

WTO Negotiations to Liberalize Trade in Services: New Challenges for Sustainable Development

Services are key for sustainable development. Services include activities such as healthcare, transport, or the provision of water and energy. It is crucial that ongoing negotiations under the World Trade Organization (WTO) to liberalize trade in services not undermine the pursuit of sustainable development. Instead, new WTO obligations on services trade should support and complement governments' obligations and efforts to protect the environment and human rights and to promote social and economic progress. To allow for this to happen, WTO Members must take urgent action. In particular, they should:

- *Recognize that services trade liberalization affects sustainable development, in both positive and negative ways;*
- *Honor their existing legal obligations to promote sustainable development and make sustainable development the key benchmark of any liberalization activities undertaken pursuant to current WTO services negotiations;*
- *Carry out thorough, comprehensive and fully transparent sustainability assessments before devising any new obligations in the WTO services negotiations; and*
- *Open their decision-making processes to guidance from relevant intergovernmental organizations (IGOs) and non-governmental organizations (NGOs).*

SERVICES ARE KEY FOR SUSTAINABLE DEVELOPMENT

Services comprise a diverse set of activities including basic services such as healthcare, education and water-provision and infrastructure services such as telecommunications, transport, and energy services. Linkages exist between the provision of services and all three pillars of sustainable development:

- Economic development requires functioning infrastructure services;

- Social advancement relies on the provision of basic services such as education, healthcare and water; and finally,
- The environment may suffer from a large range of services, such as tourism, transport, oil-drilling, energy or waste incineration services.

Governments have recognized the linkages between services and sustainable development in the context of preparations for the World Summit for Sustainable Development. They have addressed the need to deliver basic health services to all; to improve the provision of water to the poor; to promote the use of renewable energy and to protect and preserve the environment.¹ To deal with these needs, individual governments will have to take regulatory action at the domestic level. At the same time, the WTO negotiations on services are ongoing and are planned to result in an international regulatory framework on services. This regulatory framework will likely constrain domestic regulatory flexibility to deploy a full range of domestic policy tools relating to services. If the elements of sustainable development are not sufficiently taken into account during the WTO negotiations on services, the rules resulting therefrom may have the effect of seriously undermining the sustainability of policies relating to services.

NEGOTIATIONS MAY POSE CHALLENGES TO SUSTAINABLE DEVELOPMENT

The WTO is the pre-eminent body governing international trade, including international trade in services. The WTO's General Agreement on Trade in Services (GATS)² aims to liberalize trade in services.³ WTO Members are pursuing this goal through a set of far reaching negotiations.

Without the appropriate guidance, these negotiations may bring about practical and regulatory effects that negatively impact sustainable development:

- *On the practical side*, liberalization of services trade may change the nature and level of services provision. For example, liberalization may increase the provision of environmentally-destructive services such as services related to mining and oil-drilling.
- *On the regulatory side*, international services rules may reduce national sovereignty and limit the regulatory capacity of governments to address sustainable development challenges.

For example, WTO rules may limit regulatory capacity by prohibiting governments from placing quantitative restrictions on services activities or favoring consumption of domestic, environmentally sound services over foreign, potentially environmentally destructive services. WTO rules may also require governments to make potential "trade-restrictiveness"⁴ a central element in rule-making processes at the domestic, even local, level.

WTO Members must tread with caution to avoid such outcomes. To this end, WTO Members must carry out a thorough and comprehensive sustainability assessment of services trade liberalization before deepening and expanding current WTO rules on services trade. In addition, WTO Members should open their decision-making processes to guidance from relevant inter-governmental organizations (IGOs) and non-governmental organizations (NGOs). This collaboration will promote coherence in international policy-making and ensure that services trade liberalization maximizes its positive contribution to sustainable development while minimizing its other potentially negative implications.

APPROACHES CAN OFFER GUIDANCE FOR WTO POLICIES IN THE SERVICES SECTOR

Alongside WTO negotiations on services trade, the international community is also witnessing the emergence of a coherent

system of policies and obligations recognizing services as a key element of sustainable development.

Several multilateral environmental agreements (MEAs) relate to services trade. For example:

- *The Kyoto Protocol* to the United Nations Framework Convention on Climate Change relates to energy services and energy consuming services;
- *The Basel Convention* on the Control of Transboundary Movements of Hazardous Wastes and their Disposal concerns waste disposal services; and
- *The Convention on Biological Diversity* relates to services in that biodiversity could be negatively affected by unregulated trade in services such as tourism trade.

Together, MEAs and the United Nations Environment Programme (UNEP) need to ensure that services trade liberalization does not put increasing stress on the environment or restrict governments' rights to regulate for the protection of the environment.

Several international agencies work on linkages between services trade and economic development. For example:

- *The United Nations Conference on Trade and Development* (UNCTAD), provides much needed policy analysis that aims to ensure that services trade liberalization delivers economic benefits to the South;
- *The United Nations Development Programme* (UNDP) pursues similar goals. In addition to economic development, it also aims to ensure that services trade liberalization proves positive for human development more broadly.

Several of the specialized UN agencies recognize the linkages between services trade, human rights and social and human development. For example:

- *The World Health Organization* (WHO), works to ensure that liberalization of health care services does not threaten health policy objectives;

• *The UN Sub-Commission on Human Rights* affirmed the importance of basic services as a means of promoting human rights - a primary responsibility of governments;⁵ and

• *The UN High Commissioner on Human Rights* subsequently released a report on the human rights implications of services trade liberalization, particularly GATS.⁶

Finally, the Commission on Sustainable Development (CSD) in its preparation for WSSD 2002 repeatedly acknowledged the linkages between services and sustainable development.⁷

It is crucial that international trade negotiations do not undermine these concerted efforts to promote sustainable development do not create conflicting legal obligations for governments. Consequently, WTO services negotiations must not be carried out in isolation but must take into account the efforts in these other fora. Moreover, before accepting new, legally binding international trade rules, WTO Members must have a clear understanding of the effects that existing and future GATS rules may have on sustainable development policies. Services trade assessments may provide this much needed information.

PROMOTING SUSTAINABLE DEVELOPMENT AND ACHIEVING COHERENCE IN INTERNATIONAL POLICY MAKING

Sustainability assessments analyze the economic, social and environmental impacts of trade policies. They thereby provide trade policy-makers with a tool to develop a negotiating agenda and a set of policy options that can maximize the contribution of services trade liberalization to sustainable development and minimize its potentially negative implications.⁸ WTO Members have started to recognize the value of assessments. Services trade assessment is a standing agenda item of the Council for Trade in Services.⁹ However, it is important that in their assessment, WTO Members consider more than purely quantitative economic effects of services trade liberalization. Rather, they need to

conduct a comprehensive and thorough assessment, focusing in addition on the social, environmental and human rights implications of services trade liberalization. This call for a thorough, comprehensive, early and transparent assessment of services trade is widely accepted. For example:

- The UN Sub Commission on Human Rights in its 2001 resolution on services trade liberalization recognized the value of such assessments. It subsequently called upon various UN agencies to undertake services trade assessments with respect to their areas of competence. It also called upon WTO Members to take these comprehensive studies into account in their assessments;
- Civil society groups and non-governmental organizations have repeatedly called for a comprehensive assessment of services trade before the WTO continues any services negotiations. They have also offered their expertise in assessment to trade policy-makers.¹⁰

Increasing collaboration between the WTO and its Members on one hand and other UN agencies and non-governmental organizations on the other may give rise to synergies and contribute towards promoting sustainable development. To allow for this to happen, WTO Members must recognize that services trade liberalization affects sustainable development, in both positive and negative ways. WTO Members must then honor their existing legal obligations to promote sustainable development and make sustainable development the key benchmark of any liberalization activities in current negotiations. Finally, WTO Members must commit to undertaking thorough and comprehensive sustainability assessments before devising any new obligations under GATS. When carrying out these assessments, both at the national and international level, WTO Members should employ open and transparent processes, and call upon the expertise of relevant UN and non-governmental organizations.

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1 Paraphrased language from the 12 June draft, fourth session of the Commission on Sustainable Development, Bali, Indonesia, 27 May - 7 June 2002.

2 General Agreement on Trade in Services, Annex 1 B to the Marrakech Agreement Establishing the World Trade Organization.

3 Note that the WTO concept of "trade" in "services" also includes "investment" as one way of trading services.

4 Note that WTO Members are currently considering international rules that would require domestic regulations to be no more trade restrictive than necessary.

5 United Nations Economic and Social Council, Sub-Commission on Human Rights, Trade in Services and Human Rights, Resolution E/CN.4/SUB.2/RES/2001/4, 15 August 2001.

6 United Nations Economic and Social Council, Sub-Commission on the Promotion & Protection of Human Rights, Report of the High Commissioner on Liberalization of Trade in Services & Human Rights, E/CN.4/Sub.2/2002/9, 25 June 2002.

7 See above (Notes 1 & 2)

8 See WWF CIEL Joint Statements on Services Trade Assessment, July 2001, September 2001, December 2001 and June 2002, available at <http://www.ciel.org>.

9 Guidelines and Procedures for the Negotiations on Trade in Services, Special Session of the Council for Trade in Services, S/L/93, 29 March 2001.

10 See four joint statements by C.E.L. / WWF on services trade assessment, available at <http://www.ciel.org>; see also <http://focusweb.org/our-world-is-not-for-sale/statements/Stop-gats-attack.html>, or