

Doha Round of Negotiations on Services

The Current State of Play

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Trade in services is the third important pillar of market access negotiations under the Doha Development Agenda. The other two are agriculture and non agricultural market access (NAMA). However, much of the public discourse on the Doha Round of negotiations is on trade in goods. Negotiations on trade in services have received much less attention. Even in February 2008 (and later in May and July 2008), revised draft modalities were released only on agriculture and NAMA, and not on services. WTO Members having an offensive market access interest on services want the same level of ambition and political will as reflected in case of agriculture and non agricultural goods. The process of negotiations on services, based on request-offer mode, is often attributed as a stumbling block for making effective progress in seeking binding commitments from WTO Members.

The Agenda

The Hong Kong Ministerial Declaration of 2005 of the WTO Members puts forward an aggressive agenda for services trade liberalisation. It includes key provisions like progressively higher level of liberalisation, intensification by expanding sectoral and modal coverage of commitments and improving their quality and that particular attention needs to be given to sectors and modes of export interests of developing countries. Besides this, it made a provision for negotiations on a voluntary plurilateral basis as another negotiating method.

At present, services negotiations are proceeding on two parallel tracks. The first is a multilateral text on which the Chairman of the Services Special Session has been holding consultations. The second track, which is among the participants of plurilateral negotiations, is on market access in preparation for a Signaling Conference among the relevant Ministers. The signaling exercise is a two-way street and its results are to reflect progress but would not represent the outcomes of negotiations. The purpose of the Signaling Conference is to provide Members with comfort regarding progress in the market access pillar of services negotiations at the time of adopting the modalities on agriculture and NAMA. It will take place at the time of the mini-ministerial on agriculture and NAMA modalities, which is scheduled to be held in Geneva from 21st July 2008.

The Chairman of the Council for Trade in Services Special Session in his report released on 12th February 2008 (subsequently revised in May 2008) revealed the areas of convergence and divergence among the Members on a number of elements to be included in a

possible draft text. While there is a broad consensus on negotiating mandates as stipulated in GATS (the General Agreement on Trade in Services, which was agreed at the Uruguay Round) Articles IV and XIX, Doha Development Agenda and Hong Kong Ministerial Declaration, the challenge is to achieve a better level of liberalisation that the WTO Members are trying in agriculture and NAMA.

Request-Offer Approach

Request-offer approach is the main method of services negotiations. In addition to bilateral negotiations, this is also being pursued on a plurilateral basis. Accordingly and, pursuant to Paragraph 7 of Annex C of the Hong Kong Ministerial Declaration, 21 collective requests were submitted by co-sponsors to other groups of WTO Members in the following sectors and modes: Air Transport; Architectural, Engineering and Integrated Engineering Services; Audiovisual Services; Computer and Related Services; Construction Services; Distribution Services; Education Services; Energy-Related Services; Environmental Services; Financial Services; Legal Services; Logistics Services; Maritime Transport Services; Postal and Courier Services; Services Related to Agriculture; Telecommunication Services; Tourism Services; Cross-Border Supply (Modes 1 and 2); Mode 3 (commercial presence); Mode 4 (temporary movement of workers); and MFN (most-favoured-nation) exemptions.

Although WTO Members have participated actively in the request-offer negotiations, only a few members are satisfied with the outcomes of plurilateral request-offer. Most of the WTO Members are of the view that so far progress is well short of responding adequately to their

requests. Many of them were of the view that major strides needed to be taken in order to reach a successful conclusion of these negotiations. They acknowledged that the outcome of these request-offer negotiations would eventually have to be assessed by each participant, including in relation to other areas of the WTO.

Expanding Sectoral and Modal Coverage

Majority of WTO Members, particularly developed countries, have not moved beyond rhetoric. They recognise the fact that negotiations should aim at a progressively higher level of liberalisation of trade in services with a view to promoting the economic growth of all trading partners, and particularly the development of developing and least-developed countries. This has to be achieved with due flexibility for individual developing countries. To this effect Members should to the maximum extent possible expand the sectoral and modal coverage of their commitments and improve their quality by making deeper and better commitments. In doing so, they must be guided by Paragraph 1 of Annex C of the Hong Kong Ministerial Declaration. In this regard, particular attention should be given to sectors and modes of supply of export interest to developing countries. Members reiterate that the next set of offers should provide market access in sectors and modes of supply of export interest to developing countries, such as Modes 1 (cross-border supply) and 4 (temporary movement of workers), as indicated in bilateral and plurilateral requests, in accordance with Article IV of GATS.

Operationalisation of Article IV of GATS

Article IV of GATS (the General Agreement on Trade in Services) stresses that in order to increase the participation of developing countries in global services trade there is a need to:

- Strengthen domestic services capacity of these countries and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;
- Improve these countries' access to distribution channels and information networks; and
- Liberalise market access in sectors and modes of supply of export interest to them.

Such calls were re-emphasised in the Doha Ministerial Declaration of 2001 as well as in the July 2004 Framework. In the Hong Kong Ministerial Conference of 2005, it was again highlighted to give particular attention to sectors and modes of supply of export interest to developing countries.

It is, however, important to note that a large number of developing countries have been facing difficulties in identifying the sectors of their specific interests in the negotiations and the constraints to the expansion of their exports. Also, registering any meaningful liberalisation commitments in the negotiations has achieved little progress. There is a serious concern about developing countries' lack of capacity to evaluate requests received from other member countries and the development of their own requests and offers.

With respect to formulating their own requests and offer many developing countries are facing difficulties in determining their national policy objectives and competitiveness of the relevant sector and/or sub-sector. In case of liberalisation under Mode 4 (temporary movement of workers), in the categories and skill levels of interest to developing countries, no real progress has been achieved so far. Even, no progress has been achieved with respect to streamlining or increasing the efficiency of processing mechanisms for visa and work permits.

Operationalisation of LDC Modalities

Enhancing the participation of LDCs (least developed countries) in services negotiations and in turn increase their share in global services trade is a long-standing commitment of the WTO Members. The LDC modalities, agreed on in September 2003, urged the WTO Members to help LDCs build internationally-competitive domestic services capacity, and to improve the poorest countries' access to international distribution channels and information networks. The so-called 'modalities' for the special treatment of LDCs called on other WTO Members to "give special priority to providing effective market access in sectors and modes of supply of export interest to LDCs" in particular with regard to the movement of temporary workers (Mode 4).

The Hong Kong Ministerial Declaration of 2005 reiterated to pursue full and effective implementation of the modalities for Special Treatment for LDCs on trade in services. In March 2006, the LDC Group submitted a proposal to the Council of Trade in Services (CTS), which aimed at creating a mechanism to accord special priority to market access in sectors and modes of LDC export interest. The proposal suggests the creation of a new mechanism which would allow the WTO Members to provide "non-reciprocal special priority... only to LDCs," in areas of export interest to them. This proposal generated mixed reactions. Some developing countries, notably the African Group, were supportive. However, some others were wary of the introduction of preferences in the context of GATS, arguing that this would divert their markets.

According to a February 2008 analysis done by the WTO Secretariat at the request of its Members, the LDC proposal implies that “the type of special priority measures contemplated would be inconsistent with the MFN (most-favoured-nation) obligation” in WTO rules to treat all trading partners equally. Therefore, the Secretariat note said that implementing the proposal would either require all Members to agree to a ‘waiver’ to the MFN obligation or to adopt some sort of amendment or interpretation of WTO rules.

According to informal sources, the US said that the waiver is the best option, adding that developing countries should also accord the LDCs a special priority. Australia asked about a realistic scenario under which LDCs could get such a waiver. India raised questions on how the waiver could be implemented. The Chair is consulting the WTO Members in an attempt to reach a workable solution.

Domestic Regulation

Article VI of GATS (the General Agreement on Trade in Services) is related to domestic regulation, which highlights the right of the WTO Members to regulate and introduce new regulations governing the supply of services within their territories in order to meet national policy objectives. At the Hong Kong Ministerial Conference in 2005, the WTO Members were asked to develop disciplines on domestic regulation as mandated under Article VI of GATS before the end of the current round of negotiation.

In June 2006, many developed and developing countries submitted what a WTO official characterised as a ‘critical mass’ of formal and informal proposals on a broad set of issues relating to the discipline of domestic regulation. All the submissions stressed on the need to strike a balance between respecting a WTO Member’s right to regulate and curbing regulatory measures that could potentially undermine market access. One particular area where this tension exists is 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.

Many LDCs as well as developing countries lack established and well functioning regulatory and institutional frameworks. As for policy stance, there lies common position for the developing countries and LDCs as to place their need for adequate time to come up with appropriate domestic regulatory policies considering specific economic requirements and at the same time to ensure getting necessary technical assistance for capacity building.

So far the progress made on domestic regulation is relatively satisfactory as the negotiations have moved into a text-based phase. The Chair’s report of February and May 2008 call upon the relevant Working Party to intensify its work and the WTO Members invited the Chairman to continue to consult on drafting revisions with a view to developing and adopting a workable text.

What Next?

Of late the Doha Round of negotiations on services has received a greater attention. Some WTO Members are saying that negotiations on services must be driven by the same level of ambition and political will as reflected in agriculture and NAMA. The Signaling Conference is primarily a demand of the EU (European Union) and the US, which are seeking what Pascal Lamy, WTO Director-General has termed as “a certain level of comfort” about future market-opening in services while they agree further cuts in tariffs and subsidies on trade in goods. Last month, he said that these signals, while not equivalent to final offers of specific liberalisation commitments, could credibly demonstrate that “the services negotiations are moving forward”.

The main focus of this signaling exercise would likely to be on developed and emerging developing countries that have made and/or received plurilateral requests for better market access. Also the Chair of the services negotiations is conducting consultations to produce an updated services text.

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