

## Using GATS Flexibility

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### Introduction

Negotiations on further services liberalisation were mandated as part of the Uruguay Round's 'built-in' agenda.<sup>1</sup> The negotiations formally commenced in January 2000, with the aim of achieving higher levels of liberalisation. Little actual services liberalisation took place during the Uruguay Round. As a result, developing countries have been under considerable pressure to give greater market access to foreign providers. However, as the negotiations have progressed, concerns have been expressed, mainly by representatives of civil society, about the perceived threat posed by further liberalisation to countries' sovereign rights to regulate the production, distribution and trade in public services.

But supporters of further liberalisation point to the flexible structure of the GATS and its 'bottom-up' approach. The agreement allows developing countries to select sectors, modes of supply and regulatory conditions under which liberalisation commitments are made (Article XIX.2). Countries can even decide to leave entire sectors out of their schedules of commitments. This article looks at how developing countries can best use the policy space provided by a flexible GATS framework. It argues that there is ample opportunity for developing countries to develop policies for their services sectors that support their development policies.

### Background

The ongoing negotiations will take place within and respecting the existing structure and principles of the GATS. At the general level, this means two things. First, countries are expected to include more sectors and modes of supply in their schedules of commitments. Second, further elaboration of certain principles included under the framework of general obligations is envisaged, most notably principles relating to an emergency safeguards clause (Article X), disciplines on government procurement (Article XII) and subsidies (Article XVI), and general principles on domestic regulation (Article VI).

The approach to the negotiations was laid out in the Guidelines and Procedures for Negotiations on Trade in Services concluded in March 2001. While building on the core articles of the GATS, the guidelines included additional principles, among them

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an elaboration of the modalities for negotiations. Under the agreed modalities, liberalisation should be advanced through bilateral, plurilateral and multilateral negotiations, using the request-and-offer approach. The guidelines also make it clear that special attention shall be given to sectors and modes of supply of export interest to developing countries. The principles therefore encompass special considerations for developing countries.

The mandate for the Working Party on Domestic Regulation is 'to develop any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not continue to constitute unnecessary barriers to trade in services'. Members also have an understanding that domestic regulations should take account of, and build on, the transparency provisions of Article III (Transparency) of the GATS. The following areas or issues will require to be addressed in work ahead, namely issues related to: (i) transparency; (ii) monopolies; (iii) whether a necessity test is necessary; (iv) the scope and limits of Article VI:5;<sup>2</sup> and (v) harmonisation and mutual recognition. It is important to ensure that empirical investigations or analyses of the costs and benefits of such disciplines are made, while recognising that multilateral disciplines on any of these issues could also be costly and burdensome, especially for developing countries.

The primary objective of negotiations on trade in services is to liberalise trade in services rather than to deregulate the services sector. Liberalisation of trade in services refers to the removal of measures and regulations that hinder trade among trading partners and discriminate against foreign firms and entities. Deregulation is much broader because it refers to the reduction of the role of government in regulating the economy, which may be achieved by a combination of liberalisation and privatisation (the sale to the private sector of companies previously owned by the state). Thus, the GATS does not require privatisation, commercialisation or deregulation of the services sector, although these processes may help the liberalisation of trade in services.

The traditional economic justification for regulation was the existence of natural monopolies – industries for which production was far cheaper if undertaken by one firm rather than many different firms (reflecting the importance of large-scale economies of production). Natural monopolies mean that competition is not feasible or sustainable. Utilities such as railways and roads traditionally fell into this category. Regulation became essential to curb the excesses of monopoly power, for example to protect consumers from overcharging by the monopolists. A major reason for the continued regulation of certain industries is that many of them include firms that have so much market power that their regulation is considered to be in the public interest.

But certain dimensions of regulations remain central to government policy. They include the desire to provide services to isolated areas where supply is expensive and unprofitable (universal service provision) and protection of consumers, employees and the environment. A major reason for the continued regulation of certain industries is

that many of them include firms that have so much market power that their regulation is considered to be in the public interest.

The Doha Declaration of November 2001 reaffirmed the guidelines and principles of negotiations and also established the timetable for negotiations, including the deadline for conclusion of negotiations. Of crucial importance is the requirement that the conclusions of the negotiations will be part of a single undertaking. This inevitably brings into play tactical considerations which may not work to the advantage of developing countries.

## **2 Process and Modalities for Negotiations**

Both the process and modalities for negotiations are laid out in the Guidelines and Principles for Negotiations adopted in March 2001 and in a note on Technical Aspects of Requests and Offers prepared by the WTO. The adoption of the guidelines marked the end of the first phase of the negotiations, which focused on the development of a road map. The second phase, which lasted about a year (April 2001–March 2002) was taken up by a consideration of the negotiating proposals tabled by members. The third phase, to be concluded in January 2005, is to be devoted to request-and-offer negotiations.

The guidelines and principles of negotiations underscore the commitment of member governments to a multilateral framework of rules and principles and the progressive liberalisation of trade in services. There is also an acknowledgement that the liberalisation process must respect the needs and rights of governments to regulate in order to pursue national objectives (Article IV). The fact that barriers to trade are so heterogeneous and difficult to quantify makes a comprehensive approach to their disciplines extremely difficult to conceptualise. Many advocates of liberalisation of trade in services see the argument for free trade internationally as linked to the purported benefits of deregulation domestically. Yet whether strict liberalisation or liberal regulation maximises domestic welfare depends on complex judgments about market failures, and the costs and benefits of a particular regulatory approach in light of the risk preferences of a country's own citizens.

Furthermore, the participation of developing countries must be facilitated through reinforcement of capacity, efficiency and competitiveness of their domestic service industries. The implication of these principles is clear: WTO members have the flexibility to decide on the scope and pace of liberalisation of their services sectors.

One of the key principles enunciated in the guidelines for negotiations relates to the modalities for negotiations. This will include the request-and-offer approach and encompass bilateral, plurilateral and multilateral negotiations. The outcome of negotiations will be extended to all WTO Members through the MFN commitment.

Members also agreed during the February session on the modalities for treatment of liberalisation measures taken unilaterally since the previous multilateral negotiations. Each member, therefore, will be expected to assess the value of autonomous liberal-

isation using the agreed criteria, and the granting of credit will be through bilateral negotiations. For the LDCs the Services Council has agreed to establish modalities for the special treatment for LDCs in the negotiations. Paragraph 13 of the GATS Negotiating Guidelines and Procedures provides that 'based on multilaterally agreed criteria, account shall be taken and credit shall be given in the negotiations for autonomous liberalisation undertaken by Members since previous negotiations'. It is not yet clear how many developing countries have sought credit for autonomous liberalisation. It can, however, be said that for any developing country claiming credit for autonomous liberalisation, the processes and details that will be required will be as burdensome as preparing requests or offers for bilateral negotiations.

The WTO note on technical aspects of the request-and-offer approach provides details on what is actually involved in the process of preparing requests and offers in terms of content, format and process. Process issues should not be underplayed. For example, the WTO note points out a fact that smaller developing countries sometimes appear to miss, namely that initial requests and offers need not be exhaustive or perfect. They simply mark the start of the process. This means that the opportunity to make new requests/offers is not closed by the passing of the agreed deadlines. Improvements to initial requests/offers can be submitted. As the WTO Secretariat's technical note makes clear, the negotiations in the request-and-offer stage will consist of '... a succession of requests and offers and offers will be subject to several revisions as a result of the negotiations'.<sup>3</sup>

Developing countries face several challenges in the request-and-offer stage of the negotiations. One challenge relates to their ability to make requests and offers. Failure to make requests or offers, or to seek credit for autonomous liberalisation, effectively limits their participation in the request-and-offer stage of the negotiations. To make good the provisions of Article XIX regarding appropriate flexibility for individual developing countries and respect for national objectives, developing countries must table their own requests and where offers are to be made they should take into account national objectives. As noted above, developing countries still have plenty of opportunities to submit their own requests and where feasible make offers because initial requests and offers can be modified and new ones introduced as negotiations proceed. Developing countries that wish to seek credit for autonomous liberalisation need also to take into account the fact that any such credit could entail scheduling their autonomous liberalisation measures in the seeking country's schedule in accordance with Part III of the GATS and could lead to termination of an MFN exemption where one exists.

Related to the ability to make requests and offers is the make-up of the requests/offers and also measures on which to seek credit for autonomous liberalisation. Requests should be based on an assessment of potential trade opportunities, existing GATS commitments, and an assessment of the conditions and terms of access in key markets. The requests should also reflect commitments undertaken at the regional level.

A second challenge concerns what developing countries could do to achieve the objective of Article IV, on increasing their participation in world trade. This objective is unlikely to be fulfilled unless requests are conceived as part of a broader framework of liberalising domestic competition in the services sector. This would entail addressing the complex transitional issues and challenges of regulatory design. This, after all, is the reason why developing countries have sought to protect their policy space, rather than be constrained by multilateral access agreements.

To participate effectively in the GATS negotiations, governments need to have already identified their own service sector related policies with a clear domestic strategy in order to determine what proposals would be in their interest.

### **3 Analysis of Positions**

In the first phase of negotiations, around 160 proposals were tabled, with about half of them coming from developing countries. However, few developing countries had tabled their requests by the end of the initial deadline for submitting requests (June 2002) and offers (March 2003). Without tabling some requests and offers, developing countries are effectively outside the arena of negotiations.

Some major trading partners have taken different approaches to the tabling of requests and offers. The latter have not yet been made public, but it has been made clear that the proposals concentrate on removing discriminatory trade restrictions in sectors such as telecommunications, express delivery, energy services and environmental services.<sup>4</sup> The USA has adopted a modal approach, with specific requests for some members. The EU has gone for a 'tailor-made' approach, in which it requests other countries to improve their existing level of liberalisation commitments under the GATS. In each case, it proposes specific new commitments, both horizontal (cross-sectoral) and sector-by-sector.<sup>5</sup> The EU has made individual requests to 109 different countries covering horizontal commitments and the following sectors: professional services, other business services, telecommunication services, financial services, news agency and transport services. The EU is seeking both improved commitments and, apparently of almost equal importance, detailed clarification of existing commitments. Furthermore, it is looking for a reduction in scheduled restrictions whether these are horizontal or specific in nature.

These current GATS negotiations have aroused great concern from NGOs, who have claimed that the GATS is essentially a set of rules restricting governments from making their own decisions on how trade in services takes place. The EC has been specifically named as one of those WTO Members that is requesting others to liberalise public services such as sewer and water facilities. Responding to NGO allegations about possible control of utilities in developing countries – notably water – by industrialised countries, the EU has publicly stated that it would not seek the dismantling of

public services or the privatisation of state-owned companies. Japan has followed a mixed approach, with some 'tailor-made requests' and some modal requests.

The least developed countries have jointly tabled specific proposals in regard to modalities for the special treatment of LDCs in the third phase of negotiations. The main elements of the proposal include among others the need for Members to present requests which are compatible with the developmental, economic and financial needs of the LDCs and the need for LDCs to retain maximum flexibility in undertaking commitments in a manner consistent with their development needs. No LDC Member has so far tabled any initial request or offers, while they have received requests from both developed and developing countries covering several sectors and modes of supply in certain cases.

The negotiations in the second phase – the request-and-offer phase – are being conducted largely on a bilateral basis and with a high degree of confidentiality among Members. The requests are also confidential, thus making it fairly difficult to know what is being requested and what is going on in the bilateral negotiations. It has, however, been reported that there is a healthy exchange of views in bilateral consultations, both in terms of clarifying initial offers and, in a few cases, requesting deeper commitments. Most Members feel that the 26 initial offers circulated to date are a positive sign of engagement though more work still remains to be done in other areas of interest to developing countries such as agriculture and implementation issues to encourage progress in services. Some developing country Members have expressed disappointment that sectors which they had indicated as being of interest to them have not thus far been sufficiently reflected in the offers tabled.

Very few developing countries have made requests and they have yet to make initial offers; as a result, progress to date has been moderate in terms of initial requests and offers tabled, especially by developing countries. All is not lost, however, in that those countries that want to effectively participate and direct issues in a manner that addresses their national objectives can still table their initial requests or offers or seek credit for autonomous liberalisation.

#### **4 Issues for Developing Countries**

The GATS is an untested agreement. It raises major concerns for developing countries, especially in the public policy arena. Among the key issues are those related to domestic regulation of services, the future shape of subsidies and the asymmetry of commitments between Mode 4 on movement of persons and Mode 3 on commercial presence.

First, the article on domestic regulation (Article VI) has been much debated both at the WTO and by civil society. This is mainly because it deals with the sensitive issue of how much control developing countries should retain over policy on their domestic services sectors. The need for public policy intervention in the services sector is gener-

ally recognised by both developed and developing countries. Problems arise due to disagreements over the way that countries choose to pursue public policy objectives. In sectors such as education, health and professional services, measures identified in Article VI (4) – qualification requirements and procedures, technical standards and licensing requirements – vary as between countries. The three criteria laid out for disciplines under this provision, that they should be: (a) based on objective and transparent criteria, such as competence and ability to supply the service; (b) not more burdensome than necessary to ensure the quality of the service; and (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service, point to the need of a ‘necessity test’. The development of a ‘necessity test’ is thus the key challenge for negotiators. Whether this can be achieved through negotiation or whether it will have to await a dispute resolution case remains to be seen. What is clear is that the uncertainty that this creates must be resolved.

Second, the future shape of subsidies is an issue of importance to developing countries. The GATS ‘recognises that in certain circumstances, subsidies may have distortive effects on trade in services’ (Article XV). It also recognises, however, the ‘role of subsidies in relation to the development programmes of developing countries and takes into account the needs of Members, particularly developing country Members for flexibility in this area’. In the ongoing negotiations on subsidies in services, attention is likely to focus on ways of identifying, measuring and disciplining services. An important first step would be to clarify the meaning of the term ‘subsidy’ in the services context. Key considerations in defining a subsidy might include the form of the subsidy, the benefit it confers, to whom it is granted and who grants the subsidy.<sup>6</sup>

Irrespective of what is agreed, developing countries need to fight for the preservation of the flexibility they enjoy under the GATS as a whole and the recognition given to the role of subsidies in development under Article XV. However, developing countries might also want to seek clarification on the definition of subsidies given that Article I (3) excludes from the scope of GATS ‘services supplied in the exercise of governmental authority’ – in other words, services in which government has a monopoly. This might have implications on developing countries’ trade in services such as education and health.

Third, the absence of an emergency safeguards clause is seen as a major omission by developing countries. Given that a number of key WTO Agreements already incorporate an emergency safeguards clause (GATT Article XIX, Article 5 of Agriculture Agreement, Article 6 of Agreement on Textiles and Clothing), the decision at the end of the Uruguay Round to embark on ‘negotiations on the question of emergency safeguard measures’ (GATS Article X) is not surprising. However, differences between goods and services trade mean that a straightforward application of the principles of safeguards in GATT Article XIX is not feasible. Part of the problem is how services imports would be defined, given the four modes of supply.<sup>7</sup> Thus, while Mode 1 imports

of services could be treated in the traditional way – by limiting sales of foreign service suppliers – Mode 3 ‘imports’ cannot be defined in the same way because they include sales of foreign corporations established in the host country as well as the initial establishment of the foreign corporation.

When the case for emergency safeguards measures has been made, it has tended to be in the context of specific sectors, for example the proposal by ASEAN on financial services. It is not apparent that safeguard measures to cover ‘unforeseen problems caused by liberalisation commitments’ across a broad range of services can be easily crafted. As Sauvé points out: ‘It can be safely predicted that those countries – mostly OECD members – which do not believe a GATS ESM is warranted, feasible, or desirable will seek greater commitments as a negotiating *quid pro quo*’. For tactical reasons, it may be better for developing countries to use the flexibility they have under the GATS rather than open themselves up to demands for further market opening as a *quid pro quo*. There are also potentially negative consequences in using safeguard measures for Mode 3 as this is likely to create uncertainty regarding the investment regime of the host country.

A fourth area of concern is the asymmetry of commitments between Modes 3 and 4. When Mode 4 was included in the GATS, the expectation was that liberalising movement of capital – the main interest of industrialised countries – would be matched by liberalisation of movement of labour – the major interest of developing countries. Yet in sectors such as health, legal and accountancy services, in which cross-border mobility of labour is important, few countries have scheduled commitments; and where commitments have been scheduled, they are subject to many market access and national treatment restrictions. The commitments in Mode 4 are further limited by the bias in horizontal commitments toward liberalising the movement of higher-level services personnel. More than one-third of Mode 4 entries refer to intra-corporate transferees.<sup>8</sup>

If there was greater liberalisation of movement of people, developing countries would be able to export a significant labour content in services such as construction, distribution, health and transport. However, no country has yet shown a willingness to consider unrestricted flows of semi-skilled and unskilled personnel into its labour market, despite long-standing shortages in these sectors and the lower-skilled end of the health and care professions. Additionally, in business services, industrialised countries apply several restrictions, covering educational and professional qualifications, residence requirements and economic needs tests. There is, therefore, a need for greater transparency and consistency in the way these restrictions are applied.

Some concerns are sector specific. For example, in telecommunications, the interface between privatisation/deregulation and liberalisation must be carefully handled with due attention paid to issues like universal service provision, access to networks, inter-connection charges, and competition with Internet Service Providers and



Application Service Providers. In business and professional services, the question of mutual recognition agreements (MRAs) is very important. But these agreements are difficult to negotiate and also costly to implement. There is, however, some merit in developing regional MRAs. In computer software and consultancy, the key issues centre on movement of workers rather than regulation. The same applies to health and education, where the movement of teachers and nurses to industrialised countries has raised fears about the brain drain. For construction and engineering services, the major problem is the size of enterprises from developing countries. They are small in terms of both number of employees, capital and market share, making it difficult for them to have a commercial presence abroad.<sup>9</sup> Most are not big enough to be able to compete for contracts in developed countries. Their strategy should therefore focus on subcontracting services from industrialised countries.

## **5 Services Liberalisation and Development**

Fundamentally, policy on liberalising trade in services is about more than satisfying a country's commitments under the WTO; it is a component of a country's overall development strategies. Either by default or through a failure to get to grips with the complexities of the services sector, developing countries have sometimes proceeded on a path that lacked coherence in relation to their overall development strategies. The risks of this approach are particularly high in the services sector, because services are essential inputs in the production of other goods and services.

It is also worth noting that the main driver of change in key infrastructural services – telecommunications, finance, transport and energy – is technology. Most of the regulatory reforms seen in these sectors in the last 20 years have to a large extent been driven by changes in technology. Once liberalisation of the service sector in developing countries is viewed in this context, it becomes clear why liberalisation cannot be regarded as the primary goal of policy. Both deregulation and re-regulation have an important role to play in pursuit of objectives such as universal service provision (telecommunications, financial services); consumer protection (particularly in financial services); small and medium enterprise development (both as consumers and producers); and producers in other sectors (user industries).

For these reasons, the policy flexibility provided by the GATS must be fully utilised. The GATS is unique among WTO Agreements in that it recognises the broader development role of services, with its 'bottom-up' approach and the flexibility given to countries in regard to how fast and in which sectors liberalisation will be undertaken. This flexibility is what makes the GATS arguably the most development-friendly agreement in the WTO. But one must also recognise the asymmetry in negotiating capacities between developed and developing countries. It means developing countries may fail to use the policy space provided by the GATS. Within this context

four general considerations appear to be relevant:

- Development needs and priorities must be paramount in any liberalisation exercise, including the needs of under-served sectors and communities. Priorities should be based on an assessment of services export and import interests, including potential interests. The best way to do this is to formulate national priorities before adopting a negotiating position on services. The key point is that government must retain control over the sequencing, phasing and pacing of trade liberalisation so that the process of liberalisation reflects underlying social, economic and regulatory realities.<sup>10</sup>
- Every effort should be made to harness the latest advances in technology and opportunities created by the globalisation of business. It is worth noting that most of the liberalisation seen in trade in services in the last few years is the result of technological advances, particularly in telecommunications. One by-product of these advances is that most services in which information technology now plays a major role (telecommunications, banking and financial services, business and professional services, and even tourism) are built on the economics of networks and not the economics of factories.<sup>11</sup> Competitiveness for such industries depends on the ability to connect with related services and producers. In other words, companies compete by expanding the reach of their networks. Ignoring these trends is not a viable option for developing countries. India's success in attracting back-office jobs from companies in Europe and North America shows what can be achieved. One estimate puts the value of financial services activity (by turnover) that will be moved away from first-world economies in the next five years at US\$356.<sup>12</sup>
- The human capital constraint needs to be addressed, otherwise the benefits of reform will be limited. Apart from the investment in education, training and skills required to strengthen the capacity of policy-makers and managers, developing countries also need to be creative when it comes to designing their regulatory regimes. Simply mimicking the practices and approaches of industrialised countries is unlikely to serve them well. As Messerlin argued in a recent paper, reproducing industrialised countries' approaches is likely to result in: (a) costly regulatory regimes in terms of design and implementation costs; and (b) unsuitable regulatory regimes.<sup>13</sup> Moreover, it might take a long time before such regimes begin to have a noticeable impact, partly because adjustments will have to be made.
- Focusing on regional liberalisation first, before moving to multilateral liberalisation, may bring greater benefits to a country. Key benefits of this approach include capacity-building and enhancement of regional competitiveness. It is also the case in certain service sectors, for example construction, transport and tourism, that adopting a regional approach is likely to yield better results.

However, developing countries continue to be put under pressure to compromise their development priorities by allowing access to their service sectors. Most serious, perhaps, is the danger that their development interests will be put at risk by premature opening of their services markets before they have had sufficient time or assistance to establish their priorities. Under the GATS, unlike in the process of unilateral liberalisation, there is no adequate mechanism for revoking liberalisation. Once commitments have been made, the development space is lost. The best defence against being pressured into premature concessions is for developing countries to be clear about their policy priorities and to be able to defend them analytically.

## 6 GATS Flexibility

From the standpoint of developing countries, the GATS provides a highly flexible framework. Given this, it is helpful to consider what developing countries might do to take advantage of this flexibility. The laid-out criteria for scheduling specific commitments (Article XX) suggests that developing countries must do two things:

- Select service sectors they are prepared to subject to GATS market access and national treatment disciplines;
- Identify measures they intend to keep in place even though they violate market access and national treatment requirements.

Clearly this can only be done following an identification of priority sectors and modes of delivery that are most likely to bring real economic benefits to the country. Sectors targeted must include those likely to result in significant benefits. It is also important in this process to identify service sectors that are significant at the regional level because the extent of cross-border trade in certain services is limited to neighbouring countries, for example, water and electricity exports from Lesotho to South Africa.

Another important consideration is the need for involvement and participation in the negotiations. While negotiations will take place at bilateral, plurilateral and multi-lateral levels, in practice countries that have not tabled requests cannot enter the arena of negotiations. An essential first step in preparing requests is an assessment of the current and potential export and import interests of the country and, where possible, the scope of commitments already made by others. This assessment is also important in preparing a country's 'defensive' position against offers targeting its services sector.

At the general level, the GATS process of progressive liberalisation is about moving to a non-discriminatory regulatory regime. Not surprisingly, it entails significant changes in the service sectors, particularly in sectors where change is partly driven by technology. These changes raise issues concerning the pace and sequencing of liberal-

isation. A basic consideration in determining the sequencing of reforms is the need to attract foreign investment into infrastructure services. Developing country state enterprises need inflows of external resources, technology and ideas in order to build themselves into viable entities able to compete both domestically and internationally. Another important consideration is the need to develop suitable regulatory mechanisms to govern competition and ensure that important social objectives are met.

The wrong order of reform could have profoundly negative consequences for the whole process. Part of the achievement of the GATS framework is the recognition that liberalisation of trade in services need not be inconsistent with a country's right to regulate services for purposes of consumer protection, prudential management of the economy, control of monopolies or achievement of social objectives. Thus, the challenge for developing countries is to ensure that any requests and offers they table reflect national decisions on reforms they want to implement in the services sector.

Developing countries are unlikely to be in a position to meet the challenges of services negotiations if they do not have strong institutional foundations for trade liberalisation and negotiations. This is not just about establishing appropriate national processes for trade negotiations and creating institutions to manage trade liberalisation and its aftermath. It includes understanding current trade developments and the forces shaping them. For example, many of the key service industries operate as networks. How a particular sector is regulated will depend on the economics of related sectors.

Given that the GATS framework provides developing countries with ample opportunity to pursue their development objectives means that it may be unnecessary for them to push hard for traditional measures of protection such as emergency safeguards. This is not to belittle their value, especially their political value, to developing countries. Rather, developing countries have the opportunity to use the GATS framework to craft and implement a trade policy for the service sector that is designed to deal with their development problems. As argued above, key components of that policy must include the following:

- Research into the economics of the services sector and its place in the economy as a whole. This would cover cross-border exports and imports of services as well as foreign direct investment in services. On the basis of this research, governments should identify priority sectors and modes of service delivery where negotiation of concessions could result in tangible economic benefits;
- Undertaking sectoral studies, beginning with the priority sectors, which for most developing countries are likely to include basic infrastructure services in telecommunications, transport and communications;
- Wide consultation on the horizontal and sectoral issues raised in the negotiations.

This process will also aid in the learning involved in preparing policy for the service sector;

- Identifying the type of regulatory mechanisms and institutions required to handle the post-reform arrangements. This should involve training for the staff to implement policy.

## 7 Conclusion

This brief description suggests two important objectives for developing countries in the GATS negotiations. The first is the need to be clear about their objectives in services negotiations, based on their vision of the role of services in the national economy. As already indicated, this requires identification of their development priorities, an assessment of current and future trade opportunities, and the creation of appropriate institutional structures for managing liberalisation of trade in services. The starting point for developing countries must always be the promotion of their development. Trade negotiations in GATS or in the WTO as a whole cannot be a substitute for a proper trade policy rooted in clear development objectives. The starting point for industrialised countries is different, so that to assume that they broadly share the same objectives in their approach to the negotiations is a mistake.

The second imperative is the need for creativity in designing domestic regulatory regimes; without this, the result is likely to be expensive and inappropriate regulatory regimes. Once developing countries put their own objectives at the centre of their negotiating strategy, they are less likely to end up mimicking rules and regulations used by industrialised countries.<sup>14</sup>

The GATS framework is permissive enough to enable developing countries to be creative about how they deregulate and liberalise their service sectors. Provisions for special and differential treatment, whether through emergency safeguards clauses, subsidies or the extension of rules on domestic regulation, while politically desirable, may not be the central issue. Rather than expend their limited negotiating capital seeking carve-outs from GATS rules, developing countries might be better served by an approach that seeks to exploit fully the policy space provided by the GATS framework. While the developed countries seek out markets for their service providers, developing countries must focus on developing their services capacity. The GATS happens to provide a framework suitable for such an approach. Thus, at the policy level, the challenge is to have a vision for service sector development.

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## Notes

- 1 Article XIX of GATS foreshadowed successive rounds of negotiations by committing members to enter into 'successive rounds of negotiations ... with a view to achieving a progressively higher level of liberalisation'.
- 2 'In sectors in which a Member ..., the member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which ...'.
- 3 Annex to technical note.
- 4 See <http://www.ustr.gov/>
- 5 Trade in Services, Support to Commonwealth Countries on ACP-EU Negotiations for Economic Partnership Agreements (2003).
- 6 Robert Prylinski and Dariusz Mongialo (April 2003).
- 7 Pierre Sauvé (2001).
- 8 Rupa Chanda (2002). 'Movement of Natural Persons and the GATS', World Bank.
- 9 This point was highlighted in Mauritius's proposal on behalf of small economies, 'Small Economies as Small Suppliers of Services', WTO document TN/S/W/8).
- 10 Arkell, Background Paper on GATS (February 2003).
- 11 Carl Shapiro and Hal Varian 'Information Rules: A Strategic Guide to the Network Economy', *HBR* 1999.
- 12 'Focus: The Great Indian Takeaway', *Sunday Times*, 8 June 2003.
- 13 Patrick Messerlin 'Companies and Developing Countries: A Common Agenda for Cancun?', June 2003.
- 14 See the example of Guatemala in Patrick Messerlin (2003).