



Asia-Pacific  
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## Services

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Policy for RTAs/FTAs: Practical Lessons and  
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# SERVICES

APEC Workshop on FTAs  
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## Point no.1

*Services issues are by far the most dominant issues on the FTA negotiating agenda*

*Why?*

## 1. Trade in Services takes place in several ways

- \*Cross Border (eg via the internet)
- \*Temporary movement of customers (eg tourism, education)
- \*Temporary movement of service providers into the foreign market (eg foreign insurance agents, consultants)
- \*Setting up a local office (investment)

*This complexity means it takes more than 1 Chapter of an FTA to deal with all the relevant issues*

## 2. The services sector includes major infra-structural industries affecting the entire economy

- Financial services usually need to be dealt with in a separate chapter
- Telecommunications is also often dealt with in a separate chapter
- E-Commerce is often dealt with in a separate chapter
- Business mobility needs to be handled separately

3. *Services account for more than 50% on average of GDP & employment (over 75% in the developed economies) & is often the major contributor to innovation & productivity growth & the fastest growing export sector*

Services industries are beginning to mobilise & to demand commercial outcomes from trade negotiations

## 4. The GATS is moving too slowly.....

- And FTAs offer an opportunity for the pursuit of other "new" issues which do not figure fully on the current WTO negotiating agenda but which are closely related to Trade in Services such as E-Commerce, Investment and Competition Policy
- It is inevitable that developed economies will view FTAs as potentially constructive mechanisms for addressing all of these interrelated issues

## 5. Reform in the Services sectors has the greatest relative power to deliver economic benefits

Most modelling work assessing the economic impact of any particular FTA will show, despite the problems of measurement, that the potential gains from liberalising services tend to outweigh the gains from liberalising trade in goods.

(This is generally due to the positive impact of domestic reform in the services sector rather than due to gains from new access to trading partners' markets.)

*So there are at least 5 good reasons why an OECD country trading partner will want an FTA to focus closely and deliver results on Services related issues*

*Lets look at a Table of Contents....*

Goods ( Agriculture/ Manufactured Goods/Textiles)  
Tariff Schedules and Rules of Origin  
Sanitary and Phytosanitary Barriers  
Cross Border Trade in Services  
Positive List - Schedule of Commitments  
or Negative List Approach  
List A ( Non Conforming Measures)  
List B ( Sensitive Carve Outs)  
Financial / Telecommunications / Professional Services  
E Commerce / Other Sectors?  
Mode 4 / Temporary Movement of Business Personnel  
Competition Policy  
Investment  
Government Procurement  
Intellectual Property  
Standards and Technical Barriers  
Dispute Settlement

## Point no.2

*Services issues are also proving to be the slowest and most difficult to negotiate, especially for developing countries*

*negotiators seem unprepared*

- Services issues can not be avoided in any FTA negotiation with a developed economy
- It is inefficient to try to avoid them also in any FTA/RTA among less developed economies
- But the issues are complex and there are many pitfalls for developing economy negotiators
- How to get better prepared?

## Steps to take

- **Step Number 1: Do your Homework.** Improve your understanding of your services sectors, including potential export interests & competitive threats. Enhance the transparency of the domestic regulatory framework
- **Step Number 2: Get your Own House in Order.** Identify outdated & stifling red tape and get ready to implement pro-competitive regulatory reforms so that new domestic firms will be able to enter the market & allow the domestic industry to develop & grow
- **Step 3:** You are now ready to negotiate with confidence. Steps 1 & 2 will ensure that your trade negotiating strategy is **home-grown and development driven**.

## Food for Thought

- Your FTA partner will probably seek to remove discrimination by achieving maximum concessions on **National Treatment**.
- (And the WTO rules on FTAs require removal of substantially all discrimination)
- But remember that unless you also do Step 2 above ie pro-competitive regulatory reform (which the GATS does not insist upon), you risk transferring any existing monopoly profits to foreigners.

## Food for Thought

- Remember also that any concessions you agree to make on **Market Access** (consistent with Step 2 above) will boost productivity and deliver net gains for economic development, including to your own domestic service providers. Remember this is in your own best interest. Take advantage, from a political perspective, of the external pressure of trade negotiations to pave the way for necessary regulatory reforms of this kind.
- The FTA negotiation provides an excellent opportunity for ongoing policy dialogue (& perhaps for receiving technical assistance) on best regulatory practices in the services sectors.

## The basic concepts in a sample chapter on Cross Border Trade in Services

- A sample FTA chapter would contain principles drawn from the WTO/GATS
- But it also contains some new concepts
- Let's focus on the aspects which are different from the GATS ie not necessarily familiar to WTO or APEC negotiators

## Important Concepts

- Most Favoured Nation
- Denial of Benefits ( rules of origin for services - generally more liberal than for goods)
- Positive List approach (like the GATS) and/or the more deeply liberalising Negative List approach (list it or liberalise it)
- 2 Schedules of Non Conforming (Sensitive) Measures
  - Ratchet Mechanism
- Absence of an Emergency Safeguards clause?

## Negative List Approach

### Non Conforming Measures Annex 1

- Existing measures which do not conform with the principles set out in the chapter, but which are "grandfathered" in Annex 1 ie you want to retain them
- If you don't list them in Annex 1, you are obliged to liberalise them.
- In a Federal system, it is typical to "grandfather" all existing measures at State and local level.
- No new measures which are inconsistent with the Chapter can be introduced

## Negative List Approach

### Non-Conforming Measures Annex 2

- List of measures with respect to which you wish to retain even greater flexibility ie retain the right to increase the level of protection in the future
- These are the most domestically sensitive policy areas
- There will always be considerable negotiating pressure to keep this list short.

### *Implementing services preferences*

- It is worth noting that, unless the barriers to trade are quantitative in nature (eg numbers of foreign universities that can establish locally) it is probably harder, than it is for goods, to implement services sector market liberalisation on an exclusive discriminatory basis
- Many services sector reform measures agreed in the context of a bilateral FTA could readily be multilateralised and it would generally add to the domestic economic benefit to do so.

### *How much services sector liberalisation is taking place via FTAs?*

- In general, services liberalisation seems no easier in small groups than it is in the WTO
- Where the negative list approach is used, there have been significant WTO plus strides forward in terms of National Treatment
- Progress is less evident in terms of Market Access, at least from developed economy partners
- There is some progress on Temporary Movement of Business Persons and there are attempts underway to deal with Recognition of Professional Qualifications
- There is deeper commitment on the part of developing countries to Regulatory Transparency and there is incremental progress in the direction of regulatory harmonisation, including on telecoms and banking.