DOHA ROUND BRIEFING SERIES

Developments Since the Fourth WTO Ministerial Conference

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Trade in Services

Doha Mandate

"The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. We recognize the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by Members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons. We reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. Participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003."

(Paragraph 15 of the Doha Ministerial Declaration)

Background

Like the Agreement on Agriculture, the General Agreement on Trade in Services (GATS) contains a 'built-in agenda' mandating Members to reopen market access negotiations on services by 1 January 2000. As provided for in GATS Article XIX:3, Members adopted "negotiating guidelines and procedures" ('Guidelines', S/L/93) for these negotiations in March 2001.

The Doha Ministerial Declaration refers to these Guidelines as "the basis for continuing the negotiations" and states that the "negotiations shall aim to achieve progressively higher levels of liberalisation of trade in services through the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access." The negotiations "shall aim to increase the participation of developing countries in trade in services" and shall provide "appropriate flexibility for individual developing country Members."

The Guidelines further mandate Members to continue negotiations on the 'outstanding issues', i.e. the establishment of an emergency safeguard mechanism (ESM) for services,[1] possible general disciplines on domestic regulation, as well as disciplines on government procurement and subsidies (see sidebar on page 2).

Members chose the request-offer approach as the main method of negotiating new "specific commitments" (i.e. market access), while generally stating that "liberalisation shall be advanced through bilateral, plurilateral and multilateral negotiations."

Reflecting mandatory GATS provisions, the Guidelines request Members to develop criteria for granting 'credit' for Members' autonomous liberalisation since previous negotiations, as well as to conduct an assessment of trade in services with reference to the objectives set out in the GATS. Furthermore, the negotiations "shall be adjusted in the light of the assessment", and developing countries shall be provided with technical assistance to carry out national and regional assessments. Additionally, the Council for Trade in Services (CTS) shall review the facilitation of increased participation of developing countries in world trade, and conduct an evaluation of the results attained.

Mandated Deadlines

- By 30 June 2002, Members were required to submit initial bilateral market access requests to their trading partners. This deadline, however, is considered to be only indicative and Members are expected to submit further requests in the coming months.
- By 31 March 2003, Members must respond to the requests received with initial offers.
- By 1 January 2005, the mandated services negotiations are to conclude as part of the single undertaking agreed in Doha.

Regarding the Emergency Safeguard Mechanism, the following 'indicative deadlines' have been agreed:

- 31 December 2002, for tabling submissions;
- 15 March 2003, for the Chair of the Working Party for GATS Rules to issue a report on the results of the work;
- Fifth WTO Ministerial Conference (10-14 September, in Cancun, Mexico) to take stock of progress; and
- By 15 March 2004, conclusion of EMS negotiations.

Regarding other 'outstanding issues', the Guidelines provide that:

- Prior to the conclusion of the market access negotiations (i.e. 1 January 2005)
  - negotiations "shall be concluded" on GATS Articles VI:4 (domestic regulation), XIII (government procurement) and XV (subsidies).

The Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93) state that the negotiations shall be conducted "pursuant to the objectives of the GATS, as stipulated in the Preamble and Article IV, and as required by Article XIX."

GATS Article XIX.3 reads: "For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services on overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalisation undertaken autonomously by Members since previous negotiations, as well as for the special treatment of least-developed country Members under the provisions of paragraph 3 of Article IV."

Among the objectives listed in the GATS Preamble are the economic growth of all trading partners and the development of developing countries; the promotion of the interests of all trading partners on a mutually advantageous basis; securing an overall balance of rights and obligations, while giving respect to national policy objectives; and the right of Members to regulate […] in order to meet national policy objectives and, given the asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right.

On the first two items, the Chair is to circulate a progress report by 30 June 2003, and ministers are to take stock of the negotiations at the Cancun Conference in September 2003; and

- an evaluation "shall be conducted" of the implementation of GATS Article IV (on increasing developing countries' participation in the global services trade).

Members were also supposed to establish modalities for 'credit' for autonomous liberalisation before the start of the market access commitments. However, no modalities have been agreed so far, although the request-offer phase has already started.

Current State of Play

Bilateral Market Access Negotiations

In the current bilateral — and thus confidential — request phase, virtually all WTO Members have received initial requests from some 30 mainly developed and larger developing countries. The US and the EU have requested new market access commitments in most of the 12 services sectors including business services, communication, construction, distribution, environmental services, financial services, tourism and transport.

Horizontal issues have also been addressed in several requests, including removing investment barriers (economic needs-tests, investment approval procedures) in mode three (commercial presence), and increasing access for temporary entry and stay of professional employees under mode four (movement of natural persons). The US and the EU have requested "additional commitments" on services-related domestic regulatory measures — such as certain transparency (notification) and necessity requirements — imposed and/or to be imposed by trading partners.

Developing countries such as India have requested several developed countries to allow better access for service-providing natural persons (mode four). Most less-advanced developing countries and, in particular, least-developed countries (LDCs) have not yet tabled any requests.

Some developing country Members are concerned about the process's lack of transparency and the large resource capacities required by the bilateral market access negotiations, as well as inequalities in bargaining power and the trend toward the 'bilateralisation' of horizontal issues such as domestic regulation and classification. More generally, many developing countries continue to question whether they have anything to gain from further multilateral services liberalisation.

'Horizontal' Issues

Credit for autonomous liberalisation: Members appear to have agreed that 'credit' for autonomous liberalisation can be sought in any "form which the liberalising Members and its trading partner may agree upon." A major question remains regarding whether both developing and developed countries should be equally eligible for credit. Several — mostly Latin American and Asian — developing countries reject the current wording of the draft modalities as proposed by the Chair which, in principle, puts both groupings on an equal footing. They demand stronger language providing that — at least — no full reciprocity is required from developing countries as such when receiving credit requests from developed country trading partners. The question of whether newly-acceded Members such as China should also be able to seek credit remains unresolved.

Assessment of trade in services: This debate has mainly opposed developed countries and such developing WTO Members as Cuba, Kenya, Nigeria, Pakistan and Senegal on whether the CTS should conduct an assessment of services liberalisation or whether individual Members should conduct their own national and/or regional assessments.

According to GATS Article XIX.3, the CTS "shall carry out an assessment of trade in services on overall terms and on a sectoral basis" for the purposes of establishing negotiating guidelines for each further round of negotiations (see sidebar opposite). However, the Guidelines for the current negotiations were adopted in 2001 without a prior assessment of trade in services. Instead, the Guidelines state that carrying out an assessment will now be an "ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment."

While developing country Members have consistently called for an overall assessment to be carried out before commencing new market access negotiations, developed countries such as the EU and the US argue that the Guidelines provide for national assessments to be conducted by Members themselves. They also maintain that sufficient data to proceed on a proper overall assessment is not available. So far, Members have not been able to overcome this disagreement, with the result that virtually nothing has been achieved with regard to initiating an overall assessment of services liberalisation at the multilateral level.

Special treatment for LDCs: According to GATS Article XIX:3, modalities must be established on special treatment for LDCs, giving priority to facilitating these

countries' increased participation in world trade through the new negotiations. LDCs take the view that they should only receive requests that do not touch certain conditions they attach to market access commitments or require "additional commitments" on domestic regulation. Requests should also be limited to certain sectors and modes of supply. Additionally, LDCs should be granted full market access and national treatment in sectors of export interest, and they should not be requested to grant credit for autonomous liberalisation. The group also asks for technical assistance and capacity building in the context of the services negotiations. However, several developed Members have warned LDCs against going beyond the scope of the Doha mandate, or prejudging the outcomes of the negotiations. They have also asked LDCs to submit their requests to trading partners so that the latter can take their particular export interests into consideration when drafting their market opening offers.

Subsidiary Bodies

Emergency safeguards: A majority of developing country Members, spear-headed by the ASEAN countries, seems to favour the establishment of an emergency safeguard mechanism (ESM, see endnote 1) for the services sector. They argue that it would create an incentive for developing countries to enter into new market access commitments even without having a clear view of the impacts of the liberalisation process. In contrast, most developed countries and several Latin American developing countries remain rather sceptical, with the EU and the US generally questioning its feasibility and/or desirability. Australia has tabled two possible options for reaching a compromise on an ESM: firstly, a consensus-based mechanism; and, alternatively, a model that only focuses on procedural issues such as notification and consultation, but does not touch the feasibility part. Overall, Members are largely split on the need for an ESM, as well as on whether it should apply horizontally, or only on a sector- and mode-specific basis.

Domestic regulations: The negotiations on possible horizontal disciplines on domestic services-related regulatory measures have so far been mainly driven by the EU and the US, who propose the development of objective necessity and transparency requirements for the use of measures such as technical standards and licensing procedures. Arguing that such additional commitments on domestic lawmaking and administration would exceed poorer countries' resource capacities, many developing countries have been rather reluctant to proactively engage in discussions on horizontal disciplines. However, increased developing country interest in discussing domestic regulations is discernible, especially amongst Asian Members. Developing countries are also increasingly interested in a multilateral approach because trading partners such as the US and the EU have included far-reaching "additional commitments" on certain regulatory issues in their market access requests.

On the other GATS rules issues (government procurement and subsidies), discussions are still in a tentative 'brainstorming' mode.

Implementation Issues

The main outstanding implementation issue in the services field is facilitating the participation of developing countries in the global services trade as provided for in GATS Article IV. The Guidelines mandate the CTS to review the implementation of Article IV and to make suggestions on promoting its objectives, as well as to undertake an overall evaluation before the completion of the services round. The main points brought forward by developing countries are that the CTS should assess the participation of developing countries in world trade, as well as examine the actions taken by developed Members to provide access to technology, distribution channels and information networks to services providers in developing countries. The functioning of the contact points to be established by developed countries should also be assessed.

Endnotes

1 An ESM is a temporary measure that would be taken if the implementation of GATS commitments by a Member had the unforeseen consequence of services imports occurring in such increased quantities that domestic suppliers of like services would find themselves threatened with serious injury. Such ESMs are already included in other agreements, such as the GATT and the Agreement on Agriculture.

GATS Article IV.1 states that "increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments […] relating to: (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia *through access to technology on a commercial basis; (b) the improvement of their access to distribution channels and information networks; and (c) the liberalisation of market access in sectors and modes of supply of export interest to them."*

Proposals on the market access negotiations can be searched at http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm

Proposals tabled at the four subsidiary bodies of the CTS can be searched at http://www.wto.org/english/tratop_e/serv_e/s_coun_e.htm

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