

Services: Progress in Doha Round and Key Unresolved Issues

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Services Negotiations: Why?

- During the Uruguay Round, Members' attention was mostly absorbed by definitional, structural and institutional issues of the GATS
 - Little time and resources left for negotiating liberalizing commitments
- The GATS mandates WTO member governments to progressively liberalize trade in services through successive rounds of negotiations, the first round had to start no later than five years from 1995

- Services negotiations started officially in early 2000 under the Council for Trade in Services
- In March 2001, the Services Council established the negotiating guidelines and procedures (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 made and the four modes of supply

- Certain new elements have been added-
 - 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 GATS, as an ongoing activity of the Council for Trade in Services

Major areas of services negotiations

- There are four major areas of services negotiations:
 - Market access
 - Domestic regulation
 - GATS rules on emergency safeguard measures, government procurement and subsidies
 - Implementation of LDC modalities

Negotiating Process

- Negotiations in the Doha Round are being conducted on two tracks:
 - I. Bilateral and/or plurilateral negotiations to improve market conditions for trade in services - this mostly involves
 - Improving specific commitments on market access and national treatment
 - Promoting most-favoured nation treatment
 - II. 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
 - Will apply to the whole WTO membership, with certain special provisions for developing and least-developed countries

Negotiating Stages

1. From Doha to Cancun

- In 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
 - 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
- A later decision by the General Council, in the context of the July Package of 2004 (document WT/L/579), set a target date of May 2005 for the submission of revised offers
- Over the years, 71 initial and 31 revised offers were submitted, however, content (new sector inclusions and improved market access) remained shallow, partly due to frictions in other areas (Agriculture and NAMA)

- The Cancun Ministerial Meeting in early September 2003, however, failed to make progress
- The concluding statement reaffirmed the Doha Declaration and Decisions and recommitted members “to working to implement them fully and faithfully“
- Reflecting the lack of political impetus, the request-and-offer process in services virtually ground to a halt in the wake of Cancun

2. “July 2004 Package” in the aftermath of Cancun

- The July Package contained a target date of May 2005 for the submission of revised offers and adopted a set of recommendations that had been agreed before by the Council for Trade in Services (Special Session)
- These included recommendations for:
 - Members that had not yet submitted initial offers to do so as soon as possible
 - Ensuring a high quality of offers, in particular in sectors and modes of export interest to developing countries, with special attention being given to least-developed countries (LDCs)
 - Intensifying efforts to conclude the rule-making negotiations under Articles VI.4, X, XIII and XV in accordance with their mandates and deadlines
 - Providing “targeted” technical assistance to developing countries with a view to enabling them to participate effectively

3. Annex C and the Hong Kong Ministerial Declaration

- The Hong Kong Ministerial Declaration of December 2005 reaffirmed key principles and objectives of the services negotiations
- Called on members to intensify the negotiations in accordance with the objectives, approaches and timelines set out in Annex C to the Declaration
 - Expanding sectoral and modal coverage of commitments and improving their quality, with particular attention to export interests of developing countries
- Also established that LDCs are not expected to undertake new commitments in this Round

- Annex C contained a more detailed and ambitious set of negotiating objectives to guide members than any previous such document
- While ensuring appropriate flexibility for individual developing country members, it established a framework for:
 - Offering new or improved commitments under each mode of supply
 - Treating most-favoured nation (MFN) exemptions
 - The scheduling and classification of commitments
- The Annex also urged members to intensify their efforts to
 - Conclude the rule-making negotiations
 - Develop text for adoption on disciplines on domestic regulation
 - Devise methods for the full and effective implementation of the Modalities for the Special Treatment of LDC Members
- With respect to negotiating approaches, Annex C envisaged that the request-offer negotiations also be pursued on a plurilateral basis

- 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, IPs & 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 reflect removal or substantial reduction of ENTs and indication of prescribed duration of stay & possibility of renewal, if any

4. Plurilateral negotiations

- Under plurilateral negotiations, a group of members with a common interest make a joint request to individual members to improve specific commitments in a particular sector or mode of supply
- Subsequently, they meet collectively with the countries that have received this request
 - It is up to each member to respond individually to the collective request
- Two rounds of plurilateral negotiations were conducted in early 2006, based on 21 collective requests that were formulated mostly along sector lines
- The results of the plurilateral negotiations, as well as additional bilateral meetings, were expected to be reflected in a second round of revised offers
- While Annex C provided a timeline of 31 July 2006 for the submission of these offers, all negotiations under the Doha Development Agenda (DDA) were suspended just one week earlier, due mostly to a stalemate over agricultural and non-agricultural market access (NAMA)

5. Signalling Conference and elements for the conclusion of the negotiations

- The Chair of the Trade Negotiations Committee (TNC) convened a “signalling conference” for interested ministers as part of the “July 2008” package
- At the signalling conference, participating ministers indicated how their governments' current services offers might be improved in response to the requests they had received
- The signals were not intended to represent the final outcome of the services negotiations but enabled members to assess the progress made in the request-offer negotiations while preparing new draft schedules for submission
- India to improve in telecom, financial, energy, postal & courier, retail, other business services. Developed countries response not encouraging

6. March 2010 stocktaking exercise

- Progress was limited following the failure to conclude agriculture and non-agricultural market access (NAMA) modalities in the July 2008 package
- The remaining gaps were reflected in the stocktaking report by the Chairman of the Council for Trade in Services in Special Session to the Trade Negotiations Committee

7. Intensification of negotiations in 2011

- As with other areas under the Doha Development Agenda, the services negotiations entered into an intensified phase at the beginning of 2011
- In April 2011, the Chairman of the Council for Trade in Services submitted a report to the Trade Negotiations Committee on the achievements and remaining gaps in all four areas of the services negotiations:
 - market access;
 - domestic regulation;
 - GATS rules; and
 - the implementation of LDC modalities

8. Adoption of an LDC waiver by the 2011 Ministerial Conference

- In December 2011, the WTO Ministerial Conference adopted a waiver
- It allows WTO members to deviate from their most-favoured nation obligation of non-discrimination in order to provide preferential treatment to services and service suppliers from least-developed countries (LDCs)
- Of the 159 WTO members, 34 are LDCs who stand to benefit from preferential treatment designed to promote their trade in those sectors and modes of supply that are of particular export interest to them

8. Bali Ministerial Conference (2013)

- No specific discussion on services
- Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries
- Trade Negotiations Committee to prepare within the next 12 months a clearly defined work program on the remaining Doha Development Agenda issues
 - Will build on the decisions taken at this Ministerial Conference, particularly on agriculture, development and LDC issues, as well as all other issues under the Doha mandate that are central to concluding the Round

Rules yet to be Negotiated

- **Emergency Safeguard Measures (Art. X)**

- To allow for the temporary suspension of the commitments that Members may have assumed in individual sectors in case of an unforeseen surge in imports that causes or threaten to causes serious injury to domestic suppliers
- Members to conclude multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination
- Two schools of thought
 - Opponents: Such mechanism not desirable given scheduling flexibility under GATS and scarcity of trade data in many services
 - Proponents: Availability of safeguards would encourage more liberal commitments
- Not much progress

- **Government Procurement (Article XIII)-**

- Disciplines of MFN, Market Access and National Treatment not to apply to laws, regulations, or requirements governing the procurement by government agencies of services purchased for governmental purposes and not for commercial sale
- Multilateral negotiation on govt. procurement in services to be concluded by 1997
- Not much progress, the only current procurement disciplines under WTO provisions are contained in Plurilateral Agreement on Government Procurement

- **Subsidies (Article XV)-**

- It is recognized that subsidies may have a distortive effect on trade in services
- Members to enter into negotiations to develop necessary disciplines to avoid such trade-distortive effects
- Members to exchange information concerning all subsidies related to trade in services, however
 - Only limited information has been submitted
- No deadline was set and not much progress

Negotiations: Trade in Services Agreement (TISA)

- Recently, the US, the EU and Australia along with some other likeminded members (New Zealand, Canada, 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
- India, China, Brazil and a whole host of other developing countries initially did not support this approach and not participated
 - Its approach does not address the basic issue of fundamental imbalance in this round as well as also deviates from the Doha Mandate
- However, China recently intended to join TISA

- In October 2012, the RGF members agreed on several key elements of the proposed agreement
 - Incorporating provisions of the GATS into the TISA;
 - Adopting a ‘hybrid’ approach for scheduling of commitments, i.e., a ‘negative list’ approach for national treatment commitments and a ‘positive list’ approach (GATS approach) on market access commitments; and
 - Having special focus for discussing new and enhanced disciplines on the domestic regulation of services

- The proposed agreement also has a new provision, called 'ratchet mechanism', for the national treatment commitments
 - When a country improves its national treatment provisions of a given service to foreign service providers, the new level of treatment will become binding with no backsliding
 - Thus, any future autonomous liberalization as well as improvement in bilateral/regional trade agreements with regard to the national treatment provisions will be automatically locked and be binding for the TISA member countries
- For the market access commitments, TISA states that the countries should bind the 'autonomous liberalization'

GATS vs TISA

- TISA proposal includes liberalization for national treatment across all sectors, i.e., it suggests an approach which is like 'horizontal commitments'
- Negative list treatment for national treatment whereas the GATS follows a positive list approach. By definition, the negative list approach has more liberalization as compared to the positive list approach
- TISA talks about applying 'ratchet' mechanisms for national treatment but the GATS does not have any such provision for binding the future opening up of services by a country
- For market access, TISA proposes to capture 'autonomous liberalization' undertaken by a member country, GATS does not require the Members to bind their 'autonomous liberalization'

- GATS explicitly recognizes that the scheduled commitments guarantee the minimum levels of treatment, but do not prevent Members from being more open (or less discriminatory) in practice
 - Thus, whereas the GATS aims at guaranteeing the minimum, TISA seems to achieve the highest level of commitments.
- TISA agreement provides for negotiation of new market access as compared to the GATS
 - Includes the scheduling new sectors as well as improving current GATS commitments and removing existing restrictions
- TISA also aims at achieving an improvement over the GATS
 - By bringing new issues to the negotiating table like state-owned enterprises, cross border data flows, government procurement etc.
 - These new issues are to be discussed on the basis of proposals by the RGF members

TISA implications

- Loss of policy space for developing countries
- Less freedom to experiment with suitable domestic and trade policy reforms
- Moving away from key principles of WTO –
 - Multilateral consensus based approach
 - Anchored to Doha mandate
 - Inclusivity

Summary of Services Negotiations

- **January 2000:** Negotiations begin
- **March 2001:** Guidelines and the Procedures for the Negotiations on Trade in Services are adopted
- **November 2001:** Doha Development Agenda is adopted
- **March 2003:** Deadline for receiving “initial offers”
- **July 2004:** “July Package” resuscitates negotiations and establishes deadline of May 2005 for submission of revised offers
- **December 2005:** Hong Kong Ministerial Conference reaffirms key principles of services negotiations

- **July 2006:** Doha negotiations suspended
- **January 2007:** Resumption of Doha negotiations
- **May 2008:** Report on services issued
- **July 2008:** Services Signalling Conference held as part of “July 2008” package. Ministers exchange signals on what improvements could be expected in services
- **2009:** Slowdown in negotiations overall due to failure to conclude agriculture and NAMA modalities as part of the “July 2008” package

- **March 2010:** Stocktaking exercise conducted by the TNC to revive the negotiations. Report by the Chairman of the Council for Trade in Services in Special Session for the purpose of the stocktaking.
- **December 2010:** General Council calls for intensification of DDA negotiations across all areas
- **April 2011:** Report by the Chairman of the Council on Trade in Services to the Trade Negotiations Committee, representing the state of play in the services negotiations on market access, domestic regulation disciplines, GATS rules and the LDC waiver
- **December 2011:** Eighth Ministerial Conference adopts a waiver to permit WTO members to grant preferential treatment to services and service suppliers from LDCs
- **December 2013:** Ninth Ministerial Conference talks about operationalization of LDC waiver

Thank You!

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