Asia Regional Consultative Conference
Donor Committee for Enterprise Development
Bangkok, 29 November to 1 December 2006

Services Trade as a Catalyst for Regulatory Reform

2006

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Executive Summary

The aim of the paper is to illustrate how trade in services negotiations can serve as a viable approach to improving the business environment through regulatory reform. We will argue that services trade negotiations not only offer a case of urgency to commence such a large task, but also entail a helpful focus and an analytical framework, which gives the process the necessary guidance. This orientation originates in the negotiations framework laid down in the General Agreement on Trade in Services (GATS).

We first introduce the distinct characteristics of services, as growing, entwined and highly regulated sectors and highlight their vital role to the healthy functioning of a country’s economy. This is followed by a look at how services are supplied and regulated in the international context of services trade (with examples of (potential) Philippine health services trade).

After this descriptive groundwork the discussion then leads to the GATS. We show how preparations for the GATS negotiations can create opportunities that may positively spill over into reforming the business environment. It is argued that meaningful preparation for multilateral talks requires a kind of introspection by policy makers to assess the domestic needs and thereupon to establish offensive and defensive strategies. This in turn can only be effectively done through stakeholder consultations (public private dialogue). The desired outcome of the GATS preparation would therefore be a consensus on the kind of regulatory reform needed.

It is further argued that the GATS provides not only the timely incentive for introspection (through fixed negotiation dates and deadlines), but also an analytical framework to think with (i.e. determining regulations according to the GATS four modalities of supplying services) which can guide research and discussions.

The role of technical assistance, specifically looking at the GTZ Trade Policy and Trade Promotion project, in facilitating the process is highlighted. Along with an outline of the GTZ’s approach, the lessons learnt and conclusions drawn from the project to date are presented.

This leads into a more critical look of what conditions are necessary for the above-presented process to work and be of real benefit. We will argue that the GATS introspective process aimed towards a regulatory reform agenda must weigh options for liberalization of services trade carefully. We further argue that trade negotiations do not necessarily lead to the introspection called for. We underscore the need to shift from prevailing sectoral perspectives and interaction to a cross-cutting analytical and consultative process. Further we emphasize that such prerequisites as an effective state and able private sector are necessary to prevent the process from being dominated and skewed by vested interests.

Nonetheless, with an integrative and transparent process, we believe it can become possible to balance prevailing private interests with broader public interests to the greater benefit of the whole economy and society.
1. Introduction: What does Trade in Services Negotiation have to do with Regulatory Reforms?

Analyzing the business environment, even if already focused on reforming domestic regulations, could still be daunting given its wide coverage. In a general sense, business environment would cover everything that is external to an organization. Even if framed within the context of domestic regulation, it will still involve a discussion of the various regulatory mechanisms: from standard setting, to price controls, to entry controls, to state vs. private ownership and public monopolies, to various other regulatory mechanisms (e.g., on information, on government procurement, on subsidies and taxes, etc.). In these myriad of regulatory sub-systems, it would prove very helpful to have an anchor on which analyses and possible, alternative interventions (e.g., capacity development) can be developed.

Preparing for negotiations on Trade in Services may provide just such an anchor in terms of building the capacity of public officials, providing research support, and enhancing the Public-Private Dialogue on relevant issues. In this respect technical assistance in this exemplary area can be an innovative way of creating better business environments for enterprise development, thus substantially contributing to the counterparts’ reform efforts.

The subject of “trade,” by itself, is already a strong anchor on which improvements in business environments can be discussed. Success in “trade” is necessarily the result of a robust business environment – one that fosters country and sector competitiveness.

“Services,” on the other hand, provides an encompassing (and yet, paradoxically, focused) sectoral orientation to the discussions. Globally, services account for close to 70% of total economic activity (or the Gross Domestic Product, GDP); even for middle income countries, services account for more than half of total GDP. In this context, a country’s competitiveness is becoming increasingly synonymous with services sector competitiveness.

When coupled together, “Trade in Services,” then becomes a very viable approach to Technical Assistance on improving the business environment. This is possible as “Trade in Services”:

- provides the focus (i.e., International Negotiations in Trade in Services) for Capacity Building;
- provides the context (i.e., Competitiveness of the country vis-à-vis another country) for the Consultations;
- provides the analytical framework (i.e., determining regulations according the GATS four modalities of supplying services) for the research; and,
- provides a sense of urgency (i.e., the timelines of multilateral, regional and bilateral negotiations) for decision making and action.
Chapter 2 will introduce services and their distinct characteristics as growing, entwined and highly regulated segment of the economy, highlighting their role as key determinants of a country’s competitiveness.

Chapter 3 will lead us into the spheres of services trade and how this field of international relations is regulated. The very complex and judicial matter will be illustrated with examples of (potential) Philippine health services trade.

In chapter 4 we will discuss the opportunities we see in the preparation for international services trade negotiations and the processes required to generate benefits for the overall business environment.

The following chapter 5 spells out more clearly the approach pursued by the GTZ Trade Policy and Trade Promotion project in supporting such a process.

This paper is then rounded off with lessons learnt and conclusions, where we will discuss how our experiences can be transferred to other country settings.

The paper tries to illustrate that business environment reforms can benefit from a focused analysis of the current state and the reform needs to enhance the country’s competitiveness. We will argue that services trade negotiations not only offer a case of urgency to commence such a large task, but also entail a helpful focus AND an analytical framework, which gives the process the necessary guidance. This orientation originates in the negotiations framework laid down in the GATS; nevertheless we will argue that such introspective process aimed towards a regulatory reform agenda must weigh options for liberalization of services trade carefully. We further argue that negotiations do not per se lead to the introspection called for. Rather there is a need to shift from prevailing sectoral perspectives and interaction to a cross-cutting analytical and consultative process. With such an integrative and transparent process, we believe it can become possible to balance prevailing private interests with broader public interests to the greater benefit of the whole economy and society.
2. Services: Their characteristics and how they are regulated

Services cover a wide range of activities that include a variety of players from large companies that provide a variety of services to individual workers of various skill-levels. It is common to classify service activities according to the following:

1. Business services
2. Communication services
3. Construction services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health-related and social services
9. Tourism and travel-related services
10. Recreational, cultural and sporting services
11. Transport services
12. Energy

The classical definition of services is that they have the following common characteristics:

- intangible
- invisible
- non-storable
- require simultaneous production and consumption
- require physical proximity between producers and consumers

The very nature of services makes them difficult to regulate, as compared to goods. Since services present no tangible
product with which they can be attached, regulation would generally be directed at the provider - i.e., by providing standards or limiting their provision only to those with a certain qualification, by limiting their number, etc.

If the regulation of services by itself is already problematic, taking the situation to the realm of international trade presents an even more difficult situation.

**Services and the Economy**

The GDP share of services globally is approximately 60%\(^1\), whereby developed countries have a GDP share of 72% and developing countries still have 52%.

The share of services in global trade is 23%. Here developed countries hold 74,9% and developing countries 22,7% LDC: 0,4 %. Africa has a low share of 2,2 % in these trade figures, whereas Asia holds 21,2 %. The low share of services trade in LDCs is certainly worth a detailed look and discussion – which cannot be covered in this paper.

Growth rates of services in 2003 and 2004 were 14% and 18% respectively, some developing countries clearly exceeding this such as China with 34% and CIS with 23%.

“Liberalization of trade in services is expected to enhance global welfare through increased efficiency and competition, lower prices and greater choice for consumers. It should contribute to improving access to basic services and achievement of the MDGs. A number of issues and concerns remain to be addressed concerning the potential effects of services sector reform on the achievement of legitimate developmental objectives. Appropriate pace and sequencing of reform and liberalization is another issue requiring attention of developing countries. Empirical studies on the development implications of trade in services liberalization in developing countries provide partial conclusions.”\(^2\)

These trade figures have to be dealt with caution – often services and goods cannot be separated statistically (how much of a semi-conductor is an external engineering service in product development, how much is foreign marketing and distribution, how much international transport, and outsourced accounting services?)

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\(^2\) Trade in Services and Development Implications, UNCTAD, 2006
Services are critical to a competitive economy. The traditional view of services is that they “serve” the other sectors by providing support to agriculture and industry. In playing this role, services become embedded in the economy.

At this point, it may be good to provide some general classification of services. The classification of services is similar to the way industrial goods are classified, according to their position in the production process. According to their function and position in the value chain, services may be broadly categorized as follows:

1. Certain services provide the necessary infrastructure for the proper functioning of the other sectors of the economy and facilitate the flow of transactions among its actors. Examples of these are construction, communication, financial, transportation and distribution.

2. There are service activities, on the other hand, that are critical in maintaining a highly developed human capital in the country. These are mainly end-user type services and include services that are critically needed by individuals—health, education, recreation, travel, etc.

Given this categorization, it is not difficult to link these service activities with the competitiveness of the whole economy.

Efficient services are critical for competitiveness as services not only provide benefits to end-users, but are likewise key inputs to industrial and agricultural products.

Transportation and distribution are critical in the logistics chain that determines the efficiency of any production network. Communication is important in both facilitating transactions and, as highlighted by today’s IT-enabled businesses, in providing the platform by which IT-based services can be delivered. Financial services, on the other hand, provide for an efficient medium of transaction between buyers and sellers; and, equally important, link those with financial resources to those who need these resources.
2. Services: Their characteristics and how they are regulated

Services are very important in any economy. In fact, globally, service sectors account for roughly 60% of total economic activity. The share of services to GDP generally increases as the country becomes wealthy. Service sectors are also critical in providing employment. In middle and high income countries, service sectors account for more than half of total employment.

Since their impact cut across all sectors in the economy, service sectors are critical for national competitiveness. This is a key reason for the emerging liberalization of service industries across countries.

**Regulation of Services and reforms**

Each country regulates economic activities, including services. The underlying rationale differs from one country to the next, one sector to the next and one era to another, and of course some rationales are intertwined.

There are economic and political rationales for regulation, in pursuit of

- public interests (e.g. countering market failures, guaranteeing competition, reducing transaction costs, or macro-economic and non-economic goals) or
- private (group) interests (e.g. industries gaining surplus rents from regulations)

which reflect the values and preferences of a society, as well as its interest groups.

The differing regulatory systems, rooted in the national political and historical context, cover

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4 Based on Krajewski, National Regulation and Trade Liberalization in Services, Kluwer International Law, 2003

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2. Services: Their characteristics and how they are regulated

- **standard setting** – which state the requirements to control operating businesses (e.g. health and hygiene certificates for food retail outlets, Basel standards for financial services), and imply sanctions when businesses fail to meet standards.

- **price controls** – which either prescribe the actual price of a service, and aiming at redistribution of income or bargaining power (e.g. rent controls), or limit possible price increases, e.g. aiming to combat inflation or for redistribution. The difficulty lies in how to determine and ensure fair amounts of returns for the operators.

- **entry controls** – which require authorization to pursue activities, be they of qualitative (requires screening) or quantitative (requiring licenses) nature.

- **public ownership, public monopolies** – which defines the level of privatization, esp. relevant in such service sectors as telecommunication and electricity (“natural monopolies e. electrification, telephone lines, etc.. Recently some have been challenged due to technological innovation. At local level public ownership often coincides with private ownership.

- **other regulations** – which include information regulation (e.g. mandatory disclosure requirements), economic incentives (e.g. subsidies, specific taxes, charges, fees), and government procurement.

When embarking on a discussion on regulatory reforms it is important to note the difference to deregulation. In most cases reforms imply a greater reliance on market processes and a lesser degree of state intervention. They can cover the removal of regulation and the introduction of new regulations. Regulatory reforms include policy shifts, changes in the approach to regulations (e.g. shift from entry control to standard setting; shift from control-and-command in form of standards and qualitative restrictions to incentive based regulations thru taxes, charges, subsidies).

There can be several reasons for regulatory reforms:

1. technological change, e.g. changing the nature of previous natural monopolies

2. change of attitude towards and understanding of regulatory instruments (realizing that past regulations were not specific enough, not targeting the problems directly)

3. increasing integration and internationalization of global economies (e.g. less burdensome business environments as location factors) – implying regulatory competition of countries.

Within the scope of increasing integration and internationalization, trade agreements can play a triggering role for a country’s reflection on its regulatory regime. In preparing for such

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5 Krajewski, National Regulation and Trade Liberalization in Services, Pg 36, Kluwer International Law, 2003
agreements, the defensive and offensive interests have to be understood and weighed against each other, giving rise to stock taking and internal negotiations.

**The role of the state**

Ideally the role of the state has to be one of ensuring that public interest are playing a substantial role in the country’s regulatory and trade regime. A government has to weigh the legitimate private or group interests against the overall wellbeing of society. Obviously many interest groups will try to take influence on this balancing act of government. This is justified and should even be encouraged. At the same time government has the responsibility to create mechanisms that allow all relevant players to lobby for their interests – from private sector, consumers and civil society.

The mechanism in place has to be transparent, continuous and permeable, allowing opinions to come in at later stages and players to join. With all due necessity for transparency, contents under discussion do not necessarily have to be continuous public debates.

The state also has to be able and prepared to act as facilitator in convening discussions and binding in discussants. It’s in the governments’ interest to understand the positions of its constituents and learn of their needs and interests. Since the various opinions are not likely to be brought forward in the form and the timeframe required and convenient for negotiation processes, government has to design a process that will facilitate access to stakeholders.

Based on consultations and talks it is then the government’s role to compile all issues to a strategic position. This again is not to be seen as happening in a public arena. The state is in a role of moderating and crafting the dialectics between internal regulation and external relationships.
3. Trade in Services: How it is supplied and regulated

In spite of the characteristics (e.g., requires physical proximity between service providers and consumers) that make it difficult for services to be traded, there has been a significant increase in trade in services.

The enhanced tradability of services can be traced to two drivers: **Technology** and **Globalization**.

**Critical Drivers**

- **Advances in information and communications technology (ICT)** have made it possible for some services to be digitized and transmitted over the internet. This has allowed IT-enabled services to surmount key limitations on their tradability-allowing them to be digitally-stored and transmitted across countries in a fast and cost-effective manner.

- **Globalization.** The lowering of trade barriers among countries resulted in intense competition. In this environment, services are seen as key drivers for improving competitiveness across the whole economy. They cover everything, from the labor (the actual work) in industrial factories, to the managerial talent and various business processes spanning across the companies' entire value chain; to the transportation of goods to and from factories; to the trade and merchandize of goods.

In fact, it may even be argued that services should have been liberalized before goods, allowing for countries to attain competitiveness in critical supporting service industries before opening their goods sector to competition. Since services provide inputs to industrial and agricultural production, uncompetitive price and quality of services translates to higher prices and/or lower quality goods. Thus, it is not uncommon to find industrial and agricultural products which, once their trade protection is removed, are unable to compete due to expensive and/or inefficient services sector inputs. For example, a country's industrial competitiveness may be burdened by expensive electricity, inefficient infrastructure, high logistics and distribution costs, exorbitant financial fees, and an unqualified workforce.
Regulating International Trade in Services

Although there is merit to arguments that trade in services should have been liberalized prior to goods, this would have actually presented a very difficult challenge.

If domestic regulation of services is already problematic, regulating international trade in services is even more complex. The nature of services makes barriers to international trade in services less straightforward and transparent.

Under goods, trade only requires that the product be transported from one country to the other. Barriers, therefore, generally involve imposing barriers at the border-i.e., in the form of tariffs, quota, product standards, etc.

As put very succinctly by Pasadilla;

“Unlike in goods trade, most barriers to services trade are not to be found at the border, but are rather hidden deep in domestic regulation. They are typically, non-tariff, regulatory measures, or legislative and administrative practices. Therefore, they are less transparent than tariffs and quotas, and their restrictive impact is more difficult to assess. For example, domestic regulatory environment can be legal barriers to entry for professional legal or accounting services through non-recognition of diplomas. Or, they can be restrictions on foreign direct investment such as local content requirements or
3. Trade in Services: How it is supplied and regulated

joint venture requirements or through a variety of domestic regulations such as technical standards, licensing, and qualification requirements."⁶

In services, because of their characteristics and the wide range of activities that they cover, the clear-cut barriers applied to goods (e.g., tariffs and quotas) cannot be imposed. However, to discuss how barriers to trade in services are imposed, one would need to also illustrate how services are traded in the first place.

Illustration: Trade in Medical Services

To illustrate, let’s look at a doctor providing medical services to a patient. What are the ways by which a doctor can provide medical services to a specific patient? Normally, the patient goes to the doctor. But what if the patient lives in Country A and the doctor lives in Country B?

There are four modes by which services can be supplied internationally:

- To supply the doctor’s service internationally, the usual way is for either the patient to go to Country B - which is called Consumption Abroad (mode 2); or, for the Doctor to go to the patient in Country A - Movement of Natural Persons (mode 4).

- Another way is for the doctor to invest in a hospital in Country A, such that even if the doctor himself or herself is not the one providing the service, it is provided by his / her agent (i.e., a hospital owned by the doctor). This is called Commercial Presence (mode 3).

- In recent years, however, with advancements in ICT, more and more services are provided alternatively. The patient may undergo some diagnostic procedure in his/her home country and then the results may be digitized and sent over the internet to the doctor in Country B; the doctor then provides his medical diagnosis of the patient’s condition via the internet. This is known as cross-border trade (mode 1), where neither the patient and the doctor - nor his / her agent - leaves their respective countries. Although these could also already be done before (i.e., by physically sending the x-ray plate through courier services), it was time consuming and expensive to be viable.

### Summary Illustration: Supplying Services Internationally:

**Case of a Patient living in Country A and Doctor living in Country B**

<table>
<thead>
<tr>
<th>Mode 1: Cross-border Trade</th>
<th>Country A: Patient</th>
<th>Country B: Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Patient stays in Country A; has his X-ray taken.</td>
<td>X-ray result is digitized and sent via the internet</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mode 2: Consumption Abroad</th>
<th></th>
<th>Country B: Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Patient travels to see Doctor in Country B</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Patient stays in Country A; goes to a hospital owned by the Doctor (from Country B).</td>
<td>Doctor invests in hospital in Country A.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mode 4: Movement of Natural Persons</th>
<th>Country A: Patient</th>
<th>Country B: Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Patient stays in Country A; Doctor travels to Country A to treat the Patient.</td>
<td></td>
</tr>
</tbody>
</table>

Despite advancements in ICT, however, there are still obvious limitations on how it can be used to enhance mode 1 (cross-border supply). For instance, in the classic case of a barber providing haircut, the barber and the client still needs to be physically proximate to each other. It may be argued however that there is room for ICT applications as a client may send his digital image over the internet to a well-known hair stylist abroad; and an appropriate hair style “design” may be sent over the internet, for “implementation” by another barber.

Construction services are another example. It is very difficult, and almost technically impossible, for a construction worker (say, a carpenter) to build a house in another country via the internet. The situation is similar for shipbuilding and repair, for nursing services, and for a host of other service activities.

With a better understanding of how services are supplied internationally, it may now be easier to discuss barriers to trade in services. These can be imposed by either restricting access of foreigners to the domestic market (i.e., Market Access) or by discriminating between foreign and local service providers (National Treatment). We will continue to use the example of the Patient and the Doctor for illustration.
Summary Illustration of Barriers to International Trade in Services:
From the Perspective of Country A (Patient is living in Country A)

<table>
<thead>
<tr>
<th>Mode 1: Cross-border Trade</th>
<th>Example</th>
<th>Barriers to Market Access</th>
<th>Barriers to National Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Tele-medicine</td>
<td>Not allowing health-related personal data to be transmitted out of the country.</td>
<td>Subsidy given for medical treatment under a local Doctor</td>
</tr>
<tr>
<td>Mode 2: Consumption Abroad</td>
<td>Patient travels to see Doctor</td>
<td>Visa restrictions on traveling for health-related purposes</td>
<td>Limitation on amount of foreign exchange that can be brought-out when traveling, thereby limiting capability to avail of medical services outside the country; regulations relating to trans-border application of medical insurance</td>
</tr>
<tr>
<td>Mode 3: Commercial Presence</td>
<td>Foreign doctor invests in a local hospital</td>
<td>Limitations on foreign investments in medical facilities; restricting foreign-owned hospitals only to certain places (e.g., urban areas or first-class cities); restrictions on the number of foreign hospitals</td>
<td>Limits on access of foreign hospitals to local finance; Limits on remittance of earnings to another country</td>
</tr>
<tr>
<td>Mode 4: Movement of Natural Persons</td>
<td>Doctor travels to treat Patient</td>
<td>Visa and travel regulations, recognition of diplomas, work permits</td>
<td>Restrictions on rights of dependents (e.g., to domestic education system), restrictions on overseas remittance, higher tax level on foreign doctors, restrictions on benefits enjoyed by foreign doctors, discrimination in the workplace</td>
</tr>
</tbody>
</table>

In summary, therefore, barriers to trade in services cover all rules and regulations that:

1. Prevent the service from being transmitted overseas (e.g., through the internet, mail, or other delivery systems);
2. Prevent the patient from going overseas, including those that impair his/her ability to avail of the service (e.g., restrictions on medical insurance);
3. Prevent foreigners from investing local hospitals; or,
4. Prevent foreign doctors from practicing their profession in the local market.

These regulations would include a wide range of domestic regulations that cover anything from: practice of profession, to visa and travel requirements, to the issuance of work permits and licenses, to investment rules, to financial regulations, to medical insurance restrictions, etc.
It is in this context that we say that attempts to liberalize trade in services require an introspection that will force one to look at how the whole economy is regulated—whether for the domestic market or for international trade.

A general introspection or overall analysis of the business and investment climate is a tremendous task. As stated earlier, it may prove to be useful to find an anchor for focused and yet integrative analysis of competitiveness and regulatory bottlenecks, by applying the GATS framework.
4. Trade in Services Negotiations (the GATS)

The multilateral environment for trade in services is governed by the General Agreement on Trade in Services (GATS). The GATS, together with the General Agreement on Tariffs and Trade (GATT) and the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS), is part of the Marrakesh Agreement that established the World Trade Organization (WTO) in 1995.

The GATS aim for (a) credible and reliable rules and principles; (b) transparency and progressive liberalization; (c) promotion of economic growth and development of partners and developing countries, respectively; and (d) fair and equitable treatment of all WTO-members (principle of non-discrimination).

WTO-member countries commit to two types of obligations under the GATS: General Obligations and Specific Commitments. General obligations are those that apply directly and automatically to all Members and services sectors. There are only two: Transparency and Most-favored-nation (MFN) treatment.

Transparency requires Members to identify and make public their “measures” (i.e., local laws and regulations) that affect trade in services. National enquiry points are established in order to respond to information requests of other Members.

While under the MFN principle, a Member must treat all other members in the same manner, i.e. it must give to all WTO members the most favorable treatment it has accorded to any of its trading partners.

Specific commitments, on the other hand, are voluntary commitments made on specific service sectors. These commitments are on market access and national treatment. Governments are free to choose those services in which they will allow foreign service suppliers access to local markets; and those in which they will commit to treat foreign service providers in the same way as local suppliers. Equally important, Governments retain the flexibility to impose limitations in their Market Access and National Treatment commitments.

Some may question discussions on the GATS when the Doha round already collapsed. However, it must be noted that most bilateral and regional agreements on services are patterned after the GATS framework and process.

Forming Sectoral Negotiating Positions

Sectoral commitments are voluntarily entered into and governments have the flexibility to choose which sectors to commit and, within these sectors, what types of commitments to put on the table (i.e., with respect to market access and national treatment). These sectoral commitments must be carefully studied within the context of country’s developmental goals.
Based on discussions with experts and on a review of various approaches, the GTZ Trade Policy and Trade Promotion project has developed a proposed step-by-step approach to developing sectoral positions (more details on how this is implemented will be given in chapter 5).

These include:

1. **Framework Analysis**
2. **Determine the Strengths-Weaknesses-Opportunities-Threats (SWOT) of the Sector**
3. **Analyze the issues in the Sector**
4. **Identify issues related to Trade**
5. **Define the country’s negotiating Objective(s)**
   a. Construct the baseline Offer Schedule for the sector, i.e. based on current legislations and regulations, what commitments can the country make under each mode
   b. Develop the ideal Offer Schedule, i.e. based on the SWOT analysis and issues analysis, what commitments should the country make in order to address the sector’s Weaknesses and Threats; while maximizing its Strengths and Opportunities.
6. **Translate** into negotiating documents according to the GATS framework

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7 E.g., Dinos Stasinopoulos

8 It must be noted that under the GATS, the country can choose to be more restrictive than what its laws and regulations currently allow.
Based on this approach, a necessary starting point is the introspective analysis of the main issues that impede the sector’s competitiveness. Given the cross-sectional nature of services, this introspection would necessarily include domestic and (international) trade regulations on services.

Market access and national treatment commitments are issues that touch directly on domestic regulation. Market access is most clearly related to the country’s competition policy (in general, as well as in relation to the sector); while the issue of National Treatment implies analysis of how nationals are, in the first place, governed. In this sense, all domestic regulations that cover local service providers are also necessarily studied when looking at issues related to Trade in Services and the GATS (negotiations).

**The Philippine Experience**

**The Philippine Health Sector**

The case of the Philippine Health Sector is a good illustration of how to apply the proposed process towards developing a sectoral position. A simplified analysis of the sector can lead to the following enumeration of the sector’s SWOT:

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Weaknesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>∗ Supply of well-trained Health Professionals</td>
<td>∗ Lack of investments in Health Facilities; Facilities are not accredited by Health Insurance providers</td>
</tr>
<tr>
<td>∗ Favorable price position</td>
<td>∗ Inability to provide responsive public health services</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Opportunities</th>
<th>Threats</th>
</tr>
</thead>
<tbody>
<tr>
<td>∗ Health care for the Ageing population of developed countries</td>
<td>∗ Possibility that neighboring countries (e.g., Thailand, China, etc.) may develop sufficiently large pool of trained Health Professionals</td>
</tr>
<tr>
<td>∗ Medical treatment for patients from developed countries</td>
<td>∗ Brain drain</td>
</tr>
</tbody>
</table>

Given this SWOT analysis, several key issues may be identified:

**Key Issues:**

- How to attract investments in health facilities
- How to secure portability of insurance for foreign clients
- How to encourage foreign retirees or would-be retirees to visit the Philippines
- How to sustain the Philippines’ advantage in Health Services over other countries
All these issues should also be discussed in the context of the general inability of the country to provide decent health care services to societies' marginalized groups (i.e., the city poor, those living in rural areas, etc.).

The next step is to determine which of these issues are trade-related and then to analyze them under the framework of the GATS [i.e., determining the country's commitments on (a) Market Access and (b) National Treatment, with respect to each of the four modes of supply].

General: Are the Philippines an attractive destination for foreign investments? What are the factors in the business environment that encourage/discourage (foreign) investments? Let's look at them by modes of delivery:

**Mode 1: cross-border trade**

How can data security be guaranteed? How can licenses and standards as well as liabilities be regulated?

**Mode 2: consumption abroad**

How can insurance portability for foreign clients be secured? Is it necessary to have local hospitals accredited by foreign medical insurance providers? Is this true for all country-markets?

What accreditation schemes or systems are most appropriate for the Philippines? What are the requirements of foreign medical insurance providers for accrediting hospitals? Can local hospitals meet these requirements? What interventions are needed to enhance the capacity of local hospitals for accreditation? How can quality systems be established which take care of public health services as well as global health providers – avoiding double standards.

Is the country attractive as a destination for foreign retirees? Are the foreign retirees even aware of the Philippines’ potential as a retirement haven for foreigners? What are the domestic issues that should be addressed-physical security, documentary requirements (e.g., visa applications), cost of living, availability of transportation, etc.? Do foreign retirees have special requirements different from those of ordinary tourists?

What are the Philippines’ advantages in Health Services vis-à-vis other countries?

Are public funds from the health budget used to promote services for foreign patients (subsidies, tax holidays)?

How can ethical principles be secured in a global health market (e.g. transplantations)?

**Mode 3: Commercial Presence**

Are foreigners allowed to own hospitals in the Philippines? If yes, are there restrictions on the equity shares that they can own? Where are these restrictions based-the Constitution, specific laws, regulatory orders?
Are foreigners allowed to form part of management teams in the country? Is this a key requirement of foreign investors who want to put-up a hospital in the country?

How can conditionalities for foreign companies be designed and implemented in a transparent and consistent manner?

- **Mode 4: Movement of Natural Persons**

Which strategies can be conceived to retain technically skilled people in the country? Which alternative employment models can be developed?

Can foreign professionals be allowed to practice in the country?

If the Philippines want to sustain its competitive advantage, what should be its position on issues such as: (1) foreigners-who are possible future competitors-wanting to be trained in Philippine medical institutions, (2) migration of health professionals, (3) active promotion of medical tourism, putting added pressure on local capability to supply domestic needs, etc.

Analysis of the impediments to attracting foreign investments in hospitals, according to the GATS framework, requires a disciplined approach that forces one to look at the country’s over-all regulatory framework—from the Constitutional limitations on the practice of professions by foreigners, to the relevant laws on foreign investments, to the mutual recognition of certificates, to other relevant laws (e.g., prohibiting foreigners from owning land).

Thus, the GATS Framework is useful not only because it provides an opportunity for introspective analysis of the strengths and weaknesses of the sector; but by also forcing government to carefully analyze the commitments according to a disciplined approach that allows one to isolate regulatory impediments to competitiveness according to an accepted categorization (i.e., the four modes).

The four modes of the GATS Framework, in turn, provide an encompassing yet integrative view of government regulatory policies (e.g., immigration issues, mutual recognition of certificates, investment policies, foreign ownership of assets, etc.). **If those policies were scrutinized independently and without the reasoning frame GATS provides it would be very difficult to detect and analyze the existing inter-connections and subsequently develop integrated and encompassing regulatory reform proposals.**

Moreover, while the GATS Framework provides a disciplined analytical approach to regulatory issues, it is also quite flexible. By framing the issues in terms of the four modes, it can accommodate the widely varied actors under Services: from Shipping companies which may be concerned about cabotage, to IT professionals who are affected by visa restrictions, to health workers who are worried about mutual recognition of certifications. This gives the GATS Framework wide applicability as a tool for understanding and analyzing the business environment.
Link between services trade and regulatory reforms of the business and investment climate

The link between services trade and regulatory reforms of the business and investment climate is based on the nature of services trade regulations. As was shown services trade is mainly steered with domestic regulations. Some added, purely trade related issues, such as directly limiting market access of foreign players or prohibiting national treatment of foreign investors, have to be born in mind. Other than that services trade is determined by the domestic regulatory framework.

What we have tried to elaborate is the relevance of Public Private Dialogue mechanisms in preparing for trade negotiations focusing on services. This is mainly due to the fact that negotiators cannot utilize formulas or models to calculate specific tariffs and their selected effects. Services regulations are cross-cutting issues with broad relevance for the economy and they are diverse in their effects.

Whether or not services trade negotiations can actually contribute to a change of overall business and investment framework → leading to an enabling environment, is dependent on

- the preparedness of the policy makers and administrators to change perspectives and take up issues brought forward in consultations,
- the degree of influence of private or group interests to oppose or distort certain changes,
- the “drive” of the private sector to show persistence on issues close to their heart and needs and follow them up with their administration.

Strong states certainly have a larger potential to overcome oppositions within the private group interests. They have the capacity for analysis and strategic approaches to set the scene for private players to take advantage of competitive advantages.

A strong and well organized private sector on the other hand can also compensate for a weak state and push issues to be taken up by government and administration. If such a private sector has an outward focus the resulting agenda will have equally beneficial effects.

In the case of many developing countries, the state is weak or administrative structures inefficient and the private sector is either very weak or dominated by oligopolistic structures. Nevertheless a positive link between services trade and regulatory reforms can be created – for those sectors without dominant protectionist private group interests.

Sub-sectors with potential for growth and competitiveness, and given the preparedness of public and private stakeholders, can be made to “fly”. Just two examples of this are health services in Thailand and IT enabled services in India.
5. What Role can Technical Assistance / Donors play?

Promotion of Trade in Services is a relatively new topic in development cooperation. Only few experiences about the role of Technical Assistance (TA) are documented so far. This chapter is a contribution to fill this gap describing how GTZ is promoting trade in services based on the Philippines’ experiences.

The project, financed by the Monterrey Fund for Trade Promotion of the German Federal Ministry for Economic Cooperation and Development (BMZ), has a small budget and a time frame of two and a half years. Thus, it was crucial for the project to immediately engage in focused intervention in sectors with high overall economic relevance, which are high on the agenda of the Philippine Government and that promise a sustained impact beyond the life of the project.

The project’s goal is to assist public and private sector actors involved in the preparation of trade negotiations in defining the defensive and offensive interests of the industry as well as the implications of changes in regulations and trade regimes for the whole economy.

Based on initial experiences of the framework analysis, the project developed its approach or service packages, combining the

1. Framework Analysis
2. **Determining** the **Strengths-Weaknesses-Opportunities-Threats (SWOT)** of the Sector
3. **Analyzing** the issues in the Sector
4. **Identifying** issues related to Trade
5. Defining the country’s negotiating **Objective(s)**
6. **Translating** into negotiating documents according to the GATS framework

With methodological inputs:

1.) Capacity building (services trade training, soft skills)
2.) Organizational support, esp. to Public Private Dialogues (process support)
3.) Analysis and assessment (commissioning research for jointly designed ToR, expert inputs, skills training)
4.) IEC (information of stakeholders on the major issues, education of stakeholders, communication of processes)
5.) Knowledge management and evaluation
5. What Role can Technical Assistance / Donors play?

A strong focus was and is on assisting and commissioning work to analyze the competitiveness as well as the impediments of specific service sectors.

At the same time, the institutional set-up for the public-private dialogue is improved.

<table>
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<th>Knowledge management</th>
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<tr>
<td>Framework assessment – defining priority sectors, stakeholder assessment, research gaps – thru analysis</td>
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<tr>
<td>SWOT – competitiveness, measuring services – thru existing data, research</td>
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<tr>
<td>Sector spec issues – thru consultations, public private dialogue</td>
</tr>
<tr>
<td>Trade related issues – thru value chain analysis, modeling, consultations, public private dialogue (PPD)</td>
</tr>
<tr>
<td>Negotiating objectives – thru PPD, coaching</td>
</tr>
<tr>
<td>Negotiating documents – scheduling of commitments, negotiation skills – thru coaching, training</td>
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The knowledge management strategy reflects the information needs of the various target groups in terms of type and aggregation of information, media and information channels.

**Framework Assessment**

In this module, “basic research” and assessments were conducted to enable the project to focus, based on analysis of key indicators. This method later proved to be interesting and transferable for the counterpart organizations – in our case the Philippine National Economic Development Authority (NEDA) and Department of Trade and Industry (DTI) – and key stakeholders to be considered for their efforts to focus their activities, related to trade in services, on core issues with high potential.

**Prioritizing Service Sectors**

Tackling all 12 service sectors at the same time would have been a too complex and even inappropriate task. Therefore, GTZ introduced a systematic and analytical tool for the purpose of focusing its project intervention on those sectors with high overall economic relevance and which are internationally competitive or have a high potential to adapt to the standards of international competition. This tool later proved to be relevant in assisting the projects counterparts more generally in prioritizing service sectors based on

- Compilation of data and the availability of information
5. What Role can Technical Assistance / Donors play?

- Ranking of service sectors based on economic indicators on existing and possible employment generation, economic growth and its potential, and trade volumes as well as potential
- Consultations with key stakeholders to understand their interests and level of self-organization
- The sectors' ranking in government priorities, alignment with government programs, and
- Existing and prospective donor activities (to identify possible support, fields of synergies and avoid duplications).

Assessing Stakeholders

It is important to have a clear picture of the multiple stakeholders who are involved – to a different degree – in a particular service sector. The multitude of individuals and organizations linked to a service sector ranges from consumers, traders, service providers, business associations, investors, market leaders, and consulting companies in the private sector, to related universities, research institutes and donor agencies in the semi-public sector, to regulatory bodies, international offices, governmental departments and ministries on regional and national level in the public sector.

However, not all stakeholders are and have to be immediate actors in a regulatory reform process, and, depending on their roles, participation can vary in intensity and time. One useful model for a better understanding and analysis of the different stakeholder roles in a process is Bigg’s classification of participation (S. Biggs, 1989). Here, he differentiates between four types of participation.

1.) Contractual (inclusion through assignments)
2.) Consultative (inclusion of perspectives and proposals)
3.) Collaborative (inclusion in conceptual designs)
4.) Collegiate (inclusion through full partnership)

Consultative participation does not necessarily imply the active participation of a wide range of stakeholders in decision making and implementation. Consulting the right people at the right time is probably a crucial factor for the regulatory reform process. Also, the degree of consulting for different stakeholder groups varies.

GTZ first mapped the stakeholder landscape in order to picturing the specific perceptions, interests, expertise and experiences, potentials of the stakeholders, including their degree of supportiveness towards regulatory reforms. During the preparation of systematic consultations, these preliminary analyses were extended to assists counterpart organizations in using a flexible mix of assessment tools like:

- Individually structured interviews and questionnaires
5. What Role can Technical Assistance / Donors play?

- Focus group discussions
- Stakeholders matrices
- Visualization tools, like mind mapping and others.

Consultative participation in the sense of public private dialogue implies stakeholder analysis according to their interest and power – which allows a proper process design of whom to consult, in what combination and intensity – and with what aim.

Based on the analysis of stakeholders, a clear understanding has to be reached who participates in which role (or inner circle) to contribute to the preparation of services negotiations.

External partners, national or international consultants and their resources have to be woven into the wider perimeter or outer circle.

Taking this understanding, a basic framework can be generated for the

- Training need assessment of stakeholders
- Intensity of participation of stakeholders at various stages of the reform process
- Way of enhancing public-private dialogue and organizing multi-stakeholder consultations

**Identifying Information and Research Gaps**

Complete information and transparency is an ideal situation for analysis, assessment and decision making. However, in reality, the situation often is far from ideal. Information is scattered in many institutions; statistics are not comparable due to different indicators; experiences are not documented; information is incomplete, or, in specific fields, just not existent. This influences the process in many ways:

- Gathering information takes time and can delay processes
- Lack of information leads to insecurity for decision makers and reluctance in decision-making
- Service sectors with a too narrow information base might not be prioritized for regulatory reforms and service trade negotiations.

To enhance this situation, GTZ assists its counterparts through

- Compilation and structuring of data
- Assessment of data quality and information analysis
- “Packaging” of information according to target group needs
5. What Role can Technical Assistance / Donors play?

- Identification of research gaps
- Identification of national and international experts for data analysis and further research.

**A combination of all three**

Prioritizing sub-sectors, analyzing stakeholders and identifying information and research gaps are not isolated, but deeply interlinked and interrelated with each other and therefore pursued simultaneously for the framework assessment: For prioritizing service sectors, data compilation is a precondition; for data compilation, it is very helpful to know which stakeholder knows about what; the stakeholder assessment proves to be easier when knowing which service sectors are on top of the priority list; results of a service sector ranking needs to be discussed among key stakeholders, etc.

**Analyzing Service Sectors**

Analyzing those service sector(s) which has/have been selected during the framework assessment is the second step. In-depth analysis is a precondition for decision making. Analysis means gathering the right information and knowing how to interpret them.

This analysis is the genuine task of the key stakeholders, especially political decision-makers, public lead agencies and representatives of business associations. GTZ does not conduct this analysis on behalf of the stakeholders, but the project sensitizes and capacitates them in key issues and methodologies.

This module consists of three elements, most of which are implemented in a combination of joint analysis between the core stakeholders and capacity building on the analytical and technical skills:

1.) Measuring trade in services
2.) Analyzing the competitiveness of a service sector
3.) Compiling data and initiating complimentary research work

In addition, GTZ provides training on peer training approaches to the participants of the capacity building course, promoting knowledge-sharing within their respective organizations.

**Measuring Trade in Services**

Measuring trade in services describes what can and cannot be captured with conventional statistics and why, as well as the methodologies underpinning the production of statistics.

As was discussed in the previous chapters, services are intangible with far reaching cross-sectoral linkages, which mostly makes them difficult to quantify. Statistically, services are dispersed and often credited to other sectors of the economy, while others may not be fully captured altogether.
Many times, statisticians use complex concepts, methodologies and systems to produce reliable numbers. Some stakeholders are involved in parts of these processes. Overseeing the whole analytical chain and translating results into simple and readily understandable information for non-specialists can be a difficult task.

The concept of competitiveness, its implications for trade in services and measuring the performance of service sectors is crucial for developing an adequate strategy for international negotiations and domestic regulatory reforms (see also chapter 4).

GTZ assists public and private stakeholders in their effort in understanding measurements of services trade as well as in their effort of analyzing the competitiveness of a service sector. The support is made available through advice, in the frame of training events and joint workshops, which focus on:

- Providing an overview on the current efforts at improving the statistical framework for measuring trade in services and explaining the methodologies underpinning the production of statistics as well as their limits
- Explaining the concept of competitiveness and its implications for trade in services and using inter-active exercises and action-oriented training methods for the application of analyzing respective indicators
- Concrete examples from the national context – in our case specific issues from the transport and health services industry in the Philippines
- National and international sector experts as resource persons

Knowledge Management and Initiating Complimentary Research Work

While data compilation in the context of the general framework assessment is broader, giving an overview of the relative importance and competitiveness of all service sectors, information gathering for analyzing a specific service sector in detail requires a more sound and ongoing strategy to manage the existing knowledge and to generate new knowledge on a strategic basis. This includes the creation or promotion of knowledge networks of stakeholders, the inclusion of external knowledge and the initiation of research works where information gaps hinder strategy development.

GTZ assists stakeholders in

- **Stocktaking** of existing knowledge
- **Managing knowledge** in terms of assessing, structuring, adjusting and providing, reflecting the information needs of the various target groups in terms of type and aggregation of information
- **Disseminating knowledge** among stakeholders using established communication routines, media and other information channels in place.
5. What Role can Technical Assistance / Donors play?

- Defining knowledge needs and research terms
- Building research capacities through commissioning complimentary research work to national research institutions, thereby broadening the network of researchers in this field of trade and political economics
- Linking up the national knowledge and research network with various donor agencies and the international academia
- Assessing implications of changing trade barriers on the overall economy through modeling the effects
- Directly supporting selected research by individual and independent researchers locally or abroad on trade in services in the Philippines

Assessing Implications of Regulatory Reforms - sector specific and trade related issues

The development of a strategy for trade in services is a challenging task both domestically and internationally. Domestically, strategizing for trade in services requires first the analysis of domestic regulations in certain sectors, including the level of protection and competition and its consequences for the economy. Based on the analysis, effects of regulatory reforms can be anticipated and an implementation plan can be developed.

Consequently, the two modules / steps “analysis” and “strategizing” are often combined within a training workshop or consultation process.

GTZ assists public and private stakeholders in their effort of assessing the implications of regulatory reforms in the frame of training events, joint workshops and in public-private dialogue forums, by

- Show casing empirical analysis of barriers to international services transactions and the consequences of liberalization
- Providing a set of case studies wherein the implications of regulatory reforms are discussed and assessed
- Using inter-active exercises and action oriented training methods for the transfer of the case study analysis onto other cases
- Including national and international sector experts as resource persons
- Peer training for training participants for promoting knowledge-sharing within their organization
Transfer of technical know-how to policy makers – without enhanced technical skills, the Inner circle is not confident enough to face the outer circle stakeholders, let alone make pro-active suggestions to the chief negotiators.

**Strategy design – Multi-stakeholder Consultations and preparing for negotiations**

Consulting people is not a new idea. What is new is the growing prominence and frequency of consultation activities, particularly those involving large numbers of participants. As the prominence of consultation increases, it is sometimes unclear how precisely client consultations help managers make better decisions. Managers need to know that and how to design the consultation process accordingly.

Further, interests are often conflicting. Within each country, regulatory reforms do not generally create win-win-situations. Those loosing from and thus opposing reforms have to be understood. The buy-in needed consequently is a very sensitive process.

The preliminary steps culminate at this point: the relevant stakeholders have to be on board, to allow a balancing of interests. The right agencies have to be in the inner circle to be able to take the lead and sustain momentum for a discussion process initiated. The right change agents from the private sector have to be involved to insure that the most relevant issues do not get lost (purposely or due to lack of capacities) before or during implementation.

The goal of stakeholder consultations is to give stakeholders’ a chance to table the issues pressing for them and collect their opinions on trade related issues, i.e. regulatory reforms and ways of implementing them. The objectives of consultations may range from sharing information, to mediating in emerging conflicts of interest, to developing and implementing solutions to a problem. Consultations help negotiators obtain the support of stakeholders when the final outcome of international negotiations is discussed domestically for final approval.

GTZ assists public and private stakeholders in mediating strategies through:

- Providing background information on the evolution of trade policy and trade policy making
- Developing basic information packages on the crucial issues to be discussed, for the stakeholder (the outer circle) to be involved
- Explaining the general principles on broad consultation
- Giving an overview of decision-making models and consultation methodologies
- Organizational support in the public-private dialogue and in multi-stakeholders consultations
5. What Role can Technical Assistance / Donors play?

- Training in “soft skills” like assertiveness training and negotiation skills, which allow the inner circle players to take initiative and give them more courage to actually address / confront their constituency / the outer circle

**Preparation for Bi- and Multilateral Negotiations**

Based on the analysis, developed strategy and the outcome of the stakeholders consultations, deriving and defining strategic objectives is a decisive step for further negotiations on international level.

Trade negotiations are very strategic events, the sole mandate of governments and not transparent by nature – they do not have to be. The transparency and consultations come in before negotiations. Based on such preparatory analysis and consultations, policy makers in technical / line ministries should be able to draft strategic options (incorporating the so called defensive and offensive interests of the respective industry and the economy / society as a whole), which can be taken up by the negotiators. It has to be born in mind that negotiating tactics cannot limit themselves to one sector, even if it is as highly entwined with the economy as services are. International negotiating tactics will always pursue the whole package of agricultural, non-agricultural and services trade, as well as non-trade related political agendas.

All that external intervention such as TA can support is sound analysis, policy advice, sound mechanisms for information and knowledge sharing and stakeholder consultations. Whether and how negotiators base their negotiation strategies on these inputs lies beyond the control of the TA in most countries.

Line departments have to build up the confidence to suggest strategic options – they learn and experience that they are the experts and can deliver facts to prove it. At the same time they need coaching in the highly technical field of scheduling services commitments.

GTZ assists its counterparts and key stakeholders through

- Providing background information on the current state of international and regional negotiations in trade in services – linking the “inner circle” to experts and research institutions knowledgeable about these issues

- Assisting the “inner circle” in drafting strategic options

- Training in “soft skills” like assertiveness training and negotiation skills for sub-sector representatives task of convincing the lead negotiators of the validity of their proposed options

- Coaching in the scheduling of proposed commitments.
Evaluation

Meaningful impact monitoring of interventions supporting regulatory reform processes and preparations for services trade negotiations is a very challenging field.

Currently we have commenced with output monitoring. Additionally we can give immediate evidence of the appreciation of stakeholders and policy makers and the immediate effects on more assertive and better prepared pre-negotiation rounds.

International expertise as well as experiences may bridge the gap currently perceived in the field of impact thru policy reforms. At the same time GTZ’s eVal tool will be applied soon, which will allow a broader insight into what has been gathered as anecdotal evidence.
6. Lessons Learned and Conclusions

Building on what’s there

Despite the fact that promoting services trade is fairly new, there are some tools and experiences to build on, which proved to be very helpful at the outset of the GTZ project.

- WBI training course
- PPD handbook
- ITC services coalition

Realizing that some of these efforts have not brought forward sufficient or satisfying results, GTZ sought the chance and the appropriate environment, in close cooperation with the institutions that provided these initial tools, to adapt interventions by

- Contextualizing the inputs (bringing generic trainings and materials to a level where it is broken down to the national and sectoral context)
- Focusing intervention (NOT serving all service sectors at once, but choosing the most relevant and rewarding ones first, therefore allowing in-depth work. This also enables adapting interventions based on those experiences)
- Creating ownership of strategies and proposed negotiation positions by enabling agencies themselves to draft positions, not consultants.

Lessons learned in a pilot approach

It can be clearly stated that the domestic situation will dictate the pace and path of liberalization. This cannot be induced from the outside. Even if the player enforcing such change were big enough, the level of acceptance and ownership would jeopardize any meaningful benefits.

Similarly it is apparent that continued barriers to exports and supply constraints prevent developing countries from reaping benefits of services liberalization.

In most countries the main obstacles and threats to possibly reaping these benefits are internal, vested interests – this is a bigger hurdle than anticipated overpowering global trends.

Based on these findings it becomes all the more important to sequence interventions thoughtfully:
Choosing the right sectors and players

Sectors deemed relevant must not only be able to promote export growth, but must also have the capacity to foster development in domestic markets through effective inter-linkages.

Methodologically, a set of given criteria and a transparent evaluation process coupled with an open discussion seems equally important as the availability of complete data.

Preparing for services trade negotiations and the negotiation process itself is complex, and reaches into the heart of domestic regulations - a mandate that cuts across many agencies. These agencies have sectoral mandates that are not limited only to trade, so they cannot focus on trade in services alone, being faced with

(1) competing demands from constituents and
(2) limited resources.

TA can have a catalytic role by initiating Public-Private Dialogue processes, which

(1) widen the agency’s sector-specific perspective
(2) enhance coordination among agencies.

When identifying the right service sector with trade potential

with growth and development enhancing potential, absence of dominant protectionist interests, with consumer interests and benefits in foreign competition,

with the right players, who can be won over for a broader perspective and are prepared to take up issues raised by the private sector, sufficient interest and persistence in the private sector to work for change,

this sector can become an engine for growth and regulatory reform.

Transferring knowledge and analyses of complex matters

A basic but certainly not banal experience is the importance of value-added information, in order to make a significant impact. Government Agencies are in need of more in-depth analysis and policy recommendations. Unfortunately it does not seem to be self understood to avoid doing more of the same and not allowing consultants to rewrite studies they have compiled before – this has a high potential for frustration among the inner circle.

In order to truly transfer knowledge and information, it is not sufficient to make the information available. The stakeholders, as recipients of information and know-how, have very different starting points (what they know already, what they need to know and what they want to do with the information). Developing a sound knowledge management strategy based on existing communication practices is therefore essential. Similarly it is important to recognize that stakeholders need a certain degree of knowledge and skills to be able to...
perform their role in public-private dialogue processes. This necessitates stakeholders to become knowledge multipliers, i.e. they have to understand the matter to such a degree that they can actually pass on their know-how.

Preparing and packaging know-how and assessments may benefit from using a mix of external and internal perspectives, both in analyzing bottlenecks and information gaps and in presenting the results. The question of sequencing of consultations is also crucial in this regard – if scheduled too early, government agencies may be portrayed as tentative and not knowledgeable. It will initially be difficult for government agencies to synthesize conflicting views and take a leadership role.

**Capacitating agencies for multi-stakeholder consultations**

Public private dialogue, when embedded in a capacity building approach covering both technical and soft skills, matched with specific, in-depth research and accompanied during the whole process of public-private stakeholder consultations, can lead to the formulating of a national strategy for reform (including review of the trade policy and protectionist measures) by the mandated institutions themselves and lead to institutional change.

What are the prerequisites?

Careful attention must be given to the sequencing of the interventions, especially between capacity building and stakeholder consultations. Ideally, government agencies should first be capacitated on the various knowledge and skills (both technical and soft skills) relevant to the issues for consultation. This will provide them with the confidence to assume an active role in the dialogue.

Without government’s active and to a certain extent, leadership role, strong private interests may prevail, which do not necessarily reflect what is good for the overall economy. In such a situation, the Public-Private Dialogue deteriorates into an exercise of legitimizing the interests only of powerful actors.
On the other hand change agents can also be identified in the private sector or civil society. They have to be brought into the process early and possibly incorporated into the inner circle. This may turn out to be tricky though, depending on the national set-up such selected incorporation must be a transparent step, supported by the outer circle.

In the case of a well organized private sector with the “right” sector and beneficial outward linkages in mind, they can also be seen as taking the lead. In such a case the administrative side has to be brought into the process, to ensure support and the broader perspective in anticipating regulatory reforms.

Similar to the government agencies, private sector actors, and change agents in particular have to be capacitated to gain a better understanding of the nature and the relevance of the issues at stake – this is no easy task in the field of services trade. Again contextualized information is called for, reducing the complexity and increasing the sense of urgency and closeness to one’s own sphere.

**Preparing the ground for change**

Services trade policy formulation is a nebulous process as, given the nature of services, it goes to the heart of domestic regulation—a mandate that cuts across many agencies. Typically, these agencies have sectoral mandates (e.g., transport, health, etc.) that are not limited only to trade and certainly not used to seeing their agency as regulating a key to competitiveness. As such, the agencies cannot focus on trade in services alone, especially as they are faced with (1) competing demands from their respective publics and (2) their limited resources to respond to these demands.

Faced with unlimited public demands but equipped with limited resources, government usually favors tested approaches over fresh but risky methods. For a newly identified policy area as Negotiations on Trade in Services, government may be inclined to approach it warily and, in the process, miss critical opportunities.

Similarly, large parts of the private sector are frequently unaware of the comparative strengths and weaknesses of their industry and the opportunities in international trade relationships. They are often very aware of the (potential) threats entailed in liberalization. Visionaries do not often group many followers behind them.

Based on this understanding and the general perseverance of institutions, change needs convincing push and pull factors. The energy needed for institutional change offering a more supporting framework for the fostering of services sector’s competitiveness can originate in the fear of missing critical opportunities as a (potential) global player or an actor in global value chains.

Consumers can also play a decisive role in creating energy for change – as voters and as clients they can have a substantial influence on both the private sector and governments. Unfortunately there is not always an adequate perception of this role within developing countries – be it due to authoritarian or oligopolistic structures, where minorities dictate
policies, or due to uneducated masses, which do not exercise their rights as consumers or act upon the role they could play.

Even though government favors tested approaches over fresh but risky methods TA has leverage to engage in bureaucratic risk-taking initiatives (e.g., via Public-Private Dialogue, government can actively engage a wide and diverse stakeholder base during the process of forming negotiating positions). Successful demonstration can generate commitment from government.

There is also a need to strengthen the change agents in the private sector. At the same time those opposed to changes need to be better informed, so that the reservations they bring into discussions can be based on factual grounds.

This initial push, if able to successfully demonstrate its benefits (e.g., wide ownership of negotiating objectives), can then be sustained by a commitment from government to regularly devote resources to the process. It has to be stressed again that demonstration of initial success is critical in transitioning to a more sustainable approach.

Technical Assistance on Trade in Services, especially if undertaken in the context of Public-Private Dialogue processes, can play a catalytic role for (1) widening the Agency’s sector-specific perspective—as dictated by its sector-focused mandate—with the broader developmental and economy-wide issues and (2) emphasize the need for enhanced coordination among Agencies on Trade in Services issues, given their generally economy-wide implications.

Nevertheless, as has been laid out in this paper, identifying trade related issues is only a way to get a regulatory reform agenda started.

The right agencies have to be in the inner circle to be able to take the lead and sustain momentum for a discussion process initiated. The right change agents from the private sector have to be involved to insure that the most relevant issues do not get lost (purposely or due to lack of capacities) before or during implementation.

Rounding off our reflections of what TA can achieve in promoting regulatory reform through facilitating trade in services capabilities, we caution everybody involved - be they consultants, companies, public sector agencies, donors, the academic or any other stakeholder - to put their expectations into perspective. Besides restricted time and financial resources there are many “if's” and conditions that TA has to rely on and can only subliminally influence. But these factors are often pivotal in determining the outcome of the TA initiatives.
Conclusions

The applicability of an approach to utilize services trade negotiation processes for systematic introspections and subsequent reform agendas is a function of

(1) the importance of services (or selected service sectors) to the total economy,

(2) the degree of inter-linkages with other sectors,

(3) the extent to which these sectors are regulated, and

(4) an institutional framework sufficiently capable of policy review and change.

Allowing market access to foreigners and liberalization can lead to a broader offer of services, more competition, lower prices and a higher quality of services. This in turn can benefit the competitiveness of the whole economy.

Benefits of liberalization do not accrue automatically but require certain preconditions, such as a responsive regulatory framework and capacity building.

In the course of trade negotiations pressure towards services liberalization is often entailed. The pressure experienced is mostly focused on certain sectors. The necessity to react to these pressures can be utilized to trigger reforms in the overall regulatory framework for business and (foreign) investment.

Identifying appropriate response to requests tabled in trade negotiations requires an internal review of the current status and the aims and visions anticipated for certain sectors and/or the whole economy. Such an internal review process can give impulse to triggering reforms.

Business environment reforms benefit from focused analysis of the current state and reform needs to enhance the country’s competitiveness. Services trade negotiations offer the urgency for such a task. The GATS framework entails a helpful focus and an analytical framework to give such analytical process the necessary guidance.

Quite clearly negotiations do not per se lead to the introspection called for. There is a need to shift from prevailing sectoral perspectives to a cross-cutting analytical and consultative process. At the same time, an introspective process must weigh options for liberalization of services trade carefully.

The preconditions for triggering reforms are not necessarily found in the existing business and investment climate or an ongoing reform agenda. The ability of an administration to conceive a broader perspective and to engage in PPD is therefore of great importance.

But, if public dialogue forums are held as lip service, if strategic options with broad support are sacrificed for selected private interests, if the state is playing an overly dominant role in
self defining prescriptive development paths, or if a state is too weak to act upon public interest and enable a level playing field for private players, the chances of reform are bleak.

Most developing countries worry much about the threat of dominant services imports from developed countries. Whereas, even if this fear would be justified, the actual cause and therefore the greater challenge for them is their lack of competitiveness, i.e. their existing inability to compete in the global arena, as well as the inefficiencies of their economic systems and policies.

Whether or not services trade negotiations can generate sufficient energy to trigger reforms depends on the process into which such negotiations are or can be embedded. Stand alone negotiations are not likely to trigger anything, let alone substantial commitments. Yet, if all the main stakeholders are involved, there is no doubting that relevant issues will arise.

Whether or not tabled issues can lead to reforms is again a question of commitment, on behalf of the government and a question of sufficiently strong change agents, willing and able to maintain the momentum of issues raised, and see them through to a reform agenda.

Technical assistance can use such triggers as leverage points. TA can be helpful in “experimenting” with analytical and consultative approaches. Due to the fact that issues arise during the process and supporting a reform agenda may not be in the scope of TA previously designed, the mandate and roles of TA representatives have to be continuously monitored and clarified. The duration and flexibility of assistance is crucial.

We see a strong opportunity for utilizing the preparations for services trade negotiations as a bartering occasion to balance prevailing private interests with broader public interests to the greater benefit of whole economy and society.

Two crucial issues are left for discussion:

- Is there a possible and sensible sequence of services liberalization and regulatory reforms of the business and investment climate?

- Can TA use the linkage between the two fields systematically, i.e. projects aimed at assisting preparations for services trade negotiations to expand onto regulatory reforms, or business and investment climate projects to encompass positions for services trade negotiations?

These are questions to be discussed during the conference in Bangkok.
References


These results of the work have not been presented before, the project is ongoing.

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Manila, Bonn November 9, 2006