



State of Play of the GATS Negotiations: Are Developing Countries Benefiting?

I. Introduction

The Hong Kong Ministerial Conference is to provide political direction on outstanding areas for the remainder of the Doha Round of negotiations. The round of negotiations has been informally agreed to conclude by the end of 2006. For the General Agreement on Trade in Services (GATS), developing countries at the Ministerial Conference will contend with not only outstanding issues according to the negotiating guidelines adopted by Members for this round but also new areas that have recently surfaced without a mandate, agreement or interest of developing countries. This policy brief provides a critique of the state of play of GATS negotiations and its impact on developing countries and least developed countries (LDCs) interests in the negotiations.

II. What's on the table

The objectives and mandate for this round of GATS negotiations was de-

vised on 29 March 2001 with the adoption of the Guidelines and Procedures for the Negotiations on Trade in Services (herein after referred to as the Negotiating Guidelines). The key features of interest for developing countries are the following:

Objectives:

- negotiations to be conducted on the basis of progressive liberalisation, aiming to increase participation of developing countries in trade in services, providing flexibility for developing countries and special priority to least developed country Members
- liberalisation process shall respect national policy objectives, level of development and size of economies of Members

Scope of negotiations:

- special attention shall be given to sectors and modes of export interest to developing countries
- MFN exemption negotiations shall provide flexibility to developing countries
- negotiations on rules and domestic regulation must aim to conclude before negotiations on market access

Executive Summary

The General Agreement on Trade in Services negotiations are moving in an illogical manner. Rules negotiations lag far behind market access negotiations and the potential development friendly provisions have been ignored. The Sixth Ministerial Conference of the World Trade Organisation in Hong Kong will provide political direction of the last leg of these negotiations before the end of the Doha Round. This policy brief shows that the interests of developing countries in the various negotiating areas under GATS are not equally balanced in the draft Ministerial text on services in the lead up to the Ministerial Conference.

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Modalities and Procedures:

- the Council for Trade in Services (CTS) is to continually carry out an assessment of trade in services with reference to increasing participation of developing countries in world trade and adjusting negotiations accordingly. Developing countries are also to receive technical assistance to carry out national/regional assessments
- the CTS is to review progress in negotiations to ensure developing countries increase their participation in world trade and utilise flexibilities in opening their markets

Negotiations on rules and domestic regulation were to be concluded during the Uruguay Round. Unable to do so, Members agreed to conclude these outstanding negotiations later without stalling the conclusion of the Uruguay Round. Unfortunately, it was agreed that negotiations on services liberalisation would be undertaken in parallel with negotiations on rules and domestic regulation creating an illogical process of negotiations for the GATS. This process forces Members to consider binding liberalisation commitments without rules on the legal parameters for those commitments.

Currently, the Working Party on GATS Rules (WPGR) undertakes negotiations on emergency safeguard measures, government procurement and subsidies. The Working Party on Domestic Regulation (WPDR) undertakes negotiations on disciplines for domestic regulation according to the GATS Article VI: 4 mandate.

According to the Negotiating Guidelines, negotiations on market access or specific commitments are to be mainly conducted through a request-offer approach. Members are to request liberalisation commitments of other Members and in response signal their liberalisation commitments through “offers” that can at the end of the round be finalised to a new set of liberalisation commitments.

Finally, assessment of trade in services and review of progress in negotiations are two very important mandates in the Negotiating Guidelines because they refer to interests of developing countries such as ensuring their increased participation in world trade, implementation of the GATS flexibilities for developing countries and understanding the benefits services trade can deliver for development.

III. Progress Report

The ability of developing countries to provide key services for their people is essential for development. Developing countries in general do not have strong domestic service providers particularly in sensitive sectors such as financial, telecommunication, distribution, health, education and others. Thus, it is in the interest of developing countries to ensure strong and sustainable domestic providers for such services. Liberalising markets pre-

turely would prevent their ability to sufficiently strengthen their domestic supply capacity or crowd out smaller domestic suppliers preventing their ability to compete equally with foreign-service suppliers. Further, given weak data on the impacts of services liberalisation on developing countries, Members cannot afford to simply hope GATS commitments automatically result in development gains. Studies are yet to show a causal relationship between liberalisation and increases in foreign direct investment.

Due to these real concerns, developing countries place a higher priority on the completion of rules, particularly on emergency safeguard measures, and domestic regulation discipline negotiations to safeguard their right to regulate and assessment and review of progress in negotiations. Moreover, lack of progress in these other areas creates uncertainty on what rights and obligations developing countries will have for their liberalisation commitments. Despite this clear anomaly, progress in the rules and domestic regulation negotiations as well as the assessment and review lags far behind negotiations on liberalisation commitments.

A. Working Party on GATS Rules Negotiations

Negotiations on Article X on Emergency Safeguard Mechanism
GATS Article X calls on Members to negotiate on the question of emergency safeguard measures (ESM). The results of these negotiations were to enter into effect not later than 1998. This original negotiating deadline was missed and has now been extended to conclude before the end of the round. Article X is a contractual agreement among WTO Members to negotiate on an ESM. Despite this agreement, however, some WTO Members (particularly developed countries who are not in favour of an ESM) interpret Article X negotiations as leading to the *question* of an ESM and not a concrete outcome. Despite the opposing interpretations, Article X clearly states “the results of such negotiations shall *enter into effect*”. Only an actual outcome of negotiations, i.e. a mechanism that can be implemented by Members, can enter into effect.

Furthermore, an ESM is desirable by many developing countries who, like in the case of trade in goods, are interested in having a safety net in the event GATS commitments lead to harmful import surges with dire consequences. Given the low level of service industry development and competitiveness in many developing countries, it is reasonable to assume they are more likely than developed countries to experience an import surge. A group of Members from the Association of South East Asian (ASEAN) have taken the lead in pushing these negotiations forward. This group of ASEAN countries has presented substantial proposals, the first of which was made in 2000¹. The latest proposal by the group of ASEAN Members² builds on their earlier ones and discussed the political considerations of developing an ESM and outlined possible elements for a mechanism. These elements deal with meeting the MFN obligation, a limited window and conditions for invoking an ESM, a limited duration for applying an ESM, the impacts an ESM would have on acquired rights, a definition of domestic industry, applicable safeguard measures, surveillance to prevent abuse, and special and differential treatment.

In general, there is a polarization of views between a group of developed countries challenging the desirability and feasibility of an ESM and a group of developing countries in favour of an ESM. The opposing developed countries have resisted negotiating an ESM on the basis that its use would create a chilling effect and deter foreign service providers from entering into markets. The opponents have raised this concern as a question on the desirability of an ESM. A second reason for their rejection involves potential difficulty in applying an ESM to services trade – which they raise as a feasibility question. These arguments have been refuted by the fact that an ESM exists in other bilateral and regional trade agreements.³ It must be noted that some developing countries have concerns with the potential of being on the receiving end of an ESM on mode 4.

The United Nations Conference on Trade and Development (UNCTAD) has also undertaken a study on the positive desirability and feasibility of an ESM. In the paper titled “Emergency Safeguard Measures in the GATS: Beyond Feasible and Desirable”⁴, the author argues that classical economic theory from a pure academic sense where adjustment costs are non-existent rejects the notion of trade restrictions such as safeguard measures. Further, given that services trade is driven by regulation more than for trade in goods, many more reasons exist for why a safeguard measure is needed in GATS. These include uncertainty to the outcomes of services liberalisation which entails relaxation of regulations. As a result, liberalisation of trade in services can produce unforeseen import surges. These concerns lead to caution among Members to bind liberalisation commitments in GATS without safeguard measures.

Despite ten years of negotiations, there has been a continuous lack of political will mainly by developed countries to make progress. Developed countries have asked many questions but have not engaged sufficiently in finding solutions despite their capacity and resource to do so. Currently, Members are involved in discussing a set of questions posed on the ASEAN proposal.⁵ These questions are highly detailed and sophisticated at a technical level and point to how far discussions have come in negotiations. Despite several attempts at answering these questions, even through the UNCTAD paper, Members are still far from reaching agreement on these issues.

Negotiations on Article XIII on Government Procurement

Negotiations on government procurement may be the most contentious for developing countries. The main *demandeur* of negotiations is the European Communities (EC) who interprets the mandate on Article X in a very different manner from the majority of Members, which are developing countries with defensive interests. The EC has interpreted Article X as allowing for negotiations on market access. The majority of developing countries are not in favour of these types of negotiations.

The most substantial proposals table thus far are from the EC. The EC has submitted four proposals in the past four years focused on an Annex on procedural rules for government procurement and incorporating government procurement in Members’ schedule of commitments for market access and national treatment. The most recent proposal by

the EC is titled “Government Procurement in Services” on 13 June 2005 (WTO Document Code: S/WPGR/W/52). The primary interest of the EC is to liberalise government procurement in GATS. In its June 2005 proposal, the EC is explicit about this objective by stating “the underlying principle [of their proposals] would be that each WTO Member would have the possibility to undertake relevant government procurement commitments in the sectors it wishes to open to international competition and according to the specifications it would set in order to fulfil its public investment and development needs”.

The proposal discusses issues at an advanced stage that includes defining the scope of the rules to be applied to government procurement contracts that have services as the primary subject and that procuring entities include central, regional or local governments and authorities and non-governmental bodies exercising powers delegated by central, regional or local governments or authorities (in line with GATS Article 1 (a)). The EC also proposes a minimum threshold value for procurement contracts by all Members. The EC also proposes how Members should schedule whether their national treatment commitments apply to laws, regulations or requirements governing procurement in services – essentially ignoring Article XIII: 1 which states that GATS Article XVII on National Treatment shall not apply to laws, regulations or requirements governing the procurement of services. Similar proposal is also made on the MFN clause, which again Article XIII: 1 states does not apply to government procurement of services. Finally, the EC proposes rules on the valuation of contracts, provisions on technical specification and qualification requirements, standard procurement methods, time periods, documentation requirements and evaluation criteria. This latter set of proposals refers to domestic regulations and procedures that developing countries utilise for development goals and objectives.

The majority of developing countries are not in favour in opening their government procurement markets for liberalisation in GATS. This is due to the important role government procurement of services in development goals and objectives, particularly for the equitable and sustainable provision of important services for domestic consumption. This in line with the reading of GATS Article XIII on Government Procurement where paragraph 1 explicitly states that the provisions of “Most Favoured Nation Treatment, Market Access and National Treatment does not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes”. This paragraph clarifies that GATS liberalisation negotiations do not apply to government procured markets. Paragraph 2 of Article XIII on Government Procurement states “there shall be multilateral negotiations on government procurement in services...”. Despite the clear parameters to negotiations, the EC continues to insist negotiations on market access in government procurement of services.

The US has shown interest in negotiating transparency disciplines in government procurement. Developing countries, however, still hold their position on dropping the Working Party on Transparency in Government Pro-

curement (WPTGP) from the Doha Development Agenda (DDA) and hence the interest to negotiate transparency disciplines for government procurement of goods and services. In fact, before the rejection of the WPTGP during the Fifth WTO Ministerial Conference in Cancun, developing countries had raised questions on the overlap with the work of the WPTGP and negotiations on transparency in government procurement in GATS Article XIII. Given the fears that negotiations on transparency in government procurement has been revealed as a tactics by some Members, particularly the EC, as an agent towards negotiations on market access, developing countries in general oppose entertaining any discussions of transparency in GATS Article XIII negotiations.

Negotiations on Article XV on Subsidies

The mandate to negotiate subsidies is found in GATS Article XV. Members are to develop disciplines necessary to avoid trade-distortive effects of subsidies. Negotiations are also to address the appropriateness of countervailing procedures. The role that subsidies play in development programmes of developing countries and the need for developing countries to have flexibility in the use of subsidies is also to be recognised. Since the commencement of negotiations, Members have been discussing a definition for services. Without an agreed definition on subsidies in trade in services, Members are unable to move to defining the trade distorting effects of such subsidies. GATS Article XV also calls on Members to exchange information concerning all domestic subsidies related to trade in services. However, without a definition of what a services subsidy is, this information exchange exercise has proven not to be successful.

The most recent proposal on the definition of subsidies was submitted by Chile, Hong Kong, China, Mexico, Peru and Switzerland titled "Proposal for a Provisional Definition of Subsidies in Services" on 9 June 2005 (WTO Document: JOB(05)/96). This communication proposes elements for a provisional definition based on the Agreement on Subsidies and Countervailing Measures (ASCM). The elements include a basic definition, which is:

"Subsidy is defined as a measure by which a Member provides specific financial contribution or affords any form of income or price support, and a benefit or an advantage is thereby conferred, i.e., on terms more favourable than those available to the potential recipient or beneficiary in the market".

The elements further propose that subsidies can be granted by central, regional or local governments and authorities, as well as non-governmental bodies in the exercise of delegated powers, in line with GATS Article 1:3 (a). Subsidies or financial contributions would include "direct transfer of funds, potential direct transfer of funds or liabilities, government revenue that is otherwise due is foregone, government goods or services other than general infrastructure and public services (services available to the public in general), and government purchases of services".

This provisional definition is to be utilised for the information exchange exercise. Chile et al further proposed that Members share information on subsidies they provide in five sectors of their own choice by November 2005. Information on subsidies were to include: 1) what form the subsidy is in, 2) the policy objective or purpose of the subsidy, 3) eligibility criteria of the subsidy, 4) subsidy amount (if available), 5) calculation methodology (if applicable), 6) subsidy duration (if applicable), and 7) statistical data for assessment of the trade effects (if available).

While some Members felt that a provisional definition would be useful in facilitating the information exchange exercise, others raised questions on the Chile et al proposal. Some Members, mainly developed countries, did not feel the ASCM provided an appropriate basis for services. Given the need for more clarification and concerns that providing subsidy information for five sectors was too burdensome given the short time frame before the Sixth Ministerial Conference, Members did not fulfil the proposed information exchange exercise before November 2005.

Previous to this, the US had submitted a proposal titled "Working Toward a Productive Information Exchange" on 31 January 2005 (WTO Document Code: JOB(05)/5). It discussed its concern that a provisional definition, particularly one based on the ASCM, would force countries to report on a vast array of subsidies. The US felt that such an exercise may be too burdensome and proposed instead to agree on a basic definition of a service subsidy and provide such information for one or two sectors and only for subsidies that are linked to export performance. The US proposed one of those sectors to be tourism.

Lack of progress in the information exchange exercise is also due to the hesitation by Members of the potential that their revealed subsidies may be later defined as being trade-distortive and hence liable for discipline. Article XV also calls for negotiations to recognise the role subsidies play in development programmes and the need to provide flexibility in this regard. As a result, developing countries have the opportunity to balance their offensive and defensive interests in disciplines if the special treatment for the use of subsidies for development purposes is respected. Despite this opportunity, however, some developing countries do not feel ready to undertake the risk of negotiating disciplines that may not guarantee protections of their subsidies in sensitive sectors, such as education, health, etc.

B. Working Party on Domestic Regulation Negotiations

Negotiations on Disciplines for Domestic Regulation

GATS Article VI: 4 calls on Members to develop disciplines to ensure measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures do not constitute unnecessary barriers to trade. These disciplines are to ensure these types of domestic regulations are:

- a. based on objective and transparent criteria, such as competence and the ability to supply the services;

- b. not more burdensome than necessary to ensure the quality of the services; and
- c. in the case of licensing procedures, not in themselves a restriction on the supply of the service.

Negotiations on domestic regulation disciplines held under the Working Party on Domestic Regulation (WPDR) have advanced further than negotiations in the WPGR. Several proposals were submitted in 2005. Some Members, particularly developing countries such as Brazil, Philippines, Dominican Republic and Peru, are focusing on these discussions for disciplines applied to all sectors committed horizontally. While others, generally made up of developed countries, are interested in disciplines at a sectoral level. For example, Australia submitted a proposal titled "Development of Disciplines on Domestic Regulation for the Legal and Engineering Sectors" on 6 September 2005 (WTO Document Code: S/WPDR/W/34). This communication proposes separate disciplines for the legal and engineering sectors in tandem with negotiations on horizontal disciplines.

Other Members are also interested in developing disciplines on one aspect of Article VI: 4, e.g. qualification requirements, at a time. For example, Bolivia, Chile, India, Mexico, Pakistan and Thailand submitted a proposal titled "Proposed elements for disciplines on Qualification Requirements and Procedures" on 30 March 2005 (WTO Document Code: JOB(05)/50). Still others such as the US are interested in horizontal transparency disciplines in domestic regulation and has submitted a room document along these lines titled "Horizontal Transparency Disciplines in Domestic Regulation" on 18 February 2005.

In its proposal, the US presents disciplines to ensure Members' laws and regulations related to the GATS are well publicised. These proposed disciplines include a prior comment period for new regulations before they are adopted. This requirement is to be followed by responses in writing by the Member adopting the new regulation. The proposal also presents disciplines to ensure procedures that results in a license are in addition to being transparent and efficiently executed in a timely manner. In addition to concerns about the proposed prior comment period for new regulations, many Members felt the mandate for Article VI: 4 goes beyond only transparency .

The debate on whether to develop disciplines horizontally or sectorally has also raised questions on feasibility and desirability. The major developing country proponents are of the opinion that at some threshold disciplines can be applied at a horizontal level across all sectors. An informal note prepared by the WTO Secretariat titled "Overview of Regulatory Provisions in Services Economic Integration Agreements (EIA)" on 14 September 2005 (WTO Document Code: JOB(05)/175) found that the majority of EIAs had disciplines on domestic regulation at a horizontal level. Furthermore, some Members have also argued that the Australia proposal on sectoral disciplines can be applied at the horizontal level.

Developing countries in general and some developed countries, such as the EC, Switzerland and Japan, are in

favour of horizontal disciplines at least before negotiating sectoral disciplines. In addition to being feasible, negotiations at a horizontal level would remove any bias in developing disciplines in sectors of export interest to developed countries. Additionally, negotiating horizontal disciplines would be less time consuming than the sectoral approach, particularly since some developing countries are interested in concluding negotiations before the end of the round. These countries aim to develop disciplines that sets the primary objective of Article VI: 4 on national policy objectives. They find the current language in GATS Article VI: 4 harmful for developing countries since the necessity test for burdensome measures is placed on the quality of the service. To this end, the proposal submitted by Brazil et al replaces Article VI: 4 (b) from "not more burdensome than necessary to ensure the quality of the service" to "not more burdensome than necessary to meet national policy objectives". Some developed countries have also shown interest in this safeguard measure. In general, developing countries are grappling with ensuring that domestic regulation disciplines strengthens their right to regulate and at the same time disciplines developed countries' domestic regulation with a "protectionist" tendency especially on mode 4.

It must be noted that some developing countries feel there are no guarantees, given the market access interests of some major trading developed country partners, that negotiated disciplines would not impinge on their right to regulate. Others are also not in favour of disciplines on domestic regulation for the potential additional burdens they may place on them, particularly given their weak regulatory regimes. This suggests a lack of consideration of adequate special and differential treatment in the discussions. There has also been suggestion made by some Members that the scope of Article VI: 4 does not include special and differential treatment. This interpretation, however, goes against the GATS Preamble on ensuring development of developing countries, and recognising the right of Members, including those with weaker regulatory regimes, to regulate and introduce new regulations.

C. Negotiations on Specific Commitments

The negotiations to liberalise trade in services has moved much farther along than negotiations on rules and domestic regulation disciplines. Members have engaged in two rounds of requests and offers. The majority of the WTO Members have submitted initial offers (as of 28 November 2005, 69 initial offers representing 93 Members are on the table) and 30 revised offers have been submitted representing 54 Members.⁶

Developed countries have repeatedly complained that developing countries have not provided substantial offers for liberalisation commitments. Their assessment is based on their requests, which have generally called for full liberalisation of sensitive markets such as financial, telecommunication, energy and other sectors. Developing countries have in place a very important flexibility mechanism in GATS through Article XIX: 2, which allows them to open fewer sectors, liberalise fewer types of transactions,

progressively extend market access in line with their development situation and attaching conditions to their market access to meet Article IV objectives. Given that developing countries in general do not have strong domestic service suppliers that are able to compete on an equal footing with developed country service suppliers in addition to the fact that having in place strong domestic service suppliers in key and sensitive sectors is an important development objective, many developing countries simply cannot match the level of ambition imposed by developed countries. Further, without important rules negotiations and an assessment of trade in services and review of progress in negotiations absent (see below), developing countries are cautious in binding liberalisation levels in GATS.

On the other hand, developed countries have not provided offers that are meaningful for developing countries. This is mainly due to the lack of substantial mode 4 commitments by developed countries. The EC and the US frequently boast of their mode 4 commitments and offers, however, it remains that their commitments and offers are below existing levels of liberalisation and do not constitute meaningful market access for the majority of developing countries and LDC. Furthermore, developed countries have not been able to extend their mode 4 commitments beyond high skilled professions into areas where LDCs and many developing countries have supply capacity in, which is in areas of lower skill levels. Therefore, in this game of market access negotiations, developing countries do not have an incentive to offer their markets without getting anything in return.

In the few months in the lead up to the Hong Kong Ministerial Conference, developed country Members began pushing for the development of new mechanisms to intensify these negotiations. The introduction of "benchmarks" for liberalisation commitments and complementary approaches were opposed by many developing countries. Despite rejection by the majority of the Membership, the Chair of the CTS welcomed Members to submit proposals on these new areas. After the August 2005 recess, several proposals on complementary approaches were submitted with the goal of pushing them through to be endorsed by Ministers at the Hong Kong Ministerial Conference.⁷

D. Other areas

The Guidelines and Procedures for Negotiations mandate the CTS to conduct an assessment on trade in services and review of progress in negotiations. Members are also overdue in implementing the Modalities for the Special Treatment for LDC Members and Article IV. Below is a brief discussion of each of these and other ongoing discussions.

Assessment of Trade in Services and Reviewing Progress in Negotiations

Paragraph 14 of the negotiating guidelines mandates an assessment is to be on trade in services in overall terms and on a sectoral basis with reference to the objectives of

the GATS agreement and Article IV in particular. Negotiations are to be adjusted in light of the results of such an assessment. Technical assistance is also to be provided to individual developing countries to carry out national or regional assessments. The CTS has not fulfilled this mandate. Without a comprehensive assessment, developing countries are unable to assess the benefits and losses of GATS liberalisation.

Paragraph 15 of the negotiating guidelines mandates the CTS to review the progress in negotiations to ensure effective implementation of Articles IV and XIX: 2 and suggest ways and means of promoting the goals established therein. The CTS has not conducted such a review despite requests by developing country Members to do so. Developing countries have as a result undertaken their own reviews for example by assessing whether commitments and offers made by developed country Members provide meaningful market access in sectors and modes of interest to them. However, these country initiatives still do not fulfil the complete mandate of paragraph 15 which calls for ensuring the implementation of Articles IV and XIX: 2.

Modalities for the Special Treatment of LDC Members

The Modalities for the Special Treatment of LDC Members were agreed in September 2004. These modalities call on Members to consider the serious difficulty LDCs face with making commitments and their challenge to meet the services needs for sustainable development. The LDC Modalities also provide action-oriented mandates to increase the participation of LDCs in services trade. They include calling on:

- Members to give special priority to providing effective market access in areas of export interest
- LDC Members to identify their modes and sectors of export interest to be prioritised in market access commitments and those modes and sectors that present development priorities to LDCs to also be taken into consideration in negotiations;
- Members to develop mechanisms with a view to achieving full implementation of GATS Article IV: 3;
- Members to take measures to increase LDC participation in services trade; and
- Members to make commitments in Mode 4.

These calls for action, however, have not been implemented. As a result, the LDC Group in 2005 increased their efforts in ensuring Members fulfil the agreed mandates. The LDC Group has submitted a set of questions to Members inquiring how far they have come in implementing the LDC Modalities. In May 2005, the LDC Group submitted a group request on Mode 4 in the categories of export interest to them. In addition to the categories normally utilised by Members in their schedules, the LDC Group called for commitments in the categories of "semi-skilled professionals" and "service providers other than professionals". In their request, the LDC Group also recommended for Members to make commitments based on the on the W/120 classification list and the International Labour Organisation's International Standard Classification of Occupation-1988. This request is yet to be met, particularly by developed country

Members. In further pursuit of their offensive interests and for ensuring gains from this round of negotiations, the LDC Group submitted a Room Document on developing a mechanism to accord special priority in market access in line with the mandate of the LDC Modalities. These initiatives are yet to be further discussed and implemented, which may be furthered through the recent inclusion of a standing agenda item on review of implementation of the LDC Modalities in the CTS.

Special and Differential Treatment: Article IV, Classification and Most-Favoured-Nation Treatment Review

Article IV is considered to be the main SDT provision in GATS. It, however, has not been utilised or implemented in GATS negotiations. Developing country Members have called for mechanisms to implement Article IV as part of the Special and Differential Treatment portion of the Doha Work Programme. Proposals submitted to the CTS, however, have not led to any outcome.

During the Uruguay Round, most Members utilised the WTO W/120⁸ list classification and corresponding United Nations Central Product Classification (UN CPC) in their schedules of commitments. Some countries now find some of these classifications inaccurate or not in line with today's market reality for certain sectors, particularly those with rapid technological advancements. Despite many proposals to reclassify sectors such as environmental, energy and computer and related services, no agreement has been reached to change existing classifications. Nevertheless, some countries have utilised the proposed new classification in their offers raising concerns of whether this practice undermines, backtracks or impacts their current and offered commitments in any way.

The GATS Annex on Article II Exemptions allows Members to have in place MFN exemptions in their schedule of commitments through This annex also calls on the CTS to review all exemptions granted for a period of more than 5 years, sets out that in principle exemptions should not exceed beyond 10 years and that MFN exemptions are subject to negotiation in subsequent trade liberalising rounds. Members have initiated the review and negotiation of MFN exemptions. The MFN review has not led to the removal of existing MFN exemptions. Developed countries in general have in place various MFN exemptions without end dates. Developing countries are interested in seeing these MFN exemptions either removed or specified an end date.

IV. Preparations for the Hong Kong Ministerial Conference

The Chair of the CTS has under his own responsibility drafted a text for the Hong Kong Ministerial Conference. The draft text underwent three revisions and was eventually attached as Annex C to the comprehensive draft text for all the negotiating areas. The process of drafting this text came under major criticism by many developing countries whose views were not equally taken into consideration as others. Areas that were repeatedly and vehemently opposed by the

majority of the Membership, such as the numerical targets (see discussion below), continued to stay in subsequent versions of the draft text. Although reference to "numerical targets" was removed from the final version, the majority of the text does not enjoy consensus. This section will discuss parts of the text as it relates to ongoing negotiations and analyse its accurate reflection of current interests particularly those of developing countries.

The paragraphs on the rules negotiations fail to reiterate that they are to conclude before negotiations on market access as called for by the Negotiating Guidelines. Given the generally defensive position of developing countries rules negotiations, particularly on emergency safeguard measures, is important for further liberalisation in GATS. The draft text does not adequately represent the interest of developing countries in this regard. Discussions and proposals on ESM are quite advanced, however, this fact is not made clear in the draft text particularly compared to the text on government procurement.

The language on the government procurement negotiations is the strongest, while it is the only area of the rules negotiations with the most divergence. The reference made in the draft text on a possible framework also goes against the opposition by the majority of Members on such proposals that have been submitted thus far.

On domestic regulation, despite reservations by some developing countries on the inclusion of the Chair's own responsibility note on an illustrative list of possible elements for Article VI: 4 disciplines, the draft Ministerial Text obliges Members to consider this note in the negotiations for 2006. Further, the draft text does not specify whether disciplines are to be horizontal or sectoral, suggesting there is no agreement among Members in this aspect of negotiations.

The draft text is imbalanced in its treatment of negotiations for liberalisation. There is a clear bias towards and over emphasis of the market access portion of negotiations. Despite rejection of the benchmarking proposals submitted, the Chair in previous versions of the draft text included a placeholder for "numerical targets" – the new term for market access benchmarking. Developing countries continued to voice their opposition and successfully removed the placeholder from the final draft version.

Despite this improvement, the draft text continues to include a paragraph on undertaking mandatory plurilateral negotiations to intensify and expedite liberalisation negotiations. Developed countries are aiming through the plurilateral approach to gain agreement for a process in 2006 whereby a group of countries can present a collective request to other countries and oblige them to enter into negotiations on the basis of the collective request. The majority of developing countries are in opposition of this approach as it aims to bypass the bilateral request offer process for mandatory engagement in negotiations particularly on specific sectors through a plurilateral process. Unlike developed countries, developing countries will be more on the receiving end of collective requests than in the offensive end of submitting collective

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In August 1995, the South Centre was established as a permanent inter-Governmental organization of developing countries. In pursuing its objectives of promoting South solidarity, South-South cooperation, and coordinated participation by developing countries in international forums, the South Centre has full intellectual independence. It prepares, publishes and distributes information, strategic analyses and recommendations on international economic, social and political matters of concern to the South.

The South Centre enjoys support and cooperation from the governments of the countries of the South and is in regular working contact with the Non-Aligned Movement and the Group of 77. The Centre's studies and position papers are prepared by drawing on the technical and intellectual capacities existing within South governments and institutions and among individuals of the South. Through working group sessions and wide consultations which involve experts from different parts of the South, and sometimes from the North, common problems of the South are studied and experience and knowledge are shared.

requests given their general defensive stance in services trade for this round of negotiations.

Other problematic areas of the draft text include the inclusion of a Chair's own responsibility Report to the TNC Annex that outlines objectives for sectoral negotiations and qualitative objectives for each modes of supply. These areas do not enjoy consensus and are too prescriptive compared to the flexibilities GATS provides for developing countries to liberalise at a pace in line with their development levels.

Developing countries' interests discussed above are not reflected in the draft text for the Ministerial Conference. There are glaring omissions on language referring

to Article IV and assessment and review of progress in negotiations. Instead developing countries are contending with the inclusion of new instruments that threaten to remove their negotiating flexibilities in the GATS negotiations. In the lead up to and during the Hong Kong Ministerial Conference, developing countries should be mindful of the state of play of negotiations to assess what they are and are not gaining as well as what they are being requested to give in return. Developing countries in general are defensive in services negotiations due to the fact that they are not strong competitors in services trade and are negotiating an agreement with many holes still remaining. Negotiation positions of developing countries should reflect this reality accordingly.

Notes

1. Communication from ASEAN Concept Paper: Elements of a Possible Agreed Draft of Rules on Emergency Safeguard Measures for Trade in Services (GATS Article X) (WTO Document Code: S/WPGR/W/30), 14 March 2000.
2. See Communication from Brunei Darussalam, Indonesia, Malaysia, Myanmar, the Philippines and Thailand Further Thoughts on an Emergency Safeguard Mechanism (WTO Document Code: JOB(04)/4), 24 February 2004.
3. Abugattas, L. Safeguards in Agreements to Liberalise Trade in Services: Issues for Consideration of CARICOM Member States in the WTO, the FTAA and in Application of Article 47 of the Revised Treaty of Chaguaramas, report prepared for the CRNM/IBB Project, August 2002.
4. Marconini, M. Emergency Safeguard Measures in the GATS: Beyond Feasible and Desirable, UNCTAD/DITC/TNCD/2005/4, 9 March 2005.
5. Room Document circulated by Brunei Darussalam, Indonesia, Malaysia, Myanmar, the Philippines and Thailand at the WPGR in response to questions raised by Members on 20 September 2004.
6. Report by the Chairman of the Council for Trade in Services to the Trade Negotiations Committee (WTO Document Code: TN/S/23), 28 November 2005.
7. Please see *Benchmarking and Other Approaches for Liberalisation in GATS: What does it mean for Developing Countries?* T.R.A.D.E. Policy Brief No. 3, South Centre December 2005.
8. Document MTN.GNS/W/120.