

Services Negotiations

Common Sense instead of a Common Baseline

1. Ideas about a "common baseline" in services (a new name for "benchmarks") have been circulated lately. These ideas are based on false premises and dangerously detract from the GATS structure. They would create a "round for free" in services for the developed countries, while forcing the way for more concessions by the developing ones. Such approach is not a good way forward in the services negotiations, and this is why.

2. The notion that the request/offer system is not enough to push forward the services negotiations is based on the assessment that revised offers are too poor. Actually, from the 20 revised offers presented so far, 17 come from developed countries, and these are very poor indeed, whereas the developing countries' revised offers show a much more constructive approach. The problem thus rests in the bad quality of developed countries' revised offers, and nowhere else. These offers show an unwillingness to address the existing mandate, that is, to give priority to sectors and modes of supply of interest to developing countries', as stated in Annex C of the "July Package".

3. The problem can only be solved through better offers by developed countries. Developing countries have clearly indicated their expectations, both bilaterally and collectively. These expectations can be reiterated in further requests. Developed countries can also, of course, make new requests on the basis of revised offers, mainly to one another (since they seem to find their respective offers so poor), but also to developing countries (most of whose revised offers, by the way, are still not on the table). To claim that the request/offer approach is exhausted or insufficient is biased and masks the fact that developed countries do not give signs to be disposed to make their contribution to the Doha services negotiations.

4. It is against all good logic to generalize the problem of bad developed countries' offers, and to make all other members responsible for an overall improvement of the level of commitments. But this is exactly the idea behind a "common baseline".

5. The main element of a "common baseline" would be the obligation to take commitments in sectors chosen from a certain priority list. Whatever "flexibility" is allowed in this model, it would be far less than the flexibility already existing under GATS, which does not oblige countries to take commitments in any sector, or list of sectors, or sectors chosen from a list. The phantom of mandatory commitments, which haunted the beginning of GATS negotiations in the Uruguay round under the inspiration of developed countries, would come back to life.

6. The idea that sectors already committed in the Uruguay round could be counted again to fulfill each country's new commitments under the "priority list" is untenable. Since developed countries generally made more commitments in the Uruguay round, it would allow them to count again those same sectors as their "contribution" to the Doha round. Developed countries would thus have a round for free in services, whereas all the burden to take new, meaningful commitments would rest on the shoulders of developing

countries. This approach would subvert Articles IV and XIX of GATS, where flexibility is established in favor of developing countries, not against them.

7. The "common baseline" would pre-determine not only the sectors, but also the contents of market access commitments in each mode of supply. Elimination of local presence and domestic capital requirements is preached. This would amount to a rewriting of Articles XVI and XVII of GATS, which form the basis for specific commitments, and which provide the possibility for members to maintain any requirements inscribed in their schedules. The "common baseline" approach would move GATS close to other models of services negotiations, such as NAFTA, where local presence and domestic capital requirements are banned, where development needs are not recognized, and where flexibility is very limited due to a negative list system of commitments.

8. The "common baseline" also foresees some specific treatment for Mode 4: in some sectors, Mode 4 barriers would be removed. This approach ignores the fact that practically all Mode 4 regulations are horizontal, not sectoral, and if horizontal limitations remain, sectoral movements are meaningless.

9. To give transparency to Economic Needs Tests, as the proponents of a "common baseline" offer to do, is no more than the obligation that Members already have under GATS Articles III and XVI. It can certainly not be considered a "concession".

10. The ideas for a "common baseline" already vented would create a division between developing countries and least developed countries which does not exist in the GATS. Developing countries as a whole face specific situations in the services negotiations, and GATS addresses this fact. The sort of special flexibility which the "common baseline" foresees for LDCs is something that they already have - together with all other developing countries - under the GATS. Thus, the "common baseline" would erode the flexibility which GATS reserves for developing countries, without creating any new flexibility in favor of LDCs.

11. For such reasons, it is clear that the "common baseline" is fundamentally flawed. No adjustments or coefficients in that model could make it compatible with GATS and with the main principles on which the Doha round is based. It is intended as an instrument to force developing countries to make commitments much beyond those of developed countries.

12. Not a common baseline, but a common sense approach is needed. Problems must be correctly identified before they are addressed. Today's problems in the services negotiations are not to be found through an aggregate study, either quantitative or qualitative, of tabled offers as a whole, but in the analysis of individual offers, and the fact they do not fulfill specific mandates. The solution is the improvement of those deficient offers, and not some sort of diluted, collective approach, which in practice would mean the improvement of all other offers but those which are deficient.