

Trade in Services Negotiations in the WTO

*UNCTAD/AU TRAINING WORKSHOP ON TRADE
IN SERVICES FOR AFRICAN NEGOTIATORS:*

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The WTO Services negotiations - Outline

- Market access
- Rule-making
 - Domestic regulation
 - Gats rules
 - ✓ Emergency safeguard measures
 - ✓ Government procurement
 - ✓ Subsidies

The market access negotiations: Coverage

12 Broad services sectors

- 1) Business services
- 2) Communication services
- 3) Construction and related engineering services
- 4) Education services
- 5) Distribution services
- 6) Environmental services
- 7) Financial services
- 8) Tourism and Travel related services
- 9) Recreation, Culture and sporting services
- 10) Transport services
- 11) Health related and social services
- 12) Other services not included elsewhere

The market access negotiations: Coverage

Four modes of supply

- From the territory of one Member into the territory of any other Member (**Mode 1 or cross-border supply**);
- In the territory of one Member to the service consumer of any other Member (**Mode 2 or consumption abroad**);
- By a service supplier of one Member, through commercial presence in the territory of any other Member (**Mode 3 or commercial presence**);
- By a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member (**Mode 4 or movement of natural persons**).

Objective of the negotiations

- Progressive reduction/elimination of market access restrictions imposed on services and services suppliers related to
 - i) limitations on the number of service suppliers
 - ii) limitations on the total value of services transactions
 - iii) limitations on the total number of service operations
 - iv) limitation on the total number of persons employed
 - v) measures which restrict or require specific types of legal entity
 - vi) limitations on the participation of foreign capital
- Accord to services and service suppliers of any other Member, treatment no less favorable than that it accords to its own like services and service suppliers
- Reduction/Elimination of MFN Exemptions

The market access negotiations - Key developments

- 1) The GATS negotiations mandate
- 2) Preparation for first Round (1998-2000)
- 3) Beginning of the negotiations (2000-2002)
- 4) Exchange of requests and offers (2002-2005)
- 5) Hong Kong Ministerial (2005)
- 6) From Hong Kong to the Signalling Conference (2002-2008)
- 7) Period between 2008-2011
- 8) Current state of play

1) GATS negotiating mandate (Art XIX)

- Successive rounds of negotiations (Beginning not later than 2000)
- Progressively level of liberalization
- Overall balance of rights and obligations
- Flexibility for individual developing countries
- Negotiating guidelines and procedures to be decided for each round, including discussion of
 - Assessment of trade in services
 - Modalities for autonomous liberalization
 - Special treatment of LDCs

2) Preparation of the first round: Information Exchange (1998-2000)

- Delegations exchange of information to facilitate first round of negotiations
- Secretariat issued background notes to improve information base for delegations (documents in range S/C/W/37-75)
- Scheduling and classification issues were discussed in Committee on Specific Commitments
 - Classification of new services
 - Meaning of “none”, “bound”, and “unbound” in schedules

3) Beginning of the Negotiations

- Negotiations begun in 2000, subsequently the Council agreed on:
 - Negotiating Guidelines and procedures
 - Modalities for Autonomous Liberalization
 - Modalities for Treatment of LDCs
 - Discussions on assessment of trade in services
 - Scheduling Guidelines (updated) - S/L/92
- Members began submitting negotiating proposals
- Doha Ministerial Declaration (2001) endorses Negotiating Guidelines and set timelines
 - Initial request (June 2002)
 - Initial offers (March 2003)
 - End of negotiations (January 2005)

4) Exchange of initial and revised requests and offers

- Request and-offers process on Doha timeline
- Failure of Cancun Ministerial meeting (2003)
 - General Council later decided on “July Framework”, which reset deadline for revised offers May 2005
- Assessment by the Chair CTS-SS that the initial and revised offers were of poor quality (TN/S/23, July 2005)
 - Members set out their “Sectoral and Modal objectives
- Council prepared draft text for Annex C of Hong Kong Ministerial Declaration

5) Annex C of the Hong Kong Ministerial Declaration (2005)

- Objectives
 - **Modes of supply**: Aim for certain types of commitments
 - **Schedules**: Ensure clarity, adhere to scheduling Guidelines
 - **Economic needs**: Removal or substantial reduction economic needs tests
 - **MFN exemptions**: Remove or reduce, clarify scope of remaining ones
 - **LDC Modalities**: Pursue full implementation
 - **Rule making**: Intensify efforts, in domestic regulation “develop text for adoption”

Annex C of the Hong Kong Ministerial Declaration (2005) (Cont)

- Approaches
 - Bilateral request-offer: remains main method of negotiations
 - Plurilateral request: new process established
- Timeline
 - Process of requests, offers, final draft schedules, and implementation of LDC modalities to be completed by 31st October 2006

6) From Hong Kong to Signalling Conference (2008)

- After Hong Kong, Plurilateral request-offer process initiated
 - 22 plurilateral groups, two rounds of negotiations
- At the July 2008 Mini-Ministerial meeting
 - Agreement to proceed with LDC waiver
 - Signalling Conference among 32 delegation at Ministerial level, TNC chairman reports on signals exchanged (JOB(08)/93)

7) Period between 2008 - 2011

- Special Session Chair report on Stocktaking exercise finds "little or no progress" on market access (TN/S/35, March 2010)
- Secretariat updated Sectoral Background Notes, (S/C/W/298-334)
- A year later, further Chair report finds progress but minimal as a result of plurilateral request-offer groups (TN/S/36, April 2011)

2011 Ministerial Conference

- Minister recognised that the DDA negotiations had reached an “impasse”, and needed
 - Explore different negotiating approaches
 - Commit to advance negotiations where progress could be achieved (WT/MIN(11)/11)
- Ministers adopt decision on a waiver for LDC preferences (WT/L/847)

2013 Ministerial Conference: Bali Package

- Ministers at Bali instructed TNC to
 - Prepare “clearly-defined” post-Bali Work programme covering remaining DDA issues
 - Achieve this in a way consistent with the guidance provided at the 2011 Ministerial Conference
- Directed the Council for Trade in services
 - To initiate a process aimed at operationalization of the services waiver for LDCs
 - Convene High-level meeting after the submission of an LDC collective request

9) Current state of play in the post-Bali Work Programme

- Discussions have focused on developing services elements of a “clearly defined work program” required in para 1.11 of the Bali Ministerial Declaration
- Despite failure to achieve a work program in services, different Members mentioned the following elements as part of a possible
 - ✓ broader participation
 - ✓ Wider sectoral and modal coverage
 - ✓ deeper commitments
 - ✓ Greater uniformity in the level of commitments between countries at similar levels of development
 - ✓ Delivery on the development mandate

Participation of the African Countries – Services elements for the post-Bali work program

Views expressed by African countries in meetings/consultations

- Highlighted the importance of services for growth and development of their economies
- Stressed the importance of previous milestones in the services, especially Annex C of the HKMD
- Importance of preserving flexibilities granted to developing countries Members in the GATS, such as in Article XIX:2
- Urged Members to undertake liberal commitments in sectors and modes of supply of exports interest to African countries e.g mode 4
- Operationalize LDC services waiver on a priority basis

Rule-making in services negotiations

- 1) Domestic regulation

- 2) GATS Rules
 - a) Emergency safeguard measures
 - b) Government procurement
 - c) Subsidies

1. Domestic regulation

- Hong Kong Ministerial Declaration Annex C (2005)
 - Members shall develop disciplines on domestic regulation pursuant to the mandate in art VI:4 before the end of the current round of negotiations
 - After Hong Kong, convergence emerged on horizontal disciplines
 - First Chair's text in 2007
- Further technical discussions to be held on the consolidated chairs text to conclude negotiations on following elements: Transparency; Licensing requirements and procedures; Qualification requirements and procedures; Technical standards; and Special and differential

2) GATS Rules

a) **Emergency Safeguard Mechanism (ESM)**

- Article X: “There shall be a multilateral negotiations on the question of emergency based on the principle of non-discrimination
- Questions remains - on how an ESM will be applied in practice

b) **Government Transparency**

- Article XIII.2: “There shall be multilateral negotiations on government procurement in services
- Questions on the scope of the mandate, scope and definition – what about contracts that cover both goods and services, S&D treatment

c) **Subsidies**

- ✓ Article XV of the GATS – “.....develop necessary multilateral disciplines to avoid such trade distortive effects”
- ✓ Questions on the definition of a subsidy in services

GATS Rules (Cont) – Towards WTO MC10

- In each of the three areas, respective proponents have not convinced the broader Membership of the need to develop disciplines beyond those currently existing under the GATS. The problems, if any, that would be addressed by new disciplines in these three areas have not been sufficiently identified
- No text-based negotiations possible at this stage
- Discussions regarding how to proceed with the GATS Rules have not yet taken place

Thank you