

POLICY BRIEFING

The Plurilateral Agreement on Services: at the starting gate

Abstract

Faced with an impasse in World Trade Organisation's global multilateral trade talks, some 20 countries — accounting for two-thirds of the world's cross-border trade in services — began negotiating a plurilateral agreement on services in 2012 with the aim of opening domestic markets to foreign services and guaranteeing foreign and domestic companies equal treatment. Negotiations were confidential until recently, but on 15 January the US Trade Representative's office notified the US Congress of its intention to negotiate such an agreement. The European Commission is also expected to make its position public in the coming months by requesting an official mandate from the Council. The agreement has been calculated as offering the EU a potential EUR 15.6 billion and the USA EUR 10.4 billion. For the moment, China, India and Brazil remain outside the proposed trade agreement, and their entrance would increase the potential gain by 30 %. With this in mind, the agreement is likely to be crafted in such a way as to allow them a relatively easy accession in the near future.

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1. Negotiators for an agreement on services are in the starting gate

The stalemate of the World Trade Organisation's Doha Development Agenda (DDA) has led to unofficial talks for a plurilateral agreement on services.

Members currently discussing the agreement account for two thirds of the global trade in services, but do not include emerging countries.

At the beginning of 2012, a number of World Trade Organisation (WTO) Members who called themselves the 'Really Good Friends of Services' launched secret, unofficial talks on a possible plurilateral services agreement. The agreement was called the 'international services agreement' by the US and the 'plurilateral services agreement' by the EU. The basic aim was to overcome the stalemate of the World Trade Organisation's Doha negotiations, which has interrupted services negotiations as well as other issues. An agreement on trade in services was intended to further liberalise the service sector, the most dynamic and promising in the world economy. The sector, which is WTO-regulated, encompasses a wide range of different activities, from distance training to financial investment, from tourism to the immigration of professional workers. However barriers to exporting services remain in place, in the form of national regulations that often discriminate against imported services.

The stalemate of the WTO Doha Development Agenda led those countries willing to further open their markets to foreign services to pursue talks, based on a decision of the WTO's Eight Ministerial Conference, held in December 2011. This conference allowed trade agreements to be concluded earlier than the 'single undertaking' — the single, encompassing agreement — that the Doha Development Agenda (DDA) had been intended to achieve¹.

The unofficial discussions of the 'Really Good Friends' were conducted behind closed doors. Recently, however, some of the discussions' content was revealed, when the Office of the US Trade Representative notified the US Congress on 15 January 2013 of its intention to begin negotiations for a plurilateral agreement on services in the next 90 days. No declarations have been released so far by the European Commission, which is expected to officially request a mandate from the Council to begin formal negotiations with the interested countries². According to the few sources available, the mandate will be requested during the first months of this year³.

¹ The Doha Development Agenda (DDA) talks came to an impasse in July 2008 when negotiators' inability to find an agreement on agricultural discipline blocked all the other trade sectors. The Doha talks had been intended to achieve a 'single undertaking' on all trade chapters. An alternative was envisaged when by the Eight WTO Ministerial Conference in December 2011. Recognising the DDA stalemate, the Eight Conference provided political guidelines, including for '*reaching provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking*'.

² See WTO, '[EU To Seek New Mandate For Potential Services Plurilateral Negotiations](#)', 01 November 2012.

³ See [WTO](#), 01 November 2012

	<p>The US government has stated that the agreement being discussed will include 21 trading partners (Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Hong Kong China, Iceland, Israel, Japan, the Republic of Korea, Mexico, New Zealand, Norway, Panama, Pakistan, Peru, Switzerland, Turkey, the EU and the USA)⁴, which together control two thirds of global cross-border trade in services. The agreement is expected to 'permit comprehensive coverage of all services, included the ones that have still to be conceived' and to introduce transparency and predictability in trade partners' regulatory policies limiting service exports via an advanced notification system⁵.</p> <p>In the following pages, the impact of this agreement will be assessed in the light of its relevance for the EU economy, its legal and historic background and its main features.</p>
<h2>2. The stakes</h2>	
<p>The EU is the primary provider of trade in services...</p> <p>...and will receive gains from a services agreement around EUR 21 billion.</p>	<p>The EU has the largest volume of trade in services worldwide, accounting for EUR 1 trillion⁶ in services annually —23.5 % of the world's trade in the sector. The concrete gains from the plurilateral agreement for the EU will be assessed by the Commission in a sustainability impact assessment after the negotiating mandate has been requested from the Council. Gains are quite difficult to estimate in advance, however, as the architecture of the agreement is likely to allow members the freedom to choose their level of liberalisation. According to a recent partial equilibrium study⁷, a 50 % cut in tariff-equivalent barriers for cross-border services among the Really Good Friends⁸ is expected to increase the value of the EU's export services by USD 21 billion (EUR 15.6 billion) and those of the US by USD 14 billion (EUR 10.4 billion). While this estimate is based on very ambitious liberalisation assumptions with respect to cross border services, it does not encompass the entire scope of the agreement, as it does not include certain other services, such the return on investments abroad. In addition, the methodology used does not account for the impact that services liberalisation would have on manufacturing trade⁹. The estimate is</p>

⁴ See [USTR Notification to the Congress](#) of 15th of January.

⁵ See WTO, [USTR Says It Will Seek To Cover New Services In Plurilateral Agreement, 17 January 2013](#).

⁶ See EUROSTAT data. This figure derives from balance of payment 2010 and includes cross border services imports + exports, excluding govt services.

⁷ See Peterson Institute for International Economics, [Framework for the International Services Agreement](#), April 2012, page. 21

⁸ Cross border services are the so called services supplied under mode I, (e.g. distance training); but liberalization also impact on mode II, (e.g. tourism); on mode III (e.g. hotel group); and on mode IV which refers to the movement of natural persons and impact on targeted immigration policies (see infra in the text).

⁹ Trade in goods is likely to be boosted by more e.g. more efficient financial services (which ease the international forms of payment), swifter delivery and tracking systems and services to ease custom procedures (connected with trade facilitation)

<p>Trade barriers imposed by potential members generate approximately 60 % of the global costs for the services trade</p>	<p>therefore probably too limited. Given the strong complementarity of services and goods trade, only a general equilibrium framework would provide a complete assessment of the impact of services trade liberalisation. A further study illustrates that the parties negotiating the services agreement create 60 % of the costs of barriers to the trade in services; the potential gains from liberalisation are therefore substantial. For the EU, which creates more than on fifth of the world's costs on trade in services, an agreement with the other Really Good Friends would eliminate as much as half of the costs the Union faces. The trade costs imposed by the BRICS (Brazil, Russia, India, China and South Africa), who are not among the Really Good Friends discussing an agreement, are also significant, if less so — 32 % of their total, or approximately 50 % of those incurred by the EU.</p>																																																												
<p>Percentage of the costs associated with barriers to trade in services imposed by the principal actors.</p> <p>(Approx. 60 % of the global costs are imposed by the RGF — indicated in blue.)</p>	<table border="1"> <caption>Percentage of costs associated with barriers to trade in services imposed by principal actors</caption> <thead> <tr> <th>Actor</th> <th>Percentage</th> <th>RGF (Blue)</th> </tr> </thead> <tbody> <tr><td>United States</td><td>21%</td><td>Yes</td></tr> <tr><td>EU27</td><td>19%</td><td>Yes</td></tr> <tr><td>China</td><td>16%</td><td>No</td></tr> <tr><td>India</td><td>9%</td><td>No</td></tr> <tr><td>Japan</td><td>8%</td><td>Yes</td></tr> <tr><td>Brazil</td><td>4%</td><td>No</td></tr> <tr><td>Russian Federation</td><td>3%</td><td>No</td></tr> <tr><td>Hong Kong</td><td>0%</td><td>Yes</td></tr> <tr><td>Thailand</td><td>2%</td><td>No</td></tr> <tr><td>Turkey</td><td>2%</td><td>No</td></tr> <tr><td>Mexico</td><td>2%</td><td>No</td></tr> <tr><td>Switzerland</td><td>2%</td><td>No</td></tr> <tr><td>Malaysia</td><td>1%</td><td>No</td></tr> <tr><td>Indonesia</td><td>1%</td><td>No</td></tr> <tr><td>South Africa</td><td>1%</td><td>No</td></tr> <tr><td>Singapore</td><td>1%</td><td>No</td></tr> <tr><td>Korea</td><td>4%</td><td>No</td></tr> <tr><td>Canada</td><td>4%</td><td>No</td></tr> <tr><td>Egypt</td><td>1%</td><td>No</td></tr> </tbody> </table> <p>Source: <i>The International Services Agreement (ISA) — from the European vantage point</i></p>	Actor	Percentage	RGF (Blue)	United States	21%	Yes	EU27	19%	Yes	China	16%	No	India	9%	No	Japan	8%	Yes	Brazil	4%	No	Russian Federation	3%	No	Hong Kong	0%	Yes	Thailand	2%	No	Turkey	2%	No	Mexico	2%	No	Switzerland	2%	No	Malaysia	1%	No	Indonesia	1%	No	South Africa	1%	No	Singapore	1%	No	Korea	4%	No	Canada	4%	No	Egypt	1%	No
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<p>EU free trade agreements in overlapping with plurilateral agreement on services?</p>	<p>While negotiations for the services agreement are underway, parallel discussions are also taking place on a free trade agreement (FTA) between the US and the EU. While such an FTA would be only a bilateral agreement, it would likely incorporate a chapter on services. Yet the EU-US</p>																																																												

<p>An agreement should boost the employment ranks of modern economies.</p>	<p>FTA, which has been discussed for a number of years, is unlikely to be signed anytime soon¹⁰, meaning that a plurilateral services agreement — technically easier to conclude — will remain relevant in the near future.</p> <p>Free trade agreements in any case risk depriving the plurilateral agreement on services of practical relevance for the EU. Their service chapters may in fact overlap with the scope of plurilateral, and this is not only true for ongoing ambitious FTA (India, USA, Japan), but also for already signed agreements. Korea, Canada and Singapore (see tab.1), already address 9% of the global services costs.</p> <p>The importance of the service sector worldwide is growing and has already largely overtaken the industrial and agricultural sectors. According to estimates from the Organisation for Economic Cooperation and Development (OECD), services account for 68 % of the global GDP, ranging from 70 % in mature economies to 50 % in developing countries¹¹.</p> <p>Such figures call into doubt the theory according to which a normative pattern of development involves low income countries first developing agriculture and industry (sectors in which they are thought to have a comparative advantage) and then later developing their service sector. Many developing countries are today increasingly competitive in the services they offer.</p> <p>A larger share of the workforce in advanced economies is employed in the service sector. In the EU, services employ 68 % of labour force; in the US, the figure is around 80 %¹². A smaller percentage of the workforce is employed in the sector in developing/emerging countries — 28 % in India and 33 % in China — but the sector is continuously expanding. Additionally, there exists a positive correlation between the percentage of GDP contributed by service activity and living standards: the greater the wealth of a country, the more employment derives from services, a sector that generally pays more than others.</p> <p>Even given the difficulties in obtaining clear statistical data, it appears that new communication technologies have boosted cross-border services. These have surpassed trade in goods since 1980 and now account for around 27 % of world trade. This figure would be roughly doubled if the</p>
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¹⁰ See Oxford Analytica 8 February 2013 - [US-EU free trade deal will take many years to secure](#)

¹¹ See [Peterson Institute for International Economics](#).

¹² In the light of the American interest, the plurilateral agreement is aimed at boosting the main US export sector, worth USD 763,6 billion per year but joining the impressive amount of USD 1.700 billion (equal to 11 percent of US GDP) while including all sales of services from American companies worldwide. The agreement is expected to create more than 3 millions of jobs accordingly. See USTR Notification to the Congress of 15th of January.

	<p>flows deriving from commercial presence abroad — sales, dividends, interest, royalties, etc. — were also included in the calculation.</p> <p>Yet barriers to trade in services remain very high, especially in emerging countries, and there is a clear need for new international agreements. The WTO General Agreement on Trade in Services (GATS) is generally recognised as obsolete.</p>
<h3>3. Legal and historic background</h3>	
<h4>3.1. The 1994 General Agreement on Trade in Services (GATS)</h4>	
<p>The WTO's General Agreement on Trade in Services (GATS) describes services according to four supply modes.</p>	<p>The WTO's General Agreement on Trade in Services (GATS) was signed during the Organisation's ministerial meeting in Marrakesh in 1994. At the time, the agreement was recognised as a major step forward. Rather than define a single kind of services, GATS defines the mode in which services are supplied:</p> <ul style="list-style-type: none"> '(a) from the territory of one Member into the territory of any other Member; '(b) in the territory of one Member to the service consumer of any other Member; '(c) by a service supplier of one Member, through commercial presence in the territory of any other Member; '(d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.¹³ <p>Thus 'mode I' refers to cross-border services, where the services supplied from the territory of one Member State are traded into the territory of another Member (e.g. distance training);</p> <ul style="list-style-type: none"> - 'mode II' refers to services that are <i>consumed</i> abroad, when the consumer moves physically from the territory of one Member State to receive the service in the territory of another Member State (e.g. tourism); - 'mode III' refers to services supplied from a subsidiary or controlled company of a Member State located in another member state to recipients of the latter (e.g. a hotel group); - 'mode IV' refers to the movement of natural persons who move to another country in order to provide services within the framework of a professional activity. <p>The scope of GATS is wide enough to cover all services, except services offered by a governmental authority and air traffic rights (and those services directly related to air traffic). However, the concrete rights and</p>

¹³ GATS I.2

<p>The List of services in the GATS</p>	<p>obligations of the agreement's Members can only be assessed by looking at their national 'schedule of commitments', which is organised according to the 12 classifications of GATS services: business services, including professional services and computer services; communication services; construction and related engineering services; distribution services; educational services; environmental services; financial services, including insurance and banking; health-related and social services; tourism and travel-related services; recreational, cultural and sporting services; transport services; and other services not included elsewhere. These twelve categories are further divided into 160 sub-sectors.</p> <p>Under the existing agreement, WTO Member States make specific commitments regarding which sector they will apply GATS' rules to, and to what extent.</p> <p>In any case, under GATS, one horizontal clause applies to all trade in services, while WTO Members may adapt their adherence regarding two other disciplines. The horizontal discipline that applies to all trade in services is the most-favoured-nation principle (MFN), while the market access (MA) and national treatment (NT) principles are 'adaptable' disciplines. (This differs from the WTO's General Agreement on Tariffs and Trade [GATT], under which the national treatment principle is a horizontal discipline.).</p> <p>The GATS' MFN principle stipulates that</p>
<p>The most favoured nation clause is a 'horizontal' clause, meaning that it applies to all services</p>	<p>'each Member should accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country'¹⁴.</p> <p>Concerning market access, GATS stipulates that</p> <p>'With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule'¹⁵.</p> <p>Market access commitments for specific service sectors are similar to the market access concessions made in the Members' 1994 schedules to the GATT (the tariff level that Members have agreed to apply on every traded good). Similarly, market access concessions prescribe the minimum treatment that a foreign service or service supplier must be accorded by the WTO Member concerned. The GATS defines six ways of limiting free market access, with numerical limitations on, for example,</p>
<p>On the other hand, the</p>	

¹⁴ GATS II.1.

¹⁵ GATS XVI

¹⁶ GATS XVII

<p>extension of market access commitments is determined by Members on single services ...</p> <p>... as it is for the 'national treatment' clause'.</p>	<p>service suppliers, the value of transactions, service operations or employees in the sector.</p> <p>Finally, on national treatment, GATS stipulates:</p> <p style="padding-left: 40px;">'In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member should accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers¹⁶.'</p> <p>In sum, the MFN principle applies to all services supplied by economic actors of all WTO Members, subject to specific exceptions found in a special GATS Annex (the 'list of exemptions to MFN'), while the NT and MA only apply to services included in each Member's specific commitments and subject to the reservations detailed there.</p>
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3.2. From GATS to the Plurilateral Initiative on Services

<p>Negotiations on the service sector have been held hostage by the more contentious discussions on agricultural and 'non-agricultural market access' (NAMA) issues.</p> <p>The agreement may provide an alternative to the DDA's goal of a 'single undertaking'.</p>	<p>After the entry into force of GATS, WTO members continued to liberalise the sector of telecommunications and financial services, by signing additional commitments (which extended to all member states via the MFN).</p> <p>Further liberalisation in services was expected to start with 'bilateral, plurilateral or multilateral negotiations' to improve market access for services and to 'achiev[e] a progressively higher level of liberalisation'¹⁷. Those negotiations were integrated into part of the Doha Development Agenda (DDA) in 2001, which neared completion in July 2008 at the WTO's mini-ministerial Conference in Geneva. Within that conference, Ministers evoked what concrete improvements they could commit to for services during an ad hoc 'signalling conference' on Services.</p> <p>Yet the DDA collapsed due to a lack of agreement on agricultural rules, and further negotiations have stalled since July 2008. Negotiations on services, which are less contentious than agricultural and 'non-agricultural market access negotiations' (NAMA) issues, have essentially been held hostage to the entire project, since Doha was intended to be concluded with a 'single undertaking' in all WTO chapters. In December 2011, however, the Eighth WTO Ministerial Conference recognised the DDA stalemate and provided political guidelines for reaching 'provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking'¹⁸.</p> <p>Since then, the US and Australia advanced the prospect of a stand-alone</p>
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¹⁷ GATS XIX.

¹⁸ See WT/MIN(11)/W, -, [Elements for political guidance](#), 21 December 2011

<p>Significant issues are at stake in the plurilateral services agreement.</p> <p>One issue is the new agreement's link with GATS.</p>	<p>agreement in services, which they baptised the International Services Agreement¹⁹. The EU, on the other hand, has consistently referred to a potential 'plurilateral agreement on trade in services' as way of underscoring the agreement's link to the Doha negotiations and the WTO. The idea of such an agreement, regardless of its appellation, was endorsed — with divergent positions on its scope and architecture — by a group of interested countries, the 'Really Good Friends' (RGF). This group does not include the BRICS and is principally composed of developed countries, which generally already grant quite a high level of market access and apply transparent services regulations disciplines.</p> <p>The RGF held several meetings in 2012 to define the architecture and objectives of the agreement. Some of them (the US foremost) wished to create a stand-alone agreement <i>outside</i> the WTO, while others (led by the EU) hoped for an agreement in accordance with GATS rules and linked to the WTO structure. Such a linked format would facilitate, in the medium term, the accession of the biggest, interested BRICS countries, without abandoning the goal of the Doha single undertaking.</p> <p>Several questions were debated during this exploratory phase of negotiations: how to anchor the new plurilateral agreement to GATS, whether to include the service sectors through a positive or a negative list, the scope of national treatments, market access commitments and the extent of MFN.</p> <p>The new agreement can be connected to GATS through different legal mechanisms. A stand-alone agreement is WTO-compatible only if it covers at least 90 % of the global trade in services; because the RGFs only account for two thirds of world trade, China and India — which account for 12 % — could block it²⁰. A better way to link the agreement to the WTO legal system would therefore be to build upon GATS Article V, which foresees that an additional bilateral/plurilateral agreement on services is possible, provided that it:</p> <p style="padding-left: 40px;">'(a) has substantial sectoral coverage(1), and</p> <p style="padding-left: 40px;">'(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:</p>
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¹⁹ See EurActiv, [EU and 'good friends' weigh international services pact](#), 9 October 2012

²⁰ See European Centre for International Political Economy (ECIPE), [The International Services Agreement \(ISA\) — from the European vantage point](#), 2012, p.6

²¹ GATS V

²² See [Marrakesh Agreement Establishing the World Trade Organization](#), art IX.3

²³ GATS XVII

²⁴ See WTO, [Compromise 'Hybrid' Approach For Services Deal Largely Follows GATS](#), 2012

²⁵ See [Peterson Institute for International Economics](#), p. 21

²⁶ See [USTR Notification to the Congress](#) of 15th of January.

<p>Another is whether market access commitments clause should be horizontal or individually determined.</p> <p>The question of how to apply 'national treatment' is also problematic.</p> <p>Another issue concern conditional or unconditional most favoured nation clause. A final significant issue concerns the 'advance notice' to be provided on new regulations.</p>	<p>'(i) elimination of existing discriminatory measures, and/or</p> <p>'(ii) prohibition of new or more discriminatory measures either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis²¹.'</p> <p>Once such an agreement is concluded, it can be integrated into the framework of WTO through a waiver supported by three quarters of WTO Members²²; this will enable parties to the agreement to solve their disputes through the Dispute Settlement Body, as is the case for the WTO Agreement on Government procurement.</p> <p>Negotiating an agreement with such requirements and obtaining the WTO waiver is certainly more burdensome than creating an independent plurilateral external agreement (such as the Anti-Counterfeiting Trade Agreement - ACTA). But the independent option would have the disadvantage of limiting the likelihood that the BRICS would subsequently accede.</p> <p>Creating a positive list of commitments for services market access is usually considered less aggressive than defining a negative list. A positive list only liberalises those services clearly specified and that are consistent with current GATS approach. A negative list, on the other hand, would be a more ambitious goal, since only sectors that are specifically exempted would not be liberalised (although special clauses could also upgrade the level of ambition of a positive list agreement). A lack of consistency with GATS rules can limit the enlargement of the membership, as suggested in Point 1.</p> <p>National treatment is foreseen in GATS Article XVII only for sectors inscribed in the schedules; NT does not generally apply to all services:</p> <p>'1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers²³.'</p> <p>If the parties agree, an ambitious plurilateral agreement on services may promote a horizontal approach, by extending the national treatment to all services — even beyond the schedules, as suggested by the US²⁴. Applying national treatment to foreign suppliers can be excluded with an exception.</p> <p>A most favoured nation clause would extend the benefit of plurilateral agreement to all WTO Members — even if the agreement were to be concluded outside the WTO framework. The MFN clause is not compulsory for plurilateral agreements on services (see GATS Article V) as it is, for example, in intellectual property agreements (see TRIPS Article</p>
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	<p>4). Either a full MFN or a conditional MFN could then be introduced in order to expand membership.</p> <p>The first option (a full MFN) is, however, likely to excessively benefit certain countries, which could benefit from the market access opportunities offered by members of the plurilateral services agreement while keeping their own markets closed to foreign services. China, India and Brazil would not be interested in acceding to such an agreement.</p> <p>On the other hand, a conditional MFN, which prevents the agreement from being extended beyond the membership of the plurilateral agreement, may persuade non-participating emerging economies to accede to the treaty while further liberalising their markets. This was the approach adopted by NAFTA²⁵.</p> <p>On the other hand, a conditional MFN, which prevents the agreement from being extended beyond the membership of the plurilateral agreement, may entice non-participating emerging economies to accede to the treaty while further liberalising their markets. In fact, certain aspects of trade in services can only be liberalised through bilateral agreements (domestic regulation and 'mode IV'). (This conditional MFN was the approach adopted by NAFTA).</p> <p>An efficient way to improve the transparency and predictability of regulatory policies is to adopt a system of 'advance notice' and permit all Members to comment on new regulations²⁶.</p>
<p>4. The compromise of October 2012 and likely features of the plurilateral agreement</p>	
<p>A compromise approach seems likely to be adopted.</p>	<p>A compromise reached among RGF in October 2012²⁷ made it clear that negotiations will adopt a 'hybrid approach' and attempt the following:</p> <ol style="list-style-type: none"> (1) To create a WTO-compatible agreement on the basis of GATS V. This was a clear request from the European Commission, which wanted to facilitate broad participation in the agreement (especially from the BRICS) as soon as possible²⁸. An open clause facilitating the accession of non-negotiating members is likely to be introduced. (2) To establish a positive list of services to be liberalised for all members to the agreement. This request also originated from the EU, in order to create an agreement consistent with the GATS architecture. The US, on the other hand, would have preferred a more ambitious negative list. (3) To include a horizontal national treatment clause, which would

²⁷ See [WTO](#), 2012

²⁸ See WTO, [EU To Seek New Mandate For Potential Services Plurilateral Negotiations](#)

<p>The European Commission will need to request a mandate from the Council.</p> <p>Negotiations will have to be conducted with absolute transparency to avoid the problems of ACTA.</p>	<p>apply to all sectors except those expressly specified. This request came from the US and is intended to strongly liberalise domestic legislation.</p> <p>(4) To incorporate an advance notice for domestic regulation that is more efficient than the GATS notification already in force.</p> <p>The debate on whether to include an unconditional or conditional MFN clause has apparently yet to be resolved.</p> <p>Official negotiations will require the European Commission to obtain a mandate from the Council along specific lines. Until now, the Commission has followed the talks with its Doha mandate, which includes a services pillar. The Commission has also likely been supported by the Trade Policy Committee.</p> <p>However, a new agreement would likely not initially be multilateral, but only become so once a critical number of WTO Members adhere. This means that the European Commission will not be permitted to participate based on its Doha mandate. The Commission therefore requested a mandate from the Council in October 2012. Such a mandate will also be desirable once negotiations start, as the discussions should be conducted with a high level of transparency, with the European Parliament and general public regularly informed. In this, the Commission must wish to avoid the outcome of ACTA, which was rejected by the Parliament in July 2012. The Commission's procedures regarding ACTA were criticised from the outset for their lack of transparency²⁹. Today, all parties for the new services agreement hope that their negotiations will avoid the mistakes of the past.</p>
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²⁹ See European Parliament, [Does ACTA still matter?](#), policy briefing January 2013