

**Revitalising services negotiations at the WTO**  
*Can technical assistance help?*

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## Abstract

Services negotiations at the WTO are progressing slowly, limiting the potential for services liberalisation to benefit developing countries, so new impetus may be required to revitalise services negotiations. New negotiation strategies have already been proposed – but it is not clear whether and how this will be progressing. A different strategy that might help services negotiations, and with it the ability of the services sector to contribute further to development, is the use of technical assistance and capacity building to assist developing countries assess the impact of liberalisation, build up regulatory capacities and address supply capacities. Binding access to such technical assistance may help developing countries make pre-commitments that would become binding commitments only when access to technical assistance has been satisfactory, and therefore without the obligation to make commitments binding.

At Hong Kong, WTO Members could:

- recall the importance of TA, not just for Geneva negotiators but also for capital based (sectoral) officials to enable them to undertake services assessments and improve regulatory capacities;
- refer explicitly to the LDC modalities for services negotiations (as is currently in the draft ministerial text), and make TA more automatic;
- think about conducting a stocktaking of existing TA for services negotiations along the following pillars of “**Aid for trade in services**”
  - Aid for the supply capacity of services (e.g. human resource programmes)
  - Aid for addressing the regulatory framework and capacities (e.g. to establish regulatory agencies in the telecommunications sector)
  - Aid for addressing bottlenecks at the level of capitals (e.g. in kickstarting national services trade policy and equipping it with the funds to buy in TA)
  - Aid for translating the services regulatory framework into GATS language
  - Aid directly but appropriately for negotiators (sectoral and Geneva based) to negotiate away international trade barriers.

This paper reports three major findings:

1. The level of support for services trade negotiations is low, only around three quarters of a per cent (0.75%) of total aid for trade policy and regulation. Continued support is needed for negotiators in Geneva and back in support for their capitals. This support is needed in the short and long-run, whether countries are willing to pre-commit or not.
2. At the same time, the bottleneck towards seeing services sectors in the context of GATS is not a problem of translating rules into GATS language (in Geneva and capitals) alone but lies mainly elsewhere. The main challenge in progress on services offers is rooted in the absence in many countries of a clear strategy to develop the services sectors, lack of thinking about how GATS commitments may help the development of the services sectors, and lack of assistance in conducting impact assessments of liberalisation and building up regulatory capacities, and finally a lack of building up the supply capacities and mechanisms to interact amongst ministries and the private sector. These issues are much more likely to be solved on a sustainable basis when there is a national trade in services working group, perhaps working along sectoral lines, that can buy in support if and when this is needed in the context of a commitment.
3. There needs to be a new operationalisation of LDC modalities on services negotiations, because none of the references to capacity building in GATS is bound. This will need to include the idea that countries can make pre-commitments that are binding only when countries have had access to adequate and satisfactory technical assistance. There is some support for such a mechanism. We suggest it might be done either by adjusting a remaining SDT (Special and Differential Treatment) proposal in a positive way to include binding commitments on aid for (services) trade, or rewriting one of the articles in the LDC services modalities with the same effect.

# 1 Introduction<sup>1</sup>

The current status of the services negotiations is unsatisfactory to many. The Report by the Chairman to the Trade Negotiations Committee (TN/S/20) on services offers noted in July 2005 that ‘Overall, although the numbers have improved, the quality remains poor’, and ‘Few, if any, new commercial opportunities would ensue for service suppliers’. NGOs are targeting GATS, and services coalitions predict that the WTO will reach crisis point over services at Hong Kong. New impetus into GATS negotiations seems required. Amongst others this includes:

- *complementary services negotiation procedures* to make proposals more ambitious (and hence aiming for a greater welfare impact including for developing countries). The EU and others have put forward proposals for benchmarking and mandatory targets<sup>2</sup> but this seems to contradict the demands of developing countries for flexibility according to their capacities as well as statements put out by the EC on a “round for free” for developing countries, even though it included flexibility for some developing countries. Numerical targets also do not specify how liberalisation takes place. There are also plurilateral approaches (see e.g. in the Canadian non-paper 28 September 2005) which might be more helpful for developing countries, provided that there are sufficient flexibilities for them, that the request/offer approach remains the modality for making commitments, and that there is sufficient support for these negotiations. The draft ministerial text of services of November 2005 includes reference to request/offer procedures being extended on a plurilateral basis, with due consideration for the position of LDCs and small economies.
- *complementary instruments* to support negotiations of developing countries and enhance the development outcomes. The chair’s report of July 2005 indicated the importance of this: “Delegations reiterated the importance of the Modalities for the Special Treatment for LDCs and for increased LDC participation in the negotiations. In this regard, LDCs recalled the crucial role of targeted technical assistance.” The draft ministerial text of services, point 10, argues that “targeted technical assistance should be provided with a view to enabling developing countries to participate effectively in the negotiations” and makes reference to the “LDC modalities”.

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<sup>1</sup> I am grateful to the various people who provided useful insights, including at a seminar on 17 November 2005 in Geneva. This note is written for a project funded by DFID. The views expressed in this report are those of the author’s, and do not necessarily reflect those of DFID.

<sup>2</sup> Statement of EU conditional negotiating proposals – with explanatory annotations. MEMO - Brussels, 10 October 2005. The EU offer of 28 October 2005 is more specific and sets mandatory targets for developing countries. The EU wants to see negotiations complemented by ambitious mandatory country targets for services sectors to be liberalised - agreed at Hong Kong; for developing countries a lower target would apply that is equivalent to two thirds of the target (139) for developed members, i.e. 93 sub-sectors (targets will not be applicable to “LDCs and to other small and vulnerable developing countries in a similar situation”, see TN/S/W/55). Instead a plurilateral, voluntary approach might be more fruitful for developing countries so that they can discuss in groups, sectors of their interest, and with the help of assistance, without the requirement to make offers, which they can do in request/offer approaches. Alan Johnson (UK secretary of state responsible for trade) favours a request/offer approach and reluctantly agreed to the mandatory approach in the EU trade offer of 28 October 2005. The current draft services text does not include numerical targets.

This paper focuses on the second set of issues: complementary instruments. It first asks the question how technical assistance relates to the constraints to developing exports of services (to implement GATS Art IV, and Art 14 of the LDC modalities), in section 2. Section 3 summarises existing assistance for services negotiations, and section 4 provides a review of these based on consultations. Section 5 concludes with challenges ahead.

This paper includes three main conclusions.

- The level of support for services trade negotiations is low, only around three quarters of a per cent (0.75%) of total aid for trade policy and regulation. Continued support is needed in Geneva and capitals. This support is needed in the short and long-run, whether countries are willing to pre-commit or not.
- At the same time, the bottleneck towards seeing services sectors in the context of GATS is not a problem of translating rules into GATS language (in Geneva and capitals) alone but lies mainly elsewhere. The main challenge in progress on services offers is rooted in the absence in many countries of a clear strategy to develop the services sectors, lack of thinking about how GATS commitments may help the development of the services sectors, and lack of assistance in conducting impact assessments of liberalisation and building up regulatory capacities, and finally a lack of building up the supply capacities and mechanisms to interact amongst ministries and the private sector. These issues are much more likely to be solved on a sustainable basis when there is a national trade in services working group, perhaps working along sectoral lines, that can buy in support if and when this is needed in the context of a commitment.
- There needs to be a new operationalisation of LDC modalities on services negotiations, because none of the references to capacity building in GATS is bound. This will need to include the idea that countries can make pre-commitments that are binding only when countries have had access to adequate and satisfactory technical assistance. There is some support for such a mechanism. We suggest it might be done either by adjusting a remaining SDT (Special and Differential Treatment) proposal in a positive way to include binding commitments on aid for (services) trade, or rewriting one of the articles in the LDC services modalities with the same effect.

## **2 The role of assistance in removing constraints to participating effectively in trade in services negotiations**

### *Constraints to trade in services*

There are three types of constraints to successful exports of services: lack of capacity to produce services, inappropriate regulatory framework, and lack of appropriate international trade rules, or trade barriers.

### A: Inadequate supply capacity

Developing countries often face a lack of services supply capacity due to:

- *Size*. Limited size of the domestic market and so there is a need to raise market access to reap economies of scale. Some services activities require a minimum scale which is greater than the size of the domestic market.
- *Information*. Small services exporters face a lack of information on markets and regulations, and it may take time for consumers to assess the quality. Services products are often 'experience' goods, where sales depend on a track record of international credibility and profile. It can take time to build up international credibility. The fixed costs of establishing credibility are relatively costly for small services providers, and this is particularly severe in developing countries.
- *Financial Resources*. Lack of available financial resources, particularly for small services providers. Development banks have difficulties reaching SMEs, and they may not be geared towards new emerging services sectors and tend to move away from backing individual firms. There is a particular lack of loan funds for dynamic and newly emerging sectors (e.g. IT) where knowledge on the sector may not be available.
- *Technology*. Limited access to (new) technology to produce up-to-date services needed to compete locally, which is particularly severe in developing countries.
- *Human resources*. Some services, such as business or financial services, are skill intensive, but there are only limited available human resources (sometimes due to emigration) or inappropriate resources. Human resources are often geared towards traditional sectors, while it is less common that human resources are devoted towards newly emerging services sectors such as IT enabled contact centres.
- *Infrastructure*. There is a lack of an appropriate physical infrastructure (roads are not paved, weak air connections, etc.)

### B: Inadequate regulatory framework

Many services sectors need a good regulatory framework to operate efficiently and be beneficial for development. State enterprises may have been privatised into private monopolies which may abuse their position of market power if there is no adequate regulation. However, the regulatory framework is sometimes many years old, because smaller services sectors face less demand for good regulation, and there may be less familiarity with what is needed in smaller developing countries. In some cases, the regulatory framework is not ready for liberalisation and significant reform needs to take place first.

A weak regulatory framework contributes to a weak investment climate for services providers. Standard operational matters become tedious with heavy reporting requirements. It can be difficult or time consuming to register a company. Recently, several developing countries have adapted their investment laws, but some countries still lack a modern law protecting investment. It is also important to deal effectively with monopoly providers. The telecommunications sector in small Caribbean countries has been dominated by one or a few firms, so that their prices and services (including interconnectivity issues with ISPs) need to be monitored. This is a more general issue. Liberalisation without an appropriate regulatory framework in place may lead to unwanted consequences: one study suggests good policy practices as having a national regulator in telecommunications, establishment of regulatory bodies

for countries with private provision of electricity, independent regulation in water, regulation of tariffs and service standards for airports and aviation, etc.<sup>3</sup>.

There are also various public policy concerns, including equity considerations, related to private sector participation in the supply of (social) services. Many (new) domestic regulations, often for good intentions of prudence or protection of consumers, can become significant trade barriers to imports and exports of services.

Various government departments are involved in regulating and developing services for exports, and they face the problem of different ministries requiring coordination on regulation. Changes in the regulatory framework can involve changing the responsibilities of ministries. In practice, very few ministries view their services sectors through a trade lens. In order to achieve a welcoming investment climate coordination is required not only amongst ministries but also between the public and private sector regarding regulatory issues relevant for services exports.

### C: International trade barriers

Trade barriers to further trade in services in developing countries include<sup>4</sup>:

- Outright prohibitions for market access by foreign firms in developing countries, and for domestic services suppliers in foreign markets, including in developed countries
- Quotas (e.g. number of flights on a route)
- Local content and prohibitions (some supplies for nationals only, some regulations become trade barriers)
- Price-based instruments (visa fees and entry/exit taxes, or subsidies, and these will hit small traders relatively more)
- Standards and accreditation (non-recognition of diplomas obtained in foreign countries), both in domestic and foreign countries.
- Licensing and procurement (lack of transparency, outside GATS)
- Discriminatory access to distribution networks (not being listed in computer reservation systems)
- Many small services suppliers from developing countries rely on Mode 4 to export services, in which few developed countries are very open.

The problem is not just the existence of these trade barriers, but also their identification: what services sectors are of export interest; what are the trade barriers in these export markets that limit services exports; what are the elements of discrimination in the domestic market, and how does this relate to imports of services, and how can domestic rules turn into international trade barriers. Having identified trade barriers they then need to be formulated into GATS terminology (how can barriers to imports and exports be translated into GATS commitments).

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<sup>3</sup> World Bank (2005), *A Time to Choose. Caribbean Development in the 21<sup>st</sup> Century*, World Bank.

<sup>4</sup> Hoekman, B and C.A. P. Braga (1997), 'Protection and Trade in Services', *World Bank Policy Research Working Paper 1747*.

*Possible roles for assistance*

Support to overcome constraints to trade in services

Technical assistance can help to overcome all of these constraints. Table 1 provides a list of constraints to trade in services

1. Supply capacity (linked to constraint A);
2. Regulatory framework (constraint B);
3. National services trade policy (constraint B);
4. International trade barriers (constraint C);
5. Services negotiations (constraint C).

The table links constraints to services trade to the type of activities that can be employed to remove these constraints. It then mentions what type of external support has been used to do this (but this will be discussed more fully in section 3).

**Table 1 Overcoming constraints to trade in services in developing countries**

Constraints to trade in services	Activities to overcome constraints	External support to overcome constraints	
		Type	Examples of organisations
1 Lack of services supply capacity	Build supply capacity for services sectors that are sustainable, using appropriate and good quality human resources, infrastructure, new technologies	Donor support	Bilateral and multilateral finance / budget support, in country.
2 Inadequate regulatory framework	Regulatory reform	Technical Assistance	World Bank, Bilateral programmes on Investment Climate reform, in country
3 Absence of national services trade policy	Formulating sectoral services negotiations, need for services coalitions, national and sectoral working groups, impact assessments, complementary economic and social policies	Technical Assistance	UNCTAD, ILEAP, ComSec, in country
4 Existence of international trade barriers	Negotiate trade rules internationally or reduce barriers unilaterally;	Funding for negotiators	Funding in an appropriate way by donors.
5 Inability to translate current services framework in developing country capitals into GATS language used at the WTO Geneva	Translate current and future commitments into GATS language, and communicate between capitals and Geneva.	Technical assistance in country and in Geneva; general workshops.	UNCTAD, WB, South Centre, in Geneva and in Capitals, regional organisations such as COMESA

We discuss two major concerns relating to negotiations. First is the absence of a national services trade policy. Few developing countries have such a policy, and therefore their preparation for services negotiations is hampered. In some cases, the trade department sends people to negotiations in Geneva but they will consult the relevant ministries (e.g. tourism or water) on an ad-hoc basis. This is not conducive to developing the services sector, and more continuing arrangements are required, including drawing on technical expertise in certain sectors, perhaps in regional contexts. If countries take the development of services sectors seriously they are more likely to come up with services policies and with it design appropriate regulation that is suitable to use in an international context, such as translating it into GATS commitments.

The inability to translate the current services regulatory framework into GATS language is a further concern. It is not the only or the main concern, even though some might think this is the case. This is because some delegations continue to attend GATS courses, but fail to come up with new commitments (so clearly the reasons are more complex). Despite this, rotation/attrition of staff means that new people in Geneva may benefit from following GATS courses. In addition, it is often the sector specialists in the capital (apart from the national trade officials) that will also need training in GATS language relevant for their particular sector, as GATS is still something that is new compared to the regulations that may have been put in place by countries over decades of work. Again, this would indicate that key bottlenecks exist in capitals, at the level of the sector.

Technical assistance and capacity building in GATS terminology

There are several GATS articles that are relevant for discussing the role of technical assistance. For instance, UNCTAD justifies its technical assistance in the area of services by the fact that it fulfils the General Agreement on Trade in Services, Art XXV Guidelines and Procedures for the Negotiations in Trade in Services (S/L/93), par 14, see box 1

**Box 1 GATS, Art XXV Guidelines and Procedures for the Negotiations in Trade in Services. (S/L/93), paragraph 14**

The Council for Trade in Services in Special Sessions shall continue to carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and of Article IV in particular. This shall be an ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment. In accordance with Article XXV of the GATS, technical assistance shall be provided to developing country Members, on request, in order to carry out national/regional assessments.

The LDC modalities adopted by the Special Session of the Council for Trade in Services on 3 September 2003 referred to this paragraph 14, see box 2.

LDCs have called for the Implementation of Modalities for the Special Treatment of Least Developed Country Members in Trade in Services Negotiations, (WTO Job 05/114). They have called for technical assistance and capacity building to assist them to identify critical areas of potential competitiveness and to build regulatory institutions and legislation, so as to enable them to effectively participate in services trade.

So there are several references in GATS to capacity building and to general support for trade in services, in the guidelines and in the adopted LDC modalities. The main challenge does not appear to be one of language, but of following up on commitments<sup>5</sup>. On the other hand, the current text does not include binding commitments to make TA automatic, e.g. in the case of taking services commitments. This will be discussed in sections 4 and 5.

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<sup>5</sup> See UNCTAD/ITC (2005), “WTO Services Negotiations. Progress Report –September 2005”.

**Box 2 LDC modalities adopted by the Special Session of the Council for Trade in Services on 3 September 2003, references to capacity building:**

**Paragraph 8:** Members shall take measures, in accordance with their individual capacities, aimed at increasing the participation of LDCs in trade in services. Such measures could include:

- strengthening programmes to promote investment in LDCs, with a view to building their domestic services capacity and enhancing their efficiency and export competitiveness;
- reinforcing export/import promotion programmes;
- promoting the development of LDCs' infrastructure and services exports through training, technology transfer, enterprise level actions and schemes, intergovernmental cooperation programmes, and where feasible, financial resources; and
- improving the access of LDCs' services and service suppliers to distribution channels and information networks, especially in sectors and modes of supply of interest to LDCs.

**Paragraph 12:** Targeted and coordinated technical assistance and capacity building programmes shall continue to be provided to LDCs in order to strengthen their domestic services capacity, build institutional and human capacity, and enable them to undertake appropriate regulatory reforms. In pursuance of Paragraph 14 of the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93), technical assistance shall also be provided to LDCs to carry out national assessments of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and Article IV in particular.

### **3 Current assistance to trade in services**

Assistance for trade can be seen in the context of aid for trade<sup>6</sup>, which has become a topic of recent interest (in addition to normal aid for development). The Millennium Project Task Force on Trade<sup>7</sup> suggested an Aid for Trade Fund. The Sutherland Report underlined the need to support developing countries in dealing with trade liberalisation. Mandelson suggested the establishment of a Trade Adjustment Fund.<sup>8</sup> Pascal Lamy (WTO) supported the idea of an aid for trade initiative at the Trade and Development Board of 6 October 2005<sup>9</sup>. In a speech read out on his behalf on 6 October, Dr. Supachai (UNCTAD) supported<sup>10</sup> the idea of aid for trade, and called it a "Doha-plus" trade-enabling development cooperation agenda which would involve helping meet the adjustment costs, including those arising from the expiration of the Agreement on Textiles and Clothing, loss of fiscal revenue, and preference erosion. Much of this literature does not deal with services specifically, but services trade capacity building might be seen in the context of aid for trade, e.g. aid to help implement services commitments.

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<sup>6</sup> See for instance, Hoekman, B. and S. Prowse (2005), "Policy Responses to Preference Erosion: From Trade as Aid to Aid for Trade"; and World Bank draft; World Bank (2005), DOHA DEVELOPMENT AGENDA AND AID FOR TRADE, DC 2005-2006, September 12.

<sup>7</sup> UN Millennium Project, Task Force on Trade (2004), Trade for Development, New York.

<sup>8</sup> See p. 24 of his lecture "Trade at the Services of Development", 4 February 2005.

<http://www.lse.ac.uk/collections/LSEPublicLecturesAndEvents/pdf/20050204-Mandelson.pdf>

<sup>9</sup> [http://www.wto.org/english/news\\_e/sppl\\_e/sppl05\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl05_e.htm)

<sup>10</sup> <http://www.unctad.org/Templates/webflyer.asp?docid=6402&intItemID=1528&lang=1>

### *Aid for trade*

The World Bank defines aid for trade as the “provision of assistance by the international community to help countries address supply-side constraints to their participation in international markets and to cope with transitional adjustment costs from liberalization.”<sup>11</sup> They find that

- The TRTA/CB database indicates that trade-related capacity building and technical assistance increased in 2003, after being constant in 2001 and 2002. Commitments for trade policy and regulations increased from about US\$660 million per year in 2001–2002 to almost US\$1 billion in 2003. This is shown in table 2. Commitments for trade development activities increased from US\$1.4 billion per year in 2001–2002 to US\$1.8 billion in 2003.
- The World Bank has scaled up its activities, with lending for trade increasing from US\$0.8 billion in FY1998–2000, to US\$1.4 billion in 2001–2003, to a projected US\$3 billion in FY2004–2006. Trade facilitation is a significant component of this, accounting for US\$1 billion in FY2004–2006.
- The IMF has introduced the Trade Integration Mechanism (TIM), designed to assist member countries to meet balance of payments difficulties that might result from trade liberalization by other countries. But only two countries have taken advantage of the TIM so far - Bangladesh (US\$78 million) and the Dominican Republic (US\$32 million).
- The Integrated Framework of Trade-related Technical Assistance (IF), which brings together multilateral agencies (the IMF, International Trade Centre (ITC), UNCTAD, UNDP, WTO and World Bank) and bilateral and multilateral donors to assist least developed countries (LDCs), has changed and is now operating in 28 countries, with another 9 possibilities. The IF undertakes several diagnostic studies in low income developing countries, and has identified actions that need to be taken by these countries to improve their trade and investment environment. But these countries require additional financial resources to implement this, and this needs wider attention.

### *Aid for services trade*

There is much less information available on aid specifically for services trade. We discuss evidence from the TRTA/CB database, and then mention a few specific examples.

#### TRTA/CB database

The TRTA/CB database shows that aid for trade in services amounted to US\$5 million in 2001, US\$ 18 million in 2002 (spike due to support to Russia worth US million) and US\$ 6 million in 2003, with partial data for 2004 indicating this was only US\$ 1.5 million. This is only around three quarters of a per cent (0.75%) of total aid for trade policy and regulation at nearly US\$1 billion in 2003 (table 2). It is one hundredth of a percent of total aid (0.01%)

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<sup>11</sup> World Bank (2005), DOHA DEVELOPMENT AGENDA AND AID FOR TRADE, DC 2005-2006, September 12, 2005

**Table 2 – Assistance to trade policy and regulations– US\$ million**

	2001	2002	2003
<b>Trade mainstreaming in PRSPs/development plans</b>	<b>104</b>	<b>73</b>	<b>134</b>
Technical barriers to trade (TBT)	28	27	45
Sanitary and phytosanitary measures (SPS)	99	34	64
<b>Total technical standards</b>	<b>127</b>	<b>61</b>	<b>108</b>
Trade facilitation procedures	126	144	384
Customs valuation	4	17	18
Tariff reforms	0	0	1
<b>Total Trade facilitation</b>	<b>130</b>	<b>161</b>	<b>402</b>
<b>Regional trade agreements</b>	<b>56</b>	<b>163</b>	<b>142</b>
Accession	13	25	18
Dispute settlement	3	1	3
Trade-related intellectual property rights (TRIPS)	13	9	15
Agriculture	11	4	9
Services	5	18	6
Tariff negotiations - non-agricultural market access	6	3	3
Rules	9	2	1
Training in trade negotiation techniques	9	8	13
Trade and environment	84	34	26
Trade and competition	41	32	28
Trade and investment	9	11	7
Transparency and government procurement	2	2	7
<b>Total Multilateral trade negotiations and agreements</b>	<b>204</b>	<b>151</b>	<b>134</b>
<b>Trade education/training</b>	<b>37</b>	<b>57</b>	<b>62</b>
<b>TOTAL TRADE POLICY AND REGULATIONS</b>	<b>659</b>	<b>666</b>	<b>983</b>

Source: 2004 Joint WTO/OECD Report on Trade-Related Technical Assistance and Capacity Building (TRTA/CB)

The database covers projects on

1. Assessment of trade in services (row 3 in table 1)
2. Identifying markets, sectors and modes of export interest (row 3 in table 1)
3. Support for participation in WTO negotiations (rows 4/5 in table 1).

It is unlikely that the database covers all programmes, hence the need to do a further stock taking of all relevant aid programmes, but the available data are indicative of the low importance of support for trade in services (it does not cover support for supply capacity or regulatory reform). This is inconsistent with the high share of services in the economy also in developing countries.

## Services capacity building activities of international organisations

### *UNCTAD*

The division on international trade in goods and services and commodities at UNCTAD has a few projects specifically focused on trade in services. Technical Assistance has been provided on the following issues<sup>12</sup>:

- Elaboration and/or review of initial requests (row 3 in table 1)
- Analysis of the requests received (row 3 in table 1)
- Elaboration of initial offers (row 3 in table 1)
- Development of institutional arrangements to manage the negotiation process (row 4 in table 1); and
- Building overall negotiating capacities on services-related issues (row 5 in table 1).

Outputs include sectoral-specific studies, analytical work on safeguards, participating in mode 4 discussions, and responses to requests from regional and national bodies.

This work is rooted in promoting the integration into the multilateral trading system through GATS, in particular GATS Articles IV and XIX.

Mirroring the low importance of trade in services in the TRTA/CB database, the worth of trade in services projects was less than US\$ 1 million in a total of US\$ 45 million (2.5%) in the division as a whole. However, UNCTAD has been doing work on trade in services and developing expertise in the area for a long time, before the start of GATS.

### *World Bank*

The World Bank has a services trade policy programme supported by the UK DFID.<sup>13</sup> The programme aims to generate research, with the objective of improving services trade policy and enhancing the participation of developing countries in international services negotiations. It supplements the sector-specific work that is already taking place in the World Bank on telecommunications, finance, transport and other services sectors. The work is split into

- Policy research (3 in table 1)
- Conferences and workshops (e.g. in Geneva and Paris), (5 in table 1)
- Operational support (e.g. helping the government of India), (3 in table 1)
- Capacity building (e.g. course on services trade and international negotiations in Viet Nam), (5 in table 1).

The Bank also has a services trade impact assessment project which aims to assess the costs and benefits of foreign competition in services sectors given certain levels of regulatory capacity. For instance, work is being conducted to examine distribution services in China and Brazil (2 in table 1).

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<sup>12</sup> UNCTAD, TD/B/WP/181/Add.1, 22 August 2005. Some support comes from DFID.

<sup>13</sup> TRADE POLICY DEVELOPMENT PROJECT—PHASE II, report by World Bank, 22 July 2005

### *OECD*

The OECD has prepared toolkits, including in the area of trade in services. It has provided studies on managing requests and offers under the GATS in Legal, Insurance and Environmental Services, and with UNCTAD on Energy and Construction. It has also conducted general studies on the effects of services trade liberalisation, and opportunities for services trade.

### *WTO*

The WTO provides courses on trade negotiations and also to developing country capitals to teach basic GATS lessons. In Geneva, officials correspond with developing country trade negotiators on offers and request.

### *ILEAP*

The International Lawyers and Economists Against Poverty based in Canada run a services programme<sup>14</sup> for Sub Saharan Africa that aims to

1. Define the project and identify a focal point in the Ministry in charge of WTO negotiations (in capitals), (3 in table 1)
2. Include local researchers (3 in table 1)
3. Link capitals and Geneva (ILEAP has fellows working with WTO missions in Geneva), (4 and 5 in table 1)

ILEAP commissions papers from African nationals which may also serve as advisors to these governments. The analytical reports serve as background to stakeholders' policy workshops, at which the results of the commissioned papers are presented and discussed. The process of developing background studies involves data collection, followed by mentoring of African scholars by senior – and sometimes international – experts. One meeting organised by ILEAP in Accra in March 2005 included local researchers and included UNCTAD, World Bank, OECD and ICTSD. The Secretariat of the regional economic communities plays the role of local convenor for regional activities. Following stakeholders' workshops, policymakers meet to develop their negotiation positions.

### Services activities of regional and other organisations

The COMESA Secretariat runs a DFID sponsored services project aimed at developing a template or base line for helping COMESA countries in services trade negotiations. The main activities consist of the compilation of detailed sector-specific data on reform by country-based researchers. There are sectoral experts as well as country supervisors. At regional workshops (a workshop was held recently in Mauritius in July 2005), researchers and policymakers meet to discuss services related issues. Participants benefit from presentations of experience in the same sector in countries in the region, experience in other regions (e.g. Caribbean), as well as from research undertaken by other organisations such as the World Bank and UNCTAD.

The RNM is supported in part by donors. It co-ordinates the external trade policies of the Caribbean region, including in the services sector. It has commissioned several papers on services related issues, including sectoral studies used to inform the formulation of national trade policies of Caribbean countries. RNM in co-ordination

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<sup>14</sup> Supported by the Dutch Ministry of Foreign Affairs

with the ACP PMU has run regional workshops on services related issues, with participants from trade ministries and the private sector, such as national services coalitions and the regional hotel association. While the CRNM is doing external trade negotiations for the Caribbean region, the CARICOM secretariat has more expertise on services in a Caribbean context.

Other organisations that provide related assistance include the Commonwealth Secretariat which covers services activities in small and vulnerable developing countries. There are also segmented UN organisations, related to services, e.g. World Tourism Organization or ITU, IMO and UNQ (e.g. a mode 4 project funded by the Dutch Government). The South Centre in Geneva also runs a programme on services, which aims for general trade in services issues (e.g. in Geneva). There are also bilateral programmes on trade negotiations capacity building for services, e.g. by DFID, USAID and the EC.

Several, but not all, of these examples are included in the TRTA/CB database. However, the database is backward looking and does not record planned activities in the future limiting the scope of co-ordination of the various activities ex-ante. While at present the limited scale of services capacity building avoids serious duplication of effort, this might be the case if the scale of support was much higher. In such a case, an ex-ante database would be useful, and active co-ordination needed (this is something to ask for in GATS schedules).

This said, there is already some co-ordination taking place amongst the various organisations. ILEAP works with World Bank and UNCTAD, UNCTAD with COMESA. The COMESA project and ILEAP share in common that they rely on Africans to produce background material and participation of a range of other institutions in the delivery of the activity. While the COMESA project is focused on developing negotiations expertise and positions, ILEAP adds a long-term objective of developing research and analytical skills.

#### **4 Review of Technical Assistance**

There are number of key issues coming out of the consultations:

- The level of technical assistance is felt to be low (0.75% of trade capacity building funds), so it is difficult to expect much in terms of its effects on helping services negotiations.
- Geneva based technical assistance on GATS negotiations, or on general impact assessments, and direct support for trade negotiators are important elements of technical assistance. There are examples of positive effects on services negotiations (mentioned in consultations)
  - Technical assistance provided by the WTO at meetings in capitals is often being followed up and sometimes lead to new offers.
  - Assessments by UNCTAD in one country were found useful by another.
  - Studies by the World Bank are being used to develop requests at the WTO.
  - Support by ILEAP has helped to draft offers at the WTO in the case of a West African country.
  - Countries are beginning to discuss sectoral services issues (and learn from sectoral issues) across the region, for instance through COMESA.

- However, such support may not get to the heart of the issue of why countries are not in the position to even bind the status quo on foreign entry. That is, one-off missions may not be sufficient to help countries to formulate *and* agree quality offers in services negotiations, and they may not be sufficient to create a national services policy required to put GATS in the wider framework of how services can contribute to development goals.
- The key bottleneck thus appears at the level of capitals, either in terms of political will, or in terms of capacity to translate the current regulatory framework into GATS language, specific to sectors, and capacity to regulate a sector when it has been liberalised to private investors.
- What *is* needed to address this is a nationally owned process, for instance based on a national trade in services working group, perhaps working along sectoral lines (with inputs from the regions, based on regional networks<sup>15</sup>), that has the scope of commissioning or accessing research and impact assessments (row 3 in table 1) or accessing organisations to support regulatory reform (row 2 in table 1) necessary to convince the capitals of the merits (or otherwise) of services schedules (currently much support is in rows 4 and 5).
- The support of international organisations is regarded as useful; however, it is limited, given the level of support for services trade; as a result, they are not sufficiently equipped to deal with the underlying problems of why developing countries do not move on offers, because
  - They have not been able to assess adequately the impact of liberalisation (sometimes this could be straightforward, e.g. if foreign entry is already allowed and happening and thus some regulatory framework must be in place, but sometimes impact assessments are more complex and may find contrasting effects), or the impact assessments may not have been “owned” by the capitals, constraining the will to act on new impact assessments.
  - They may not have been able to access the assistance needed for regulatory reform and regulatory capacities.
  - There may also be strategic reasons for not moving on services.
- In a submission to the WTO, the LDC Group stated that due to insufficient trade assessments and the lack of targeted technical assistance it had been especially difficult for many of them to identify sectors of export interest.<sup>16</sup> In essence this reflects the view that the WTO has never been able to fulfil satisfactorily the Uruguay Round commitment (article XIX:3) to assess the results of GATS commitments.
- Organisations such as COMESA are developing toolkits, and use and adapt toolkits designed by the OECD or templates designed by the World Bank. The support for further development of general toolkits may be helpful but in the light

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<sup>15</sup> The GTZ is supporting capacity building for in the financial and telecommunications sector at a regional level in a project called “The Challenges and Opportunities offered by CAFTA for the Financial and the Telecommunications Sector in El Salvador, Guatemala and Honduras and their Implications for the Development Agenda.” Elsewhere, we argue that regional trade agreements are particularly well suited to address sensitive services sectors (not so much goods, as south-south within RTA trade in goods is not very important in total goods trade), see [http://www.odi.org.uk/publications/briefing/bp\\_march05\\_reg\\_int.pdf](http://www.odi.org.uk/publications/briefing/bp_march05_reg_int.pdf). COMESA and ILEAP also take this issue head on, with COMESA adding an ambitious sectoral perspective, while ILEAP involves several regions.

<sup>16</sup> UNCTAD/ITC (2005), “WTO Services Negotiations Progress Report”, September,

of the above will meet with limited results, as the main challenge lies in making such templates useful for the circumstances of developing countries and using the toolkits and templates to assess the impact of scheduling on the services sectors (i.e. the capacity to use such toolkits). Further support at the regional level (working with regional communities) to adapt and *utilise* toolkits to perform the assessments is a more promising way (working with the regions may also help to build up regional assessment capacities).

- Several commented on the importance of regional networks (either developing-developing, or developed-developing). Countries can learn from others, for instance when sectors have been liberalised in some countries but not in the others (some learning is already occurring during discussions at the Committee for Trade in Services). Central banks could work together in regional networks, or regulators of utilities can exchange experiences. An example of a regional network is the Caribbean Hotel Association which is working together within the Caribbean region. It helps to formulate trade negotiations positions when it comes to external trade negotiations, e.g. at the WTO. While it is tempting to select a few sectors in a few countries, there may be disadvantages if some countries are seen to be “selected” while others do not receive support.

If this brief review can do justice to a critical assessment of existing technical assistance initiatives, it is that

- Much support for services negotiations is regarded as useful and well organised, particularly at the level of Geneva;
- However, because total support is very little, not much can be expected, and of course some countries will hardly receive any assistance (e.g. some of the small and island states are dependent on support by the Commonwealth).
- And an insufficient amount of effort is devoted at building negotiation capacities at the level of capitals (rather than Geneva), and existing efforts that do address this are frequently not aimed at building up the processes behind services negotiations, such as supporting a national trade in services working groups where continued discussions and learning can take place, or building up national think tanks on international trade (in services) issues, or improving the regulatory agencies at the sector level.

There is some support for the view that it is important to establish a window or a fund that can be deployed in an automatic way for countries needing technical assistance to support the commitments they put in GATS, e.g. for impact assessment or support for regulatory reform and capacities. This would help countries to schedule sectors when they might have an interest in doing so, but when there are still limited problems related to implementation of the commitments. The arrangement will need to be such that the services commitment is only binding if technical assistance has helped with the implementation in a satisfactory way. Perhaps it is easiest to manage this in a staged way.

For example, Mattoo<sup>17</sup> discusses the creation of a “mechanism for regulatory assistance to support liberalisation commitments by developing countries” to solve the disconnect between services negotiations and technical assistance. According to him, this could reassure developing country policymakers that any regulatory inadequacies

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<sup>17</sup> Mattoo, A. (2005), “Services in a Development Round”, forthcoming in the Journal of World Trade.

that could undermine the benefits of liberalisation will be diagnosed and remedied before any market-opening commitments take effect.<sup>18</sup>

There are several questions that will need to be answered

- Who determines when technical assistance has been adequate in remedying the regulatory inadequacy? Here it seems that national ownership is felt to be important, though it is also possible to think about a submission to the Council for Trade in Services by both those who provide and receive technical assistance (e.g. in the Trade Policy Review sense, by WTO secretariat and government) – we suggest some examples of WTO texts in section 5.
- What type of assistance is best for this purpose? While international organisations may have the capacity (particularly if they were able to beef up their trade in services capacity building support), it could be more acceptable and efficient to support initiatives and working groups in-country in first place and these could then “buy-in” expertise from organisations such as the World Bank, UNCTAD and others.
- What time framework? While it is best to leave this up to the country, some time commitment will be necessary. There are examples in GATS of pre-commitments to liberalise.
- It needs to be ensured that aid for services trade is additional to existing aid for development. What are the ways of doing this? One way might be to establish of a separate fund based on negotiations in the WTO.

Table 3 repeats the constraints to further services trade, and summarises the issues in the support that tries to overcome these constraints. The final column includes possible and partial solutions as discussed in this section.

**Table 3 Support to overcome constraints to trade in services**

Constraints to trade in services	Issues in support activities	Possible solution
1 Lack of services supply capacity	No focus on this in TA activities; though clearly some support is already occurring	Increase and co-ordinate support for services supply capacity
2 Inadequate regulatory framework	Little focus on this in the operationalisation of TA for trade in services negotiations. Little knowledge available in Geneva based institutions on this, while in the WB such knowledge (e.g. on transport, telecommunications, banking) is not linked to the debate on trade in services.	Design new types of support windows for trade in services negotiations, in particular for those sectors in countries that want to schedule but not yet have the right capacities.
3 Absence of national services trade policy	Lack of support for the development of a national services trade policy, absence of national services group, so that much outside one-off support does not get an immediate reaction or is followed up with actions in international trade barriers.	Support the formation of a national working group, backed up by research capacity either in-country (e.g. think-tank) or in international organisations, or using regional networks.
4 Existence of international trade barriers	Direct bilateral support (e.g. by bilateral donors or EC) of developing country negotiators, while seen as beneficial by developing countries, may raise issues related to conflict of interest.	Provide a multilateral fund that can be used to support developing country trade negotiators.
5 Inability to translate current services rules into GATS language used at the WTO.	For this, one-off external support by WTO / UNCTAD / World Bank may be needed, but in itself is not sufficient for countries to move on services (this would require attention to other factors as well).	Connect one-off support to a clear in-country strategy for developing the services sector.

<sup>18</sup> Regulatory institutions can be costly and require sophisticated skills. A telecommunications regulatory authority is likely to cost around \$2 million each year (Mattoo). This is the country amount of aid that is currently discussed on the aid for trade initiative.

In terms of possible solutions, donors interested in assisting developing countries' ability to participate and engage in services trade negotiations by supporting a national trade in services policy (3), can use a multi-pronged, longer term approach:

- support a national working group on trade in services, and equip this with the tools and funds to solicit assessments of trade in services, or do the assessment themselves
- foster regional networks at the sector level, so that interested parties (e.g. private sector, regulatory agencies, central banks) learn from experiences within the region
- support the development of trade in services windows in multilateral organisation, e.g. in UNCTAD and the World Bank to explain about GATS and its general implications as well as combining their strength in providing sectoral expertise and assessments, at the level of capitals, and linking in with national working groups at the sector level.

Such a three-pronged approach is more likely to tackle the root of the challenge in capitals, that some developing countries are not able to think about their services sector in trade terms because they lack the mechanisms for continued co-ordination across ministries and between private and public sectors, and because they lack adequate tools to do assessments on which they are willing to act. Of course, countries may still decide not to make commitments, but at least, developed countries have done their best to make sure that countries that are willing to commit a sector, are not prevented from doing so because of lack of knowledge on GATS or on its possible implications. And developing countries would not be in the situation to forego welfare benefits from liberalisation, because they did not have the information or means of communication.

Of course, this is unlikely to speed up services negotiations in the current round. Some immediate actions now might be helpful, which is to support initiatives in Geneva and particularly in developing country capitals to explain about GATS. This should be aimed at sectors that have shown some initial interest in GATS, and where little help now might make them ready to schedule commitments (either to improve existing offers or to make new offers), before the new deadline for services offers to be agreed at Hong Kong is reached.

## **5 Challenges ahead**

Services negotiations are progressing slowly. New negotiation strategies have already been proposed – but it is not clear how this will be progressing. Quick answers do not seem to be available *en masse*. One strategy that can help services negotiations and with it the ability of the services sector to contribute further to development, is to use technical assistance and capacity building to help developing countries assess the impact of liberalisation and build regulatory capacities. Binding access to such technical assistance may help developing countries make pre-commitments that would become binding commitments only if access to technical access has been provided in a satisfactory way.

At Hong Kong, WTO Members could:

- recall the importance of TA, not just for Geneva negotiators but also for capital based (sectoral) officials to enable them to undertake services assessments and improve regulatory capacities;
- refer explicitly to the LDC modalities for services negotiations (as is currently in the draft ministerial text), and making TA more automatic;
- think about conducting a stocktaking of existing TA for services negotiations along the following pillars
  - Aid for the supply capacity of services (e.g. human resource programmes)
  - Aid for addressing the regulatory framework and capacities (e.g. to establish regulatory agencies in the telecommunications sector)
  - Aid for addressing bottlenecks at the level of capitals, e.g. in kickstarting national services trade policy and equipping it with the funds to buy in TA
  - Aid for translating the services regulatory framework into GATS language
  - Aid directly for negotiators (sectoral and Geneva based) to negotiate away international trade barriers

This paper included three major findings:

- The level of support for services trade negotiations is low, only around three quarters of a per cent (0.75%) of total aid for trade policy and regulation. Continued support is needed in Geneva and capitals. This support is needed in the short and long-run, whether countries are willing to pre-commit or not.
- At the same time, the bottleneck towards seeing services sectors in the context of GATS is not a problem of translating rules into GATS language (in Geneva and capitals) alone but lies mainly elsewhere. The main challenge in progress on services offers is rooted in the absence in many countries of a clear strategy to develop the services sectors, lack of thinking about how GATS commitments may help the development of the services sectors, and lack of assistance in conducting impact assessments of liberalisation and building up regulatory capacities, and finally a lack of building up the supply capacities and mechanisms to interact amongst ministries and the private sector. These issues are much more likely to be solved on a sustainable basis when there is a national trade in services working group, perhaps working along sectoral lines, that can buy in support if and when this is needed in the context of a commitment.
- There needs to be a new operationalisation of LDC modalities on services negotiations, because none of the references to capacity building in GATS is bound. This will need to include the idea that countries can make pre-commitments that are binding only when countries have had access to adequate and satisfactory technical assistance. There is some support for such a mechanism. We suggest it might be done either by adjusting a remaining SDT (Special and Differential Treatment) proposal in a positive way to include binding commitments on aid for (services) trade, or rewriting one of the articles in the LDC services modalities with the same effect.

**Box 3 Incorporating binding commitments on aid in services negotiations.**

*Example 1: Revision of an LDC proposal on SDT*

Least-developed [ Developing ] country Members reaffirm their commitment to the fundamental principles of GATS. They will continue to seek to comply with all the rules set out in the agreement and can make pre-commitments to liberalise. The General Council agrees that the implementation by LDCs of their obligations or pre-commitments may require further technical and financial support directly related to the nature and scope of such obligations or commitments, and urges donors and relevant agencies to coordinate their efforts in the delivery of such support. The General Council also understands that for LDCs to be integrated into the international system through trade in services, they will need support for regulatory capacities and reform in the services sectors.

For these commitments, on both sides, to be met, an 'Aid for Services Trade' facility to stand along side GATS needs to be developed and fully funded before the conclusion of these negotiations. The fund should be additional to current commitments and should provide funding on a grant basis. Its size should be sufficient to meet explicit needs for assistance to comply with new commitments by LDCs in the current agreement and the costs such as building regulatory capacities arising from commitments, as identified [in the Agreement] [by the General Council] [by the Committee on Trade in Services], and capped at [ ].

Should a Least-developed country Member find that it is not in a position to comply with its pre-commitments, it should bring the matter to the attention of the Committee on Trade in Service for appropriate and automatic access to technical and financial support from the Aid for Services Trade Facility. An assessment of the technical assistance will be submitted to the Committee on Trade in Services. The pre-commitment to liberalise will become binding only when the Committee on Trade in Services has given a positive assessment, so there is no condition that commitments will have to be binding.

*Example 2: Revision of the LDC modalities for trade in services*

Targeted and coordinated technical assistance and capacity building programmes shall be provided to LDCs in order to strengthen their domestic services capacity, build institutional and human capacity, and enable them to undertake appropriate regulatory reforms. In pursuance of Paragraph 14 of the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93), technical assistance shall also be provided to LDCs to carry out national assessments of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and Article IV in particular.

The General Council agrees that the implementation by LDCs of their pre-commitments may require further technical and financial support directly related to the nature and scope of such obligations or commitments. Should a Least-developed country Member find that it is not in a position to comply with its obligations or commitments, it should bring the matter to the attention of the Committee on Trade in Service for appropriate and automatic access to technical and financial support from the Aid for Services Trade Facility. An assessment of the technical assistance will be submitted to the Committee on Trade in Services. The pre-commitment to liberalise will become a binding commitment only when the Committee on Trade in Services has given a positive assessment, so there is no condition that commitments will have to be binding.

For these commitments, on both sides, to be met, an 'Aid for Services Trade' facility to stand along side GATS needs to be developed and fully funded before the conclusion of these negotiations. The fund should be additional to current commitments and should provide funding on a grant basis.