

**CONSIDERATIONS FOR THE SUBMISSION OF INITIAL OFFERS IN LIGHT OF
THE CURRENT STATE OF PLAY OF NEGOTIATIONS**

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I. INTRODUCTION

1. Recently, developed countries have heightened their calls for the submission of initial offers by Members who have not done so. In light of this elevated pressure, this note provides some considerations negotiators can take into account when engaging in market access negotiations in the near term. The discussion in this note is written in the context of the current state of play of negotiations.
2. At the time of writing, 25 initial offers have been submitted by developing country Members. Many developing country and especially least developed country (LDC) Members continue to face resource constraints and technical challenges when it comes to formulating an initial offer. These same challenges also extends to the submission of initial requests. Additionally, some Members are weary of moving further ahead with market access negotiations while rules negotiations increasingly lag far behind. Still, for other Members the movement in market access negotiations in trade in services is dependent on movement in other WTO negotiating areas, such as agriculture. This complex set of elements should be kept in perspective as negotiators face possible impending movements, e.g. services as part of the July package, in negotiations.
3. This note discusses the differing negotiating scenarios for individual Members and aims to present a clearer picture of the near term prospects for market access negotiations. From this, general considerations and options are provided for Members facing pressure to submit initial offers. Some of these points may also be relevant for Members considering the submission of improved offers. This note does not present a checklist for formulating initial offers since much has been written on this topic. Complementarily, this note provides a few guidelines for negotiators to consider in the near term based on opportunities and challenges within the current market access negotiations.

II. CONSIDERATIONS AND OPTIONS FOR MARKET ACCESS NEGOTIATIONS

4. Developed countries are pushing for the submittals of more initial offers so that a critical mass is available for the completion of a round of negotiations. In the face of this push, developing countries have various negotiating options on legitimate grounds to withstand the pressure. Each of these negotiating options are discussed in the following paragraphs.
5. In the sectors and modes of export interest and commercial value to developing countries, such as mode 4, mode 1, construction and related engineering services, and computer and related services, among others, developed country initial offers do not appear to offer much to developing countries and LDCs. In general, initial offers of developed countries have not met the requests of developing countries and do not meet the objective of increasing developing country participation in trade in services. Based on this current state of play, ***developing countries and LDCs can call for improved offers by developed countries and condition the submission of initial (or improved) offers on this demand.*** The demand for improved offers by developed countries must be specific to the modes and sectors of interest to each developing country Member. Members can analyse the weaknesses in the initial offers of developed countries to request improved offers in the areas of export interest. Although this may be a time consuming and resource constraining exercise for some, Members may decide to make collective requests in already identified sectors and modes of interest, such as mode 4. Strategically, Members may also make requests that may not be met by developed country Members in the near term (or current round of negotiations) as a way of prolonging the time it may take for the condition to be met, as well as utilising the condition as a bargaining position in negotiations. However, a note of caution must be provided here. Members who have not yet submitted initial requests should do so when they are ready to subsequently submit an initial offer since the submission of an initial request implies engaging in the negotiating process.
6. Many developing countries and LDCs have not submitted initial offers (and for some this includes initial requests) due to continuing resource constraints and technical challenges. For Members facing these challenges, ***submission of an initial offer may be conditioned on obtaining proper financing and assistance that translates into domestic capacity to formulate initial offers.*** This negotiating option however comes with an important caveat. Even with the receipt of proper financing and assistance, Members must not be required to submit an initial offer based on a deadline that may be difficult to meet. Many types of technical assistance and capacity building efforts are and have been supplied to developing countries and LDCs. However, such activities, whether in the form of workshops, seminars or in-country trainings, have not resulted in much progress at the domestic level. This is due in part to continuing and deep resource constraints as well as the need for time to

translate advice and guidance into practice and adoption. Some Members still need to organise various stakeholders within their countries; learn more about their services industries, export activities and (potential) import needs; collect data: solidify regulatory mechanisms; etc. and utilise all of this input into the formulation of an initial offer. These crucial and daunting tasks will take many years for some Members. Thus, having more time on ones hands is vital for some Members.

7. Members who require more time for the submission of a proper initial offer should consider the option of *offering less than the status quo or actual levels of liberalisation*. This is not prohibited under GATS and in fact has been the practice of many developed countries whose levels of actual liberalisation are higher than commitments and offers made.¹ These actions by some developed country Members seem to be made for the sake of caution and flexibility. In this same way, developing country Members can provide an initial offer in only those areas and levels of openness they are comfortable in accepting imports, especially from developed countries. This should not be an unwelcomed action within GATS since it is part of the framework of negotiations in that subsequent rounds of negotiations result in higher levels of liberalisation. Hence, what is not offered in this round has the option of being offered in the next round. Having the time for flexibility and space is crucial for formulating and putting in place domestic development goals and policies.
8. A few developing countries have thriving service sector industries that make up a significant portion of GDP and/or export composition. These countries tend to have in place relatively higher developed service-oriented economies and societies and as a result their marketplace presents an opportunity for developed country exporters. These countries may wish to consider *conditioning movement in the market access negotiations of GATS as a negotiating or bargaining position with movement in other WTO areas*. This distinctive negotiating tactic can help alleviate some power imbalances between developed and developing countries to add an extra element to the dynamism of negotiations. A note of caution must also be provided here. Tradeoffs between one area of WTO negotiations with another must be taken only when assured that negotiating outcomes in both areas will be beneficial.
9. The GATS rules negotiations are lagging far behind market access negotiations. The mandate under the guidelines and procedures for negotiations calls for the completion of rules negotiations prior to the conclusion of negotiations on market access or specific commitments. It is in the best interest of all Members that multilateral rules are in place before liberalisation takes place. Developing country and LDC Members should *make initial offers explicitly conditional to the satisfactory outcome of multilateral negotiations on GATS rules, particularly for emergency safeguard measures and subsidies*.

¹ Please refer to South Centre Analytical Note on *Actual Liberalisation versus GATS Commitments by Quad Members*. June 2004.

10. Some Members have raised the discussion on establishing benchmarks for determining the quality of initial offers. If such benchmarks are considered, the implications on developing countries and LDCs must be seriously considered. More importantly, bottom-lines must be established and included. In this regard, Members must not forget those flexibilities within the GATS Agreement that provide special and differential treatments for developing countries and LDCs, more specifically Articles IV and XIX:2. The following is a preliminary suggestion for a set of bottom-lines to be incorporated in proposed benchmarks, in that they:

- do not prevent developing country or LDC Members from liberalising fewer sectors based on level of development.
- do not prevent developing country Members from attaching conditions for the fulfilment of development goals and objectives of increasing their participation in services trade. Note: developed countries have included a large number of conditions to their commitments.
- do not prevent developing country Members from committing below actual levels of liberalisation. Note: developed countries have committed and offered below actual levels of liberalisation.
- do not force Members to make offers before completion of the rules negotiations.
- do exempt LDCs from all benchmarks. This may be justified through the use of the Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services which affords LDCs greater terms of flexibility and calls for Members to “exercise restraint in seeking commitments from LDCs”.²

III. CONCLUSION

11. The push by developed country Members for initial offers from developing countries and LDCs must be kept in perspective of the overall complex and dynamic nature of the current GATS negotiations, capacity levels of individual Members and other negotiating areas of the WTO. In summary, given the overall atmosphere of negotiations in the near term, developing country and LDC Members can utilise the following negotiating options and considerations depending on their individual negotiating scenarios:

- Call on developed countries to improve their initial offers before submitting initial offers (or improved offers).
- Call for proper assistance and financing as a condition to submit initial offers (with an important caveat that assistance and financing if not

² See *Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services*. (WTO Document Code: TN/S/13), 5 September 2003.

adequate does not translate into an automatic submission of an initial offer).

- Submit an initial offer below status quo with the option of submitting improved offer(s) in subsequent rounds.
- Condition the completion of rules negotiations for initial offers.

12. Offensively, developing countries must ask for benchmarks that call for the improvement of offers by developed countries. More analysis and thought must be put into further type of offensive demands, however, such an exercise has already begun under the agenda item for the review process of negotiations with the latest submissions by a group of developing countries on the implementation of paragraph 15 of the guidelines and procedures for negotiations.³

³ Please see *Communication From Barbados, Bolivia, Colombia, Cuba, China, Ecuador, Egypt, Honduras, India, Indonesia, Jamaica, Malaysia, Nicaragua, Pakistan, Peru, Dominican Republic, Trinidad and Tobago and Venezuela : Joint Statement on the Implementation of Paragraph 15 of the Guidelines and Procedures for the Negotiations on Trade in Services*, (WTO Document Code : TN/S/W/16), 25 July 2003 and *Communication From Bolivia, Brazil, Chile, China, Colombia, Cuba, Dominican Republic, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nicaragua, Pakistan, Peru, Philippines and Thailand : Review of Progress as established in Paragraph 15 of the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93)*, (WTO Document Code : TN/S/W/19), 31 March 2004.



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