

World Trade Organisation GATS Regime: Implications For the Accountancy Sector

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< EXECUTIVE SUMMARY >

◆ One of the most important developments in the millennium that had far reaching implications in the world economic system is the formation and functioning of the World Trade Organisation. The inclusion of services in the Uruguay round of trade negotiations led to the general agreement on Trade in services (GATS) which came into force in 1995 and sets out a framework of legally binding rules governing the conduct of world trade in services. The negotiations to further liberalise international trade in services, launched in February 2000, are already underway at WTO. These negotiations constitute the GATS “built-in agenda.” While

the imperatives of the new world order would necessitate opening up of the trade in services, the GATS has provided for an in-built mechanism to safeguard the interest of the domestic service providers within the given parameters. The Article gives a basic understanding of the GATS agreement, an update on current negotiations in services and the challenges and concerns of the Indian accountancy sector in this regard. The Article provides specific guidelines to address the concerns of the Indian accountancy sector during negotiations and suggests possible negotiation strategy to be adopted during GATS Negotiations.

INTRODUCTION – EMERGENCE OF WTO

One of the most important developments in the millennium that had far reaching implications in the World Economic System is the formation and functioning of the World Trade Organisation. The economic history of the mankind can easily be divided into pre and post WTO era. While the WTO regime is compelling every country to adjust, reformat and, redesign their economic systems to synchronise with the WTO regime, these countries are also doing considerable amount of research for developing prescriptions

and formulations to develop appropriate strategies to meet the challenges of the new trade order and to assure fair share of benefits out of the new economic order.

The World Trade Organisation (WTO) represents the culmination of a long drawn process directed at establishing a formal world trade body after 47 years of de facto trade regulation under General Agreement on Tariffs and Trade (GATT). With the completion of the Uruguay Round of Trade Negotiations in December, 1993, the Final Act as well as the Marrakesh Agreement Establishing the World Trade Organization were signed at the last Ministerial meeting of the GATT held in Marrakesh in April, 1994, paving the way for beginning of a new era in world trade. The WTO formally commenced its operations on 1st January, 1995 and has 144 countries as its members; the notable exceptions being Russian Federation, Saudi Arabia, Nepal, amongst other

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nations, which are actively seeking to join WTO, by fulfilling the commitments enshrined in WTO agreements and principles.

The WTO marks the establishment of a legal and institutional base for international trade that had been previously absent under the GATT; a contractual framework within which governments could formulate domestic trade policy; and the platform upon which trading relations among countries could evolve through collective debate, negotiation and adjudication.

General Principles of WTO

1. **Non-discriminatory treatment in international commerce;**
2. **The pursuit of a reduction and possible elimination of barriers to trade; promote free trade and**
3. **The pacific settlement of disputes through a generalised adherence to a dispute settlement mechanism.**

While the establishment of the formal legal presence in the international trade remains the significant feature of the creation of WTO, its contribution to international trade regulation has been to inject more than just a degree of formality. WTO embodies the same architectural core as that of the International Trade Organisation (ITO) and GATT. To this end, Most Favoured Nations (MFN) and its corollary national treatment remain the key principles of international trade regulation and are embedded throughout the Agreements administered by the WTO. The principles governing trade negotiations namely reciprocity; and the dispute settlement mechanism of the GATT have been modified to make it more rigorous, inclusive and binding in principle. However on the practical front, circumventions and non-adherence is at galore.

GATS – GLOBAL SCENARIO

Ranging from architecture to value-added telecommunications and beyond, services are the largest and most dynamic component of both developed and developing country economies. Important in their own right, they also serve as crucial inputs into the production of most goods. The significance of the services sector to the global economy continues to grow:

- ◆ More than 60% of world production is derived from

services, and while services trade (on a balance-of-payments basis) amounts to one-fifth of total world trade, it is growing more rapidly than merchandise trade.

- ◆ The World Bank has reported that the services share of world GDP during the period 1980 to 1998 rose by 5%. In developing countries, this increase has been estimated at 9%.

Their inclusion in the Uruguay Round of trade negotiations led to the **General Agreement on Trade in Services (GATS)** which came into force in 1995 and sets out a framework of legally-binding rules governing the conduct of world trade in services. It is supported by a number of schedules of specific commitments undertaken by individual WTO Members. These commitments bind Members not to introduce more restrictive rules which could have an adverse effect on trade. Since January 2000, they have become the subject of multilateral trade negotiations.

The Agreement on trade in services reached in the Uruguay Round is perhaps the most important development in the multilateral trading system since the GATT itself came into effect in 1948. The GATS for the first time extends internationally-agreed rules and commitments, broadly comparable with those of the GATT, into a huge and still rapidly growing area of international trade. Although reliable statistics on services are few, conventionally measured trade in services is generally agreed to be equivalent in value to about one-quarter of international trade in goods. A further unmeasured, but undoubtedly very large, proportion of international trade in services does not cross national frontiers, because the service supplier (such as a branch of a foreign bank) or the service consumer (such as a foreign tourist) does so instead. The reach of the GATS rules extends to all forms of international trade in services. This means that the GATS agreement represents a major new factor for a large sector of world economic activity. It also means, because such a large share of trade in services takes place *inside* national economies, that its requirements will from the beginning necessarily influence national domestic laws and regulations in a way that has been true of the GATT only in recent years.

GATS envisages development of developing countries through achieving progressively higher level of liberalization through successive rounds of multi-lateral negotiations while giving due regard to national policy objectives. GATS also recognises the right of members to regulate and to introduce new regulations in order to meet national policy objectives.

GATS provide for trade in services under the following four modes of supply:

Cross-border practice	Where the service provider remains in one country and the client in another. Most often such trade takes place electronically.
Consumption Abroad	Where the client travels from his home country to the country of the service provider to obtain the service
Commercial Presence	Where services are provided through establishment of an office in the other country.
Movement of Natural Persons	Where the professional accountant travels from one country to another to deliver a service.

GATS consists of a core set of disciplines including most-favored-nation (MFN) treatment, market access, and national treatment. Upon joining the WTO, each country decided whether and how to apply these core disciplines to services trade in its market. The agreed objective of the current GATS negotiations is to extend that coverage, and the purpose of this stage of the negotiations – submission of requests – is to allow each WTO member to individually inform its trading partners of the improvements it seeks in those countries' GATS commitments.

GATS requires that each member should accord immediately and unconditionally to services and service suppliers of any other Member, treatment no less favourable than that it accords to like services and service suppliers of any other country. However, this does not mean rigidity across the board irrespective of national policy and objectives, and, economic and local needs. It provides that a Member may maintain a measure inconsistent provided that such a measure is listed in, and meets the conditions of the Annex on Article II Exemptions on MFN. It further adds that provisions of this Agreement shall not be so construed so as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed. Under Article XII, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including payments or transfers for transactions related to such commitments in the event of serious balance of payments and external financial difficulties or security threat thereof. The Article further elaborates the conditions for relaxation from such restrictions. Article XIV lists out the general exceptions which may be nec-

essary to protect public morals or to maintain public order or to protect human, animal or plant life or health, or to secure compliance with laws or regulations, etc. Article XIV list out the security exceptions. The GATS includes special provisions reflecting the interests of developing countries. In considering progressive liberalisation, the GATS provides that there shall be appropriate flexibility

for individual developing country Members (especially least-developed countries) for opening fewer sectors, liberalising fewer types of transaction, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at:

- the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia*, through access to technology on a commercial basis;
- the improvement of their access to distribution channels and information networks; and
- the liberalisation of market access in sectors and modes of supply of export interest to them.

The GATS is about trade liberalization not deregulation. It clearly defines what trade restrictions are, and establishes a process to reduce them through successive rounds of negotiations. The Agreement explicitly recognizes the right of Members to regulate.

Looking at the GATS agreement, as well as at the significance of the specific services commitments undertaken by WTO members, it must be borne in mind that the Uruguay Round services package is only a beginning. The GATS rules are not quite complete, and are largely untested. The process of filling the gaps has begun through negotiations, and experience will no doubt show a need to improve some of the existing rules. Each government's schedule of liberalization commitments for trade in services is also only a first step, comparable not with its GATT schedule of 1994, but rather with the initial limited tariff-cutting undertaken when the GATT was launched. Among the most important elements in the GATS package is the promise that successive further rounds of negotiations will be undertaken to continue

opening up world trade in services.

The negotiations to further liberalise international trade in services are already underway at WTO pursuant to the GATS. Under successive rounds of negotiations, aimed at progressive liberalisation, Members individually choose in which sectors to make binding commitments, and in which not to make. This is known as a “positive listing”, or “bottom-up”, approach. Negotiations proceed on the basis of requests and offers; that is, countries request each other to consider liberalisation in particular sectors, and respond with offers. Agreement to liberalise is not reached until all participating Members – including developing countries – are satisfied with the total package being offered.

CURRENT NEGOTIATIONS IN SERVICES SECTOR

In February 2000, the General Council of the WTO launched negotiations on trade in services in accordance with the mandates contained in the GATS. These negotiations constitute the GATS “built-in agenda”. Article XIX of the GATS defines the scope and objective of these negotiations. The main objective of Article XIX is the progressive liberalization in services so as to continue the trade liberalization initiated during the Uruguay Round. Article XIX reiterates the flexibility provided to the developing countries through Article IV, and through the structure of the GATS based on the “positive list” approach, whereby the countries can make commitments on:

- Specific sectors
 - Specific types of transaction (mode of supply)
- in accordance with their level of development.

The scope of the negotiations is comprehensive, mirroring the scope of the GATS itself. WTO Members agreed in the Uruguay Round to a far-reaching additional negotiation beginning in 2000 aimed at producing significant liberalization in services trade.

The mandate of the negotiation is ambitious: to remove restrictions on trade in services and to provide effective market access, subject to certain specified limitations. A wide range of countries have already stated their interests in the negotiations. Thus, all countries, including developing countries, should have an important stake in outcome of these negotiations, both as parties seeking and as parties providing GATS commitments.

The first phase for the negotiations on services ended in March 2001 with a “stock taking” exercise by the

Special Session of the WTO Council for Trade in Services, to consider progress made and how to move forward. Countries agreed on the “**Guidelines and Procedures for the Negotiations on Trade in Services**” which provides that:

- (i) the participation of developing countries and a special attention to least-developed countries should be taken into consideration in the negotiations;
- (ii) flexibility to liberalize fewer sectors should be granted to them;
- (iii) the process of liberalisation shall take place with due respect for national policy objectives;
- (iv) no exclusion a priori of any service sector or mode of supply;
- (v) the starting point for the negotiation of specific commitments shall be the current schedules and the main method of negotiations shall be the “Request and Offer approach.”

The Doha Ministerial Declaration, in November, 2001, has endorsed the work already done, reaffirmed the negotiating guidelines and procedures and called for submission of initial offers in the GATS negotiations by March 31, 2003. By that date, the WTO members should be prepared to inform trading partners of proposed responses to requests received, in the form of proposed improvements to their GATS schedules of commitments. The final stock taking shall take place at the 5th Ministerial Conference of WTO in Mexico in 2003.

More than 100 proposals have been submitted to the Special Session of the Council for Trade in Services, the majority of which have been tabled by the developed countries, namely the European Communities (13), Canada (13), the USA (12), Switzerland (10), Australia (10) and New Zealand (7). Developing countries have also made proposals on several crosscutting issues, namely classification, temporary movement of natural persons, assessment of trade in services, increasing participation of developing countries, autonomous liberalization in services and treatment of the MFN exemption and establishment of fair trade rules including emergency safeguard measures.

Several countries such as Singapore, EC, USA, China, New Zealand, Australia, Brazil, Switzerland have also submitted their Request List to India in, inter alia, Accounting, Auditing and Book-Keeping Services for consideration. Most of these countries have made full commitments under Mode 1, 2 & 3. The Working Group constituted by the Department of Company Affairs, Govt. of India for suggesting Negotiation Strategy in the

Accountancy Sector has already suggested for refraining from Commercial Presence mode (i.e., Mode 3) for this sector for the time being. While commitments for other modes may be made subject to certain additional commitments after analysing each and every case.

These negotiations are building on the existing General Agreement on Trade in Services (GATS). In broad terms, the services negotiations can be seen as consisting of two parts: the rule-making exercise and the negotiations on further liberalization.

- On the rule-making side, the subsidiary bodies are continuing the mandates provided for in the GATS built-in agenda to negotiate disciplines on:
 - Emergency Safeguard Measures;
 - Subsidies;
 - Government Procurement; and
 - Domestic Regulations (to ensure measures relating to qualification requirements, technical standards and licensing requirements do not constitute unnecessary barriers to trade).
- For the negotiation of further liberalization, the starting-point is seen to be the elaboration of the negotiating guidelines. The guidelines are expected to provide necessary direction for the negotiations on:
 - The objectives;
 - The sectoral coverage of the negotiations (non-exclusion of any sector);
 - The possible modalities that may be used in the negotiations (bilateral, plurilateral or multilateral);
 - The flexibility for developing countries (opening fewer sectors and liberalizing fewer types of transactions);
 - The treatment of least-developed countries; and,
 - The treatment of autonomous liberalization undertaken since the conclusion of the Uruguay Round.

CHALLENGES/CONCERNS BEFORE THE ACCOUNTANCY SECTOR IN INDIA

The macro economic implications of WTO on Indian economy and the challenges and opportunities emerging therein for the Indian accounting profession needs to be examined. New economic order aims at progressive globalisation of trade in services. The GATS also recognises this and states that the trade in services may be required to be monitored with reference to eco-

nomic needs, management needs and local needs as applicable to the particular country. However, the countries should not impose unnecessary barriers in the movement of services and of service providers.

Classification / Definition of the Accountancy Sector :

Accounting, auditing and book-keeping services are part of subsection "A" of "1 Business Services" of the Service Sectoral Classification List (MTN.GNS/W/120). The corresponding classification number under the United Nations' "Provisional Central Product Classification" (CPC) is 862. There are no further sub-categories provided for under W/120. Under the Provisional CPC, however, the category of "Accounting, auditing and bookkeeping services" (CPC 862) is further sub-divided, as follows:

Major Challenges

- ◆ Definition of domain of accountancy services.
- ◆ Provision of level playing field for the Indian accountancy service sector characterised by largely small and medium sized firms vis-à-vis large professional firms.
- ◆ Presence of Dominant Global Firms creating oligopoly without regulatory control.
- ◆ Suitable framework for regulation or addressal of concerns of provision of accountancy services by professionals other than CAs.
- ◆ Impact of legal framework outside the country such as emanating out of Sarbanes Oxley Act of 2002 in the US.
- ◆ Equivalence of Qualification.
- ◆ Limitations for advertising, particular form of entity requirement and other non professional barriers such as VISA restrictions etc.

Accounting and Auditing Services (CPC 8621)

- Financial auditing services (CPC 86211)
 - Examination services of the accounting records and other supporting evidence of an organisation for the purpose of expressing an opinion as to whether financial statements of the organisation present fairly its position as at a given date and the results of its operation for the period ended on that date in accordance with generally accepted accounting principles.

- Accounting review services (CPC 86212)
Reviewing services of annual and interim financial statements and other accounting information. The scope of a review is less than that of an audit and therefore the level of assurance provided is lower.
- Compilation of financial statements services (CPC 86213)
Compilation services of financial statements from information provided by the client. No assurance regarding accuracy by the client. No assurance regarding accuracy of the resulting statements are provided.
Preparation services of business tax returns, when provided as a bundle with the preparation of financial statements for a single fee are classified here.
Exclusion: Business tax preparation services, when provided as separate services, are classified in subclass 86302 (Business tax preparation and review services).
- Other accounting services (CPC 86219)
Other accounting services such as attestations, valuation, preparation services of proforma statements, etc.

Book-keeping services, except tax returns (CPC 8622)

- Bookkeeping services, except tax returns (CPC 86220)
Bookkeeping services consisting in classifying and recording business transaction in terms of money or some unit of measurement in the books of account.
Exclusion: Bookkeeping services related to tax returns are classified in subclass 86302 (Business tax preparation and review services).

Some of the specific issues and concerns arising out of the GATS and trade in accountancy services before the country are:-

- ❖ The accountancy service sector in the world is an oligopolistic structure and is showing tendency of further concentration. Such a phenomenon has to be carefully weighed and checked from being replicated in the domestic sector in India. This aspect also needs to be analyzed and examined with regard to its possible relationship and impact on the Indian scenario. Even from the WTO Secretariat's note on accountancy services, it is observed that out of top 100 companies in United States, about 80% audits are done by the top five firms. Further, for example, in Azerbaijan, nearly 95% of audits are done by a single firm. The situation is more or less reported to be on the similar pattern in other Countries where commercial presence mode is allowed.
- ❖ Accounting profession is structured in India as partnership with few partners or proprietorship concerns. The very large professional firms known as big five employ thousands of professionals world-wide and share a major portion of category of accounting and other services. Indian Accounting Sector mainly comprises of small and medium size firms. Number of chartered accountancy firms with five or more partners is about 1300 out of more than 11,000 firms. The remaining are practising as proprietary firms or in their individual names. This has implication, not only from the point of view of the GATS negotiations, but also for existing policy prescriptions for taking advantage of GATS Framework. The existing structure in India, as aforesaid, is consistent with the structure and nature of the Indian economy which is dominated by small and medium size enterprises.
- ❖ With the changing structure of the Indian economy, the structure of profession may also change but only over a period of time with policy and regulatory prescription. Till such time, small and medium firms would continue to predominate. They would combine themselves structurally and operationally to become multifunctional but still may not have strength and resources to supply services under commercial presence. The small and medium sized firms need to be protected and promoted before they are able to face competition from accounting profession abroad which is oligopolistic in nature. A framework of negotiations which sustain and promote existing oligopolistic structure world-wide in India would be contrary to the underlying principle of GATS.
- ❖ While advertising, in India, is currently being prohibited for the chartered accountants under the Chartered Accountants Act, 1949 and Regulations framed thereunder but we need to consider this issue of advertising, in detail, while allowing provision of services by the foreign service providers. As a country we need to consider permitting Indian professionals on same lines or obtain an international bar otherwise Indian firms will be at a disadvantage. Disguised advertisement by supporting events, research circulation etc. is also to be considered for permission/denial internationally.

- ❖ The Accountants are frequently constrained as to business structures through which they provide services. In India, currently only the only partnerships or sole proprietorship form of entities are being permitted but at the international level, even corporate form of entity is also allowed. At the time of permitting entry of foreign service providers, we need to consider whether limitations on the type of a particular legal entity that may be permitted as per local requirements, e.g. only partnerships or sole proprietorships may be required, or the corporate form of entity may also be permitted for the foreign service providers.
- ❖ Accountancy Services under its various constituents are provided by heterogeneous group of service providers. Financial auditing services are provided by the Chartered Accountants and Cost auditing services by the Cost Accountants. Accountancy Services are mainly provided by the Chartered Accountants. These, as well as, Book-keeping services are also being provided by members of other professional bodies, graduates from the other institutions/universities as well as non commerce graduates. In generic sense service providers can be classified into professional, skilled and semi-skilled. No suitable framework exists for their regulation or addressal of their concerns.
- ❖ Number of foreign companies are getting their book-keeping and accountancy services done from India. Some of the establishments which are providing these services are foreign based through alternative Government of India clearances. In the process, they have leveraged to their advantage on lower operation cost, and, retaining/repatriating a significant portion of margins.
- ❖ The range of services offered by accountants is wide and growing. There has been a view that a distinction should be made, in certain cases, between accountancy services and services provided by accountancy firms.
- ❖ It is suggested that if a service is provided by an accountancy firm, it, by definition, be an accountancy service. As a result, the domain of accountancy services has been defined differently in different countries, and the boundaries with other regulated professions (e.g. the legal profession with respect to taxation) or non-regulated services providers (e.g. management consultants), are, therefore not defined consistently from country to country.
- ❖ The globalisation of trade and economy has opened new vistas of opportunities for Indian business entities as well and today we witness many Indian Companies listed on stock exchanges outside the country as well, which augurs well for business community in India. One has to view these positions in the context of the developments taking place in the legal framework outside the country and one such major development has been the Sarbanes Oxley Act of 2002 as promulgated in US after the fall of big corporates. One of the provisions of this Act provides for foreign public accounting firms that prepares an audit report with respect to the listed companies in US shall also be subject to same set of standards as prescribed in respect of US firms. In case some components of the company has been audited by the foreign firm, the registered public accounting firms, the working papers of such foreign firms shall also be made available to the firm and the Board.
In the Indian context, the Institute, under the new auditing standards currently under exposure for public comments, has provided that in such cases the Indian auditor shall assess the professional competence of the other auditors, and may review his working papers.
- ❖ Barriers external to GATS, commonly known as non-professional barriers, such as VISA restriction, further reduce the effectiveness of such commitments and need to be addressed. Analysis of limitations imposed by member countries, identified on the basis of the survey carried out by WTO in November, 1998 indicate that:
 - In most of the developing countries surveyed, incorporation as a corporate body is prohibited and partnership is the only collective form of practice allowed.
 - In more than 50% of the countries, for a firm to be considered as the member of the accountancy profession, it is generally required that at least the majority of the capital and the voting rights be in the hands of locally qualified accountants, and the majority of the directors or members of the management body be locally qualified accountants.
 - 70% of the questionnaire responses indicated that firms were required to be controlled directly by locally licensed accountancy professionals and, in most cases, the required level of control was well in excess of a simple majority.
 - In about 30% of the cases, residency and citizenship requirements are also imposed.
- ❖ General impediments to trade in accountancy services include:
 - Restrictions on international payments.
 - Restrictions on the mobility of personnel.
 - Impediments to information and technology

transfer.

- 'Buy National' public procurement practices.
- Differential taxation treatment
- Monopolies creating artificial trade barriers.
- Subsidies for export of services.

❖ Specific impediments for this sector are:

- Nationality requirements.
- Residence requirements.
- Professional certification/entry requirements.
- Restrictions on solicitation etc.
- Compartmentalisation or limitations on services to be provided.
- Quantitative and value restrictions on the provision of services.
- Restrictions on business structures.
- Differences in accounting, auditing and other standards.
- Restrictions on international relations/use of firm names.

BASIC ISSUES, CONCERNS AND GUIDELINES WITH SPECIFIC RELEVANCE TO INDIAN ACCOUNTANCY SECTOR

The negotiations should possibly be undertaken on following lines; so as to address the concerns of accountancy sector in India:

- Non-compliance of Article III, GATS on transparency seems to be by design arising out of reluctance in opening up of the Service Sector. This has put developed countries into an advantageous position as the other countries like India would not be able to make "Request List" based on a well-informed scenario. Developed countries, on the other hand, have gathered relevant information commissioning studies entailing high costs in regard to countries of their preference. This uniquely puts them in advantageous situation while making "Request List", and, later on during negotiation. Ministry of Commerce, Government of India should support such initiatives in this regard financially as well as otherwise to deserving pioneer institution on best endeavour basis.
- Despite absence of adequate database and its implications on making recommendations on the Request List, GATS negotiations on Accountancy Services have progressed far ahead over a period of last seven years, and, therefore taking a stand that unless the GATS addresses information deficiencies, negotiations should not proceed further, may not appear to be pragmatic. This may not either be responded well

by the developed countries whose strategic interests might lie in allowing the existing scenario to continue. While Government of India should lodge and protest non action with regard to Article III GATS, the strategy should be to proceed further towards negotiations, while filing the entry of reservations on major issues related to basic agreement and its implementation. These could be appropriately pressed during the process of negotiation and, side by side, measures to gather, examine and analyze data on a continuing basis could be intensified. In essence, it could be suggested for best effort approach with Request List suitably accommodating the information gap and affording greater leverage and flexibility for correction factor later on, and, alternate fall back position.

Major Concerns & Guidelines

- ◆ **Non Compliance of Article III on GATS needs to be protested.**
- ◆ **Entry of Reservations on major issues needs to be filed.**
- ◆ **Commercial presence mode should be discouraged.**
- ◆ **Non professional barriers need to be addressed.**
- ◆ **Citizenship requirement, residency requirement & market access barriers in case of developed countries should be sought to be removed.**
- ◆ **Orientation of Economic Need Test to focus on quantitative terms.**
- ◆ **Good quality professionals need to be developed.**
- ◆ **Rules of fair trade through protective mechanism to be adhered in letter and spirit.**

- The commercial presence mode should be discouraged as the Indian profession would be handicapped on account of huge infrastructural and capital cost requirement abroad. If unrestricted commercial presence is allowed to the foreign service suppliers, as a consequence of Request made; based on their organisation and financial strength, they may endanger the survival of domestic service provider. The movement of natural persons and cross-border mode would be the most preferred option considering the comparative advantages and potential for export available.
- As regards the limitation, the Request List made to developed countries should seek to remove follow-

ing, wherever they exist :

- Citizenship criteria.
- Residency requirement after the grant of license.
- Market access barrier in case of developed countries.
- The Government should also squarely address the non-professional barriers, such as, restrictions on VISA and other issues, like, linking the Request List with the expeditious consideration of recognition of Indian qualification by other members through process of MRA. Multiplicity of authorities, e.g. in U.S.A., has proved to be a major barrier for Indian accountancy sector and therefore should be protested for a single point contact and uniform systems and procedures. The single economic custom frontier concept should be consistently followed. If this proposition is not comprehensively acceptable, then India should also evolve a strategy to exploit this proposition to sparingly forestall, defer or circumvent issues that are currently inconvenient to Indian interest. Similarly, socio-security contribution, as imposed in developed countries, like U.S.A.; during the temporary movement of natural persons, should be scrapped.
- During the negotiation when "Give and Take" positions are confronted and actual formulations and country positions are crystallised, entry of reservation could prove beneficial in the context of hard bargain with practical ground realities fully taken into consideration. The following issues need to be taken into account simultaneously, while firming up on the Request List to be made :
 - ◆ Protection Mechanism for Trade in Services on the lines of Trade in Goods- Countervailing Duty Mechanism. The principles of protective mechanism against unfair practices have universal acceptance as far as trade in goods are concerned. Extension of appropriate rules would ensure that trade in services also mature quickly and get instant and wider acceptability.
 - ◆ Economic Need Test.
 - ◆ MFN treatment is sparingly applied and is curtailed through the mechanism of Regional Blocks/Bilateral Arrangements which does not bring about the equal and consistent applicability of MFN Principle.
 - ◆ Special and Differential Treatment.
 - ◆ The multilateral agreements should describe Economic entity clearly and presence of Federal Structure should be given a similar treatment.
 - ◆ Presence of Dominant Global Firms creating oligopoly without regulatory control.
 - ◆ The repatriation of income by such foreign entities should be regulated, and, if necessary an appropriate levy be imposed on repatriation of the income generated either directly/indirectly through their operations in India. As an alternative, they could be made to invest aforesaid earnings in India, in one form or other. This is particularly necessary because they are leveraging on low cost and repatriating substantial portion of scale of fees/service charges.
- ◆ Professional qualification, training and other requirements including professional standards have been used as a barrier for movement of accounting services from India.
- ◆ The cases of multinational companies investing through FDI route insisting for foreign accounting firms or their disguised associates in India. The situation is also noticeable, not only in cases of FDI but also in technological collaboration with other companies.
- ◆ The free trade should not be a misnomer and result in trade distortion. The abuse of Dominance will not achieve the desired results of achieving progressively higher levels of liberalisation of trade with the overall objective of raising standards of living, ensuring full employment and proportionate growth in the real income and effective demand.
- ◆ The market access to the foreign Accounting professionals should be subjected to a special dispensation till India attains comparative level of economic development in the transition period and continue for a period of 8 years after India attains 3.5% of shares in world market for accountancy services for two consecutive years. The extent of market access allowed to foreign service provider in comparative terms should be defined in terms of value and volume rather than in percentage terms which has always been found to be detrimental to the interest of the country.
- ◆ Need for development of a harmonious coding system on lines of Trade in Goods.
- ◆ CPC classification of accountancy service sector, does not cover the services provided by accounting firms. This may not only lead to circumvention of the framework with which sector may be opened up but also make regulation of foreign service providers difficult to the detriment of the service provider.
- Despite establishing all these protective mechanisms, by placing special provisions for small & medium sized practitioners and putting the entry of reservations etc., one can not ignore that we really need to develop good quality professionals to be able to survive in the long run at the international level. In this regard networking of small firms can help tremendously in the development of a strong network of

firms which can compete at the international level.

- Rules of fair trade through a protective mechanism, *inter alia*, providing that international trade should not be concluded at below the normal value of the service in exporting country by a service provider, in the target destination, has to be adhered to in letter and spirit, by the services sector and Accountancy sector in particular. Similarly subsidisation of services contingent upon export of these services needs to be prohibited/regulated.
- The economic need test as mentioned in the GATS, is neither defined nor its criteria is specified. Developed countries are neither transparent in disclosing criteria, nor, maintaining consistency from year to year. It is misused by the developed nations for not granting market access in their own country by creating a number of barriers i.e. proposition of no economic need. On the other hand, it is abused for gaining access into the developing nations on grounds of economic requirement. Orientation of economic need test should primarily focus on quantitative terms rather than on qualitative orientation. A comprehensive renegotiation on the basis of application and impact study is required to ensure that the provision does not create a trade distortion and a perpetual bias against the developing and the least developed countries.
- The possibility of imposition of limitation/ quota on the number of suppliers and a limitation on the total value of service transaction should be initiated and pursued vigorously until the level playing field is achieved.
- The approval of the concerned Institution regulating the profession should be mandatory, before a firm or corporate entity is permitted to perform the declared/other services falling under the domain of the regulated profession under the law of the land.
- The IFAC has laid down minimum acceptable requirement for accountancy qualification, training and professional standards. Any member country, whose qualification meets these requirements, should be in principal taken as an acceptable qualification, across all member countries.

POSSIBLE APPROACH DURING NEGOTIATIONS UNDER GATS

The approach for the negotiations should be in line with the positive list approach of the GATS and that negotiations should be driven by identification of individual interest by each member country. It would also take into account the fact that most developing countries have a deficit in trade in services and have not yet devel-

oped a competitive services industry. The negotiations would need to aim at the effective achievement of the objectives of Article IV of GATS and to reduce the current imbalance in commitments by focusing on the liberalisation of market access in sectors and modes of supply of export interest to developing countries.

The developing countries need to identify their national interests, which would require a review of existing policy/regulatory frameworks and establishment of an effective domestic consultative mechanism to help define national objectives, which may need to be reflected in a policy/regulatory reform exercise. The identified national interests would be the basis of negotiating strategy and requests of developing countries.

The Entry of Reservations, as detailed in earlier paras, will enable to extract maximum leverage and avail opportunities in the best interest of the country. While framing the Request List the strategy should be to file the entry of reservations on major issues related to basic agreement and its implementation, which would prove to be highly beneficial for the country.

Mechanisms need to be developed to ensure the effectiveness of Article IV as well as obtaining an authoritative interpretation of the provisions relating to developing countries including the Annex on Movement of Natural Persons. A monitoring and notification mechanism would need to be established to ensure implementation of the Article IV obligation. Article IV provides that developed country Members shall undertake specific commitments to strengthen the developing countries' domestic services capacity and its efficiency and competitiveness, *inter alia*, through greater access to technology and improved access to distribution channels and information networks, which would be particularly important to enable developing countries to take advantage of the opportunities provided by electronic commerce.

Given that trade conditions for mode 4 are far more restrictive than for any other mode of supply a substantially higher level liberalization would need to be achieved in this mode of supply. There should be a revision of the Annex on Movement of Natural Persons to ensure effective market access through mode 4. The Annex particularly its paragraphs 2 and 4 represents a major carve out from GATS Article IV obligations and therefore needs to be revisited and modified to ensure that movement of one factor of production, labour, is treated in the same manner as another factor, capital. Matters relating to sovereignty as well as the welfare-creating effects of liberalization of all factors of production should be duly taken into account.

GATS Article XIX.3 provides that the negotiating guidelines should establish modalities for the treatment of liberalization undertaken autonomously by Members

since previous negotiations. Autonomous liberalization is unilateral liberalization that countries have undertaken independent of rounds of negotiations. Recognition of autonomous liberalization in terms of receiving credit would provide countries with a strong incentive to unilaterally initiate liberalization and ensure that policy reforms are not postponed in anticipation of reciprocal trade concessions. Credit would be given in terms of reciprocal benefits and concessions. Developing countries have undertaken important liberalization since the Uruguay Round. It should be noted that developing countries did not receive reciprocal benefits for the commitments they made in financial and telecommunications services negotiations. Moreover, after the conclusion of the telecommunications and financial services negotiations, a few developing countries have submitted schedules of specific commitments on these sectors for which they could request credit.

The best way to deal with protectionist domestic regulation is perhaps through pursuing specific commitments on national treatment and dispute settlement, rather than development of detailed rules and disciplines on domestic regulation which would reduce the flexibility of developing countries.

Rationale for Emergency Safeguard Measures

The rules of 'fair trade' are equally desirable both in trade in goods and in trade in services and should be structured on similar lines. The underlying principle is that approach, redressal mechanism, applicability, domestic concerns, liberalisation effort, protective mechanism etc. should be in harmony with the principles and rules of fair trade as are applicable in respect to trade in goods.

The fact that a safeguard mechanism exists for trade in goods, and that it is generally considered useful, provides a starting point for considering the question of an emergency safeguard mechanism for services trade. Accordingly, an emergency safeguard mechanism could conceivably be considered necessary to provide temporary protection from unforeseen developments arising from service trade liberalisation commitments, and to strengthen domestic support in favour of pursuing further liberalisation commitments.

The question of the possible development of Emergency Safeguard Measures (ESM) to apply to trade in services is also part of the negotiating agenda. The GATS does not currently provide for the use of an emergency safeguard mechanism. The mandate to pursue negotiations on this is provided for in Article X of the GATS.

The Department of Company Affairs, Govt. of India has constituted a standing Working Group under my con-

venorship for Suggesting Negotiation Strategy in the Accountancy Sector for consideration by the Government of India in Formulating Positions and Strategies in Ongoing Negotiations on Trade in Services. This Working Group has already submitted its two Reports to the Government for its consideration. The 2nd Report of the Working Group has endeavoured to deal with the issues of Emergency Safeguard Measures and MFN Exemptions.

Contrary to stand of developed nations including US & EU that there is no need for Safeguard Measures in so far as services are concerned, the Group has suggested need and framework for safeguard measures as a comprehensive part of regime of "fair trade" in service sector also on the lines of that prevailing in trade in goods which have generally proved useful.

In considering the creation of any ESM, careful examination is needed to be paid to the policy implications of instituting a mechanism that would restrict, at least temporarily, access for exporters. In addition to ensuring that substantive standards provide clear guidance and predictability, the eventual creation of an ESM would need to rest on well-defined procedural requirements that minimise administrative discretion and ensure transparency, fairness and due process.

The Special and Differential Treatment provisions also need to be provided for in an ESM for the developing and least developed countries (LDCs). Such provisions would be required to ensure that such developing and LDCs are not targeted particularly in respect of provision of services by supply of natural persons under mode 4. Indian size of domestic service providers is under utilised, partial employed, large enough in size, quality to cater to Indian economic and local needs. Further, the domestic service providers are fully skilled and are of world standard in the education, training, quality and application of International standards. The possible forms which such Special and Differential Treatment provisions in an ESM may take include :

- ❖ The special and differential treatment should be applied with respect to treatment of developed nations and developing and least developed nations on the similar rationale of consistency and equity as provided in all other WTO Agreements.
- ❖ Safeguard measures by the developed nations against the developing and LDCs should not be imposed unless that developing nation or LDC has achieved the sufficient level of competitiveness by way of attaining say, 3.5% of the market share in world market in that service sector. 3.5% share of the market is to be achieved for two consecutive years. The analogy is drawn from the Article 17 of Agreement on Subsidies for trade in goods. The safe-

guard measures should be imposed only through the process of consultation in such cases. It should not be imposed either by investigation or by notification.

- ❖ There should be an additional time frame to the developing and LDC's so that safeguard measures can not be imposed for 8 years from the date of the Agreement (Final Agreement on GATS eventually) on the developing and LDC's by the developed nations.
- ❖ The constructive remedy should also be offered before the imposition of safeguard measures as has been provided by Article 15 of Anti-dumping Agreement.
- ❖ Another possible form for the S & D treatment could be the threshold of de-minimis for trigger of which in case of developed nations could be 5% of domestic market size of their country when developing country is exporter and in case of developing and LDC's it should be 1% of the market size when developed country is exporter. This would mean that unless the export of service in question exceeds 5% threshold of market size of developed nations, no ESM can be initiated at first instance against a developing country. This against the developed nations could be initiated once export of services by a developed nation exceeds the 1% of the domestic market size of developing countries initiating the measures for safeguard.
- ❖ Developing countries should be entitled to apply a safeguard measure for a longer initial period. 4 years instead of 1 year for developed nations and extendable by another term as above after reviews.
- ❖ There could be the extensions of duration of an ESM for the developing and LDCs and a longer period to conduct the investigation necessary to establish proof as to the injury or threat of injury to domestic service suppliers.

The Most-Favoured-Nation principle also constitutes one of the most fundamental requirements of the multilateral trading system. Because of its importance, this principle was included in Article II of the GATS and it is understood as a general obligation that applies to any measure affecting trade in services, regardless of whether the Member has acquired specific commitments on market access and national treatment.

At the beginning of the Uruguay Round, developing countries had to oppose the idea of introducing "conditional MFN" into the Agreement. MFN exemptions have been sought by about 70 countries for some 380 measures. The coverage, content and time frame for such measures are not clearly defined. The next round of negotiations should aim at removal of these exemptions and developing criteria for maintenance of the remaining exemptions for a defined period e.g. an additional 5 years.

While discussing MFN one can not ignore the regional

trading agreements which have belied the very concept of MFN. Most countries in the world, on all continents, are members of one or the other regional trade agreements — customs unions, free trade areas or other preferential arrangements. The fact is that most of the benefits of liberalisation have been confined to RTAs to the exclusion of the rest of the WTO membership, particularly RTA dominated by developed nations i.e., EU, US- Canada etc. The network of RTAs throughout the world is now highly complex and many countries are members of several agreements, sometimes with differing rules.

Over 200 Regional Trade Agreements (RTAs) have been notified to the GATT or WTO over time; currently over 150 agreements are in force, most of which have been concluded in the past 10 years. Since 1995, over 100 agreements covering trade in goods or services, or both, have been notified to the WTO. Unfortunately, the RTAs have been existing without any time period and WTO should take the initiative of directing all such RTAs participants to curtail the existing period.

Unless MFN is comprehensive as a rule without exception the multi-lateral trade regime signified by WTO will always remain futile. Thus, a strong move towards MFN is warranted.

CONCLUSION

While the imperatives of the new world order would necessitate opening up of the trade in services, the GATS has provided for an in-built mechanism to safeguard the interest of the domestic service providers within the given parameters. The synopsis of the GATS agreement and the negotiation strategy as attempted to in the earlier part of the paper suggest possible road ahead. While stating so, the idea is not to adopt a negative approach to the liberalisation of trade in services but to emphasize the paramount need for having intense analysis of the domestic service sector assessing the implications of the opening up of the sector under the GATS regime on the domestic service providers and based on that to take a considered view as to whether the accountancy sector should be opened at all and if so, under what mode of supply and with what limitations. This at the same time may warrant for pro-active role in strengthening the domestic service sector so that over a period of time they are able to withstand not only the emerging scenario arising out of entry of foreign service providers but also carefully exploit the opportunities which the new economic order might offer to domestic service providers worldwide. ■