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GATS IT/ITES Commitments and the Doha Development Agenda

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Introduction

There have been a variety of discussions in the WTO of issues relevant to IT and ITES. One of the reasons there has been so much consideration of the impact of technology on business in the services agreement is because many of the services that our negotiators cover form part of what could be called the 'infrastructure of technology-enabled services supplies'.

In WTO the terminology related to IT and ITES has changed over time. Ten years ago we were talking almost exclusively about 'electronic commerce'. We then talked about 'e-business' and 'e-trade' because we realised that the new technologies could have an impact on the way companies do business, not just on the way they supplied their goods or services. Today, we are negotiating matters related to IT enabled services under a rubric we are calling (somewhat obscurely) 'negotiations on cross-border supply'.

WTO commitments

Looking at the number of countries that have taken market-opening commitments in some of the infrastructure for IT kinds of services, we see that at least three of the major support sectors (computer services, telecommunications, and the banking sector) tend to have the highest number of market access engagements in the WTO. That implies they really are globalised industries that can more easily play a supporting role around the world in IT enabled services. There are somewhat fewer commitments on the broader spectrum of support services for online and other IT enabled services, advertising, distribution and various forms of delivery.

The changes in the sector have been essential to governments that want to take advantage of more exports in IT enabled services. The reforms have generally gone quite well. A recent price basket of a new system that the International Telecommunications Union (ITU) is measuring in terms of prices showed that a quite surprising number

of developing countries had moved into the lowest price basket with some of the OECD countries. That was a good sign for progress in IT enabled services.

To the extent we negotiate on improving market access for IT enabled services, we hope that would be a way to help small businesses take more advantage of opportunities in international trade. Bearing in mind the problem of data and where it is available – US data tends to show that the smaller the business, the less likely it is to have internet access or a hosted web for IT enabled services. Hopefully that is changing as prices make it more possible for smaller businesses to afford the level of access they need to do e-business.

GATS is composed of a set of articles that constitutes the obligations and schedules of commitments in which the market axis undertakings – be they great or small – are listed. In terms of guarantees of access in the WTO, although 102 governments (more than any other service sector) have commitments, only 61 of those have indicated in cross-border supply (Mode 1, at least) that they will not impose trade limitations or trade restrictions. There are similar patterns for other sectors, such as banking and telecommunications and computer services as a whole. These are rough averages over a wide variety of sub-sectors but in terms of negotiating improved access, the guarantees will be there for a rainy day even if they are not necessarily needed when things are going well in the sectors of interest to people in IT or ITES.

Key sectors

Looking across the board in some of the IT enabled services sectors, if you isolated industrialised countries, there were three or four sectors that showed up at the very top of the scale for Mode 1 cross-border supply. Between 70 per cent and 96 per cent of countries that committed in computer services, travel agencies, and certain business and professional services, said that they would put no barriers in the way of cross-border supply. The highest – the 96 per cent type of commitments – are mostly in computer services.

Now that compares with emerging economies when we analyse the sectors that had the highest incidences of no limitations for cross-border supply. Interestingly, that might reflect what happens in a negotiating dynamic; you came out with essentially the same sectors, but at much lower proportions of commitment. There may be regulatory barriers other than pure market access restrictions that can affect some (for example, Mode 4) inabilities to negotiate contracts in industrialised countries. But it should be of concern that there is such low incidence of open cross-border commitments (of emerging economies) because of the phenomenon of the subcontracting by some of the larger first-comer developing countries, from which Mauritius has benefitted enormously.

In fact, the globalisation of the whole process for IT enabled services means that you cannot necessarily just target one market, and you cannot necessarily just look at cross-border supply. With respect to sub-contracting IT back office services to other developing countries there is quite a lot of work to be done if governments want to ensure, for either their current exports or potential exports in IT enabled services, that guarantees are there in the WTO for the day when they may be needed.

Professional services

In WTO we also looked at professional services, which tend to be smaller businesses, and the extent to which they could benefit. To some degree, there are certain sectors, like engineering and management consulting, which do quite well compared to others. Apparently, people do not want any cross-border supply of legal services, which has a very, very low level of commitment. Still, even in professional services, where there is a lot of potential for IT enabled trade, there is much work to be done in the WTO context.

IT sectors

In the negotiations in the Doha Agenda to date, computer services is one of the leading areas in which governments have been willing to show their hand and indicate that they will make or improve commitments. The computer services negotiators and *demandeurs*, as we call them in Geneva, have been a very diverse group of both developed and developing countries that have worked extremely well together. They have been trying to address a number of both regulatory and classification issues, so that the commitments will not only be there, but will make sense. This has been a very dynamic area of negotiations.

Classification

We are grappling with several changes in the WTO in terms of classification. For example, do downloadable products fall under services or goods? This is a whole area within itself and there is a great deal of concern overall about the impact of technology on classification issues. Now why does that matter? It matters because in order to ensure that you have commitments on your exports, you have to know what they are called and where they fall in a classification system.

Outsourcing, of course, is a new enough area, but there are many commercial names attached to it, for instance 'customer relations management'. The issue is this: the term 'customer relations management' is not to be found anywhere in any of the WTO or UN classification systems used for taking commitments. So part of our job is to find out where some of these services belong in a generic sense, even if they may be known by new and various names. The trouble is, if you do not know where

'customer relations management' is to be committed, you do not know where to ask for the commitment to be listed, and you do not know once commitments are taken where your rights might be, if you cannot find the commitment.

Cross-border supply

Now, going back to those negotiations that we in the WTO call 'cross-border supply', but to anyone outside the WTO, these would be negotiations on IT enabled services. The negotiating group tends to focus on requesting commitments from others – generally in the areas of back office or front office, logistic and business support services, as well as the knowledge services (like research and development) and some of the professional services – because of the wide range of trading interests of some of the governments involved, from the lower-end to the more sophisticated financial-oriented knowledge services. One of the things they have tried to do is look at classification. These are some of the kinds of services being requested by the group, which calls itself the 'plurilateral negotiating group on cross-border supply'. The members have come up with some solutions for some things: they are requesting a more recent version of UN classification system be used that specifically references call centres. Otherwise, they have tried to pinpoint areas of the existing WTO classification system where they want the commitments made, which is very helpful both to the *demandeurs* and the recipients of requests for improved cross-border supply.

Another interesting thing this group has done is to say that requests are on both Mode 1 (cross-border supply) and Mode 2 (commercial consumption abroad) because we are never sure of where to draw the line between the two. Looking at the way business is done in terms of the structure of a lot of offshoring-outsourcing relationships, it is almost as if cross-border supply and consumption abroad are operating together, and in some cases, even commercial presence (Mode 3) is simultaneously at play. It is an area that those with a vested interest should keep an eye on to make sure that the WTO would be there for you.

Other tools for ITES

Not only is telecommunications and communications reform important for IT enabled trade, but the businesses wishing to get involved must also invest in the computers and many other forms of equipment that is critical to them taking advantage of IT enabled trade. Essentially, the technology behind IT and IT enabled trade is intellectual power and intellectual knowledge, which, at some point, becomes intellectual property that is in itself also traded.

The Information Technology Agreement (ITA) had 70 participants as of April 2011. Officially it covers 97 per cent of world IT trade. These figures should be viewed in the context that while a country might not constitute a huge proportion of world IT

trade, it might find IT trade nonetheless extremely important to its own economy. There are governments also considering joining the ITA in the context of the Doha negotiations, and in the context of accession.

What the ITA members do, either immediately or on a phased basis for developing countries, is agree to implement zero tariffs on a number of IT goods and equipment. ITA members generally would have zero tariffs on software, and non-ITA members would have average tariffs of around 16 per cent. The potential impact of having lower tariffs compared to what non-members tend to have is evident.

The Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) is closely aligned with the IT environment: you often hear about the mobile phone technologies and other computer technologies for doing e-business or setting up websites that have been protected and for which companies want to sell the technology. There are also various fields of open sourcing and similar things. There is an extent to which it seems that the more protected the IT environment is, the more companies will try to share the technologies that can be used to promote innovation. Now the TRIPS Agreement protects trade in intellectual property but does not promote it, as in the sense of the services agreement. Where you are really going to get market access for many kinds of services that have high intellectual property content is rather in the services agreement.

Conclusion

The telecoms and IT services have essentially become the basic infrastructure for even other infrastructure portions of the economy – and clearly for all forms of business – but are critical in particular for IT enabled services.

