

## Trade Facilitation in Services

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*The concept of Trade Facilitation in Services (TFS) is fairly new. Recently, several WTO members have put forward proposals regarding domestic regulations in services trade on development of measures, administration of measures, transparency, gender equality, and development. Simultaneously, India has put its proposal on TFS, which can be viewed as an extended version of all proposals on domestic regulations. It will be interesting to see how successful will India be to take its proposal forward to the regular work programme of the WTO amidst growing concerns from many WTO members and long pending other issues.*

### Introduction

The share of services sector in world trade has increased from 19.71 per cent in 2006 to 23.71 per cent in 2016. Value of world trade in services has increased from US\$2.9tn to US\$4.9tn during the same period.<sup>1</sup> After the adoption of the WTO Trade Facilitation Agreement (TFA) in goods in 2014, there is a growing voice for a similar kind of trade facilitation disciplines in services trade.

Recently, many members have tabled proposals governing various principles of domestic regulations, which have been further weighted in by India's proposal on Trade Facilitation in Services (TFS).

### A Quick Recap

The General Agreement on Trade in Services (GATS) is the only existing set of multilateral rules covering international trade in services. Article XIX of GATS envisages that members shall enter into successive negotiations, beginning not

later than five years from the date of entry into force of GATS, for liberalising services trade and providing higher market access. Thus, negotiations began in January 2000 but so far the WTO members have only been able to negotiate disciplines on domestic regulations in the accountancy sector.

Currently, the WTO members are engaged in negotiating a separate set of 'horizontal' disciplines on domestic regulations, which will not be, like the accountancy disciplines, sector-specific and will apply to all measures affecting trade in services within the scope of GATS.

### Domestic Regulations

Services trade is protected mainly through disciplines of domestic regulations. The GATS agreement contains disciplines on barriers to trade in services in the form of restrictions on market access (Article XVI) and on national treatment (Article XVII).

Article VI.4 and the Decision on Domestic Regulations (as adopted in the Accountancy sector in December 1998) call upon the WTO members to develop necessary disciplines to avoid unnecessary barriers to trade in services relating to qualification requirements and procedures and technical standards, and licencing requirements and procedures.

Many countries, such as the European Union, Norway, Australia, Canada, Japan, South Korea, Columbia, Mexico, Chile, Peru, Uruguay and Iceland have submitted proposals to develop a package of rules at MC11 (Buenos Aires 2017) on domestic regulations affecting trade in services under the categories of development of measures, administration of measures, transparency, gender equality, and development.

These proposals aim at setting the following disciplines:

- measures relating to licencing requirements and procedures, qualification requirements and procedures, and technical standards should be objective and transparent
- a single window to avoid requiring an applicant to approach more than one competent authority for each application for authorisation
- authorisation fee charged should be reasonable, transparent, and do not restrict the supply of the relevant service
- a detailed transparency in all aspects of licensing and qualification requirements and procedures and technical standards

## Proposed TFS Provisions

In February 2017, India submitted its proposal for a multilateral agreement on TFS. It aims at reducing or eliminating border and behind-the-border barriers to services trade. The main elements of the proposed TFS agreement are given below:

- publishing all measures of general application relating to supply of a services along with establishing and maintaining an appropriate mechanism for responding to enquiries regarding measures affecting trade in services
- single window facility for applications, specific timeframes for applications, acceptance of electronic applications and authenticated copies of documents, procedure for appeal and review, including procedures for information and verification requests as well as an expedited fast-track procedure for acceptance of applications
- fees and charges applied are reasonable, transparent, commensurate with the costs incurred by the competent authorities, and do not in themselves restrict or impair the supply of the relevant service
- providing information with regard to the criteria defining economic needs tests (ENTs), and details of requirements, procedures and guidelines for administration of such ENTs as per Members' Schedule of specific commitments in order to enable effective market access
- ensuring free cross-border flow of information for facilitating Mode 1 (cross-border) supply of services

- facilitation of supply of services, such as cross border insurance portability for availing of medical or tourists related services in a foreign country
- endeavour to streamline temporary entry formalities such as visa processing fees and simplification of procedures for entry and stay, clarity in respect of work permits and visas, disciplines on measures relating to taxation, fee/charges, discriminatory salary requirements, social security contributions in relation to temporary entry
- exchange of information on procedural requirements and associated formalities and documentation and also sharing of experiences regarding implementation, best practices for collection and compilation of data relating to trade in services, exchange of statistics on trade as well as technical guidance or assistance and support for capacity building to small and medium enterprises
- special provisions for developing and least developed countries pertaining to the entry into force of this Agreement due to their special economic and developmental situation as well as trade and financial needs; while LDCs shall not be required to implement any obligations, they would be encouraged to do so
- technical assistance may be provided to developing countries and LDCs in order to advance and strengthen their institutional and regulatory capacities
- institutional arrangements such as the establishment of a Committee on TFS at the WTO as well as a National Committee on TFS

## Way Forward

It is true that recent proposals on domestic regulations on trade in services and India's proposal on TFS are similar in terms of issues covered. However, TFS provisions significantly differ with regard to their depth and breadth. Both the proposals on domestic regulations and that on TFS have received a mix response from the WTO members.<sup>3</sup>

Many developing countries along with several LDCs reiterated that the proposed disciplines on domestic regulations of service trade would lead to additional financial and administrative burdens and reduce their capacity to meet national policy objectives, such as poverty reduction and economic growth.<sup>4</sup>

Some major industrialised countries such as the EU, Canada, Switzerland, Australia, and New Zealand, among others, have welcomed the TFS proposal but have also raised certain questions. Turkey has shown its interest completely in line with India. China has cautiously welcomed the Indian proposal but raised several technical questions. USA's response is awaited, particularly in regard to procedures for the movement of short-term service providers. Brazil and Argentina have shown their willingness to participate in discussions.

On the other hand, some developing countries such as Bolivia and Venezuela, among others, are not in agreement with the tabled TFS proposal, citing that the same would entail burdensome commitments on their part. The Africa Group led by South Africa has shown

concerns by stating that it would impose burdensome/costly multilateral obligations and does not fit into the template of trade facilitation agreement for goods.

Many African economies as well as several LDCs seem to be opposing the proposals on domestic regulations along with India's proposal on TFS as they are of the opinion that the proposed measures are not in line with their national objectives and also they will require a lot of political interventions.

Responding to the concerns of various members, India has maintained the position that TFS is not about new market

access for services. It ensures having provisions for special and differential treatment for developing countries and LDCs, and also addresses issues of technical assistance and support for capacity building.

The proposed multilateral agreement on TFS might be too ambitious at the moment, given the fact that members have just started implementing the Trade Facilitation Agreement on Goods. Thus, India's TFS proposal may be considered under the regular work programme of the WTO.

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