

JEL Classification: K33; J51

<https://doi.org/10.35945/gb.2019.08.015>

CHALLENGES FACED BY THE WTO'S ECONOMIC SYSTEM IN TRADE IN SERVICES NEGOTIATIONS*

NINO PARSADANISHVILI

Doctor of Law

Ivane Javakhisvili Tbilisi State University, Georgia

nino.parsadanishvili@tsu.ge

KEYWORDS: WTO, TRADE, SERVICES, DEVELOPING AND LEAST DEVELOPED COUNTRIES.

For citation: Parsadanishvili, N. (2019). Challenges Faced by the WTO'S Economic System in Trade in Services Negotiations, *Globalization And Business*, №8, pp. 121-125. <https://doi.org/10.35945/gb.2019.08.015>

INTRODUCTION

The nexus between globalization and international development is one of the most debatable issues (Ozekin, 2019:49). Promoting economic growth through trade in services facilitation is included in all key guiding documents of the World Trade Organization (WTO) as its major operational goal (Parsadanishvili, 2018:357; WTO doc. WT/MIN(15)/DEC).

Based on the Preamble to the Marrakesh agreement establishing the WTO, the organization is committed to ensuring expansion of trade in services in line with the needs of developing and least developed countries. While the General Agreement on Trade in Services (GATS) annexed to the Marrakesh agreement stipulates the desire of the WTO to facilitate increased participation of developing and least developed countries in trade in services negotiations for strengthening their competitiveness in the services sector (GATS Preamble).

Daily growing role of trade in services accounting for almost half of today's world trade (WTO doc. WT/MIN(15)/DEC) makes the importance of participation of developing and least developed countries in the trade negotiation process vitally important.

Strong commitment of the WTO towards making trade in services negotiations more oriented on the inclusion of interests of developing and least developed countries brings questions to our attention, namely how capable is the WTO to exercise its complete competence and strong motivation to bring the interests of developing and least developed countries at the table of negotiations, next to the fact that the practice of the organization goes to absolutely different direction. Does the current state in trade in services negotiations mean that the WTO fails to implement its own goals in

practice? What are the solutions that can be found to be put forward for the negotiations at 2020 MC in Kazakhstan?

In order to answer these questions and next to giving overview of the existing international legal framework in terms of linking trade in services with the promotion of global economic growth the following issues are addressed by the paper:

- The WTO as a key international organization dealing with trade rules on global level;
- Growing importance of trade in services to meet the needs of developing and least developed countries;
- Crises within multilateral negotiations in the services sector;
- Analysis of the approaches that can be used to move the blocked process of trade in services negotiations forward.

From **methodological** perspective it has to be emphasized that, the paper focuses on the current developments within the WTO as economic policy provider and takes deep look on the overall dynamics of the trade in services negotiations. Next to relevant international agreements and scholarly articles, special attention is paid to the instruments of economic policy such as the official concluding documents of respective Ministerial Conferences (MCs) published by the WTO itself. This gives the opportunity to get insight to the situation that exists within the WTO, from the perspective of trade in services negotiations, as well as facilitates the generation of new ideas and impartial conclusions around WTO's new policy approaches in the services sector.

For the analysis of the issues raised above this paper consists of 4 parts. Part 1 provides introduction. Part 2 provides an analysis of the international legal framework for trade in services related aspects of promoting economic growth with special focus on Developing and Least Developed Countries. Part 3 touches upon solutions for the crises in trade in services negotiations in line with the Trade Facilitation for Services Agreement. Part 4 provides conclusions.

* Present paper is prepared within the framework of the project – YS-2016-98 funded by the Shota Rustaveli National Science Foundation of Georgia.

ARE TRADE IN SERVICES NEGOTIATIONS IN CRISES?

The WTO is the key international organization framing trade rules on global level (Azevedo, 2017), with inescapable commitment to strengthen global economy for ensuring more employment and income growth in the world (Marrakesh Declaration 1994). But this great power of the organization is also linked to great responsibility of ensuring global economic development which puts WTO in a very complicated situation leading us to the question as of how the WTO is achieving its founding goals and what are the challenges in way, that prevent it from reaching success in this regards. To answer this question, it is important to look at the correlation between readiness and possibilities within the WTO to meet the goals of promoting global economic growth by the way of considering interests of developing and least developed countries next to the negotiation based decision making procedures that frame the basis of contemporary global trading system.

The two major international treaties that deal with participation of developing and least developed countries in services negotiations existent within the WTO system are Marrakesh Agreement and GATS.

Both the Marrakesh agreement establishing the WTO and its Annex on trade in services GATS underline the importance of the economic growth of least developed countries to meet the needs of their economic development (Marrakesh Agreement, Preamble), by strengthening their service exports and their domestic services capacity and its efficiency and competitiveness (WTO doc. WT/MIN(15)/DEC).

The importance of GATS in trade in services negotiations especially from the perspective of considering the interests of developing and least developed countries derives from the fact that it applies to all service sectors with only two exceptions for the services that are supplied in the exercise of governmental authority (GATS, Art. 1.3 (b,c)), as well as services related to the exercise of air traffic rights (Lester, 2008:602; GATS Art. 1:3 b.).

In order to see, as of how the goals of the WTO in terms of ensuring participation of developing and least developed countries in the trade in services negotiations is ensured, for the promotion of their economic growth, present paper gives an overview of relevant ministerial conferences delivered within the WTO.

Doha Ministerial Conference (Doha MC) is amongst the first MCs which underlined the major role of international trade in services in promoting economic development with a special focus on developing and least developed countries (WTO doc. WT/MIN(01)/DEC/1), giving the right to members within the framework of GATS to regulate the supply of services based on their national legislations (WTO doc. WT/MIN(01)/DEC/1, para.7). The right of members of the WTO to impose domestic regulation on services is the major reason that causes the lack of progress in the negotiations within the WTO, as vividly shown in the results of 2003 Cancún Ministerial Conference (Ministerial Conference, 2003) and 2005 Hong Kong MC about the right of member states to regulate trade in services with emphasis on the importance of considering the interests of developing and least developed countries, having reached no major success (WTO doc. WT/MIN(05)/DEC para. 25.). The Hong Kong MC was followed by

the Geneva MC of 2011 focusing on the importance of the preferential treatment to services and service suppliers of least developed countries underlining the need for the liberalization of market access in sectors and modes of supply of the export interest of developing and least developed countries (WTO doc. WT/L/847.).

Non-utilization of waiver decision on preferential treatment in favor of developing and least developed countries offered by the Geneva Ministerial Conference, by any WTO member state the decision was made on Bali MC in 2013 about the operationalization of the waiver in services (WTO doc. WT/MIN(13)/DEC), for the encouragement of members to extend preferences for services coming from least developed countries (WTO doc. WT/MIN(13)/43 WT/L/918).

As the decision made during Bali MC has not resulted in major success to prioritize the interests of least developed countries and because of the lack of progress in providing preferences to least developed countries since Geneva MC of 2011 in the process of services negotiations (WTO doc. WT/MIN(15)/DEC para. 24), Nairobi MC of 2015 made the decision to extend the date for the waiver until 2030 (WTO doc. WT/MIN(15)/48 WT/L/982).

In line with all these developments already in 2017 During the Buenos Aires MC African Member States of the WTO have expressed their position regarding the trade in services negotiations underlining that - the needs of developing countries should be paid more attention (WTO doc. WT/MIN(17)/8, JOB/GC/166 JOB/TNC/68, JOB/SERV/274). Based on the position of African Countries this would help to “establish and utilize operational and effective provisions for special and differential treatment” (WTO doc. WT/MIN(17)/8, JOB/GC/166 JOB/TNC/68, JOB/SERV/274), seeing trade in services as a major tool for economic development. But as showed by Buenos Aires MC the daily growing number of stakeholders being interested in trade in services negotiations makes the overall process even more complicated resulting in almost no progress in trade in services negotiations. As it was rightly noted by Roberto Azevedo “Multilateralism does not mean that we get what we want. Multilateralism means we get what is possible” (WTO doc. WT/MIN(17)/74). Finding balance between what is wanted and what is possible is something that the WTO member states have still to think about and most probably they will come up with the new approaches during ringing up 2020 Ministerial Conference that is to be delivered in Kazakhstan. Otherwise it will become apparent that the WTO cannot implement its own guiding principles which are based on the idea of promoting global economic growth and fostering economic development for those who are in most need of it meaning developing and least developed countries.

The next part of the paper touches upon the approaches that can be used within the WTO to move trade in services negotiations forward.

SOLUTIONS TO THE CRISES

2017 Buenos Aires MC underlines the importance of opportunities generated within multilateral trading system for the benefit of all members of the WTO with special emphasis on developing and least developed countries (WTO doc. WT/MIN(17)/55/Rev.1, para 10).

The fact that the WTO members pay more attention to a services waiver for making international trade in services more flexible for least developed countries as evidenced by extending the operationalization of the waiver on preferential treatment until 2030 (Matsushita, 2008:228-229; Mattoo, 2003:21; Lester, 2008:604; Guzman, 2009:567), clearly shows the increased need for trade liberalization in the services sector, which is challenging to succeed in practical terms within the WTO so far.

Buenos Aires MC of 2017 is also interesting from the perspective of the new solutions offered by the WTO member states themselves. India for example came up with the initiative to start negotiations for a – Trade Facilitation for Services Agreement – for the betterment of consideration of the interests of developing and least developed countries in the WTO (WTO doc. WT/MIN(17)/19, JOB/GC/168 JOB/TNC/70, JOB/SERV/276, WT/MIN(17)/7; WT/GC/190.).

The question that arises from the new initiative offered by India is mainly taking skeptical direction, asking how can new agreement help in solving problem, when there is evident lack of progress in negotiations within the framework of the old and well-known agreement, that is GATS.

We think that, using different approaches for the interpretation of GATS by the WTO members could better facilitate the solution of the crises in the trade in services negotiations, then it will happen in the case of offering absolutely new agreement at the table of negotiations. Otherwise bringing new agreement with new line of bargaining can doubtfully make the overall situation better. 2020 Kazakhstan MC will show what is the overall attitude of WTO member states towards trade in services negotiations, but if they still decide to go for a new international agreement as offered by India, then it has not to be Multilateral, it has to be Plurilateral. “The Plurilateral approach offers Members the possibility to revamp the WTO to their own benefit” (Natens, 2013:253). A new Plurilateral agreement will make the possibility for members (considering their economic preferences) to freely join at any stage avoiding frightening mandatory format being that much associated with Multilateralism (Parsadanishvili, 2018:350). Even though it will not be easy to engage in new trade negotiations around new Plurilateral Agreement, it will still have more flexibility to better consider the economic interests of developing and least developed members of the

WTO, hopefully offering the mechanisms that will make the goals and principles of the organization in terms of promoting economic growth and prosperity of all trading partners operational in practice.

CONCLUSION

The WTO's commitment in ensuring global economic growth for meeting the needs of developing and least developed countries represents only one side of the coin. “Whatever the growth promoting effects might be envisioned within the WTO the fact remains unchanged – a growing importance of trade in services makes it more complicated to make progress in negotiations putting the WTO in a very challenging situation” (Parsadanishvili, 2018:351).

Economic growth that is produced by freer international trade is becoming imperative for developing and least developed countries in pursuing their interests within global trading system.

Analysis of the results of the relevant MCs of the WTO shows that in spite of the willingness of member states to consider the export interests of developing and least developed countries in the services sector, the overall complicated landscape unifying daily growing number of stakeholders participating in trade in services negotiations, prevent the fulfillment of this goal. The results of relevant MCs as major decision-making body of the organization delivered throughout the years starting from 2001 to 2017 show no major progress in the trade in services negotiations to benefit developing and least developed countries. There is an expectation that the upcoming 2020 Kazakhstan Ministerial Conference will hopefully offer solutions from the current crises in the trade in services negotiations, which in our opinion has to be either modified interpretation of GATS or acceptance of the launch of negotiations around the new international agreement offered by India. If this last option will be selected, then it is more than clear that the format of the new Trade for Services Facilitation Agreement has to be plurilateral rather than multilateral as the latter means even more complication of the already very complicated trade in services negotiation process preventing the WTO from meeting its operational goals in practice.

REFERENCES:

1. Ozekin M. (2019), Globalization And Its Impacts On International Development: A Long-Term Historical Perspective, *Globalization And Business*, N7, p. 49.
2. Parsadanishvili, N. (2018). Poverty Eradication – Controversies Between UN and WTO, vol. 9, “Check Yearbook of Public and Private International Law”, at p. 337.
3. Natens, B., Wouters, J. (2013). The State of Play and Future of Services Negotiations in the WTO, vol. 4 “Check Yearbook of Public and Private International Law”, at p. 253.
4. Lester, S., Mercurio, B., Davies A., Leitner K., (2008) *World Trade Law Text Materials and Commentary*, p. 602.
5. Matsushita, M., Schoenbaum, T. J., Marvoidis, P.C., (2008) *The World Trade Organization Law, Practice, and Policy*, p. 228-229.
6. Mattoo, A., Carzaniga, A., (2003) *Moving People to Deliver Services*, p.21.
7. Lester, S., Mercurio, B., (2008) *World Trade Law*, p. 604.
8. Guzman, T., Pauwelyn, J. H. B., (2009) *International Trade Law*, p. 567.
9. Marrakesh Agreement Establishing the World Trade Organization (15 April 1994), (entered into force 1 January 1995).
10. General Agreement of Trade in Services (15 April 1994), (entered into force 1 January 1995).

11. Marrakesh Declaration 1994, https://www.wto.org/english/docs_e/legal_e/marrakesh_decl_e.htm
12. The General Agreement on Trade in Services (GATS): objectives, coverage and disciplines' <http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm>, accessed 17.02.2015;
13. WTO doc. WT/MIN(01)/DEC/1.
14. WTO doc. WT/MIN(05)/DEC.
15. WTO doc. WT/L/847.
16. WTO doc. TN/S/13.
17. WTO doc. WT/MIN(13)/DEC.
18. WTO doc. WT/MIN(13)/43 WT/L/918.
19. WTO doc. WT/MIN(15)/DEC.
20. WTO doc. WT/MIN(15)/48 WT/L/982.
21. WTO doc. WT/MIN(17)/8, JOB/GC/166 JOB/TNC/68, JOB/SERV/274.
22. WTO doc. WT/MIN(17)/74.
23. WTO doc. WT/MIN(17)/55/Rev.1.
24. WTO doc. WT/MIN(17)/19, JOB/GC/168 JOB/TNC/70, JOB/SERV/276, WT/MIN(17)/7; WT/GC/190.
25. Members Move to Enact Bali Decision on LDC Services Waiver, is available on < https://www.wto.org/english/news_e/news15_e/serv_05feb15_e.htm> accessed 23 August 2018;
26. Azevêdo Underlines Growing Importance of Services in Global Trade, 17 October 2017, is available on <https://www.wto.org/english/news_e/spra_e/spra193_e.htm> accessed 23 August 2018.
27. Fifth Ministerial Conference, Day 5 Ends without Consensus, 14 September 2003, is available on <https://www.wto.org/english/thewto_e/minist_e/min03_e/min03_e.htm> accessed 23 August 2018.

JEL Classification: K33; J51

<https://doi.org/10.35945/gb.2019.08.015>

CHALLENGES FACED BY THE WTO'S ECONOMIC SYSTEM IN TRADE IN SERVICES NEGOTIATIONS*

NINO PARSADANISHVILI**Doctor of Law**

Ivane Javakhisvili Tbilisi State University, Georgia

nino.parsadanishvili@tsu.ge

KEYWORDS: WTO, TRADE, SERVICES, DEVELOPING AND LEAST DEVELOPED COUNTRIES.

For citation: Parsadanishvili, N. (2019). Challenges Faced by the WTO'S Economic System in Trade in Services Negotiations, *Globalization And Business*, №8, pp. 121-125. <https://doi.org/10.35945/gb.2019.08.015>

SUMMARY

Present paper focuses on current crises in international trade in services negotiations from the perspective of consideration of trading interests of developing and least developed countries in line with the operational agenda of the World Trade Organization (WTO). Through the analysis of the existing international legal texts and scholarly works particular attention is paid to the different rounds of trade in services negotiations in parallel to the consideration of the results of relevant ministerial conferences of the World Trade Organization, drawing attention to the situation with regards of consideration of the interests of developing and least developed country members of the WTO. Special focus is paid to the complexity of the decision making process and it's complication over time due to increased participation of

parties concerned in the process of trade in services negotiations resulting in no progress in the overall process. Next to analyzing the challenges faced by the WTO in trade in services negotiations, especially in terms of considering the interests of developing and least developed countries, paper shows the ways that could be used during 2020 Kazakhstan Ministerial Conference of the World Trade Organization for finding solutions to simplify the decision making process and establish freer international trade in services by the way of either implying new approaches in interpreting the existing multilateral treaties that deal with trade in services between all member states of the WTO or deepening the discussions on a new plurilateral agreement helping the organization to overcome the stagnated process of trade in services negotiations and therefore ensuring the compliance with it's own operational goals.

* Present paper is prepared within the framework of the project – YS-2016-98 funded by the Shota Rustaveli National Science Foundation of Georgia.