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## *From Secretary General's Desk*

Our membership being spread across many countries, the TCDPAP website is a desired platform for interaction. The Secretariat has recently revamped and updated the website, making it more interactive. Please register yourself in the User Login section to get full access to the website, [www.tcdpap.org](http://www.tcdpap.org).

You can use the *Message Board* to post a message and seek feedback from registered users. Or you can cast your vote at the *Opinion Poll*. The TCDPAP website is also hyperlinked to the respective websites of the member countries. In fact this issue of *TCDPAP Focus* is being hosted in the website.

We wish to develop an on-line database of consultants, called 'Experts' Register' in the TCDPAP website. We will appreciate if the member associations could send details to the Secretariat on Engineering Consultancy Organizations and Individual Consultants in each of your countries for enlistment in the Experts' Register.

You must also be receiving *Consultancy Business Opportunities* by email. It has now become weekly and the scope greatly enhanced. Please give your feedback on the relevance of the opportunities published therein and how we can make it as your preferred choice of media for projects and consultancy related information.

On the training front, we are organizing a 2-day Seminar on 'Development of Consulting Services' jointly with the Asian Development Bank on April 24 & 25 at New Delhi. Mailers have already been sent to all TCDPAP member country contacts. We look forward to your participation.

We will also appreciate hearing from you in what way the Secretariat can participate and assist in the training, education and skills upgradation efforts of our member associations.

# TCDPAP INTERNATIONAL WORKSHOP ON “SUSTAINABLE DEVELOPMENT AND POVERTY ALLEVIATION : CHALLENGES & OPPORTUNITIES FOR CONSULTANTS” AT HANOI, VIETNAM FROM 28-30<sup>TH</sup> NOVEMBER, 2002

## *A Report*

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The Annual workshop of TCDPAP was organized by Vietnam Engineering Consultant Association (VECAS) in collaboration with United Nations Economic & Social Commission for Asia and the Pacific (UN-ESCAP) and Asian and Pacific Centre for Transfer of Technology (APCTT).

### **Topics**

The following topics were covered in the workshop:

- Objectives, policies and measures on poverty reduction and hunger alleviation, some experiences;
- Relationship between poverty reduction, hunger alleviation and sustainable development;
- Quality/Environment management and sustainable habitation;
- Enhancing the cooperation between technical consultants in the region and other developed/developing countries;
- The role of technical consultants in the programmes of poverty reduction, hunger alleviation, and gap reduction between the rich and poor;

### **Salient Points**

The workshop was organized in seven sessions. In the first session country papers were presented by the representatives of the countries in the Asian Region namely, India, China, Indonesia, Lao PDR, Vietnam, etc. The country papers addressed the theme of the workshop, i.e., poverty alleviation and sustainable development with reference to their respective countries. Some speakers went into the reasons for poverty and defined poverty cycle by integrating the factors like lack of capital, low productivity, low income, low savings and low investment, etc. The papers spelled out the programmes that have been taken up or proposed to alleviate the poverty. The role of consultants in poverty alleviation programmes has been clearly brought out. According to a country paper the Engineering Consulting Firms (ECFs) did a good job and provided excellent consulting services in major construction projects, such as, infrastructure, environment protection, etc. The consulting firms also became market oriented. Provisional regulations have been formulated on qualification for practice of registered consulting engineers. The firms underwent training to familiarize and grasp the rules of game in the international market competition. Exchange of

consultants between two countries was also promoted. Several delegations of consultants visited project sites in France, Germany, etc. to study foreign expertise in implementation of projects.

One of the countries (Lao PDR) has identified the main sectors, i.e., agricultural and forestry, rural infrastructure and road construction, education and health that need to be addressed to reduce the poverty level in the country. They have taken up a programme on "National Poverty Eradication Programme" and identified the role of consultants in this programme. Thus the country papers have adequately addressed the relationship between poverty alleviation and sustainable development and clearly brought out the role of consultants in achieving these objectives.

In the remaining sessions specific papers were presented from organizations and individuals such as report by FIDIC (The International Federation of Consulting Engineers), peoples participation in sustainable development, environment protection and sustainable development, eco System with sustainable development and poverty alleviation and significance of coal in sustainable development, etc. In addition there were sectorial reports on construction, transport and agriculture, etc.

According to FIDIC, the ECFs are largely responsible for designing and planning the construction and management of the infrastructure required to meet the world's ever-increasing demand for food, water, shelter, sanitation, energy, health services and economic security. More significantly the ECFs have to address the problems of how to improve people's lives while conserving natural resources in a world that is growing in

population rapidly. Clients are seeking a greater range of skills and services to address emerging sustainability issues, which encourage ECFs to provide multi-disciplinary economy.

Integrating sustainable development as a fundamental component of the services, ECFs can promote their business image and strengthen their value to stakeholders, public investors, suppliers, and staff. ECFs are able to assist legislators, politicians, the public and officials in interpreting the implications of policies and legislations affecting the built and natural environment. Without this, public debate would be diverted to ideology and problems.

The Government of Vietnam has been undertaking concrete actions and measures for rapid, effective and sustainable growth and economic development of the country to eradicate hunger and alleviate poverty. In achieving these objectives several sectors have been identified which create both opportunities and challenges for consultancy services. They include agriculture, rural development, industry, education, health care, etc.

Similarly the Department for International Development (DFID) has stressed upon infrastructure and technology as the key drivers of development. Consequently DFID has been active in encouraging and supporting private sector investments in infrastructure, but they feel that provision of hardware is not enough. The use to which infrastructure is put is the key to poverty alleviation and sustainable development. The role of engineering consultants is required for (a) ensuring that appropriate standards and technologies are applied, (b) informing users, policy

makers and financiers of the implications of the choice and (c) recognizing that the future of consultants relies on their reputation.

The problems of resource degradation and environmental pollution originate from socio-economic development generated by human beings. Therefore, to achieve a sustainable development target, it is required to build proportionally and harmoniously the relationship between the socio-economic development and the environmental protection and also integrate the environmental protection concerns with the strategy, projection and planning of the socio-

economic development.

One paper suggested to build eco-villages for hunger eradication and poverty mitigation by the application of science & technology. It further said that public and consultants have special roles in the development of eco-villages.

Vietnam has identified the efforts required from ECFs for achieving sustainable development strategy as planning for construction, construction of infrastructure projects and construction of dwelling house models, etc.



Annual TCDPAP International Workshop in Hanoi, Vietnam

## THIRD MEETING OF GENERAL COUNCIL AND EXECUTIVE COMMITTEE OF TCDPAP IN HANOI, VIETNAM FROM 28-30<sup>TH</sup> NOVEMBER, 2002

### Salient Points

- Mr. She Jiaming, President TCDPAP and Chairman, CNAEC welcomed the members and the invitees for the Third Meeting of the Executive Committee of TCDPAP. Mr. Jiaming thanked Vietnam Engineering Consultants Association (VECAS) for the excellent arrangements during the conference. President, TCDPAP appreciated the efforts put on by TCDPAP Secretariat during the last one year and the help provided to VECAS for making the event possible. President, TCDPAP also applauded the Secretariat for carrying out various activities of the Biennial plan. President praised the new Secretary General for his new ideas about TCDPAP. The agenda circulated earlier was then adopted by the members for discussion.
- Mr. Somenath Ghosh, Secretary General, TCDPAP gave a report on the activities undertaken by the Secretariat since the last Executive Committee Meeting held in Three Gorges, China. Mr. Ghosh emphasized the need for greater networking and changed role of TCDPAP in the changing environment.
- The Secretary General articulated the necessity of financial resources for the programme and observed that funding is an important issue and should be discussed in detail. It is thus important to undertake programmes that can generate funds for TCDPAP.
- Dr. Uddesh Kohli, Chairman, CDC emphasized that at present funding for TCDPAP Secretariat and its activities is being provided by Govt. of India and felt that ESCAP/APCTT should facilitate with ADB/World Bank and the respective governments of the region to get funds for TCDPAP.
- Mr. Fedorov, ESCAP congratulated TCDPAP Secretariat for the activities carried out during the last one year and support provided to VECAS for organizing the international conference. Mr. Fedorov felt that TCDPAP activities have gained momentum over the past few years and there is a need to set up of permanent Secretariat for the same. Mr. Fedorov promised to extend all possible support from ESCAP for setting up of the Secretariat of TCDPAP. He arranged a meeting of the representative of TCDPAP Secretariat with the Deputy Executive Secretary of ESCAP to discuss further modalities in this regard. During the meeting it was also felt that TCDPAP programme has been running successfully for the last 10 years, therefore there is a need to change it to a Permanent Centre for Asia Pacific rather than a Programme.
- Mr. Mahbub Haque, President, Bangladesh Assoc. of Consultg Engrs(BACE) felt that funding is an important issue and respective governments of the member countries should support the activities of TCDPAP. Mr. Haque said that financial support provided towards travel assistance by ESCAP should be provided

directly to TCDPAP and not through National focal point of APCTT/ESCAP. He appreciated the Secretariat for their efforts over the years. Mr. Haque felt that copies of 'TCDPAP FOCUS' newsletter of TCDPAP should be sent to governments of member countries.

- Mr. Mahendra Raj, CMD, Mahendra Raj Consultants, India said that main objective of TCDPAP is regional cooperation. He emphasized the need of using expertise of consultants in the region and greater networking among member firms. He appreciated the training programmes conducted by the Secretariat during the last one year.
- Mr. Nguyen Chat emphasized the need to have more finances for the programmes.
- Mr. Badan Nyachyon from Nepal reiterated that funding is an important issue and there is a need to have tight budgeting for the programme. He said that facilities available with various member associations should be utilized for the programmes of TCDPAP. Mr. Badan offered his services for reorienting TCDPAP website. Similarly he said that Bangladesh can provide services for training. He said that there is a need for greater cooperation and networking among member countries.
- Mr. She Jiaming summing up the discussion said that there is a need to utilize the services for member countries for the activities of TCDPAP and to have more visibility for the programme. He said that linkages of TCDPAP website to other member countries can be done by respective association themselves. He emphasized that all the member countries of TCDPAP should pay membership subscription on time and help the Secretariat

for carrying out the activities effectively. Mr. She Jiaming reiterated ESCAP for facilitating in providing support from respective governments of the region. He specially urged Government of India to support the activities of TCDPAP for some years.

- The following decisions were taken with regard to agenda item during the meeting of the **Third Executive Committee Meeting**

- a) No comments were received with regard to the Biennial plan of activities for the next one year. It was agreed to hold the activities as per the plan of action.
- b) The budget for the programmes was approved. It was felt that new sources of revenue should be found and programmes should be self sustaining. The Secretariat of TCDPAP should utilize the facilities of the member firms. It was agreed that members of TCDPAP should pay subscription. The members felt that views expressed in the meeting should be taken into account for the budget preparation and expenses to be kept at minimum.
- c) It was agreed to hold next meeting of TCDPAP along with Fourth Executive Committee meeting in Bali, Indonesia on the request from their representative from National Association of Indonesian Consultants. India can hold the workshop in the year 2004.

- The following decisions were taken with regard to agenda item during the meeting of the **Third General Council Meeting**

- a) It was agreed to renew the membership of Srilanka, as it was felt that TCDPAP



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should widen its base and include more and more countries of the region.

b) With regard to formulation of sub committee, it was agreed that Secretariat can prepare these sub committees and send it to the member countries. It was felt that more and more countries should be involved in these sub committees.

c) Members agreed to pay Annual subscription as per the laid down criteria but also said that other means of finances should be explored for funding the activities based on the above discussion.

d) It was felt that networking is an important issue and experts available in one country should be utilized by other countries of the region. Members suggested the following to increase collaboration

- ❖ ESCAP to facilitate with ADB/World Bank for co-operation.
- ❖ To strengthen networking for

enhancing collaboration among member associations and respective governments of the region.

- ❖ To liaise with other countries to become members of TCDPAP
  - ❖ To meet various member countries of the region to identify and explore the opportunities, strengths, weaknesses and consultancy practices followed in various member countries.
- e) Member countries felt that Vision and Mission Statements are very important for TCDPAP as it will help in giving new direction to the programme. It was agreed that the Secretariat can form a small working group for formulating Vision & Mission Statement for TCDPAP. The working group can collect views from all the countries and prepare a document on the same. The same can be discussed during the next meeting of Executive Committee in Bali, Indonesia.

## TCDPAP WEBSITE

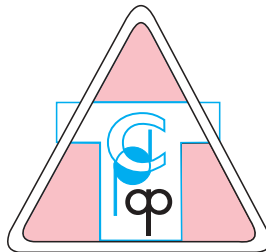
The TCDPAP website [www.tcdpap.org](http://www.tcdpap.org) has been redesigned in its shape, content and linkages to give a new and vibrant look and is more informative. Site contains information about the status of consultancy in member countries including information on prevailing system of registration, accreditation and rating of consultants. Some of the salient features of the website are :

- User Opinion Polls
- Linkages with other TCDPAP member country website, FIDIC etc.
- Message Board

- Photo Gallery
- Registration – Login
- Events – Forthcoming and Past
- What's New
- Publications
- News Section

Some features that would be included in near future :

- Searchable Database of Consultants
- On-line registration for Conferences and Events



### 4<sup>TH</sup> EXECUTIVE COMMITTEE MEETING OF TCDPAP ALONGWITH THE ANNUAL INTERNATIONAL WORKSHOP

**DATE : SEPTEMBER, 2003**

**VENUE : BALI , INDONESIA**



Paper Presented by Mr. H.P. Looi during the Sixth National Consultancy Congress on 15-16 January, 2003 in New Delhi, India

## GATS – CHALLENGES FOR THE PROFESSIONAL SERVICES PROVIDER -

By Mr. H.P. Looi, Honorary Secretary, ACEM, Malaysia

### INTRODUCTION

Since the end of the cold-war, globalisation and the liberalisation of international trade represented by the **General Agreement on Trade and Tariff (GATT)** presided over a period of unprecedented growth in the wealth and well-being of human-kind. The first 50 years of **GATT** saw international trade expanding from about US\$61 billion (in 1950) to US\$6 trillion by the end of the century (in 2000); and much of this expansion in trade occurs from the 1970s; that is at the end of the cold war.<sup>1</sup> A corollary of this is the growing importance of International trade to the economies of nations. As a measure of its importance, international trade constitute about 20% and 30% of the GDP of Japan and the US respectively (two typical developed nation); while Malaysia's (a developing nation) international trade is twice that of her GDP. Globalisation with all its implication therefore is an important agenda in the economic policy and strategic plan of nations.

Since the conclusion of the Uruguay round of trade negotiations, trade in services have been receiving increasing attention from proponents of globalisation and government regulators. The "**General Agreement on Trade in Services**" or **GATS** deals with intangibles (i.e. goods which are not physical but intellectual or skill rendered such as hotel and catering, education, and engineering consultancy) as opposed to trade in goods under GATT. The initial focus of GATS towards the end of the century was on the financial and telecommunication sub-sectors. Consolidation of banks, entry of foreign banking institutions and the liberalisation of national telecom monopolies were issues hotly debated and pronounced on by Government regulators and the private sector in both the national and international press. Despite some reservation and backtracking by Governments especially in light of the 1997 economic crisis, the concluded Doha Ministerial round (November 2001) reaffirmed the commitments of WTO nations to GATS with increasing spot light being focused on the professional services sub sector.

Professional service providers such as the architects and engineers are quintessentially purveyors of expert knowledge. They are also traditionally regulated and licensed by national governments the world-over. Thus the professional engineer and architect who typically live in a cloistered world sheltered from the upheavals of international competition will find this cosy arrangement being increasingly challenged. In Malaysia however some engineers are of the opinion that the "black ships" are already at our shores.



Figure 1 – The "black ships" of Commodore Perry arriving at the shores of Edo Bay forced Japan into opening trade with the West in 1853.

This paper is an introduction to the subject of globalisation and the GATS for the professional engineer and architect with the following sub-topics:

- 1 From Bretton Woods To The World Trade Organisation - A brief historical perspective of GATT, WTO and GATS);
- 2 GATS the Agreement – An introduction to GATS, its basic principles and articles of the Agreement);
- 3 GATS and The Professional Service Sector – Issues pertaining to the professional services sector (architecture and engineering).

<sup>1</sup>Chart 1 - World Export from 1950 to 2001 (Exports of Merchandise and Commercial Service).

# 1 FROM BRETTON WOODS TO THE WORLD TRADE ORGANISATION



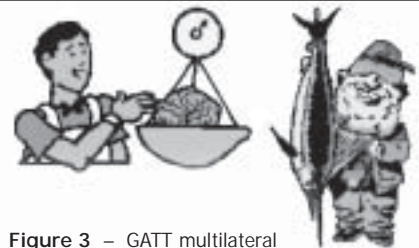
**Figure 2 – Bretton Woods, New Hampshire, USA**  
A meeting place for reconstruction and formation of a post-war economic order and the birthplace of the World Bank and the IMF in 1944.

**Bretton Woods** The seeds of GATT were sowed in July 1944 where 44 countries met at Bretton Woods to chart out a new postwar economic order. Fresh from the devastation of World War II, the over-riding concern was postwar reconstruction and the establishment of a new economic order based on notions of consensual decision making and cooperation in trade and economic relations; or a multilateral framework to overcome the destabilization effects of previous global economic depression and trade crisis which were thought to have contributed to WWII. The 1944 meeting resulted in the establishment of the “Bretton Woods Institutions”; the “**World Bank**” (“**WB**”) and the “**International Monetary Fund**” (“**IMF**”). The original Bretton Woods agreement or framework included plans for an “**International Trade Organisation**” (“**ITO**”) which was ambitious in its scope and aim of global trade liberalisation. Ironically the ITO which was strongly supported by the United States government was to suffer

strong opposition from the US Congress, and in 1950 the American Government announced that it will not further seek ratification from Congress which effectively killed it as a UN charter.

**GATT and the Early Days** Even in the early days it was evident that the ITO charter was to face opposition from many national legislatures. In 1948 at a UN conference on trade and employment in Havana, the ITO charter was officially adopted. Notwithstanding (or despite) the issues of ratification by national governments, 23 countries (out of the then 50 odd participating countries) that had proceeded with multilateral negotiations on customs tariffs earlier in 1946, agreed to some of the trade rules of the ITO charter as a basis for their trade negotiations. This combined package of trade rules and tariff concessions came to be known as the “General Agreement on Trade and Tariffs” and the original 23 countries became founding members of GATT (or the “contracting parties”). GATT as a “provisional” agreement officially came into force in January 1948 and it remained the only multilateral instrument governing international trade from 1948 until the establishment of the World Trade Organisation (WTO) in 1995.

For half a century the legal text of the GATT remained unchanged as per the 1948 agreement. Additions in the form of “plurilateral” agreements (i.e. voluntary membership) with further efforts on reduction of trade tariffs were the primary agenda during the early days. Much of these agreements were achieved through a series of “multilateral” negotiations known as “trade rounds”. The early days of trade rounds concentrated on tariff reductions but by the mid 1960s non tariff issues started to assert themselves into the agenda. The Kennedy round (1964 to 1967) included ‘Anti-Dumping’ measures and in particular the Tokyo round (1973 to 1979), which included agreement on non-tariff barriers, were significant. The Tokyo round involved 102 countries and marked the point where developing countries start to be included in the GATT forum.



**Figure 3 – GATT multilateral instrument governed international trade from 1948 until the establishment of the WTO in 1995.**

**The Uruguay Round And The Creation Of The WTO**

The GATT preside over half a century of growth in world trade and GDP during the 1950s and 1960s (growth for international trade averaged 8% during the period mentioned). The continual reduction of tariffs under GATT ensured that international trade consistently outpaced GDP growth and by the Uruguay rounds, the rush for membership to the GATT illustrates its recognition as an anchor of development and engine of economic growth. However as world trade grows, GATT became a victim of its own success. In the 1970s and 1980s, a series of recession, lower tariffs and higher foreign competition drove governments (especially from the developed countries) to devise other forms of protection for sectors facing increasing foreign competition. Such forms of "neo-protectionism" include seeking bilateral market sharing arrangements with competitors, instituting new forms of Technical Barrier to Trade (TBT), and most damaging of all engaging in an ever increasing subsidies race for the agriculture sector.

Year	Place / Name	Subjects covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960 – 1961	Geneva (Dillon rounds)	Tariffs	26
1964 – 1967	Geneva (Kennedy rounds)	Tariffs and Anti-Dumping Measures	62
1973 – 1979	Geneva (Tokyo rounds)	Tariffs and non-tariff measures "frame-work" agreement.	102
1986 – 1994	Geneva (Uruguay rounds)	Tariffs, non-tariff measures, rules, services (GATS), intellectual property rights (TRIPS), dispute settlement, textiles, agriculture, creation of the WTO.	123

**PANEL 1 – GATT Trade Rounds up to 1995.**  
(From 'Trading into the future' by the WTO, April 1999)

By the 1980s, the GATT was facing problems of relevancy due to a world changed since its inception 40 years ago. The environment for trade policies was deteriorating, world trade was now much more important as a component of GDP and was more complex compared to the 1940s. Trade in services and the expansion of cross-border investment had also become major issues of interest. In other words, GATT was found wanting; loopholes in its multilateral agreement was heavily exploited and even its institutional structure and dispute settlement were giving cause for concern. It was against this background that the Uruguay round was convened by GATT members with the aim to reform, reinforce and extend the multilateral system. The Uruguay rounds that took seven and a half years to complete (twice its original schedule) overcame its difficult and contentious beginning to conclude with the

**PANEL 2 – The Uruguay Rounds, Key Dates**

Sept 86	Punta del Este – Launch
Dec 88	Montreal – Ministerial mid-term review
April 89	Geneva – Mid-term review completed
Dec 90	Brussels – "Closing" ministerial meeting ends in deadlock
Dec 91	Geneva – First draft of Final Act completed
Nov 92	Washington – US and EC achieve "Blair House" accord on agriculture
July 93	Tokyo – "Quad " achieve market access breakthrough at G7 summit
Dec 93	Geneva – Most negotiations end (with some market access talks remaining)
April 94	Marrakesh – Agreements signed
Jan 95	Geneva – Creation of the WTO, agreements came into force.

(From 'Trading into the future' by the WTO, April 1999)

Marrakesh declaration of 1994 and the formation of the **World Trade Organisation (WTO)** in 1995.

The Uruguay round had the distinction of being the largest trade negotiation of any kind in history and signalled a new economic era in the history of human civilisation. Of particular interest is the inclusion of 'built-in' agenda for ongoing negotiations for the GATS for the post-Uruguay era (and before the start of any new trade rounds). Accordingly the newly established WTO instituted Ministerial Conferences where sectoral issues were tackled. Four Ministerial Conferences have been held since; Singapore (Dec-96), Geneva (May-98), Seattle (Dec-99) and Doha (Nov-01) where the telecommunication and financial sub-sectors under the (GATS) services sector received intense attention.

## **2 GATS THE AGREEMENT**

**WTO and The GATT** With the ascension of the WTO, the position of the GATT has sometimes been a matter of confusion. A brief explanation of the basic structure and form of the WTO in this section, should perhaps lead to a better understanding of the GATS.

The old GATT of the 1947 text is dead!! However a new GATT termed GATT 1994 lives as the successor to the old GATT. The WTO in essence is radically different from the old GATT but also incorporates the core principles of the old GATT. The main differences between the old GATT system and the WTO can be listed in the following panel below (Panel 3):

### **PANEL 3 – Main Differences between GATT and the WTO**

#### **GATT 1947 – 1995**

- GATT was ad hoc and 'provisional' (i.e. it was **not** or **meant to be** permanent). The General Agreement during its existence had never been ratified by national parliaments and it contained no provision for the creation of an organisation.
- GATT had "contracting parties" underscoring its status as a purely legal text.
- GATT only dealt with trade in goods.
- Due to the 'provisional' and 'contractual' nature of the GATT, dispute settlement was slow and may not have strong legal standing.

#### **WTO; 1995**

The WTO and its agreement are permanent and has sound legal basis for its existence. Its agreement has been ratified by its Members and the agreement themselves described how the WTO is organised.

The WTO has "Members" underscoring its status as a legally constituted organisation.

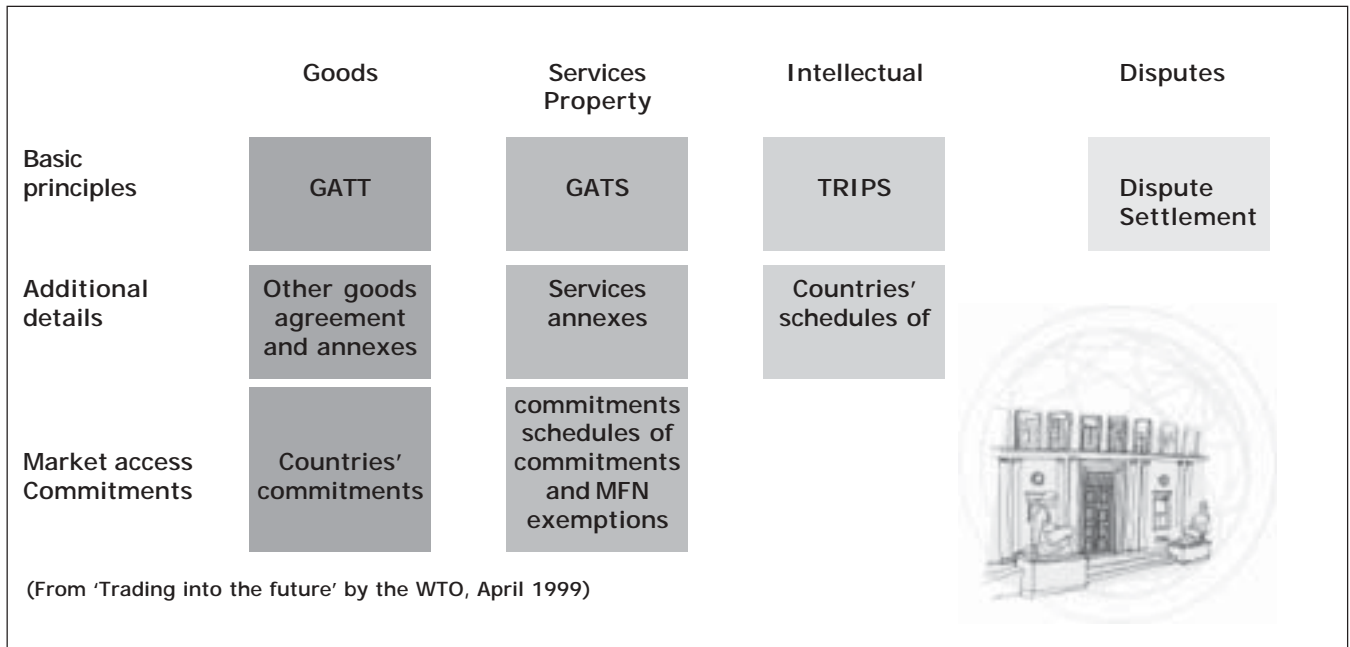
The WTO covers services, intellectual property as well as goods.

The WTO dispute settlement system is faster, more automatic and it's ruling cannot be blocked.

(From 'Trading into the future' by the WTO, April 1999)

**PANEL 4 – IN A NUTSHELL**

The basic structure of the WTO Agreements.



Both GATT and GATS which constitute the largest areas of trade share a common three part outline (Panel 4) as follows:

- **The Basic Principles** set out broad principles governing the agreement and these include “MFN” principle of non-discrimination;
- **Additional Details** are annexes and additional agreements dealing with specific requirements of sectors or issues; and
- **Market Access Commitments** are lengthy lists of commitments made by individual countries allowing specific foreign products or service-providers access to their markets. For GATS these include market access for type of services, nature and/or limitations to access and list of services where the principles of “MFN” do not apply.

**Overview of GATS** The GATS as a legal document consists of 29 articles (32 if three *bis* articles are counted separately) grouped into five parts. Eight annexes dealing with specific issues are also included. Without delving into the details of the legal text, the Agreement can be broadly described in the following objectives and principles (which are also contained in the preamble to the Agreement):

- **Trade in Services** GATS though based generally on the structure and basic principles of GATT is also different in fundamental ways. International trade is normally understood to involve only the movement of goods. However the international trade in services (which had been growing in importance for the past decade – the last part of the series will deal with some statistics and importance of the services trade) include significant differences in methods that cannot be covered under GATT. For example the delivery of services often requires the physical presence of the person or company supplying the services. Thus GATS is more comprehensive in its definition of trade and include cross border transactions and the movement of ‘natural persons’. The first preamble to the Agreement affirms the importance of the international services trade and seeks the expansion of the services trade.

- **Progressive Liberalisation and Promotion of Economic Growth** The second and third preambles set out the principle of progressive liberalisation of the services trade by successive rounds of negotiations. Member countries liberalised in stages in accordance with their domestic agenda or economic policy. The promotion of liberalisation in the services trade is also hoped to promote economic development of Member countries similar to the GATT for the past half century.
- **Liberalisation not Deregulation** The most contentious opinion pertaining to GATS is the perceived need to deregulate the services industry. The fourth preamble recognises the right of Members to *'regulate and introduce national regulations on the services industry to meet national policy objectives and given asymmetries'* (or distortions due to given or existing policies such as government monopolies on the services trade – which is a common phenomenon even in developed countries) *'existing with respect to the degree of development of services regulation in different countries'*.  
  
The GATS therefore makes a distinction between trade barriers that distort competition and restricts access to markets on the one hand, and regulations which are necessary to pursue legitimate policy objectives and ensure orderly functioning of markets. For example imposition of technical standards are legitimate rights whilst restricting the entry or movement of foreign service providers would be considered barriers in trade. Article VIII touches on the sticky topic of national monopolies by requiring that such monopolies (if existing before GATS commitments) should not act inconsistently with a Member's MFN's obligations or its specific commitments or abuse its monopolistic position.
- **Increasing Participation of Developing Countries** The fifth preamble recognises the status and nature of developing countries and affirms Members' desire to facilitate increasing participation of developing countries by measures to strengthen the capacity, efficiency and competitiveness of the domestic services industry in developing countries.
- **Status of Least-Developed Countries** The last preamble *take particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs.*

**PANEL 5 – THE TEXT of the GATS**

- Part I Scope and Definition (Article I)
- Part II General Obligations (Articles II to XV)
- Part III Specific Commitments (Articles XVI to XVIII)
- Part IV Progressive Liberalisation (Articles XIX to XXI)
- Part V Institutional Provisions (Articles XXII to XXVI)
- Part VI Final Provisions (Articles XXVII to XXIX)

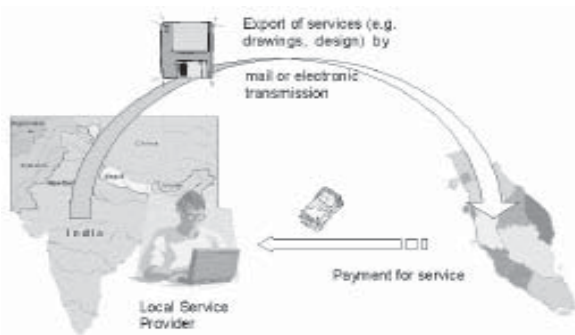
**Annexes on**

- I Article II Exemption
- II Movement of Natural Persons Supplying services under the Agreement
- III Financial Services
- IV Financial Services (2<sup>nd</sup> Annex)
- V Negotiations on Maritime Transport Services
- VI Telecommunications
- VII Negotiations on Basic Telecommunications

(From 'General Agreement on Trade in Services' WTO)  
The full text of GATS can be freely downloaded from ACEM website <http://www.acem.com.my>

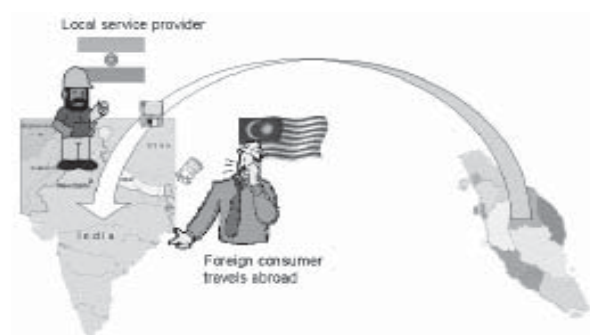
**Part 1 – Scope and Definitions** The coverage of GATS is wide and universal and include measures taken at all levels of the central, regional or local governments and authorities and non-government bodies (NGOs). Services are also defined as any services in any sector **except services supplied in the exercise of government authorities** (such as central banking, social security scheme etc) which are defined as services supplied not on a commercial basis nor in competition with other services provider (Article I.3 (c) ). Article I defines in comprehensive terms (a major divergence from GATT) **four modes of supply**:

- **Mode 1 – Cross Border Supply** is the most common mode and most similar to the trade in goods under GATT. It defines supply from the territory of a Member into the territory of another Member. In this case presence of natural person or commercial presence is not necessarily required. Examples of Mode 1 trade include the provision of design/drafting services, the sales of insurance coverage and back office operation. Due to the absence of natural person or commercial presence, design warranty may controversially not be included in some case (as design warranty to a certain extent requires presence or residency for its effective enforceability). Contrary to the expectation of most architects and engineers, Mode 1 trade may in fact be more prevalent than thought and many professional service providers may already be conducting Mode 1 trade without being aware. The growth of electronic transmission and the Internet is also a facilitator to Mode 1 trade.
- **Mode 2 – Consumption Abroad** is the supply of service ‘in the territory of one Member to the service consumer of another Member’. This typically involves the travel of the consumer to the supplying country, perhaps for tourism or to attend an educational institute, or attendance in a technical conference or seminar.
- **Mode 3 – Commercial Presence** is the supply of service by a representative office, branch office, foreign subsidiary, or foreign joint venture company in the territory of another Member. Mode 3 is the most difficult and contentious issue as barriers to commercial presence include national legislation and corporate licensing requirements. In many developed and developing countries engineering and architectural service providers are perceived to impact on public safety and the public interest. They are therefore regulated and licensed. Such registration or licensing requirements effectively force the provision of consulting services to be in Mode 3 or Mode 4. Mode 1 is therefore only applicable where back office design and/or drafting services are provided. Mode 3 is also considered to have the most potential in future development.
- **Mode 4 – Presence of Natural Person** is the supply of service by the presence of a natural person or in simple terms the admission of nationals in the supply of services. Mode 3 sometimes do not require the presence of natural persons but in most cases Mode 3 will be found together with Mode 4 (the placement of foreign managerial staff or staff with expert knowledge in the foreign subsidiary/ branch office /representative office etc.).



Mode 1 – Cross Border Trade

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Mode 2 – Consumption Abroad

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Figure 4a – The Four Modes (Methods) of Trade in Services.

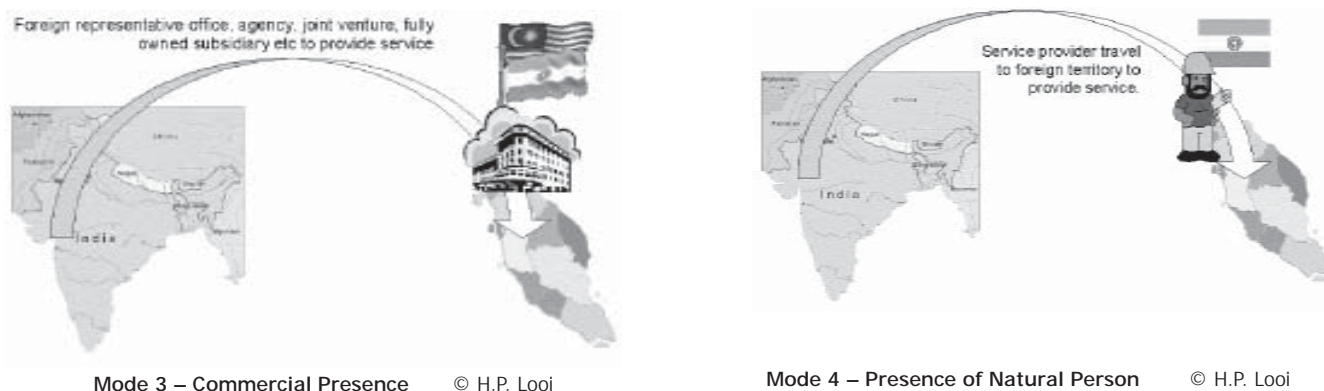


Figure 4 – The Four Modes (Methods) of Trade in Services.

**Part II – General Obligations** covers Articles II to XV which sets out the general obligations under GATS. These basic obligations (or rules) apply to all Members and, for the most part, to all services and to a large extent follow GATT provisions of which the most important are listed as follows:

- **Most Favoured Nation** (Article II.1) a principle derived from GATT rules, asserts that each Member shall accord immediate and unconditional treatment equally to all Member countries. MFN principles are however qualified by exemptions where Members are permitted to apply for temporary exemptions to Article II.1 with the proviso that such exemptions shall be subject to a stated time limit (not more than 10 years from the date of the GATS, which is 1995).
- **Transparency** (Article III) requires the publication of all measures pertaining to the services trade; all published documents to be freely available and requests for information from Member for specific information on measures should be promptly answered. Article III also requires Members to establish one or more enquiry points for dissemination of information to other Members on enquiry.
- **Increasing Participation of Developing Countries** (Article IV) address the difference between developing countries and developed countries. Developing countries are encouraged to participate by progressive liberalisation of specific commitments through negotiation rounds and the focus on capacity building (Article IV.1) whilst developed countries are requested to '*establish contact points*' facilitating access to information relating to their services market countries (Article IV.2). Special mentioned is listed in Article IV.3 on the status of least-developed countries.
- **Economic Integration** Article V on '*Economic Integration*' is modelled after Article XXIV of GATT. It allows and recognises the rights of Members to form alliances or bilateral agreement among themselves provided that such bilateral agreement (a) *have substantial sectoral coverage* and (b) *substantially promotes the liberalisation of services trade (or economic integration)* between signatory Members of the agreement (Article V.1). The conditions for approval of such agreement for developing countries are given some flexibility by taking into consideration the reality of economic conditions and other factors (Article V.3). Such agreement should also be promptly reported to the '*Council for Trade in Services*'. Article V is also an exemption to Article II MFN treatment for non-Members of such bilateral agreement. An example of such agreement would be the '*ASEAN Free Trade Area*' (AFTA).
- **Domestic Regulations** Article VI affirms the right of Members to maintain technical standards, administrative or licensing procedures in regulating the sectors where specific



commitments have been made. Such measures shall be maintained in an objective, reasonable and impartial manner (Article VI.1). Article VI.4 in particular expand on the need for technical standards, licensing procedures, and qualifications be based on objective and transparent criteria, not more burdensome than necessary and by themselves not a restriction to the supply of service. Article VII.5 touches on the need for harmonisation to international standards. Article VI.2 requires Members to maintain or institute tribunals (judicial, arbitral or administrative) as a channel for providing review and remedy on allegations brought by aggrieved service providers on measures of domestic regulations.

- **Monopolistic Business Practices** Article VIII is similar to GATT's Article XVII on state trading. State monopolies or monopolies due to national policies or planning requirements (such as central bank, utility monopoly, social security insurance) are given due recognition under Article VIII and such monopolies are required to respect MFN obligations and specific commitments; and not to abuse its monopolistic position.
- **Payments and Transfers** Article XI guarantees that there shall be no restrictions for international payments and transfers for transactions relating to specific commitments of Members except under circumstances of Article XII (i.e. when a Member experience serious balance-of-payments and external financial difficulties).
- **Government Procurement** Under Article XIII government's purchase of services for its own use is exempt from basic GATS obligation. However negotiations Article XIII.2 specify that negotiations on government procurement in services should start two years from the WTO agreement (which would make end 1996 the base year for commencement on negotiations in opening up government procurement).

**Part III – Specific Commitments** set out rules which together with the basic categories of services listed (or scheduled) define individual commitments of Members to admit foreign service providers. The three Articles (XVI to XVIII) deal mainly with market access and national treatment. The main principles of Part III defines equal treatment (MFN) to all service providers foreign or local in terms of market access and national treatment only for scheduled sectors (i.e. sectors which are committed for opening). Members are required to specify limitations to market access and national treatment in *specific commitment lists*.

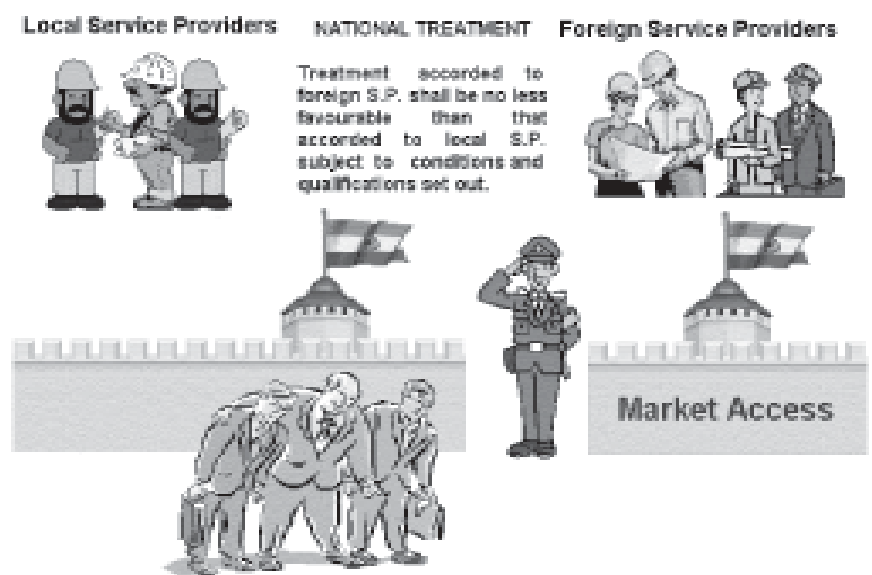


Figure 5 – Market Access and National Treatment

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## PANEL 6 – MARKET ACCESS AND NATIONAL TREATMENT

**1 Market Access** deals with the entry of foreign S.P. into local (national) markets. Where market access is committed limitations may be imposed, typically as follows (the six limitations under Article XVI.2 form the basis but not listed in original format for easier digestion by the layman):

- Commitment ('*none*' or '*bind*') or no commitment ('*unbound*') to provide access for specific sector or sectors;
- Restriction on the number of foreign S.P. allowed;
- Foreign investment and equity shareholding rules;
- Company registration rules which may set some form of limitations for foreign companies;
- Qualification requirements for professional S.P.
- Rules on entry of natural person (business visa etc).

**2 National Treatment** deals with conditions and qualifications, which modify MFN treatment (after foreign S.P. gains entry into national markets). Usual conditions include:

- Local licensing and professional registration procedures (which can also be considered Market Access limitations) which usually include some conditions on residency or citizenship;
- Government procurement policies favouring local S.P. (Article XIII exemption);
- Subsidies and differential tax treatment for local S.P.

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The biggest difference between GATT and GATS commitments is that the right to equal national treatment for services is restricted whilst national treatment for merchandise applies equally to all, once a product or merchandise has gain market access. The reason for this differential treatment is that: entry of goods (GATT) into national market can still be controlled by import duties, quantitative restrictions, and other border measures, whilst (under GATS) once foreign service provider gains entry into national market (particularly where services are provided by commercial entity or personal presence) will in practice enjoy virtually free access to that market if given national treatment.

**Part IV – Progressive Liberalisation** sets out measures for the practical implementation of liberalisation measures. Articles XIX and XX defines procedures for progressive liberalisation and rules on specific commitments on services. Article XIX.1 in particular asserts that *Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force the WTO agreement* (which would be early 2000). This Article in effect commits governments to repeated rounds of trade liberalisation in services (during the closing 'Act' of the Uruguay rounds). In affirming the commitments made by governments. Article XX.3 asserts that *Schedules of Specific Commitments* prepared by individual Members shall form an integral part of the agreement.

The subsequent Articles of Part IV provides for rules for modifying or withdrawing commitments in schedules. Modification to more restrictive measures or withdrawing commitments (despite belief to the contrary) is allowed under GATS but at a price. The price to be paid include a readjustment of the balance of advantage in commitments with any Member affected by this change. Compensatory readjustment is usually carried out on a basis of bilateral (or multilateral) negotiations with the Member (or Members) affected and in case of an agreement should result in a compensatory adjustment perhaps by liberalising some other sector to offset those withdrawn. All compensatory adjustments are also to be applied on an MFN basis. In case negotiations do not lead to an agreement, GATS allows affected Members to seek arbitration. If the arbitrator finds in favour of the complainant(s), the said complainant(s) or affected countries will have the right to retaliate by withdrawing commitments "substantially equivalent" to the findings of the arbitrator and in this case the retaliatory measures (withdrawal of commitments) will apply only to the country making the change.

**Parts V and VI – Institutional and Final Provisions** are final 'Acts' tying-up loose ends and providing organisational framework for the agreement. Important issues within these Parts of the agreement are:

- **Consultations** Article XXII requires *Members to provide sympathetic consideration to and afford adequate opportunity for consultation regarding any representation*. In simple terms Members are to consult each other in case of dispute, request for information, or any matters pertaining to the agreement (representation).
- **Dispute Settlement** Article XXIII institutionalises the Dispute Settlement Unit (DSU) in the settlement of dispute under the agreement.
- **Council for Trade in Services** Article XXIV institutionalise the Council for Trade in Services (a unit of the WTO) as an agency *for facilitating the operation of the agreement and the furtherance of its objectives*.
- **Relationship with other International Organisation** Article XXVI provide recognition for consultation and cooperation with the United Nations and its specialised agencies as well as with other intergovernmental organisations concerned with services.
- **Denial of Benefits (to non Members)** Article XXVII is a telling provision which defines WTO Members as an exclusive club. The denial of GATS benefits also extends to maritime vessels and service providers or juridical persons of non Member countries.
- **Definitions** Article XXVIII concludes by providing definition of terms under the agreement.
- **Annexes** Article XXIX adds that annexes included with the agreement are an integral part of the agreement.

**PANEL 7 – DEFINITIONS**

<b>Natural Person (of a another Member)</b>	A person residing in the territory of or is a national of or has the right of permanent residence of that other Member or any other Member.
<b>Juridical Person</b>	Any corporation, person, partnership, joint venture, legally organised under applicable laws whether for profit or non-profit.
<b>Juridical Person of another Member</b>	A juridical person organised under the law and substantially operating in the territory of that other Member OR in case of a commercial presence is owned (i.e. more than 50%) by a natural person of that Member.
<b>Measures</b>	Any measures (or actions) in the form of law, regulation, rule, procedure, decision, administrative action.

(From 'General Agreement on Trade in Services' WTO)  
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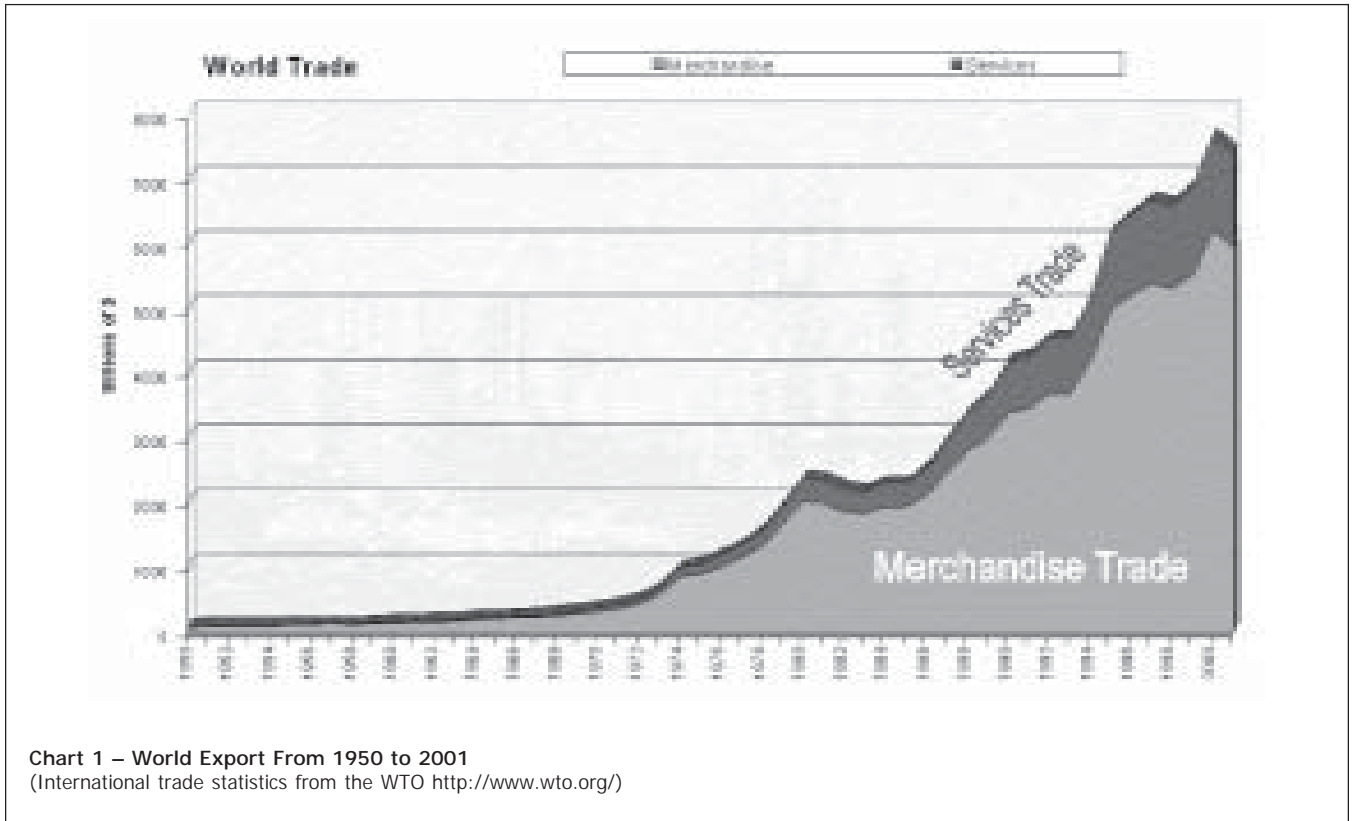
**Annexes** are decisions adopted in Marrakesh during the closing Act of the Uruguay rounds. These Annexes or Ministerial decisions touch on specific issues of the GATS which were reached separately (or as ongoing supplementary negotiations) from the GATS. Important annexes which concerns the professional services sectors are the annex on **Article II Exemptions** and Annex on **Movements of Natural Persons**.

The 'Annex on Movements of Natural Persons' provides that *natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment* (i.e. entry of natural person should be allowed without other onerous visa requirement). This however does not prevent Members from employing legitimate measures to regulate the entry of natural person into, or temporary stay in the territory of that Member (i.e. visa requirement may be imposed but should not nullify or impair the benefits made under the specific commitment).



### 3 THE PROFESSIONAL SERVICES SECTOR

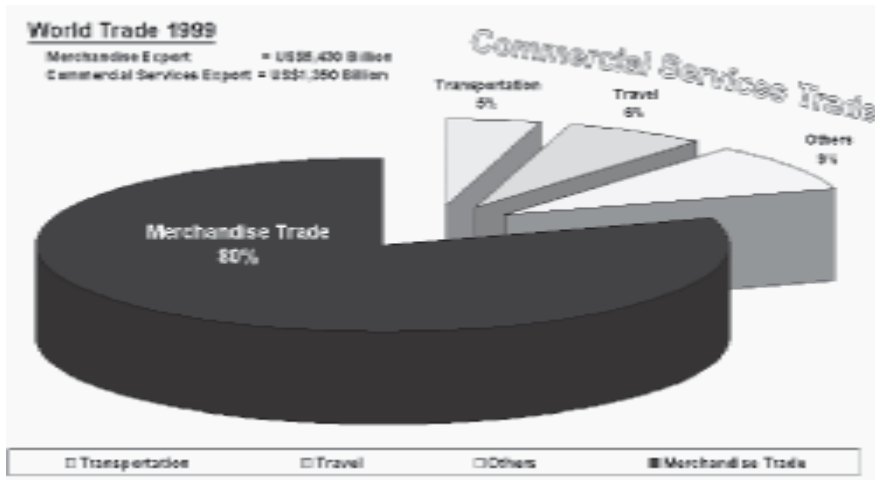
The Commercial Services Sector in International Trade as described in previous section saw a steady increase in expansion from the 1970s (Chart 1 – World Export from 1950 to 2001). By end of the 20<sup>th</sup> Century the services trade was an important component of world trade constituting as much as 20% of total world trade.



The commercial services sector comprises several sub-sectors of which the major sub-sectors are (a) transportation, (b) travel (represented mainly by tourism), and (c) other commercial services. Charts 2 illustrate the share of the three main services sub-sectors. As this paper is focused on the professional sub-sector, Charts 3 and 4 attempts to identify the sub sectors concerned by further breaking down the commercial services sub sectors for 3 major trading blocs. From the charts following, the professional services sub sector would be related to sub sectors classified as:

- Construction, and
- Sub sectors lumped under "other business".

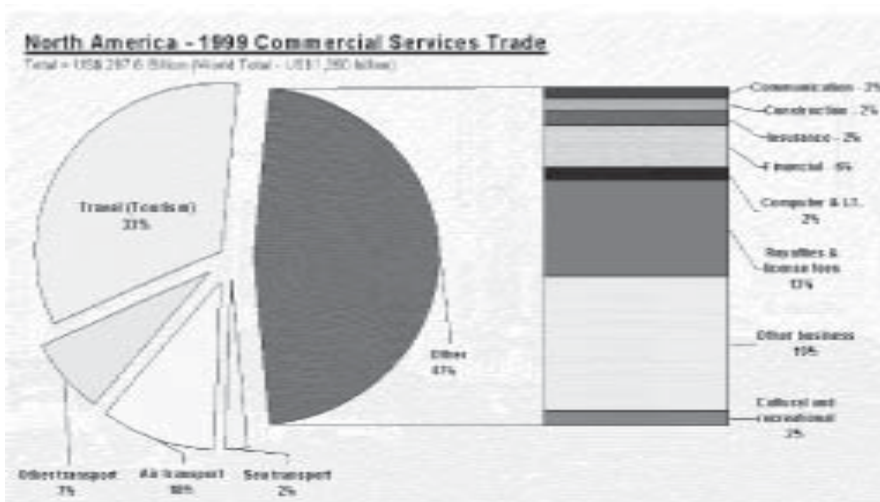
As would be evident later, statistics for professional services under CPC classification as "Engineering Services" and "Architectural Services" are lumped under "other business". The dearth of "finer" statistics relating to the professional services sub-sector can perhaps be attributed to the relative (small) size of the sub sectors and (relative) 'recentness' of attention focused on this sub-sector.



Commercial Services Trade constitute about 20% of total world trade. The major components of commercial services comprise:

- **Transportation** - 23%;
- **Travel** (mainly tourism) – 33%; and
- **Others** (which lump all others services such as engineering, construction, accountancy etc) – 44%

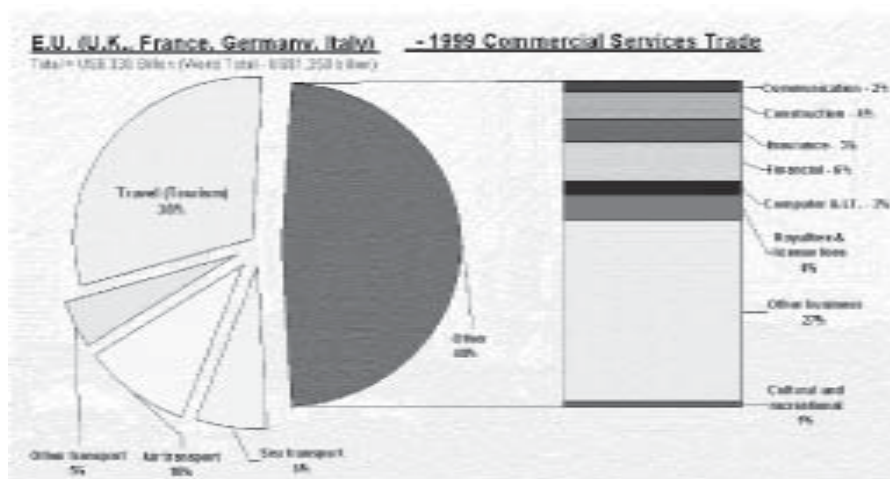
Chart 2 – Share of Commercial Services Export in International Trade for 1999.



Tourism receipt is an important component of the Services Trade. Befitting the USA as a major source of innovation, 'royalties and license fees' constitute a major component (13%) and financial at 6% reflects North America as a major bloc in financial services.

Construction contributes only 2% while professional services (Engineering & Architectural CPC 8671, 8672 and 8673) would be lumped under 'other business'.

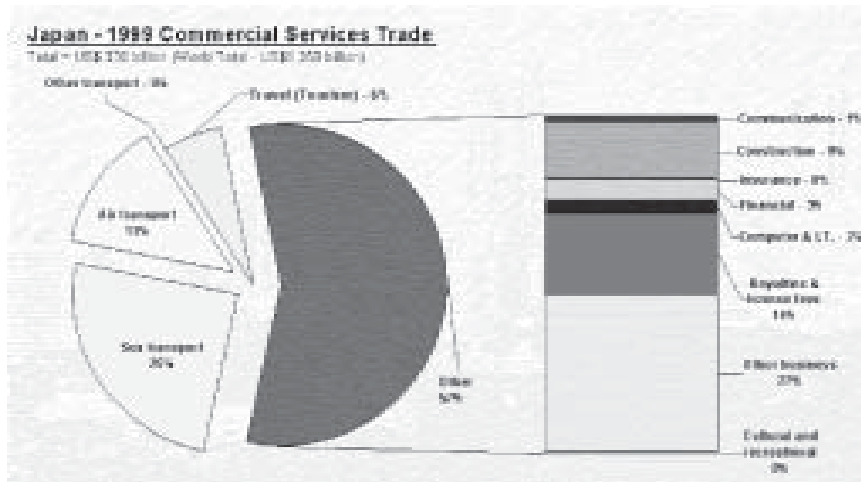
Chart 3 – Commercial Services Export for North America (USA & Canada) 1999



The 'big-4' of the EU mirrors the North American services trade to a certain extent. 'Royalties and license fees' is much lower at only 3% whilst financial services plays an equally important role at 6%.

Tourism at 30% is a major component of the services trade.

Chart 4 - Commercial Services Export for E.U. 'big-4' (UK, France, Germany, Italy) 1999



Major differences of Japan to the western economies:

- **Travel** at only 6%;
- **Construction** at 9%;
- **Financial** services at 3% reflects Japan's lesser role in world financial services.
- **Transport** command a larger share at 38% (about 20% for EU & N. America) reflecting Japan as a major shipping nation.

Chart 5 – Commercial Services Export for Japan 1999.

In attempting to quantify the commercial services sector for developing countries, and due to the lack of statistics on this subject we can perhaps conjecture (for the export sector):

- For most developing nations, travel and tourism probably command a much larger share of the services trade (more than the 30% of the developed economies). For some developing countries travel/tourism may be the dominant sub-sector in the services trade.
- Significant (and growing) export are in sub-sectors listed (statistically) under "other businesses" which include remittance from expatriate workers (India, Philippines, Indonesia), back-office operation (India, Philippines), software development (India, Korea), education services (India/ Malaysia / Singapore), printing services (India, Malaysia, Singapore).
- Niche markets in communication and computer & I.T. related services may be significant in some countries (Singapore / India). These two sub sectors may also have the most potential for future growth for the developing economies.

**Central Product Classification.** The professional services sub-sectors are relatively recent addition to the services trade. U.N. C.P.C. (Central Product Classification) of services pertaining to the professional services sub-sectors particularly for engineering and architecture are as follows:

**PANEL 8 – Central Product Classification for Architectural and Engineering Services (CPC867)**

**8 Business services; agricultural, mining and manufacturing services**

**86 Legal, accounting, auditing and book-keeping services; taxation services; market research and public opinion polling services; management and consulting services; architectural, engineering and other technical services**

**867 Architectural, engineering and other technical services**

8671 Architectural services

86711 Advisory and pre-design architectural services; 86712 Architectural design services; 86713 Contract administration services; 86714 Combined architectural design and contract administration services; 86719 Other architectural services.

- 8672 Engineering services
- 86721 Advisory and consultative engineering services; 86722 Engineering design services for the construction of foundations and building structures; 86723 Engineering design services for mechanical and electrical installations for buildings; 86724 Engineering design services for the construction of civil engineering works; 86725 Engineering design services for industrial processes and production; 86726 Engineering design services n.e.c.; 86727 Other engineering services during the construction and installation phase; and 86729 Other engineering services.
- 8673 Integrated engineering services
- 86731 Integrated engineering services for transportation infrastructure turnkey projects; 86732 Integrated engineering and project management services for water supply and sanitation works turnkey projects; 86733 Integrated engineering services for the construction of manufacturing turnkey projects; and 86739 Integrated engineering services for other turnkey projects
- 8674 Urban planning and landscape architectural services
- 86741 Urban planning services; and 86742 Landscape architectural services.

In practice, construction activities are intimately related to the engineering services sub sectors listed in Panel 8 above. However under CPC, construction are listed separately under CPC 5. Panel 9 is a summarised listing of construction and construction related works.

#### **PANEL 9 – Central Product Classification for Construction & Construction related works (CPC 5)**

**5** Construction work and constructions; land

#### **51 Construction work**

- 511 Pre-erection work at construction sites
- 5111 Site investigation work; 5112 Demolition work; 5113 Site formation and clearance work; 5114 Excavation and Earth moving work; 5115 Site preparation work for mining; and 5116 Scaffolding works.
- 512 Construction work for buildings
- 5121 For one and two-dwelling buildings, 5122 For multi dwelling buildings; 5123 For warehouses and industrial buildings; 5123 For commercial buildings; 5124 For public entertainment buildings; 5126 For hotel, restaurant and similar buildings; 5127 For educational buildings; 5128 For health buildings; and 5129 For other buildings.
- 513 Construction work for civil engineering
- 5131 For highways (except elevated highways), streets, roads, railways and airfield runways; 5132 For bridges, elevated highways, tunnels and subways; 5133 For waterways, harbours, dams and other water works; 5134 For long distance pipelines, communication and power lines (cables); 5135 For local pipelines and cable, ancillary works; 5136 For constructions for mining and manufacturing; 5137 For constructions for sport and recreation; and 5139 For engineering works n.e.c.
- 514 Assembly and erection of pre-fabricated constructions
- 515 Special trade construction work
- 5151 Foundation work including pile driving; 5153 Water well drilling; 5154 Concrete work; 5155 Steel bending and erection (incl. welding); 5156 Masonry work; 5159 Other special trade construction work
- 516 Installation work
- 5161 Heating, ventilation and air conditioning work; 5162 Water plumbing and drain laying work; 5163 Gas fitting construction work; 5164 Electrical work; 5165 Insulation work (electrical wiring, water, heat, sound); 5166 Fencing and railing construction work; and 5169 Other installation work (lifts etc)

- 517 Building completion and finishing work
  - 5171 Glazing work and window glass installation work; 5172 Plastering work; 5173 Painting work; 5174 Floor and wall tiling work; 5175 Other floor laying, wall covering and wall papering work; 5176 Wood and metal joinery and carpentry work; 5177 Interior fitting decoration work; 5178 Ornamentation fitting work; and 5179 Other building completion and finishing work.
- 518 Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator
- 52 Constructions
  - 521 Buildings
    - 5211 Residential buildings; and 5212 Non-residential buildings.
  - 522 Civil engineering works
    - 5221 Highways (except elevated highways), streets, roads, railways, airfield runways; 5222 Bridges, elevated highways, tunnels and subways; 5223 Waterways, harbours, dams and other waterworks; 5224 Long distance pipelines, communication and power lines (cables); 5225 Local pipelines and cables; ancillary works; 5226 Constructions for mining and manufacture; 5227 Constructions for sport and recreation; and 5229 Other civil engineering works.

**Issues Relating To The Professional Services Sub-Sector** (and in this paper specifically on the engineering and architectural services sub-sector) are discussed in this section.

- **Licensing and Local Regulations** Engineering and architectural services are perceived to impact on public safety and public interest. In most developed and developing countries therefore, architects and engineers are regulated and licensed. Similarly certain category of contractors (especially electrical and gas piping contractors) are also regulated and licensed by national and local governments.

Article VI of GATS allows Members to maintain technical standards, administrative or licensing procedures in regulating the sectors where specific commitments have been made. Such measures should be based on objective and transparent criteria not more burdensome than necessary by themselves and not a restriction to the supply of services. Notwithstanding the principles enumerated in Article VI, licensing and local regulations act as barriers to trade, protect local services providers from foreign competition, and effectively force the provision of engineering and architectural services to Mode 4 or Mode 3. In practical terms, Mode 1 and 2 for the engineering and architectural services are only applicable where designs are traded on an “as-is” basis without any warranty on design or compliance to local standards and regulations. Mode 1 and 2 trade in engineering and architectural services are common where back-office design are handled off-shore or distributed to sub-contractors in other countries (a growing trend for large engineering companies).

Licensing requirements are applicable in Japan, USA., E.U. countries, Australia, and for the ASEAN Malaysia, Singapore and the Philippines. Licensing requirement and procedures varies from country to country ranging from the most relaxed (U.S.A.) to strict requirement of citizenship (Philippines).

- **Temporary Stay and Entry of Natural Persons** regulates the entry of natural person into a country and is an effective front-line barrier to the services trade. Engineering and architectural services in particular relies heavily on presence of natural person. In most countries temporary stay and entry of natural persons are allowed as ‘Intra-Corporate Transferee’, “Business Visitors” and/or “Specialist or Experts”. Restriction on entry and stay of natural persons includes restriction on the number and periods of stay. Entry of natural persons is also a contentious issue where sometimes visa requirement and approval are subjected to Byzantine laws and opaque procedures.
- **Establishing Commercial Presence** is also subjected to restriction or discriminatory practice in most countries. Common modalities for such control include:
  - ❑ Restriction on foreign ownership to locally incorporated companies;
  - ❑ Requirement of local participation;
  - ❑ Restriction on foreign ownership of local assets and properties (landed property being the most frequently quoted as subjected to restriction or control);



- ❑ Licensing and/or local regulations described under paragraph 1 above;
  - ❑ Discriminatory taxation laws for foreign companies
- **Government Procurement** In many countries the government is the biggest consumer of professional services. It is therefore not surprising that foreign service providers (especially from the developed countries) would dearly love to target government procurement programmes. Under Article VIII of GATS, state monopolies or monopolies due to national policies or planning requirements (such as central bank, utility monopoly, social security insurance) are given due recognition. Article XIII exempt government's purchase of services for its own use from basic GATS obligation. Thus in many countries (including developed countries such as Canada, USA and the E.U. with Japan being particularly cited as recalcitrant) discriminatory procurement policies on government purchase of professional services are a reality blocking access to foreign services providers.

Recognising the contentious issue of government procurement, GATS (Article XIII.2) specifies that negotiations on government procurement in services should be an agenda in future WTO trade negotiations with the ultimate aim of opening up government procurement. Despite the above, large engineering corporations have been able to manoeuvre round this restriction by the following methods:

- ❑ Development projects and especially large infrastructure projects packaged with financing are the most common method of project bidding in many developing countries where foreign funds are welcomed. Thus engineering services providers with ambition to export should include multidisciplinary skills in their stable of expertise of which the financier will play an increasingly important role.
  - ❑ Initial engineering study and technical proposal are frequently provided on a governmental aid basis. The subsequent project implementation is (hopefully) awarded to the country providing the initial (free) study/proposal. This method is much cheaper than the 3<sup>rd</sup> method cited below but do not guarantee success in project procurement.
  - ❑ Government to government loans for development projects with proviso that the award of contracts be channelled to service providers of the country providing the aid.
  - ❑ Government to government basis where bilateral arrangement sometimes include barter trade.
- **Technical Barriers to Trade (TBT) and the International Standards Movement** Technical standards are essential components of engineering systems. However they can also be an impediment to international trade. TBT were (and are still is) employed by many countries (including the developed countries) as a tool to restrict foreign competitors. Such 'neo-protectionism' includes 'green-labelling', 'eco-labelling', overly restrictive health and phytosanitary requirements etc. Engineering and architectural services providers are also strongly impacted by technical standards as engineering design dependent on standards varies from country to country. Technical and especially local standards if made uniform among nations can also be a great leveller facilitating the practice of professional service providers across nations.

WTO rules assert that though technical standards are legitimate instruments in a nation repertoire of regulations, countries should endeavour to follow international standards where possible. It is therefore pertinent to note that the growing momentum of the international standard movement represented by the

**International Standard Organisation (ISO)**, will be an important trend in the globalisation of the professional services trade. A sub-agenda of the internationalisation of standards is the increasing participation of the public or stake-holders in the ISO movement. ISO procedure which is also consistent with current world trend on sustainable development requires industry/stake-holder participation in a consultative process. This trend towards a government-public consultative programme is now becoming so prevalent (at least in Malaysia) that professional bodies and N.G.O.s are requested to participate in many forums ranging from recycling, standard writing, and social issues.



- **Professional Mobility and Accreditation of Qualifications** are similar to the ISO movement but present issues which are more intractable. Initiatives at benchmarking and accreditation of professional qualification at the international level include:

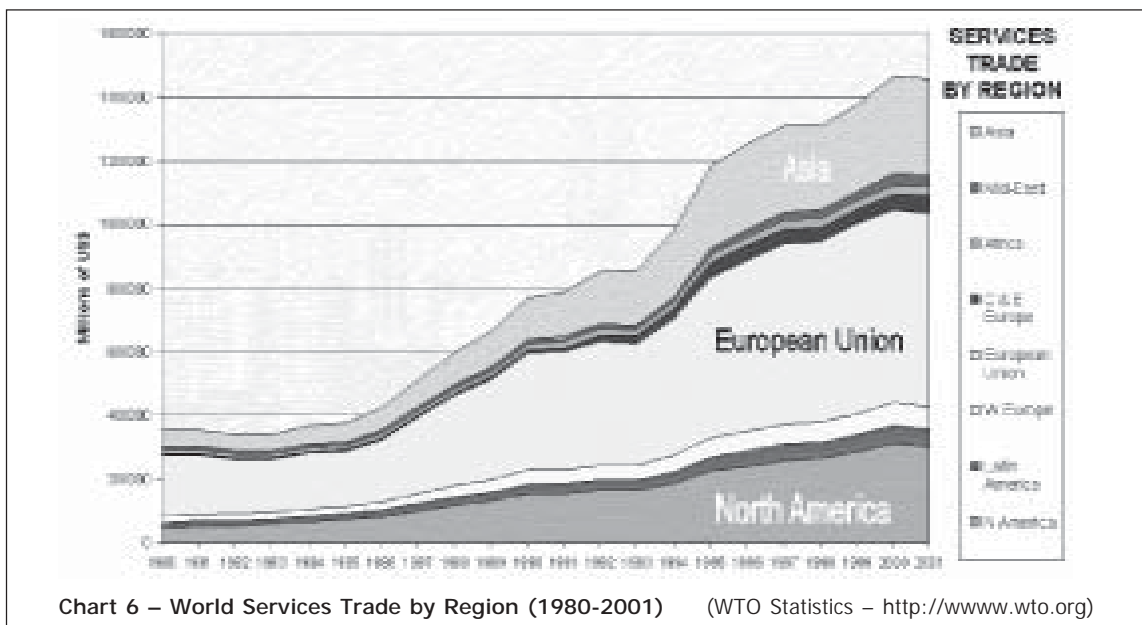
- ❑ ASEAN Engineers Register (<http://www.aseanengineers.com>),
- ❑ APEC Engineers Register (<http://www.apecsec.org.sg>),
- ❑ Engineers Mobility Forum (E.M.F.).

The E.M.F. which is an initiative of the 'Washington Accord' nations in their multilateral agreement on 25<sup>th</sup> June 2001 in South Africa aims to establish an international benchmark for a register of engineers of all nations having similar objective. It is proposed to name the E.M.R. register the '**International Professional Engineer Register**'. Signatories to the E.M.F. (as of January 2003) include Malaysia, South Africa, Australia, Canada, Hong Kong, Ireland, Japan, Korea, New Zealand, United Kingdom, and the United States of America.

- **The Parochial Nature of the Professional Service Market** Having overcome all the impediments to services export listed above, the biggest barrier to professional services trade is the parochial nature of the professional services market. Marketing of engineering or architectural services requires local brand recognition and local consumers of such services expects the services to be 'local' in nature. Thus having established a commercial presence or presence as a natural person, the professional service provider finds that he is required to network with the locals, gather local market intelligence and attune himself with the cultural bias of the local community before he can make any marketing impression. However most 'pure design practice' does not have the financial, personnel and/or marketing resources to pursue such export-oriented strategy. Thus the wisdom 'All Politics are Local in Nature' rings similarly true for the professional services market. The irony however is that the small consultancy practice may have certain niche skill or highly specialised skill which are prime candidate for export.

To work round this impediment, it is incumbent on the 'pure design office' to seek strategic alliance or 'partnership' with other related companies such as the large engineering companies, investors, and even financial venture capitalist who are pursuing export-oriented agenda. Government sponsored initiative may also be helpful in convening a national register of export ready consultancy, coordinated with other national initiatives listed above.

**Leading Services Exporters** In concluding this section, some statistics on services export by region and lead exporters are shown in Charts 6, 7 and 8.



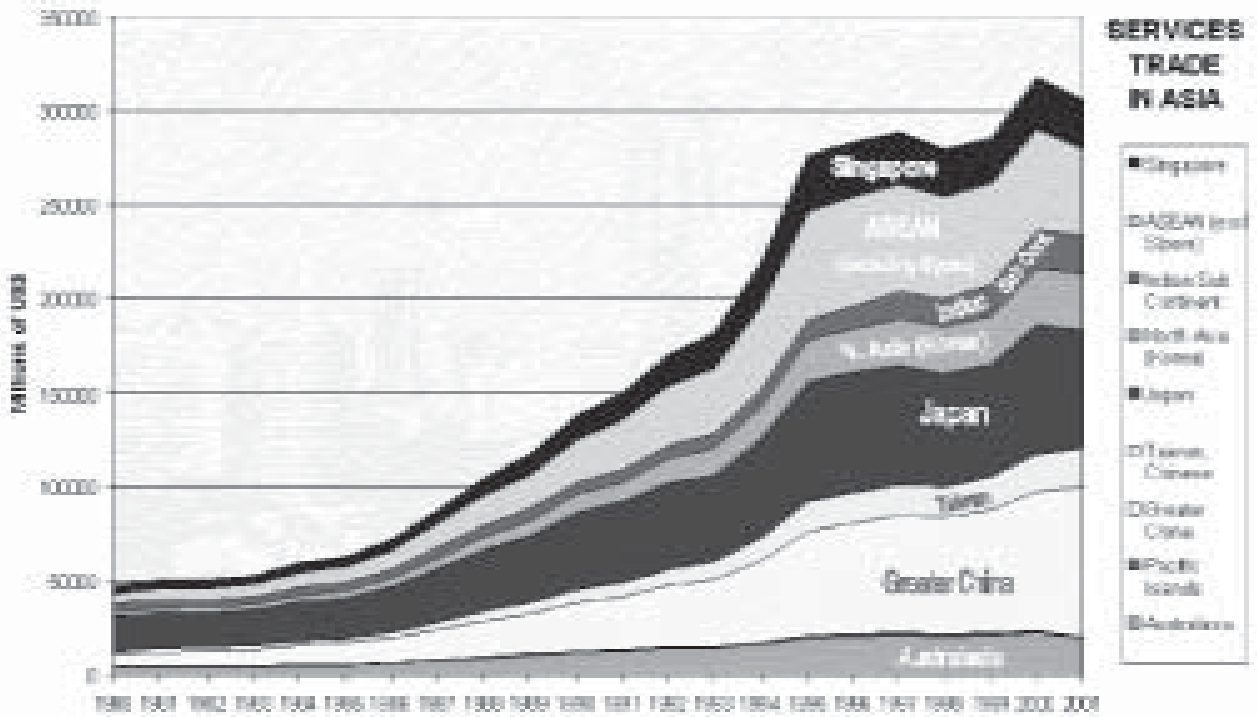


Chart 7 – Services Trade For Asia (1980 – 2001) (WTO Statistics – <http://www.wto.org>)

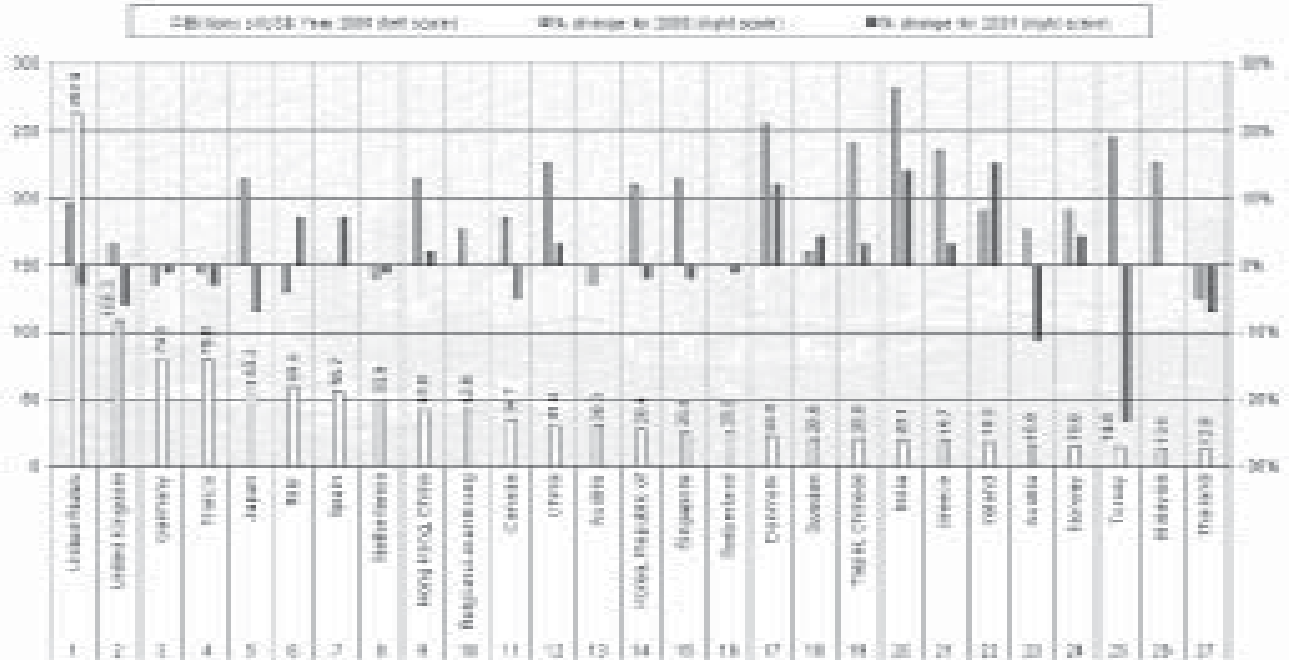


Chart 8 – Leading Services Exporters 2001 (WTO Statistics – <http://www.wto.org>)

## 4 CONCLUSION

**Lessons From the Financial and Communication Sub Sectors** Having hindsight from GATS initiative in liberalising the financial and telecommunication sub sectors in the closing years of the 20<sup>th</sup> Century, it is perhaps pertinent to note some success and failure:

- Liberalisation of the financial sub-sector did not achieve the success which was expected due to the following main reasons:
  - Financial markets are viewed as strategic areas impacting on the security of nations. Thus financial markets are in most cases subjected to a plethora of national regulations (more so compared to the professional services sub-sector).
  - The financial crisis of 1997 and still weak economic sentiments probably contribute a large part to this short fall in expectation.
  - Consolidation of financial institutions achieved mixed results from country to country.

Positive results from WTO initiatives however include a measure of success in the harmonisation of regulatory standards among WTO countries, some liberalisation of financial markets and the recognition of most countries that liberalisation of the financial markets is an imperative in the long term.

- The communication sub sector achieved the most success in liberalisation and in countries where liberalisation has been achieved, falling prices, improving services and continual upgrade of technology has been the result. Cross border movements of commercial entities for the telecommunication sub-sector is also fuelling a technology boom and may be a model for other sub sectors.

**Present and Future Outlook** The pace of GATS negotiation on the professional services sub sector is at the moment quickening and request and counter request are already being submitted by WTO Members seeking access to markets. I believe that the degree of difficulties in liberalising the engineering sub sector lies somewhere between the financial and telecommunication sub sector. Initiatives towards this end include liberalisation of regulatory standards (which is the most intractable), harmonisation of standards (which may be see success under the ISO), and initiatives for engineer mobility (which though not intractable may take longer to achieve). Perhaps the professional services sub sector can never be totally liberalised in the true sense, as there will always be a niche market for the local service provider even in a liberalised and globalised environment.

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