

## Services Negotiations in the WTO: Requests and Offers

by Bhagirath Lal Das

### Current Stage of Negotiation

Currently the negotiations in the area of services in the WTO are focused on liberalization in various services sectors. Countries are presenting their "request lists" to one another, making requests for specific liberalization in specific sectors by the country to whom the list is addressed. It is being done with the expectation of getting benefits from liberalization. The requests are considered by the receiving countries and responses are given by them in the form of "offers" for liberalization.

Many developed countries have given their request lists to a large number of the developing countries. Some developing countries have also given their request lists to some other developing countries. In this process the developing countries are presently engaged in the following tasks:

- (i) A large number of the developing countries have not prepared their own request lists. They are in the process of doing so.
- (ii) The developing countries are also examining the request lists that they have received and are working out their possible responses.

### Preparation of Request Lists

The following three points should be kept in view

by a developing country while preparing its request lists.

- (i) It should identify the specific services sectors where it has good supply and export capacity. If it does not have such capacity at present but expects to have it in some sectors in the near future, it may include these sectors in the list.

It should collect information on the size of its production in these sectors and also the size of the market in the target country to whom the request list will be given for liberalization in these sectors. This will give the country an approximate estimate of possible gains from liberalization in the target country.

- (ii) The request is usually for the removal of restraints. Hence the country should collect information on the restraints in these services sectors in the target countries to whom the request will be given. The request should be for clear commitments to remove the restraints.

If there is no restraint at present in the target country but it is anticipated that restraints may be introduced in future, the request should still be made. It will be a safeguard against possible future restraints.

If there are no restraints in these sectors in the

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target country and also if there is no likelihood of restraints in future, the country need not place a request in these sectors to the target country.

(iii) A request need not always be for liberalization in a particular sector. It can also be for solutions to particular problems, e.g., movement of persons for providing service or recognition of the qualifications of service providers. This type of request will be naturally applicable to all services sectors or specified services sectors, as the country may decide.

### Preparation of Offer Lists

A developing country that has received requests from the developed countries and some other developing countries will naturally be examining them in order to prepare its responses. The response may be in the form of either offers for liberalization or expression of inability to liberalize in the particular sector included in the request list.

The requests of other countries should be examined by a country on the basis of three main criteria given below:

(i) whether there are certain sectors in which the country must not make any commitment to liberalize;

(ii) whether a particular service sector is critical for development in the country and thus it is desirable to protect that sector;

(iii) whether the use of foreign service in a particular sector will help the production of manufactures or other important services in the country or will be otherwise useful, e.g., for large public consumption.

On the basis of these criteria, a country should prepare three lists as described below. These lists will be for the use of the country itself and are not meant to be given to other countries. They will help in the process of preparing the responses to the request lists of other countries.

#### *“Negative-sectors list”*

Based on point (i) above, a “negative-sectors list” should be prepared containing the sectors or sub-sectors in which the country must not make any commitment for liberalization. In this connection it is significant to note the news in the *London*

*Financial Times* of 5 February 2003 that the European Commission (EC) has decided to exclude four areas from WTO negotiations, viz., health, education, energy and water. The implication is that they will not agree to make any commitment of liberalization in these areas. The developing countries should similarly prepare their respective “negative-sectors lists”.

This will help the negotiation process, as the country, having prepared such a list, can then proceed to have constructive talks with others in other services sectors for give-and-take.

It is important to emphasize that such a “negative-sectors list” will not mean that the country will not liberalize import of services in these areas. It will only mean that the country will not make a commitment to liberalize in these areas in the WTO negotiations. Such a commitment will bind the country permanently. Adhering to the “negative list” will enable the country to retain its flexibility and options on liberalization in these areas according to its own perceived needs and priorities from time to time.

#### *“Critical-sectors list”*

Next, taking into account point (ii) above, a country should prepare a “critical-sectors list” that includes the service sectors that are critical to its economic development and where it is necessary to encourage domestic production of services. The necessity may be both substantive and strategic. In these areas, even though the country may not stop the entry of foreign services altogether, it should still protect the domestic services against competition from the foreign services and service providers. Some examples of this type of services may be banking, telecommunications, etc.

In these critical sectors, the objective of the country in the negotiations should be to have stringent conditions of market entry and full flexibility for providing support to domestic services without extending it to foreign services, i.e., full flexibility regarding the discipline on national treatment.

#### *“Useful-sectors list”*

Coming to point (iii) above, a country should prepare a “useful-sectors list” including in it the foreign services that are necessary and useful for its domestic production of goods and services.

Naturally, the country should be more liberal in the negotiations in offering liberalization in these sectors, provided it gets commensurate offers from others in the sectors of its own export interest.

A developing country should prepare its responses to the request lists of other countries fully guided by these three lists. As mentioned earlier, the response could be either in the form of offer lists or in the form of expression of inability to liberalize. For example, if a request has been received for liberalization in a sector which this country has included in its "negative-sectors list", it should say in its response that it does not intend to offer any liberalization in that sector.

## Negotiating Strategies

Some suggestions on negotiating strategies are given below.

### *(i) No request, no offer*

We have to note that a country is not required to offer any liberalization just because negotiations on liberalization have started and various countries have sent their request lists to that country. If it does not have a request list, it should not give an offer list. It should make offer lists in response to the request lists of others only if it perceives that it has also to make some requests to the other countries regarding their liberalization.

The situations which will give rise to the perception that no requests are needed have been described above.

### *(ii) No single-sector negotiations*

The past negotiations in the area of services have broadly followed the practice of negotiations among countries in specific sectors, taking one sector at a time. In particular, the areas of financial services and telecommunication services had been selected for such treatment. As the developing countries do not have adequate supply capacity and export capacity in most of the sectors, sector-wise negotiations for liberalization will not be of much benefit to them.

A better method will be to have cross-sector negotiations. This will provide them with the opportunity to pursue their interests in the sectors of export interest to them while considering at the

same time the proposals of the other countries in the sectors of interest to the latter. Hence the developing countries should not favour sector-by-sector negotiations; rather they should favour negotiations that keep the various sectors together. Another approach could be to take a large group of services sectors together. But in this case, they should ensure that the groups contain an adequate number of sectors of their export interest.

### *(iii) Linking sectoral liberalization with solutions to general problems*

The developing countries may also link their possible liberalization in some sectors with their getting benefits in the form of solutions to the general problems they face in other countries, particularly in the major developed countries. For example, the developing countries which have some supply and export capacity face two main constraints in the major developed countries, viz., visa policy which has the potential of constraining their supply of service through the movement of persons (Mode 4 of service supply covered in the WTO services negotiations), and qualification recognition. A developing country may link its offer of liberalization to their making concrete commitments on these two points, viz., movement of persons for supply of services and qualification recognition.

The developed countries may argue that visas are an immigration issue which centres around security interests and also that the qualification issue is to be settled bilaterally with different countries through mutual qualification recognition agreements. The counterargument of the developing countries should be that without any easing on these two fronts, the developing countries do not get any significant benefit from the liberalization commitments of the major developed countries. Hence, it is necessary for them to make commitments on these two points up front, before the developing countries undertake commitments on liberalization in various sectors in their request lists.

The developing countries should strongly resist the approach of the major developed countries to delink Mode 4 supply and recognition of qualifications from the negotiations on liberalization.

### *(iv) At least commensurate benefit in return*

The developing countries have to ensure that they get at least commensurate actual benefits in various sectors, either through liberalization by the others in those sectors or through their concrete commitments on movement of persons and qualification recognition or a combination of both. Of course the developing countries should also insist on utilizing the special-and-differential-treatment provision in Article XIX of the WTO's General Agreement on Trade in Services (GATS) which states that the developing countries may liberalize "fewer sectors" and "fewer types of transactions", which implies that the developing countries have the right to expect more than mere commensurate benefits.

*(v) Commitments to be enforceable*

In the past, the major developed countries have obtained from the developing countries concrete "enforceable" commitments while they themselves have generally made only "best-endeavour" commitments on special and differential treatment for the developing countries. The past experience shows that the best-endeavour-type commitments or general expressions of guidance and approach (for example, a stipulation that the Members "shall do their best to..." or will, "to the extent possible, ...", or the general statements on guidelines in Articles IV or XIX of GATS, etc) are totally useless in the WTO. The developing countries should give any concession only in return for "fully enforceable" commitments of the other side.

*(vi) Domestic subsidy in service sectors*

It should be noted that providing domestic subsidies in the goods sector is not considered to violate the principle of national treatment as there is an exception in Article III.8 of GATT 1994; but there is no such general exception in GATS. Hence it should be ensured that the developing countries put this exception under Article XVII of GATS in all sectors that they include in their schedules of sectoral commitments.

*(vii) Assessment of past liberalization*

The developing countries have with them some eight years' experience of the workings of the WTO. They made commitments earlier in several sectors, like financial services, telecommunication services, etc. A developing country should assess how far it has benefited from the commitments of the others and how far the others, particularly the

major developed countries, have benefited from the commitments that it has made so far. This assessment will provide the developing countries with objective lessons for the ongoing negotiations.

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