



**Petroleum Federation of India**

# **Review of Domestic Regulations for conformity with WTO - GATS**

PART I: Background, Scope and Methodology

March 07

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## **PART I**

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# 1 Background

## 1.1 Background to this Report

1.1.1 Petroleum Federation of India (PetroFed) is a federation of forty three companies which was formed with the objective of promoting the interests of the petroleum industry and functions as a facilitator for the oil industry in India.

1.1.2 The Ministry of Commerce (MoC), Government of India, has asked the Ministry of Petroleum & Natural Gas (MoPNG) to identify the domestic regulations in place for the various service areas under its jurisdiction and examine whether they are consistent with the Illustrative List of the Possible Elements of Article VI:4 Disciplines (placed at Annexure III to this report), pertaining to the General Agreement on Trade in Services (GATS) at the World Trade Organisation (WTO). Accordingly, PetroFed has been commissioned to undertake the study to respond to the MoPNG on the subject.

1.1.3 Consequently PetroFed has approached PricewaterhouseCoopers (PwC), a Member company and Knowledge Partner to assist in carrying out the study and to present a report in relation to the compatibility of the identified notifications, laws, acts and policies as per list enumerated in Annexure I.

1.1.4 This report is an outcome of a detailed study of identified notifications and discussions with industry. The report is submitted for perusal by MoPNG and to facilitate response to Ministry of Commerce.

## 2 Scope of Work & Methodology

### 2.1 Scope of Work

2.1.1 The scope of this study covers a broad spectrum of analysis relating to domestic regulations under the jurisdiction of MoPNG. The identified notifications have been analyzed to -

- Identify any clauses pertaining to service elements;
- Analyze if the clauses constitute barrier to trade from GATS perspective;
- Identify the Central Product Classification (CPC) the service element pertains specially when they are one or more amongst the CPCs for which India has already taken commitment (CPC - 8672, 8673, 865, 86601, 8676, 513, 633, 886) and for which the Oil & Gas Industry has recommended liberalization (CPC - 883, 5115, 884, 8675);
- Test if the clause passes the WPDR tests of Necessity, Transparency, Equivalence, and International Standard;
- Analyze the Mode(s) (amongst the four Modes described by GATS) in which the identified clause related service is expected to be rendered.

### 2.2 Methodology

The following methodology was adopted by us for the purpose of the review:

- PetroFed provided to PwC the identified notifications listed in Annexure II.
- The notifications were reviewed to examine whether the same are consistent with the Illustrative List of Possible Elements for Article VI: 4 disciplines of WTO (GATS) and identify the specific clauses which are construed to constitute barrier to trade. These non-compliant clauses were then further analyzed to identify the CPC, Mode and any non compliant test(s) of identified by WPDR;
- Upon completion of the review of the notifications, PetroFed arranged an Industry meeting on November 14, 2006 to enable PwC to ratify the report format, approach and methodology with industry and again on December 27, 2006 to share its findings and seek industry comments based on their experiences while operating under these regulations/legislations/notifications.

On the basis of industry interaction this report is submitted.

## 3 Understanding GATS Article VI:4

### 3.1 General Agreement on Trade in Services (GATS)

3.1.1 The Uruguay round (1986-94) was the eighth and the last round organised under the auspices of General Agreement in Tariffs and Trade (GATT). Alongside the agenda of further liberalization of trade in goods, this round also established the framework agreements for liberalization in services.

3.1.2 By the time of conclusion of Uruguay round a new World Trade Organization had been constituted within which revised GATT 1994 covering trade in goods, a General Agreement on Trade in Services (GATS) and agreement on Trade Related Intellectual Property Rights (TRIPS) were to have separate attention.

3.1.3 The topmost decision-making body of the WTO is the Ministerial Conference, which has to meet at least every two years. It brings together all members of the WTO, all of which are countries or customs unions. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements. Five Ministerial Conferences have been held under WTO. Singapore (1996), Geneva (1998), Seattle (1999), Doha (2001), Cancun (2003) and Hong Kong (2005).

3.1.4 The Hong Kong Ministerial conference held in December 2005 decided that Members shall develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current round of negotiations. Recent mandate of is on developing disciplines in domestic regulations before the end of current round. In the the Hong Kong Ministerial it was decided that negotiations on domestic regulation will be completed as a part of Doha round of negotiations.

### 3.2 Definition of Services:

3.2.1 For the purpose of GATS, trade in services is defined as supply of a service in:

- Mode 1 (Cross Border Supply): From the territory of one member into the territory of any other member.
- Mode 2 (Consumption Abroad): In the territory of one member to the service consumer of any other member.
- Mode 3 (Commercial Presence): By a service supplier of one member, through commercial presence in the territory of any other member.
- Mode 4 (Presence of Natural Person): By a service supplier of one member, through presence of natural person of a member in the territory of any other member.

### 3.3 Article VI:4 and the Illustrative List

3.3.1 During the course of Uruguay Round of negotiations, the WTO Members recognized the potential trade restrictive effects of the Domestic Regulatory Measures applicable in different member states. Recognizing the said shortcoming and consequent non-conformity with the various articles of the GATS, it was agreed to develop specific  
*Report -Dated February 23, 2007*

disciplines for ensuring that there were no unduly burdensome or trade restrictive domestic measures adopted. In pursuance of the said objectives, various steps were initiated for purposes of evolving the requisite "disciplines". The council for trade in services, under the provision of Article XXIV to facilitate effective discharge of its function, lead to the establishment of the Working Party on Domestic Regulation (WPDR) in 1999. The WPDR has been playing the pivotal role in evolving, through the process of participation of member states, sector specific/generic disciplines in domestic regulations.

- 3.3.2 Numerous proposals have been submitted by the member states in relation to the various aspects of possible domestic regulation disciplines. As a consequence an illustrative list of possible elements for Article VI:4 disciplines has been formulated. Members have also recognized the need for domestic coordination between trade ministries and regulating agencies, for ensuring that the eventual disciplines do not overly impinge on the regulatory autonomy and are in keeping with the objectives of the GATS simultaneously. During the course of such intense participation, member states have stressed upon the Preamble of the GATS wherein the right to regulate has been enshrined in order to meet National Policy Objectives.

### 3.4 **Actions by India**

- 3.4.1 India has also been actively participating in the above process of evolving requisite "disciplines". In pursuance thereof, the MoC has sought participation from all concerned Ministries/Departments and other stakeholders by requesting them to identify domestic regulations existing for each of the service sectors under their jurisdiction and to examine whether the same are consistent with the possible elements in the "illustrative list" drawn at the WTO, as mentioned above.

### 3.5 **Article VI of the GATS**

- 3.5.1 The Article states as follows :

#### **Article VI: Domestic Regulation**

1. *In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.*
- 2 (a) *Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.*
- (b) *The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.*
3. *Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a*

*Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.*

4. *With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:*

(a) *based on objective and transparent criteria, such as competence and the ability to supply the service;*

(b) *not more burdensome than necessary to ensure the quality of the service;*

(c) *in the case of licensing procedures, not in themselves a restriction on the supply of the service.*

5. (a) *In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:*

*(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c);  
and*

*(ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.*

(b) *In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations<sup>(3)</sup> applied by that Member.*

6. *In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member."*

### 3.6 **The Illustrative List**

3.6.1 At the WTO, member countries have tabled several proposals in the Working Party on Domestic Regulations (WPDR) as an outcome of discussions, in the WPDR and based on proposals tabled an Illustrative List of possible elements was compiled by the Chairman of WPDR for facilitating discussions on developing sector specific and generic disciplines in domestic regulations. In brief, these elements include the Licensing Requirement and Procedures, the Qualification Requirements and Procedures, the Technical Standards and the Regulatory Transparency.

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#### Illustrative List of Possible Elements

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Licensing Requirement and Procedures	Qualification Requirements and Procedures	Technical Standards	Regulatory Transparency
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### 3.7 **This Report in Perspective**

3.7.1 In light of the above, MoPNG has sought inputs from concerned stakeholders including PetroFed after broadly analyzing the overall compliance of the existing domestic regulations in the Oil & Gas Sector (list of identified legislations/notifications placed at Annexure I) with the inherent parameters of Article VI:4 of GATS. PetroFed has therefore engaged PwC to undertake the said analysis.

3.7.2 The objective is to analyze the identified domestic regulations to examine their consistency with the possible elements in the "illustrative list" evolved during the course of participation of Members in the WPDR meetings. For this purpose, it would need to be seen whether these short-listed Domestic Regulations broadly follow the following four tests as identified by WPDR wherever applicable:

- *Necessity*
- *Transparency*
- *Equivalence*
- *International Standards*

### 3.8 **Recognition by GATS of Rights of Members to Regulate**

3.8.1 Though this report is restricted to identifying the domestic regulations for disciplining with an objective of conformity with GATS article VI 4 and specially in the identified CPC

sectors, it may be pertinent to note the following considerations GATS gives to the member countries as regards making regulations.

- 3.8.2 Before independently analyzing the above short listed Domestic Regulations it is relevant to note at the outset that the GATS recognizes the need and rights of the members to introduce new regulations inter-alia for meeting national policy objectives. There have been debates by the WPDR recording the concerns of members to the extent that nothing in the Article was intended to interfere with the way members proposed, prepared or adopted certain measures of general application and that the GATS recognized the sovereignty of Members to develop domestic procedures that best suited their political, social and economic conditions, as well as their legal and constitutional systems<sup>1</sup>. Further, various developing member countries have expressed special concerns in this regard where in it has been submitted that developing countries require flexibility to maintain and introduce regulations especially because as economies develop, the need for additional regulations become necessary. It is important for developing countries to have flexibility to the fullest extent to allow for the design of regulations suited to individual development needs and objectives. In light of this position and requirements, it has been forcefully stated that the existing right to regulate and to introduce new regulations must be clearly reaffirmed and explicitly stated so as to ensure that any possible future disciplines do not prescribe, prevent or constrain in any way the ability of a member state to regulate<sup>2</sup>.
- 3.8.3 The underlying principle of GATS recognizes that there cannot be a completely unregulated regime in connection with different sectors including Oil and Gas Services though the same does require such regulations to be in place for purposes of ensuring performance and quality controls inter-alia to preserve the environment and to protect consumers. The critical aspects which must be ensured is that the concerned Regulations must be clearly defined, should be non discriminatory and must be transparent. During the course of negotiation proposals by different member countries, it has been expressly recognized that many natural resources are held in trust for the public by the state itself and therefore the said issue of ownership of natural resources was not strictly made a part of the initial papers.

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*Report dated September 22<sup>nd</sup>, 2003 on the meeting of WPDR held on July 1<sup>st</sup>, 2003- Para 18 recording the submission of Indonesian representative*

<sup>2</sup> *Communication from the ACP Group- Pro Development Principles for GATS Article VI:4 Negotiations (JOB (06)/136/Rev-1 dated June 19, 2006)*

## 4 Brief Background on Central Product Classification (CPC)

### 4.1 The Central Product Classification

4.1.1 The WTO in the "GUIDELINES FOR THE SCHEDULING OF SPECIFIC COMMITMENTS UNDER THE GATS" states as to how to describe committed sectors and sub sectors. It states as follows :

- 23) *The legal nature of a schedule as well as the need to evaluate commitments, require the greatest possible degree of clarity in the description of each sector or sub-sector scheduled. In general the classification of sectors and sub-sectors should be based on the Secretariat's Services Sectoral Classification List. Each sector contained in the Secretariat list is identified by the corresponding Central Product Classification (CPC) number. Where it is necessary to refine further a sectoral classification, this should be done on the basis of the CPC or other internationally recognised classification (e.g. Financial Services Annex). A breakdown of the CPC, including explanatory notes for each sub-sector, is contained in the UN Provisional Central Product Classification.*

*Example: A Member wishes to indicate an offer or commitment in the sub-sector of map-making services. In the Secretariat list, this service would fall under the general heading "Other Business Services" under "Related scientific and technical consulting services" (see item I.F.m). By consulting the CPC, map-making can be found under the corresponding CPC classification number 86754. In its offer/schedule, the Member would then enter the sub-sector under the "Other Business Services" section of its schedule as follows:Map-making services (86754).*

4.1.2 By definition, CPC is physical characteristics of goods or on the nature of the services rendered. Each type of good or service distinguished in the CPC is defined in such a way that it is normally produced by only one activity as defined in ISIC. The CPC covers products that are an output of economic activities, including transportable goods, non-transportable goods and services. The classification structure comprises:

- Sections -one digit code;
- Divisions - two-digit code;
- Groups - three-digit code;
- Classes - four-digit code;
- Subclasses - five-digit code.

4.1.3 Part III of GATS has three articles-Article XVI, XVII, XVIII which set out detailed rules for members to undertake specific commitments. Commitments are taken in two levels :

- Horizontal commitment i.e. applicable to all services sector
- Sectoral commitments i.e. which remains restricted to particular service sector.



# **Petroleum Federation of India**

## **Review of Domestic Regulations for conformity with WTO - GATS**

### **PART II: Analysis of MoPNG Regulations**

March 07

## Part II

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# 1 Analysis of MoPNG Notifications

## 1.1 Introduction to Analysis

### 1.1.1 Analysis of identified notifications of MoPNG is contained in the subsequent sections. This analysis has been carried out as follows-

- The notifications have been reviewed to identify clauses which pertain to providing services.
- Out of such clauses, those have been identified and listed which can be construed to constitute barrier to trade in services by virtue of non-compliance to one or more items in the Illustrative List of Possible Elements drawn out by WPDR in respect of disciplining domestic regulations as stated in Article VI of GATS;
- Reasons for construing these non-compliances have been amplified under the heading "Analysis"; To the extent possible, the reasoning has also been strengthened by practical experience by service recipients or service providers;
- As stipulated by WPDR the domestic regulations need to qualify in the four tests namely necessity, transparency, equivalence and international standards. The analysis names one or more of these tests construed are not passed by the regulation due to by virtue of the defied non-compliant clause;
- Further, the services affected or addressed to by the identified clause have been categorised under CPC, especially when it falls under a classification of identified CPCs for review in this exercise listed in Part II of this Report;
- A further analysis on each of the identified clauses has been carried out to understand the Mode amongst the four Modes of services defined under clause 2 of Article I of GATS.

### 1.2 Analysis of Notification: "Guidelines for Laying Petroleum Product Pipeline" read with "Supplementary Guidelines for Laying Petroleum Product Pipeline, dated November 20, 2002 read with December 26, 2004"<sup>1</sup>

- **Broad Overview of the notification:** In a major decision towards deregulation of oil sector and to attract investment in the petroleum product pipelines, in November 2002, Government had laid down a new Petroleum Product Pipeline Policy for laying pipelines in the country, on common carrier principle. The guidelines facilitate laying of optimal size pipelines by proposer companies taking into account the interest of other interested companies as well. These guidelines are aimed at ensuring proper utilization of the pipelines in the future and desire that there should be a periodical review of the guidelines to enable the Government to take timely corrective action keeping the economics of the venture in view. Guidelines for Laying Petroleum Product Pipelines and Supplementary Guidelines thereto will remain in force till the proposed Petroleum Regulatory Board is constituted. After the constitution of this Board, the right of user in land for laying petroleum product pipelines will be granted by Ministry of Petroleum and Natural Gas subject to fulfilment of requirements under the Petroleum Regulatory Law.

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<sup>1</sup>

*It is construed that pipelines are (in some cases) laid for supplying service of transportation of petroleum. Hence this notification has been analysed.*

- These Guidelines categorizes petroleum product pipelines into three scenarios: -
  - o pipelines originating from the refineries and up to a distance of around 300 kms from the refinery
  - o pipelines dedicated for supplying product to a particular consumer, originating from a refinery or from oil company's terminal
  - o pipelines originating from refineries exceeding 300 kms in length and pipelines originating from ports.

#### 1.2.1 Analysis of RoU clause:

- **Clause construed to deviate:** "The ROU acquisition ..... will be subject to such conditions as may be deemed fit by the Government in public interest. Such conditions may inter alia include ....."
- **Analysis:** The conditions for ROU acquisition are not stated in completeness and are left open for Government to stipulate. There are no prescribed formats for applications to be made for obtaining the RoU. Timelines for obtaining such a right are also not outlined under the provisions of these guidelines.
- **Non-conformity to Illustrative List of Elements:**
  - o Licensing Requirement and Procedure : (i)
    - Transparency - Licensing Criteria;
  - (ii) Administration of Licensing Procedure - Reasonableness and Objectiveness;
  - o Regulatory Transparency:
    - (i) Transparency in Licensing Application Procedures - Timeframe for Decisions.
- **WPDR Tests:** Unless justified under the national policy objective, this clause may fail to qualify 'necessity' and 'transparency' test.
- **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of service:** Mode 3 (Commercial Presence).

#### 1.2.2 Analysis of "Pipeline capacity" clause:

- **Clause construed to deviate:** "3.4 The designed pipeline capacity would be at least 25% more than the capacity requirement of the proposer....".
- **Analysis:** The extra capacity requirement can be construed to be an unreasonable and burdensome requirement. It may also not be in conformity to the international norms and therefore may not meet the requirement of "Equivalence". Even though the mechanism is in place for receiving payment for selling such additional capacity, it may not take into account a situation where the demand for such additional capacity does not exist. The cost burden for the additional capacity building would fall on the proposer company. An across the board extra capacity requirement,

without specifically assessing the market requirement, may also prove to be unreasonable.

■ **Non-conformity to Illustrative List of Elements :**

o Licensing Requirement and Procedure :

(i) Administration of Licensing Procedure - Reasonableness and Objectiveness.

■ **WPDR Tests:** Unless justified under the national policy objective, this clause may fail to qualify 'necessity' and 'equivalence' test.

■ **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.

■ **Mode of service:** Mode 3 (Commercial presence)

1.2.3 **Analysis of "Bank Guarantee" clause:**

■ **Clause construed to deviate:** "4. The Owner/proposer will be required to furnish an irrevocable bank guarantee of ... 2% of the project outlay or Rs. 2 Lac per km of pipeline proposed, whichever is higher ..... the bank guarantee shall be encashable anytime after 36 months from the date of the sanction...."

■ **Analysis:** The bank guarantee requirement can be construed as an unreasonable and burdensome requirement. The condition may also not pass the test of 'international standards' laid down by WPDR.

■ **Non-conformity to Illustrative List of Elements :**

o Licensing Requirement and Procedure :

(i) Administration of Licensing Procedure - Reasonableness and Objectiveness

■ **WPDR Tests:** Unless justified under the national policy objective, this clause may fail to qualify 'international standards' test.

■ **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.

■ **Mode of service:** Mode 3 (Commercial Presence)

1.2.4 **Analysis of "Tariff" clause:**

■ **Clause construed to deviate:** "Tariffs for the pipelines commissioned are after the date of..... will be subject to the control orders or regulations that may be issued by the Government.....".

■ **Analysis:** The control orders and regulations being the framework, under which the tariff would be decided, is not existing or clearly mentioned or promulgated. Therefore it is construed that this clause, in the least, lacks the element of transparency.

■ **Non-conformity to Illustrative List of Elements:**

- o Regulatory Transparency :
  - (i) Publishing - public availability to interested persons

- **WPDR Tests:** This clause may fail to qualify 'transparency' test
- **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of service:** Mode 3 (Commercial Presence)

1.3 **Analysis of Notification: "Notification on authorization to market transportation fuels MS, HSD and ATF to new entrants including private sectors, dated March 8, 2002"**

- **Broad Overview of the notification:** The Administered Price Mechanism was dismantled vide resolution of Government of India dated 21 Nov 1997. In the said resolution, it was envisaged that investment in the refining sector will be encouraged by providing reasonable tariff protection and making marketing rights for transportation of fuels viz MS, HSD and ATF subject to certain conditions.

1.3.1 **Analysis of 'Rs. 2000 Crore' clause:**

- **Clause construed to deviate:** Section 3 ".....The guidelines for granting of authorization to market transportation fuels are given below: I. As per ..... companies owning and operating refineries with an investment of at least Rs. 2000/- crore or oil exploration companies producing 3 million tonnes of crude oil annually are entitled for marketing rights for transportation of fuels..."
- **Analysis:**
  - o Marketing of transportation fuel can be considered as an area of service providers' interest. Investment of Rs. 2000 Crore, to acquire authorization, is a qualification criterion for a company desirous of entering into various activities related to market transportation of fuel. There are investments on assets, clearly specified in the notification, which will be considered eligible. Eligible investments as defined in the notification, to acquire rights for marketing of transportation fuel, are related to investment in grass root refineries, E&P and laying Pipelines. Though such investment is part of the same value chain, this is not necessary to the specific line of business of that of marketing transportation fuels. Such investment may fall outside the competency areas or business interest of some, otherwise qualified transportation fuel marketers of Member countries, despite them being competent in the area of fuels' marketing. So this can be construed as burdensome from procedural perspective.
  - o Such or similar qualification criteria, for acquiring rights for marketing of transportation fuel, is not commonly practiced anywhere in the world. Hence this may not pass the test of 'equivalence'.
  - o The criteria of Rs. 2000 Crore itself, unless justified by the policy objective, is considered burdensome.
  - o A similar case has also been discussed in para 11 of WTO document SL/92 dated 8 March 2001.

- **Nonconformity with the Illustrative List of Element:**

- o Qualification requirement and Procedure:
  - (i) Requirement: Relevance of qualification requirement and scope of examinations to the activities for which authorization is needed.
- **WPDR Tests:** Unless justified under the national policy objective, this clause may fail to qualify 'Necessity' and 'Equivalence' test.
- **CPC:**
  - o CPC 63297 (Retailing services of fuel oil, bottled gas, coal and woods)
  - o CPC 62271 (Wholesale trade services of solid, liquid and gaseous fuels and related products (Excluding electricity and town gas))
  - o Other category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of service:** Mode 3 (Commercial Presence)

### 1.3.2

#### **Analysis of "Authorisation" clause:**

- **Clause construed to deviate:** Section XII "The company seeking authorization to market transportation fuels will be required to make an application in the specified form accompanied by such fees as may be .....The scheme will specially outline the mode of compliance volunteered by the eligible company relating to retail service obligations and marketing service obligations as may be laid down by Government/regulatory Board."
- **Analysis:** This notification doesn't provide for the format of application or amount of fees. Also the application review procedure or the timeframe for processing application, which are requirement as per illustrative list requirement, have been stated. The notification also binds the applicants to propose scheme inclusive of the obligations, which are not quantified. Hence the notification clause is construed to be not transparent.
- **Nonconformity to Illustrative List of Elements:**
  - o Licensing Requirements and Procedures:
    - (i) Transparency: Application procedure, Timeframe, Licensing criteria. o  
Regulatory Transparency:
    - (ii) Transparency in licensing application procedures: information about requirements/documentation; timeframe for decisions.
- **WPDR Tests:** Unless justified under the national policy objective, this clause may fail to qualify 'Transparency' and 'Necessity' test.
- **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of Service:** Mode 3 (Commercial Presence)

### 1.3.3 Analysis of 'remote area' clause:

- **Clause construed to deviate:** Section XIII. "After scrutinizing the scheme the government or the regulatory board as the case may be, may give authorization to eligible company imposing conditions in public interest which may include (a) servicing remote areas and low service areas as may be declared by central government from time to time ..... Government or regulatory board shall have the power to cancel the marketing authorization if the eligible company fails to set up retail outlets..... "
- **Analysis:** India has not taken any commitment in GATS in Marketing of petroleum product. However, with respect to the parameters laid by GATS in Article VI: 4, servicing in remote areas may be found unreasonable and burdensome (refer 3.5.2) under qualification criteria and procedure. The conditions to open retail outlets in remote areas and not to close without prior permission which may be imposed in public interest seem to be burdensome. GATS, recognizes the right of member to regulate, on the supply of services within their territories in order to meet national policy objective. But imposing condition in "public interest" as mentioned in this clause fails to qualify in transparency and necessity among the four WPDR tests. Also under the illustrative list, the clause is therefore non-compliant as regards transparency of regulations of obligations.
- **Nonconformity to Illustrative List of Elements:**
  - o Regulatory transparency:
    - (i) Publication: Public availability to interested person etc.
- **WPDR Tests:** Unless justified under the national policy objective, this clause may fail to qualify 'Necessity' test. This is also construed to fail the 'Transparency' test.
- **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 3 (Commercial Presence).

1.3.4 To summarize, the scheme of the Notification, as discussed above, broadly confirms to the requirements established/emerging under the current round of meetings between Members deliberating adoption of requisite "disciplines" under Article VI: 4, however, provisions need to be inserted for licensing forms, procedure and other related criteria to bring in more transparency.

### 1.4 Analysis of Notification: "Liquefied Petroleum Gas (Regulation of use in Motor Vehicles) Order, 2001, dated August 1, 2001"

- **Broad Overview of the notification:** The Ministry of Petroleum and Natural Gas issued an order under Essential Commodities Act for regulating storing, supply and distribution of Liquefied Petroleum Gas for use in Motor Vehicles through dispensing stations by a Government Oil Company or by parallel marketer

#### 1.4.1 Analysis of 'Authorisation' clause:

- **Clause construed to deviate:** Section 3 "Restriction on unauthorized acquisition and sale of Auto LPG ....No person shall sale ...No person shall purchase..... "
- **Analysis:** The Order deals with restrictions on unauthorized acquisition or sale of Auto LPG and provides for sale and dispensing of LPG, only by auto LPG

dispensing station dealer. An auto LPG dispensing station dealer is either appointed by Government Oil Company or a parallel marketer under a license by the Chief Controller of Explosives under the Static and Mobile Pressure Vessels (unfired) Rules 1981. However, the Order does not specify how the Government would appoint a dealer neither does it provide the format of application or amount of fees. The same therefore seem to lack compliance with GATS principles on the issue of procedure and related documentation and fees. The Auto LPG Dispensing Station Dealers are required to comply with various requirements issued under the Order *inter-alia* display of stock, procurement of LPG from Government Oil Company or parallel marketer, dispensing of auto LPG conforming to Indian Standard specification and maximum price at which Auto LPG can be sold.

- **Non conformity to Illustrative List of Elements:**

- o Licensing requirement and procedure
  - (i) Transparency: Licensing criteria, Application procedure, Time frame, Appeal and Review procedure.

- **WPDR Tests:** This clause is construed to fail 'Transparency' test.
- **CPC:** CPC 63297 - Retailing services of fuel oil, bottled gas, coal and woods. The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 3 (Commercial Presence).

#### 1.4.2 Analysis of 'LPG Specification' clause:

- **Clause construed to deviate:** Section 3(6) "No Auto LPG dispensing station dealer shall dispense .....conforming to auto LPG specification i.e IS 14861...."
- **Analysis:** Use of international standard as a product specification is desirable as per GATS. Equivalent specification to such standard is also not mentioned in this notification. The IS specification may potentially not conform to the relevant international standard. From a broader perspective usage of standards which if are not international would constitute a barrier to the services of dispensing Auto LPG. It would however be debatable if such non-conformity would also constitute a barrier to providing engineering services under Mode 1.
- **Non conformity to Illustrative List of Elements:**
  - o Technical standard:
    - (i) International and national technical standard : Use of international standard, Deviation from International standard
- **WPDR Tests:** This clause fails in 'International Standards' test.
- **CPC:** CPC 63297 - Retailing services of fuel oil, bottled gas, coal and woods. The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 3 (Commercial Presence).

### 1.4.3 Analysis of "Assessment of parallel marketer" clause:

- **Clause construed to deviate:** Section 6 Assessment and certification rating for parallel marketers: ... No Parallel marketers shall commence any activity such as import..."
- **Analysis:** The Order is in principle GATS compliant and appears to be transparent on the issue of low risk rating certificate. The Order is construed to be non-compliant from the perspective of no instruction given to rating agencies to inform any deficiencies found. The Order should, to be in compliance with GATS principles, be descriptive on the tests and examinations that the parallel marketer would undergo for the risk rating certification. Also, the Order differentiates between a Government Oil Company and Parallel marketer by prescribing a mandatory rating certificate and also in relation to maintenance of records and furnishing of information, only for the latter. Therefore the clause is construed as not complying with the Article XVII of GATS referring to 'National Treatment'. This clause is not referring to the appeal or review procedure of authorisation or feedback mechanism on deficiencies in case the application is rejected.
- **Non conformity to Illustrative List of Elements:**
  - o Licensing requirement and procedure;
    - (i) Transparency: Appeal / review procedure.
    - (ii) Procedures and related documentations: identification of deficiencies.
  - o Qualification requirement and procedure:
    - (i) Transparency: Appeal and review procedure
    - (ii) Requirements: .....scope of examinations to activities for which authorization is needed.
    - (iii) Specification assessment and verification of qualification
- **WPDR Tests:** This may fail in 'Necessity', 'transparency' and 'equivalence' test.
- **CPC:** CPC 63297 - Retailing services of fuel oil, bottled gas, coal and woods. The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 3 (Commercial Presence). Clause not-compliant with Article XVII of GATS.

### 1.4.4 Analysis of 'Auto LPG Stock by dispensing station' clause:

- **Clause construed to deviate:** Section 5 (5) " Procurement, storage and sale of auto LPG ...by a auto LPG dispensing station dealer...Every auto LPG station dealer shall take steps to ensure adequate availability of stocks of auto LPG .....at all times."
- **Analysis:** The 'steps to ensure adequate availability of stocks of auto LPG', need to be adhered to maintain license. Regulatory transparency needs, therefore, to be ensured by providing the quantum measure of adequate stock and the possible steps a dispensing outlet may take to ensure its availability.

\* **Non-conformity to Illustrative List of Elements:**

o Regulatory transparency:

(i) Publication: Requirement to ..... maintain licenses.

- **WPDR Tests:** Unless justified under the national policy objective, this clause may fail to qualify 'Necessity' test. This may also fail in 'Transparency' test.
- **CPC:** CPC 63297 - Retailing services of fuel oil, bottled gas, coal and woods. Other activity(ies) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 3 (Commercial Presence).

1.5

**Analysis of Notification: "Liquefied Petroleum Gas (Regulation of supply and distribution) Order, 2000 dated April 26, 2000"**

- **Broad Overview of the notification:** The Ministry of Petroleum and Natural Gas issued an order under Essential Commodities Act for regulating supply and distribution of Liquefied Petroleum Gas by a Government Oil Company or a parallel marketer at the Government controlled or declared price through a public distribution system or parallel marketer system. The Order further puts a restriction and prohibits other than a government oil company, a parallel marketer or a distributor to be engaged in the business of selling LPG to consumers.

1.5.1

**Analysis of 'storage transportation (etc) of petroleum' clause :**

- **Clause construed to deviate:** Section 4 "restriction on storage and transport of liquefied petroleum gas ...No person shall... fill any cylinder unless authorised...."
- **Analysis:** The Order provides restrictions on unauthorised possession, supply and consumption of liquefied petroleum gas. It specifies for registration and holding of valid authorization for a distributor for supplying LPG filled in cylinder. However, the Order does not provide for the format of application or amount of fees. The same are not in compliance with GATS principles on issue of procedure and related documentation and fees. Further, there is no prescribed timeframe for processing of an application made neither is there any criteria specified for grant of authorization
- **Nonconformity to Illustrative List of Elements:**
  - o Licensing requirement and procedure;
    - (i) Transparency: Timeframe, Appeal / review procedure. o
  - o Qualification requirement and procedure:
    - (ii) Transparency: Appeal and review procedure, Administrative and procedural rules related to qualifications requirement.
- **WPDR Tests:** This clause fails to qualify in 'transparency' test.
- **CPCs:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report
- **Mode of services:** Mode 3 (commercial presence).

## 1.5.2 Analysis of 'Assessment and certification of parallel marketer' clause;

- **Clause construed to deviate:** Section 11 "Assessment and certification rating of parallel marketers .... 1)(a) No parallel marketer shall commence any activity such as importing, storing, transportation...
- **Analysis:** The Order is in principle GATS compliant and appears to be transparent on the issue of low risk rating certificate. The Order is construed to be non-compliant from the perspective of no instruction given to rating agencies to inform any deficiencies found. The Order should, to be in compliance with GATS principles, be descriptive on the tests and examinations that the parallel marketer would undergo for the risk rating certification. Also, the Order differentiates between a Government Oil Company and Parallel marketer by prescribing a mandatory rating certificate and also in relation to maintenance of records and furnishing of information, only for the latter. Therefore the clause is construed as not complying with the Article XVII of GATS referring to 'National Treatment'. This clause is not referring to the appeal or review procedure of authorisation or feedback mechanism on deficiencies in case the application is rejected.
- **Non conformity to Illustrative List of Elements:**
  - o Licensing requirement and procedure;
    - (i) Transparency: Appeal / review procedure.
    - (ii) Procedures and related documentations: identification of deficiencies.
  - o Qualification requirement and procedure:
    - (i) Transparency: Appeal and review procedure
    - (ii) Requirements: ..... scope of examinations to activities for which authorization is needed.
    - (iii) Specification assessment and verification of qualification
- **WPDR Tests:** This may fail in 'Necessity', 'Transparency' and 'Equivalence' test.
- **CPCs:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 3 (commercial presence).

1.5.3 The Central Government has power to exempt any person or class of person from any provisions of this Order through an Official Gazette. Therefore the said provision may prima facie be too wide and maybe construed to be lacking the level of 'transparency' parameter as recognized under the Provisions of GATS.

## 1.6 Analysis of Notification: "The Gazette Notification-Petroleum Prod (Maintenance of Production, Storage and Supply) Order, 1999, dated April 16, 1999"

- **Broad Overview of the notification:** The Order derives its powers from the Essential Commodities Act, 1955 and seeks to regulate the production, storage and supply of petroleum products in the interest of public life, economy and protecting consumer interests. The Order delegates powers to Central Government to direct

any oil refining company to maintain a level of production. The same would be invoked in public interest.

#### 1.6.1 **Analysis of 'Takeover of retail outlet' Clause**

- **Clause construed to deviate:** Section 7 "Takeover of retail outlets and other business premises of the dealers if ...with a view of ensuring adequate supplies of petroleum product....it is necessary in public interest...."
- **Analysis:** This notification derives power from essential commodities act 1955. But no indicative list for such circumstances is given. Further, even though the notification provides for a mechanism of reasonable opportunity being given to the oil company of being heard, the procedure and time lines for the same are not mentioned.
- **Non conformity to Illustrative List of Elements:**
  - Regulatory transparency:
    - (i) Publication: Requirements to maintain license and certificate, Rights to appeal.
- **WPDR Tests:** This may fail 'Necessity', 'transparency' and 'equivalence' test.
- **CPCs:** CPC 63297 - Retailing Services of Fuel Oil, Bottled Gas Coal and Woods.
- **Mode of services:** Mode 3 (commercial presence).

1.6.2 Similar provisions have been outlined for maintaining stocks of petroleum products. The same are also found wanting for lack of transparency as mentioned above. The Central Government has the power under the Order to take over the retail outlets and other business of dealers of petroleum products, if it feels necessary to do so to ensure adequate supplies of petroleum products and their equitable distribution. Even though the Order provide for a mechanism of reasonable opportunity being given to the dealers of being heard, the procedure and time lines for the same are not mentioned, thereby resulting in lack of transparency.

#### 1.7 **Analysis of "The Petroleum Act, 1934"**

- **Broad Overview of the notification:** The Petroleum Act, 1934, (the Act) was enacted primarily with the objective to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of petroleum.

1.7.1 **Clause construed to deviate:** Section 8 deals with the requirement of no license for import, transport or storage of petroleum of Class A. However, the said section further states that no such license would be required by a person if the total quantity in his possession does not exceed thirty litres. Further the said section states that Petroleum Class A possessed without a license under this section shall be kept in securely stoppered receptacles of glass, stoneware or metal which shall not, in the case of receptacles of glass or stoneware, exceed one litre in capacity or, in the case of receptacles of metal exceed twenty-five litres in capacity.

#### 1.8 **Analysis of "The Petroleum Rules, 2002"**

- **Broad Overview of the notification:** The Petroleum Rules were enacted in 1976 to carry out the objectives laid down in the Act. However, the Petroleum Rules, 1976

were repealed by the Petroleum Rules, 2002 (the Rules) vide Section 202 of the Petroleum Rules, 2002.

#### 1.8.1 Analysis of 'Repairing' Clause

- **Clause construed to deviate:** Chapter I Part II section 8 "No person shall cause to be repaired or repair the use of hot work any tank or container which had petroleum unless it has been thoroughly cleaned and freed from petroleum and petroleum vapour or otherwise prepared for safely carrying out such hot repair and certified in writing by a competent person to have been so repaired."
- **Analysis:** This rule does not define the competent person who will be certifying such repair. The reference of international standard which could be applicable in such repair activity is not available.
- **Non conformity to illustrative list element:**
  - o Qualification requirement and procedure
    - (i) Transparency: including criteria of qualification requirements, administrative or procedural rules relating to administration of qualifications requirements, appeal/review procedures, etc.; pre-establishment, public availability, and objectivity; accessibility by service suppliers.
- **WPDR Tests:** This may fail in 'International Standard' and 'equivalence' test.
- **CPC:** CPC633orCPC886.
- **Mode of services:** Mode 4 (Presence of Natural Person) and Mode 1 (Cross border supply).

#### 1.8.2 Analysis of 'Construction of Vessel' clause:

- **Clause construed to deviate:** Chapter III part II section 34 "Requirements as to the construction of vessels: Every ship or other vessel carrying petroleum in bulk ....shall be made of iron or steel ...provided that the licensing ..... Chief controller, specify."
- **Analysis:** This clause though specifies some of the technical requirement of construction of vessels but the reference of technical standard etc, are not mentioned. It also mentions the possibility of deviation in construction of vessels in 'Special circumstances' but the circumstances are not mentioned.
- **Non conformity to Illustrative List of Elements :**
  - o Technical standard: In all its elements like use of international standard, appeal and review procedure, etc.
  - o Regulatory transparency :
    - (i) Publication: Requirements to obtain review maintain and renew license and certificate.
    - (ii) Transparency in licensing application procedure : information and requirement of documents

- **WPDR Tests:** This may fail in 'International Standard' and 'equivalence' test
- **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 1 (Cross Border Supply).

### 1.8.3

#### **Analysis of 'Manufacturing of Tank Vehicle' Clause:**

- **Clause construed to deviate:** Chapter III part IV section 63 " Tanks Vehicles.-(1) Every tank vehicle used for transport of petroleum...requirement laid down in the third schedule and be of a type approved in writing by chief controller.. "
- **Analysis:** Construction of tank vehicle may come under the scope of service provider who will be transporting petroleum on land by vehicles. Third schedule though defines all necessary technical requirements to construct a tank vehicle but does not refer to any technical standard which is internationally practiced. This clause has other service related activities like testing of tank anchoring of tank etc. But in third schedule no standard practices are referred.
- **Non-conformity to illustrative list of element::**
  - o Technical standard:
    - (i) Transparency: Administrative or procedural rules related to administration of qualifications requirement, Appeal or review procedure etc.
    - (ii) International and national technical standards: Use of international standard or deviation from such standard
    - (iii) International professional body for promotion of best practices.
- **WPDR Tests:** This clause may fail to qualify in two of the four tests: a) International standard b) Equivalence
- **CPCs:** Testing of the tank under CPC 8676. However there are other service related activities, covered under this section, falls outside the identified CPCs
- **Mode of services:** Mode 1 (Cross border supply).

### 1.8.4

#### **Analysis of 'Construction of Pipeline' Clause:**

- **Clause construed to deviate:** Chapter III part V Transport by Pipelines sub section 90 " The pipeline shall be constructed of suitable steel...with a code recognized by the chief controller or OISD standard 141...."
- **Analysis:** Construction of pipeline refers to Indian standard also does not mention the types of steel permissible for different services. Similarly technical standard etc are not mentioned for coating, hydrostatic testing, and repair and maintenance of pipeline. The format for application for seeking approval for such pipelines is not mentioned.
- **Non-conformity to illustrative list element:**
  - o Technical standard :

- (i) International and national technical standards: Use of international standard or deviation from such standard.
- (ii) International professional body for promotion of best practices.
- **WPDR Tests:** This clause may fail to qualify in two of the four tests: a) International standard b) Equivalence.
- **CPCs:** CPC 633 or CPC 886 Maintenance & Repair of equipments for Repair and maintenance of pipeline (considering pipeline as equipment which facilitates the service of transporting petroleum). Testing, etc. fall under CPC 8676 i.e. technical testing and analytical services.
- **Mode of services:** Mode 1 (cross border supply), Mode 3 (Commercial Presence) and Mode 4 (Presence of Natural Person).

#### 1.8.5 Analysis of 'Storage of Petroleum' Clause

- **Clause construed as deviate:** Chapter V Storage of Petroleum requiring license. Section 118 supervision of operations within an installation, service station or storage shed: all operations within an installation ..... shall be conducted under supervision of an experienced responsible agent or supervisor..."
- **Analysis:** This section doesn't specify qualification requirement and procedure for supervisors. Supervision is a critical area under mode 4 of services, in field services of oil and Gas sector.
- **Non-conformity to illustrative list element:**
  - o Qualification requirement and Procedure:
    - (i) Transparency- Qualification requirement, administrative or procedural rules related to administration of qualification requirement,
    - (ii) Requirements: Residency requirements.
- **WPDR Tests:** This clause may fail to qualify in two of the four tests: a) International standard b) Equivalence
- **CPC:** Depending upon the specific nature of supervision it can be referred to either of these CPCs; CPC 8672: Engineering Services, 8673: Integrated Engineering services.
- **Mode of services:** Mode 4 (Presence of natural person).

#### 1.8.6 Analysis of 'testing of Storage Tank' Clause:

- **Clause construed as deviate:** Chapter V part III section 126, "...Storage tanks or other receptacles for the storage of petroleum in Bulk..be tested by water pressure by a competent person..Proforma of certificate of testing ...."
- **Analysis:** The procedure of testing, like the applicable international standard etc. is not mentioned. The qualification of competent person is neither available in the regulation nor referred.

\* **Non conformity to Illustrative List of Elements:**

- o Technical standard:
  - (i) International and national standard: Use of international standard and deviation from such standards
  - (ii) Conformity assessment
  - (iii) International professional body for establishing and promoting best practices.
- o Qualification requirement:
  - (i) Transparency: Qualification requirement Accessibility by service supplier.

■ **WPDR Tests:** This clause may fail to qualify in two of the four tests: a) International standard b) Equivalence

■ **CPC:** Testing fall under CPC 8676 Technical testing and analytical services.

■ **Mode of services:** Mode 4(Presence of Natural person).

1.8.7 **Analysis of 'Refusal of License' Clause**

■ **Clause construed to be deviate:** Chapter VII Section 151: "...a licensing authority refusing ...to grant amend renew or transfer a license shall record his reason for refusal in writing...."

■ **Analysis:** As per the illustrative list suggested by WPDR, it may be deemed that the licensing authority must identify the deficiencies and also keep the provision/possibility of resubmission in case of deficiencies and incomplete information. This clause doesn't specify such provision.

■ **Non-conformity to Illustrative List of Elements:**

- o Licensing Requirement and procedure:
  - (i) Transparency : Licensing criteria, appeal and review procedure
  - (ii) Procedures and related documentation: Identification of deficiencies
  - (iii) Review/ appeal: possibility of resubmission in case of deficiencies and incomplete information.
- o Regulatory transparency:
  - (i) Publication: Rights to appeal.
  - (ii) Transparency in licensing application procedure: Notification of reason of denial.

■ **WPDR Tests:** This clause may fail to qualify in 'Transparency ' test

- **CPCs:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 3 (commercial presence).

#### 1.8.8 Analysis of 'Test Apparatus' Clause:

- **Clause construed to deviate:** Chapter X testing of Petroleum, section 190 ..." standard test apparatus - The standard test apparatus shall -agree in every respect with Indian standard specification no IS 1448....."
- **Analysis:** Considering this as a service which a testing agency may provide, this may be unreasonable unless the equivalence and deviation are established with other/international test standards.
- **Non-conformity to Illustrative List of Elements:**
  - o Technical standard:
    - (i) International and national standard: a) Use of international standard and deviation from such standards.
- **WPDR Tests:** This clause may fail to qualify in two of the four tests: a) International standard b) Equivalence.
- **CPCs:** CPC 8676 Technical testing and analytical services.
- **Mode of services:** Mode 1 (cross border supply).

#### 1.8.9 Analysis of 'Petroleum testing' Clause:

- **Clause construed to deviate:** Chapter X testing of Petroleum, section 193 "Method of test - The testing official shall test the sample in the manner laid down in the Indian standard specification no IS 1448...."
- **Analysis:** Considering this as a service which a testing agency may provide, this may be unreasonable unless the equivalence and deviation are established with other/international test standards.
- **Non-conformity to Illustrative List of Elements:**
  - o Technical standard:
    - (i) International and national standard: a) Use of international standard and deviation from such standards.
- **WPDR Tests:** This clause may fail to qualify in two of the four tests: a) International standard b) Equivalence
- **CPC:** CPC 8676 Technical testing and analytical services.
- **Mode of services:** Mode 1 (Cross border supply) Mode 4 (Presence of natural person).

## 1.8.10 Analysis of 'Responsibility of Master of Vessel' Clause:

- **Clause construed to deviate:** "Chapter III Part II Rule 43 (c) (d) (e)(f) (g) : Master of the Vessels specially responsible :The Master or other officer in-charge of any vessels which carried petroleum on board...shall be responsible to see that-..."
- **Analysis:** Chapter III of the Rules deals with transport of petroleum. Part II of Chapter III of the Rules from Rule 33 to 50 provide for transport by water. Rule 43 lays down certain responsibilities of a master or other officer in charge of any vessel which has carried petroleum on board whether as cargo or as fuel. In line with the responsibilities, certain measures have been enumerated to ensure safety. In order to ensure that the responsibilities laid down for the a master or other officer in charge of any vessel a certificate are adhered to, a certificate needs to be obtained from the Chief Controller. However, the said Rule further states that the said certificate shall be granted only on receipt of a fee fixed by the Central Government from time to time. In the absence of any guidelines for fixing the fee, it would be essential to ensure that these regulations that may be passed by the Central Government for prescribing the quantum of fees required to be paid should not be too high and generally should be sufficient for covering up the administrative costs.
- **Nonconformity to Illustrative List of Elements :**
  - o Qualification Requirement and Procedure:
    - (i) Administrative or procedural rules related to administration of qualifications requirement.
    - (ii) Specification assessment and verification of procedure
- **WPDR Tests:** This clause may fail to qualify in 'Transparency' test.
- **CPCs:** This category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 4 (Presence of natural person).

## 1.9 Analysis of "The Oilfields (Regulation and Development) Act, 1948"

- 1.9.1 **Broad Overview of the notification:** The Oilfields (Regulation and Development) Act, 1948 (the Act) is an act for the regulation of oilfields and for the development of mineral oil resources.
- 1.9.2 Section 3 of the Act is the Definition clause and defines inter-alia mineral oil, which includes natural gas and petroleum, mining lease and oilfields.
- 1.9.3 Section 4 of the Act provides that any mining lease granted needs to be in conformity with the rules made under the Act. Under section 5 of the Act the Central Government has powers to make rules for regulating the grant of mining leases or prohibiting the grant of such leases. The rules include manner of making application, the persons who can make application, areas for mining, fees to be paid, conditions on which lease shall be granted and rent payable for the lease.
- 1.9.4 Section 6 provides for powers of the Central Government to make rules as respects development of mineral oils.
- 1.9.5 Section 6A of the Act provides for payment of royalty in respect of any mineral oil mined at the rate specified in the schedule. The Central Government has powers to enhance or

reduce the rate at which royalty shall be payable. In order to encourage exploration in offshore areas, the Central Government may even exempt any payment of royalty in respect of any mineral oil produced. The Central Government under section 7 may even make rules for modifying the terms and conditions of lease granted prior to the commencement of the Act.

1.9.6 Section 9 of the Act deals with penalties for contravention of any provision under the Act. The provisions of the Act are binding on the Government too.

1.9.7 The Central Government has power to relax rules in public interest.

1.9.8 As can be seen from the contents of the subject provision, the policy directives are binding in nature. The same can be issued in case the Central Government finds it necessary or expedient for public interest. Therefore the said provision may prima facie be too wide and maybe construed to be lacking the level of 'transparency' parameter as recognized under the Provisions of GATS.

1.9.9 To summarize, the scheme of the main Act as discussed above broadly confirms to the requirements established/emerging under the current round of meetings between Members deliberating adoption of requisite 'disciplines' under Article VI: 4.

1.9.10 The Petroleum and Natural Gas Rules, 1959 under the Act have been framed, regulating the grant of exploration licenses and mining leases in respect of petroleum and natural gas which belongs to the Government and in conservation and development thereof.

#### 1.10 **Analysis of "P&NG Rules, 1959<sup>2</sup>"**

- **Broad Overview of the notification:** The said Rules primarily deal with the regulation of grant of Exploration Licenses and Mining Leases in respect of Petroleum and Natural Gas, which belong to the Government and for the conservation and development of the same.

##### 1.10.1 **Analysis of 'Issuance of License' Clause:**

- **Clause construed to deviate:** (I) Rule 4 "No person shall prospect for petroleum except in pursuance of a petroleum exploration license granted under these rules, and no person shall mine petroleum except in pursuance of a petroleum mining lease ...."; (II) Rule 5 (2) "...Every license and lease shall contain such of the terms, covenants and conditions prescribed by those rules ... and additional terms, covenants and conditions between the Central Government and the licensee and the lessee."; (III) Rule 5 (3) "The Central government, if it deems fit, may from time to time notify in the official gazette particulars regarding the basis on which the Central Government may be prepared to consider proposals for prospecting or mining operations in any specified areas;" (IV) Rule 20 "Upon written application being made by the licensee or the lessee ..... the Central Government.....considers that adequate reasons have been furnished .... Authorize .... Suspension....";
- **Analysis :** The exact parameters, on compliance with which, such license or lease for exploration/mining would be granted are not specified though Rule 5(3) provides

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<sup>2</sup>

*The PEL and ML are issued to companies investing in exploration. They are typically not service providers. This analysis from GATS perspective, however applies to a hypothetical situation of PEL or ML being granted to service providers.*

for the Central Government to notify the particulars regarding the basis on which the proposals for prospecting or mining operations in any specified areas would be considered. Ideally, such basis must be pre-established and should be objective in nature. The same should be put in public domain and information thereto should be readily available from a designated authority. The said Rules do not prescribe any specific authority for the purposes of such grant of license/lease. The manner of making applications or the timeframe for taking decision in respect thereto are also not enumerated. There is also no provision expressly provided for challenging any decision denying the grant license/lease (though the same may be as per the Government decision, it is imperative that such decisions are taken in a transparent manner without any arbitrary exercise or discretion).

■ **Non-conformity to Illustrative List of Elements :**

- o Licensing Requirement and Procedure :
  - (i) Transparency - Licensing Criteria, Application Procedure;
  - (ii) Administration of Licensing Procedure - Reasonableness and Objectiveness;
  - (iii) Procedures and related documentation: Identification of deficiencies (If license is denied), possibility of resubmission in case of deficiencies and incomplete information.
- o Regulatory Transparency :
  - (i) Transparency in Licensing Application Procedures - Timeframe for Decisions.

■ **WPDR Tests:** This clause may fail to qualify in Transparency test.

■ **CPCs:**

- o Services incidental to mining (CPC 883);
- o Other services fall under CPC(s) outside of the identified CPCs

■ **Mode of services:** Mode 3 (commercial presence).

1.10.2 **Analysis of 'Cancellation of License or Lease' Clause:**

■ **Clause construed too deviate:** section 21 Cancellation of licenses and leases: "...if the licensee and lease or his executor....a) fails to fulfil...b) fails to use the land covered..... "

■ **Analysis:** This section elaborates on cancellation of license on un-fulfilment of certain desire of the license issuing authority. However this clause doesn't specify the circumstances transparently, on occasion of which such licenses or lessees will be invoked. The review and appeal procedure is also not specified in the clause.

■ **Nonconformity of Illustrative List of Elements:**

- o Licensing requirement and procedure:
  - (i) Transparency: Appeal and review procedure.

(ii) Administration of licensing procedure: Objectiveness and reasonableness.

(iii) Review and Appeal: Reason of rejection, Information of deficiencies, possibility of resubmission in case of deficiencies and incomplete information.

- **WPDR Tests:** This clause may fail to qualify in Transparency test.
- **CPCS:** This category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 3 (commercial presence).

## 1.11 Analysis of "PNGRB Act 2006"

1.11.1 **Broad Overview of the notification:** The Petroleum and Natural Gas Regulatory Board Act 2006 (The Act) has been recently enacted primarily with the objective of establishing a Petroleum and Natural Gas Regulatory Board which would be required to regulate the activities of refining, processing, transportation, distribution, and sale etc. of petroleum, petroleum products and natural gas with the primary purpose of protecting the interests of the consumers as well as to promote competitive markets.

1.11.2 Chapter II from Section 3 to 10 deals with the constitution, powers and jurisdiction of the Petroleum and Natural Gas Regulatory Board. The functions of the Board have been enumerated under Section 11 of the Act and it is relevant that the same primarily provide for ensuring of interests of consumers by fostering fair trade and competition amongst the entities. The other relevant provisions pertaining to the functions of the Board in light of the present analysis are Section 11 (c), (e), (f), (g), and (i) specifically.

1.11.3 There are adequate safeguards which seem to be in-built for ensuring the independence of the Regulatory Board while discharging the enumerated functions. However the provisions of Section 42 provides for the overriding powers of the Central Government. This provision especially the grounds on which the directions could be issued, prima facie seems too wide and may be vulnerable from the touchstone of the 'transparency' parameter.

1.11.4 Chapter IV of the Act deals with 'registration and authorization' and therefore for the purposes of the present analysis in light of compatibility with Article VI: 4 of the GATS, the parameters emerging from the said Article are required to be carefully considered by applying the same to the relevant provisions of the Act.

1.11.5 Section 15 provides for mandatory registration under the Act prior to undertaking of specified activities in respect of petroleum, petroleum products or natural gas. The said provision therefore deals with the eligibility conditions and the procedure for making an application by an entity desirous of -

- a) marketing any notified petroleum or petroleum products or natural gas; or
- b) establishing or operating a liquefied natural gas terminal; or
- c) establishing storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations,

1.11.6 The said provision requires the concerned entity to make an application for registration in a prescribed format and accompanied by a prescribed fee. However, the exact format in respect of such application as well as the quantum of fee is yet to be determined by the

Regulatory Board (which itself is in the formation stage) by passing appropriate Regulations. Therefore, it would be essential to ensure that these regulations to be stipulated are:

- transparent
- prescribe a simple format for making the application,
- the application must clearly specify all the details required for processing of the same;
- do not require cumbersome documents to be attached with the application form (that is minimum number of documents must be prescribed to be accompanied with the application);
- the pre-authentication requirement, if any, in respect of the accompanying documents must be simple and less time consuming;
- the quantum of fee required to be paid with the application should not be too high and generally should be sufficient for covering up the administrative costs involved in processing of the application or commensurate with the expenses involved including for undertaking any verifications etc.<sup>3</sup>

1.11.7 Further, under the said provision, there is no prescribed timeframe for processing of an application made to the Regulatory Board. It would be desirable to prescribe a timeframe for such processing of application. Special consideration must be given for ensuring that the eligibility criteria must be clearly and expressly prescribed in advance and known to public at large. This would not only ensure transparency but would also fulfill the broad parameters contemplated under Article VI: 4.

1.11.8 Section 16 of the Act prescribes a bar on undertaking specified activities without obtaining authorization under the Act. Section 17 deals with the procedure for seeking authorization by an entity which proposes to lay, build, operate or expand a pipeline as a common carrier or contract carrier. Similar authorization is also required for an entity proposing to lay, build, operate or expand; a city or local natural gas distribution network. The authorization contemplated, under Section 17 of the Act requires to be taken from the Regulatory Board, by filing an application as per the prescribed form and accompanied by a prescribed fee. As under Section 15 of the Act, the regulations for prescribing the form as well as the concerned fee must be based on the abovementioned parameters. Therefore, the observations made in respect of Section 15 above would also apply to the present provision. Similarly it would be advisable to prescribe a timeframe for processing of applications made under Section 17.

1.11.9 Under Section 19, the board may give wide publicity and invite applications from interested parties pursuant to forming of a opinion by the board that it is necessary or expedient to lay, build, operate or expand a common carrier or contract carrier between two specified points or to lay, build, operate or expand a city or local natural gas distribution network in a specified geographic area. However, the said provision does not enumerate the basis on which such opinion is to be formed by the board. The said

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*Disciplines on Domestic Regulation In the Accountancy Sector as Adopted by the Council for Trade in Services on December 14<sup>th</sup>, 1998 - Refer to paragraphs 8-17 (Document S/L/64 dated December 17<sup>th</sup>, 1998)*

provision also authorizes the Regulatory Board to select an entity in an objective and transparent manner as specified by regulations for such activities. However the said provision is too general and therefore it would be advisable to outline the indicative parameters on which selection of an entity would be made. In the absence of such guiding parameters that may be prescribed in advance, the selection process may be construed to be lacking transparency and may not have any relation to the competency or the ability of the entity to provide the concerned service which form the basis of securing consumer interests.

- 1.11.10 Section 20 gives power to the Regulatory Board to make certain declarations, which would have an effect on the business prospects of an existing entity. The said provision authorizes the Regulatory Board to make such declarations merely on the basis of its opinion. However, while making such declarations under Section 20 (1) of the Act, the board may also call for objections and suggestions within a specified timeframe from all persons and entities likely to be affected by such decision. This methodology seems to broadly incorporate the emerging trend of encouraging greater public participation in formulation of legal framework (as recorded in the WPDR papers while discussing the evolution of requisite "disciplines").
- 1.11.11 The provisions under Section 20 (4) of the Act give the Regulatory Board powers for deciding the "period of exclusivity" to lay, build, operate, or expand a city or local natural gas distribution network. This provision would require special consideration in so far as the same has a direct impact on "market accessibility" to service providers. The said provision requires such decision to be made on the basis of principles "laid down by the regulations" while fully protecting the consumer interest. It is therefore imperative that such "exclusivity" must address the principles of GATS in general and be based on certain rationale objectives that maybe sought to be secured. Incidentally, some of the parameters that may act as a guide for the objectives to be achieved are enumerated in Section 20 (5) of the Act.
- 1.11.12 Section 23 deals with suspension or cancellation of Authorization. The same provides for the affected party to be given an opportunity of being heard before any action of suspension or cancellation is undertaken.
- 1.11.13 Chapter VI deals with "Appeals to Appellate Tribunal" and therefore addresses the inherent parameters emerging from Article VI: 4. Recognition of a legal framework for challenging decisions by an affected party on denial of a license/authorization has emerged from the discussions and papers submitted by members during the meeting of WPDR4. Under Section 33 of the Act an appeal is provided to the aggrieved party and the relevant portion of Section 33 (1) of the Act is as follows: "Any person aggrieved by an order or decision made by the Board under the Act may prefer an appeal to the Appellate Tribunal----- "
- 1.11.14 From the contents of the above provision it is clear that in case a registration or authorization under Section 15 or 17 of the Act respectively is denied to an applicant, a right to appeal against such denial could be preferred. The said Section 33 also prescribes the timeframe within which the said appeal is to be filed and the requisite procedure for the same. Therefore, the implicit requirements of Article VI: 4 seem to be addressed vide the above provision. It is also relevant to point out that under Section 33 (5) of the Act, the said appeal must be disposed off finally at least within 90 days from

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*4 Proposal for Disciplines on Licensing Procedures submitted by EC before the WPDR - Refer paragraphs 15-17 (Document S/WPDR/W/25 dated July 10<sup>th</sup>, 2003.)*

the date of receipt of appeal. In case of the said appeal not being so disposed, the Appellate Tribunal is required to record reasons in writing for the said delay.

1.11.15 Further under Section 37, right to further appeal to the Hon'ble Supreme Court has been provided for within 90 days from the date of decision of the Appellate Tribunal sought to be appealed against. Therefore, the scheme of the above provisions by prescribing the right to challenge as well as the requisite time frames for doing so, seems to satisfy the inherent requirements of Article VI:4 parameters.

1.11.16 In addition to the above provisions, for the present purposes Sections 42 and 60 of the Act are also relevant. Under Section 42 (2) Central Government has been endowed with powers to issue directions to the Board including issuance of binding policy directives. The said provision is extracted herein below:

*(2) Without prejudice to the foregoing provision, the Central Government may, if it finds necessary or expedient so to do in public interest or for maintaining or increasing supplies of petroleum, petroleum products or natural gas or all or any of them or for securing their equitable distribution and ensuring adequate availability, issue policy directives to the Board in writing and such policy directives shall be binding upon the Board:*

*Provided that no such directive shall relate to any day-to-day affairs of the Board:*

*Provided further, the Board shall, as far as practicable, be given an opportunity of expressing its views before any directive is issued under this sub-section.*

- 1.11.17 As can be seen from the contents of the subject provision, the policy directives are binding in nature. The same can be issued in case the Central Government finds it necessary or expedient not only for public interest but also "for maintaining or increasing supplies... or for securing their equitable distribution and ensuring adequate availability". Therefore the said provision may prima facie be too wide and maybe construed to be lacking the level of "transparency" parameter as recognized under the Provisions of GATS.
- 1.11.18 Under Section 61 the Central Government has been endowed with Powers for making rules for carrying out provisions of the Act. Under the said provision, the basic subjects on which such rules are to be made are also broadly enumerated. In view of the issue of compatibility of the concerned provisions with Article VI:4, for the purposes of making the rules special attention may be given to subjects enumerated under Section 60 (2) (e), (f), (g), (h), (k), (l), (m), (n), (o), (p), (q), and (r) with a view to ensure that the parameters contemplated under Article VI:4 stand duly addressed and there are no deviations from the same.
- 1.11.19 To summarize, the scheme of the main PNGRB Act 2006 as discussed above broadly confirms to the requirements established/emerging under the current round of meetings between Members deliberating adoption of requisite "disciplines" under Article VI: 4, however, the same level of compatibility must be ensured while laying the concerned Regulations and in the formulation of the Rules as required under the concerned provisions of the Act.

## 1.12 Analysis of "NELP Model Production Sharing Contract"

**1.12.1 Broad overview of the notification:** New Exploration Licensing Policy was formulated by the Government of India in 1997-98 to provide a level playing field in which all the parties may compete on equal terms for the award of exploration acreage.

1.12.2 Some clauses of Model Production Sharing Contract (MPSC) of NELP VI address to issues pertaining to acquisition or provisioning of services. In appendix-F of MPSC, three procedures for acquisition of goods and services are mentioned. The procedures do not necessitate any kind of licensing or qualification for providing services. The procedures to be adopted by the operator for the acquisition of goods and services are as follows.

*The operator will be at liberty to determine the procedure of acquiring services valued at less than \$50000.*

- \$50000 to less than \$200000 Procedure A.
- \$200000 to less than \$500000 Procedure B.
- Equal or more than \$500000 Procedure C.

The Appendix-F, however, stipulates that the contractor shall have to arrange at least one quotation from Indian supplier. This may be considered as "unreasonable" and lacking "objectivity".

1.12.3 **Analysis of "Employing Indian National" Clause:**

- **Clause construed to deviate:** In Article 22.1 of MPSC "contractor shall, to the maximum extent possible, employ, citizen of India having appropriate qualifications and experience, taking into account experience required in the level and nature of petroleum operation."

- **Analysis:** This requirement is construed to be going against the spirit of GATS. Though this is not a mandatory condition, the spirit of the provision does not comply with the principles of GATS Article XVII where no differential National Treatment is expected to be given to Member country service providers. Also the ambiguity (refer 3.5.3) in the minds of service recipients as to what would "to the maximum extent possible" mean, leaves a reason for the clause to be non-compliant with the spirit of Article VI: 4.
- **Nonconformity to Illustrative List of Elements: -**
- **WPDR Tests:** This clause may fail to qualify in 'Necessity' test.
- **CPCs:** This category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 4 (Presence of Natural Person). Construed not to comply with Article XVII - National Treatment.

#### 1.12.4 **Analysis of 'Technical Assistance' Clause:**

- **Clause construed to deviate:** In Article 22.3 At the request of the Government, the Foreign Companies shall separately endeavour to negotiate, in good faith, technical assistance agreements with the Government or a company nominated by Government for this purpose setting forth the terms by which each Foreign Company constituting the Contractor may render technical assistance and make available commercially proven technical information of a proprietary nature for use in India by the Government or the company nominated by Government. The issues to be addressed in negotiating such technical assistance agreements shall include, but not be limited to, licensing issues, royalty conditions, confidentiality restrictions, liabilities, costs and method of payment.
- **Analysis:** This clause takes commitment from the operator for providing technical assistance at terms to be mutually agreed and therefore it constitutes trade in service under Mode 1 by the operator. A closer analysis reveals that, this clause enables rather than restricts the trade in service. Hence this clause is not construed to be non-compliant with GATS.
- **Nonconformity to Illustrative List of Elements: -**
- **WPDR test: -**
- **CPCs:** CPC 8672 ( Engineering service) or CPC 8673: Integrated engineering Services
- **Mode of services:** Mode 1 (cross border supply)

#### 1.13 **Analysis of "CBM Model Contract"**

- 1.13.1 **Broad Overview of the notification:** In order to harness CBM potential in the country, in 1997 Government formulated a CBM Policy, which provided for attractive fiscal and contract terms. An MOU was signed between Ministry of Petroleum and Natural Gas and Ministry of Coal to facilitate implementation of CBM policy including identification of areas for CBM operations. For this purpose, a Joint Committee comprising of representatives of Ministry of Petroleum and Natural Gas and Ministry of Coal was constituted in September 1997. The terms and conditions for development of CBM resources and Model Contract for production of CBM in the country were formulated.

Prospective blocks were delineated, after due deliberation between the Ministry of Coal and MOP&NG for global bidding in line with the practice with oil & natural gas blocks..

- 1.13.2 Some clause of CBM Model Contract addresses to issues pertaining to acquisition or provisioning of services. In appendix-E of MPSC, three procedures for acquisition of goods and services are mentioned. The procedures do not necessitate any kind of licensing or qualification for providing services. The procedures to be adopted by the operator for the acquisition of goods and services are as follows.

*The operator will be at liberty to determine the procedure of acquiring services valued at less than \$50000.*

- *\$50000 to less than \$200000 Procedure A.*
- *\$200000 to less than \$500000 Procedure B.*
- *Equal or more than \$500000 Procedure C.*

The Appendix-E, however, stipulates that the contractor shall have to arrange at least one quotation from Indian supplier. This may be considered as "unreasonable" and lacking "objectivity".

- 1.13.3 In Article 20.1.a) & b), contractor shall give preference to purchase of Indian services, employ Indian subcontractor who are having the required skills on comparable standards. The equivalence in regard to various elements under qualification requirement and procedure are not mentioned in the CBM policy documents.

1.13.4 **Analysis of "Employing Indian National" Clause:**

- **Clause construed to Deviate:** In Article 19.1 of Model Contract "contractor shall, to the maximum extent possible, employ, and require the operator and sub-contractors to employ, citizens of India having appropriate qualifications and experience, taking into account experience required in the level and nature of CBM operation."
- **Analysis:** This requirement is construed to be going against the spirit of GATS. Though this is not a mandatory condition, the spirit of the provision does not comply with the principles of GATS Article XVII where no differential National Treatment is expected to be given to Member country service providers. Also the ambiguity (ref 3.5) in the minds of service recipients as to what would "to the maximum extent possible" mean, leaves a reason for the clause to be non-compliant with the spirit of Article VI:4.
- **Nonconformity to Illustrative List of Elements: -**
- **WPDR Tests:** This clause may fail to qualify in 'Necessity' test.
- **CPCs:** This category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of services:** Mode 4 (Presence of Natural Person). Construed not to comply with Article XVII - National Treatment.

1.14 **Analysis of "Open Acreage Licensing Policy"**

- 1.14.1 **Broad Overview of the notification:** Though the subject of introducing Open Acreage Licensing Policy (OALP) is under active consideration by the Govt. of India, one such

policy or notification is yet to be introduced by the DGH or MoPNG. Therefore, analysis of any such OALP is not feasible at this stage.

## 1.15 **Analysis of "Essential Commodities Act, 1955"**

1.15.1 **Broad Overview of the notification:** The Essential Commodities Act, 1955 (the "Act") gives powers to control production, supply, distribution etc. of essential commodities for maintaining or increasing supplies and for securing their equitable distribution and availability at fair prices. The State Government/UT ministries have issued various control orders to regulate various aspects of trading in Essential Commodities such as food grains, edible oils, pulses, kerosene, sugar etc.

1.15.2 Section 2(a) (viii) defines an essential commodity to mean any of the following classes of commodities which include petroleum and petroleum products.

- Section 3 of the Act provides powers to Central Government to issue order for maintaining or increasing supplies of any essential commodities or for securing their equitable distribution or for controlling the rise in prices. The powers include regulation by licenses, permits or by controlling prices, prohibiting the withholding of any sale of any essential commodity ordinarily kept for sale, seizure of essential commodities in public interest etc.
- Section 6A of the Act provides for procedure for dealing with goods seized under section 3 of the Act. The section provides for issue of show cause notice before confiscation of essential commodity and procedure for appeal.
- Section 7 of the Act provides the penalties for not complying with orders issued under section 3 of the Act.
- The powers of the Central Government under the Act seem to be too wide and discretionary

## 1.16 **Analysis of "Policy for development of natural gas pipelines and city or local natural gas distribution network "**

- **Broad overview of the Notification:** Policy for development of natural gas Pipelines and City or Local Natural Gas Distribution Networks has been recently enacted with the objective of providing a policy framework for the future growth of pipeline infrastructure to facilitate the evolution of nationwide gas grid and growth of city and local gas distribution networks. The policy is also to promote public and private sector investment in natural gas pipelines and city or local natural gas distribution networks. This policy may be read in conjunction with Petroleum and Natural Gas Regulatory Board Act 2006 as this act provides the legal framework for the development of natural gas pipelines and city or local gas distribution networks. This policy document covers areas like objective, applicability, grant of authorization, bid bond and performance bond, conditions under ROU acquisition, unbundling of operations, gas grid connectivity, Transportation Tariff, Technical and HSE standards, statutory clearances, Role of State Governments, FDI policy Gas advisory body, Long Term Plan and Miscellaneous.

### 1.16.1 **Analysis of Grant of Authorization clause:**

- **Clause construed to deviate:** "...Provided that such an authorization for gas pipeline shall be granted to any entity only if the design pipeline capacity is at least 33% more than capacity requirements of the concerned entity plus the firm up contracted capacity (termed as total capacity) and this extra capacity ....."

\* **Analysis:** The extra capacity requirement can be construed to be an unreasonable and burdensome requirement. It may also not be in conformity to the international norms and therefore may not meet the requirement of "Equivalence". Even though the mechanism is in place for receiving payment for selling such additional capacity, it may not take into account a situation where the demand for such additional capacity does not exist. The cost burden for the additional capacity building would fall on the proposer company. An across the board extra capacity requirement, without specifically assessing the market requirement, may also prove to be unreasonable.

■ **Non-conformity to Illustrative List of Elements:**

o Licensing Requirement and Procedure :

(i) Administration of Licensing Procedure - Reasonableness.

■ **WPDR Tests:** Unless justified under the national policy objective, this clause may fail to qualify 'Equivalence' and 'Necessity' test.

■ **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.

■ **Mode of service:** Mode 3 (Commercial Presence).

1.16.2

**Analysis of condition under ROU acquisition clause:**

■ **Clause construed to deviate:** "...The ROU acquisition may be subject to such conditions as may be deemed fit by the central government in the public interest. Such conditions may, inter alia, include the following ..... "..."

■ **Analysis:** This clause confers discretionary power to the central government. Also the conditions, under which such ROU acquisition will be granted, are not clearly mentioned. Hence, this clause may fail to qualify in transparency test.

■ **Non-conformity to Illustrative List of Elements:**

o Qualification requirement and procedure:

(i) Transparency: Administrative or procedural rules related to administration of qualifications requirement.

■ **WPDR Tests:** This clause fails to qualify in Transparency test.

■ **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.

■ **Mode of service:** Mode 3 (Commercial Presence).

1.16.3

**Analysis of statutory clearance clause:**

■ **Clause construed to deviate:** "...The authorized entities will be required to obtain various statutory clearances including the environmental clearance for laying.....".

■ **Analysis:** This clause doesn't clearly specify all clearances required to be obtained by the entities, or refer to notification where. Though this is a post authorization requirement, but this, if not known in advance, may create problem for the entity. Thus this may fail to qualify transparency test.

\* **Non-conformity to Illustrative List of Elements:**

o Regulatory Transparency:

(ii) Transparency in licensing requirement and procedure-Information and requirements of documents.

- **WPDR Tests** : This clause may fails to qualify in Transparency test
- **CPC:** The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.
- **Mode of service:** Mode 3 (Commercial Presence).

## **2 CONCLUSION**

### **2.1 Multiple Modes within a Notification**

- 2.1.1 The primary task of this GATS compliance review of notifications, as a Member country, is to identify "domestic regulations existing for each of the service sectors under jurisdiction" of MoPNG. The identified regulations acts and notifications are, obviously, not directly addressing to any particular service sector. A single regulation can include many service provisioning prospects or activities. One single clause as such may address to one or more Modes of trades in services, which also depends upon the nature and part of activity a service provider undertakes within the scope of a regulation. Such interconnection or overlap relative contribution to trade of different activities should be taken care of by the government while taking sector specific commitments.
- 2.1.2 For illustration sake, Modes 1, 3 and 4 are relevant to the oil and gas field services industry. An example of a Mode 1 activity would be analysis of geological data by a firm in the foreign country on behalf of a client located elsewhere. Mode 3 activities would include those undertaken by foreign affiliates of a firm. Specialized drilling crews that serve foreign markets would fit under the rubric of Mode 4. And all of these activities could be addressed to in a country by one single regulation relating to exploration activity.
- 2.1.3 Again Mode 1 or cross-border trade data, for oil and gas field services may not be comparable to the larger reported category of Construction, Engineering, Architectural, and Mining services which come under Mode 3 i.e. Commercial Presence.

### **2.2 National Policy Objective and GATS principles**

- 2.2.1 GATS recognizes the right of member to regulate within their territories (Annex 1B, WTO), on the supply of services within their territories in order to meet national policy objective. A continuing debate around the subject of 'necessity' test laid down by WPDR for all regulations of a country, indicates that countries would insist on national policy taking priority over the trade enablement, at least to selective sectors. Therefore some common terms like "in Public Interest" or "in the interest of Public safety" or "owing to Environmental Concerns" would be acknowledged as regards intent but GATS would promote the importance of assessment of reasonableness of qualifying or licensing criteria or regulatory provisions. Any such conditions, limitations or procedures also are expected to be objectively laid down and transparently published rather than the open ended and subjective terms.
- 2.2.2 Notifications identified as listed in Annexure I include some acts e.g. Petroleum Act 1934 or PNGRB Act 2006. Acts are guiding notifications which empower the government bodies/authorities to promulgate rules and regulations by way of notifications. Hence these acts do not always directly refer to service related activities. Neither do they always directly refer to any activity where non-compliance to GATS principle is possible. The sensitivity of GATS compliance having grown, including due to commitments given by the Government in some of the sectors (CPCs), it is necessary that notifications originating out of the powers vested in Government bodies by the Act should address to the sensitivity of GATS principles while under drafting.

### **2.3 Comments on Notifications Reviewed**

- 2.3.1 The notifications reviewed as a part of this report preparation can be termed as broadly conforming to the requirements laid down as on date under the current round of negotiations between Members deliberating adoption of requisite "disciplines" under Article VI.4.of GATS principles. Most of the non-compliances with Article XVI, Article

XVII and with some of the elements of Illustrative List laid down by WPDR can be termed as unintentional or justified by National Policy. However, since this review was meant to identify the non-compliances, they have been listed so as the MoPNG to take remedial action in the form of justification of National Policy objectives or amendments to the notification clauses. The non-compliances justifiable under National Policy objectives would come under "Unbound" category, should at any time the Government consider giving bilateral, plurilateral or horizontal commitments.

2.3.2 At few places the notifications need to be more transparent on the issue of license requirement, qualification criteria, technical standards, and also may be made less burdensome (like on investment criteria) to be able to comply with the GATS principles.

2.3.3 In few Notifications the Central Government has power to exempt any persons or class of person from any provisions of the Order through an Official Gazette. The same seem to be quite discretionary and wide. Similarly; the Central Government has the powers under the Order to take over the retail outlets and other business of dealers of petroleum products, if it feels necessary to do so to ensure adequate supplies of petroleum products and their equitable distribution. While the necessity of such clauses so as the Government to tide over emergency situations is appreciated, the GATS principle call for criteria for any action to be taken in such circumstances for the discretionary powers to be objectively used.

2.3.4 Generally, approval procedures or licensing and qualification requirements, such as 'financial soundness' are often stipulated as conditions to obtain a license. If the same are non-discriminatory in nature, and therefore applicable equally to nationals and foreigners, they should not be scheduled under Article XVII. Nor should they be scheduled under Article XVI as long as they do not contain any of the limitations specified under Article XVI. However, if such approval procedures or licensing and qualification requirements are discriminatory or they contain any of the limitations specified under Article XVI, the same should be scheduled by the country concerned. It has been observed that in some regulations, the granting of licenses has been subject to review, possibly meaning that they are granted on a discretionary basis. In such a case the right to supply the service is uncertain. Therefore, such entries should be avoided unless the objective criterion, on which such a review is based, is precisely and explicitly described.

2.3.5 In view of the existing notifications, wherein various licensing/authorization requirements are prescribed and in light of the recommendations of the industry towards liberalization of certain additional sectors during the future course of negotiations, special attention should be given to ensure that any commitments made hereafter do not lead to non-compliance of existing domestic provisions with the commitments to be made. Therefore, while scheduling the commitments, adequate and well defined limitations may be considered to be inserted wherever deemed appropriate.

### 3 Annexures

#### 3.1 Annexure I : List of Identified MoPNG Regulations for Review under this Report

PwC was requested by PetroFed to undertake review of the following notifications as a part of this report. One or more of these notifications have been referred to as "identified notification(s)" in this report.

Sr.No.	Subject	File Reference	Date
1	Guidelines for laying Petroleum Products Pipelines	P-20012/5/99-PP	20/11/2002
2	Authorisation to market transportation fuels MS, HSD and ATF to new entrants including private sector	P-23015/1/2001-MKT	08/03/2002
3	Liquefied Petroleum Gas (Regulation of Use in Motor Vehicles) Order 2001	GSR-569(E)	01/08/2001
4	Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 2000	GSR-487(E)	26/04/2000
5	The Gazette Notification-Petroleum Prod.(Maintenance of Production, Storage and Supply) Order 1999	P-11013/2/97-Dist.	16/04/1999
6	Petroleum Act, 1934		
7	Petroleum rules, 1976*		
8	Oil Fields Act, 1948		
9	P&NG Rules, 1959		
10	PNGRB Act 2006		
11	NELP		
12	OALP		
13	CBM policy		
14	Essential Commodities Supply Act 1955		
15	Policy for development of natural gas pipelines and city or local natural gas distribution networks		

The notification "Petroleum Rules 1976" stands repealed by "Petroleum Rules 2002" and the latter has come into effect. Hence "Petroleum Rules 2002" is analysed for any non-compliance with GATS Article VI: 4.

## 3.2 Annexure II : List of identified CPCs - Commitments by India

The Department of commerce is the competent department to finally decide on the services for which India will take commitments. However, so far Ministry of Petroleum and Natural Gas has conveyed no objection to the Department of Commerce for taking commitments in:

- CPC 8672 : Engineering services.
- CPC 8673 : Integrated Engineering services.
- CPC 865 : Management consulting services.
- CPC 86601 & 866: Services relating to management consulting services.
- CPC 8676 : Technical testing and analytical services.
- CPC 513 : General construction work for Civil Engineering.
- CPC 633 (CPC 8861-8866) or CPC 886: Maintenance & Repair of equipments.

Ministry of Petroleum and Natural Gas has also conveyed no objection for:

- CPC 883 : Services incidental to mining.
- CPC 5115 : Site preparation work for Mining.
- CPC 884 : Services incidental to manufacturing, except the manufacture of metal products, machinery and equipments.
- CPC 8675 : Related scientific and technical consulting services (Excluding Map Making Services 86754)

Other Important CPCs for India's bilateral or multilateral trade negotiation in GATS on which commitments may be considered are:

- CPC 518 : Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator.
- CPC 62271 : Wholesale trade services of solid, liquid and gaseous fuels and related products (Excluding electricity and town gas)
- CPC 63297 : Retailing services of fuel oil, bottled gas, coal and woods.

Hence, PwC while reviewing the domestic regulations has identified clauses pertaining to services and then identified CPCs to which those services belong to specially when the services are from one of the above listed CPCs. The CPCs have been indicated against each identified non-compliant clause, should it be from within the above list.

(Extracts from Attachment I of "Report of the Chairman of the Working Party on Domestic Regulation to the Special Session of the Council for Trade in Services" - JOB (05)/280 dated 15 November 2005)

Illustrative List of Possible Elements for Article VI:4 Disciplines

INTRODUCTION

The following is an illustrative list of possible elements for any necessary disciplines under Article VI:4 of the GATS. It has been compiled on the basis of proposals<sup>5</sup> presented and comments thereon by Members in the Working Party on Domestic Regulation. While this list reflects interests and concerns discussed by Members, there is no presumption that consensus has been reached on its elements. It does not prejudice the outcome of the negotiations under Article VI:4 of the GATS, neither in substance nor form. Further work on these elements will be pursued on the basis of current and future proposals by Members without prejudice to the position of any Member or their proposals regarding any of the elements. This list is without prejudice to Members working on the basis of Members' proposals.

LICENSING REQUIREMENTS AND PROCEDURES

**Transparency:** including services subject to licensing, licensing criteria, application procedures, documentation requirements, timeframes, appeal/review procedures, etc.; building on existing principles and disciplines in Articles III and VI; pre-establishment, public availability and objectivity; accessibility by service suppliers.

**Requirements:**

Relevance of licensing requirements to the activities for which authorization is sought.

Residency requirements not subject to scheduling under Article XVII of the GATS.

**Administration of licensing procedures:** neutrality, reasonableness, objectiveness and impartiality.

**Procedures and related documentation:** burdensomeness or reasonableness; relevance of documentation requirements; format of documentation; identification of deficiencies.

**Review/appeal:** availability; reasons for rejection; information on deficiencies; possibility of re-submission in case of deficiencies and incomplete information.

**Timeframes:** reasonableness; including submission, re-submission, renewal, decision, review/appeal, and entry into effect of license.

Fees: for licensing procedures; reasonableness, reflection of administrative costs, concessionary fees for applicants from developing countries, and treatment of auction or tendering.

## QUALIFICATIONS REQUIREMENTS AND PROCEDURES

**Transparency:** including criteria of qualification requirements, administrative or procedural rules relating to administration of qualifications requirements, appeal/review procedures, etc.; pre-establishment, public availability, and objectivity; accessibility by service suppliers.

### **Requirements:**

Relevance of qualification requirements and scope of examinations to the activities for which authorization is sought.

Language requirements: linkage to service requirements or legitimate objectives including quality of service and protection of consumers.

Residency requirements not subject to scheduling under Article XVII of the GATS: relevance as pre-requisite for eligibility for examinations.

**Specification, assessment and verification of qualifications,** including educational qualifications and professional competence:

Availability of pre-established mechanisms for verifying foreign qualifications including examinations.

Specification relating to education, course work, examinations, training, work experience.

Identification of additional requirements relating to education, training or work experience in case of deficiencies.

Possibility of meeting deficiencies through course work, training or work experience and where possible in home country.

**Examinations:** relevance; reasonableness of frequency; eligibility and accessibility; facilitating participation of foreign service providers; residency requirements.

**Procedures and related documentation:** burdensomeness or reasonableness; relevance of documentation requirements.

Review/appeal: availability; including non-acceptance of qualifications; possibility of re-submission in case of deficiencies and incomplete information.

**Timeframes:** reasonableness; including verification of qualifications, examinations, submission and re-submission of applications.

Fees: for examinations and other qualification procedures; reasonableness; reflection of administrative costs; concessionary fees for applicants from developing countries.

### **Mutual recognition agreements.**

## TECHNICAL STANDARDS

**Transparency:** including services subject to technical standards and information on technical standards, etc.; pre-establishment, public availability, and objectivity; opportunity for comments and taking the results into account; review of necessity.

**Conformity assessments:** application of regulatory control on compliance with the standard.

**International and national technical standards:** use of relevant international standards and deviation from such international standards; presumption of consistency with disciplines if in compliance with relevant international standards.

**International professional bodies:** recognition of role in establishment and promotion of best practices.

**Technical standards for Mode 1:** principle of equivalency.

#### REGULATORY TRANSPARENCY (INCLUDING TRANSPARENCY ELEMENTS NOTED ABOVE)

**Mechanisms to respond to inquiries:** concerning Article VI:4 elements, to interested persons.

**Publication:** concerning Article VI:4 elements; public availability to interested persons; requirements to obtain maintain or renew licenses/certificates, etc.; application processing deadlines; rights of appeal; notification of violation of terms of license.

**Notice and comment:** advance publication of regulations governing Article VI:4 elements; opportunity for comment; clarity/plainness of language in publication; response to substantive comments; reasonableness of duration between publication and entry into effect.

**Transparency in licensing application procedures:** establishment, clarity and public availability of procedures concerning Article VI :4 elements; information about requirements/documentation; timeframe for decisions; notification of application status; notification of reasons for denial; non-discriminatory basis of qualifying examinations, frequency of examinations and cost of applications.

#### OBJECTIVES, SCOPE AND APPLICATION

##### **General considerations**

Objectives of Article VI:4 disciplines.

Right to regulate in line with the GATS, specifically the right of regulators to regulate and to introduce new regulations to meet national policy objectives.

Scope and application of Article VI:4 disciplines and relationship with existing GATS provisions, specifically Article VI:4 disciplines non-overlapping with the scope of Articles XVI/XVII and consistency with the GATS and its Annexes.

#### DEFINITIONS

Definitions for qualification requirements, qualification procedures, licensing requirements, licensing procedures, and technical standards.

## DEVELOPMENT CONSIDERATIONS

**Compliance:** compliance taking account of degree of development of regulations, institutional regulatory capacity, need to regulate and introduce new regulation to meet national policy objectives, and the level of development of individual developing Members. Compliance on best-endeavour basis for LDCs.

**Implementation:** implementation taking account of needs of developing country Members differential implementation including differential timeframe for compliance.

**Technical assistance and capacity building:** technical assistance and capacity building, including for building institutional capacity, and strengthening ability for compliance.

Recognition of the needs and regulatory capacities of developing and least developed countries, and facilitation of their services exports.

### 3.4 Annexure IV : Abbreviations.

ATF	:	Aviation Turbine Fuel.
CBM	:	Coal Bed Methane
CPC	:	Central Product Classification.
E&P	:	Exploration and Production.
GATS	:	General Agreements on Trade in Services.
GATT	:	General Agreement in Tariffs and Trade.
HSD	:	High Speed Diesel.
LPG	:	Liquefied Petroleum Gas
MoPNG	:	Ministry of Petroleum and Natural Gas.
MOC	:	Ministry of Commerce.
MS	:	Motor Spirit.
NELP	:	National Exploration and Production Policy
ROU	:	Right of User.
UN	:	United Nations.
WTO	:	World Trade Organisation.
WPDR	:	Working Party on Domestic Regulation.

### 3.5 Annexure V : Suggestion to Illustrative List of Elements.

The following changes (includes additions) are proposed to the Illustrative List of Possible Elements drawn out under GATS Article VI:4

SI.No	Element	PetroFed's Comment
	Regulatory Transparency: <b>Confidentiality</b>	3.5.1 Governments of Member countries may reserve the right to seek information from service providers regarding the business operations. For example, in marketing of transportation fuels in India, as per notification "The Gazette Notification-Petroleum Prod (Maintenance of Production, Storage and Supply) Order, 1999, dated April 16, 1999" under clause 8 reserves the right to ask for "any and every" information. While service companies perceive such a clause itself burdensome, under 'national policy' the Governments may reserve this right to demand information. Therefore, the service companies deservedly want the Government to maintain confidentiality of such information provided, since it may be sensitive from business stand point. Therefore a "Confidentiality Promise" element be added to 'Regulatory Transparency' in the Illustrative List.
	Licensing Requirement and procedure: <b>Burdensome</b>	3.5.2 Currently the 'burdensomeness' is included in Illustrative List only for 'procedures and related documentation' perspective. Some Licensing criteria like necessity to provide 25% extra capacity than required by the proposer of the pipelines or servicing remote areas by fuel marketing companies is burdensome.
	Licensing Requirement and Procedure & Qualification Requirement and Procedure: <b>Unambiguous</b>	3.5.3 Licensing criteria or Qualification criteria, including some times unintentionally, remain ambiguous rendering service providers in difficult situations and at times resulting into deprivation of licenses or qualification. This may even lead to avoidable litigation. Such elements de-motivate service providers in trading services with target Member countries. Necessity to have unambiguous licensing and qualification criteria is therefore recommended to be included in the elements of Illustrative List.

Sr. no.	Name of the company	MoPNG Regulation	Reference and Clause in the MoPNG Regulations	Ref in report Rev 0 Dated 14 Dec 06	Company feedback	Response to Company feedback
1	Company A	Notification on authorization to market transportation fuels MS, HSD and ATF to new entrants including private sectors, dated March 8, 2002	As per the resolution of GOI dtd 21st Nov 1997, companies owning and operating refineries at least Rs. 2000 crore or oil exploration and production companies producing at least 3 million tonnes of crude oil annually, are entitled for marketing rights of transportation fuels.	5.3.3	Company may not agree that huge Investment and production criteria is burdensome than necessary.	The huge investment and qualification criteria may not be burdensome from the business perspectives of companies. However, as discussed in the meeting, it is burdensome from GATS Article VI:4 perspective as described in the clause 1.3.1 of Report Rev 2.
2	Company A	Notification on authorization to market transportation fuels MS, HSD and ATF to new entrants including private sectors, dated March 8, 2002	Section XIII. "After scrutinizing the scheme the government or the regulatory board.... may give authorization to eligible company. imposing conditions an eligible company imposing conditions in public interest....servicing remote areas and low service areas ..... Government or regulatory board	5.3.10	Company may not agree that the conditions to open retail outlets in remote areas and not to close without prior permission is burdensome	The conditions may not be burdensome from the business perspectives of companies. However, as discussed in the meeting, it is burdensome from GATS Article VI:4 perspective as described in the clause 1.3.3 of Report Rev 2.

Sr. no.	Name of the company	MoPNG Regulation	Reference and Clause in the MoPNG Regulations	Ref in report Rev 0 Dated 14 Dec 06	Company feedback	Response to Company feedback
			shall have the power to cancel the marketing authorization			
3	Company A	Liquefied Petroleum Gas (Regulation of use in Motor Vehicles) Order, 2001, dated August 1, 2001	Section 6 Assessment and certification rating of parallel marketer And Section 8 for maintenance of records	5.4.7	Company may not agree that the requirement of rating certificate, maintenance of records and furnishing of information, for parallel marketer is discriminatory	The conditions may not be burdensome from the business perspectives of companies. However, this clause is construed as non-complaint to National Treatment principles as per Article XVII. Non-compliance to this article is considered as discriminatory in case the parallel marketer is a service provider from other Member country. Also this is construed to be a non-compliance with the Licensing Requirement under 'necessity', 'transparency' and 'equivalence' tests laid down by WPDR as describe in clause 1.4.3.
4	Company B	Notification on authorization to market transportation fuels MS, HSD and ATF to new entrants including private sectors, dated March 8, 2002	General	5.3	The notification is non-compliant for another reason. The policy of market-determined pricing has already been violated by the Government. No transparency in the subsidy administration	The views are well appreciated. In the notifications under review there is no direct reference of subsidies to services provisioning. Thus, in this limited exercise of reviewing domestic regulations for compliance with GATS, subsidy is unable to be projected as a non-conformity. However, the views will be forwarded to MoPNG as a part of this report under the heading "Industry Comments".

Sr. no.	Name of the company	MoPNG Regulation	Reference and Clause in the MoPNG Regulations	Ref in report Rev 0 Dated 14 Dec 06	Company feedback	Response to Company feedback
5	Company B	Liquefied Petroleum Gas (Regulation of use in Motor Vehicles) Order, 2001, dated August 1, 2001	General	5.4	The real problem is 'import substitution'. Government expects auto LPG to be dispensed only from imports but reserves the right to permit use of indigenous LPG (including that manufactured by petrochemical plants). This is restrictive. There are no guidelines specifying conditions when the Government can refuse permission. There is no provision for appeal against the decision of the Government	Please indicate reference to a specific notification which provides for such a restriction to enable incorporation of this comment in the report. Concurrently efforts are on to locate any such a clause in notifications.
6	Company B	The Gazette Notification-Petroleum Prod (Maintenance of Production, Storage and Supply) Order, 1999, dated April 16, 1999	General	5.6	The issue is extent. The government has powers to seek 'any other information' some of which may be commercially sensitive. There is no promise that information will be protected. An omnibus 'any other' needs to be defined both for the nature of information and the circumstances that	While it is appreciated that the issue deserves to be addressed, within the current framework of GATS and specially within the illustrative list of possible elements provided by GATS WPDR, such an element relating to 'confidentiality promise' is not incorporated. Hence, though this issue would form a part of the report under heading "industry comments", it is unable to be projected as non-conformity to GATS.

Sr. no.	Name of the company	MoPNG Regulation	Reference and Clause in the MoPNG Regulations	Ref in report Rev 0 Dated 14 Dec 06	Company feedback	Response to Company feedback
					may warrant collection of such information e.g. a state of war.	
7	Company B	The Petroleum Rules, 2002	General	5.8	To say that the "repair shall not be done unless" implies that repair can be abandoned!!!! Repair work has to be carried out in the presence of a chartered specialist or certified by him subsequently . Define specialist for each case.	Non-compliance of this clause with elements in the illustrative list, is addressed in sr 1.8.1 (and 1.8.6 for testing as well) of Rev 2 of the Report.

Sr. no.	Name of the company	MoPNG Regulation	Reference and Clause in the MoPNG Regulations	Ref in report Rev 0 Dated 14 Dec 06	Company feedback	Response to Company feedback
8	Company B			4.2	None of the above relate to retailing of petroleum products, transportation services for hydrocarbons (mainly through pipelines) as trades. Nor do they include prospecting for hydrocarbons. Have we made any commitments in these products (trades)? Is there any impending move to make such commitments? If not EC act related control orders and policy resolutions are actually 'unbound'.	India has not given commitments for CPCs relating to retailing and transportation services.
9	Company C	PNGRB ACT 2006	Section 15 on Registration of entities and Section 16 Authorisation;	5.11	the relevant provisions contained in proviso to section nos. 15 and 16 of the Petroleum and Natural Gas Regulatory Board Act may please be referred to regarding deemed registration and authorisation for regularisation of actions taken by various agencies unauthorisedly	Subject to any legal interpretation, it may be noted that Section 15 and 16 permit information to the board within 6 months of listed activities which are even now covered under licensing / authorisation. Therefore the act does not express an intent to regularise unauthorised/unlicensed activity by any entity. Hence this is not included in non-conformities.



# **Petroleum Federation of India**

## **Review of Domestic Regulations for conformity with WTO - GATS**

PART III: Compendium of MoPNG Notification clauses,  
construed to be nonconforming to Illustrative List of Elements

March 07

SL no.	Relevant Clause	Deficiency/ Comments in terms of Article VI :4 tests	Non conformity to Illustrative list of elements as per Article VI : 4.	Relevant CPC	Affected Mode of Services:	Reference in Part II of Final
		1. Necessity 2. Transparency 3. International standard. 4. Equivalence	1. Licensing requirement and procedure. 2. Qualification requirement and procedure. 3. Technical standard. 4. Regulatory transparency.		Mode 1: Cross border Supply. Mode 2: Consumption Abroad. Mode 3: Commercial Presence. Mode 4: Presence of Natural Person.	
<b>Regulation: Guidelines for Laying Petroleum Product Pipeline" read with "Supplementary Guidelines for Laying Petroleum Product Pipeline, dated November 20, 2002 read with December 26, 2004</b>						
1	Section 5: ROU acquisition.	1. Necessity 2. Transparency.	1. Licensing requirement and procedure. 2. Regulatory transparency.	*	Mode 3	1.2.1
2	Sec 2: Pipeline Capacity ...at-least 25% more than capacity requirement.	1. Necessity. 2. Equivalence.	1. Licensing requirement and procedure	*	Mode 3	1.2.2
3	Sec 4: Supplementary guidelines; Bank Guarantee.	3. International Standards.	1. Licensing requirement and procedure	*	Mode 3	1.2.3
4	Sec4: tariffs for Pipeline commissioned	1. Transparency.	1. Regulatory transparency.	*	Mode 3	1.2.4
<b>Regulation: Notification on authorization to market transportation fuels MS, HSD and ATF to new entrants including private sectors, dated March 8, 2002</b>						
5	Section 3: Authorisation for marketing right of transportation fuel. ( Rs.2000 Cr investment)	1. Necessity 4. Equivalence.	2. Qualification requirement and Procedure.	63297 62271	Mode 3	1.3.1

SL no.	Relevant Clause	Deficiency/ Comments in terms of Article VI :4 tests	Non conformity to Illustrative list of elements as per Article VI : 4.	Relevant CPC	Affected Mode of Services:	Reference in Part II of Final Report
		1. Necessity 2. Transparency 3. International standard. 4. Equivalence	1. Licensing requirement and procedure. 2. Qualification requirement and procedure. 3. Technical standard. 4. Regulatory transparency.		Mode 1: Cross border Supply. Mode 2: Consumption Abroad. Mode 3: Commercial Presence. Mode 4: Presence of Natural Person.	
6	Section XII : The company seeking authorization to market transportation fuel.	1. Necessity 2. Transparency.	1. Licensing requirement and procedure. 4. Regulatory Transparency.	*	Mode 3	1.3.2
7	Section XII: After scrutinizing the government...in public interest ...servicing remote area...	1. Necessity 2. Transparency.	4. Regulatory transparency.	*	Mode 3	1.3.3
<b>Regulation: Liquefied Petroleum Gas (Regulation of use in Motor Vehicles) Order, 2001, dated August 1, 2001</b>						
8	Section 3: Restriction on unauthorized acquisition...	2. Transparency.	1. Licensing requirement and procedure.	63297	Mode 3	1.4.1
9	Section 3 (6): ...conforming to LPG specification i.e. IS 14861..	3. International standard.	3. Technical Standard.	63297	Mode 1	1.4.2

SL no.	Relevant Clause	Deficiency/ Comments in terms of Article VI :4 tests	Non conformity to Illustrative list of elements as per Article VI : 4.	Relevant CPC	Affected Mode of Services:	Reference in Part II of Final Report
		1. Necessity 2. Transparency 3. International standard. 4. Equivalence	1. Licensing requirement and procedure. 2. Qualification requirement and procedure. 3. Technical standard. 4. Regulatory transparency.		Mode 1: Cross border Supply. Mode 2: Consumption Abroad. Mode 3: Commercial Presence. Mode 4: Presence of Natural Person.	
10.	Section 6 Assessment and certification rating for parallel marketer	1. Necessity 2. Transparency 4. Equivalence	1. Licensing requirement and procedure. 2. Qualification Requirement and Procedure	63297	Mode 3	1.4.3
11	Section 5 (5) Auto LPG stock	1. Necessity 2. Transparency	4. Regulatory transparency.	63297	Mode 3	1.4.4
<b>Regulation: Liquefied Petroleum Gas (Regulation of supply and distribution) Order, 2000 dated April 26, 2000</b>						
12	Section 4: restriction on storage...	2. Transparency	1. Licensing requirement and procedure 2. Qualification Requirement and Procedure	*	Mode 3	1.5.1
13	Section 11: Assessment and certification rating of parallel..	1. Necessity 2. Transparency. 4. Equivalence	1. Licensing requirement and procedure. 2. Qualification Requirement and Procedure.	*	Mode 3	1.5.2

SL no.	Relevant Clause	Deficiency/ Comments in terms of Article VI :4 tests	Non conformity to Illustrative list of elements as per Article VI : 4.	Relevant CPC	Affected Mode of Services:	Reference in Part II of Final Report
		1. Necessity 2. Transparency 3. International standard. 4. Equivalence	1. Licensing requirement and procedure. 2. Qualification requirement and procedure. 3. Technical standard. 4. Regulatory transparency.		Mode 1: Cross border Supply. Mode 2: Consumption Abroad. Mode 3: Commercial Presence. Mode 4: Presence of Natural Person.	
<b>The Gazette Notification-Petroleum Prod (Maintenance of Production, Storage and Supply) Order, 1999, dated April 16, 1999</b>						
14	Section 7: Takeover of retail out let...	1. Necessity 2. Transparency. 3. Equivalence.	3. Regulatory transparency.	63297	Mode 3	1.6.1
<b>Regulation: "The Petroleum Rules, 2002"</b>						
15	Chapter I Part II Section 8: repairs to receptacles.	3. International Standard. 4. Equivalence	2. Qualification Requirement and Procedure	633 or 886	Mode 4. Mode 1	1.8.1
16	Chapter III part II section 34...construction of vessels..	3. International Standard. 4. Equivalence	3. Technical standard. 4. Regulatory transparency.	*	Mode 1 Mode 4	1.8.2
17	Chapter III part II section 63 manufacturing Tank vehicles..	3. International Standard. 4. Equivalence	3. Technical standard	8676	Mode 1	1.8.3
18	Chapter III part V section 90 The pipeline shall be constructed..	3. International Standard. 4. Equivalence	3. Technical standard	633 or 886 and 8676 (testing)	Mode 1, Mode 3 and Mode 4	1.8.4

SL no.	Relevant Clause	Deficiency/ Comments in terms of Article VI :4 tests	Non conformity to Illustrative list of elements as per Article VI : 4.	Relevant CPC	Affected Mode of Services:	Reference in Part II of Final Report
		1. Necessity 2. Transparency 3. International standard. 4. Equivalence	1. Licensing requirement and procedure. 2. Qualification requirement and procedure. 3. Technical standard. 4. Regulatory transparency.		Mode 1: Cross border Supply. Mode 2: Consumption Abroad. Mode 3: Commercial Presence. Mode 4: Presence of Natural Person.	
19	Chapter V Section 118 Storage of petroleum.... supervision.	3. International standard. 4. Equivalence	2. Qualification Requirement and Procedure.	8672 or 8673	Mode 4	1.8.5
20	Chapter V Part III section 126 : storage tanks or... .be tested	3. International Standard. 4. Equivalence	2. Qualification Requirement and Procedure. 3. Technical standard	8676	Mode 4	1.8.6
21	Chapter VII: section 151: a licensing authority refusing to grant..	1 Transparency	1. Licensing requirement and procedure. 4. Regulatory transparency	*	Mode 3	1.8.7
22	Chapter X: section 190: Standard test apparatus..	3. International Standard. 4. Equivalence	3. Technical standard	8676	Mode 1	1.8.8
23	Chapter X: section 193. Testing of petroleum..	3. International Standards. 4. Equivalence	3. Technical standard	8676	Mode 1 Mode 4	1.8.9
24	Chapter III Part II Rule 43 : responsibility of Master of Vessel	2. Transparency	2 Qualification requirement and procedure.	*	Mode 4	1.8.10
<b>Regulation: P&amp;NG Rules, 1959</b>						

SL no.	Relevant Clause	Deficiency/ Comments in terms of Article VI :4 tests	Non conformity to Illustrative list of elements as per Article VI : 4.	Relevant CPC	Affected Mode of Services:	Reference in Part II of Final Report
		1. Necessity 2. Transparency 3. International standard. 4. Equivalence	1. Licensing requirement and procedure. 2. Qualification requirement and procedure. 3. Technical standard. 4. Regulatory transparency.		Mode 1: Cross border Supply. Mode 2: Consumption Abroad. Mode 3: Commercial Presence. Mode 4: Presence of Natural Person.	
25	Rule 4 , Rule 5 ( 2), 5(3) Issuance of license...	2. Transparency.	1.Licensing requirement and procedure 4. Regulatory Transparency.	883	Mode 3	1.10.1
26	Section 21 cancellation of licenses..	2. Transparency	1. Licensing requirement and procedure.	*	Mode 3	1.10.2
<b>NELP ( MPSC)</b>						
27	Section 22.1 ...contractor shall... employ	1. Necessity.	-	*	Mode 4	1.12.3
28	Section 22.3 Foreign companies shall offer ...technical assistance..	-	-	8672 and 8673	Mode 1	1.12.4
<b>CBM ( MPSC)</b>						
29	Section 19.1; Employing Indian National...	1. Necessity	-	*	Mode 4	1.13.4

SL no.	Relevant Clause	Deficiency/ Comments in terms of Article VI :4 tests	Non conformity to Illustrative list of elements as per Article VI : 4.	Relevant CPC	Affected Mode of Services:	Reference in Part II of Final Report
		1. Necessity 2. Transparency 3. International standard. 4. Equivalence	1. Licensing requirement and procedure. 2. Qualification requirement and procedure. 3. Technical standard. 4. Regulatory transparency.		Mode 1: Cross border Supply. Mode 2: Consumption Abroad. Mode 3: Commercial Presence. Mode 4: Presence of Natural Person.	
<b>Policy for development of natural gas Pipelines and City or Local Natural Gas Distribution Networks</b>						
30	Section ...Design pipeline capacity 33% more than capacity requirement.	1. Necessity 4. Equivalence	1. Licensing Requirement and Procedure.	*	Mode 3	1.16.2
31	Section... The ROU acquisition may be subject to....	2. Transparency.	2. Qualification requirement and procedure.	*	Mode 3	1.16.3
32	Section ...various statutory clearances .....	2. Transparency.	4. Regulatory transparency.	*	Mode 3	1.16.4

- The category(ies) of service(s) pertaining to this clause do(es) not form a part of the identified CPCs listed in Annexure II of this report.