

Understanding General Agreement on Trade in Services (GATS)

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Overview

- Trends in Services Trade
- GATS: Overview, Structure and Key Concepts
- Doha Negotiations on Services

Trends in Services Trade

- Traditional belief that services can not be traded due to various characteristics, such as-
 - Intangible
 - Simultaneity
 - Instantaneity
- These beliefs are not correct as shown by trade data
- Certain services - international transport and communication - have been traded for centuries, Some services are supplied in conjunction with goods (finance, insurance, marketing, etc.)
- Services have become more tradable as a result of:
 - Technical progress (e-banking, tele-medicine, distance learning)
 - Government retrenchment
 - Market liberalization and regulatory reform

- Services are the fastest growing sector of the global economy
- Trade in services has grown faster than in goods over the past decade with developing countries witnessing even faster growth rates
 - Developing countries' share in world services exports increased from 18 percent in 1980 to around 30 percent in 2011
 - Asian Developing countries' share in world services exports increased from 10 percent in 1980 to around 24 percent in 2011
 - But, African Developing countries' share in world services exports decreased from 3.4 percent in 1980 to around 2.1 percent in 2011
- Developing countries' share in world services imports increased from 31 percent in 1980 to around 37 percent in 2011
- Asian Developing countries' share in world services exports increased from 18 percent in 1980 to around 27.5 percent in 2011
- But, African Developing countries' share in world services exports decreased from 6.5 percent in 1980 to around 4.1 percent in 2011

Africa

Exports

Up 0%

\$85 billion

2% of world total

Imports

Up 9%

\$149 billion

4% of world total

Asia

Exports

Up 12%

\$1.10 trillion

26% of world total

Imports

Up 14%

\$1.09 trillion

28% of world total

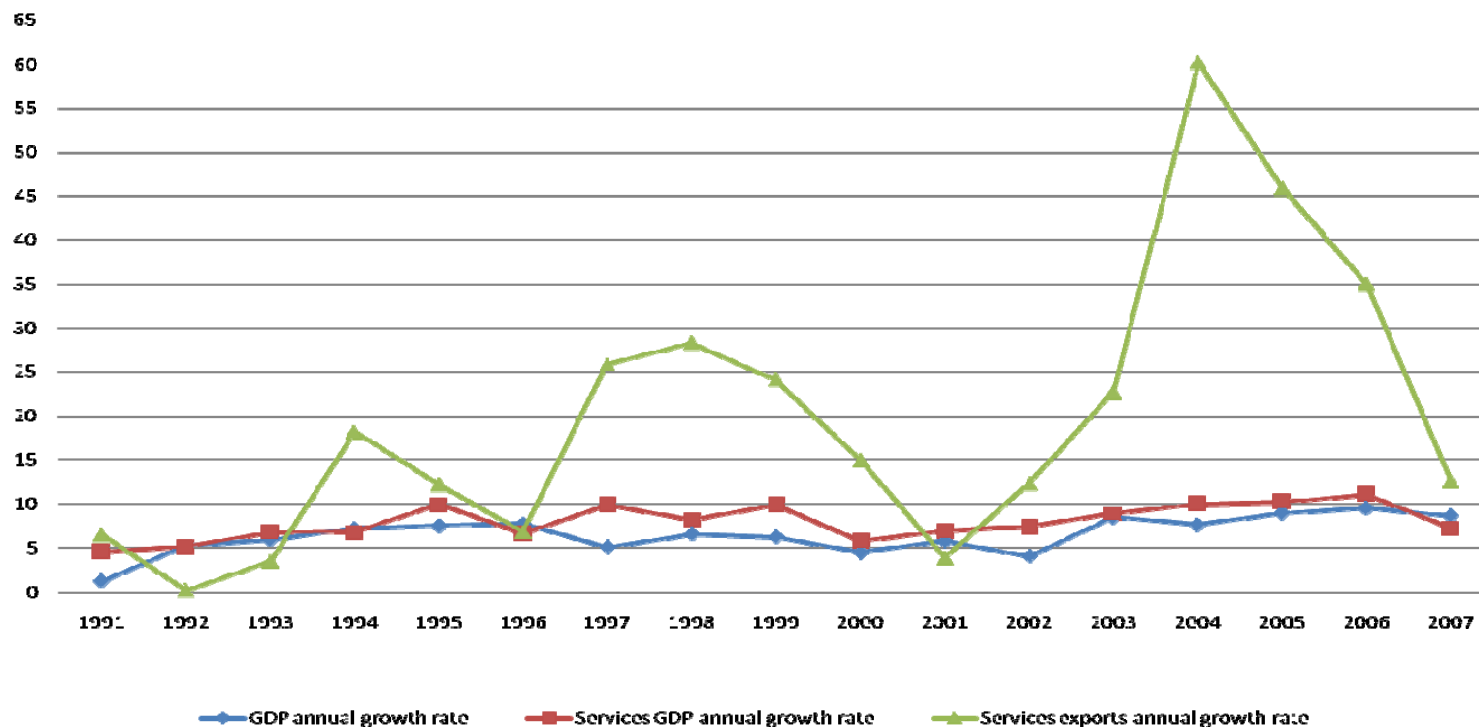
World Services Exports by Categories

- Exports of transportation services in 2009 (**21% of the total services exports**)
- Exports of travel services in 2009 (**26% of total services exports**)
- Exports of other commercial services, the largest and most heterogeneous group of the three major services categories in 2009 (**53% of total services exports**)

(Source: WTO International Trade Statistics-2010)

- Contribution of services in India's GDP and exports is continuously increasing
 - Risen from 43% (1990-91) to 62% (2010-11) (Economic Survey, 2012)
 - Share in total exports grown from 20% (1990-91) to 35% (2009-10) (UNCTAD Handbook of Statistics ,2011)
 - Share of services in India's total exports expected to rise to about 50.4%, likely to surpass merchandise exports by 2012 (FICCI Survey, 2007)

Services Growth Rates: 1991 – 2007 for India



Source: UNCTAD Handbook of Statistics, 2008

Understanding the GATS

The General Agreement on Trade in Services (GATS) entered into force in January 1995 as a result of the Uruguay Round negotiations to provide for the extension of the multilateral trading system to services

Members of WTO are signatories to the GATS and have to assume the resulting obligations

Regardless of their countries' policy stances, trade officials need to be familiar with this Agreement and its implications for trade and development

Two main pillars of GATS:

- ensuring increased transparency and predictability of relevant rules and regulations, and

GATS- The Agreement

Within the framework of the Agreement, the latter concept is paramount to improving market access and extending national treatment to foreign services and service suppliers across an increasing range of sectors

does not, however, entail deregulation. Rather, the Agreement explicitly recognizes governments' right to regulate, and introduce new regulations, to meet national policy objectives and the particular need of developing countries to exercise this right

is in all 29 articles- divided into 6 parts- Scope & definition, General obligations & disciplines, GATS Rules, Schedules of commitments, Progressive liberalization, Institutional and final provisions

includes various Annexes to GATS, while 3 Annexes

Services Trade and Modes of Supply

Four-pronged definition of services trade depending on the territorial presence of the supplier and the consumer at the time of the transaction

From the territory of one Member into the territory of any other Member (**Mode 1 - Cross-border trade**);

In the territory of one Member to the service consumer of any other Member (**Mode 2 – Consumption abroad**);

By a service supplier of one Member, through commercial presence, in the territory of any other Member (**Mode 3 - Commercial presence**); and

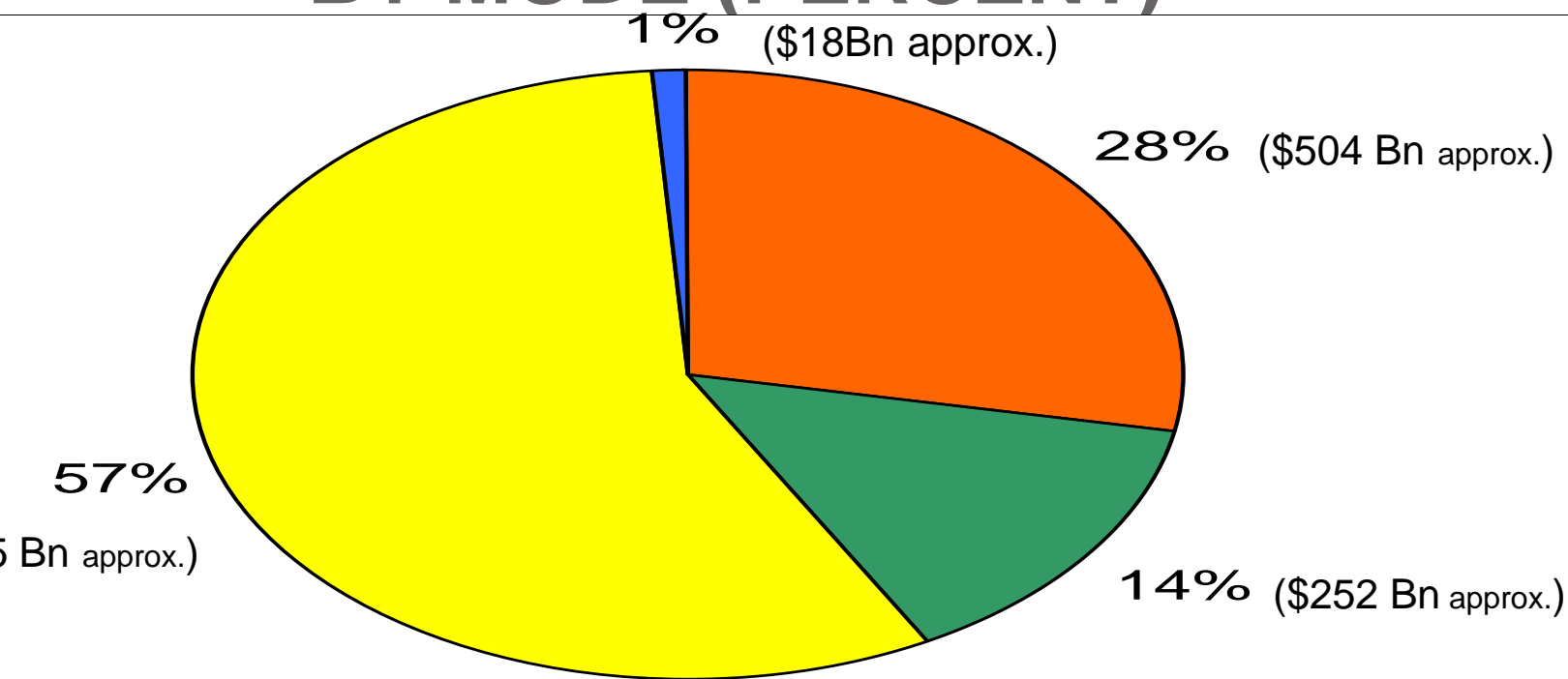
By a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (**Mode 4 - Presence of natural persons**)

Significantly broader than the BOP concept of services trade

BOP focuses on residency rather than nationality – i.e. a service is being exported if it is traded between residents and non-residents

Certain transactions falling under the GATS, in particular in the case of

VALUE OF WORLD TRADE IN SERVICES BY MODE (PERCENT)



- Mode 1 (Cross Border Supply)
- Mode 2 (Consumption Abroad)
- Mode 3 (Commercial Presence)

Structure of GATS

positive list approach

standing commitments – choice is left to the Member

negative listing of limitations on Market Access and National treatment

Under GATS there are certain General Obligations (MFN, transparency) and Conditional Obligations, (Market Access, national treatment)

GATS - Scope and Application

Article I:1 stipulates GATS applies to **“measures by members”** affecting trade in services

Does not matter in this context whether a measure is taken at central, regional or local government level, or by non-governmental bodies exercising delegated powers

However, **“services supplied in the exercise of governmental authority”** (Article I:3b) not covered under GATS

Such services should be “supplied neither on a commercial basis, nor in competition with one or more service suppliers” (Article I:3c), such as police, fire protection, monetary policy operations, mandatory social security, and tax and customs administration

According to the Annex on Air Transport Services, **the**

Services Sector Classification

Classification system comprised of 12 core service sectors (document MTN.GNS/W/120):

- Business services (including professional services and computer services)
- Communication services
- Construction and related engineering services
- Distribution services
- Educational services
- Environmental services
- Financial services (including insurance and banking)
- Health-related and social services
- Tourism and travel-related services
- . Recreational, cultural and sporting services
- . Transport services

ATS: Main Building Blocks

General Obligations

- Unconditional General Obligations
- Conditional General Obligations

Other General Provisions

Specific Commitments

Unconditional General Obligations

Each Member has to respect certain general obligations that apply regardless of the existence of specific commitments

These include:

MFN treatment (Article II),

Some basic transparency provisions (Article III),

Availability of legal remedies (Article VI:2),

Compliance of monopolies and exclusive providers with the MFN obligation (Article VIII:1),

Consultations on business practices (Article IX), and

Consultations on subsidies that affect trade (Article XV:2)

several cases the same Article contains both

Most-Favoured-Nation (MFN) Treatment

In the context of the GATS, the MFN obligation (Article II) is applicable to any measure that affects trade in services in any sector falling under the Agreement, whether specific commitments have been made or not

Exemptions could have been sought at the time of the acceptance of the Agreement (for acceding countries: date of accession)

They are contained in country-specific lists, and their duration must not exceed ten years in principle

More than 90 Members currently maintain such exemptions, which are mostly intended to cover trade preferences on a regional basis

Transparency

Article III ensures that Members publish promptly all measures pertaining to or affecting the operation of the ATS

A obligation to notify the Council for Trade in Services at least annually of all legal or regulatory changes that significantly affect trade in sectors where specific commitments have been made

Members are also required to establish enquiry points which provide specific information to other Members on request

Conditional General Obligations

These apply only to sectors listed in a Member's schedule of commitments

Domestic Regulation

Article VI:1, Measures of general application are to be administered “in a reasonable, objective and impartial manner”

Article VI:3, If the supply of a scheduled service is subject to authorization, Members are required to decide on applications within a reasonable period of time

Article VI:5, Seeks to ensure that specific commitments are not nullified or impaired through regulatory requirements

Article VI:4, Mandates negotiations to be conducted on any necessary disciplines that, taking account the above considerations, would prevent domestic regulations from constituting unnecessary barriers to trade

Article VI:6 requires Members that have undertaken commitments on

Payments and Transfers

IMF Article XI requires that Members allow international transfers and payments for current transactions relating to specific commitments

It also provides that the rights and obligations of IMF Members, under the Articles of Agreement of the Fund, shall not be affected, subject to the provision that capital transactions are not restricted inconsistently with specific commitments, except under Article XII or at the request of the Fund

Footnote 8 to Article XVI further circumscribes Members' ability to restrict capital movements in sectors where they have undertaken specific commitments on cross-border trade and commercial presence

General Provisions

Economic Integration Agreements

Like GATT in merchandise trade, the GATS also has special provisions to exempt countries participating in integration agreements from the MFN requirement

Article V permits any WTO Member to enter into agreements to further liberalize trade in services on a bilateral or plurilateral basis, provided the agreement has "substantial sectoral coverage" and removes substantially all discrimination between participants

Recognizing that such agreements may form part of a wider process of economic integration well beyond services trade, the Article allows the above conditions to be considered in this perspective

Recognition

Notwithstanding the MFN requirement, Article VII of the GATS provides scope for Members, when applying standards or granting licenses, certificates, etc., to recognize education and other qualifications a supplier has obtained abroad

- This may be done on an autonomous basis or through agreement with the country concerned
- However, recognition must not be exclusive, i.e. other Members are to be afforded an opportunity to negotiate their accession to agreements or, in the event of autonomous recognition, to demonstrate that their requirements should be recognized as well

Exceptions

Part II of the GATS (General Obligations and Disciplines) further contains exception clauses for particular circumstances

Regardless of relevant GATS obligations, Members are allowed in specified circumstances to restrict trade in the event of

- Serious balance-of-payments difficulties (Article XII) or
- Health and other public policy concerns (Article XIV), or
- To pursue essential security interests (Article XIV *bis*)

Specific Commitments

In addition to respecting the general obligations referred to above, each Member is required to assume specific commitments relating to market access (Article XVI) and national treatment (Article XVII) in designated sectors

The relevant sectors as well as any departures from the relevant obligations of Articles XVI and XVII are to be specified in the country's Schedule of Commitments

Article XVI (Market Access) and XVII (National Treatment) commit Members to giving no less favourable treatment to foreign services and service suppliers than provided for in the relevant columns of their Schedule

Commitments thus guarantee minimum levels of treatment, but do not prevent Members from being more open (or less discriminatory) in practice

of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
HORIZONTAL COMMITMENTS			
SECTORS INCLUDED IN THIS SCHEDULE			
SECTOR-SPECIFIC COMMITMENTS			
<i>Specific commitments in the relevant service sector(s)/sub-sector(s) as appropriate]</i>			
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LIMITATIONS ON MARKET ACCESS (MA):

Article XVI

giving access to home market by a member country to services and service suppliers of other Member countries

The provisions of GATS, laid down in Article XVI.2, cover six types of restrictions that must not be maintained in the absence of limitations

- Limitations on the number of service suppliers;
- On the total value of service transactions or assets;
- Number of operations or quantity of output;
- Number of natural persons supplying a service;
- Type of legal entity or joint venture through which a service is provided;
- Any foreign capital limitations relating to maximum levels of foreign participation

LIMITATIONS ON NATIONAL TREATMENT (NT): ARTICLE XVII

The national treatment standard does not require formally identical treatment of domestic and foreign suppliers

Formally different measures can result in effective equality of treatment; conversely, formally identical measures can in some cases result in less favourable treatment of foreign suppliers (*de facto* discrimination)

That limitations on national treatment cover cases of both *de facto* and *de jure* discrimination

Unlike Article XVI, Article XVII does not contain an exhaustive listing of the types of measure which would constitute limitations on national treatment

Modification of Schedule

Article XXI provides a framework of rules for modifying or withdrawing specific commitments

The relevant provisions may be invoked at any time after three years have lapsed from the date of entry into force of a commitment

In the absence of emergency safeguard measures, which are still under negotiation, this waiting period is reduced to one year under certain conditions

At least three months' notice must be given of the proposed change

The compensation to be negotiated with affected Members consists of more liberal bindings elsewhere that "endeavour

Domestic Regulations (DRs)

WATS makes a clear distinction between domestic regulation and measures subject to trade liberalization

WATS explicitly recognizes the continued right (and, possibly, the obligation) of Members to enforce domestic policy objectives through regulation

Public policy objectives that might require regulatory support:

- Equitable access, regardless of income or location, to a given service

- Consumer protection (including through information and control)

- Job creation in disadvantaged regions

- Labor market integration of disadvantaged persons

- Reduction of environmental impacts and other externalities

- Macroeconomic stability

Governments remain free under the GATS to pursue such policy objectives even in sectors where they have undertaken full commitments on market access and national treatment

Because of the importance of the domestic regulatory environment as a context for trade, the Council for Trade in Services has been given a particular negotiating mandate in Article VI:4

Allows the Council to develop any necessary disciplines to prevent domestic regulations (qualification requirements and procedures, technical standards, and licensing requirements) from constituting unnecessary barriers to trade

The Working Party on Domestic Regulation (WPDR) has

e disciplines envisaged under Article VI:4 are intended to ensure that domestic regulations are, *inter alia*:

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

not more burdensome than necessary to ensure the quality of the service;

in the case of licensing procedures, not in themselves a restriction on the supply of the service

ANNEX ON FINANCIAL SERVICES

The Annex on Financial Services is intended mainly to clarify some core GATS provisions as they apply to financial services

One of the central elements is the so-called “prudential carve-out”

It confirms “notwithstanding any other provisions of the agreement” that WTO Members are free to take prudential measures to protect investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system

The Annex also specifies the scope of the governmental-

Services Negotiations

The General Agreement on Trade in Services (GATS) mandates WTO member governments to progressively liberalize trade in services through successive rounds of negotiations

Under the mandate of Article XIX, the latest round of negotiations began in January 2000

In March 2001, the Council for Trade in Services adopted Guidelines and Procedures for the Services Negotiations (document S/L/93), major elements include-

- Reaffirmation of the right to regulate and to introduce new regulations on the supply of services;

- Objective of increasing participation of developing countries in services trade; and

- Preservation of the existing structure and principles of the GATS, including the listing of sectors in which commitments are

certain new elements have been added, such

- Explicit recognition of the needs of small and medium-sized service suppliers;
- Reference to the request-offer approach as the main method of negotiation; and
- Continuation of the assessment of trade in services, mandated under Article XIX:3, as an ongoing activity of the Council for Trade in Services

November 2001, the Ministerial Conference in Doha confirmed the Services Negotiating Guidelines of March 2001, services negotiations became part of the "single undertaking" under the Doha Development Agenda, whereby all subjects under the negotiations are to be concluded at the same time

Initial requests for new or improved services commitments were to be submitted by 30 June 2002, with initial offers being due by 31 March 2003

India's Requests

India's requests to 62 members in architectural, engineering, audio-visual, computer and related, health, maritime, tourism and travel, financial, construction and related engineering and accounting and bookkeeping services

India also received requests from a number of members

horizontally, UR commitments improved by enhancing the period of stay for business visitors and also expanding the category of professionals to include Contractual Service suppliers, both employees of enterprises and independent professionals in certain identified sectors

India's Initial Offer

India submitted its initial offer in January 2004. UR commitments improved in engineering, computer and related, construction and related engineering, financial, health and tourism.

Fresh commitments in accounting and book keeping, medical and dental, services by midwives, nurses, physiotherapists and para-medical personnel, and maritime transport services.

Highlights of India's Revised Offer

Building on the improvements in the initial offer, **fresh commitments** offered in architectural, integrated engineering and urban planning and landscape services; veterinary services; environmental; distribution; construction and related engineering services; tourism; education, life insurance, recreational, cultural and sporting services and air transport services.

Improvements made in a no. of sectors incl. engineering; computer & related services, R&D services; basic telecommunications; value based telecommunications; construction & related engineering services, banking services, asset management services and other non-banking financial services.

India's offer is in line with its aggressive position.

Revised Offers

Over 60 countries (EC as one) including India submitted initial offers

Over 30 including US, EC & India submitted revised offers

Intense bilateral & plurilateral negotiations continued

negotiations Process

negotiations in the Doha Round are being conducted on two tracks:

- Bilateral and/or plurilateral negotiations to improve market conditions for trade in services

- Multilateral negotiations among all WTO members to establish any necessary rules and disciplines (such as on domestic regulation, emergency safeguard measures, government procurement and subsidies) which will apply to the whole WTO membership, with certain special provisions for developing and least-developed countries

Hong Kong Ministerial Declaration

Modal objectives agreed to make new and improved commitments

Mode 1- commitments at existing level & removal of requirement of com. Presence

Mode 2 – at existing level & also commitments where on Mode 1 exist

Mode 3 – commitments on enhanced levels of foreign equity participation, removal or substantial reduction of ENTs and commitments allowing greater flexibility on the types of legal entity permitted

Mode 4 - (i) new/improved commitments on categories of CSS, IIPs & Others, de-linked from com. presence to reflect removal or substantial reduction of ENTs and indication of prescribed duration of stay & possibility of renewal, if any; (ii) new/improved commitments on categories of ICTs & BVs to

Mini-Ministerial- July 2008

Signaling Conference held in July 08.

Members gave signals to make qualitatively improved offer in services sectors/modes

India to improve in telecom, financial, energy, postal courier, retail, other business services. Developed countries response not encouraging.

July 08, CTS Chairman came out with a report-
"Requirements required for the Completion of the
Services Negotiations."

for further progress.

Plurilateral Approach to Negotiations

WTO (December 2005) mandated the adoption of plurilateral 'Request Offer' approach as a complementary method of negotiations

entails a group of members putting a single request in sectors / Modes of interest to them and is intended to complement the bilateral request – offer process which should continue to be the primary method of negotiations

Participation is limited to the requesting and requested members and the outcome would only be reflected in the Revised Offers of each individual member as is the case with the bilateral requests. However, the benefits would be extended to all the WTO members

as part of the plurilateral process. 22 plurilateral groups

After the Signaling Conference, Negotiations have continued primarily in the plurilateral format

Intensive negotiations held in 2009, 2010 and also till the first half of 2011

These efforts culminated into the report by the Chair of the CTS-SS and all subsidiary bodies under the CTS in April 2011

The Chair's report puts forth two views:

developed Countries view

further progress on market access could include the binding of autonomous liberalization where possible, improved levels of access under mode 3 (including restrictions on foreign equity participation and forms of commercial presence), as well as a robust and satisfactory outcome in mode 4

developing countries view

Imbalance in the market access negotiations, as developing country flexibilities have not been taken into account in other Members' requests, sectors of export interest of developing countries not being fully reflected in developed members offers;

the fact that developing countries have already made a significant contribution to the Doha Round and

the fact that some plurilateral requests and recent

Some Recent Proposals by Developed Countries

Cluster Approach - A number of Members along with Australia proposed that a core group of Members (Signalling Conference participants plus others interested) to

- bind current levels of market access in priority sectors;
- remove significant impediments to mode 3 trade (in particular limitations on foreign equity and forms of commercial presence);
- enhance market access for mode 4; and
- achieve other objectives such as commitments to adhere to the telecommunications reference paper

Other proposals have also been obtained from Mexico, Switzerland and Chinese Taipei, and Korea

Australia has not supported any of these proposals and our view has been that we are committed to be guided by the objectives for market access as outlined for various Modes as per Annex C of the MD. That is an agreed mandate and in our view any approach which intends to change these objectives is not going to be helpful

Plurilateral Approach to Services Negotiations proposed by RGF

Recently, the US, the EU and Australia along with some other likeminded members (New Zealand, Canada, Singapore, Hong Kong, Taiwan, Chile, Columbia, Switzerland, Pakistan and Mexico) also known as really Good Friends of Services (RGF), have proposed a new plurilateral approach to services, which is primarily an RTA type Services plurilateral under Article V of the GATS

India, China, Brazil and a whole host of other developing countries do not support this approach and are not participating in this process at this stage. This is

What are the implications?

Loss of policy space for developing countries ?

Moving away from key principles of WTO –

Multilateral consensus based approach

Anchored to Doha mandate

Inclusivity

GATS and LDCs

Article XIX:3 of the GATS requires the establishment of modalities for the special treatment for LDCs in the negotiations on trade in services

These modalities were established in September 2003 (TN/S/13)

Annex C of the Hong Kong Ministerial Declaration of December 2005 (WT/MIN(05)/DEC) also provided guidance in this regard and called on Members to establish appropriate mechanisms to give effect to the modalities

Trade ministers at the 8th WTO Ministerial Conference in Geneva in December 2011, adopted a waiver to enable developing and developed-country Members to provide preferential treatment to services and service suppliers of least-developed country (LDC) Members

This waiver, which will last for 15 years from the date of adoption, releases developing and developed-country Members from their legal obligation to provide non-discriminatory treatment to all trading partners