



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

**ASSESSMENT OF TRADE IN SERVICES IN THE
CONTEXT OF THE CURRENT GATS
NEGOTIATIONS IN THE WTO**

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TABLE OF CONTENT

I.	INTRODUCTION.....	3
II.	IMPORTANCE OF ASSESSMENT FOR DEVELOPING COUNTRIES	3
III.	THE NATURE OF ASSESSMENT FOR TRADE IN SERVICES.....	4
	A ADOPTING A DEVELOPING COUNTRY PERSPECTIVE IN ASSESSING DATA.....	4
	B ASSESSING WHETHER THE GATS STRENGTHENED DEVELOPING COUNTRIES' DOMESTIC SERVICES SECTORS	5
	C CONDUCTING A BROADER QUANTITATIVE AND QUALITATIVE ASSESSMENT OF THE GATS	5
	D ADDRESSING IMPACTS OF GATS ON DEVELOPING COUNTRIES REGULATORY POLICIES.....	5
IV	OPERATIONALISING PARAGRAPH 14 OF THE NEGOTIATING GUIDELINES.....	6
	A MAKE SUBMISSIONS TO THE CTS	6
	B IDENTIFY PRIORITY SECTORS FOR REVIEW OF PARTICULAR INTEREST TO DEVELOPING COUNTRIES AND START CONDUCTING WORK	7
	C STRENGTHEN WORK ON RESEARCH GAPS AND DATA NEEDS.....	7
	D DEVELOP MECHANISMS FOR IMPLEMENTATION OF TECHNICAL AND FINANCIAL ASSISTANCE	7
	E INCREASE INTERNATIONAL COOPERATION AMONGST INTERGOVERNMENTAL AND NON- GOVERNMENTAL ORGANIZATIONS.....	7
V	CONCLUSION	7

ASSESSMENT OF TRADE IN SERVICES

IN THE CONTEXT OF THE CURRENT GATS NEGOTIATIONS¹

I. INTRODUCTION

1. Paragraph 14 of the March 2001 guidelines and procedures for the GATS 2000 negotiations reads as follows:

"The Council for Trade in Services in Special Sessions shall continue to carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and of Article IV in particular. This shall be an ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment. In accordance with Article XXV of the GATS, technical assistance shall be provided to developing country Members, on request, in order to carry out national/regional assessments."

2. The inclusion of such a strong reference to "assessment" in the GATS negotiating guidelines reflects a major negotiating success for developing countries, who, for several reasons, attach great importance to undertaking a thorough assessment of services trade and its liberalisation. Paragraph 14 of the guidelines also shows that Members have not been able to carry out a satisfactory assessment prior to the adoption of the negotiating guidelines, as mandated by Article XIX GATS.

3. This note aims to assist developing country negotiators in their approach towards assessment of trade in services. First, it explains why assessment is of particular importance to developing countries; second, it provides some preliminary ideas on the appropriate nature of an assessment; and finally, this note offers some recommendations to operationalise paragraph 14 of the negotiation guidelines. These suggestions and recommendations are made with a view to initiating a discussion amongst WTO Members, the Secretariat and civil society on the need and relevance of conducting an assessment of trade in services and its liberalisation.

II. IMPORTANCE OF ASSESSMENT FOR DEVELOPING COUNTRIES

4. Paragraph 14 provides the Council for Trade in Services (CTS) and its Members with broad potential to conduct a thorough assessment of the GATS. If carried out adequately, such an assessment offers benefits to all WTO Members and their trade policy makers, both at the national and international level. However, an assessment of the GATS is of particular importance to developing country Members.

5. First, assessment is an important tool for developing countries to determine whether the Uruguay Round has delivered the promised benefits, both in quantitative and qualitative terms. Second, in the context of new negotiations, it is vital that WTO Members gain a sound understanding of the effects and implications of the current GATS disciplines and levels of commitments, *before* continuing with further liberalisation. This requires a two-fold approach: on one hand, a stocktaking exercise of the legal and policy framework created by five years of GATS implementation and its effect on national economies and sustainable development; and on the other hand, an analysis of the broader implications of services

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liberalisation on national economies and social systems in general. Third, and particularly from a developing country perspective, a thorough assessment is crucial to assist negotiators in their daily business throughout the course of the upcoming negotiations. Data and information gained through the assessment could serve as a valuable input for the design of developing countries' individual negotiating positions.

6. Overall, a careful analysis of the *currently existing* legal and socio-economic environment lays the basis for an ex-ante assessment of a possible *future* GATS regime. Only if negotiators are able to draw upon a thorough assessment analysis, will they be able to ensure that their overall approach to services liberalisation leads to economic growth and sustainable development for all, both within and between individual WTO Member countries.

7. For these reasons, developing country negotiators may wish to carefully consider how to best build upon the assessment reference in the negotiating guidelines. In the context of the next CTS Special Sessions, developing countries may wish to discuss amongst each other:

- *the appropriate nature and scope of an assessment* carried out by the Council for Trade in Services;
- *means to operationalise paragraph 14* of the negotiating guidelines.

In the long run, developing countries may also wish to consider how to ensure that the negotiations will be adjusted in light of the results of any assessment undertaken.

III. THE NATURE OF ASSESSMENT FOR TRADE IN SERVICES

8. Members have extensively discussed the limitations and constraints relating to an assessment of trade in services. Lack of data, analytical and methodological problems, among others, make it difficult to conduct a detailed empirical assessment of services trade. However, these difficulties should not delay any assessment discussion and process in the WTO context. Rather, Members may wish to engage in a broader discussion relating to the appropriate nature of the GATS assessment.

9. Paragraph 14 of the guidelines establishes that Members shall conduct the GATS assessment "with reference to the *objectives of the GATS* and of Article IV in particular." Based on this, WTO Members may wish to consider different aspects of the GATS assessment, key questions and issues, four of which are identified in the following part of this note.

A Adopting a Developing Country Perspective in Assessing Data

10. So far, the GATS assessment has focussed on quantitative economic and trade flow-related data. However, when analysing current data, it is important to focus on those economic *objectives* of the GATS, which particularly relate to developing countries. They include (i) the promotion of economic growth of all trading partners, (ii) increased participation of developing country Members in trade in services and (iii) liberalisation in sectors and modes of supply of export interest to developing countries.

11. To adequately assess whether the GATS has achieved these goals, Members need to improve the quantitative assessment analysis. For example, they may wish to:

- *with assistance from the Secretariat, examine existing data from a developing country perspective*, and specifically focus on issues such as changes in growth, trade patterns, foreign direct investment flows and levels of commitments from the perspective of developing countries; and
- *ask the Secretariat to identify and gather sufficient new data, indices and types of information*, which will help assess GATS developments in relation to the development related economic objectives mentioned above.

B Assessing whether the GATS Strengthened Developing Countries' Domestic Services Sectors

12. According to its Preamble and to Article IV, the GATS aims to strengthen developing countries' domestic services sectors and their efficiency and competitiveness. This is important to increase developing countries participation in trade in services, but also to ensure that developing countries will be able to serve their domestic needs and markets. As means to achieve this goal, the GATS suggests to improve developing countries' access to technology and to distribution channels and information.

13. Data on access to technology, distribution channels and information is not sufficiently included in the WTO's economic analyses. WTO Members may wish to:

- *consider which economic indicators could serve as adequate measurements for these goals;*
- *ask the Secretariat to identify possible sources of information; and*
- *ask the Secretariat to collect the relevant data.*

14. When analysing whether the GATS has strengthened developing countries domestic services sectors, Members should give special emphasis to the varying impact foreign direct investment may have on developing countries' domestic service providers.

C Conducting a Broader Quantitative and Qualitative Assessment of the GATS

15. WTO Members and the Secretariat also need to assess whether the GATS has achieved its broader goals, namely those set out in the Preamble of both the GATS and the WTO Agreement. As part of the multilateral trading system, the GATS aims to promote the development of developing countries, raise the standards of living and allow for the optimal use of the world's resources in accordance with the objective of sustainable development.

16. To adequately analyse whether the GATS fulfils these goals, WTO Members need to complement their quantitative assessment of economic and trade flow data with qualitative analyses incorporating development and sustainable development aspects. For example, Members may wish to:

- *identify relevant social, economic and environmental indicators such as access to and quality of water, access to basic education, access to health services, access to telecommunication or the exhaustion of natural resources, which provide information on the broader goals described above;*
- *ask the Secretariat to identify information sources and collect relevant data;*
- *analyse whether the GATS has had an impact on these indicators and particularly, whether the GATS has improved or deteriorated a Member's performance in these aspects.*

17. Such broader assessment is important, because the GATS covers all services sectors, including many basic services, such as the above-mentioned. Improving provision of essential services is crucial for raising the standards of living and for promoting the overall development of a country. Consequently, when conducting such a broader assessment, WTO Members should give special consideration to a country's level of economic development and related national policy objectives.

D Addressing Impacts of GATS on Developing Countries Regulatory Policies

18. The GATS suggests expansion and progressive liberalisation of trade in services as a means to promote the above-mentioned goals. However, the GATS also recognizes that in order to achieve these goals, efforts to liberalise trade in services need to be balanced with an adequate regulatory framework. In its Preamble, GATS specifically suggests to give due

respect to national policy objectives, to recognize the right to regulate, and to recognize the right to introduce new regulations to meet national policy objectives.

19. The GATS also acknowledges the particular need of developing countries to exercise their right to regulate. Consequently, WTO Members may wish to:

- assess whether the GATS has *allowed developing countries to fully exercise their right to determine their national policy objectives*;
- assess whether the GATS has *granted developing countries the flexibility to achieve these objectives through the type and means of regulation they consider appropriate*;
- assess whether the GATS has *weakened or strengthened domestic regulatory frameworks for foreign investment*, which are crucial to ensure that developing countries truly benefit from increasing FDI.

20. When analysing these questions, Members should give particular emphasis to developing countries, which are going through structural changes in their economic, social and other policy environment.

IV OPERATIONALISING PARAGRAPH 14 OF THE NEGOTIATING GUIDELINES

21. The previous section identified different aspects of the assessment as mandated by the GATS and by paragraph 14 of the negotiating guidelines. This may help WTO Members identify appropriate ways of operationalising paragraph 14 of the guidelines. This section offers some suggestions for possible next steps:

A *Make Submissions to the CTS*

22. Developing countries may consider making written submissions to the CTS Special Sessions and/or oral statements with a view to compiling a record of statements which:

- stress the *lack of available data*;
- suggest that the *Uruguay Round has failed to deliver economic and other benefits* for developing countries;
- emphasize *available economic data on negative implications* for developing countries;
- emphasize *current imbalances in the level of commitments to the detriment* of developing countries;
- call for *financial and technical assistance* to carry out a comprehensive quantitative and qualitative assessment of the impacts of the GATS agreement and its current level of commitments on developing country WTO Members.

23. Developing country negotiators could draw upon existing submissions, such as the recent Argentinean communication on "Assessment of Trade in Services: the Participation of Developing Countries" (S/CSS/W/44) or the "Note on Assessment of Trade in Services in Certain Transition Economies" (S/CSS/W/18), submitted by Slovenia, Bulgaria, Czech Republic, Poland and Slovak Republic. These submissions might constitute useful models as they:

- show that a submission can *simply compile and annex existing data - highlighting developmental aspects*;
- *draw upon existing work from other institutions and organizations*;
- *maximise effective use of resources* by taking a joint assessment approach for a group of countries;

B Identify Priority Sectors for Review of Particular Interest to Developing Countries and Start Conducting Work

24. Developing country Members may wish to identify key priority services sectors (e.g. transport, construction and tourism) and start immediately with an analysis of concrete linkages between services liberalisation and economic growth and sustainable development in these sectors. Undertaken at the national level, sectoral studies would highlight concerns and opportunities brought by increased liberalisation. Members could share the results in the CTS. Industrialized countries, the Secretariat or other international organizations should provide financial assistance to facilitate timely conduct of such work.

C Strengthen Work on Research Gaps and Data Needs

25. The WTO Secretariat should continue to provide reviews of general trends, patterns and evolution of services trade and liberalisation (including regional and sectoral differences, major importers and exporters). Together with other international and regional organizations or institutions, the Secretariat should review and compile available literature, information and statistics on services trade, to allow Members to identify individual and common priority research needs.

D Develop Mechanisms for Implementation of Technical and Financial Assistance

26. According to paragraph 14 of the negotiating guidelines and Article XXV of the GATS, the Secretariat shall provide technical assistance to developing countries. However, industrialised countries, the Secretariat and other relevant entities shall also commit to providing financial assistance to less-resourced countries willing to undertake specific sectoral or other assessments of trade in services.

E Increase International Cooperation Amongst Intergovernmental and Non-governmental Organizations

27. Several international organisations and civil society groups have developed expertise in a qualitative and multi-disciplinary approach to assessment. These organizations could contribute their relevant technical expertise, in particular relating to developmental, environmental or specific sectoral aspects of the assessment. Currently, policy makers and researchers outside the multilateral trading system are also engaging in a broader debate about possible benefits and detriments of services trade liberalization, particularly with reference to developmental and environmental impacts. It is crucial, that any assessment of the GATS is not conducted in clinical isolation of such other developments. The WTO Secretariat and Members may thus wish to actively seek cooperation with the relevant institutions.

V CONCLUSION

28. Given the importance of the assessment issue, developing country delegates may wish to establish in the next Special Sessions a record of statements, which builds upon the negotiating guidelines and which creates a positive momentum for continuing to shape the debate in future GATS negotiating sessions later this year. Simultaneously, developing countries may discuss amongst themselves, whether and how to explore any of the above suggestions.