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Negotiations for a Plurilateral Agreement on Trade in services

The European Commission proposed to the Council to open negotiations on a new international agreement on trade in services. 21 WTO Members are currently participating in this initiative, hence a "plurilateral" approach, and the EU is pushing for the agreement to comply with WTO rules so it can be "multilateralised" at a later stage.

The origins of the initiative

To overcome the stalemate in the Doha negotiations (DDA), at the 8th Ministerial Conference of the WTO in December 2011, WTO Ministers acknowledged the impasse and made a commitment go ahead with negotiations in certain areas covered by the Doha negotiations with the aim of reaching "*provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking.*"

In that spirit, WTO members went ahead with negotiations on trade facilitation and certain other areas. Some WTO members – originally led by the USA and Australia - started floating the idea of a stand-alone agreement on trade in services to advance the DDA negotiations amongst willing WTO members.

The participants

The participants in this initiative are the so-called "Really Good Friends of Services". This "Really Good Friends" group is neither an exclusive nor a stable group of WTO members, but an ad-hoc coalition of all those WTO members that showed willingness to advance the services negotiations in the DDA. In addition to the EU and its 27 Member States, the "Really Good Friends" is made up of some 20 other WTO members: 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 and the USA.

These countries are a mix of developed and developing countries and in 2010 represented around two thirds of global trade in cross-border services (excluding intra-EU trade).

The EU would welcome any WTO members which share the objectives of the agreement to join the negotiations at any time.

Main elements of the future agreement

As an outcome of the exploratory talks that took place in 2012, the "Really Good Friends" agreed that any agreement would not simply be a Free Trade Agreement among the participants but would have the objective of being a full part of the WTO system.

1. The objective of the plurilateral trade in services agreement should be to negotiate an ambitious agreement that is compatible with the General Agreement on Trade in Services, (GATS), which would attract broad participation and which could be multilateralised at a later stage. Indeed, by staying close to the GATS, it could be easier to convince some of the leading emerging countries that were active in the DDA negotiations to join the initiative, either during the negotiations or later on.

2. The agreement should be comprehensive in scope with no exclusion of services sectors or modes of supply at the outset. Commitments taken by "Really Good Friends" should reflect the reality on the ground, i.e. the actual level of existing liberalisation, and provide for new or improved market access.

All services sectors will potentially be covered by the negotiations, to the same extent they were covered by the GATS/DDA negotiations. However, it will be up to each participant to decide for which sector and to what extent it allows foreign services suppliers to provide services in their territory. The agreement will also include regulatory disciplines e.g. in the area of telecommunications, financial services or postal and courier services. These disciplines typically cover issues such as the independence of regulators, fair authorisation processes or non-discriminatory access to telecommunication networks.

3. There should also be new and better rules on the basis of proposals brought forward by the participants. Members of the "Really Good Friends" made suggestions to include new rules, covering domestic regulation (e.g. authorisation and licensing procedures), international maritime transport, telecommunication services, e-commerce, computer related services, cross-border data transfers, postal and courier services, financial services, temporary movement of natural persons, government procurement of services, export subsidies and state-owned enterprises. This list is based on the interests expressed by individual participants in the "Really Good Friends" group. It is not exhaustive and it does not mean it was agreed that there will be new or better rules in all the sectors listed.

Structure

1. In terms of the structure of the agreement, it was agreed that it would be based on the GATS, with some core GATS articles (including on definitions, scope, market access and national treatment, general and security exemptions) being incorporated. This would, by and large, make it possible at a later stage to integrate the plurilateral agreement into the GATS.

2. There would be additional provisions to govern how each member of the "Really Good Friends" could take commitments. In this respect, it was agreed that commitments on national treatment would in principle be applied on a horizontal basis to all services sectors and modes of supply, i.e. the understanding on national treatment would be closer to the GATT model. Exemptions to this horizontal application would have to be listed in the countries' national schedule of commitments. Participants in the negotiations might also agree that commitments would in principle reflect actual practice (the "standstill clause") and that future elimination of discriminatory measures would be automatically locked in (the so-called "ratchet clause") unless an exemption were listed.

Multilateralisation: bringing the agreement under the WTO umbrella

In a first phase, the agreement will only be binding upon the participants – and therefore will not be part of the DDA as such. But the EU has ensured that the structure of the agreement provides for a credible pathway to future multilateralisation.

Two conditions are necessary for bringing the future agreement into the WTO system.

First, the type of obligations undertaken under the agreement need to be the same sort as in the GATS so they can be easily brought into the remits of the GATS. This will be ensured by relying on the same basic concepts (market access, national treatment...).

Second, the number of participants will need to reach a critical mass so that the benefits of the agreement can be extended to all WTO members.

In order to avoid free-riding, the automatic multilateralisation of the agreement based on the Most Favoured Nation (MFN) principle should be temporarily suspended as long as there is no critical mass of WTO members joining the agreement. At the same time, "Really Good Friends" agreed to include an accession clause for interested WTO members and a pathway to the multilateralisation of the agreement, i.e. the agreement should set out the mechanisms and conditions for subsequent multilateralisation.

Next steps

The negotiations are expected to start in spring 2013, once all participants have got their negotiating mandates. The negotiations will take place in Geneva.

For further information

Trade in Services

<http://ec.europa.eu/trade/creating-opportunities/economic-sectors/services/>