaper producer services inputs, better opportunities for technological development, development of regional networks, increase in profits, demonopolisation, better or increased consumer choice, export profile enhancement of "national champions", and others. There is a lesson to be learned from the ASEAN experience. The ASEAN participants opted for the coverage of specific activities rather than whole sectors. They did not feel to be constrained by any classification systems (which they felt to be out of date or not compatible with market interests). It was also agreed to bind commitments on improvements and not only the formal removal or relaxation of "behind the border" barriers. All this is tailor-made to allow a smoother flow of services.

It is possible to make priority lists. For example, if the CEFTA Parties were to decide to negotiate in the area of business and professional services and combine them with mutual recognition agreements they could ensure considerable "deliverables". In this case a priority list could look like this:

- Legal services
- Accounting, auditing, book-keeping
- Architectural
- Engineering and engineering-related services
- Urban and spatial planning
- Scientific services
- Technical consultation services.

This list can be broader or narrower. It could contain, medical, dental, educational and other services delivered by independent professionals. Whatever sector is chosen for a short list of sectors, it should be combined with possibly two other bases for negotiations: all modes of supply, and harmonisation efforts.

4.1 Modal ambitions

Below are some general directions in which modal ambitions could proceed. Every sector could be analysed from a modal point of view and the real market situation could be determined.

- **Mode 4**

All the CEFTA Parties with, the exception of UNMIK/Kosovo, have horizontal limitations on mode 4 affecting all sectors or would like to maintain them as new members of the WTO on an MFN basis. In a regional context of services trade liberalisation it is not only possible but preferable to expand the temporary entry possibilities and the length of staying for a broader category of personnel. For example there can be an agreement on expanded temporary business entry, when no revenue is earned or when revenue is earned, and for temporary entry associated with commercial presence when wages are earned. New categories could be agreed, for example for temporary movement of trained professionals and trainees, including new sub-categories not linked to commercial presence. A major hindrance is unspecified economic needs tests.

Mode 4 issues can be resolved uniformly, horizontally, by a separate agreement, in a positive approach rather than a restrictive approach. This could include the dropping of nationality (citizenship) requirements, residency requirements, and resolve the issue of labour permits for short-term services, extension of periods of stay for contractual services suppliers and agree on a definition for essential personnel in connection with an investment. Nationality, citizenship, requirements are inappropriate as a tool to control or protect professional competency. Residency requirements limit cross-border trade. Solutions are indirect forms of commercial presence. Residency could favour consumer protection; however, there are other instruments to accommodate accountability, such as liability insurance.

Deliverables in this area could be harmonised procedures, comparable standards of recognition in connection with authorisations and approvals, all in all a higher mobility of highly-skilled labour.

- **Mode 3**

There is a number of ways to liberalise services delivery in this mode of supply. As a first step, it could be determined what is the state of foreign commercial presence in the domestic market and in which sectors. Some of the liberalisation possibilities are, for example, the removal of reciprocity requirements for construction and other services, the elimination of commercial presence as the only allowed type of delivery of certain services, for example advertising, marketing, management consulting, etc., reducing the need to address several authorities for licensing and approvals, voluntary memberships in economic associations and professional organisations, eliminating of contingency requirements for memberships and employment of local staff, introducing greater flexibility in the legal form of enterprises, allowing sole proprietors in the delivery of certain services, the lifting of

equity limitations, allowing partnerships of domestic suppliers with foreign suppliers, and others.

- **Modes 1 and 2**

These two modes are underestimated in the generation of revenues and employment. There are examples of fast growing companies who cover the region with exclusively mode 1 services, such as by means of electronic commerce and are achieving record high rates of growth. It is a fact that these two modes have an enormous potential for cross-border trade by modern electronic means. Full information technology services commitments would contribute to the realisation of increased mode 1 and mode 2 supplies in many new more advanced areas, including research and development, educational, medical services, customer services such as call centres, answering services, development of data banks, and many others. Mode 1 can always be mirrored by mode 2. In a regional context there is almost no justification for limiting the mode 2 of supply of services, if its liberalisation goes hand in hand with supervisory systems.

4.2 Harmonisation

The process of negotiations in services can induce the negotiators towards harmonising some regulatory requirements and procedures. This can increase the predictability and stability of the services markets in the region, with far-reaching implications for the attraction of extra-regional investment.

Examples of areas where harmonisation efforts could be made:

- Current practices in the systems of authorisations, licences, approvals in terms of procedures and material requirements, amounts and nature of information required, length of time needed for approval;
- Government procurement in services;
- Branching policies;
- Purchases and ownership of real estate;
- Health insurance;
- Other forms of insurance;
- Other.

4.3 Authorisations, Licensing, Approvals

The CEFTA Parties should address the issue of transparency in licensing and other forms of authorisation, approval or any type of acquiescence, in connection with the delivery of services by foreign suppliers in compliance with the GATS Article VI:2, VI:3, VI:4, and VI:5, and inform of all the cases where such procedures exist and of the legitimate policy objectives. If there are no differences between the treatment of domestic and foreign suppliers it is appropriate to seek the simplification of procedures and relaxation of requirements where feasible. This should especially be

the case where more than one government body or agency is involved in the approval process.

Subparagraph (c) of Article VI:4 implicitly recognises that licensing procedures in themselves can create significant barriers to the supply of services, especially where more than one approval is required for the same activity or applies to the same service provider. Disciplines on licensing procedures and requirements can be treated as a horizontal issue. The GATS does not define "licence", however it must apply to all types of authorisations, approvals, opinions, acquiescence, with the same effects as a licence, if it is conditional to the submission of an application and the satisfaction of certain requirements in order to obtain a permission to perform an activity or activities. This, for example, may include a building permit, which can effectively nullify all other approvals. On the other hand authorisations and licensing requirements are one of the key instruments in the regulation of services, especially professional services and other activities, that are under close government supervision and are closely connected for example to qualifications and technical standards. By themselves, they are not considered an unnecessary barrier to trade in services, but need to be the subject of close examination because of arbitrary practices.

The CEFTA 2006 Parties should take special care that licensing procedures do not nullify or impair agreed gains in negotiations, if by their application they undermine the commitments.

It is therefore recommended that, when the CEFTA 2006 Parties negotiate sectors and subsectors, to reconsider at the same time the current practices regarding authorisations, review the policies behind them, and coordinate these policies amongst them, especially if they have comparatively the same policy objectives. The Parties can deal with this question as a horizontal issue or as a sectoral issue. There is, however, a wide scope of regulatory measures that fall outside of the scope of the GATS Article VI:4, such as independent actions by regulators and others that create market conditions for services. Past practices of regulators are relevant as an indication how the market is regulated, especially regarding foreign suppliers.

The common elements for addressing all types of administrative procedures, relative to specific sectors, are:

- Elimination of multiple requirements by different authorities for the same service or activity
- Examination of the actual regulatory intensity of a given service and its justification
- Introduction of automatic approval systems where feasible, for the purposes of monitoring rather than controlling the supply of a service.

5 Preparations for Negotiations

Several key tasks are outlined below that may influence the degree of success in negotiations on trade in services and the degree of achievement of targets that have been initially set, whether as a whole or by stages. Participating governments need to feel prepared to respond to political and administrative challenges, to the complex policy issues and challenges that the services trade negotiations would push into the forefront. The CEFTA 2006 Parties are, economically, at different levels of development, while some of them have additional geographical disadvantages. The negotiating process by itself may in its course redefine some objectives and expose the need to test the political acceptability as it progresses. A well prepared negotiations road map can map out negotiating sequences between the Parties and define stages at which results can be underlined or "locked-in" to prevent any backtracking. An internal road map can be more specific with regard to tasks and activities that would be necessarily performed, such as internal consultations, preparations of proposal, decisions, etc.

The basis for all preparations is the recognition of the multiple challenges that liberalising services entails and of the capacities required not only to negotiate but implement the agreed outcomes. One of the principle obstacles to successful preparations and negotiations are limited capacities in terms of personnel and their experience and knowledge and a sufficiently supportive environment. This was found to be one of the major challenges of the CEFTA 2006 Parties when examining the potentials for negotiations on the liberalisation of trade in services. The actual trade expertise and negotiating experience is embodied in a few officials inside economic ministries. It is necessary to overcome the knowledge gap about trade in services at higher policy-making levels, to increase the understanding of the process and to avoid conflicts of interest. The trade negotiators, or designated officials, may be limited in understanding of the dynamics of legal sectoral challenges and economic implications.

The people involved in the negotiations need to gather sufficient information so that they can submit informed and meaningful offers and requests, once the process of negotiations begins. In addition to that it is necessary to choose the relevant stakeholders within and outside the government, and not only establish proper channels of communication, but a process of engagement in order to obtain useful information. This necessarily includes all types of economic operators. By including stakeholders outside of the government authorities, it becomes more likely to help the domestic services suppliers and exporters to take full advantage of newly negotiated market access opportunities. Services providers and exporters are the best

source of information for the challenges that they encounter in exporting services in other markets.

The legitimacy of a services negotiations process, especially in a regional context, where economic operators are much more familiar with each other, will be secured if the internal coordination process includes key external stakeholders, whether institutional, representatives of the private sector or civil society, especially, if they would have any influence on implementation. It could pose a challenge, since multi-stakeholder consultations inevitably increase the possibilities for conflicting interests to surface (such as commercial interests, consumer interests, social policy interests, general public interests, etc.). Identification of stakeholders and educating them to play a role in negotiations is a process in its own right, which should not avoid the professional, economic and other associations and interest groups, local communities. It depends on a range of factors such as companies that dominate the domestic services market, including public service companies, influence on sector-specific policies, human capital availability, retraining needs, etc.

Another task is a full inventory of relevant measures in order to have a good understanding of the domestic services regimes and their shortcomings. It is up to the government authorities to prepare various liberalisation scenarios and obtain information relevant to their negotiating partners in order to identify barriers. A trade-regulatory audit focuses on the measures that are relevant to services trade policies and relevant to the offer/request process. Recognising such measures may be a challenge, especially if they have an indirect effect on trade in services. A typical and an important example may be the general company's laws, which do not make any allowances for companies engaged in services trade and rigidly prescribe legal forms for all cases and impose some horizontal limitations which in fact restrict, for example, cross-border services trade or the movement of natural persons. A regulatory audit should produce a list of non-conforming measures and especially current special sectoral requirements that are underpinned by specific policies, and what regulatory or policy changes can be translated into offers in the course of negotiations. An analytical approach to this question, especially if it is related to a specific sector may indicate in advance what major or minor regulatory changes would be necessary and what periods of adjustment would be needed.

Additionally, a completely different analysis may be necessary, from a different perspective, i.e. an economic-social impact perspective. This can be assigned to the proper institutions and/or interested stakeholders that have the expertise for such an analysis.

An internal efficient coordination process is considered to be among the most crucial of negotiating inputs. It is an issue of national policy coherence of such importance that it alone is liable to determine the success or failure of a Party's participation in the negotiations. Line ministries may object to liberalisation tendencies or reject the requests by other Parties, especially if they imply adjustments of a systemic nature, which may have political connotations. This can be expected from education, labour

and internal affairs ministries. Although it is entirely up to the CEFTA Parties how they coordinate and therefore formulate national positions, the negotiating authority would normally lie with one ministry and accountability as well. This single authority may need to take on board other processes, such as accession negotiations in the WTO, integration with the European Union, etc. These may be ahead or more advanced than regional negotiations and on the other hand, regional negotiations may disclose liberalisation possibilities to partners outside of the region. Therefore, regional services negotiations should indeed be regional in character and fulfill the criteria of GATS Article V. Any internal coordination set-up should make proper allowances for the fact that services are highly inter-related, inter-active and that they affect a broad spectrum of beneficiaries and stakeholders and that a well-developed and open regional services trade may reach well beyond the region itself.

There is an indisputable and inevitable fact that services trade pacts stand or fall on implementation, especially, if it relies on trust that the negotiating parties would fulfill their obligations. Effective implementation, in due course, can bring all the desired short-term and long-term benefits and economic rewards.

Conclusions

CEFTA 2006 Parties have a good potential to initiate and conduct efficient negotiations in the area of trade in services and achieving a liberal regional trading area. This would bring substantial benefits to Governments, business community and consumers in the region. The main recommendations and proposals of the study on how to conduct negotiations are as follows:

- The first main common basis of negotiations should be **GATS Articles V and XXVIII**. The second major principle that should be applied is the **GATS plus**, which would imply higher levels of trade liberalisation in services.

- Parties should combine the existing **GATS Schedules** of commitments and most recent offers in the process of accession to the WTO with **full disclosure of current measures that affect the trade in services**.

- On a sectoral level is recommended to **list specific sectoral requirements** which are not immediately apparent but significantly impact on the services trade.

- The **Offer and Request approach** is the principal method of services trade negotiation, irrespective of the model of negotiation i.e. bilateral, plurilateral or multilateral.

- CEFTA 2006 Parties may select initially a **limited number of sectors** that they feel are easier to handle and less problematic. A number of elements should be considered when choosing the sectors or subsectors:
    - high added value,
    - possibilities for an economy of scale,
    - extra regional competitive advantages,
    - cheaper producer services inputs,
    - better opportunities for technological development,
    - development of regional networks,
    - increase in profits,
    - demonopolisation,
    - better or increased consumer choice,
    - export profile enhancement of "national champions".

- **Limited capacities** in terms of personnel and their experience and knowledge are one of the principle obstacles to successful preparations and negotiations. It is necessary to **overcome the knowledge gap** about trade in services at higher policy-making levels, to increase the understanding of the process and to avoid conflicts of interest.

- An **efficient internal coordination** is a key to successful negotiations. During the coordination process it should be acknowledged that services are highly inter-related, inter-active and that they affect a broad spectrum of beneficiaries and stakeholders.

- The basis for all preparations is the recognition of the **multiple challenges** that liberalising services entails and of the capacities required not only to negotiate but implement the agreed outcomes.

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