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*Series on General Agreement on Trade in Services: Part 9*

## Service Sector: Business Process Outsourcing (BPO)

### Expanding Trade in ICT-enabled Services

Until recently, cross-border trade in services attracted limited attention in GATS, in part because its practical and economic significance was limited. However, technological advances have accelerated possibilities for services trade across borders and has led to more cross-border trade in many services. A number of services whose provision once required physical proximity between the consumer and the supplier can now be traded via the Internet or other networks. This includes, for example, e-banking, on-line computer and IT services, many forms of professional and consultancy services, and on-line sales of hotel reservations, airfare and even goods. In addition, many companies can now sub-contract or "outsource" activities they once performed in-house. Business outsourcing (BPO), the topic of this issue\*, has created many opportunities, not least for developing countries, and has also opened doors to trade for small and medium size enterprises. Outsourced activities may often be fairly low-skill oriented, but increasingly knowledge intensive activities are also outsourced, such as research and development and financial advisory services.

### BPO: Increasing Successful back-office exports

Business Process Outsourcing (BPO), a notion that includes a variety of business support functions, is sometimes referred to as back office services. Such services can be outsourced to domestic as well as foreign firms. They can now be provided remotely from locations far from the head office or other final consumer by electronic means. When outsourced to foreign firms, the GATS would apply. Many developing countries have succeeded in gaining BPO contracts in recent years. BPO services may include customer support or sales and marketing support (e.g. by means of call centres) for insurance, airline and many other industries. It also can include accounts, bookkeeping, or payroll management, bill collection, and records transcription, to name a few examples. They often require language aptitudes and a degree of skills and training, but not necessarily at sophisticated levels, and can offer advantages such as lower costs and 24 hour-a-day service to the outsourcing companies.

### GATS Commitments

Some WTO Members have commitments on BPO-related services. It is important to keep in mind that the Schedules, many dating from 1994, do not always reflect the reality on the ground. Many companies in the

industrialized world are outsourcing back-office functions, even if no bound commitments exist in the GATS. A group of WTO Members have made requests of others during the Doha trade negotiations to seek improved commitments on the cross border trade in BPO and other services that are more commonly outsourced today.

### Definition and Classification

BPO is not a sector in its own right in the GATS classification (W/120). This is in part because the BPO activities can be performed on behalf of many different services and industries and in some cases would fall under commitments in the sector concerned. Also, commercial trends (streamlining and downsizing companies) and new technologies have opened possibilities for international trade in these services that were not common at the time the GATS and UN classifications were first elaborated in 1991.

Keeping this in mind, the most amenable part of the GATS sectoral classification is "Other business services". This is a broad sector encompassing many different activities, from advertising to convention management to packaging and photographic services.

### Cross border trade

Outsourced BPO services often use the Internet, Internet-enabled technologies (such as VOIP networks for call centres), private corporate networks, satellite links or a combination of these to send and receive the services. While GATS cross border supply (mode 1) is most relevant, consumption abroad (mode 2) may also be involved in a BPO services transaction. This is because it may be difficult to distinguish between supply by modes 1 and 2. As a result, both modes should be consulted for such services. In fact, in the Doha negotiations, Members are seeking similar or at least consistent levels of commitments on both modes. Trade in an outsourced activity probably does involve transactions that involve both mode 1 and mode 2. Put simply, the firm that outsources the activity to a foreign country may be "consuming abroad" while the foreign firm that performs the outsourcing contract would then deliver the service across borders to the client.

### Commercial presence and outsourcing

The rapid growth of opportunities in BPO outsourcing have also inspired foreign companies including both developed and developing countries to establish a base of operations in client countries. This way, they can also take advantage of contracts awarded domestically. When they do so, the activities would be trade covered by GATS commitments on commercial presence (mode 3). In some cases, companies establish a commercial presence abroad to supply BPO services in countries where foreign outsourcing has become popular. Once established, they will usually export these services from the foreign base. For example, an Indian firm with expertise in managing call centres has set up an operation in Mexico to supply Spanish-language call centre services to the U.S. market. In such a case, a mode 3 commitment of Mexico would relate to the ability to establish the firm, but mode 1 & 2 commitments of the United States would govern whether the firm is

\*Computer and IT support services are often outsourced. However, the sector is not addressed here since it will be explained in another issue.

entitled, under GATS, to supply the service from Mexico to the U.S. client.

### Home market regulations

Common features of services with a high probability for outsourcing include:

- ◆ no face-to-face servicing requirement;
- ◆ high information content;
- ◆ the work can be delivered or performed electronically;
- ◆ access to affordable, high quality telecom and ICT services;
- ◆ wage advantages with similar occupations in the client country;
- ◆ low set-up barriers for the creation of new firms or affiliates and obtaining any necessary licenses; and
- ◆ streamlined procedures for obtaining investment approval, approvals and licenses, where applicable.

These features imply that to successfully participate in exports of BPO, services providers often need to take into account their own government's regulatory policies to determine if the basic ingredients are in place. For example, before setting up a call centre that would use VOIP technology, you may first need to find out how complex any licensing process might be, if high bandwidth communication links are available, or whether or not VOIP is legal in your country.

### Export market regulations

GATS rules concern the regulatory conditions or requirements you may face in the country where your client is located. As a relatively new trend, BPO often faces few formal regulations. Nevertheless, it can be affected by measures in related industries. For example, cross border BPO services that use VOIP or private networks may run up against restrictions on use of these telecom services or requirements that the transmission may be terminated only on monopoly networks. This can raise the cost of performing cross border BPO and reduce its feasibility. Alternatively, to set up a commercial presence to supply BPO, companies will need to deal with regulations and costs associated with establishment, investment and incorporation in the foreign market, as well as local labour laws.

### What will you find in GATS schedules?

Due to cross border trade having only recently become more feasible, restrictions are not common. Therefore, mode 1 commitments tend to reflect a country's openness (or caution) toward open markets, than they do a specific legal framework in place for cross border supply. This is why many schedules indicate either no limitations, by listing "None" or "Unbound", meaning no commitment. Sometimes entries may state "Unbound\*", meaning not possible due to lack of technical feasibility, even though new technologies have now made the supply possible. Where cross border supply is "Unbound" or "Unbound\*", there is no GATS guarantee on cross border delivery of the service, although in reality market access might be possible.

Less commonly, some commitments include a limitation on cross border supply that says a "commercial presence is required". In these instances, it is not always clear whether it means that cross border supply is not committed or not possible, or whether it means it is possi-

ble to supply the service cross border (e.g. from your parent company) so long as a subsidiary or representative office is established. Suppliers will need to confirm such details with the authorities. As in other sectors, commercial presence commitments may include limitations such as a joint venture requirement or foreign equity limits.

### Restrictions on government procurement

In recent years, perceptions in some countries about jobs lost to foreign outsourcing have led to laws prohibiting the outsourcing of public contracts, or government procurement of services to foreign firms abroad. Such laws may also prevent domestic companies from subcontracting portions of their government contracts to firms abroad. However, a foreign company with a subsidiary in the country concerned may still qualify to bid on government contracts.

Bear in mind that government procurement is not covered by the GATS (Article XIII). Thus far, no such legislation has extended the ban beyond government procurement to include contracts by private companies to outsource their own back office functions.

### Scheduling elements to bear in mind

BPO is an example of a sector where transactions may require attention to how both cross border supply and consumption abroad (modes 1 & 2) are scheduled. To avoid confusion, the ideal would be that the entries for both modes are the same or consistent with one another. For example, it is difficult to be certain of your legal rights, under GATS, to take advantage of a commitment with no limitations on cross border supply, if the entry for mode 2 (the ability of your client to contract the services abroad) indicates no commitment, i.e. "unbound".

Also, since many types of BPO services are often not explicitly listed in schedules, to determine if your service is committed, you may need to examine the coverage of W/120 and UNPCPC classifications in greater detail. A particular activity might actually fall within the underlying definition of a certain service listed in a schedule or might be covered by the catch-all "other" sub-sectors included in the GATS classification, if "other" is scheduled.

### Outdated classifications

Another scheduling issue can arise when the terms or technologies described in the CPC definition are out of date, making it unclear whether it is relevant to the services you are offering. For example, the GATS classification "1.F.t. Other business services: other" lists its CPC definition as 8790. CPC 8790 includes "telephone answering services". It might be possible to argue, for lack of a better alternative, that call centre services are covered here. However, the 1991 CPC definition tends to imply services like those of a "receptionist", making it difficult to assume with certainty that the commitment might cover call centres that handle services such as reservations or claims processing.

In the Doha negotiations, a group of WTO Members has proposed using a portion of the 2002 UNPCPC in schedules. This version of UNPCPC more clearly indicates some of the business support services. It remains to be seen whether some governments will agree to adopt this approach, which would not be obligatory.