

Services

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A push for commencing discussions on liberalization of certain services sectors has been sought by a few WTO Members who have offensive interests in that regard. This push has been advanced through exploratory discussions undertaken at the WTO Council for Trade in Services – Special Session (CTS-SS) as a result of submissions that certain countries have introduced since 2019. It has also been advanced through the plurilateral joint statement initiative (JSI) negotiations on e-commerce. Sectors covered in these processes include financial services, agricultural services, tourism and environmental services (through the CTS-SS), and computer and related services (CRS), advertising, couriers, telecoms, distribution (including retail) and certain financial and transport services (through the JSI).¹ Also, language that aims at advancing services liberalization is being sought by certain – mainly developed – WTO Members for the draft ministerial outcome document (i.e., Ministerial Declaration) of the 12th WTO Ministerial Conference and the document pertaining to the WTO response to the pandemic.

The unfinished multilateral round and the concerns of developing countries

GATS 2000 negotiations began in January of the year 2000, launched pursuant to Article XIX of the WTO's General Agreement on Trade in Services (GATS). Agreeing to services market access negotiations was a concession by developing countries in exchange for agricultural reforms, particularly in subsidies and market access, which still have not meaningfully materialized.

The Doha Round subsequently incorporated the GATS 2000 round of negotiations (Article 15 of the Doha Ministerial Declaration).² As a result, the GATS 2000 negotiations were folded into the Doha Round single undertaking with agriculture and non-agricultural market access (NAMA). Under the Doha Round, least-developed countries (LDCs) are not expected to liberalize services (see Paragraph 26, WTO document WT/MIN(05)/DEC). These negotiations have not yet concluded.

¹ INF/ECOM/62/Rev.1 from <https://bilaterals.org/?wto-plurilateral-e-commerce-draft>

² https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#services

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Developing countries, many least-developed countries and recently acceded Members have progressively liberalized their services sectors. Yet, they often face significant barriers to access and entry in developed-country markets, including but not limited to Mode 4 of services supply.

The interests of developing countries

Developing countries have generally not been on the offensive regarding services. Their historical stance in regard to services negotiations was to insist on balance between the negotiations on services, on agriculture, and on advancement on implementation issues, as well as the importance of remedying current imbalances in terms of achieving meaningful commitments in Mode 4 and operationalizing GATS Article IV on increasing participation of developing countries. The COVID-19 pandemic left devastating impacts on the services sectors of developing and least-developed countries.

Developing countries have continually reaffirmed the objectives and principles stipulated in the GATS, including under Article XIX:2, which allows them to open fewer sectors, liberalize fewer types of transactions, progressively extend market access in line with their development situation and attach conditions to their market access which enable them to meet Article IV objectives. In accordance with Article XIX:2, developing countries are permitted to liberalize their services markets at their own pace, including through conditioning access to a given services sector on the achievement of one of the objectives set out in Article IV:1. These objectives include strengthening the developing countries' domestic services capacity, its efficiency and competitiveness.

It is important to recall that GATS Article XIX (Negotiation of Specific Commitments) does not refer to reciprocity: this means that developing countries are not expected to reciprocate in terms of liberalization, both through opening sectors and committing to national treatment, given that their levels of development would require that they align liberalization with their developmental needs.

The area where developing countries do have offensive interests is Mode 4 (and recognition of the qualifications of professionals like doctors and lawyers etc). Developed countries have repeatedly rejected requests in this area from developing countries and are almost certain not to lock in the WTO such commitments in the future. (It is important to note that recognition of qualifications is often done by subnational private sector associations, e.g., provincial/state bar associations for lawyers etc, so national governments cannot force it to occur even if they agreed to it at the WTO.)

Current liberalization interests of some WTO Member States

Members interested in exploring and seeking additional services market access are supposed to pursue this under the ongoing round of negotiations, which is the GATS 2000 round that has been folded into the Doha Round and its single undertaking.

Article XIX of the GATS does not mandate standalone plurilateral market access negotiations. Article XIX:4 provides that the "process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations". References to "such round" mean rounds established based on multilateral consensus and requirements of Article XIX (including adoption of negotiating guidelines and procedures for each round of services negotiations, undertaking an assessment of trade in services, taking into account the development concerns of developing countries as per Article XIX:2 and setting modalities for the special treatment of LDCs).

References to plurilateral processes in Article XIX provide for one technique or method of negotiations within multilateral rounds of negotiations, which are established to negotiate specific commitments. These rounds require consensus to launch them and guidelines for each round are required (see Article XIX). Currently, the ongoing round is part and parcel of the Doha Round of negotiations and any liberalization to be undertaken by proponents of services market access would fall under the umbrella of the Doha Round

and be based on the Negotiating Guidelines on trade in services adopted in the year 2001 (WTO document S/L/93) and reaffirmed in the Doha Ministerial Declaration.

In preparation for the 12th Ministerial Conference

- Developing countries should guard against language in the Ministerial Declaration as well as the outcome document on the WTO response to the pandemic (i.e., the Walker draft text) that would further services liberalization or agree to commence market access negotiations based on the exploratory work undertaken in the CTS-SS. Proponents of services market access should be asked to unilaterally liberalize in sectors and modes of supply of export interest to developing and least-developed countries;
- Developing countries should insist on their rights under Articles IV and XIX:2 of the GATS and maintain their historical stand regarding the need for balance in the negotiation pillars under the Doha Round;
- Developing countries should insist on removing regulatory barriers that render market access commitments meaningless, including those related to qualification requirements and procedures, in order to facilitate trade in services especially through Mode 4, an area of key interest for developing countries;
- Recalling the decision in WTO document WT/L/847 in favour of least-developed countries, it is important to enhance the operationalization of the waiver granting preferential treatment to services and services suppliers of LDCs and make the waiver permanent.

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