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Trade in services: towards a plurilateral agreement

SUMMARY *The importance of the services sector in the EU's economy is growing. Businesses across the world are increasingly interdependent, in so-called "global value chains". But regulatory divergence between countries can entail additional costs for service providers themselves, those consuming services in their production activities as well as for final consumers. As the largest exporter of services in the world the EU has a strong interest in the liberalisation of services.*

In the light of stagnation in the Doha Round of trade talks, a separate international agreement on trade in services is seen as a way to increase efficiencies in production carried out around the globe. Some 20 countries, led by the United States, the EU and Japan, have recently begun negotiating such an agreement on a plurilateral basis, bringing together some but not all WTO members.

Some emerging market powers such as India and Brazil have expressed concerns that the conclusion of a plurilateral services agreement might kill off the Doha Round negotiations and thus prevent deals in other fields that may have been possible under Doha. At the same time, businesses have been calling for quick and ambitious negotiations.

In this briefing:

Glossary

Most favoured nation: status or level of treatment of one state by another, under which the recipient of this treatment must receive trade advantages equal to those of the "most favoured nation" of the country granting such treatment, and may not be treated worse than any other country with MFN status.

National treatment: principle whereby imported and local goods/services should be treated equally on a country's market.

Non-tariff measures: any policy measure other than tariffs that can have an impact on international trade flows.

Background

Services account for about 75% of gross domestic product (GDP) in the EU, and on average 50% for developing countries.[1] Since businesses often operate as part of a "global value chain", in which goods and services supplied by different companies are brought together, the costs of services also influence the production costs of many goods.

In the EU, over three quarters of jobs are in the services sector. The EU's international trade in services is also increasing. In 2011, its surplus reached €121 billion. Therefore as the largest exporter of services, negotiations on an international agreement on services liberalisation offer strong interests for the EU.

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Traditionally the biggest concern regarding liberalisation of services relates to possible losses of jobs to other countries. However, many services cannot be transferred due to cultural perceptions, language barriers and the need to be close to the consumer. In addition, increased efficiency as well as the demand for high-skills services could benefit the developed countries which are currently strong in providing such services.[2] For developing countries, it is argued that opening up their services markets could be beneficial, enabling expansion of domestic capacity through attracting inflows of capital and expertise.

Barriers to trade in services

To protect their own market, countries impose barriers to trade and investment in services, in particular through non-tariff measures, which can take the following forms:[3]

- limiting foreign participation in the market place (quotas or bans);
- discriminatory rules and practices (discrimination in licensing, subsidies, public procurement);
- discriminatory access to distribution networks.

In addition;[4]

- commercial presence may be required in the country where services are provided;
- minimum obligatory foreign investment levels may be set; and
- recognition of qualifications, and rules on migration can also have an impact on provision of services.

The barriers are highest in financial and business services which are strictly regulated, as well as in sectors with protection of domestic businesses such as the construction sector.

Some services restrictions serve legitimate and recognised purposes, such as rules on immigration and on consumer protection. Therefore such restrictions will always be required, although sometimes they can be addressed by mutual recognition with other countries.

Trade negotiations and the resulting international agreements aim to address restrictions which are "protectionist" by nature.

Defining services

Covering fields as diverse as advertising, and dentistry, construction and transport, to name just a few, services are not easily defined. The major criterion is the non-physical nature of services, as services are often intangible and impossible to store.

According to a note from the World Trade Organisation (WTO) Secretariat, international trade in services is any service or labour activity across borders to fulfil the needs of the recipient or consumer, except sale of physical goods (although the service may be incorporated into physical goods), or to furnish an input for a producer of goods and/or services.

Article I:2 of the General Agreement on Trade in Services (GATS) sets out four modes of supply for trade in services:

Mode 1 concerns cross-border supply, meaning that the service crosses the border, but neither consumer nor supplier does; for instance, an international phone call;

Mode 2 refers to consumption abroad, meaning that the consumer consumes the service while abroad, for example, by repairing a ship in a foreign port;

Mode 3 means commercial presence, essentially entailing foreign investment, for example, when a foreign bank establishes a branch or a subsidiary and supplies services;

Mode 4 presupposes migration and presence of natural persons, meaning that the service provider crosses the border, for example, a specialist from one country gives training to employees of a given company in another country.

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Current agreements

GATS/WTO

Services were covered by the Uruguay Round of trade negotiations, leading to the adoption of the General Agreement on Trade in Services. GATS, which entered into force in January 1995, aimed to ensure increased transparency and predictability of relevant rules and regulations. It was also to promote progressive liberalisation through successive rounds of negotiation. Its main principles are unconditional most-favoured nation (MFN) treatment, national treatment, the transparency principle which entails publication of all applicable rules, and the absence of local-presence requirements.

GATS members are free to choose which sectors are to be progressively "liberalised", which modes of supply as set out in GATS Article I:2 would apply to a particular sector, and to what extent services are liberalised over a given period of time.

Due to the limited coverage of GATS, countries use regional or bilateral free trade agreements, permitted under GATS Article V, to liberalise their trade in services.

Regional trade agreements (RTAs)

According to the WTO paper on Services rules in regional trade agreements, proportionally more bilateral agreements than plurilateral agreements include provisions on services, in comparison with agreements regarding trade in goods.

Some regional agreements covering trade in services were concluded before GATS, for example, the European Community. As such agreements aim to develop deeper economic and political integration, they differ from other RTAs in that they also cover issues such as employment, social security, and the status of dependents.

Roughly half of RTAs regarding services follow the GATS structure, providing a "positive list" of commitments. This means only those sectors and measures listed are included in the scope of the agreement, while all others are excluded. Such agreements are found mainly between developed and developing countries and among developing countries. Several free trade agreements (FTAs) concluded by the EU also follow this approach.[5] However, this type of agreement is generally not used between industrialised countries, which have greater interest in trade in services.

The other form of RTA covering services is the more dynamic, NAFTA-inspired type. Such agreements include a "negative list" of commitments, which apply to all service sectors and measures within the scope of the agreement, unless explicitly excluded. The "negative list" principle therefore also covers new types of services that may develop in the future. These agreements tend to contain specific requirements on the composition of senior management and board of directors, and local-presence requirements. Furthermore, they often provide for building on the agreements in areas such as mutual recognition of qualifications and domestic regulatory disciplines. As a result, this type of RTA addresses a larger variety of existing barriers to trade in services. Such agreements have been concluded by North and Latin American countries, with the exception of Mercosur, which follows the GATS model of RTA.

Bilateral agreements

Countries are increasingly including provisions on services in their bilateral trade agreements. The EU has included such provisions in its FTAs with South Africa, Mexico, Chile, Colombia, Peru and South Korea. There are ongoing negotiations with several other countries, including Canada, India, Malaysia, Vietnam and others. It is expected that this trend will continue and grow, and in practice this will open many services markets to a range of service-supplying countries.

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State of negotiations

Doha Round stalemate

The Doha Round was launched in November 2001 with the aim of ensuring that WTO members could address a variety of issues such as agriculture, industrial goods, services, regulation, environment, and intellectual property.

In 2004, member countries decided to limit the negotiations, focusing on some fields that seemed more promising, including services. However, even a limited deal has not been reachable.

Prospects for a plurilateral agreement on services ("TiSA")

Due to the lack of progress in the Doha Round, certain countries declared their willingness to move instead towards a plurilateral services agreement. In October 2012, the EU, Australia, Canada, Chile, Colombia, Hong Kong, Japan, Mexico, New Zealand, Norway, Pakistan, Singapore (which later left the group), South Korea, Switzerland, Taiwan and the United States announced their intention to negotiate an international services pact (Trade in services agreement or TiSA) among themselves. These countries, dubbed the "Really good friends of services", represent about 60% of global trade in services. Nonetheless, this agreement would reduce relatively moderate barriers on existing trade between economies which are already open. Emerging economies, such as China, Brazil and India, are not participating in these talks and have expressed concerns about resulting negative consequences for the Doha Round and the multilateral trading system.

By the end of 2012, the interested countries had set out a framework of principles for the negotiations. They have decided that market access talks will be conducted on the basis of a "hybrid" approach (instead of choosing either a "positive" or "negative" list approach to commitments). The final deal would contain new and enhanced disciplines for trade in services, and such a deal should be ambitious and comprehensive. The ultimate goal would be to bring all WTO members into the agreement. They have also agreed that while market-access commitments would be negotiated on a "positive list" approach – meaning members only take on commitments in areas specifically listed – national-treatment obligations would apply across-the-board to all sectors except in areas specifically exempted from this general rule.

Furthermore, participants need to agree whether obligations should be applied on a conditional or unconditional most-favoured-nation basis. While under GATS Article II, unconditional MFN is obligatory between all WTO members, it allows exemptions. It is argued that if this international services agreement is outside the WTO, the agreement need not apply unconditional MFN to non-members. That would act as an initiative to join the agreement.

Regional negotiations

Currently the Trans-Pacific Partnership **(TPP)** is being negotiated, with the possibility of concluding in 2013. The original scope of the envisaged agreement has been extended, to add enhanced provisions on regulatory issues, public procurement, competitiveness, business facilitation, environmental protection and development, as well as the traditional chapters on goods and services. The initial negotiations were carried out by 11 nations[6] including the United States. Japan has been invited to join the negotiations, and China is currently analysing the possible advantages of joining the TPP talks.

The successful conclusion of the TPP would enable its members to take advantage of greater liberalisation in the Asia-Pacific region, which could have a potentially negative impact on the EU's export performance in this region.[7]

On 13 February 2013, the EU and the US announced plans for a **Transatlantic Trade**

and Investment Partnership (TTIP). While the negotiations started on 8 July 2013, several aspects are seen as complicated, including the audiovisual sector, privacy issues and public procurement rules in the US.

Views of parties concerned

EU, US and other negotiating parties

Initially the EU was sceptical of TiSA. It believed that it would not significantly liberalise services markets and that only a plurilateral agreement which encouraged countries where the greatest trade interest lies (India, China, and Brazil, Indonesia etc.) to join would be worthwhile. In addition, the Commission would need to receive a mandate from Member States for negotiations outside GATS.

However, in July 2012, the EU and 17 other WTO Members issued a joint statement in which they committed themselves to advancing negotiations on trade in services and to broadening the discussions to other countries, including further developing countries.

In its meeting of 18-19 March 2013, the Council approved a mandate for the European Commission to negotiate TiSA on behalf of the EU.

The Office of the US Trade Representative formally notified Congress on 15 January 2013 that it intends to begin negotiations for a plurilateral services agreement. The US has outlined several key objectives, including negotiation of a deal that would cover services "that have yet to be conceived", and the inclusion within a services deal of rules making regulatory processes in participating countries more transparent. This, however, is contrary to the "hybrid" framework so far agreed upon by the participating countries.

European Parliament

The European Parliament's Committee on International Trade (INTA) drafted a resolution on opening negotiations on a plurilateral agreement on services, which was adopted in plenary on 3 July. The resolution recognises the importance of services for the EU economy, and thus welcomes the opening of negotiations. At the same time, the resolution also notes that emerging markets with the largest potential for services growth have not so far joined the negotiations and invites them to do so. In addition, according to Parliament, there would not currently be enough signatories to an agreement and therefore an MFN clause should not be applied. Moreover, inclusion of the standstill and ratchet principles in the agreement should make the parties' commitments binding and lead to further progressive opening up of the services sector.

Emerging economies

China

China has not expressed an official position regarding the TiSA, but it is not part of the "Really Good Friends of Services" club. However, Hong Kong recently announced it will participate in the negotiations on TiSA.

IBSA (India, Brazil, South Africa)

IBSA has stated that a plurilateral approach to liberalise trade in services where member countries voluntarily agree to new rules, might undermine the possibility of reaching a Doha deal. Their position is that industrialised countries in the Doha Round are trying to gain cuts on industrial goods and market access to services in IBSA and China, but are offering too little by way of concessions both on reducing their own subsidies and opening market access for agricultural goods. Also, they argue that the proposal is contrary to the "single undertaking" principle governing Doha Round negotiations.

Businesses and business associations

Business organisations comprising the Global Services Coalition have expressed their wish for a launch of international trade negotiations on services, calling for speedy and ambitious negotiations that would enhance trade in services.

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Similarly, the European Services Forum has been calling for the launch of plurilateral negotiations on services as soon as possible.

On 25 April 2013, the European Commission held a Civil Society Dialogue meeting on the plurilateral trade in services agreement. During the meeting, the Commission stressed that it would encourage new participants to join the negotiations. In addition, German public broadcaster, ARD, asked about the EU's approach to the audiovisual sector. The Commission explained that while audiovisual services are within the scope of TiSA, the EU would still be able to decide later whether to make commitments in this sector.

On 12 June 2013 the European Commission launched a public survey on TiSA to better inform its decisions in the negotiation process.

Main references

Prospects for Services Trade Negotiations / Jeffrey J Schott et al. Peterson Institute for International Economics, PIIE Working Paper, October 2012, 29 p.

Services rules in regional trade agreements How diverse and how creative as compared to the GATS multilateral rules?/ WTO WP, October 2012.

A Plurilateral Agenda for Services? Assessing the case for a Trade in Services Agreement (TISA) / Pierre Sauvé, Working Paper, Swiss National Science foundation, May 2013, 24 p.

The Plurilateral Agreement on Services: at the starting gate, EP DG for External Policies, Policy Department briefing, February 2013

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http://libraryeuroparl.wordpress.com

Endnotes

[1] European Commission, DG Trade's website on services (accessed July 2013).

[2] Global trade in services: Fear, facts, and offshoring/ VoxEU.org column by J. Bradford Jensen, 19 November 2012.

[3] Prospects for services trade negotiations/ Jeffrey J. Schott et al., Peterson Institute for International Economics, PIIE Working Paper, October 2012, 29 p.

[4] Framework for the International Services Agreement/ Gary Clyde Hufbauer, J.B Radford Jensen, and S Stephenson, Peterson Institute for International Economics, Policy Brief, 10 April 2012, 45 p.

[5] The International Services Agreement (ISA)— from the European vantage point/ Hosuk Lee-Makiyama, keynote speech at the ECIPE/ESF Conference on services plurilaterals, European Centre for International Political Economy, ECIPE Policy Brief No. 3/2012, March 2012, 18 p.

[6] The United States, Australia, Peru, Malaysia, Vietnam, New Zealand, Chile, Singapore, Canada, Mexico, and Brunei Darussalam.

[7] The Trans-Pacific Partnership Agreement and its implications for the EU/ Roberto Bendini, EP Directorate-General for External Policies, 13 December 2011.

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