

# Developing more effective negotiating modalities and narrowing the governance gap for services at the WTO

Session 5

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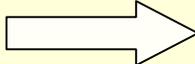
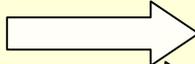
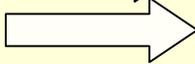
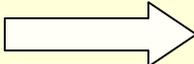
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# Start from the premise that the GATS negotiations are in a mess

From a business perspective there is no doubt about this

- After 10 years of negotiations, and at a time of immense global change in business realities, the best the business community can now expect is that current Doha Round “offers” and anticipated marginally “revised” offers will be harvested “somehow”, “sometime” (but not in any “early harvest”)
- We haven’t seen them all but we are told the offers are worth having. Losing them completely would then unquestionably be worse than delaying them
- But only just! Because the offers we have seen contain *no* new market access. They do no more than remove the odd drop of water “policy space/discretion” between actual “applied” and “legally bound” conditions in the market place
- The FTAs are meanwhile edging impatiently further into experimentation with “WTO+” international governance on services trade and investment (the governance gap is widening)

# Why are they in a mess?

- We looked at some of the domestic explanatory factors in earlier sessions - and we focussed also on domestic and regional ways to overcome some of these obstacles
  - Lack of information on the services economy..... 
  - Policy uncertainty leads to defensiveness..... 
  - Lack of domestic regulatory reform impetus..... 
  - Absence of coordinated domestic strategies for services development..... 
- In this paper, we take a radical look at how the inter-governmental negotiating process in the WTO might itself be at fault and what sort of adjustments could be designed that might help?
  - A Plan B for the GATS
    - whether or not we have a Doha outcome in 2012, or 2014 or never...

# Systemic strengths or faults?

- The concept of “multilateral”
- The concept of a “round”/the concept of a “single undertaking”
- Exclusion of investment and competition policy from the agenda
- Unreadability of the GATS/increasing disconnect from business reality
- Uncertainties in interpretation of the GATS/absence of dispute settlement case law
- Mercantilist approach in the request-offer modalities/public opacity of services “offers”/slowness of the incremental approach
- Absence of inventory of services barriers/absence of quantitative measure of services barriers
- Technical complexity of the GATS schedules/”positive lists” of commitments
- Absence of the regulators from the table/absence of support for regulatory dialogue
- Absence of international support for domestic institution building.
- Inadequate private sector stakeholder consultation mechanisms/location in Geneva

# Potential Solutions?

- Stand-alone services negotiations
- “Critical mass”, plurilateral, mfn-based negotiations
- Negotiation of a new simple multi-modal services accord eg a Standstill and Rollback type deal (without individual schedules, or with negative, if any, listings)
- Negotiation, with the regulators, of a generic cross-sectoral Services Reference Paper (eg modelled on the Telecoms Reference Paper) setting out pro-competitive principles focussed on transparency and dialogue
- Permanent ongoing “living” services negotiations accompanied by regulatory benchmarking dialogue (with stakeholder consultation opportunities?)
- Establishment of GATS working groups on movement of natural persons and on services value chain interoperability
- Intensified WTO work towards global governance on investment and competition
- WTO support for intensified domestic attention to regulatory audit and regulatory institution building