



The Trade in Services Agreement ('TiSA')

This public survey is about the negotiation and conclusion of a stand-alone plurilateral agreement on trade in services between the EU and currently 21 WTO-members, being Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Hong Kong China, Iceland, Israel, Japan, the Republic of Korea, Mexico, New Zealand, Norway, Panama, Paraguay, Pakistan, Peru, Switzerland, Turkey and the USA. Those 22 WTO-members represented around two thirds of global trade in cross-border services (excluding intra EU trade) in 2010.

This future trade in services agreement should be based on the General Agreement on Trade in Services ("GATS"), and is meant to advance the stalled multilateral negotiations carried out under the umbrella of the World Trade Organisation ("WTO") with those countries that are willing to continue negotiations on trade in services. New and/or improved commitments from all WTO members would be particularly important for the EU as services constitute the single most dynamic economic activity in the EU, accounting for almost 3 quarters of GDP and employment. EU companies are leading providers of services in many sectors and are the biggest exporters of services worldwide, with almost 26% of world total export of services and half of all foreign investment flowing from the EU to other parts of the world. Legal security and new market access opportunities are therefore crucial for European companies.

In order to overcome the stalemate of the Doha negotiations, at the 8th Ministerial Conference of the WTO in December 2011, Ministers acknowledged the impasse and issued "elements for political guidance" providing for a commitment "(...) to advance negotiations, where progress can be achieved, including focusing on the elements of the Doha Declaration that allow Members to reach provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking.(...) Ministers recognise that Members need to fully explore different negotiation approaches while respecting the principles of transparency and inclusiveness." In that spirit, WTO members advanced negotiations in the area of trade facilitation and certain other areas. Also, certain WTO members 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 the willing WTO members.

The group of countries potentially participating in the negotiations on the Trade in Services Agreement for which data are available represent a very substantial share of EU exports and imports of commercial services: 58% of EU exports and 59% of EU imports. The overall average figures are however mostly determined by a sub-set of countries as the USA, Switzerland, Japan, Norway, Australia and Canada alone represent almost 50% of both EU exports and EU imports. With the majority of these countries the EU has already signed, is negotiating or is starting to negotiate ambitious bilateral agreements that include both goods and services liberalisation.

However, there is also a group of countries with which either the EU has agreements where services commitments could be deepened (e.g. Mexico and Chile) or has no FTA including a services chapter (Australia, New Zealand, Pakistan, Switzerland[1], Paraguay, Taiwan and Turkey). These countries together represent at least 22% of EU exports and more than 20% of EU imports of commercial services, which amount to 123 and 90 billion Euros respectively. It is noted that the EU is also an important trading partner for these countries. This is not only the case for smaller countries, but the EU27 represents e.g. for the US 32% of its export and 34% of its imports of commercial services.

The EU has bilateral agreements including a services chapter in force with the following countries:

1. Norway
2. Iceland
3. Mexico
4. South Korea

Main elements of the future agreement

Although the negotiation of the agreement would be outside of the auspices of the WTO, the current potential members of the agreement share the understanding that the agreement should be brought back to the WTO and GATS, when the agreement attracted a critical mass of WTO-members.

The agreement should be ambitious, comprehensive in scope and commitments taken should reflect in principle as closely as possible the autonomous level of liberalisation (i.e. binding the existing practice). Also, the negotiation is aimed at providing for new or improved market access. Moreover, new and enhanced disciplines should be elaborated on the basis of proposals brought forward by the participants. Such proposals are expected to be made in the area of domestic regulation (e.g.

authorisation and licensing procedures), international maritime transport services, Information- and Communication Technology ('ICT') services (including cross-border data transfers), e-commerce, computer related services, postal and courier services, financial services, temporary movement of natural persons, government procurement of services, export subsidies and state-owned enterprises. This list is neither an exhaustive list, nor does it mean that it was agreed that in all those sectors there will be new and enhanced disciplines.

Architecture

In terms of architecture of the future agreement, convergence could be found that the agreement would be based on the GATS, whereby some GATS core articles (inter alia on definitions, scope, market access and national treatment, general and security exemptions) would be incorporated. This would ensure a future possible integration of the agreement into the GATS. There would be additional provisions to govern how each member could take commitments. There was a general understanding that market access commitments should be taken as in GATS. In terms of national treatment, the agreement could contain the possibility to be applied on a horizontal basis to all services sectors and modes of supply. Exemptions to this horizontal application would then have to be listed in the countries' national schedule of commitments. There was also convergence that commitments should in principle reflect the actual practice ("standstill clause") and that future elimination of discriminatory measures should be automatically locked (so-called "ratchet clause") unless an exemption is listed.

Multilateralisation

Unlike in the DDA negotiations, the possible future agreement would for the time being fall short of the participation of some of the leading emerging economies, notably Brazil, China, India and the ASEAN countries. It is not desirable that all those countries would reap the benefits of the possible future agreement without in turn having to contribute to it and to be bound by its rules. Therefore, the automatic multilateralisation of the agreement based on the MFN principle should be temporarily pushed back as long as there is no critical mass of WTO members joining the agreement. Such a temporary push back can be achieved by ensuring that the future agreement fulfils the conditions of an economic integration agreement as set out in GATS Article V, i.e. the agreement should have substantial sectoral coverage, provide for the absence or elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures. At the same time, there was a common understanding to include an accession clause for interested WTO

members and to elaborate a pathway to the multilateralisation of the agreement, i.e. the agreement should define the mechanisms and conditions for subsequent multilateralisation.

Way ahead

In March 2013, the Council authorised the Commission to open negotiations on a plurilateral trade in services agreement. For these reasons, it has been decided to carry out a Trade Sustainability Impact Assessment for the future negotiation between the EU and the WTO members which are interested in this initiative. It was also decided to request input and views of interested companies, associations and the civil society by launching a public survey.

Further information can be found on the homepage of DG Trade:
http://ec.europa.eu/trade/policy/countries-and-regions/agreements/index_en.htm

Further information on the ongoing negotiations can be found on the following link:
<http://trade.ec.europa.eu/doclib/html/150129.htm>

Further information and statistics can also be found on the following link:
<http://trade.ec.europa.eu/doclib/html/122532.htm>