

National Consultation
Services Trade and Domestic Regulation in India
New Delhi, Thursday, November 29, 2007

Objective

- To deliberate and invite comments from various stakeholders on country background paper and two sectoral case studies which will be presented at this consultation.
- To take on board the deliberations while preparing the synthesis paper which will act as a policy advocacy document for future.
- To facilitate interaction between policy-makers (including regulators), civil society representatives, inter-governmental and multilateral agencies, academics and media.

Background

The service sector constitutes a significant share of gross domestic product (GDP) in most of the countries in South Asia, Africa and the Caribbean. There are important stakes of the developing countries in the Doha Round of negotiation on services liberalisation. Among many issues, “domestic regulation” has become very important for the LDCs (least developed countries) and developing countries while undertaking liberalisation of their service sectors. Domestic regulation has its importance in protecting national policy objectives subject to that this is not to be applied as a means for undue trade restrictions. Regulation can enhance consumer welfare by ensuring quality and appropriateness of services in the midst of a wide range of providers under progressive liberalisation on services. Regulatory measures can be applied to limit anti-competitive practices that may arise from market dominance by a few firms (domestic as well as foreign). There is also a rising concern about sudden repatriation of profits by foreign service providers, leading to balance of payments crisis for them. Sound regulatory mechanisms can help LDC governments as effective measures against adverse balance of payments shocks while maintaining a friendly environment for domestic and foreign services providers.

Article VI: 4 of GATS is related to “domestic regulation”, which highlights the right of the WTO Members to regulate, and to introduce new regulations, governing the supply of services within their territories in order to meet national policy objectives (such as universal service obligations say in rural areas). Also in the Preamble of GATS, given the existing asymmetries with respect to the degree of development of services regulation in different countries, a particular need of developing countries to exercise this right has been recognised. Paragraph 7 of the Doha Ministerial Declaration of the WTO Members reaffirms the right to regulate and to introduce new regulations governing the supply of services.

At the WTO Hong Kong Ministerial Conference, Members have been asked to develop disciplines on domestic regulation as mandated under Article VI: 4 of GATS before the end of the current round of negotiation, and there was a call on the WTO Members to develop an appropriate text for adoption. However, in the presence of various concerns of the developing countries (let alone the LDCs) about the appropriateness of development-friendly, and/or other strategies, and the need for capacity building on this matter to come up with a suitable policy framework, the timeline that was set appears to be unrealistic.

In June 2006, a number of WTO Members have submitted what is being characterised as a “critical mass” of formal and informal proposals on a broad set of issues relating to the disciplines. Most of these submissions stress on the need to strike a balance between respecting a Member’s right to regulate and curbing regulatory measures that could potentially undermine market access. One area where this tension is particularly evident is in the debate over the so-called “necessity test” for regulatory measures.

While the GATS mandate stipulates that qualification and licensing requirements should not be “more burdensome than necessary to ensure the quality of a service”, some WTO Members are concerned that such a test may constrain their ability to introduce regulations, which seek to implement national policy objectives that go beyond simply ensuring the quality of a service. As for a policy stance, there lies a common position of the LDCs and the developing world as to the need to place a demand for adequate time to come up with appropriate domestic regulatory policy regimes considering their specific economic requirements and, at the same time, to ensure necessary technical assistance for capacity building in this area. Many LDCs as well as developing countries lack established and well functioning regulatory and institutional frameworks. Further, there should be considerations regarding ensuring adequate regulatory flexibility for LDCs as well as developing countries and possible future disciplines to promote developing countries and LDCs’ export capacities and opportunities.

The provisions for domestic regulation in GATS Article VI: 4 apply horizontally for all sectors. Sector-specific priorities (for example on telecommunications) are the potential ones for future consideration. Additionally, the provisions under the GATS Article VI: 1, 2 or 3 generate some overlap with market access and national treatment articles, and therefore may result in disciplines can create legal uncertainty. The quantitative maximum set to limit market access and the qualitative minimum under domestic regulation provisions should be distinguished clearly to avoid such confusion.

Context

This consultation is organised by engaging the policy-makers (including regulators), civil society representatives, inter-governmental and multilateral agencies, academics and media. Country background paper and two sectoral case studies will be presented at this meeting. After receiving comments from various stakeholders, a synthesis paper will be prepared, outlining the policy implications and impact of services liberalisation and domestic regulation on these countries’ economies. This synthesis paper will be finalised after conducting the dissemination meeting so that deliberations at these meetings are taken on board. It will act as a policy advocacy document for future.

The Event

The National Consultation on Services Trade and Domestic Regulation in India, to be held on Thursday, November 29, 2007 in New Delhi, is to invite comments and inputs on the country background paper and two sectoral case studies prepared by CUTS CITEE. The following is the list of issues / subjects which will be discussed at this consultation. It includes:

- Country background paper on ‘Evolution of Services in India’
- Country paper on ‘Domestic Preparedness on Services in India’
- Two sectoral case studies:
 - ✓ Wholesale Trade
 - ✓ Education

Place

WILLOW Hall, India Habitat Centre, Lodhi Road, New Delhi

Organised by

