

NEGOTIATING TRADE IN SERVICES

A Practical Guide for
Developing Countries



May 2009

Negotiating Trade in Services

A Practical Guide for Developing Countries

Table of Contents

| | |
|---|----|
| 1. Introduction | 1 |
| 2. Mapping a Strategy for Services in National Development Plans | 3 |
| 3. Preparing for Services Negotiations | 5 |
| Negotiating without a Proper Services Road Map..... | 6 |
| Inter-governmental Coordination and Multi-Stakeholder Consultations | 6 |
| Conducting a Trade-related Regulatory Audit | 8 |
| 4. Conducting Services Negotiations | 11 |
| Making Rules for Services Trade..... | 11 |
| Opening Services Markets..... | 12 |
| Implementing Negotiated Outcomes..... | 14 |
| Addressing Regulatory Weaknesses..... | 15 |
| 5. Enhancing the Capacity to Supply | 19 |
| 6. The Challenge of Aid-for-Trade in Services | 23 |
| The Need for a Tailored Response | 23 |
| Devising an Aid-for-Trade Agenda in Services..... | 24 |
| 7. Conclusions | 25 |
| Figures | |
| Figure 1. Trade policy formulation checklist in Thailand..... | 8 |
| Figure 2. Negotiating Essentials: Inter-agency Coordination and | 9 |
| External Stakeholder Consultations | |
| Appendix | 27 |
| Box A.1. The Place of Services in National Development Strategies | 27 |
| Box A.2. Policy-making Benefits from Effective Intra-governmental Coordination..... | 28 |
| Box A.3. Performing a Trade-related Regulatory Audit in Services | 29 |
| Box A.4. A Trade-related Regulatory Audit: Illustrative Examples..... | 31 |
| Box A.5. Key Questions in the Preparatory Phase of Services Negotiations | 32 |
| Box A.6. The Doha Round Shift Towards Collective Requests | 33 |
| Box A.7. Concerns Arising in Services Negotiation | 34 |
| Box A.8. Examples of Best Practice Capacity Building in Services | 35 |

| | |
|--|----|
| Box A.9. Best Practices in Trade-Related Training: Course Design and Delivery..... | 37 |
| Box A.10. The Implementation Phase of the Services Trade-Negotiation Cycle | 38 |
| Box A.11. Strengths and Weakness of Domestic Suppliers..... | 39 |
| Box A.12. Organizing Services Coalitions in Developing Countries | 40 |
| Box A.13. Providing Market Intelligence to Developing Country Suppliers: | 42 |
| The Trade Facilitation Office of Canada | |
| Box A.14. Strengthening the Supply-Side Capacity of Developing Country Exporters | 43 |
| Box A.15. Addressing aid for trade in services: the EU-CARIFORUM..... | 44 |
| Economic Partnership Agreement (EPA) | |
| Tables | |
| Table A.1. Sample List of Exporters and Other Domestic Stakeholders in..... | 46 |
| Selected Service Sectors | |
| Table A.2. Factors to Consider in Formulating a Request or Offer | 48 |
| References | 51 |

ACKNOWLEDGEMENTS

This publication was prepared under the guidance of Mona Haddad, Sector Manager, International Trade Department (Poverty Reduction and Economic Management) of the World Bank. Mario Marconini from Manatt Jones Marconini, Sao Paolo and Pierre Sauvé from World Trade Institute, Berne produced the technical draft of the guide.

Peer reviewers of this publication were Juan Sebastian Saez from the World Bank and Professor Robert Stern from University of Michigan who also edited the document. Robert Reinecke from The Word Express provided the design and graphics support in finalizing the report for publication. Amelia Yuson from the World Bank provided administrative support.

Arguments in favor of open services markets are becoming increasingly set forth worldwide. This applies in particular to key enabling sectors such as financial services, telecommunications, and transportation, which contribute centrally to a nation's overall economic development. At the same time, the difficulties of opening services markets to foreign competition are becoming evident. Thus, because doing so involves a broad and complex set of policies, regulatory instruments, institutions and constituencies, domestic and foreign as well as public and private. Experience has shown that considerable care must be given to the assessment of the nature, pace and sequencing of regulatory reform and liberalization in order to meaningfully enhance a nation's economic growth and development.

Not surprisingly, and despite the experience that has been gained from more than two decades of negotiations at the multilateral, plurilateral, and bilateral levels, trade in services continues to rank among the most complex subject matters in modern trade diplomacy. Such complexity arises from a number of factors, including: (i) the intangible nature of service-sector activity, and the corresponding difficulty of measuring and assessing a sector's contribution to production and exchange and the economic consequences of alternative policy choices; (ii) the considerable diversity of activities encompassed in a sector; (iii) the challenge of factor mobility (capital and labor) involved in services transactions; and (iv) the ubiquity (and diversity) of market failures affecting services transactions and related regulatory intensity.

Both their central intermediation functions and the impact of competitiveness on a nation's overall

economic performance suggest the possibility of far-reaching benefits from the liberalization of services trade and investment. Numerous studies have in recent years documented the potential magnitude of these benefits, which are typically seen as exceeding those emanating from the full opening of trade in agricultural and manufacturing products.¹ To date, however, the benefits of pro-competitive reform in services markets have tended to be realized more through unilateral efforts at the domestic level than through collective action at the trade negotiating table, be it at the WTO or under preferential trade agreements (PTAs).

It is well known that the WTO's Doha Development Agenda (DDA) negotiations have encountered recurring difficulties and at the time of writing (February 2009) have yet to be concluded. Part of the problem can clearly be traced to the fact the negotiations have focused centrally (and perhaps excessively) on trade-offs between agriculture and non-agricultural market access (NAMA). At the same time, there is little doubt that slow progress in the services discussions is due to the challenges faced by a majority of WTO members in mastering the regulatory intricacies of the service sector and in devising a proper role for services in national development strategies.

Absent such a roadmap and confronted with generally weak negotiating, regulatory and implementation capacities, developing country members of the WTO are often especially handicapped in their ability to engage meaningfully in services negotiations. More often than not, such difficulties translate into negoti-

¹ See Hoekman and Mattoo (2009), and Hoekman (2006).

ating stances and levels of bound commitments that connote considerable precaution. The end result is that the development potential of services trade and negotiations in the sector fail to be properly harnessed. Addressing the above challenges through targeted technical assistance and capacity strengthening therefore must be part of the solution. While perhaps not of crucial importance, the question is whether the difficulties lie within the structure of the WTO multilateral negotiations, or within the problematic efforts of the developing countries' efforts themselves.

Building on the work of Feketekuty (2008), the main aim of this report is to provide a practical checklist to help services negotiators, officials in ministries and regulatory agencies, and the broad stakeholder communities (including those inside the World Bank and in aid agencies) to gain a better sense of the key "moments" in the life cycle of services negotiations. These moments are as follows:

- *mapping* a strategy for services in national development plans;
- *preparing* for services negotiations (i.e., developing an informed negotiating strategy or identifying the capacity needs required to do so; setting up the proper channels of communication with key stakeholders; and conducting a trade-related regulatory audit);
- *conducting* a services negotiation (i.e., acquiring a voice in debates on outstanding rule-making

challenges in services trade by pursuing offensive interests; devising strategies to deal with defensive concerns; analyzing the negotiating requests of trading partners; formulating own requests and offers; and participating in collective requests and offers);

- *implementing* negotiated outcomes (i.e., addressing regulatory capacities and weaknesses; and identifying implementation bottlenecks); and
- *supplying* newly-opened markets with competitive and international standard-compliant services (i.e., addressing supply-side constraints on the ability to take full advantage of the outcome of trade negotiations, including aid-for-trade in services).

In what follows, this report focus in Section II on mapping a strategy for services in national development plans. Section III is devoted to preparing for services negotiations, Section IV to conducting services negotiations, Section V to enhancing the capacity to supply, and Section VI to aid-for-trade in services. Conclusions are in Section VII. There are several boxes and two tables in the Appendix that provide illustrative examples of the many key points that need to be considered in planning, implementing, and evaluating a program of services negotiations especially in emerging market and developing economies.

2

Mapping a Strategy for Services in National Development Plans

In embarking on services negotiations, governments must clarify at the domestic level the broad policy objectives they wish to achieve. This implies determining the extent to which such agreements are used as an anchor of ongoing policy reforms and/or as precursors of future reforms, notably via a pre-commitment to future market opening. The idea here is to gain a greater sense of the likely opportunity costs flowing from various approaches to liberalization and policy bindings under services agreements, including the choice *not* to make new or improved binding commitments, thereby preserving policy space for the future.

The heterogeneity of services and their essentially intangible nature pose daunting challenges to services negotiators. Governments tend to think of services in a piecemeal, segmented manner that often reflects more the particular characteristics of individual sectors than their role in the overall economy. Such a tendency can be seen in the (generally disorganized) way in which many governments tend to tackle services issues. There are probably few governments that have a “Ministry of Services,” while most, if not all, have numerous sectoral ministries dealing with individual service sectors. These may include: financial services via a Ministry of Finance or of the Economy; telecommunication services via a Ministry of Communications (which can also include postal services, broadcasting and audiovisual services); a Ministry of Transportation, and so forth. Many services-related issues also involve more than one ministry or government agency. This is notably the case in regard to the movement of natural persons and trade in professional services, which in many countries is concomitantly the competence of the Ministries of External Relations, Justice, Education

and Immigration (when the latter is separate from other ministries).

Developing a clear strategy for services therefore poses, for most governments, genuine institutional challenges to the extent that no single agency takes a holistic view of services and their interlinked contribution to the development and growth process. Accordingly, any attempt to devise a service-sector road map or strategic blueprint must start with setting up a cross-sectoral, multi-issue steering committee and designating the coordinating function to a specific ministry, secretariat, agency or personality within the government that will be empowered to identify key elements of a services road map and oversee its implementation. Such a coordination function is far from trivial, since it cuts across bureaucratic competencies (so-called “regulatory turf”) and can potentially create conflicts between sectoral and economy-wide perspectives.

Considering the economy-wide implications of service-sector reforms, coordination should ideally take place as close as possible at the highest levels of government (e.g., the office of the presidency or of the prime minister) or derive from them a clear delegation of power. Sectoral ministries naturally focus on the design and implementation of optimal policy for each individual sector under their jurisdiction. The establishment of a national development strategy, however, requires that services be thought of in economy-wide terms. Governments should seek to identify growth and development bottlenecks in the economy and direct policy efforts at overcoming the bottlenecks and deciding what, if any, role can be assigned to trade-and-investment policy in this process. One approach is to look at

productive chains (activities) or clusters (location)—concepts that go beyond individual sectors. This takes into account the interface between services and the industries to which they provide critical inputs, with a view to evaluating the role of service-sector policy in such a broader context. For instance, if for a particular supply chain, the main problem is logistics and transportation, this implies a particular set of solutions that clearly involve a range of service sectors. If, on the contrary, the main bottleneck is the access to imported components, the issue points to trade in goods and the workings of a country’s “traditional” (goods-related) foreign-trade regime. In other instances, the binding constraint may concern the supply of skilled workers, pointing to the need for enhanced efforts in education and training and the possible scope for attracting foreign investment in higher or specialized education services.

With an economy-wide map in hand, governments can then more easily focus on—and prioritize—services-related policy responses. In each case, governments will need to determine whether the best solution to a particular problem involves technical support (financial and otherwise), strengthened regulation, enhanced efforts at investment promotion, targeted efforts at trade and investment liberalization, or greater transparency and certainty in domestic policy-making.

Unlike other sectors of the economy, services involve a host of national policy objectives, such as prudential regulation, universal access, the preservation of cultural diversity, or the maintenance of high professional standards. These objectives have to be clearly defined and factored into the analysis as well. The boundaries between public and private interests may also need to be properly delineated, notably in the context of public-private partnerships that are increasingly common in service sectors such as infrastructure and transportation. Finally, the boundary of state sovereignty almost invariably comes into play in service-policy discussions to the extent that

services negotiations encompass foreign-investment liberalization. The latter includes the possibility of foreign presence and involvement in particularly sensitive sectors.

Any consistent approach to services policy in national development strategies needs to focus on the pace and manner in which a country wishes to integrate itself into the world economy. The revolution in communications and information technologies, and the compression in time and distance that has come in its wake, have transformed the world into a fast-moving and interconnected community. This can greatly facilitate the scope for “plugging into” regional or global supply chains, and it allows countries to leapfrog what used to be difficult technological constraints on development. But it also requires quick responses to emerging social and economic challenges. Measuring the costs and benefits of opening up and integrating more fully into production networks needs to be ascertained alongside the cost of *not* doing so, or of doing so at a different pace or through different means.² The effects of various policy choices on employment and restructuring, the possible impacts on “national champions” and other strategic considerations thus need to be properly identified and measured.

The checklist in Box A.1 below emanates from considerations made so far with respect to whether, how, and in what manner services and service sector policy (including trade policy in services) are situated in national development strategies:

²The cost of not opening up or of doing so in a manner that preserves greater policy space—e.g., via fewer legally-binding commitments or via commitments that favor some forms of entry over others (i.e., minority joint ventures vs. majority foreign ownership, Greenfield investment vs. purchases of existing (national) firms, etc.) needs to be looked at from various perspectives. These include the impact on access to capital, resulting investment levels, the nature and extent of contestability in key sectors, the level of competitiveness in particular sectors and the overall economy as well as in export markets, access to distribution channels, and the capacity to create and innovate.

3

Preparing for Services Negotiations

Despite its innate promise, the multiple challenges that liberalizing services trade entails cannot be underestimated, particularly in light of the limited administrative and negotiating capacities of many developing countries. A country needs to gather significant knowledge before it can submit sensible liberalization requests to its key trading partners and make informed market-opening offers. In addition to putting in place the proper channels of communication with key stakeholders inside and outside the government as well as preparing a full inventory of relevant measures to ensure full knowledge of the regulatory regime and its possible shortcomings (see below), governments need to identify opportunities and challenges for their exporters, determine the capacity building needs of the negotiators, ministries, and regulatory agencies, and assess the likely economic and social impacts of various liberalization scenarios. These are challenging tasks even for developed country governments whose resources, human and financial, are typically far greater than those of developing countries.

Much capacity-building effort in services has to date focused on helping developing country negotiators and policy officials master the legal provisions of services agreements such as the GATS. For many least developed countries (LDCs) and small and vulnerable economies (SVEs) as well as a number of countries seeking admission to the WTO, this remains an important task, particularly as their trade expertise is especially weak or embodied in very few officials inside trade and foreign ministries. Regulatory agencies and other ministries have usually even less capacity. Short-term training directed at overcoming these knowledge gaps can be useful in many countries, and international organizations and

regional organizations are heavily involved in this type of TRTA (Trade-Related Technical Assistance)³ delivery. The latter typically focus their TRTA efforts on preferential liberalization initiatives, whereas the former (with the exception of the WTO) tend to focus on both multilateral and preferential liberalization endeavors.

A more pressing TRTA need, which is arguably more conducive to harnessing the pro-development potential of services liberalization, goes beyond GATS and the intricacies of trade agreements covering services. Such a need concerns how best to acquire the analytical tools to determine a country's readiness: to liberalize; develop government-wide negotiating strategies; assess the gender, poverty alleviation, and human health impacts of market opening in services; and help domestic service providers to take full advantage of the market access opportunities arising from regional and multilateral liberalization efforts. Technical assistance and training efforts directed to these issues have not yet materialized in a sustained manner, and they deserve far greater and immediate attention

For the most part, this entails the documentation (in the form of country/region and sector-specific case studies) and dissemination of knowledge on best practice in both developed and developing countries. North-South and South-South learning are equally important channels, and such a diversity of exper-

³The international organizations include: World Bank Institute; United Nations Commission on Trade and Development (UNCTAD); International Trade Centre (ITC); and the WTO. The regional organizations include: Organization of American States; the Inter-American Development Bank; the European Commission or the Asian Development Bank; UNESCAP; and ECLAC.

tise is more easily achieved through international organizations than through bilateral donors from the OECD area.

Negotiating without a Proper Services Road Map

Ideally, preparing for international negotiations should come *after* the establishment of national development strategies. That is often not the case, as countries become involved in negotiating processes that cannot wait for overall national policy positions to be determined. This is why many developing countries often have a feeling of precariousness when negotiating—a sense that they are not ready, both from a political and an administrative perspective, to respond to the complex regulatory and policy issues that arise in services negotiations. It is particularly the case when negotiations involve more mature partner countries that are likely to formulate highly informed negotiating demands

For developing countries, international negotiations often become a leading driver of domestic economic reforms, requiring the formulation of policy positions in areas where a domestic consensus for change has yet to take root, or where domestic regulatory conditions are insufficiently developed. Moreover, in many developing countries, an appropriate level of regulation and attendant regulatory capacity have often failed to materialize by the time such countries are confronted—in the context of asymmetrical negotiations—with the need to adapt, update, reform, or even adopt nascent regulatory regimes. The lack of previous experience with regulatory reforms renders the search for policy responses even more difficult. The problem is further aggravated by the speed of international negotiations, which usually proceed at a faster pace than domestic political change is wanted or even feasible.

The task of preparing for international negotiations is thus an exercise in adaptation and approximation. While governments should ideally know what they want from negotiations before they negotiate, there is typically little time available for such an assessment. Thus, the only remaining option is often to progressively identify the objectives *during the negotiating process*. Negotiations in this sense require clarifying and eventually rectifying sub-optimal

regulatory situations and mapping out proper sequences between internal regulatory reform and external liberalization. The position a country takes in negotiations, however, will reflect an equilibrium between the demanded (by trading partners) and the acceptable (by domestic politics).

Inter-governmental Coordination and Multi-Stakeholder Consultations

In preparing for services negotiations, as in the establishment of a national development strategy for services, an important first step is to set up a credible, transparent, and efficient coordination process for the work at hand. In the case of trade negotiations, such coordination often rests with foreign and/or trade ministries—typically the ministries responsible for conducting the negotiations themselves. Intra-governmental coordination counts among the most crucial of negotiating inputs—an issue of such importance that it alone is liable to determine the effectiveness of a country's participation in international negotiations. The last thing a government wants is for different ministries and/or agencies to be saying different things about the same set of negotiations or, worse yet, for trading partners to be confused as to where negotiating authority and accountability are ultimately vested.

The main objective of internal coordination is the establishment of national positions regarding all service-related issues dealt with in specific negotiations. A secondary objective is the achievement of consistency and coherence in the way a particular country or government manages its external trade environment. This is an important demand placed on coordinating agencies since it requires an additional check on positions taken across various fora and negotiating settings (e.g., WTO vs. PTAs). While coordinating for WTO-GATS negotiations, for example, a government will need to be mindful of positions taken or interests pursued in other negotiating fora, and to seek overall consistency and coherence. This refers not only to scheduled commitments governing access to a country's services market but also to positions regarding rules and principles, which may vary across agreements and/or negotiating processes. That is, positive vs. negative lists, sectors and/or disciplines that may be covered

in PTAs but not at the WTO level, such as digital trade/e-commerce and government procurement of services. Box A.2 highlights some of the policy-making benefits likely to derive from an effective process of intra-governmental consultations in services trade.

Various options are available to governments in structuring internal policy dialogues and decision-making processes in services trade. One structure used by a number of WTO Members is the creation of dedicated “Working Groups” established under the Trade/Commerce Ministry to co-ordinate trade negotiations. Depending on available resources, Members could have a single group for services, or a number of different Working Groups covering related services sectors (e.g., one group on recreation/sports/entertainment and tourism; another on transport, distribution, and communications, etc.). Governments with limited resources may wish to focus on creating groups for selected service sectors—although this may raise challenges as service sectors are often highly inter-related. Working Groups could also be considered for issues that are relevant across a range of sectors, such as Mode 4 and labor-force development, or possibilities for cross-border and e-trade in services. Participants in such groups may to some extent self-select based on the relevance of the issue to their responsibilities (e.g., immigration authorities would have a clear interest in being involved in Mode 4 discussions; telecommunications authorities less so).

While governments must ultimately assume the responsibility of carrying out their country’s trade-negotiating strategy, the legitimacy for this will only be secured if the coordination effort expands to include all key external stakeholders in the process, that is, the private sector and civil society at large. The task is here again challenging since the conduct of multi-stakeholder consultations often involves a broad variety of potentially conflicting interests—ranging from mercantilistic export interests to concerns over consumer protection or the preservation of a country’s cultural heritage. Although governments at times regard such a consultative process as unduly onerous and potentially constraining of its sovereign decision-making prerogatives, the backing of key affected constituencies may be necessary when it comes to ratifying and implementing negotiated outcomes.⁴

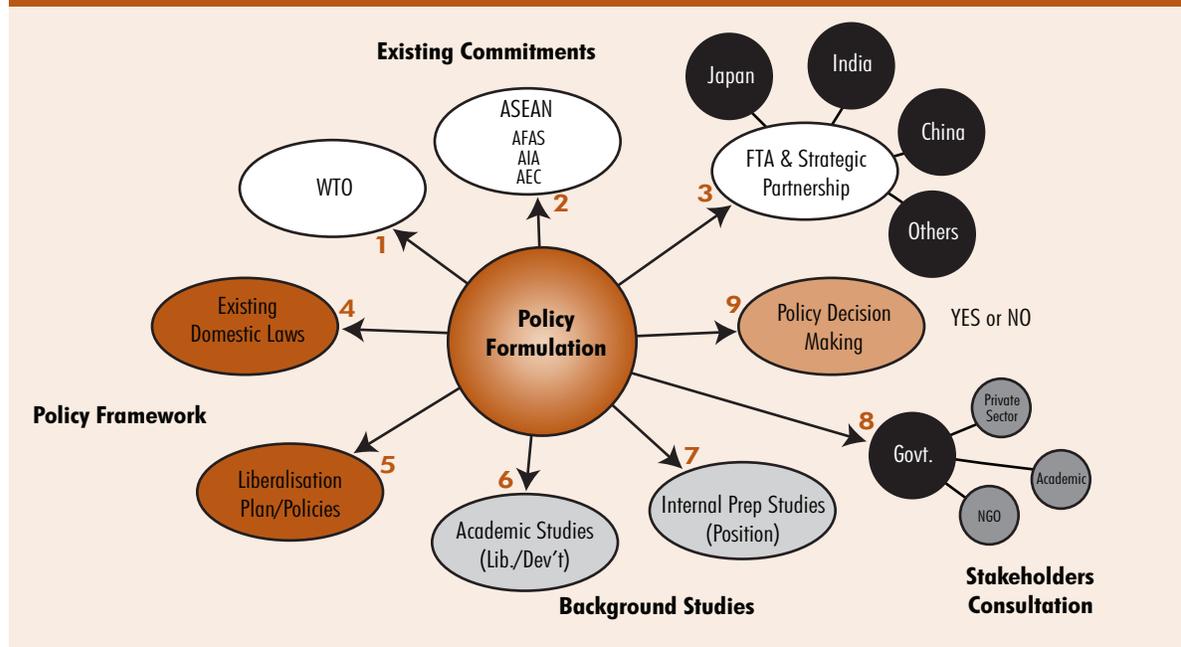
Effective consultation is ideally an ongoing, two-way process—i.e., stakeholders provide initial input and receive initial feedback, then comment on negotiating alternatives, and receive feedback on the negotiations as they progress. If the consultation is only one-way, exporter stakeholders may soon lose interest and critics or groups with a defensive or rent-protecting agenda may gain disproportionate influence.

Figure 1 below shows the policy-decision matrix used by the Ministry of Commerce in Thailand in preparation for the various negotiations in which it participates. The matrix reveals the country’s recognition of the need for policy decisions to rest on sound analytical inputs and an extensive consultation process within and outside government, with a view to ensuring that Thailand pursues a coordinated and coherent set of objectives across various negotiating fora.

Table A.1 below indicates the main private and public stakeholders to consider for various service sectors.

In general, public consultations should aim to bring together stakeholders with differing views so that individual groups are exposed to the full range of factors that the government must take into account and balance in the negotiating process. In addition, it may be helpful to confront domestic service exporters with consumer and producer interests as well as those of service importers and public-interest groups in public debates. The actual economic and political consequences of trade and investment liberalization in services trade and attendant regulatory-reform issues should thereby be clarified. Such debates may help to address possible misconceptions and misunderstandings in the public-policy debate over liberalization and reform issues.

⁴To help with the process of consultation, the International Trade Centre of UNCTAD/WTO has published a useful iGATS Consultation Kit,¹ which contains a series of questions organised in three groupings: (a) barriers encountered related to the general principles in the GATS, (b) barriers encountered by mode of supply, and (c) possible market access impediments encountered in domestic regulations and their implementation. These questions may need to be adapted to make sure that all the information needed to assess the impact of services liberalization and to formulate requests and offers is being captured in the consultation process. See ITC (1999).

Figure 1. Trade Policy Formulation Checklist in Thailand


Source: Vonkhorporn (2008).

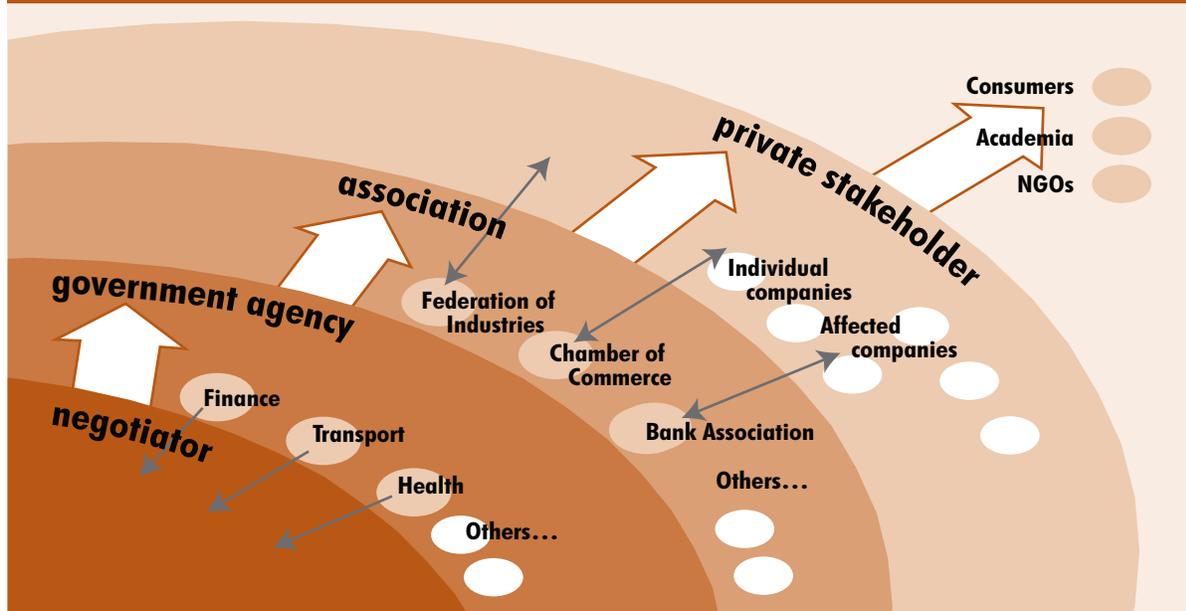
The mix of stakeholders therefore needs to be as broad and representative as possible, even though it may make debate more controversial. It may also have to reflect a balance between institutions of a national and sub-national character, depending on the weight of such types of institutions in each case. A balance will further need to be struck between institutions that are more horizontal in nature (e.g., a chamber of commerce representing several sectoral interests) and those of a more narrowly sectoral character (e.g., the banking federation or individual professional service associations). However, as in government, it is still relatively rare for the private sector, particularly in developing countries, to be organized around all-inclusive coalitions and/or other types of groupings dealing with services. As noted above, given the key intermediary role many services play for the entire economy, it will be particularly helpful to reach out to consumer communities (including in the agricultural, mining and manufacturing sectors), and not solely to focus on the negotiating preferences of service producers.⁵ To this end, building up capacity among consumer-advocacy organizations, or supporting their creation, may be of considerable use in promoting pro-competitive, consumer-friendly outcomes in policy design.

A particularly sensitive issue is the balance to be struck in consultations among business associations, trade unions, and non-governmental actors (NGOs). The latter in particular will tend to take vocal positions on a number of significant matters pertaining to services trade—often questioning the very benefits of liberalization itself, and cautioning against the treatment of services with “public good” characteristics (e.g., education, health, water distribution, cultural industries).

Drawing once more on the experience of Thailand’s Ministry of Commerce, Figure 2 below illustrates the continuum of inter-agency and external stake-

⁵ Services play a very important role in the lives of all citizens, so it is important to have consumer and user voices represented. Transnational NGOs may have the resources to provide excellent briefings on economic and social impacts in general. However, it will be important to ensure that representatives of such groups are from the domestic economy and are well versed in the actual circumstances for consumers in the particular country. Equally, operators in other sectors of the economy—such as agriculture or manufacturing—are important consumers of services (e.g., transportation or financial services). The interests of local manufacturers or producers who could benefit from the domestic liberalization of services, including manufacturers that provide bundled solutions of goods and services, should also be represented.

Figure 2. Negotiating Essentials: Inter-agency Coordination and External Stakeholder Consultations



Source: Vonkhorporm (2008).

holder consultations needed to make services negotiations successful.

Conducting a Trade-related Regulatory Audit⁶

Since the very currency of services negotiations consists of domestic regulation, much of the preparatory work will need to focus on the domestic regulatory regime and its relevance in a trade policy context: how it is framed; what objectives are pursued; and with what degree of efficiency; how domestic regulatory requirements are rooted in international standards or international best practice; how user-friendly domestic rules and administrative procedures are; how and by whom domestic regulations are applied; how trade- and investment-friendly domestic regulatory regimes are; and whether domestic regulatory objectives can be attained in ways that are less restrictive in trade and investment.

An inventory audit of domestic regulatory measures “affecting services and trade in services” should be compiled on the basis of existing legislation and regulations. Such an internal exercise will strengthen inter-agency coordination and help promote a

healthy dialogue between officials involved in domestic and external policy matters while also promoting a culture of regulatory reform and regulatory impact assessment. Thus, a trade-related audit can be very useful even in the absence of international negotiations.

Trade and investment negotiations, however, offer excellent, ready-made, opportunities for engaging in such an exercise. This, in turn, helps to address the need for investments in trade-related capacity among regulatory officials who may have limited knowledge or experience about international agreements, trade law, and negotiating processes. It can also help enhance knowledge among trade officials who may not have a full understanding of the underlying law and economics of sectoral regulatory challenges.

As noted in Box A.3 below, performing an audit of all service-related regulation can prove a daunting task, particularly in light of the fact that such an exercise may typically exceed the scope of measures subject to services-trade negotiations. This is why

⁶The following section draws on Sauvé (2008).

enhancing the ability of government officials to gain a fuller understanding of trade law is particularly important, if for no other reason than to properly identify and circumscribe what and how domestic regulatory conduct may legitimately be expected to arise in international trade discussions and distinguish that from more purely domestic matters of non-discriminatory conduct. Regulatory officials naturally tend to view their work as primarily domestic in nature. Yet the advent of trade disciplines on services in the GATS and in a growing number of PTAs has clearly revealed that much of what regulators consider domestic in nature potentially lies within the perimeter of trade and investment negotiations.

Box A.4 provides concrete illustrations of what a regulatory trade audit typically generates by way of information. It will be evident that this listing closely tracks the information required in producing a negative list of non-conforming trade and investment measures.

Governments responsible for coordinating the preparatory work for negotiations should aim to gather an inventory of measures that will enable them to seek answers to at least a few basic policy questions:

- whether the existing regulation or regulatory regime is adequate and/or acceptable or whether it needs changing;
- whether any needed changes can be contemplated within the time frame of ongoing international negotiations;
- whether regulatory changes can be “offered” in international negotiations.

The above elements are important for several reasons. First, offers in services negotiations may require the binding of existing regulatory situations, and countries should avoid scheduling legally binding measures that domestic regulators do not find adequate or fully developed. At the same time, changes to domestic regulation that may be needed or contemplated for internal or domestic political reasons may in fact constitute valuable offers to make in the negotiations if they tend to improve on market-access or national-treatment conditions—as defined in most international agreements. Why not then promote formal changes and offer them while there is still time to (seek to) obtain reciprocal concessions from major trading partners?

Some of the key questions that arise in the preparatory phase of services negotiations are noted in Box A.5.

4

Conducting Services Negotiations

Services negotiations tend to be complex affairs—in tandem with the sectors involved. A first concern for governments in conducting services negotiations is how the talks are actually going to be organized and to identify key issues that will require attention early on. Since services negotiations involve a number of important but highly heterogeneous sectors, the question of composing delegations for negotiating meetings is crucial, all the more so given the budgetary constraints most developing countries face, and that sector-specific expertise cannot realistically be maintained in Geneva. This implies a minute monitoring of the negotiating process and a good means of information going back in capitals so as to maintain relevant officials ready for participation when needed.

The conduct of services negotiations essentially involves the mastery of two key issues—rule-making and market-opening, both of which (and especially market opening) need to rest on continuous coordination and consultation with key stakeholders inside and outside government.

Making Rules for Services Trade

The initial emphasis in services negotiations will often be placed on rule-making issues, a phase of negotiations that may encompass a diverse set of issues—old and new. These will typically range from the approach to be taken: for scheduling commitments (i.e., top-down/negative list or bottom-up/hybrid list or a combination of the two); to the scope and definition issues and the unfinished rule-making agenda of GATS (i.e., domestic regulation, emergency safeguards, government procurement and subsidies), which remains for the most part an unmet challenge at the PTA level as well.

Rule-making discussions will also typically feature a number of more frontier issues, including: whether and how to address e-commerce and digital trade more broadly in services negotiations; whether and how to address matters of cultural cooperation (with or without legally-binding market access commitments); whether and how to ring-fence sectors, such as public health and education, where specific “public goods”-related concerns may predominate; the need to design pro-competitive regulatory provisions to open up trade and investment in network industries; the need for competition-policy complements to market opening in selected sectors prone to market dominance and anti-competitive conduct; the specific treatment of investment in service industries (a central challenge in PTAs featuring comprehensive investment chapters); how best to enhance the treatment of labor mobility; agreeing on operational aid for trade modalities for services, etc.

Many developing country governments regard themselves as essentially “rule-takers” in trade negotiations, including in the services field. And they find themselves thus taking a relatively passive stance in discussions on rule-making issues. This tendency may be even more pronounced at the PTA level, particularly when negotiations are conducted along North-South lines and where developed country governments often come to the negotiating table with a pre-determined platform of rules and substantive obligations, with only limited scope for negotiation, modification, and/or innovation.

Yet, while the above negotiating asymmetries are an unfortunate fact of life in trade diplomacy, developing countries have a major stake in the crafting of rules governing services trade. For this reason, they

need to exhibit a more pro-active stance in such talks and strive to identify, formulate, and defend their own proposals in areas of priority interest. At the WTO level, as well as in regional negotiations, they must also reach out more to other developing countries in pooling scarce negotiating resources and building coalitions in support of specific issues (in particular, Mode 4 trade, e-commerce/cross-border supply, emergency safeguards, and special and differential treatment).

Developing countries should especially participate in the ongoing discussions on the interface between domestic regulation and external liberalization—the so-called GATS Article VI:4 work program. This is so as strengthened regulatory disciplines may help to promote sounder overall governance and greater transparency in domestic markets, with attendant signaling externalities. Stronger disciplines on domestic regulation can also provide an effective means of challenging regulatory practices in foreign markets that are needlessly burdensome or serve as disguised restrictions to trade.

Technical assistance and capacity building efforts targeted at helping developing country negotiators to acquire a greater voice—through greater technical expertise—in services rule-making may thus be particularly useful. The broad pool of former services negotiators, particularly those from leading developing countries, needs to be harnessed more resolutely to this end. This could usefully be done through the establishment of a roster of experts that the World Bank or regional development banks could administer. In addition, developing country governments could team up with NGOs and policy-research organizations that have developed considerable technical expertise in the services field, outsourcing part or all of the crafting of rule-making proposals to the latter.

Opening Services Markets

While the rule-making agenda in services remains significant and of continued importance to all members of the trade community, much of the attention in services negotiations is devoted to the question of market opening and specific liberalization commitments.

Unlike discussions on non-agricultural market access (NAMA) or agriculture, services negotiations have so

far largely eschewed formulas (linear or non-linear), coefficients or thresholds for the negotiations, as indicated in Box A.6 below. This reflects the particular difficulty of quantifying non-tariff (i.e., regulatory) barriers to trade and investment. Absent formula-based approaches, governments continue to conduct negotiations based on the exchange of market-access and national-treatment commitments on a sectoral and mode-of-supply-specific basis, with occasional (and increasing) use being made of GATS Article XVIII (Additional Commitments). The latter relates to pre-committing or phasing-in future market openings, allowing for a smoother transition towards greater market openness and attendant structural adjustment challenges.

Opening services markets typically involves a considerable number of policy parameters, and various layers of impediments, some of which may be overlapping. Many of these impediments will be narrowly sectoral in character and relate to a host of regulatory measures that may potentially affect the quality and certainty of access to, and presence in, services markets. Secondly, many other policy parameters may not be sector-specific but relate to more generic or horizontal policy measures (e.g., investment, labor mobility). And thirdly, still other policy measures may lie wholly outside the remit of what is often considered as the central focus of services negotiations (e.g., standards-related issues; competition policy; access to government procurement markets).

An important question confronting governments in the context of request-offer negotiations concerns the level of ambition at which legally binding commitments can be scheduled under services agreements. The choice of what to bind is likely to have important implications for domestic economic performance and regulatory conduct. For instance, the impact of *de novo* liberalization (i.e., implying the elimination or progressive reduction of *existing* restrictions to trade or investment in services)—on competition, the likely response of foreign direct investors, domestic incumbents, employment levels, the design of domestic regulatory regimes—is likely to differ significantly from the potential impact flowing from a decision to bind the regulatory status quo (i.e., to freeze the current level of policy restrictiveness) or indeed to bind at a level below the regula-

tory status quo (which the GATS and GATS-like agreements allow).

In deciding the type of access to request and/or offer, three core issues will typically need to be addressed: the benefits to be achieved; the political concerns/downsides; required regulatory frameworks or regulatory reform efforts. Table A.2 lists a number of important policy considerations likely to inform the formulation of negotiating requests and offers. Given perceived shortcomings in regulatory regimes and external competitiveness, developing countries tend to focus much negotiating energy on defensive interests—i.e., the protection of the home market from foreign competition through limited market-opening offers. This comes at the cost of offensive interests in key export markets. A first reason for such a negotiating stance lies in the pronounced asymmetries that characterize the conduct of services negotiations and that are rooted in capacity and informational deficits that are often more substantial in poorer countries.⁷ These relate to the genuine difficulties most developing country governments experience in collecting information on regulatory barriers maintained in foreign markets that hamper the growth of home-country suppliers. Another reason stems from the sensitivities in offering foreign interests enhanced access to a country's market, or in placing foreign services and service suppliers on an equal regulatory footing with domestic competitors. A third reason for defensive posturing traces its origin to the very demands that developed countries often put on their negotiation partner, forcing the latter to focus their energy on responding to those demands. A fourth reason has to do with the fact that offer lists deal with a host country's own regulations. Seen this way, precision becomes an imperative, as governments are keen to avoid situations where imprecise offers (and, thus, prospective commitments) sow the seeds of future trade disputes and possible demands for compensation and/or retaliatory measures. The informational deficits that developing country governments confront in the conduct of services negotiations aggravate this problem, reinforcing their tendency to considerable precaution in undertaking new or improved commitments in services trade.

The above challenges notwithstanding, the past few years have witnessed a sea-change in the overall level

of engagement by developing countries in services negotiations across a broad spectrum of sectors. Such a changing landscape attests to the growing realization that developing countries possess clear comparative advantages in the supply of many services, particularly those that make intensive use of labor.⁸ It also attests to the growing acceptance that negotiating offers can help secure enhanced access to imports (including imports of capital), particularly of key infrastructural services and the economy-wide benefits likely to derive from such access. As in the case of trade in goods, the main gains from trade in services—those most likely to enhance national welfare—relate to the possibility opened up by trade to import a broader array of cheaper or better products than those on offer domestically and by exposing domestic suppliers in an orderly, adjustment-promoting, manner to greater competition as well as in attracting needed foreign investment in key sectors.

Services negotiations represent a unique opportunity for countries at all levels of development to secure better terms of access to foreign services markets, which reliance on unilateral reform efforts alone cannot provide. The preparatory work needed to formulate informed requests can also benefit from the regulatory inventories and capacity-building efforts described above. But there are additional matters that need to be addressed in order for a country, particularly a developing one, to put together development-enhancing requests.

⁷ While all WTO Members suffer an information deficit in services negotiations, many developing countries can be at a particular disadvantage, lacking the large network of embassies, organized industry associations (coalitions of services industries), foreign affiliates of home-country chambers of commerce, and even individual company presence in local markets from which many developed countries can source information. Such uneven access to information means that the negotiating requests emanating from some developed-country partners tend to be more highly specific in nature, focusing on previously identified and rank-ordered, sector-specific, or horizontal measures whose progressive elimination or liberalization is being sought. Many developing countries are unlikely to be in a position to make similar types of requests, particularly in the early stages of the request-offer process. This tends to place these countries in an inherently defensive posture, and leads to commitment patterns that display considerable precaution and may be of limited development benefit to host nations and lacking significant commercial value to exporting nations.

⁸ For a fuller discussion of the services-export potential of developing countries, see OECD (2003).

Request lists are, by essence, offensive in character. They focus on sectors, sub-sectors and modes of supply against which requesting countries ask their partner countries to progressively remove or lessen access-impairing regulatory measures. The main motivation underlying request lists lies in the export interests of the requesting country's leading service providers. The content of a country's request list should therefore be based on an assessment of what these interests consist of—something that is still relatively absent from the approach that many developing countries take to the negotiations.

In principle, nothing prevents a country from asking for commitments in all sectors included under services agreements. The reason such an outcome normally does not arise in practice is that countries are often reluctant to formulate requests in areas where they may not be in a position to offer reciprocal concessions. This may explain the fact that a relatively limited number of developing countries have chosen to take part in the collective requests that were formulated after the December 2005 WTO Hong Kong Ministerial.

Putting together targeted negotiating requests requires detailed information about the full range of measures preventing effective access to the markets of key trading partners. The breadth of services trade and the diversity of sectors renders information-gathering a large and complex task, and one with which many developing countries, even larger ones, experience recurring difficulty. Such difficulties will be compounded if channels of communication with key stakeholders—i.e., chambers of commerce, services firms already active in world markets or those in active prospecting mode, embassies in key foreign markets—are inadequate. This highlights the potential payoff from targeted efforts through TRTA at providing developing country suppliers with greater economic intelligence on market-access conditions and opportunities in export markets, access to distribution channels, information on product standards, B2B dialogue and networking, etc.

The ultimate strategy to be followed in services negotiations and the accompanying position papers, offers, requests and other relevant documents that implement that strategy will also have to be informed by matters unrelated to services. Trade

negotiations are typically organized as a “single undertaking,” where nothing is agreed until all is agreed. In other words, services negotiations are most often—if not always⁹—part of a bigger context which includes all sectors of a country's economy. As the Doha negotiations have made abundantly clear, negotiations on agriculture and industrial products will necessarily exert a huge impact on the nature and pace of what is being negotiated in services—what is being demanded, what is being offered, the overall approach to the negotiations and, possibly even the outstanding rules and principles that may be under negotiation. Thus, in addition to “self-contained” concerns relating to the service sector itself, a negotiating strategy for services must be informed by the limits and opportunities emerging from other elements of the Single Undertaking under negotiation. Once again, this draws attention to the need for adequate policy coordination among ministries and members of a country's trade negotiating team.

The range of pertinent concerns arising in the conduct of services negotiations is listed in Box A.7.

Implementing Negotiated Outcomes

The agreements emerging from the Uruguay Round brought a broad set of obligations for developing economies that went well beyond the traditional border measures of the old GATT, and into disciplines with a far wider development impact. This is plain to see in the services field with its coverage of sectors such as finance, telecommunications and transportation services whose economy-wide, infrastructural properties are of critical importance, as well as in sectors where a host of public policy concerns and sensitivities arise, such as health, education, environmental, or audio-visual services.

While trade-related capacity building has in recent years increasingly contributed to bringing a number of developing economies to the point at which they are ready and able to formulate and negotiate

⁹ Some countries, particularly developing countries like China and India, have shown a tendency to segment the conduct of their PTAs as between their goods and services components, typically focusing on the former first and dealing with services at a later stage.

a national trade strategy, this does not necessarily imply that they are prepared to implement the resulting trade agreements. Nor does it guarantee the availability of resources required to handle the significant recurring costs that new trade rules in highly regulated sectors typically bring. Such costs may range from strengthening regulatory agencies to the establishment of independent regulatory agencies in the telecommunications or energy fields.

The administrative and financial burden of complying with WTO obligations will tend to be particularly acute for WTO-acceding economies, especially the least developed economies, as accession is almost certain to involve far-reaching commitments to substantive legal and institutional reforms. Moreover, the cost of implementing WTO agreements or PTAs is not just associated with legal compliance. These costs also comprise the ancillary measures and costs to *effectively* obtain and support the benefits derived from implementation and liberalization. Such costs and capacity-building requirements will be diverse and varying according to the domestic circumstances, and in resource-constrained environments may at times need to be assessed against competing, and at times more compelling, domestic priorities.

Addressing Regulatory Weaknesses

If there is one area where TRTA assistance can make a decisive contribution in the services field, it is in strengthening regulatory agencies and their staff in developing countries. Regulatory institutions are costly and require staff with sophisticated legal and economic skills. As the unfolding financial crisis in developed country markets is currently recalling, sound domestic regulation is critical to realizing the full benefits of open service markets and in mitigating or responding to its potential downsides.

To engage meaningfully in services negotiations, a country needs to feel confident in its ability to manage the regulatory, sectoral, and economy-wide implications of a liberalization. In assessing its competitive strengths and weaknesses in the production and exchange of services, a country must openly confront any competitive weaknesses that directly result from its own regulatory regime. Onerous regulatory requirements may prevent a country's

enterprises in a particular sector from increasing the economic efficiency of their operations or from introducing new and more competitive services and marketing techniques.

Many service sectors are highly regulated as a consequence of a range of policy objectives. Examples are consumer protection, equitable and/or universal access to services in the health and educational fields, environmental protection, and, in the case of financial services, the protection of depositors and the maintenance of a country's financial stability. Such regulation forms an essential part both of good governance and a functioning market economy. Accordingly, both the GATS and preferential services agreements recognize the right of countries to regulate, and to introduce new regulations on the supply of services, to meet national policy objectives.

There are two main ways in which trade liberalization in services can intersect with domestic regulation. Firstly, in making regulations, governments need to take into account a wide range of factors, one of which may be the economy-wide, trade and investment impacts of such regulation. Information on the potential economic and trade/investment costs may assist governments in seeking the most efficient regulatory means of achieving desired policy objectives. There are likely to be positive effects in terms of overall democratic governance in the more efficient and transparent design, implementation, and enforcement of domestic regulations.

Secondly, the process of liberalizing services markets can require new or different types of regulatory intervention, for example to ensure that the expected benefits of liberalization are realized (e.g., that liberalization results in a genuinely competitive market) or that important policy objectives continue to be achieved within new market structures (e.g., universal service obligations).

Pro-competitive regulatory reform need not be necessarily an exercise in regulatory disarmament. It is precisely because service-sector liberalization more often than not requires significant new regulation that countries, particularly those with weak regulatory capacities, may be loath to undertake far-reaching liberalization commitments in the context of trade agreements.

Still, as the earlier discussion of the desirability of performing a trade-related regulatory audit suggested (see Box A.3), the process (and culture) of regulatory reform and review that trade negotiations may help to promote involves a number of key questions including, but not limited to:

- **the purpose or policy objective of the regulation** (e.g., consumer or environmental protection; prudential protection, ensuring competition or equitable and universal access to a service, reducing income and regional disparities).
- **the effectiveness and efficiency of the regulation** (factors to consider may include whether the regulation is reasonable, objective in its application and transparent; whether it is proportional to the objective being pursued; and whether it is linked to or rooted in international standards).
- **implementation of the regulation** (e.g., are there transparent and impartial procedures for implementing the regulation? Can natural and juridical persons affected by the regulation provide input prior to its adoption? Do natural and juridical persons negatively affected by the regulation have any recourse to appeal? Do the relevant ministries or government agencies have the requisite skills, financial resources and political legitimacy to dispense their regulatory and implementation responsibilities?)

These points are merely indicative and certainly not exhaustive. Countries may not view all the points raised as being important, or may assign different degrees of importance to different factors. Consideration and weighing of such factors, while essential for effective liberalization that serves national objectives, including development or equity objectives, can be a challenging process, in particular for developing countries with limited administrative capacity. Many countries, indeed, require significant technical assistance in terms of regulatory capacity building, as well as training and assistance regarding the post market-opening implementation of commitments.

In engaging in services negotiations, governments need to have some idea of the desirable length of transition periods towards greater market openness. Liberalization cannot indeed be achieved or decreed overnight, particularly in services markets, but is

typically best pursued in a progressive, orderly, and transparent manner. This allows, on the one hand, incumbents to prepare for greater competition and to anticipate and mitigate possible distributional downsides, and to put in place a proper regulatory framework on the other hand.

The complexity and slow pace of domestic regulatory reform efforts in many services markets implies that countries will typically prefer to adopt a sequenced approach to market opening. Proper sequencing can help to overcome the concerns of domestic service providers over greater competitive challenges. Recourse to progressive liberalization may also buy needed time, allowing regulatory authorities to acquire the expertise required to properly regulate more open domestic markets and to anticipate and manage the new market risks such openness can entail.

There is little doubt that adopting and implementing sounder regulation is key to better overall performance in services. Often, regulations trigger positive externalities in terms of facilitated trade and investment, improved investment climates, and the adoption of pro-competitive regulatory stances. This is why efforts directed at assisting developing countries to acquire and adopt best-practice regulatory regimes and to benchmark their regulatory regimes with prevailing international standards may be of considerable benefit to recipient countries in the services field.

In considering how best to serve the services-related aid-for-trade needs of developing countries, it appears desirable to distinguish countries by income level, which will typically offer a sound proxy of regulatory sophistication and absorptive capacity in services. LDCs are likely to be better served by regional and multilateral development agencies with greater in-country presence, closer ongoing monitoring and a finer appreciation of the country- or region-specific types of institutional and human resource constraints that weigh on such countries. On the other hand, countries with more advanced regulatory/ implementation capacities are likely to have a keener interest in best-practice regulation, and in learning from—and comparing notes with—other emerging countries as well as developed country counterparts in areas of mutual regulatory interest.

Greater efforts need to be directed at providing opportunities for developing country officials to train in leading programs of trade and sectoral regulation in leading institutions of higher education as well as in relevant international organizations with particular sectoral expertise.¹⁰

Other options include capacity-building activities that embed longer-term donor country expertise within regulatory agencies in recipient countries, as well as pairing local institutions with leading universities or policy research institutions. Examples for such training and regulatory strengthening are the China-EU Trade Project and the USAID-funded International Trade Assistance Project in Indonesia, depicted in Box A.8 below. Trade and investment liberalization is hardly without distributional consequences. The gains and losses arising from a change in domestic conditions of competition affect different groups in society, and a careful assessment needs to take account of the impact of liberalization on vulnerable groups (including workers in state-owned enterprises likely to face greater post-liberalization dislocation), as well as the interest of poor, small and geographically remote firms, all of which can confront more limited access to finance.

A further candidate for enhanced assistance in the implementation phase thus is the design of reforms that properly factor in the distributional impacts of liberalization on various parts of the population (rural vs. urban, formal vs. informal, men vs. women,

children), and to improve their access to essential services. Such services run the gamut from sanitation to transport, telecommunications, small-scale finance, education and health. While most of these complementary policy challenges lie outside the realm of trade negotiations, getting them right can help to build needed support for market opening efforts. However, implementing such policies in an economically sound manner can present numerous challenges to weak bureaucracies, and many developing countries will require outside support and a fair amount of time in meeting them.

Much TRTA delivery, including in services trade, takes the form of short training activities delivered in-country. Effective course design and delivery, and above all attention to context specificity, are critical ingredients of such assistance. Box A.9 below highlights a number of best practices in TRTA design and delivery drawn from Australia's recent experience in Indonesia.

Box A.10 contains a number of questions that emerge in regard to the implementation phase of the trade-negotiation cycle in services trade.

¹⁰ The latter group comprises, for instance, the ITU (telecommunications), the BIS (banking and insurance), the IOM (labor mobility), the WHO (trade and health), the ITC (private sector development, export promotion).

5

Enhancing the Capacity to Supply

The last pillar of a coherent negotiating package in services needs to target the very real constraints that many developing country exporters face in attempting to supply newly opened markets. Despite the growing number of success stories in sectors such as energy, business-process outsourcing, construction or environmental services, there remain too few documented examples of companies from developing countries involved in export trade to a significant degree.

Several reasons may be adduced to explain this fact, starting with the fact that most services firms, including in OECD countries, are very small. Small service suppliers typically have limited human resources to build referral networks, find local partners abroad, identify market opportunities, and research regulatory conditions prevailing in foreign markets. In many market segments, such as telecommunications, utilities, finance and transportation, developing country firms also need to contend with the large fixed costs of entering capital-intensive sectors, as well as with the presence of very large companies in the market. Even in sectors where developing countries are exporting, studies reveal a number of key common problems facing their exporters. These include: (i) market-development constraints flowing from low brand recognition and difficulties in establishing credibility with international suppliers;¹¹ (ii) lack of access to financing for export or business development;¹² (iii) limited prospects to serve foreign markets via an established presence (i.e., more limited returns on Mode 3 commitments by trading partners); (iv) lack of access to reliable and inexpensive infrastructure and key input services, notably finance and telecommunications/IT; and (v) lack of access to a range of formal and informal networks and institutional facilities necessary for trade.¹³

Developing economies typically need to diversify and add value to their production chains and export baskets. This requires, first and foremost, enhanced access to foreign markets and a progressive lifting of impediments to trade, investment and labor movement facing service suppliers—the essence of what trade negotiations can deliver. Yet securing durable gains in supply capacity requires efforts on several other fronts. Chief among these are: to raise quality standards; meet host-country certification requirements; and improve home-country trade infrastructure, notably through higher quality and lower cost of communications, finance, transportation and logistics services.

Governments, the private sector and development partners have to invent new ways of working together to foster competitive supply responses. This is arguably the hardest element of the services-negotiating cycle, because matters relating to private-sector development tend to involve forms of expertise and institutions that are not centrally involved in earlier moments of the negotiating life-cycle. Still, experience shows that important trade performance payoffs can result from targeting development assis-

¹¹ This means that small service providers cannot easily compete on reputational grounds, and must thus rely heavily on business prospective efforts in target markets to make themselves known. The latter trend highlights the strong interest expressed by developing countries against restrictions on the temporary entry of business visitors.

¹² For many small firms, equity finance is not a viable option. Most Service sector SMEs thus rely primarily on debt finance for purposes of running and expanding their businesses. There is much anecdotal evidence that banks are less likely to lend to service-producing firms relative to manufacturing enterprises. To some extent, this may be due to the intangible nature of service-sector output and the lesser value of physical assets that can serve as collateral.

¹³ See OECD (2003) and Chaitoo (2008).

tance towards intermediary (so-called “meso-level”) institutions and processes, such as private sector associations, SME support structures and public-private dialogue and partnering activities.

As to be noted below the aid-for-trade debate has to date largely centered on support to the public rather than the private sector. Aid-for-trade financing has also shown a distinct bias towards activities other than services.¹⁴ While one should not discount the very real difficulties that public-sector entities face in preparing for, conducting and implementing the outcome of trade negotiations, there is little denying that real commercial capacity constraints also lie in the private sector. Such constraints can all but obviate the ability of countries and firms to take advantage of newly-opened trade and investment opportunities.

The primary focus of assistance efforts on public-sector entities can be traced to the nature and mandates of regional and multilateral dispensers of TRTA, which are primarily designed to serve the interests of national governments or regional regulatory or negotiating entities. Such a bias, however, also traces its origin in a dearth of knowledge and policy instruments designed specifically to help developing country firms expand their services trade. Redressing the existing bias in services-related TRTA design and delivery is critical to lifting the constraints weighing on services exporting firms from developing countries.

While governments at all levels of development face numerous challenges in understanding how to maximize the benefits to their economies—and for their service suppliers—from engaging more fully in services trade negotiations, such challenges are clearly more acute for developing countries. There are several reasons for this. First, governments often have incomplete information about the current status of services trade activities in their own country. Most export-development initiatives have focused on goods trade, and so service exporters have become used to operating independently of government programs. Government officials therefore typically have only anecdotal data on services export activities.

This fact is reinforced by the historically incomplete services-trade statistics, in part because there is not a convenient check point (such as a border crossing)

at which trade data can be collected for the majority of services. Most WTO Members not only lack information about what services are being exported to which markets, but also lack a registry of service exporters to query.

Second, a related issue is that most governments do not collect detailed statistics on services that firms or households purchase and so do not have usefully disaggregated data on services inputs into national economic sectors. This hinders efforts at measuring the impact on the domestic economy of either liberalizing or restricting access to foreign services.

Third, in most countries, including developed economies, up to 95 percent of service firms are small or very small and so are often under-represented in statistical surveys due to the response burdens such surveys represent. In addition, very small firms typically do not have staff dedicated to government relations and so do not participate actively in government trade consultations.

Fourth, services trade agreements remain relatively new and, as yet, have tended to offer relatively few actual liberalization benefits, other than transparency, in key foreign markets. Thus, neither service exporters nor service importers have been highly motivated to participate in government consultations.

Finally, advocacy groups such as industry associations are still largely unaware of their smaller members’ service export activities and so are not always able to represent their interests. In many countries, services industry associations are relatively less developed than their counterparts in manufacturing or agriculture.

In order to negotiate effectively and to better identify the interests, competitive strengths and weaknesses of domestic suppliers, and to direct policy attention to stronger supply capacities, governments should consider a number of objectives in consultation with domestic stakeholders, as noted in Box A.11.

¹⁴ A recent inventory of completed and ongoing technical support initiatives for the CARIFORUM region conducted by the European Commission (EC) found that of about 200 TRTA projects or multi-year programs, only three specifically targeted services. See Chaitoo (2008), p. 308.

Of particular importance in the services field is the need for the private sector to acquire a voice in the trade-negotiating process and to speak to the needs of both users and providers of services. Assisting in the creation, early funding and nurturing of sustainable coalitions of service industries in developing countries represents a novel form of trade-related technical assistance in services trade, involving direct business to business dialogue supported by donor governments (see Box A.12 below).

As noted above, because of its central focus on the private sector, capacity building in respect of supply-side constraints involves a different set of institutional actors than those concerned with the strengthening of trade negotiating or regulatory capacity. Such differences matter for assistance design and inter-agency coordination efforts. It is, here again, an area where greater private-sector involvement from service-exporting firms in industrial countries could usefully complement the efforts of bilateral donors and multilateral agencies such as the ITC or the World Bank.

Service-exporting firms in industrial countries also have a stake in ensuring that developing country markets are progressively opened, that such opening is sustainable, and that it occurs in a stable regulatory environment. These objectives can be served by enhanced private-sector support for improved regulatory institutions and practices in developing countries. Means thus need to be devised for the private sector to contribute financial resources, people, and expertise towards efforts at enhanced regulatory performance and improved compliance with quality and licensing standards and their improvement as well as greater access to distribution networks.

Strong potential payoffs may also be expected to flow from targeted efforts through TRTA at providing developing country suppliers with greater economic intelligence on market access conditions and opportunities in export markets, access to distribution channels, information on product standards, business to business (B2B) dialogue and networking, etc.

The need for simplification of information on domestic regulatory procedures (including licensing and product certification) and the lack of market

intelligence rank among the biggest commercial barriers to increased service exports in developing countries. There is a need to implement mechanisms in developed and leading emerging countries that go beyond passive enquiry/contact points in helping predominantly small service-supplying firms to better contest markets in rich countries. OECD and leading emerging economies need to provide real commercial meaning to the commitments made under GATS Article IV (Increasing Participation of Developing Countries) and its PTA equivalents by offering tangible market-access support to developing country suppliers. Meeting such challenges can be facilitated through the work of dedicated agencies such as the Trade Facilitation Office of Canada (see Box A.13 below) or the Centre for the Promotion of Imports from developing countries (CBI) in The Netherlands.

There is, as well, an obvious role for coalitions of service industries in various OECD and emerging countries to play in helping set up B2B contacts, especially among SMEs. Moreover, funding assistance from government sources for private sector development purposes could prove particularly helpful.

The multiplicity of modes of supplying services and the ensuing regulatory intensity of services trade and of related factor movements raises a host of further technical assistance challenges in buttressing supply capacities. The predominance of commercial presence as a mode of supplying services suggests that assistance directed at enhancing a host country's investment climate may be particularly important in strengthening the competitiveness of the service sector and in eliciting an adequate private-sector response in the form of new FDI. Beyond supplying needed (and scarce) capital, FDI inflows in both (goods and services) can be expected to provide expanded opportunities for local suppliers of a host of services (e.g., telecoms, transport, logistics, finance, professional and business services) and potentially enhance access to the distribution channels of multinational enterprises in other markets. Particular attention should be devoted to assistance targeted at developing an FDI promotion tool kit specifically for service industries and offering best-practice advice on the design and implementation of investment incentive schemes in various service industries.

At the same time, the rising salience of cross-border trade and of possibilities for remotely supplying service markets highlights the need for greater regulatory convergence through the development and adoption of international standards and the negotiation of mutual recognition agreements as means of facilitating increased cross-border trade in services. Low standards and related inadequacies in domestic regulation can frustrate the access of developing country services and service providers

to foreign markets. Helping developing countries improve domestic standards and qualifications for services, notably by strengthening their participation in regional or global standard-setting initiatives, is another area where more focused capacity-building efforts can be expected to yield strong development dividends. Questions that arise in the provision of assistance directed at strengthening the supply-side capacity of developing country exporters of services include those noted in Box A.14.

6

The Challenge of Aid-for-Trade in Services

Market opening in the service sector needs to be accompanied by a careful combination of competition and regulation. Such a process can present substantial challenges to resource-constrained governments in many developing countries, particularly the least developed countries (LDCs and small and vulnerable economies (SVEs)). Other aspects of successful service sector reforms include progressive liberalization, which is a feature that trade agreements are generally well designed to promote, as well as trade-related capacity building, comprising investments in sounder negotiating and regulatory regimes and institutions (a goal that is today fully acknowledged in the Doha Development Agenda and other negotiation fora).

Combining aid for trade with additional trade and investment liberalization commitments could help to advance services negotiations, while also addressing the concerns voiced by many developing country governments and civil society organizations over the extent of asymmetries at the negotiating table. Because of the diversity of different service sectors, any coherence-promoting aid-for-trade package in services requires close cooperation and coordination among multilateral institutions, bilateral donors, and civil society actors (both private sector and NGO representatives).

The DDA and Ministerial declarations linked to PTAs make recurring references to trade-related technical assistance and capacity building. Absent greater efforts to give operational meaning to those terms, the risk may arise that the absence, inadequate supply or inappropriateness of such assistance may frustrate, unduly hold back, or even provide a ready-made excuse to renounce needed reforms and attendant liberalization commitments. To mitigate

such a risk, more formal linkages are necessary between enhanced engagement in services negotiations by developing countries and additional assistance on the part of developed countries and relevant multilateral agencies.

Such a link could lend greater credibility to both liberalization and technical assistance programs. Indeed, the development promise of the Doha Round and the ubiquitous calls for coherence in policy-making would be well served if future trade agreements entailed a tangible set of provisions and up-front commitments by the leading multilateral and regional lending agencies and bilateral donors to strengthen regulatory institutions. As indicated in Box A.15, such a linkage has begun to take root at the PTA level, with the recent Economic Partnership Agreement (EPA) entered into between the member states of the European Union (EU) and those of the CARIFORUM.¹⁵ The EPA offers a first attempt at crafting operational aid-for-trade provisions in services trade and embedding them in a trade agreement. Time will tell whether, how, and to what extent such a novel precedent can be replicated in other PTAs as well as at the multilateral level.

The Need for a Tailored Response

The particular nature of services trade and liberalization involves a number of special features to the aid-for-trade debate. The non-tariff nature of impediments to services trade implies that governments do not forego fiscal receipts when engaging in services liberalization. Absent tariff protection, there

¹⁵ CARIFORUM membership comprises the Member States of the Caricom, the Dominican Republic, and Haiti.

is no significant preference-erosion agenda to speak of in services trade, and hence little need for compensatory payments for countries or regions affected by MFN-based negotiations.

Moreover, the practice of market opening in services, where status quo commitments are far more likely rather than significant *de novo* market opening, suggests that far-reaching post-liberalization adjustment pressures are generally weaker (or minimal) in most negotiating settings. This implies that discussions of an aid-for-trade response in services can generally be divorced from concerns over the design and adequacy of compensatory financing for those that may be adversely affected by market opening, which is a key issue in goods negotiations. But this is not to say that market opening in services cannot produce distributional downsides. It most surely can, as with liberalization in any given sector. The main point, however, is that significant new market opening is rarely the norm at the negotiating table.¹⁶ Any opening should, moreover, be properly sequenced, including pre-commitments to future liberalization via GATS Article XVIII (Additional Commitments), in order to mitigate significant adjustment pressures and to ensure that market opening and regulatory strengthening are carried out concomitantly.

Adjustment pressures resulting from market-opening initiatives in services could further be addressed through recourse to an operational emergency-safeguard mechanism. This is an area of unfinished rule-making where progress remains desirable, but

where ongoing discussions have tended to bog down over repeated—and ultimately futile—attempts at replicating GATT practices in a services setting.¹⁷

Devising an Aid for Trade Agenda in Services

Without the need to respond to concerns over preference erosion and significant post-negotiation dislocation pressures, the question arises where additional assistance is most needed for services. As Mattoo (2006) has aptly noted, developing countries face two central challenges in undertaking service sector reforms. The first is identifying the elements of economically sound policies, and a second to assess how the policies at the domestic level can be supported by multilateral (or bilateral/regional) negotiations.

To address the deficit in negotiating, enforcement, implementation, and supply-side capacities that the majority of developing countries face in services negotiations, it is necessary to take a fresh look at the idea of embedding an aid-for-trade component in services trade agreements. Such a component should target each of the key moments of the negotiating cycle in services described earlier.

¹⁶ An exception is countries seeking accession to the WTO. For a fuller discussion of the level of GATS commitments by newly-acceding WTO Members, see Roy et al. (2007).

¹⁷ For a fuller discussion of emergency safeguard measures in services trade, see Sauvé (2002).

7

Conclusions

This paper has been designed to provide a practical guide to the planning, implementing, and evaluation of a program of services that may be particularly useful for emerging market and developing economies. It is evident that a great deal of care is needed in carrying out a program of services negotiations.

The checklists and illustrative examples that have been provided will hopefully give policy makers the background and advice that can result in an effective and successful negotiating outcome for their services sectors.

Box A.1. The Place of Services in National Development Strategies

- What is the institutional setting for dealing with services within the government?
- Is there an authority, agency, or ministry responsible for coordinating strategies focused on the service sector?
- Is the coordinating authority, agency, or ministry capable of making and executing decisions?
- Are services being dealt with adequately from a sectoral perspective? Are there sufficient and well-functioning ministries or agencies devoted to service sectors?
- Are services an integral part of the decision-making process in the establishment of national development strategies?
- Are national development strategies based on economy-wide considerations?
- Are the priorities established for the service sector (including the role assigned to trade and investment policy) based on economy-wide considerations in addition to sector-specific concerns?
- Have distinctions been made regarding horizontal *versus* sectoral priorities for services?
- Are priorities clear in terms of support, regulation, or policy-making for services and their relationship to the overall economy?
- Do specific national policy objectives for services clash with broader objectives for national development?
- How far should government intervention go in the economic realm in general and in the service sector in particular?
- Is the service sector sufficiently internationalized? How internationalized should it be according to national development objectives? What role should be assigned to trade and investment policy relative to autonomous liberalization in this regard?
- Has a cost-and-benefit analysis been undertaken with respect to the opening up of the economy in general and the service economy in particular?
- Has a cost-and-benefit analysis been undertaken with respect to the non-liberalization of the economy? How clear are the government and key stakeholders on the opportunity costs of various liberalization scenarios?

Box A.2. Policy-making Benefits from Effective Intra-governmental Coordination

Given the regulatory intensity of many service activities and the range of sectors involved, proper co-ordination across various government agencies is critical. Promoting an effective process of intra-governmental coordination is likely to generate a number of positive policy-making externalities. These include the following:

To create a whole range of government positions

Services negotiations are highly information intensive. Co-ordination is essential to develop negotiating positions based on a complete assessment of key national priorities, and to ensure that negotiators are well informed of the full range of factors influencing the domestic services market. In countries with federal systems of governance, such co-ordination can be important in ensuring that federal government negotiators are well equipped, in terms of both knowledge and mandate, to address trading partners' questions on sub-national measures.

To create an information base on measures affecting trade in services

One of the key substantive obligations flowing from most trade agreements covering services is to provide trading partners with accurate information on the domestic regulatory environment affecting trade in services. Meeting such transparency obligations can be assisted by the creation of a central inventory, or focal point (and, preferably, a database), of the various regulatory measures, and a means for keeping that inventory up to date.

To identify and analyze the effects of specific measures on the achievement of economic or social policy objectives

Governments at all levels need periodically to review the effectiveness of existing domestic policies and regulations in achieving underlying economic and social policy objectives. This may include an analysis of the trade or investment effects of regulatory measures.

There is a need to create an awareness of the impact of services trade disciplines on regulatory conduct in sectors where commitments are scheduled, including in respect of notification requirements

In developing new policy initiatives, all parts of government need to be sensitized to the need to take into account current services-trade commitments, consider incorporating international standards where applicable, and meet notification requirements and disciplines on regulatory conduct.

To avoid duplication in domestic stakeholder and intra-governmental consultations

Especially among small and very small service firms, it is important to avoid unnecessary surveying in order to retain their co-operation. If a particular government entity needs to consult with firms under its direct mandate, that consultation should be coordinated with the trade ministry to include any services-related issues instead of re-surveying the firms specifically about trade in services.

Given the multitude of sub-sectors and measures arising from services trade, it is important to find a balance between engaging intra-governmental partners on issues of mutual concerns and avoiding inundating key departments and agencies with too much information or requests for input. The establishment of good regular lines of communication between individuals can play a significant role in quickly addressing issues without creating unnecessary process.

To contribute to an ongoing assessment of the impact of services-trade liberalization

In most countries, data for impact analysis are the responsibility of the national statistical agency. However, such a task is challenging for several reasons and recourse to anecdotal information can be useful. First, services trade agreements address the issue of the *flow* of services, while data collection is typically focused on populations of *service industries*. Second, services trade agreements cover four modes of supplying services, while data collection is typically focused on cross-border trade (Modes 1 and 4), a limited portion of in-country trade such as tourism or education services (Mode 2), and very little of foreign affiliate trade (Mode 3). Third, a particular service may also be exported by goods manufacturers and firms in related service industries; simply surveying one particular service industry may therefore not always give a complete picture of export activity. Goods-trade statistics include services that are exported by manufacturers, including both services bundled with goods (e.g., maintenance or training agreements) and stand-alone services sold by manufacturers to foreigners (e.g., financial services, consulting services). "Bundled" services sold to foreigners need to be distinguished from domestic service transactions that are embedded in exported goods and so are not service exports. It is helpful to alert the various parts of government that participate in data collection to the relevant issues for assessment and the consequent data requirements.

Source: OECD (2002).

Box A.3. Performing a Trade-related Regulatory Audit in Services

The two-way interaction afforded by the request-offer process on which services negotiations typically rest can be very useful if it can underpin attempts to benchmark a country's domestic services regulation with that of its main trading partners and if it can identify means of achieving greater policy convergence and/or moves in the direction of "best" (often pro-competitive) regulatory practices. Such benchmarking, and the related need (in response to potential requests from trading partners) to identify more precisely what policies and measures can (and cannot) be addressed in the negotiations, may also allow a useful policy dialogue to take place between trade officials, sectoral regulators and officials in other government agencies and departments, as well as with key stakeholders in business and civil society. Such two-way policy interaction is also a potentially important means of answering the central question of what policy objectives developing countries ultimately wish to pursue in their GATS/PTA negotiations, both domestically and in foreign markets. Questions that may arise in such a domestic so as to inform the request-offer process comprise the following:

- What is the policy objective pursued by the relevant regulatory measure?
- Is the policy objective pursued by the specific measure still consistent with overall government policy?
- How transparent is the regulatory measure and the process to adopt it?
- Are private sector stakeholders, domestic and foreign, consulted prior to the enactment of new policy measures?
- When was the policy measure, law or regulation enacted?
- When was the measure last invoked?
- Is it periodically reviewed?
- Is the government satisfied that the policy objective is being achieved and has it developed a framework to assess the effectiveness of its regulatory regime?
- Can the policy measure be achieved through other means or in a manner that might lessen its restrictive impact on trade or investment?
- Performing an audit of a country's regulatory regime in the context of negotiations on services trade and investment liberalization may thus generate positive policy spillovers in terms of domestic regulatory conduct and design and contribute to a strengthening of consultations within and outside government in the services field. Among the reasons why governments might be interested in engaging a trade-related regulatory audit are the following:
 - Ensuring that key regulatory objectives are met in the most efficient manner (i.e., in the manner that is least wasteful of scarce public resources), including in respect of prudential, consumer protection or social policy objectives.
 - Identifying antiquated or inefficient regulations and adopting or converging towards international best practices. In the field of financial services, for instance, this may allow a benchmarking of the degree to which domestic prudential standards and regulations approximate agreed international norms such as those found at the BIS, IOSCO and the IAIS.
 - Encouraging, where feasible, the adoption of market access-friendly (pro-competitive) regulation.
 - Building trust within the government (i.e., encouraging a "whole of government" approach to domestic regulation) through closer dialogue between trade negotiators, ministries and sectoral regulators.
 - Deepening dialogue with key external stakeholders, including regional/local governments, producers and users/consumers, NGOs, and the academic community. Gaining a clearer sense of the reasons behind the possible continued need to maintain potentially trade- and investment-restrictive measures.

As regards the practical means of effecting such an audit,¹⁸ one useful starting point is to prepare a list of non-conforming measures, i.e., the equivalent of a negative list of measures, which absent their inscription in reservation lists, would be found in breach of the key liberalizing provisions found in trade agreements—national treatment, market access (quantitative restrictions), local presence requirements, and most

¹⁸ In the Canadian context, with which one of this report's co-authors was directly involved, compilation of the list of non-conforming measures maintained at the federal level was carried out over a four-month period by a small team of young officials chosen for their expertise in law under the supervision of a member of the services negotiating team who provided them with a methodology to produce comparable reservations across

(continued on next page)

Box A.3. Performing a Trade-related Regulatory Audit in Services *(continued)*

favoured nation (MFN) treatment—and to describe comprehensively: (i) the sectoral nature of the listed non-conforming measures (for definitional purposes); (ii) the level of government at which they are applied (i.e., national, sub-national or municipal); (iii) their legal anchoring (i.e., the full citation of the law or regulation in question); and (iv) the precise nature of their non-conformity.

Recourse to such an audit was pioneered in the context of preparing the negative lists of non-conforming measures defining the Parties' legally binding commitments under the North American Free Trade Agreement (NAFTA).¹⁹ There are several uses to which a trade-related regulatory audit may be put. These include:

- Providing a comprehensive overview of the trade- and investment-restrictive components of a country's regulatory regime.
- Identifying regulations in need of reform and possibly elimination (which can then yield useful negotiating currency).
- Confirming the legitimacy and continued need for trade- and/or investment-restrictive regulations.
- Being clearer on the implicit hierarchy of trade- and investment restrictive measures (e.g., understanding which type of restrictive measure is most likely to be deemed market-access unfriendly by trading partners). This may include non-discriminatory measures, particularly quantitative restrictions (i.e., market-access measures), including prudential measures.
- Identifying measures that may be scheduled in trade agreements (i.e., in making new and/or improved negotiating offers).
- Anticipating partner country negotiating requests and assessing the scope for opening up/reforming regulations or leaving them unchanged.

It bears noting that the negative list-based regulatory audit depicted above focuses policy attention on measures that are either overtly discriminatory (in the case of measures violating the national treatment and MFN provisions of trade agreements) or which overtly constrain the quantum of market competition allowed (in the case of market access or non-discriminatory quantitative restrictions).

A trade-related regulatory audit conducted along these lines may therefore not always easily provide a full reading of all non-discriminatory measures that may nonetheless be unduly burdensome or act as disguised restrictions to trade and investment and for which trade disciplines are being sought under the GATS Article VI:4 work program. Identifying such measures is inherently more difficult and requires considerably more dialogue between trade negotiators, ministries, and sectoral regulators and greater technical competence on the part of trade ministries than is often available.

Despite the above caveats, experience shows that a trade-related regulatory audit that maps the universe of explicitly restrictive governmental measures affecting trade and investment in services can still yield important gains in transparency and help anticipate negotiating red lines and implementation bottlenecks. In turn, the homework and regulatory dialogue that flow from such an exercise can help to promote a culture of pro-competitive regulatory reform in countries that attempt it. Conducting an audit is indeed a useful means of preparing for services negotiations, to master the sectoral intricacies and the technical details that are the very currency of services negotiations conducted along request-offer lines, give service providers a one-stop inventory of restrictive measures maintained at home (and in the markets of key trading partners to the extent that such efforts are reciprocated or mandated by trade agreements), and afford negotiators a complete road map of measures to target and rank order in future negotiations. None of the above is readily possible without precise information on the regulatory *status quo*.

Source: Sauv  (2008).

all service sectors. Once the inventory was completed in draft form, the Canadian trade negotiating team was able to sit down with ministries and sectoral regulatory agencies, asking the latter to verify the accuracy of the information collated in the first instance and engaging in a second phase in a policy dialogue on the rationale behind restrictive measures, the possibility (or not) to achieve such objectives through other means (including via non-discriminatory measures) and the scope for removing (or not) such non-conforming measures or progressively reducing the level of their non-conformity in the context of the NAFTA negotiations. Such a dialogue was also carried out with private sector representatives, asking similar questions on the scope for modifying or eliminating existing restrictive measures maintained at the domestic level.

¹⁹ Such a listing of non-conforming measures is typically found in preferential trade agreements (PTAs) modeled on the NAFTA that pursue a negative list approach to liberalization. A number of more recent PTAs, notably those negotiated by Japan, have sought to embed such negative lists solely for transparency purposes, with the respective Parties' legally binding commitments on services governed on the basis of the hybrid scheduling approach found in GATS (which combines the voluntary, positive, selection of sectors, sub-sectors and modes of supply in which commitments are scheduled with the negative listing of limitations to national treatment and market access maintained in scheduled sectors, sub-sectors and modes of supply). Unlike the GATS, where Parties are free to determine the level of their positive bindings, the Japanese PTAs feature an obligation whereby positively listed commitments lock in the regulatory *status quo*. As noted in Box A.1, such an approach was replicated, most recently, in the EPA entered into by the EU member states and the CARIFORUM.

Box A.4. A Trade-related Regulatory Audit: Illustrative Examples

1. *Singapore-US Free Trade Agreement: Singapore's Schedule*

Sector: Financial services

Sub-Sector: Banking services

Industry Classification: —

Type of Reservation: Market access and national treatment

Level of Government: National

Measures: Banking Act, Cap. 19; MAS Notice 619

Description: Only a maximum of 20 new Wholesale Bank licenses will be granted by the Monetary Authority of Singapore between 30 June 2001 and 30 June 2003. Quantitative limits on the number of Wholesale Bank licenses will be removed for U.S. banks 3 years after the date of entry into force of this Agreement. Wholesale banks are not permitted to: (a) accept Singapore dollar fixed deposits of less than S\$250,000; (b) offer savings accounts; (c) operate interest-bearing Singapore dollar current accounts for natural persons who are Singapore residents; (d) issue Singapore dollar bonds and negotiable certificates of deposit, unless requirements pertaining to minimum maturity period, minimum denomination or class of investors contained in the Guidelines for Operation of Wholesale Banks issued by the Monetary Authority of Singapore are complied with.

2. *Japan-Philippines Economic Partnership Agreement: Japan's schedule*

Sector: Financial services

Sub-Sector: Banking services

Industry Classification: JSIC 612 (banks, except Central Bank); 621 (financial institutions for small businesses)

Type of Reservation: Market access and National treatment

Level of Government: Central government

Measures: Deposit insurance law (Law No 34 of 1971), Article 2

Description: The deposit insurance system only covers financial institutions that have their head offices within the jurisdiction of Japan.

3. *North American Free Trade Agreement: Mexico's Reservation List (Annex I)*

Sector: Communications

Sub-Sector: Entertainment Services (Cinema)

Industry Classification: CMAP 941103-Private Exhibition of Films

Type of Reservation: National Treatment (Article 1202); Performance Requirements (Article 1106)

Level of Government: Federal

Measures: *Ley de la Industria Cinematográfica; Reglamento de la Ley de la Industria Cinematográfica*

Description: Thirty percent of the screen time of every theater, assessed on an annual basis, may be reserved for films produced by Mexican persons either within or outside the territory of Mexico.

Box A.5. Key Questions in the Preparatory Phase of Services Negotiations

- Is there a national or sectoral development strategy for services that should be informing the preparatory work for negotiations?
- Has thought been given to the place of reform in the development of the domestic service market and the relationship of that reform to international trade negotiations at hand?
- Is the coordinating authority, agency, or ministry fully in place and ready to operate?
- Have capacity-building needs been identified with respect to the overall approach to liberalization and trade agreements—i.e., the readiness to liberalize, the strategies to adopt in negotiating liberalization and the advantages from negotiating, particularly in terms of access to foreign markets?
- Are other external priorities in related international fora clear to all participants in the preparatory process—for example, positions and commitments taken in the context of bilateral agreements?;
- Is there a reasonable understanding amongst those participating and, in particular, by the coordinating entity, as to what are measures affecting trade in services as per international trade agreements?
- Do those coordinating the work need further capacity building in matters relating to international trade agreements?
- In the case of sectoral ministries and agencies, how should the capacity-building exercise be best pursued?
- Does an inventory of measures affecting trade in services already exist at the horizontal and/or sectoral level? Beyond its use in trade negotiations, is the information gathered in such inventories being used to underpin domestic dialogue with key regulatory agencies and external stakeholders and as a means to promote regulatory review and reform processes?
- Once an inventory of regulatory measures is put in place, what is the basis for determining what regulatory requirements are adequate and/or acceptable or in need of change?
- In instances where regulatory change appears necessary, can or should changes be contemplated within the timeframe of ongoing international negotiations?
- If so, could or should these changes be presented as part of the offer the country is to make in these negotiations?
- In the case of all measures, what is the criterion to be applied in choosing which measures and/or modes of supply in which sectors should be offered as bound, partially bound or unbound in the negotiations?
- Has a clear distinction been established between defensive and offensive interests in the negotiations? How does the government establish its negotiating “red lines,” i.e., points beyond which it is not prepared to engage or commit?
- Are offensive interests actually able to take advantage of the negotiations, or is there need for additional capacity-building, in particular for private-sector supply?
- Have export-market studies been conducted within government or by the private sector?
- Has all relevant information (public, private, international, etc.) regarding export interests been compiled, analyzed and circulated amongst participants in the preparatory group?
- How significant is the voice of consumer/user groups in the formulation of service sector policy? Should technical assistance be directed at nurturing such voices or sustaining their development?
- Has the coordinating entity managed to organize the necessary consulting process with all relevant stakeholders in the public and private sectors, including with trade unions and with relevant non-governmental organizations?
- Is the consultation process with stakeholders broad enough to be truly representative?
- Does the decision-making process seek to achieve a proper balance between sectoral, individual corporate, and economy-wide objectives (both offensive and defensive)?

Box A.6. The Doha Round Shift Towards Collective Requests

For lack of any credible alternative,²⁰ and drawing on mercantilistic reflexes long honed in goods (i.e., tariff) negotiations, the bilateral request-offer approach was adopted in the Uruguay Round as the dominant negotiating method for opening up services markets.

Concern over the limited progress, time-consuming nature, and information-intensive asymmetries implicit in such an approach led to a decision by Trade Ministers at the December 2005 WTO Ministerial Meeting in Hong Kong to supplement, where practicable, bilateral request-offer discussions with plurilateral negotiations whose results would then be extended to all WTO Members on an MFN basis.

Such an approach primarily involves groups of WTO members, akin to the numerous “friends” groups that already exist under GATS, to propose a set of negotiating objectives in a given sector or in a cluster of sectors.

The shift towards plurilateral (or collective) discussions at first revealed a paradoxical aversion of developing countries towards considering alternatives to the current bilateral approach, even as the latter approach is clearly much more taxing for developing countries than they are for developed countries. This is mainly due to: the considerable resources and time bilateral request-offer discussions, the limited number of services experts available for bilateral discussions in Geneva missions and in capitals; the negotiating imbalances that flow from the limited ability of most developing countries to formulate their own requests; significant asymmetries of negotiating-relevant information available to policy officials; and the more limited extent of stakeholder consultations and private sector engagement—and presence abroad—of service suppliers from developing countries. All of these factors tend not surprisingly to interact in ways that produce least common denominator, precaution-induced, outcomes at the negotiating table. Such a stalemate, in turn, complicates attempts at marshalling corporate interest in multilateral negotiations, and tends to shift incentives towards bilateral or neighborhood responses in the form of preferential trade agreements.

Collective (plurilateral) approaches are likely to economize on the scarcest of commodities—time and human resources, and afford developing countries significant economies of scale in negotiating efforts. Avoiding sector-by-sector and country-by-country bartering of commitments can indeed substantially reduce the transaction costs of negotiations. Such requests also offer a useful means for developing countries to pool their resources in pursuit of common objectives and indeed to join forces with various country groupings (developed and developing) in ways that can build useful reform coalitions in services talks.

A credible case can thus be argued to exist for complementing the current bilateral request-offer approach, which is still of relevance for countries with highly specific offensive or defensive interests, with collective approaches to negotiations.

²⁰ It bears recalling that the bulk of the Uruguay Round was spent on developing the framework of disciplines and rules for services trade. Considerably less time was spent on the market-access dimension of the talks, and no specific attention was paid to the idea of alternative methods of conducting market-access negotiations in services.

Box A.7. Concerns Arising in Services Negotiation

- Has the government identified specific rule-making issues to which it intends to attach priority importance in the conduct of services negotiations?
- How adequate are the negotiating skills of the country's trade and regulatory officials, particularly as regards the capacity to take an active part in discussions on rule-making issues in services negotiations?
- Has the government considered teaming up with other WTO Members or regional partners in formulating proposals and negotiating on selected rule-making issues?
- Has the government considered how best to cooperate with various international organizations, bilateral donors or expert NGOs in formulating negotiating proposals on selected rule-making, market-opening or development issues?
- Has the government considered the pros and cons of participating in collective requests and offers on selected rule-making, thematic or sectoral issues with a view to overcoming resource constraints and achieve scale economies in the conduct of negotiations?
- What role is the government thinking of assigning to Article XVIII (Additional Commitments) of GATS (and PTA equivalents) in sequencing liberalization undertakings (pre-committing to future opening) and/or addressing sector-specific complements of market opening (for instance, government procurement, emergency safeguards, labor mobility-related issues, etc.)?
- According to what criteria does the government choose among measures and/or modes of supply, and among sectors that are to be offered as bound, partially bound, or unbound in the negotiations?
- Has a clear distinction been established between defensive and offensive interests in the negotiations?
- Are the country's negotiating "red lines" clearly established, and does a process exist to revisit these in the light of developments within and outside the services negotiations?
- Have export interests been identified so as to contribute to the elaboration of a realistic request list?
- How does the government compile information on foreign barriers affecting the country's service suppliers?
- Has a mock request list been elaborated on the basis of existing and/or compiled information?
- How does the ministry responsible for the conduct of services negotiations seek input from key stakeholders in responding to requests for market-opening formulated by trading partners?
- Do consultations focus primarily on targeted sectors and key domestic suppliers or is an attempt made to weigh the economy-wide implications of acceding to negotiating requests?
- Does the government weigh the pros and cons of binding less than the status quo, notably in terms of the signals such a decision may send regarding the country's investment and regulatory climate?
- To what extent is the government's negotiating stance in services, notably as regards the evolution of liberalization offers, informed by—and coordinated with—the state of play of negotiations in non-service sectors?

Box A.8. Examples of Best Practice Capacity Building in Services

The China-EU Trade Project

Between March 2005 and December 2008, the European Union and China have been carrying out a range of bilateral trade in services activities involving seminars, studies and visit tours, including the hosting of a Chinese internship program in various EC institutions concerned with trade and economic/regulatory matters.

Throughout the period, the project has held the following activities:

- 14 conferences and seminars were held in China dealing with topics such as: financial services; state treasury management; environment/climate change and financial services; professional licensing in legal services; developing the ITC industry; measures to develop China's insurance and financial markets; civil aviation; competition policy challenges in service industries.
- 12 studies were carried out dealing with topics such as: domestic regulation; outsourcing of financial services; insurance market openness; insurance supervision; mergers and acquisitions' policy in banking services; urban planning of commercial centers; air transportation and the GATS; deregulation of the aviation sector; the effects of liberalization in retail distribution services; and the travel industry; as well as:
- 7 visit tours of Chinese delegations to the EU dealing with: the regulation of foreign legal consultants; bankruptcy regulations for financial institutions; payment and settlement systems; the regulation of legal services and services statistics.

Several best practice lessons emerge from the design of the EU-China Trade Project in the services field. For starters, the Project is focusing needed policy research attention on the second generation type of implementation challenges arising following WTO accession. For the most part, this entails working in close proximity with key regulatory agencies, ministries and the Trade Ministry (MOFCOM) in ensuring that Chinese implementing legislation is fully consistent with WTO law and the country's accession commitments.

The presence of a large team of experts (approximately fifteen professionals), both Chinese and European, in Beijing greatly facilitates such a task and creates indigenous capacity in project management and sectoral knowledge while also favoring greater responsiveness to client needs. The Project has notably hired the former Deputy Head of China's mission to the WTO during the closing phase of the accession negotiations. A person of such rank has proven of considerable use in working closely and in confidence with the Chinese bureaucracy. The project team works closely with the EC representation in Beijing and typically involves Commission staff, both that working in Beijing and traveling from Brussels, to its seminars, conferences and other dialogue activities in China. Such interaction has also facilitated the exchange of policy messages between the two partners.

In funding a number of technical studies on a full range of regulatory and sectoral issues, the Project has also sought to associate foreign and local experts drawn from leading Chinese universities and research institutions. A similar pairing has been used in organizing various seminars at which the main findings of commissioned research are presented and discussed among experts drawn from larger circles in China and abroad.

A final best practice component of the China-EU Trade Project is its emphasis on training. Each year for the past three years, the Project has fully funded the participation of two or three MOFCOM staff to follow the year-long MILE (Masters of International Law and Economics) program at the World Trade Institute (WTI) in Berne, Switzerland, one of the world's leading centers of policy research and advanced training in trade regulation. Moreover, mindful to secure regulatory compliance by Chinese sub-national (provincial) governments, the China-EU Project has also been funding the participation of local officials in the five week Summer Academy held each year at the WTI. In 2007–2008, more than 30 officials from provincial governments benefited from advanced training at the Academy.

The Indonesia Trade Assistance Project (ITAP)

The \$13.5 million, four year, Indonesia Trade Assistance Project (ITAP) was funded and implemented by USAID during 2004–08. Its delivery was outsourced to Chemonics, a leading US development consultancy with wide experience in TRTA/CB.

ITAP focused training efforts on the following key areas: legal support, economic research, public outreach, organizational development, and information technology. Delivered by a team of US and local experts working inside the Indonesian Ministry of Trade, the ITAP project aimed to improve the Ministry of Trade's capacity to analyze and implement trade reforms leading to increased exports, a more attractive investment climate, and increased employment opportunities for Indonesians.

(continued on next page)

Box A.8. Examples of Best Practice Capacity Building in Services *(continued)*

The ITAP has fully funded and overseen the development of a one year Masters' program in Trade Policy and Negotiations dispensed by the country's leading university (The University of Indonesia) and directed in part towards staff of the Trade Ministry. A full term (15 week) course on trade in services has been developed to this end.

A measure of how a locally-anchored CB project of this type may be effective can be derived from the range of activities that ITAP supported. These included, among others: (i) Capacity strengthening of Trade Ministry (MoT) staff; (ii) Workshop Series on Economic Research and Trade Policy Analysis; (iii) Trade Research Lecture Series; (iv) Mentoring on Economic Research and Trade Policy Analysis; (v) Briefing Sessions for MoT staff by ITAP trade economists; (vi) Strengthening the links between MoT and Indonesia's leading universities and research institutions working on trade issues; (vii) Funding, development and delivery by ITAP staff and local academics of a one year Masters of Economics in International Trade Policy (MITP) in association with the law and economics faculties at the University of Indonesia; (viii) Specialized training for MoT lawyers and legal staff in relevant ministries and regulatory agencies; (ix) launch in 2009 of a new Masters Program on International Trade Law at the University of Indonesia; (x) Outreach activities with law schools in the Greater Jakarta area; (xi) Publication of a textbook on WTO law in Bahasa Indonesian; (xii) Upgrading the IT facilities and IT staff of the MoT; (xiii) Promotion of public-private dialogue on WTO and Indonesia's regional trade policy.

Source: China-EU Trade Project (2008), and USAID (2008).

Box A.9. Best Practices in Trade-Related Training: Course Design and Delivery

A number of best practices can be employed in delivering technical training to government officials in the typical short-term course formats within which the bulk of TRTA in services is delivered. The purpose of such training is to ensure that the skills and capabilities of staff in trade ministries, line ministries or regulatory agencies concerned with trade negotiations and implementation matters are durably upgraded to a higher level. The two main areas for providing effective training relate to course design and to course delivery.

The main component of effective design are courses that:

- are tied to the Ministry's strategic vision, mission statements and main functions;
- are conducted in a location free of distractions from the office; training of less than a week can take place in the capital, but all training should be outside the office; longer-term training should be located far enough to prevent staff from being called back to the office;
- provide participants with training materials that are specifically tailored to the country's *problématique* and the Ministry's needs;
- are coordinated with other training providers to the Ministry, so as to avoid overlaps or substantive inconsistencies; and
- target the most suitable participants, i.e., those for whom the training is directly relevant.

While most training tends to target junior and new professional staff, the training needs of more senior managers often requires attention due to the higher expertise of the latter, the greater time pressure they face (especially where trade expertise is scarce and concentrated in a few senior hands) and the concomitant reluctance of the latter to engage in training activities. Training for senior staff should always be short, involve fewer people and allow close interaction with invited experts.

The main components of effective delivery are training courses that:

- require participants to produce outputs (a paper or briefing note for the Minister) relevant to supporting the Ministry achieve its Mission Statement and Strategic Vision;
- provide an interactive format (with case studies, practical exercises and group work) to ensure a better chance of transferring knowledge; requiring participants to take an active part in the training is the best way to ensure a transfer of knowledge;
- are delivered as a series of training courses to incrementally build up the skills and capabilities of participants; this allows participants to apply their newly-acquired knowledge in the office after each training segment;
- are pitched at the right level for the participants; and
- are delivered if possible in the local language (or at least all training material should be translated into the local language if the training itself is delivered in a foreign language by international experts).

Source: Indonesian Ministry of Trade Training Needs Assessment: Supporting the Ministry's Strategic Vision with Training (2007).

Box A.10. The Implementation Phase of the Services Trade-Negotiation Cycle

- Are proposed new and/or improved commitments informed by an assessment of the possible implementation costs (including recurring costs) relating to regulatory enforcement activities?
- Has a proper assessment been made of the capacity-strengthening needs of key regulatory agencies prior to scheduling new and/or improved commitments?
- Has the government given thought to formulating requests of needed capacity-strengthening as a pre-condition or *quid pro quo* for new and/or improved commitments?
- What considerations weigh on the government's decision to pursue liberalization in a progressive manner and sequence such liberalization with strengthened regulatory and implementation capacities?
- Is the government considering making use of Article XVIII (Additional Commitments) of the GATS (and its PTA equivalents) for purposes of adopting a sequenced approach linking market opening with a strengthening of regulatory and implementation capacities?
- Has an attempt been made to benchmark the country's regulatory practices and institutions against those of key trading partners or of countries at similar levels of development and regulatory sophistication?
- To what extent can regulatory harmonization or the pursuit of mutual recognition initiatives help countries address weakness in domestic regulatory practices, help overcome the potentially trade-inhibiting effects of regulatory diversity and move domestic regulatory regimes in the direction of "best" regional or global practices?
- To what extent is the government's liberalization strategy and its approach to sequencing informed by an ex ante assessment of the possible social, environmental and/or developmental impacts of market opening?
- Is the government confident in its analytical capacity to conduct the various impact assessments linked to service sector liberalization or does it require dedicated technical assistance to this end?

Have attempts been made to learn from the post-liberalization implementation experience of neighboring countries or countries at similar levels of development through targeted training?

Box A.11. Strengths and Weakness of Domestic Suppliers

Learn who is exporting which services to what markets and through which mode of supply

A major purpose of negotiations is to strengthen the competitive positioning of a country's services exporters. If a government is unaware of its economy's competitive strengths, it could inadvertently ignore or undermine them at the negotiating table. Developing economies in particular often assume that little export activity is occurring in services markets. Yet, research by the International Trade Centre (UNCTAD/WTO) has indicated that many developing countries' firms export more than 40 different types of services to a range of export markets. Developing countries may thus have greater export interests and potential in trade in services than is often recognized to date by governments conducting the negotiations.

Learn what will make a competitive difference for service firms

To develop negotiating positions, governments need to know what non-tariff or regulatory obstacles their service exporters are encountering (by mode of supply), both in their sector and in related sectors. They also need to determine priority export markets for the "request" process. This latter issue is challenging as the global competitive environment for services is rapidly changing, and service exporters typically operate in a wider range of markets than do goods exporters. Since it is easiest to enter a new service market if the firm has an advocate who knows the quality of the service being provided, important export markets include those from which foreign investors have come, those with significant expatriate populations, those that are common travel destinations, and those with whom there are economic integration agreements.

Determine the role played by service imports and how to ensure economic benefits from more liberal market access

The competitiveness of all domestic enterprises, as well as the quality of life for citizens, depends on the type and quality of service inputs available to them. Having the option to import can provide a competitive incentive to improve quality and availability. In addition, foreign firms that choose to establish local offices may create jobs and generate other positive spillovers, most notably in terms of improved product standards, better access to distributional channels, etc.

Build domestic support for liberalization of services trade, by identifying and partnering with national "champions" that have become successful exporters

Perhaps because services agreements are complex initiatives that deal with many issues that affect people's quality of life, they often become international focal points for broader concerns about globalization. Several civil society voices have expressed recurring concerns that services trade rules may infringe on domestic regulatory sovereignty, disrupt basic services (such as education, health, utilities), favor foreign over domestic interests, and limit environmental obligations. Such criticisms often overlook both the degree of choice involved in making sectoral commitments under trade agreements like the GATS and the actual role of service firms in creating the vast majority of new jobs. It is important to foster an informed public debate about services liberalization, including by creating opportunities for a dialogue between service exporters (especially small and very small firms) and representatives of relevant public interest groups. Identifying and partnering with firms, including small firms, that have become successful exporters of services, can be helpful in addressing the legitimate public policy concerns that negotiations in areas characterized by high regulatory intensity and particular policy sensitivities can generate.

Source: OECD (2002).

Box A.12. Organizing Services Coalitions in Developing Countries

The integration of services in the multilateral trading system during the Uruguay Round and the subsequent liberalization processes which have followed at the bilateral, regional and multilateral levels, have alerted major private sector stakeholders, particularly in developed countries, to the necessity of monitoring these processes and influencing rules and negotiated outcomes to their advantage.

A need has arisen in a number of countries to establish organized services-related private sector advocacy groups that would be mandated by industry associations and enterprises to lobby relevant government and non-government constituencies and voice corporate interests and concerns on services trade matters.

In this context, the private sector in some developed countries took the lead in creating coalitions of service industries, which were designed to serve as umbrella organizations, or informal networks, that share a common interest over the development of service industries, and to strategically represent the voice of the industry and bring together service firms and business associations to discuss and strategize on policy issues of interest.

Although some of the coalitions established in developed countries were born prior to or during the course of the Uruguay Round, the majority of the existing coalitions were created after the conclusion of the Round. Most of these coalitions operate through small and flexible secretariats. They tend to represent the interests of larger services enterprises, whose views and interests may not always concur with those of small and medium sized enterprises. However, the latter's interests can readily be taken into consideration throughout their affiliation with sectoral services associations which are members of larger coalitions. The majority of the coalitions are purely driven by private sector companies with no institutional role played by their respective governments. This enables the coalitions to freely discuss and coordinate their positions, independently formulate policies and undertake activities in a manner that reflects their sole interests.

Existing coalitions are more visible in high income countries. This can be attributed to a host of factors, including the lack of awareness in many developing countries of the important role of services in their respective economies; the prevalence of forces that are not supportive of public-private collaboration and that are unwilling to endorse the concept of institutionalizing private sector policy lobbying mechanisms; as well as a lack of adequate funding.

Very few existing coalitions are solely dedicated to advancing their members' interests in regional and multilateral trade negotiations. In almost all cases, mandates encompass objectives of a more domestic nature such as: establishing internal databases on possible export opportunities in foreign markets; improvement of statistical measurement of service sector data, and encouraging governments to implement domestic economic, fiscal and monetary policies most conducive to a service-friendly environment; and assisting in enhancing public and private awareness on the strategic economic and social role of service sectors.

Policy Lobbying by Service Coalitions: Impact on Trade Policy Formulation

Service sector coalitions from developed countries tend to have significantly wider mandates and, consequently, a more extensive sphere of interest and constituencies than their developing country counterparts. While the latter's sphere of lobbying has been limited to their own governmental constituencies, the concerns of the former typically encompass legislative constituencies, government constituencies in foreign markets and other stakeholders. Also, some member companies in developed country coalitions enjoy considerable political weight in their own right, owing to their size and global presence.

Due to their higher level of financial and human resource capacity and sophistication, developed country coalitions are generally more active and aggressive in lobbying their own national constituencies, sustained in many instances by institutionalized two-way consultation processes. Some developed country coalitions have come to realize that, in order to effectively attain their export interests in foreign markets, it is important for their own governments to adequately address the export interests of their trading partners.

This is most apparent in the case of the US Coalition of Service Industries (CSI), which has for years exerted determined efforts to lobby USTR and the Congress towards easing trade restrictions in areas of export interests to their trading partners in services and non-services related areas in the context of the WTO negotiations. In return, US trading partners may become more encouraged or engaged to open their own services markets in sectors of export interest to CSI members.

Service industry coalitions are not the sole private sector player in voicing the interests of the industry in multilateral and preferential trade negotiations. Other national, regional and international lobbies play an important role although their inputs generally tackle services in a more comprehensive manner encompassing other tracks of trade negotiations such as agricultural and non-agricultural goods. Among the most active of such lobbies, at the international level, is the International Chamber of Commerce (ICC).

Box A.12. Organizing Services Coalitions in Developing Countries *(continued)*

It remains highly difficult to empirically document the influence that service industry coalitions exert on services trade liberalization. There is however significant anecdotal evidence suggesting that such coalitions are among the most effective forces influencing government positions vis-à-vis services trade negotiations. The results of the lobbying activities of the coalitions may be more significant in bilateral and regional trade negotiations in which, unlike the multilateral trade process, member states may have greater leverage, address policy concerns over shorter time frames and pursue what are often more narrowly-defined trade, investment and regulatory objectives with partner countries.

Future Challenges and Opportunities

Service sector coalitions face several key challenges, among which: (i) the heterogeneous nature of the service sector and, occasionally, conflicting inter-sectoral interests that derive from such diversity, which heightens the challenge to coordinate among the various sectoral positions within such coalitions; (ii) the ongoing backlash against globalization, which often targets the alleged dangers of service sector liberalization for domestic policy space, social security, employment or access to public services; (iii) the occasional adverse implications of the lobbying role played by influential non-service private sector players, which have succeeded, in some instances, in focusing their respective governments' attention on other economic sectors, notably agriculture, regardless of these sectors' importance (relative to services) in their economies; and (iv) the ongoing burden on the coalitions to adequately explain and draw attention to the importance of the services sector in formulating trade policies. The latter challenge tends to be compounded by budgetary constraints. However, despite the above challenges and the fact that there are yet few developing country coalitions established to represent the voice of the services industry in relevant fora, one may expect that the number and organizational quality of services industry coalitions will keep increasing, due to the following factors:

(i) the rapidly growing importance of services in the economies of developed and developing countries, and the increasing appreciation, therefore, of the vital role of service businesses in shaping economic policy making and international trade trends; (ii) the mounting appetite of national and multinational service industries to organize themselves in order to enhance their ability in exploring new export markets and develop strong lobbies able to influence national, regional and multilateral trade policies; (iii) the integration of more services-related trade and investment rules and liberalization commitments in bilateral, regional and multilateral trade agreements, and (iv) The increasing role played by existing coalitions, mainly from developed countries, in assisting in the establishment of similar coalitions in the developing world, through sharing their experience on organizational and policy lobbying aspects.

In the latter regard, international organizations can play a vital capacity building role. This is notably the case of the ITC which, through its "World Trade Net" initiative, is providing support to services industry communities in developing countries to become institutionally organized, in order to effectively express their interests and objectives.

Source: Ragui El-Etreby(2008).

Box A.13. Providing Market Intelligence to Developing Country Suppliers: The Trade Facilitation Office of Canada

Established by the Canadian International Development Agency in 1980, the Trade Facilitation Office of Canada (TFO)²¹ is a not for profit corporation whose mandate is to assist exporters from developing countries and transition economies in securing greater access to the Canadian market by offering them practical exporting advice, market information and exposure in the Canadian marketplace through various promotional activities.

The TFO's main services comprise: (i) *Canadian Market Information Services*, a web-based source of information on export requirements and market intelligence targeted at developing country SMEs. On a fee paying basis, the TFO also provides exporters with customized market development consulting services, information seminars, trade missions, etc. The TFO also publishes an electronic newsletter containing sourcing information for would-be exporters to Canada; (ii) *Trade-Readiness Capacity Building Services*, which focuses on training and the implementation of trade development projects with local partners in order to develop the know-how of developing country exporters and strengthen trade support and investment attraction institutions in developing countries.

While the TFO's experience in the services field remains limited, it has most recently begun to devote closer attention to the sector with a view to developing a range of service offerings tailored to the sector and aimed at helping developing country exporters, particularly SMEs, better understand the fragmented nature of the Canadian market for services, gain a greater foothold in it as well as reach out to Canadian consumers (through Mode 2 trade (e.g., consumption abroad) in areas such as health-related tourism and wellness. The TFO has also recently completed its first *Market Report on the Canadian Service Sector*, focusing particular attention to the tourism sector and to a number of business services. The Report is intended to provide developing country suppliers with background information on the services sector in Canada in order to facilitate efforts in: (i) developing a strategy for entering the Canadian market; (ii) understanding the complex nature of the services industry in Canada; (iii) recognizing the real costs involved with entering this market; and (iv) finding additional information from other sources before entering the market.

The TFO occupies a unique and potentially very helpful niche in private sector development. Canadian negotiators have recently begun to make its services known to its trading partners, particularly PTA partners, with a view to signaling the early attention that Canada wishes to pay to services issues and sectors of priority interest to its developing country trade partners.

²¹ For fuller information on the activities of the TFO, see www.tfocanada.ca

Box A.14. Strengthening the Supply-Side Capacity of Developing Country Exporters

- What forms of advisory services and training opportunities have been developed to assist in strengthening trade and investment promotion organizations and private companies in developing countries?
- How can detailed information best be supplied on the regulatory regimes prevailing in the specific service sectors of developed and emerging country markets of interest to developing country exporters of services?
- Have online databases and electronic meeting places been developed to facilitate interaction between service suppliers in developing countries and companies in developed markets that may be seeking to outsource work or find partners?
- What are the most efficient ways of making market intelligence on developed and emerging country service markets and export opportunities available to services exporters in developing countries?
- What steps have been taken to promote b2b dialogue and enhance access to distribution channels in the services markets of developed and emerging economies?
- What forms of assistance, including by private companies, is best able to help developing country firms enhance quality standards and more easily meet host country certification and licensing requirements?
- What forms of assistance are available or should be developed to help developing country firms or industry associations take part in the activities of standards-making bodies in service industries?
- What training and technical assistance is needed to help industry providers, industry associations or licensing bodies in developing countries participate in part in and benefit from mutual recognition agreements designed to facilitate trade and overcome the potentially trade-impairing aspects of regulatory diversity?
- What forms of assistance are best able to nurture the emergence and sustain the existence of coalitions of services industries in developing countries?
- What funding opportunities exist to help small service exporting firms from developing economies take part in trade missions to developed and emerging country markets as well as buying missions for services importers from developed countries?
- How can leading developed and emerging country suppliers of services be made to share their expertise on service sector R&D, access to finance, quality control, recognition, etc.?
- What steps are needed to strengthen the ability of service sector SMEs to fund their growth and development, including in export markets?
- What special mechanisms or funds could be created to provide funding at affordable interest rates to services SMEs?
- How can financial institutions in developing countries be encouraged to overcome their aversion to lend to service sector firms with limited physical capital and significant intangible assets?

Box A.15. Addressing aid for trade in services: the EU-CARIFORUM Economic Partnership Agreement (EPA)

The co-operation elements of the EPA mark the attempt by EU Member states to infuse the Agreement with a concrete development dimension. In so doing, the EPA charts new territory at a time when the multilateral community is struggling to give operational meaning to the concept of Aid for Trade. Part I of the EPA, which focuses on a Trade Partnership for Sustainable Development, provides the umbrella provisions on development. However, more issue- and sector-specific development cooperation provisions can be found in all of the EPA's various Titles.

Part I of the EPA states that development co-operation can take financial and non-financial forms. Further, Article 7(3) clarifies the relationship between the EPA and the Cotonou Agreement by providing that EC financing is to be carried out according to the framework of rules and relevant procedures provided for in the Cotonou Agreement, in particular the programming procedures of the European Development Fund (EDF) and within the framework of relevant instruments by the General Budget of the European Union.

The EPA text does not feature explicit language on the level of development financing made available overall or for the specific issues and sectors subject to the Agreement's coverage. This has sparked much criticism throughout the CARIFORUM region over the allegedly unbalanced nature of the Agreement insofar as its development provisions remain somewhat abstract and not legally enforceable, while its liberalization commitments are up-front, legally binding and enforceable. Responding to such critiques, the Caribbean Regional Negotiating Machinery (CRNM) has cautioned that any perceptions about the EPA's practical deficiencies with respect to the treatment of development and development cooperation and assistance should first be tempered by the recognition that, as a trade agreement, the EPA should not be perceived to be the primary vehicle through which development may be achieved. Rather, it should be considered as one strategic instrument in a range of economic development strategies.

According to the Joint Declaration on Development Co-operation appended to the EPA, a package of €165 million has been set aside for the next six years to fund trade-related technical assistance (TRTA) and capacity building (CB) activities identified and rank-ordered in the Caribbean's regional indicative plan (RIP). This regional package includes an incentive tranche of €32 million for adhering to principles of good governance, democracy and the rule of law. Of the €165 million being made available, CARIFORUM states have indicated that the region intended to devote thirty percent of the RIP and the full amount of the incentive tranche to issues of EPA implementation. In addition to funding for the regional indicative plan, each CARIFORUM state will receive funds for its national indicative plan (NIP) but must identify two priority projects for such additional funding. The Dominican Republic and Jamaica have already announced that they will be using the financing under their respective NIPs for purposes of EPA implementation.

The development priorities identified in Part I of the EPA include the provision of: (i) technical assistance to build, human, legal and institutional capacity in the CARIFORUM states in order to facilitate compliance with the commitments of the EPA; (ii) assistance for capacity building and institution building for fiscal reform; (iii) the provision of support measures aimed at promoting private sector and enterprise development; (iv) the diversification of CARIFORUM exports of goods and services through investment and the development of new sectors; (v) enhancing the technological and research capabilities of the CARIFORUM states so as to facilitate the adoption of and compliance with internationally recognized SPS measures, technical standards and labor and environmental standards; (vi) the development of CARIFORUM innovation systems; and (vii) the development of infrastructure in support of trade.

In the context of the EPA's Investment, Services and E-Commerce Title, the generic cooperation provisions are complemented by a few sector specific cooperation provisions, the most developed being those agreed for the tourism sector. The cooperation activities foreseen under the title are premised on the belief that trade-related technical assistance and capacity building are important elements in complementing the liberalization of services and investment, supporting the CARIFORUM states' effort to strengthen their capacity in the supply of services and facilitating the implementation of scheduled commitments.

Subject to the provisions of Article 7, which speaks directly to the question of development financing, the specific cooperation envisaged includes providing support for technical assistance, training and capacity building in a number of areas. These include: (i) improving the ability of CARIFORUM service suppliers to gather information on and meet regulations and standards of the EC Parties; (ii) improving the export capacity of local service suppliers; (iii) facilitating interaction and dialogue between service suppliers of both Parties; (iv) addressing quality and standards in needs in those areas where the CARIFORUM states have undertaken commitments; (v) developing and implementing regulatory regimes for specific services at the CARIFORUM level and in the signatory CARIFORUM states; (vi) establishing mechanisms for promoting investment and joint ventures between service suppliers of the Parties; and (vii) enhancing the capacities of investment promotion agencies in CARIFORUM states.

Box A.15. Addressing aid for trade in services: the EU-CARIFORUM Economic Partnership Agreement (EPA) *(continued)*

An additional feature of the EPA's development dimension is the establishment of a regional development fund (RDF). According to EPA Article 8(3), the RDF will be used to mobilize and channel EPA-related development resources from the European Development Fund and other potential donors. The Parties have agreed that the CARIFORUM states are to endeavor to establish the fund within two years of the date of signature of the Agreement. One of the aims of the RDF is to increase the speed at which funds are disbursed to the CARIFORUM countries.

Source: P. Sauvé and N. Ward (2008).

Table A.1. Sample List of Exporters and Other Domestic Stakeholders in Selected Service Sectors

| GATS Sector | Exporters | Other Stakeholders |
|---|---|--|
| Business services | Small & large national firms who sell by each mode TNC subsidiaries (Mode 3) Government agencies Non-profit organizations | Professional services associations Professional licensing registrars Service Industry associations Real Estate Board Convention Board National Research Council Unions |
| Communication services | As above | Service industry associations Telecommunications regulator National Film Board National News Service Unions Producers in other sectors which consume these services |
| Construction & related engineering services | As above | Construction Association Engineering Association Architectural Association Housing Authority Environmental Impact Safety Standards Unions Producers in other sectors which consume these services |
| Distribution services | As above | Retailers Association Wholesalers Association Importers Association Franchise Association Duty-Free Shops Unions |
| Education and training services | As above | Teachers Unions Association of Private Educational Institutions Association of Community Colleges Career Guidance Association Student Associations |
| Environmental services | As above | Environmental services association Trade unions Environmental NGOs Producers in other sectors which consume these services Consumer groups |

Table A.1. Sample List of Exporters and Other Domestic Stakeholders in Selected Service Sectors *(continued)*

| GATS Sector | Exporters | Other Stakeholders |
|---|---|---|
| Financial services | As above | Bankers Association Brokers Association Insurance Association Central Bank/Finance Ministry Security Exchange/Stock Market Securities Regulator Unions Producers in other sectors which consume these services |
| Health-related & social services | As above | Hospital Association Outpatient Clinics Association Health advocates Social welfare advocates Unions |
| Recreational, cultural, entertainment & sporting services | As above | Major sports team managers National museum National library and archives National performing arts groups Coalitions of domestic film-makers Council for the Arts Unions |
| Tourism and travel-related services | As above | Travel agencies' association Tour guides association Hotel association Restaurant association Parks Authority Environmental Impact Agency Unions |
| Transport services | As above | Airport Authority Air Traffic Controllers Association Port Authority Vehicle licensing authority Unions Producers in other sectors which consume these services |
| Other (energy services) | Utility companies Energy trading companies | Utility regulators Industry associations (including from other sectors which consume these services) User/consumer advocates Environmental NGOs Unions |

Source: OECD (2002).

Table A.2. Factors to Consider in Formulating a Request or Offer

| Group | Possible benefits | Concerns to be addressed, including by regulatory reform |
|--------------------------------|---|--|
| Country/ economy in general | <ul style="list-style-type: none"> • More efficient use of resources • Attract more foreign investment • Expanded job opportunities; reduced “brain drain” • Enhanced labor force skills • Increased foreign exchange earnings • Increased tax revenues • Economic diversification • Increased services efficiency • Increased technology transfer • Increased economic growth throughout the economy | <ul style="list-style-type: none"> • Determine the impact on domestic economic performance and regulatory conduct of various levels of policy binding (e.g., below the status quo, status quo, pre-commitment to future liberalization) • Ensure good quality services • Ensure adequate infrastructure for business activities • Assess impact of market opening on scope for achieving universal service supply/access objectives, particularly for the poor and/or geographically disadvantaged • Need to improve environmental stewardship and address possible adverse environmental impacts arising from liberalization • Ensure ability to regulate according to best international practices where feasible and enforce regulatory regimes adequately • Restrict the scope for illegal activities • Maintain a stable political and economic environment • Adequate means of disciplining the potential anti-competitive conduct of dominant firms (domestic and foreign) • Can competition policy play a larger role in disciplining market conduct post-liberalization? • Ensure adequate tax revenues for the government |
| Consumers | <ul style="list-style-type: none"> • Lower prices for services (leading to a better standard of living; greater purchasing power) • Better quality of service (including convenience, responsiveness, timeliness) • Greater choice; new services offerings | <ul style="list-style-type: none"> • Ensure adequate resources to address labor force retraining needs, particularly vis-à-vis employees in state-owned enterprises • Assess impact of market opening on scope for achieving universal service supply/access objectives, particularly for the poor and/or geographically disadvantaged • Ensure adequacy, reliability and quality of public services • Safeguard consumer rights, and provide redress for complaints • Ensure sensitivity to local needs |

Table A.2. Factors to Consider in Formulating a Request or Offer *(continued)*

| Group | Possible benefits | Concerns to be addressed, including by regulatory reform |
|-------------------|--|--|
| Business services | <ul style="list-style-type: none"> • Lower costs of doing business; increased profitability • Ready availability of capital; reduced cost of funds • Greater ability to own & dispose of assets • Fewer foreign exchange limits; ability to repatriate profits • Infusion of new technologies and innovation • Greater adherence to international standards • Enhanced scope for mergers and strategic alliances • Remove red tape; increase transparency regarding domestic regulatory requirements • Access to skilled labor and expertise (locally & from abroad) • Access to larger markets • Access to cheaper service inputs, increasing efficiency and competitiveness | <ul style="list-style-type: none"> • Allow local firms to recoup initial investments • Encourage reinvestment in improved services • Ensure the growth of local enterprises • Ensure acceptance of locally-produced services • Encourage adoption of/compliance with international standards • Ensure availability of appropriately-skilled workers • Ensure disclosure of financial information by foreign firms • Ensure financing at competitive rates • Ensure effective professional (service industry) associations |

Source: OECD (2002).

References

- Chaitoo, Ramesh (2008). "Aid for Trade for Services in Small Economies: Some Considerations from the Caribbean," in Dominique Njinkeu and Hugo Cameron (eds.), *Aid for Trade and Development*. New York: Cambridge University Press, pp. 300–313.
- El-Etreby, Ragui (2008). Globalization of Services Trade and the Establishment of Industry Coalitions, *ITC World Trade Net Business Briefing*, (14 April).
- Feketekuty, Geza (2008). "A Guide to Services Negotiations, Appendix A," in Aaditya Mattoo, Robert M. Stern, and Gianni Zanini (eds.), *A Handbook of International Trade in Services*. New York: Oxford University Press, pp. 542–592.
- Hoekman, B. (2006). "Liberalizing Trade in Services: a Survey," *Policy Research Working Paper 4030*, Washington, DC: The World Bank.
- Hoekman, B., and A. Mattoo (2008). "Services Trade and Growth," Policy Research Working Paper 4461. Washington, DC: The World Bank.
- Indonesia Trade Assistance Project—Annual Report 2007* (2007). Washington, DC: United States Agency for International Development, (25 January).
- Indonesian Ministry of Trade Training Needs Assessment: Supporting the Ministry's Strategic Vision with Training* (2007). Report prepared by the Technical Assistance Management Facility for Economic Governance (TAMF/AusAID), Jakarta, February.
- ITC (1999). *Business Guide to the General Agreement on Trade in Services*, available online at www.intracen.org.
- Mattoo, A. (2006). "Services in a Development Round: Proposals for Overcoming Inertia," in R. Newfarmer (ed.), *Trade, Doha and Development: a Window into the Issues*. Washington, DC: The World Bank, pp. 161–74. Available at: http://www0.gsb.columbia.edu/ipd/pub/Aaditya_Mattoo.pdf.
- OECD (2002). *Managing the Request-Offer Negotiations under the GATS*, TD/TC/WP/2002(13)/FINAL, Paris: OECD, (21 June).
- OECD (2003). *Opening Up Trade in Services: Opportunities and Gains for Developing Countries*, Policy Brief, Paris: Organization for Economic Co-operation and Development, (August).
- Roy, M. et al. (2007). "Services Liberalization in the New Generation of Preferential Trade Agreements (PTAs): How Much Further than the GATS?," *World Trade Review* 6, 155–92.
- Sauvé, P. (2002). "Completing the GATS Framework: Safeguards, Subsidies, and Government Procurement," in B. Hoekman et al. (eds.), *Development, Trade and the WTO: A Handbook*. Washington DC: The World Bank, Chapter 32, Part IV.
- Sauvé, P. (2008). "Conducting a Trade-Related Regulatory Audit in Financial Services," Mimeo. Washington, DC: The World Bank.
- Sauvé, P., and N. Ward (2008). *The EU-CARIFORUM Economic Partnership Agreement: Assessing the Progress on Services and Investment*, NCCR Working Paper No. 2008/10. Bern: World Trade Institute, (May).

Vonkhorporn, P. (2008). "Preparing for FTA Negotiations: Thailand's Experience," Presentation to the ADB=ITD course on Trade and Investment in

Services, Bangkok: International Institute for Trade and Development, (13 February).



THE WORLD BANK

1818 H Street, N.W.
Washington, DC 20433