

# Summary

## 1. Definition of special and differential treatment

Special and differential treatment (SDT) is applied rather differently in the General Agreement on Trade in Services (GATS) than in other World Trade Organization (WTO) agreements, in which it often takes the form of less rigorous obligations and/or additional time for implementation. The GATS, in contrast, imposes the same general obligations on all members, developed and developing, and gives no additional time to developing countries for implementation. Instead, the GATS provides extreme flexibility in terms of the number of market-opening commitments, the time for implementation of those commitments and the limitations that can be placed on them. Regional trade agreements (RTAs) also offer a great degree of flexibility. This can be viewed as a form of SDT.

In negotiating SDT outcomes in trade agreements, developing countries need a comprehensive national services strategy that has been developed within a coherent policy framework. Such a strategy and framework can serve as a basis for formulating negotiating positions that reflect national interests, including different types of SDT.

The categories of SDT analysed in this paper are: (1) The architecture of the agreements, which provide flexibility in commitments; (2) the acknowledgment that reciprocity is not required of developing countries; (3) the actual outcomes of the negotiations of the GATS and of RTAs; (4) the provision of technical assistance; (5) allowing additional time for implementation of commitments; and (6) ‘best endeavour’ type provisions that create no rights or obligations for members.

## 2. SDT commitments under the GATS, the Doha Development Round and regional trade agreements

The *architecture* of the GATS gives great flexibility to members by using the ‘positive list’ approach, under which each member decides which sectors to liberalise, and the extent and timing of the liberalisation. The Doha Development Agenda (DDA) follows the same approach, as do many RTAs. Other RTAs use the ‘negative list’ approach, under which all services sectors are fully opened except to the extent set out in a schedule of non-conforming measures. This also gives a good deal of flexibility, though arguably less than positive list agreements.

The GATS contains provisions acknowledging that developing countries are not expected to provide *reciprocity* in terms of the number of commitments, and various documents produced during the DDA reiterate this principle. LDCs were to be given even more flexibility, and the Hong Kong Ministerial Declaration clearly stated that they were not expected to make any new commitments. Few of the RTAs we have

examined contain provisions recognising the need to allow more flexibility to developing countries, although in practice developing country parties to RTAs have generally made many fewer commitments than developed country parties.

The *negotiated outcomes* of the GATS show that on average developing countries made many fewer commitments than developed countries. However, many of the Mode 1 (cross-border) and Mode 4 (temporary movement of natural persons) commitments by developed countries are linked to Mode 3 (commercial presence), which makes them of little value to smaller countries, which do not generally have service suppliers large enough to invest abroad. Besides, the Mode 4 commitments are mostly limited to highly skilled individuals, and not to lower skilled workers, where the smaller countries have a competitive advantage. Our RTA analysis showed a similar asymmetry of outcome, with developed countries making many more commitments in the case of positive list agreements, or scheduling fewer non-conforming measures in the case of negative list agreements than developing country members.

The GATS calls for *technical assistance* to be given to the developing countries but, unlike many WTO agreements, specifies that it should be provided not by the developed countries, but by the WTO itself. In practice, however, a good deal of assistance has been provided by members, as well as by the WTO and other international organisations. The amount of assistance given with respect to services has been relatively low. Various documents produced during the Doha Development Round reiterate the need for technical assistance to be given to the developing countries. Few RTAs contain provisions on the supply of technical assistance.

The GATS does not give members *additional time* for implementation of the general obligations, although the negotiating flexibility built into the agreement allows countries to delay implementation of their commitments. A significant number of such pre-commitments have been made by developing countries in the telecommunications sector. A few of the RTAs we examined allowed additional time for implementation to smaller countries, although in some cases these were limited to a few sub-sectors.

The GATS and various DDA documents contain a number of hortatory, 'best endeavour' type provisions. These of course are of little value to developing countries. A few of the RTAs that we examined contain similar statements.

It is difficult to assess the overall impact of SDT, and to the best of our knowledge no-one has attempted to measure its value as a whole to the developing countries. Certain types of SDT – technical assistance and additional time for implementation of commitments – clearly benefit the smaller, poorer countries. So does the aspect of non-reciprocity that allows greater access to developed country markets. However, the other side of non-reciprocity, allowing the developing countries to keep their service markets more closed, may in fact be harmful to them. There is a substantial body of work that demonstrates that barriers to trade in services can be extremely costly, and that removing them can raise GDP significantly. The positive effects are felt throughout the economy because increased competition results in lower intermediate costs for manufacturers and agricultural producers, as well as for service suppliers. Opening more

service sectors may benefit smaller and less developed countries, although this should be done with great care. In particular, it is essential to set up effective regulatory structures before liberalising, and time and technical assistance is needed to accomplish this.

### **3. Challenges faced by business in maximising export and investment opportunities from SDT Arrangements**

Small service suppliers in developing countries are primarily interested in Mode 1 and Mode 4 supply. However, as noted, Mode 1 and Mode 4 commitments are often linked to Mode 3, which puts access out of their reach. In any event, even where not linked to Mode 3, Mode 4 access is highly limited. Even where they do have formal access, small service suppliers may not have the resources to investigate foreign market opportunities, and they often lack government support. They may not have adequate human or technical resources, and they often pay high costs for basic services, such as financial credit and access to the internet.

### **4. Pro-development SDT arrangements and measures**

Our recommendations with respect to negotiated outcomes relate to Mode 1 and Mode 4 access, since these are the modes in which service suppliers in small countries are primarily interested. With respect to Mode 1, developing countries should seek to have the developed country partners bind all sectors on Mode 1, without being linked to Mode 3. This is important to ensure modal neutrality. For political and security reasons, it is unrealistic to expect the developed countries to grant broad Mode 4 access, so that our recommendations with respect to this mode simply call for incremental improvements. Mode 4 commitments should not be solely linked to commercial presence, but should be expanded to include contractual service suppliers, independent professionals and trainees. Technicians and semi-skilled workers should also be covered. Workers granted access should be allowed to bring their spouses, and the issue of pension portability should be considered. Elements from bilateral labour agreements (BLAs), such as those allowing entry of a limited number of low-skilled workers on a seasonal basis, could be incorporated into RTAs. More effective approaches to address measures inhibiting Mode 4 market openings for service suppliers from developing countries should be formulated, including ways to address economic needs test (ENT) measures more effectively. These could include the development of binding rules and conditions spelling out their use in services schedules, as well as mechanisms for periodic review. The negotiation of mutual recognition agreements (MRAs) should also be encouraged, though this is a challenging undertaking among countries of different levels of development. Other recommendations with respect to negotiated outcomes include longer time-frames for implementation of commitments and access to government procurement opportunities on a non-reciprocal basis.

Another recommendation relates to the sharing of information and expertise. Recent RTAs negotiated by the USA establish committees on trade capacity building

that are tasked with overseeing all aspects of technical assistance, including helping to prioritise projects, requesting assistance from international organisations and others, and monitoring and assessing trade capacity building projects. This seems to be a promising approach, but it is too early to assess how effective it has been. Another approach is exemplified by the ‘Hub and Spokes’ project of the Commonwealth Secretariat, which places experts in the trade ministries of the recipient countries. A mid-term review of the project found that it was efficient and practical, and had had a positive effect on capacity building in the recipient countries.

A third set of recommendations relates to the benchmarking of technical assistance, both for the implementation of commitments and for the setting up of the regulatory structures that should accompany liberalisation. The smaller countries should seek to link their liberalisation commitments to the provision of technical assistance and the establishment of regulatory structures, following the precedent of the DDA negotiations on trade facilitation. They should also seek to have offers of technical assistance transformed from hortatory to mandatory provisions, so that failure to supply the specified assistance would provide a basis for resorting to dispute settlement.

Technical assistance to help smaller and poorer countries reduce supply-side constraints to service exports is also desirable.

As stated at the outset, in negotiating SDT outcomes in trade agreements developing countries should have a comprehensive national services strategy developed within a coherent policy framework. Such a strategy and framework can serve as a basis for formulating negotiating positions that reflect national interests, including different types of special and different treatment.

## **5. Assessing the impact of services trade liberalisation**

Assessing the impact of services trade liberalisation is an important but difficult task for economic researchers. The methodologies are still being developed and the data are inadequate, particularly in small and low-income countries. In addition, services are highly heterogeneous in their characteristics, ranging from essential infrastructure, such as telecom services, to consumer services, such as tourism. However, considerable progress has been made over the past decade in modelling the impact of liberalisation on services trade. Economists have attempted to estimate these impacts through four different types of approaches. The first focuses on the level of the firm, to measure changes in total factor productivity (TFP). The second uses economy-wide computable general equilibrium (CGE) models to assess the overall impact of liberalisation on services trade through incorporating all of the channels through which services may impact on national economies. The third, ‘frequency’, approach involves the examination of restrictive policies applied to service sectors and a conversion of these into frequency indicators (i.e. the more measures applied, the higher the frequency), then used in impact regressions. Similarly, the fourth, ‘gravity’, approach relies on indirect methods through gravity regressions to estimate what trade flows should be in a certain services

sector and then estimates the tariff equivalent of policies from the difference between estimated and observed flows.

The results of these modelling approaches suggest that barriers to services trade appear to be substantial, especially for Modes 3 and 4. However, the approaches are still fraught with difficulties and drawbacks, such as the lack of availability of universally accepted measures of restrictions on services that can be converted into cost and price wedges in these various modelling frameworks. Despite their shortcomings, estimates from these modelling approaches indicate the relative magnitude of prevailing barriers, as well as the distribution of the gains to be realised from increasing competition in services markets on income and welfare. Across the board, the research suggests that potential gains from liberalisation may be quite large because of the numerous linkages between services and the rest of the economy

## **6. Approaches to advance SDT in a multilateral context**

While there is a great deal of hortatory language in the GATS and in various DDA documents about the importance of providing SDT to developing countries, it does not seem to have had the desired effect. We recommend the development of a reference paper, along the lines of the telecommunications reference paper that would be open to adoption by WTO members. It would create binding commitments to provide technical assistance and benchmark the provision of assistance by linking it to the implementation of commitments by developing countries.

Another approach that has considerable merit is the proposal under discussion in the Services committee that developed countries should be granted a waiver from the most favoured nation (MFN) obligations of the GATS to enable them to establish a generalised system of preferences (GSP)-type programme in favour of LDCs with respect to services. We also recommend following in the multilateral setting some of the approaches we have recommended in the RTA context: a collective decision by members to delink commitments on Mode I access from commercial presence; various incremental improvements to Mode 4 access; and the granting of non-reciprocal access to the government procurement markets of the developed countries.

