



Improving institutional mechanisms for trade in services negotiations and policy-making

Toolkit

This toolkit is published as part of the “Support to Enhance Development of Trade in Services Negotiations” initiative jointly undertaken by ILEAP, CUTS International Geneva and the University of Sussex’s CARIS. It aims to contribute to the increased and more effective participation of Least Developed, Low and Lower-Middle Income Countries and their Regional Economic Communities in multilateral, regional and bilateral services trade negotiations.

The initiative promotes understanding among policy makers, regulators and negotiators about their services sectors and the role that trade negotiations can play in pursuing their strategic interests therein.

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Acronyms

ANTAQ	National Waterway Transportation Agency
CAMEX	Foreign Trade Chamber of Brazil (Câmara de Comércio Exterior)
CBHE	Cross Border Higher Education
CNI	National Confederation of Industries
CONEX	Private Sector Advisory Council of CAMEX (Conselho Consultivo do Setor Privado)
CSO	Civil Society Organizations
DEINT	Department of International Negotiations
DFAS	Department for Financial Affairs and Services
DFID	Department for International Development
DNS	Division of Services Negotiations (Divisão de Negociação de Serviços)
FDI	Foreign Direct Investment
FTAA	Free Trade Agreement of the Americas
GATS	General Agreement on Trade in Services
GECEX	Executive Management Committee of CAMEX
GoB	Government of Brazil
IBC	International Branch Campus
IBGE	Brazilian Institute of Geography and Statistics
ICT	Information Communication Technologies
LDCs	Least Developed Countries
LICs	Low Income Countries
LMICs	Lower Middle Income Countries
MA	Market Access
MDAs	Ministries, Departments, and Agencies
MDIC	Ministry of Development, Industry and Foreign Trade
MER	Ministry of External Relations of Brazil (Itamaraty)
MERCOSUR	Common Market of the South (Mercado Comum do Sul)
MFA	Ministry of Foreign Affairs
MSITS	Manual on Statistics of International Trade in Services
MT	Ministry of Trade

NT	National Treatment
OECD	Organisation for Economic Co-operation and Development
SCS	Secretariat of Trade and Services
SECEX	Brazil's Secretariat of Foreign Trade
TiS	Trade in Services
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

Using the Toolkit

Objective

The overarching objective of the toolkit is to help governments in LDCs, LICs, LMICs and their RECs improve the effectiveness of different institutional mechanisms for coordinating and consulting on trade in services (TiS) policymaking and negotiations.

To help elicit this outcome, a key objective is to help various stakeholders better understand their roles and how they can best engage in policymaking and negotiation processes.

Rationale

Effective institutional mechanisms for intra-governmental coordination and non-state actor (NSA) engagement on TiS policymaking and negotiations are essential for two main reasons: 1) they can provide decision-makers with key sources of information on which to underpin decisions regarding needed reforms, including in the preparation of national negotiating strategies; and 2) they can provide needed buy-in from stakeholders for the ultimate decisions taken by government, notably those responsible for *trade* in services policymaking and related negotiations.

At present, experience in most LDCs, LICs, LMICs and their RECs, indicates that often the institutional mechanisms related to TiS policymaking and negotiations are inadequate (and often woefully so). This includes importantly mechanisms between trade officials and different sectoral officials (the latter of which often fail to see the trade dimension of their sector policies), as well as between government and non-state actors. As a result, the government, and particularly those responsible for services trade negotiations, are often hard-pressed to access much of the locally-held knowledge to identify the offensive and defensive strategic interests. This is especially problematic vis-à-vis services trade negotiations.

Audience

The toolkit is intended for anyone interested in TiS policymaking and negotiations, however it targets in particular officials responsible for trade policy – such as Ministries of Trade, Commerce, Integration, and/or Foreign Affairs, as well as the broader range of officials dealing with individual service sector (and investment) policy (e.g. Finance, ICT/Telecommunications, Education, Energy, Environment, Tourism, Transportation, Professional and Business services, Audiovisual services, Construction, Engineering, Distribution, Health, Cultural, Sporting and Recreational services, etc.). At the same time, the intended audience includes non-state actors (NSA), such as civil society organisations, private sector associations and bodies, as well as services firms themselves.

Approach

The toolkit is broken down into three parts. After addressing some definitional issues, it starts in Part I by looking at the structures (i.e. actors and roles) as well as the processes (i.e. interactions and processes) of effective institutional mechanisms for TiS policymaking and negotiations. Part II delves more specifically into enriching intra-governmental engagement. Part III provides some exercises that could be used in concert with the toolkit for training purposes.

To help support the process of better understanding how different institutional mechanisms can be deployed for enhanced coordination and consultation amongst stakeholders, the toolkit draws on examples of good practices from different parts of the world. These examples, presented in Boxes throughout the toolkit, offer the stakeholders options on how to overcome the specific institutional challenges they may face in devising and leveraging effective mechanisms for TiS. Concrete recommendations are provided in bullet points.

The source material for the toolkit is varied, but primarily draws from a range of commissioned studies (see also References):

- ACP International Trade Advisors. (2015). *Successful Private Sector Mechanisms for Promoting Trade in Services*. In *Tradeinservices* [Project]. Retrieved 2015, from <http://www.tradeinservices.net/>
- Joosep Alvarenga, K. (2015). *Effective Services Institutional Mechanisms: The Case of Brazil*. In *Tradeinservices* [Project]. Retrieved 2015, from <http://www.tradeinservices.net/>
- Lane, J. E., Owens, T. L., & Kinser, K. (2015). *Cross Border Higher Education, International Trade, and Economic Competitiveness*. In *Tradeinservices* [Project]. Retrieved 2015, from <http://www.tradeinservices.net/>

Readers are encouraged to read the individual studies in parallel with the toolkit, as these provide additional details and insights.

Effective Institutional Mechanisms for Coordinated Negotiation Positions

Definitions

Institutions are “systems of established and prevalent social rules that structure social interaction” (Hodgson, 2006). These rules are implicit or explicit.

Mechanisms are “logical assembly of components, elements, or parts, and the associated energy and information flows, that enable a machine, process, or system to achieve its intended result” (BusinessDictionary, 2015).

In the context of government as an institution, it could be said that institutions are the formal organization of governments, and the actors, processes of interactions, and practices applied are the mechanisms that characterize the institutions. For the purposes of this toolkit, we consider institutional mechanisms along the lines of structures (i.e. actors and roles) and processes (i.e. interactions and practices).

Intra-governmental coordination is the process of organizing people or groups so that they work together properly and well according to an already-agreed-upon plan of action. **Intra-governmental collaboration** is a process of coming together of those with different roles and responsibilities to create a shared understanding or plan. In the government you are often doing both i.e. collaborating with your stakeholders to define a plan of action, then coordinating the follow-up tasks to ensure that everyone is executing according to that plan.

NSA engagement entails mechanisms governments can employ with non-state actors. **Consultation** therein is a mechanism, which allows a government to obtain feedback from the public on analysis or decisions and provide to the public feedback how the concerns were taken into account. **Involvement** is a level deeper engagement of the NSAs, as the government would work directly with the NSAs throughout a process to ensure that public concerns and aspirations are constantly understood and considered (this is engaging the NSAs where the NSAs can actually provide real inputs into decision-making). Most intense engagement is **collaboration** where the government

partners with the public in each aspect of the decision, including the development of the alternatives. The promise between the counterparts is to look for the other's direct advice.

Sectoral MDAs designate in this toolkit services sector officials, regulators, agencies, departments and ministries that deal with services sectors, such as for example health, education, agriculture, transportation, etc. It excludes the Ministry of Trade and the Ministry of Foreign Affairs.

Ministry of Trade in Brazil is the Ministry of Development, Industry and Trade (MDIC) but within this toolkit, to ensure simplicity, we will use Ministry of Trade (MT)

Ministry of Foreign Affairs in Brazil is the Ministry of External Relations but within this toolkit, to ensure simplicity, we will use Ministry of Foreign Affairs (MFA).

Effective institutional mechanisms

In the context of broader government priorities, effective structures and processes for developing TiS policy, including as related to services negotiations, help ensure decisions are grounded in evidence and insights from key stakeholders affected by the topic under discussion. They also help to promote stakeholder buy-in – specifically within the sector and in the general public, which is essential for providing fertile ground on which to base implementation.

BOX 1

THE OBJECTIVE OF EFFECTIVE MECHANISMS

Effective institutional processes and structures should enable the country to take a decision, which is the optimal choice out of a set of *known* alternative options.

The literature on effectiveness of institutions generally comprises series of checklists of things to look for. Generally the contents of these checklists differ. Characteristics for effective institutional coordination mechanisms for TiS (non-exhaustive list) provided in this toolkit are based on research by Ben-Gera on coordination (2009) and Moore on institution building (1994) with slight modifications toward TiS context, such as adding engagement with the NSAs, which is a process apart from intra-governmental coordination and collaboration.

BOX 2

CHARACTERISTICS FOR EFFECTIVE INSTITUTIONAL MECHANISMS FOR TiS

1. **Clear and agreed mandate:** Formal decision-making structure(s) and processes to coordinate negotiation positions exist, established by legal measures, outlining obligations to coordinate with sectoral MDAs.
2. **Political support:** Coordination has a component linking it to the highest levels of the government for endorsement, in order to ensure political will, and implementation at the technical levels.
3. **Human Resources:** Agencies have the capabilities to carry out coordination and collaboration work.
4. **Financial Resources:** Coordination, collaboration, and NSA engagement requires minimal extra resources, as it is undertaken within existing government structures, and coordination and collaboration work is already accounted for as a normal functioning of the government.
5. **Clear responsibilities:** Government positions are based on adequate information, related to government's stated priorities (sectoral MDAs are aware of responsibility to contribute) and coherently presented (Ministry of Trade or Ministry of Foreign Affairs has the responsibility to lead formulation and coordination of positions).
6. **NSA engagement:** There exists a close collaboration with the private sector and consumer and other civil society organizations involved in TiS, with appropriate two-way information flows.

The coordination, collaboration and various NSA engagement mechanisms are all issues of governance. Please find below in Box 3 some questions, which help you to map the components of these mechanisms within your government (adapted from the extensive World Bank questionnaire <http://go.worldbank.org/S5CMR9AA40>).

BOX 3

QUESTIONS THAT COULD BE ASKED TO ASSESS THE STRUCTURES AND PROCESSES ON GOVERNANCE

- Is there a trade agency with a mandate and authority to coordinate?
- Does the institutional framework provide a clear guidance for sectoral MDA for TiS?
- Are sectoral MDAs required to participate in coordination processes? Is this due to a law, decree, practice, or public pressure?
- Does the agency have adequate staff for the mandate it is required to carry out?
- Is the agencies budget sufficient to carry out the regular operations?
- What information is included in notifications to other government entities?



- Is there a law that governs the trade policy-making and negotiation coordination process as a whole?
- Are there formal NSA engagement mechanisms?
- Regarding the engagement with stakeholders, does information flow back and forth between the agency and other government entities and NSAs?

Conditions to keep in mind when improving institutions

You will recognize these conditions within the good practices that have been presented below.

BOX 4

- Improving institutions is a long-term activity.
- Improving institutions should be seen more as a 'process' rather than following a 'blueprint': it requires flexibility.
- Improving institutions requires adapting it with the specific political, cultural, economic, etc. context.
- Improving institutions implies changes in social relationships, which might produce oppositions. Both, people who start the processes and those who have power over the organization/institution concerned, need to be substantially committed to the process. Some room should be left for trade-offs.
- Having success in improving institutions necessitates effective leadership.
- It is the skills of organization or management development specialists that are needed to improve institutions (Moore, 1994).

Often structures within governments are comprised of political and technical structures and processes. Below the sections are divided into decision-making structures, technical structures and decision-making processes and technical processes.

Decision-making structures

Create an organization for stakeholders to coordinate trade issues, including TiS.

In LDCs, LICs, and LMICs, there is a general absence of mechanisms specific to trade in services policy formulation and/or negotiations, as it usually occurs as a sub-set of broader trade policy mechanisms. This could be attributed to the fact that traditionally trade policy was viewed in terms of goods and evolution of international trade rules, which commenced with goods (under GATT) and only later evolved to also cover TiS (under GATS).

If your country does not have a decision-making coordination body for trade issues, see information on how to set up one according to the toolkits, which have been developed in the 2000s by the Joint Integrated Trade Assistance Programme (JITAP), a collaboration effort of the ITC, UNCTAD and the WTO. However, following the JITAP model, the governments sometimes perceived it a project based initiative and once donor money ran out and the WTO negotiations came to a standstill, some of them stopped coordinating, collaborating as well as engaging with the private sector and the CSOs.

If a trade coordination body already exists in the country, it should be mandated to deal with TIS issues and sectoral MDAs if not already obligated to participate in the coordination body, should be invited as need arises to collaborate on services issues. This will help to ensure the political leadership for technical level collaboration.

BOX 5

CAMEX: BRAZIL'S TRADE DECISION-MAKING AND COORDINATION MECHANISM

Brazil's Foreign Trade Chamber (CAMEX) structures and processes are there to ensure that Brazilian Ministers and Ministries coordinate and take decisions together on trade in goods and services issues. CAMEX's core function is to formulate, adopt, implement and coordinate policies and activities related to foreign trade in services and goods. It has nineteen major and seven sub-tasks, which apply to both trade in services and goods.¹

CAMEX is a member-based organization established by a Presidential Decree No. 4.732, in 2003 but has existed since 1995 as a trade coordinating body. It brings together a number of Ministries involved in economic and trade policy through several layers of representation (see also box 6), including: (i) Council of Ministers; (ii) Executive Management Committee (GECEX); (iii) Executive Secretariat; (iv) Private Sector Advisory Council (CONEX); (v) Subcommittees.

The **Council of Ministers** is the highest decision-making body in CAMEX (political authority). It is comprised of six of the historically and politically strong Ministries of the country, plus the President's Cabinet representative (Chief of Staff of the Presidency of the Republic). The Ministries are: Ministry of Development, Industry and Trade (MDIC) (from hereon designates as Ministry of Trade – MT); Ministry of External Relations (MER) (from hereon Ministry of Foreign Affairs - MFA); Ministry of Finance; Ministry of Planning, Budget and Management; Ministry of Agriculture, Livestock and Supply; Ministry of Agricultural Development; and the Civil Cabinet of the Presidency of the Republic (Casa Civil). The Council takes the highest-level decisions, approving trade positions that are proposed by GECEX or sub-committees (see below). The relatively more important Ministries involved in services decision-making at this level are the MER, MDIC, and the Ministry of Finance.

The **Executive Management Committee** (GECEX) is the core executive board under CAMEX (executive authority). GECEX as a body was created to account for a broader range of Government Ministries and Agencies, such as the Ministry of Transportation or Health. In 2003, the number of Ministries that compose GECEX was increased from 14 to 26, as there was a realization that many trade issues required the cooperation of a broader range of different Government institutions (this is notably the case for

¹ Some of the tasks are: setting procedures for the implementation of foreign trade policy; coordinate the actions of the bodies that have expertise in foreign trade; setting guidelines and guidance on standards and procedures for exports and imports; establishing guidelines for the negotiation of agreements and covenants relating to foreign trade; implementing foreign trade policy.



services). GECEX is not as high level as Council of Ministers, but made up of executive and under-secretaries. Under GECEX the representation of different services sectors is more apparent, as the agencies and ministries involved here go well beyond those related to core economic or financial activities of Brazil. GECEX is a technical level body in a sense that it does not take trade decisions but it rather further formulates and recommends decision to the Council of Ministers. Over the past 12 years of functioning of the GECEX with its hundred plus meetings has however shown that it is not necessary that all these Ministries and Agencies are present at each of the coordination meetings as often their area of competence is not under discussion and the processes become too lengthy. Ideas are under way to reduce the GECEX with provisions to extend invitations to different MDAs to coordination meetings as need arises.

The **Executive Secretariat** (technical authority) responsibilities are to prepare the meetings of the Council of Ministers, the GECEX, and the CONEX (see below); chair and coordinate collective bodies, committees and technical working groups under the CAMEX; carry out and promote studies and prepare proposals on issues of competence of the CAMEX to be submitted to the Council of Ministers and GECEX; request information from other government agencies and the private sector; and, monitor the implementation of resolutions and guidelines established by the Council or GECEX.

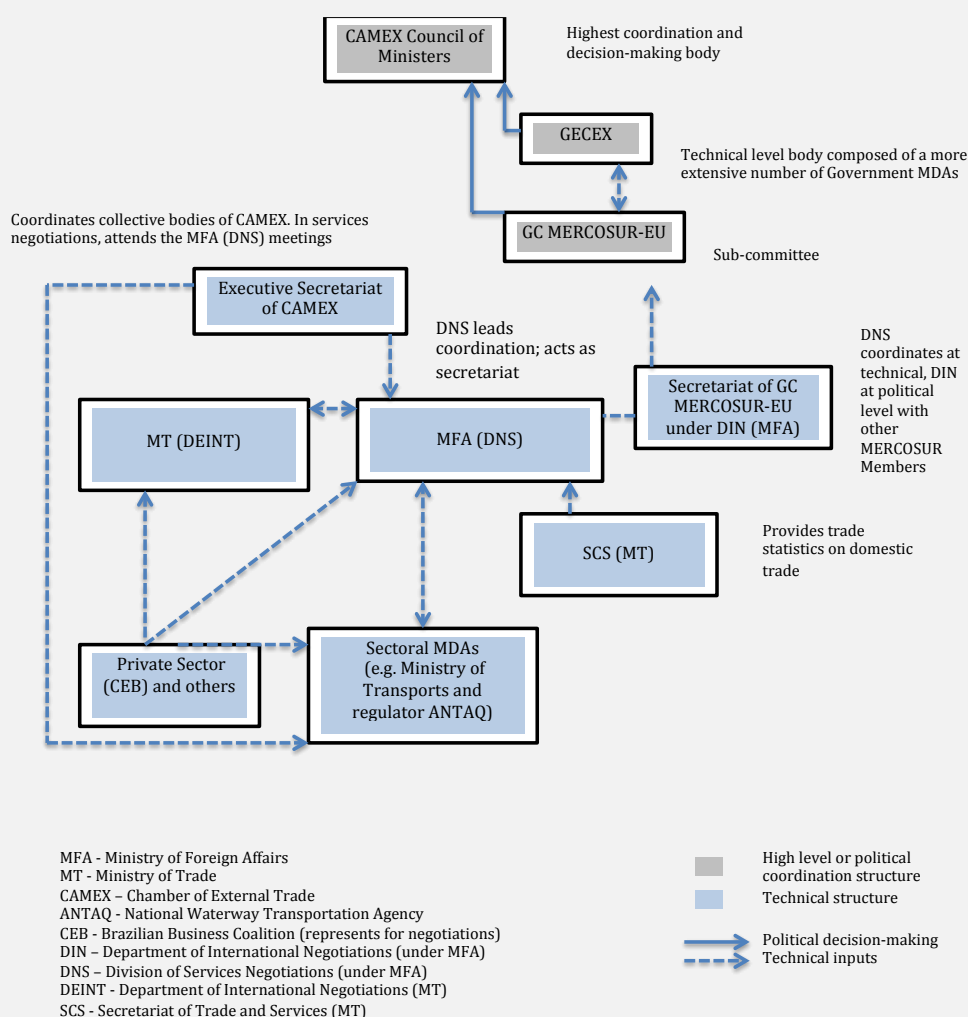
In 2003 CAMEX was strengthened and one of the main outcomes was the establishment of the **Private Sector Advisory Council** (CONEX), which was to create better channels for interacting with the private sector. The function of this body is to provide GECEX with private sector advice. It is composed of 20 private sector representatives, with personal, non-transferable mandates. They were selected on the basis of their important presence in Brazil's foreign trade. They are usually the CEOs and directors of companies and raise important issues and problems as well as real-world expertise and experiences into GECEX at a very high level.

Under GECEX, **subcommittees** are created as need arises. They are composed of Ministerial stakeholders that make up CAMEX or GECEX. These "technical" subcommittees are in reality decision-making bodies where appropriate ministerial representatives gather and take technical level decisions, after which they recommend them to either GECEX or CAMEX. In Brazil, there is no specific sub-committee on only services under the GECEX (services are still considered less tradable and are subject to less disputes than industry and agriculture), and the specific services-related technical work is undertaken in networks and technical groups. The technical work occurs as both formal and informal processes and is led by the MFA and undertaken by MFA, MT or other sectoral MDAs (described below). Services issues tend to be addressed in other, larger CAMEX subcommittees.

Box 6 below gives a quick overview of the relations between the political structures that are describe in Box 5 above. It highlights only one of the subcommittees on MERCOSUR-EU and omits CONEX, as it was reinitiated only in 2015. It also already presents the technical structures described further down in the toolkit text.

BOX 6

BRAZIL'S POLITICAL AND TECHNICAL STRUCTURES



Source: CAMEX website, <http://bit.ly/1JeaimB> (free translation)

The legal mandate, decrees and rules of the coordinating agency, which set up the institution and which the institution sets, are respected and followed

BOX 7

The most important factor that has grown out of CAMEX is that in Brazil trade policy issues are coordinated, as the decree that sets up the body and the resolutions that CAMEX passes are mandatory in nature (i.e. they are not recommendations). As a result, by and large, the institutions comply. It has been achieved through the legal mandates and leadership. New resolutions are passed on monthly basis. <http://www.camex.gov.br/>

Establish systems for guaranteeing human resources to undertake coordination work on TiS

To help ensure a consistency and quality of engagement, your government's trade coordination agency should have mechanisms to source adequately trained personnel and there should be staff specifically dedicated to services trade. If services trade is a priority of your country, there need to be people dedicated to services trade issues.

BOX 8

CAMEX's Executive Secretariat personnel are public servants that follow a Government career called Foreign Trade Analyst; in other words, they receive very specific trade-related training to be able to undertake this role. This career provides public servants to both the MT and the CAMEX Secretariat. There are about 50 people working for the Secretariat, of which two are specifically working on trade in services issues. These are the people that have the responsibility to attend the services technical coordination meetings organized by the MFA (explained below).

There is a need to regularize funding to undertake coordination and collaboration work

In LDCs, donors often support trade policy development and therein trade negotiation coordination work, which in the short-run might be helpful but in the long-run is not sustainable nor desirable. LDCs need to start thinking about putting efforts into regularizing financial resource from within their governments for trade policy issues. Coordinating TiS issues with the sectoral MDAs is actually a natural role for the ministry responsible for foreign trade issues (MT or MFA). If coordination to date has not been undertaken, then it is natural that some minimum resources for trade policy coordination are allocated, or more importantly, a clear role should be assigned to MFA or MT to coordinate with or without extra resources.

BOX 9

A key distinguishing feature of Brazil's coordination mechanism is that it does not require new and additional funds, as CAMEX is mostly a decision-making body, which passes resolutions and participation in Council of Ministers, GECEX, and work under sub-committees does not provide or allow extra remuneration for the participants, rather their work under these coordination bodies is assumed as a regular day-to-day functioning work of the Government. The same is true for the day-to-day coordination undertaken by the MFA for services negotiation positions as well as for the inputs that are provided by the MT or the sectoral MDAs. The only structure that needs funding is the CAMEX Executive Secretariat (please see above what its roles and responsibilities are). Importantly, the resources for this work are

automatically allocated from the Treasury and the MT is the one responsible for asking for these funds every year as part of their normal budgetary requirements.

- To the extent that direct allocation can be made from treasury, sustainability of trade policy and trade negotiations can be increased.
- Government officials should understand what coordination and collaboration entail, which will help them to understand that it is a very natural part of TiS work that trade officials should employ daily and sectoral Ministries should be initiated into upon need. It should not be seen as extra and new work but something that is integral to TiS policy-making.

Intra-governmental coordination mechanism has a component linking it to the highest levels of the government for endorsement, in order to ensure political will and implementation.

BOX 10

In Brazil, coordination happens at the highest levels of the government in a very formal manner, as demonstrate within the boxes above.

CAMEX was first constituted under the Government Council (Council that advises the President), however since 1999, when MDIC (MT) was created, the Chamber itself remained under the Government Council, but its Executive Secretariat (responsible for the technical and managerial issues) was placed under the MT. In 2003, CAMEX's legal mandate to formulate trade policy and negotiation positions was restored by President Lula da Silva (it had a trade coordination mandated already from 2001).

To reinstate CAMEX's political standing in 2007, a resolution No. 70 of 2007, was passed, which requested that all agencies involved in governing Brazilian foreign trade need to obey with Articles 1 and 3 of the Presidential Decree No. 4.732, which outlines that these agencies have to bring all legal acts, that might impact Brazil's foreign trade, to CAMEX before issuing them. In this way, the government ensured a single point through which all trade and trade-related matters could be centralized. Only the President of the Republic can take foreign trade and negotiation decisions without bringing the discussions first to CAMEX.

In Brazil coordination has been divided into political and technical level coordination. As seen above, the CAMEX bodies and processes are there to ensure the coordinated decisions among the Ministers, however the technical day-to-day coordination for services negotiations and policy-making is undertaken by the MFA, together with the MT, sector MDAs, and the NSAs. From the technical deliberations, which are led by the MFA, and described below, decisions are being refined and vetted as they go up the CAMEX hierarchy.

Technical Structures

Though this toolkit is catered towards TiS negotiations, it should be very clear that the decision-making (political) and the technical structure for developing negotiation positions should be situated within the normal structures for trade policy discussion within the country. In each country, what matters most is that policy-making coordination work is undertaken within the government. Collaboration and coordination for TiS negotiations are just other ways of policy-making but coordination and collaboration importance should be there at all times, not only for TiS negotiations.

Have a responsible entity for technical TiS coordination

- Establish a responsible entity within your government that takes the lead on TiS technical coordination among the MT, MFA and the sectoral MDAs. This responsible entity should be established within the most appropriate government Ministry that deal with foreign trade (i.e MFA, MT, etc).
- Establish responsible government entity(s) for engaging with the CSOs and the private sector.
- With regards to TiS, depending on the nature of the issue to be addressed, countries may consider a comprehensive services subcommittee under the Ministry of Foreign Affairs (or other similar coordinating entity) (for example to deal with cross-cutting issues, such as investment measures in services or labour mobility-related issues), or they may opt for sector-specific committees (for example, for telecommunication, banking, and distribution, or even more specific sub-sectors, such as IT-enabled services, mobile banking, and retail trade, etc.).
- It should be defined that the entity responsible for TiS coordination always becomes the focal point that does the technical level coordination even if the TiS issues is under a broader negotiation agenda, as part of a regional agenda or something bilateral. This is important as the TiS diplomats or experts would be able to best assess the services component due to their training.
- Be mindful that to set up well functioning entities will take continuous thought through reforms and time, as is evident in the Brazil case in Box 11.

BOX 11

MFA'S DIVISION OF SERVICES NEGOTIATIONS

To manage the different negotiation demands by the WTO, FTAA, and MERCOSUR-EU, Brazil's MFA expanded extensively. First, there was only the International Trade Division under the MFA dealing with trade issues and employing only five diplomats. In the mid-1990s, following the worldview of Brazil's President Fernando Henrique Cardoso, the leadership within the MFA started creating new departments' and divisions. In 2001, several new thematic divisions were established, where about 30 diplomats started working on specialized issues after receiving extensive commercial diplomacy training at the Brazilian diplomatic representations in several European countries (Puntigliano, 2008). Today, the MFA has divisions dealing with every aspect of international trade negotiations, including a Division of Services

Negotiations (Divisão de Negociação de Serviços - DNS). The DNS employs itself five diplomats (with extensive TiS knowledge) dealing with trade in services negotiations and services regulation topics.

DNS is situated under one of the nine under-secretariats of the MFA. Every single negotiation that has a service chapter, whether something under the WTO or the MERCOSUR external relations, even if there are specific departments within the MFA dedicated to the WTO and the MERCOSUR negotiations, it is always the DNS that acts as the focal point and does the technical level coordination and consultations for the other Departments. It is also DNS that interacts for example with the different Divisions and Under-Secretaries at the MDIC.

The DNS' role, as an interface/interlocutor, is to act in a sense as a focal point to gather everybody in a single body within the MFA as well as from the outside to make TiS discussions and collaboration possible, for example for an offer or request at the WTO within the LDCs services waiver discussions or for some TiS developments outside of the WTO framework. The DNS is responsible for making contact both within the MFA in the area of services trade promotion, negotiations, preferential trade agreements, etc, and at the same time coordinate with the sectoral MDAs (different ministries and regulatory agencies, etc) to secure their technical input into discussions.

Roles of the Ministry of Trade

Besides above-mentioned entity that takes the lead on coordination, collaboration, and NSA engagement, there are other institutional components that are required for TiS policy-making.

- Have in place an entity under the MT, which deals with TiS analysis. The same entity could be responsible for analysing connections between domestic production of services and trade of services.
- Have MT be responsible consulting the services trade private sector and civil society representatives (or another ministry, if historically it has been so developed and makes sense).
- Have the MT be responsible for coordinating and analysing TiS issues with statistics department(s).
- MT or other similar entity should be responsible for verifying domestic trade policy's compatibility with the GATS and other international commitments.
- MT should have in place a department that coordinates specifically with the MFA on TiS issues for negotiation positions (unless these functions are already carried out within the same Ministry in your country).
- Under MT the people working on domestic trade data, statistics, and analysis should provide inputs to the people dealing with international trade.

**BOX 12****BRAZIL MINISTRY OF TRADE ON TiS**

In light of increasing importance of the services sector, in 2005 the Federal Government, through the Decree No. 5532 of September 6, created the Secretariat of Trade and Services (SCS) under the Ministry of Development, Industry and Trade (MT). The SCS houses several departments and divisions, including a Department of Trade and Services Policy and a Division on General Coordination on External Markets. The SCS is responsible for formulation, coordination, implementing, and evaluating public policies and actions for developing TiS sectors within the domestic context. SCS also sometimes consults the MFA's DNS because domestic policy in TiS has to be compatible with the GATS rules.

SCS publishes the National Atlas of Trade and Services together with the Brazilian Institute of Geography and Statistics (IBGE) and others. The IBGE also puts out a monthly Services Survey.

Under the MT is also the Secretariat of Foreign Trade, SECEX, under which is the Department of International Negotiations (DEINT). SECEX is in charge of the conduct of foreign trade policies and the management of commerce through supervision, direction, planning and control in the area of its competence. DEINT is directly involved in TiS negotiations in collaboration with the MFA's DNS.

For services negotiations, SCS undertakes the services cooperation initiatives in relation to domestic issues. SCS provides inputs to SECEX (DEINT), such as statistical data for services negotiations and also helps out with consultations with private sector representatives. It is SECEX that is in charge of all the private sector consultations for services trade negotiations; yet, at times it is undertaken by the MFA's DNS and there can be associations and groups specifically under sectoral Ministries that the sectoral Ministries consult themselves.

Closely involve statistics departments for TiS

- Statistics officials should have close collaboration with the MT to provide them, alongside with other stakeholders, the inputs into the coordination efforts undertaken by the MFA or other entity doing the technical coordination.

BOX 13**STATISTICS DEPARTMENTS**

As of 2012, Brazil has in place a statistics database for services sector (Integrated System of Foreign Trade in Services, Intangibles, and Other Operations that Produce Variations in Equity) SISCOSERV, which is a computerized online system that permits the federal government to monitor foreign services transactions between residents and non-residents. It requires that every Brazilian legal entity and individual that imports or exports services, register any operation of sales of services and intangibles, which generate changes in equity. It ensures adequate classification of services activities according to

the UN Central Product Classification, however it leaves out cross-border investments in the services sector (known in trade speak as ‘mode 3 – commercial presence’). SISCOSEV is established by a Presidential decree and benefits from e-governance platforms. It has improved collection, treatment and analysis of services data.

Sectoral Ministries, Departments, and associated Agencies (MDAs) coordinate with the MFA²

- The sectoral MDAs need to be aware of their responsibilities to provide domestic inputs into TiS negotiation and policy-making coordination processes.
- The MT or the MFA (depending on who has the responsibility) needs to help sectoral MDAs understand the trade dimension of sectoral policies, including on why trade matter to the sector and the sector officials (many of who consider their sector non-tradable).

BOX 14

SECTORAL MDAS

Sectoral MDAs are responsible for providing technical inputs to the different services negotiating and policy-making processes within the Government of Brazil (GoB). All of the sectors have their own governing bodies, composed of the regulators and sectoral Ministries, entitled to regulate the sector. The sectoral MDAs usually help to situate the ‘trade’ discussions within the broader orientation of their sectoral policy and regulatory framework. The sectoral MDAs should be able to provide the MT or MFA with a clear picture of the policies, goals, and regulations in their sector. By preparing the technical inputs about the sector, they help shape how the discussions will be based. However, across sectoral issues, the sectoral Ministries’ capacity to understand trade issues and specifically the trade dimension of their sectoral policy varies significantly. There is a diverse range of knowledge and acceptance of the GATS and the trade negotiations context.

MFA’s DNS (see above for the roles of the DNS) works with all the different services sectors. DNS brings together technical people and when it comes to taking decisions at the Ministerial level decision-making bodies (CAMEX bodies), the sectoral Ministers are usually briefed before their high-level coordination meetings as well as accompanied by their advisors to the meetings.

Institutional processes (interactions and practices)

Having looked above at the structures i.e. actors and roles, we turn to consider processes – i.e. interactions and practices.

² See Part II on the information needs of trade and sectoral officials for TiS.

Institutional coordination processes should be as simple as possible with clear steps so that all actors can be aware of what to do and when.

Processes between the MT, MFA, and the sectoral MDAs should ensure that negotiation positions and policy reflect wider public policy objectives and that policies in one area do not thwart those of the others.

- Develop a white paper in your country for coordination processes among government institutions specifically on TiS. Ensure it outline competencies, mandates and processes among the MT, MFA, and sectoral MDAs, as well as other rules deemed important.

Undertake an initial strategic stocktaking

Not all government agencies need a say at all times. At first, a smaller group of ministries can do the initial stocktaking. After the initial stocktaking of the situation they should involve the other stakeholders, notably the sectoral ministries, regulatory agencies, the private sector, etc.

- Ministries, which are more central for undertaking initial TiS assessment should do that for initial analysis of strategic and commercial interests abroad as they relate to market access and national treatments as well as on the market entry issues for services suppliers.

BOX 15

INITIAL STRATEGIC STOCKTAKING WITH FEWER STAKEHOLDERS

First, when Brazil starts preparing offensive and defensive services negotiating positions, the MFA's DNS would analyse the request and determine what information is needed. Together with the MT and sometimes also the Ministry of Finance, it would define the strategic and commercial interests. For example, if Brazil had to prepare a market access request or offer on maritime transport within the MERCOSUR-EU context, the DNS would approach the MT to get domestic statistics and analysis on maritime trade from MT's Secretariat of Trade and Services (SCS) and other technical analysis and trade flows between the EU and Brazil and its MERCOSUR partners from its Department of International Negotiations (DEINT). After the initial assessment of the data, the DNS comes up with sub-sectors and modes on which it may consider making an offer and approaches then the relevant sectoral MDAs. Please see box 20 for a diagram of the processes.

Undertake coordination and discussions with sectoral MDAs to settle disagreements and define negotiation positions

For developing effective trade policy and negotiation positions, procedures should be carried out as constantly as possible, in order that the different sides know e.g. who initiates meetings, who leads, what are the communication practices, for what purpose are the procedures, etc. One of the key elements for effective procedures is free flow of information between the MT, MFA and the sectoral MDAs, as communication is one of the most powerful mechanisms of coordination among government and also between government and the NSAs. To the extent possible, information sharing should be made mandatory.

- To coordinate large TiS negotiating processes, your country should consider setting up processes by sector, aimed at involving the sector MDAs at a technical level, as well as the private sector and CSOs. The sectoral MDAs will have an important responsibility in providing the MT or the MFA (whoever leads the coordination) with the sector's reality.
- Before the coordination meetings, relevant technical notes should be circulated in order that the participants can prepare and arrive at the meetings having in mind adequate statistics and sector information, including insights on legislative and regulatory issues. General positions of the external stakeholders, that the MT, the MFA, or the sectoral MDAs are in contact with, should also be circulated.
- The coordinating ministry (MT or MFA) should be assigned responsibility for helping to ensure that sectoral MDAs adequately appreciate the trade dimension of their sector. Both formal and informal approaches can be deployed for helping build trade capacity in sectoral MDAs.
- Conversely, sectoral MDAs should have a responsibility to ensure the coordinating ministry the needed understanding of the sector, including sector objectives and regulatory dynamics.
- The coordinating ministry should also be required to report back to the agencies and those that they collect information from. This is essential to promote a virtuous circle of information flow, helping keep stakeholders engaged in on-going processes, and to build the relationship on which future collaboration will occur.

BOX 16

MFA IN THE INTERLOCUTOR/COORDINATOR ROLE

Brazil has a draft white paper developed for processes among government institutions but it is not final and available yet.

Notwithstanding, in Brazil the mechanisms for coordinating services trade negotiation positions with the MDAs are similar across services sectors. It does not matter if it is signing the Telecommunication Reference Paper at the WTO, which required the DNS to consult with the Ministry of Communications and figure out what are the reservations, or a demand for Brazil to open up the legal services market, where the DNS would need to consult the Bar Association only to find out that they are adamant not to allow foreign workers to work in Brazil on Brazilian law.

Considering that to date, often services negotiations are large with a breadth of issues covered and the extensive number of government sectoral MDA bodies involved, (all of which have their own governing bodies, composed of the regulators and sectoral Ministries, entitled to regulate the sector), services coordination led by the MFA's DNS has frequently been undertaken by sector (i.e. financial services, telecommunications, maritime transport, etc.), both with responsible government bodies and the private sector.

Once the strategic position is defined (as described in box 15), the development of the positions is opened for inputs from sectoral Ministries their regulators and as needed, a survey may be conducted with the private sector. The DNS convenes a meeting with the MDA(s) that have a stake in the process. If the MDAs do not adequately understand how trade issues pertain to their sector, it is the DNS that explains them to them – generally in terms of GATS-based rules and specifically on the potential implications on

sectoral policy. CAMEX and MT are also always present at these coordination meetings. The DNS acts as a secretariat for TiS coordination. To ensure participants have adequate information on which to engage in the work, technical notes are circulated before the meetings. This would include, inter alia, statistics about trade in the sector, information on legislative and regulatory issues, and known positions of external stakeholders that they are in contact with. The DNS undertakes all the needed communication work with other MDAs.

What is still inhibiting Brazil to be as effective as it could be in coordination between the plethora of actors, is the lack of recording, filing, and enabling usage of decisions that are taken at each coordination meeting. In short, the information feedback loop remains weak. The MFA does an effective job in collecting information from others but does not have adequate mechanisms in place to give feedback and record information, which is problematic as all the sectoral MDAs that are consulted need to know what is done with the information and what they can expect. This is important substantively, but also for helping to build the relationship on which future collaboration will occur.

Continuing on the example (see in box 15), for maritime transport services, the MFA's DNS would invite to the meeting the Ministry of Transport, the Secretariat of Ports, the Navy, National Waterway Transportation Agency (ANTAQ), as well as other Agencies, as required. To engage ANTAQ, which is Brazil's federal regulatory agency in waterway transportation, first a request to ANTAQ would come from the Ministry of Transport, directly from the MFA or even the Navy (this depends on how advanced the negotiation is and who is the leader of the negotiations). In the case of MERCOSUR-EU, the Ministry of Transport is responsible for the negotiation issues on transport and ANTAQ takes part due to the issues related to maritime transportation. The role of ANTAQ in the international negotiations is to give technical advice in the issues related to waterway and maritime transportation. In the consultations with the Ministry of Transport and the MFA, ANTAQ will point out whether the negotiation align with the current legal framework and what efforts would be needed to assimilate the aspects under negotiation. The Ministry of Transport will express their views, concerns, and reservations and they might agree to include the subsectors and modes under their responsibility, or depending on different reasons, it may decide that it is not possible.

It is also possible that the Ministry of Transportation or ANTAQ requests to carry out further consultations with their private sector and their CSOs.

Engage the private sector and CSOs

Private sector and CSO engagement with the government on TiS should be designed with a view to ensure regular two-way inputs but also that the NSAs can actually be involved in the policy-making or could be the partners to the government, rather than just having in place systems of informing each other, which has often been the case when engaging the NSAs in trade policy discussions and negotiations. Emphasis should be placed on the importance of NSA input (as they often know better than the government the practices on the ground), while at the same time situated in the context of government's ultimate decision-making authority. In pursuing the above, engagement should commence early in the process so as to avoid perceptions of NSA input being an after-thought (with government already essentially having decided its position). This has the added benefit of generating greater buy-in to the decision eventually taken, as well as helps to ensure the essential information held by NSAs feeds into the development of negotiating positions.

- Establish private sector TiS engagements that withstand time and fads and which provide the government with real information and real input to decision-making. Preferably these engagements involve the private sector in the process throughout. The government can even partner with the NSAs to develop alternatives and to identify the preferred solutions.
- The government can consider pairing TiS policy development work with trade promotion and business development in order to provide the private sector with clear tangibles they could take away when they invest their time into discussions with the government.
- Sectoral MDAs can have their own NSA engagement mechanisms to collect inputs from their traditional stakeholders.
- Coordination processes need to have in place information sharing mechanisms for all NSAs.
- Sustainability of these engagements is also essential, hence it should ideally not be tied to any specific negotiation and/or rely overly on donor support.

BOX 17

BUSINESS DEVELOPMENT AND TRADE PROMOTION WILL HELP TO KEEP THE PRIVATE SECTOR ENGAGED IN SERVICES SECTOR DISCUSSIONS.

In light of WTO and regional negotiations, in 1990-2000s in Brazil, there was reorganization of processes of negotiations and consultations with the business and CSOs. Several formal fora were established with the non-state actors (NSAs) in the 1990s and beginning of 2000s. Big meetings were held, documents distributed and presentations made. These fora were discontinued in the middle of 2000s, as negotiations became stuck at the WTO and regionally. Private sector and civil society organizations (CSOs) lost interest, believing deals were not possible. Even in 2015, as negotiations were picking up again, the private sector and the CSOs did not show much interest. But the meetings could be convened again if there was a need. It only takes a political decision.

Across the Government of Brazil, there are many different private sector consultations. Sometimes these consultations are formal and institutionalized, and sometimes they occur informally (even within the same Ministry). However, for TiS issues, normally, as a parallel process, sometimes before and sometimes after the consultation with the MDAs, the MT's DEINT together with the MFA's DNS, in certain sectors that have historically not been under the MT, would undertake the private sector consultations. Otherwise the MT and sectoral MDAs undertake the consultations.

According to Brazil's MT, services trade consultations with the private sector are more nuanced, compared to consultations on trade in goods where the processes are well established (according to the MT, once they release a formal statement for consultations, the private sector knows precisely how to reply, submit their proposals, etc). With regard to services sectors, the representation, level of engagement, and competence varies from sector to sector. Some of the current services sectors are still fragmented and very localized. Some of them are composed of many small and medium-size companies, which creates the absence of a unified service-sector voice. Some sectors are more focused on the domestic economy. However, there are sectors, such as construction, architecture, IT, IT-enabled

services, and finance where Brazil has already for years had very liberal policies, and thus the awareness and consultation processes within these sector stakeholders are more established. To reach the services sector private sector players, sometimes MT goes directly to known stakeholders for consultations and sometimes more democratic processes, such as surveys are conducted among a larger base of private sector stakeholders. Groups, such as the Confederação Nacional de Indústria (CNI) that have largely been consulted on industrial issues, are becoming increasingly more interested in services consultations.

At present, the private sector does not consult often with the DNS, however the DNS remains open to dialogue with the private sector. Current channels and mechanisms for engaging the services private sector are more informal. There are no formal or cumbersome procedures to reach the DNS, such as filing a formal request. The private sector actors can reach the DNS by phone, email and/or by arranging a meeting at the MFA with the DNS. By and large services NSAs tend to approach the DNS only when they have questions or concerns regarding a particular regulation that may feature in an on-going trade negotiations. On the other hand, where the private sector is more engaged with the MFA is on issues related to business development and trade promotion.

Those interested in further developing government mechanisms with CSOs and the private sector, please see below links and documents:

- “Handbook on stakeholder consultations and participation in ADB operations.”
- “EIF Guidebook on Effective Engagement of Non-State Actors” for governments interested in perfecting stakeholder outreach” <http://bit.ly/20yCDwB>.
- Those interested in making consultative processes (mainly PPD) work effectively can find a PPD Handbook and implementation guidelines here: <http://www.publicprivatedialogue.org/>

Coordinating positioning in a regional setting

Clear and simple process should exist to ensure national coordination and consultative processes, which can also function in a regional context, where positions may need to be harmonized between countries before moving to negotiate with a 3rd party. Such processes should exist at the technical and political levels.

BOX 18

COORDINATING PROCESSES EXIST AT TECHNICAL AND POLITICAL LEVEL WITH REGIONAL MEMBERS

In Brazil for the MERCOSUR-EU negotiation process (see more information in boxes 15 and 16), they also have a process that is undertaken with the other Members of the MERCOSUR (Argentina, Uruguay, etc). Before the negotiation position goes to CAMEX for endorsement, it is discussed at the technical level with all the MERCOSUR partners. In terms of services issues, at the technical level the DNS engages with the focal points of each MERCOSUR Member country, while also undertaking consultations with

the national regulators and the private sector in Brazil. Then at the technical level the countries come together to provide a single document and a consolidated position. Since the MERCOSUR-EU negotiations are under the Department of International Negotiations of the MFA, they are responsible for the coordination at the political level. Finally, in Brazil, if the technical and political coordination have been achieved across the MERCOSUR countries, the CAMEX Ministers endorse the collective position.

Secure political endorsement of negotiating positions

Once a negotiating position has been formulated among the MT, MFA, sectoral MDAs, and the NSAs, it is essential that it is adopted at the political level.

- Ensure there exists a political process for dealing with situations when consensus on policy or negotiation position at the technical levels was not achieved.
- Have in place a mechanism to adopt the position with approval of the political leadership.

BOX 19

THE POLITICAL LEADERSHIP ENDORSES NATIONAL TIS NEGOTIATION POSITIONS

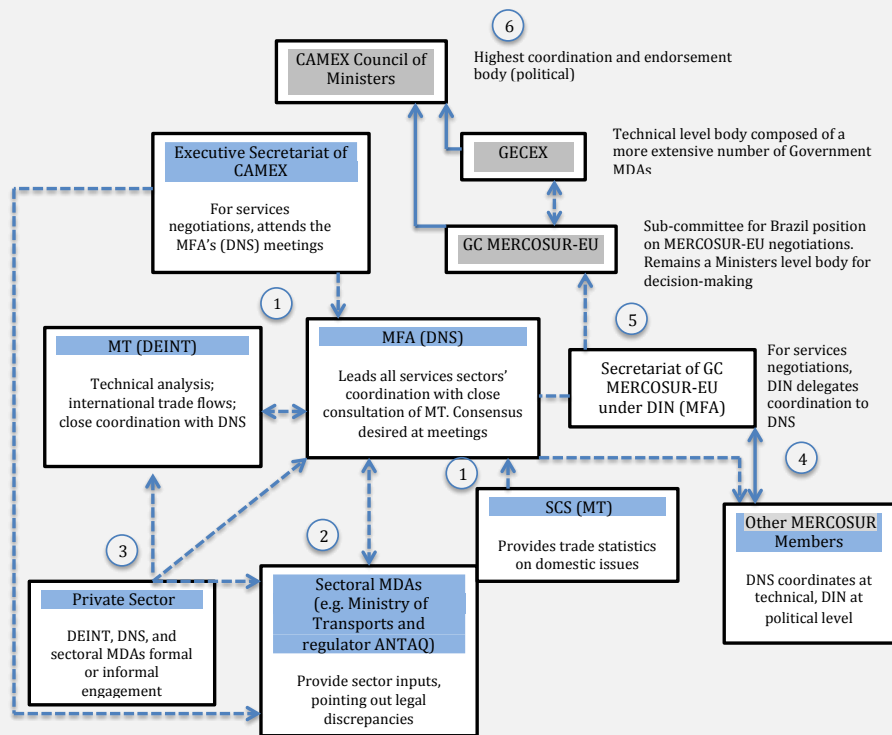
After DNS has achieved consensus among different bodies that it consults, DNS formulates a negotiating position, which will be brought before CAMEX for a final deliberation with the presence of all the Council Ministers (see box 6 on CAMEX bodies). If consensus is not reached at the technical level, DNS takes the issue to GECEX or CAMEX and outlines the positions of various Ministries. It is then up to the GECEX or CAMEX to try and forge consensus. If that fails, the decision can be put to the President of the Republic for final determination.

The highest decision-making body, the CAMEX Council of Ministers, meets approximately every two months or as and when there is a need. The MT, as the initiator of the Council of Ministers meetings has expressed that they would like the meetings to take place at least once a month, as was originally envisioned. On the other hand, GECEX, which meets about once a month, does not have the political decision-making power required for deciding on negotiating positions. The reality however is that Brazil is not engaged in many other services negotiations, only within the context of MERCOSUR-EU, MERCOSUR and Columbia, within MERCOSUR itself and at the WTO. Thus from the point of view of Ministerial level decision-making meetings, some have suggested the current frequency is sufficient.

BOX 20

OVERVIEW OF TIS INSTITUTIONAL COORDINATION STRUCTURES AND PROCESSES FOR BRAZIL’S UNDER MERCOSUR-EU NEGOTIATIONS

GC MERCOSUR-EU (Group), is a CAMEX subcommittee, dealing with both TIS and trade in goods negotiation issues. Legally established under CAMEX Resolution No. 6, on February 16, 2011. Co-chaired by MFA and Executive Secretariat of CAMEX and composed of representatives of the ministries, which make up the CAMEX. Other MDAs may be convened to participate. No additional remuneration to members of the GC MERCOSUR – EU is allocated as per the participation in it. Its secretariat is under MFA’s International Negotiations Department (DIN), which provides the technical and administrative means necessary for their operation. The Secretariat circulates discussion documents for meetings two working days ahead. The Group is responsible for preparing Brazil’s positions for the MERCOSUR-EU discussions, negotiations and an eventual bi-regional trade agreement on trade in goods and services. The Group itself make recommendations to the bi-regional negotiation positions and develops technical notes and impact assessments. If a position within the MERCOSUR-EU negotiations has a services component, the DIN would pass the hat to the DNS. The eventual recommendations will be taken to the Council of Ministers of CAMEX.



MFA - Ministry of Foreign Affairs
 MT - Ministry of Trade
 CAMEX - Chamber of External Trade
 ANTAQ - National Waterway Transportation Agency
 CEB - Brazilian Business Coalition (represents for negotiations)
 DIN - Department of International Negotiations (under MFA)
 DNS - Division of Services Negotiations (under MFA)
 DEINT - Department of International Negotiations (MT)
 SCS - Secretariat of Trade and Services (MT)

■ High level or political coordination structure
 ■ Technical structure
 → Political decision-making
 - - - - - Technical inputs

In case of a services component, 1) responsible people from MFA, MT and often also Ministry of Finance would do the initial strategic stocktaking. DNS would approach the MT to get domestic statistics and analysis on the needed services sector trade from MT's SCS and other technical analysis and trade flows from DEINT. After the initial assessment of the data, the DNS comes up with sub-sectors and modes on which it may consider making an offer or a request. 2) The MFA's DNS acts as a secretariat for TiS coordination. DNS carries out the coordination with the sectoral MDAs that have a stake in the discussions. DNS explains to the sectoral MDAs trade rules, if necessary. The sectoral MDAs would give technical advice and point out whether the negotiation aligns with the current legal framework or not. CAMEX secretariat people that work of services and DEINT representatives are always present at services negotiation's coordination meetings. 3) DEINT, and sometimes MFA's DNS or the sectoral MDAs will carry out the NSAs engagement. 4) In case a services issue requires a regional (MERCOSUR) position, at the technical level, DNS engages with the focal points of each MERCOSUR Member country and MFA's DIN at the political level. 5) After DNS has achieved consensus among different bodies that it consults, DNS formulates a negotiating position, which will be brought before CAMEX for a final deliberation with the presence of all the Council Ministers. 6) If consensus is not reached at the technical level, DNS takes the issue to GECEX or CAMEX to forge consensus. If that fails, the decision can be put to the President of the Republic for final determination.

Enhancing Coordination between Trade and Service Sector Officials

The problem

The key problem is that sectoral MDAs and trade officials do not understand each other. Sectoral officials believe that there is nothing in their sector to trade and dismiss the trade officials' requests for conversation and information. Trade officials, on the other hand, are not able to explain to the sectoral officials where the potential trade issues lie in their sector because they often use terminology too far fetched for the other Ministries. Yet, in order to explore the trade potential of the services sectors, the trade officials need to know from the sectoral MDAs what the specifics in the services sectors are. Steps 1 and 2 below explain and help MT (or MFA, if they deal with international trade issues) and sectoral MDA officials understand what they can do for each other. It involves having a conversation, developing a shared language and through that a shared understanding.

Step 1: Identifying tradable services

One of the very first steps would be probably defining the service itself. A good starting framework for trade in services would be the WTO GATS classification system but since it was updated last in 2000s, a lot of new services have been added. The UN Central Product Classification (CPC) system classifies many of the possible tradable services in more detail.

For example, it is possible that your country wants to promote higher education services in the neighbouring countries and there are services providers within your country that would like to set up campuses abroad or provide services online or just attract foreign students. This is a starting point where the trade official, sectoral MDA and also the private sector can have a conversation. For example, there are an increasing number of countries actively marketing their higher education system in order to attract more international students through interagency marketing campaigns (e.g.: Study in Ghana, Contact Singapore). At least 53 countries worldwide currently maintain a government sponsored "Study Country" initiative.

To illustrate the conversation between the trade and services sectoral official, this toolkit uses an example from the higher education subsector of cross-border higher education (CBHE).

Step 2: Understanding the service sector commercial activities

The trade official and the services sector official have to meet and establish common understanding of how trade happens within the service sector. The ways of providing and consuming services is varied and unless looked at from a trade framework, for example, the GATS framework, many sector officials would not be able to even imagine how services can be demanded, supplies and thereafter promoted or limited.

First, the trade official would explain to the sector official that there are four possible ways of commercial/trade activities within services trade. These four in the trade talk are understood as the ‘four modes’³ of how services can be provided. When the trade official explains the four ways of commercial activity, it will start becoming clearer for the services sector official how these ways of trading a service applies within their sector or subsector. It will become clear who is trading, who is consuming, where trade happens, and how trade happens. It is also possible that not all the four ways of services supply are possible within a services sector because of physical limitations or just impossibility of supplying a services in that way.

BOX 21

FOUR WAYS OF SERVICES TRADE

1) Cross-Border Supply (‘mode 1’)

Trade official: would explain that the very first way of trading services is through *cross border supply*, which means that in this way of providing a service, the provided service has to cross borders from your country to another.

Education official: when thinking about higher education, the educational official would be able to provide that mostly when higher education is provided across borders it has to do with the *delivery of education via online or other distance means*, wherein the service provider e.g., university (as the exporter) is in one country and the consumer, as e.g., student (importer) is located in another.

2) Consumption Abroad (‘mode 2’)

Trade official: this is a way of trading services where a consumer from your country goes to enjoy services within another country.

Education official: in this form, the consumer (e.g., student) moves across borders to consume the service (e.g., education).⁴

³ The four modes of services supply are defined under the WTO GATS (World Trade Organization General Agreement on Trade in Services).

⁴ With 4.5 million tertiary education students having studied abroad in 2012, student mobility is, by far, the largest of higher education's contributions to international trade (OECD, 2014). Expenditures include the costs associated with the delivery of the service (e.g., tuition and fees, if such are charged) as well room and board. Nations that provide significant subsidies to higher education and in turn charge very low or no tuition/fees to students will have a lower calculated export value than those with



3) Commercial Presence ('mode 3')

Trade official: here the foreign services provider will establish commercially or operate an entity (branch, subsidiary, etc) on the territory of your country.

Education official: this applies for example when a university (foreign service provider) establishes a physical presence in my country (i.e. invests) in order to render services.⁵

4) Presence of natural persons ('mode 4')

Trade official: here a natural person (foreigner) will move temporarily to your country to supply its service there. In this mode, individuals travel across borders to provide their service.

Education official: this applies e.g. for faculty members traveling to a foreign destination to teach a course. Sometimes the faculty only "flies in" to deliver a guest lecture or perform other services. Furthermore, there can be staff persons in academic programs, which are delivered in overseas environments. In that respect, this form of trade is often tied to a commercial presence abroad.

Step 3: Determine key policy issues and the associated rules

The third step entails in it talking about the rules that apply to the providers or consumers of the services within your country. Often there are limitations placed upon the provision of services in order to protect the consumers or sometimes the national services supplies from foreign competition. Some of the rules that trade officials are trying to better understand within the context of the service sector are related to market access (MA) and national treatment (NT).⁶ These terms guide what is allowed and not allowed for the services providers and consumers in international services trade. MA limits in a variety of ways the entry of foreign services or services providers into a national market. NT restricts the activities of foreign services or services providers once they have entered the national market. The MA⁷ and NT⁸ limitations deal with issues on

higher tuition/fees. That said, international students in low tuition/fee countries still expend discretionary monies in the local economy, help internationalize the educational experience, and build important cultural ties with the host nation.

⁵ This is a small, but rapidly growing form of higher education's cross-border engagement and includes the development of international branch campuses (IBCs) and other foreign outposts (e.g., outreach offices, research sites, academic partnerships and other forms of service provision) as well as the acquisition of existing providers by a foreign educational corporation. As indicators of the significance of this form of trade, the Cross-Border Education Research Team (C-BERT, 2015) has identified 231 operating international branch campuses and Zimny (2011) estimated educational Foreign Direct Investment in 2009 at approximately \$9 billion (because of data integrity issues, we believe this number underestimates the actual value of education-related FDI).

⁶ The market access (MA) and national treatment (NT) concepts are once again found within the WTO GATS agreement.

⁷ Countries can make specific sectoral commitments within the GATS, for example in higher education. Within GATS, the MA provision covers six types of restrictions that if maintained must be listed as a limitation in the WTO Member's schedule of specific commitments. The six types of restrictions are limits 1) on the number of service suppliers' permits; 2) the value of transactions or assets; 3) the number of total service output; 4) number of natural person supplying a services; 5) measures that restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; 6) and, limitations on the use of foreign capital (foreign shareholding, total value of foreign investment, etc.). A country is allowed to maintain such measures as long as they are listed as a limitation in their schedule of commitments (WTO, 1994).

⁸ The national treatment provision (GATS Article XVII) says that foreign service providers (business visitors, traders and investors, intra-corporate transferees and professionals) will not be treated less favourably at the local market than the local providers.

authorization, ownership, quality control, quantity control, financing activities, etc. Usually across services sectors, these limitations are similarly worded and only differ in detail and clearly not all limitations apply to all services sectors.

BOX 22

Trade official: will ask questions on the rules of authorization of foreign services activities and providers and how they compare to the treatment of the national/local service providers (in trade talk there are always issues on comparing the treatment that the national service providers receive compared to that of the foreign service providers). For the ease of understanding, the questions have been divided into categories as they relate to permits and licensing, ownership, quality control, and financing activities. Depending on the services sector, some of these questions might be a bit nuanced but across services sectors, often these questions can be asked to find out what are the limitations on the entry and/or the restrictions within the territory of a country for foreign service providers.

Licensing, qualification, and quality control (regulation)

- *Is private participation allowed and foreign participation possible?*

Trade official: this question has to do with and prohibition *a priori* on foreign services providers not being allowed to provide their services within the borders of your country. It is also sometimes possible that certain activities are only allowed for the government but not for the private sector.

- *Are foreign established institutions subject to specific performance requirements, including licensing requirements? Are licences, permits and standards provided by a regulatory agency?*

Trade official: this questions focuses on the issue of developing standards for educational services providers. If the standards and conditions are met, the license could be granted.

Ownership and financial limitations

- *Are foreign firms required to establish locally through a particular legal form of establishment?*
- *Is local control (e.g. 51% or more of the equity/contribution) required over the (equity/contractual) joint venture?*

Trade official: often when foreign companies/institutions establish commercial activity within another country's territory, there can be limitations on how much of the company can be owned by the foreign service provider or there may be requirements to partner up with a local company/institution.

- *Are foreign established institutions subject to specific performance requirements, including remittance and foreign exchange restrictions limiting external financial transfers?*

Movement of natural persons

However, limitations may be listed in Member's schedule of commitments to cover measures that the Member wishes to maintain inconsistency within Article XVII (residency requirements, discriminatory subsidies, tax benefits, etc). Article XVI prohibits the use of numerical quotas and economic needs tests, unless specified in Member's schedule of commitments (WTO GATS, 1994).

- *Is the entry of foreign experts/faculty subject to economic needs tests? Are there time limitations on the presence of foreign experts? Are there residency or nationality requirements with respect to certain categories of personnel employed by locally established higher education institutions?*

Trade official: these measures are often put in place to guarantee quality and expertise of the people supplying the service. Sometimes they are also used to limit the supply of service suppliers within your territory.

Not all questions are appropriate for all the four modes of services trade and there are other questions that could be asked. For more elaborate questions on different services sectors, please see OECD library on “Managing the Request-Offer Negotiations Under the GATS.” There you can find a plethora of questions for example on environmental services, transportation services, legal services, logistics services, construction and engineering, energy services, etc.

From the answers of the education official, we can find out what in education services is logical and what not. Some of the above question categories overlap and do not perfectly fall for examples under quality control or licencing but are the mix of different categorizes.

Education official: often the sectoral officials know right away the answers to these questions or can easily find out.

1) Cross-Border Supply ('mode 1') of higher education.

Quality control and licensing: cross-border supply tends to focus quality assurance policy on protection against fraudulent or illegitimate activity. Because quality assurance is a national activity, and supply happens from a provider non-resident in the country, the ability for an agency to hold the provider responsible is limited. Every country has a right to determine if an educational provider, whether via an online delivery system or physical presence, can provide an educational service to a student within its borders. Therefore requirements are established that govern distance delivery that are aimed to ensure that actual education is being provided, rather than just the award of a credential from a degree mill. In some countries, online provision is not regulated; in other countries it is not allowed or recognized as a legitimate educational service.

2) Consumption Abroad ('mode 2') of higher education.

Quality control, consumer rights, and financial limitations: the restrictions on consumption abroad mostly concerns limiting educational funding and scholarships, especially services funded from government sources. In other words, degree programs, online courses, and students studying abroad are generally (though not always) free to move across borders; however, they commonly face restrictions in terms of their ability to access the type of support that domestic students and institutions receive from their home government. At the same time, for students studying abroad there may be subsidies for international students.

Quality assurance: consumption abroad increasingly requires quality assurance agencies in multiple countries to agree on quality standards (or recognition) with respect to the award of degrees. Here the concern is for students who may take part of their program of study in one country and wish to finish their degree in another country. Quality assurance involves the recognition of institutions in both countries as legitimate providers of higher education. This harmonization of standards, for example, is occurring in Europe through the European Quality Assurance Register for Higher Education.

Movement of natural persons: some government sponsored study abroad programs, such as those from China, Russia, Saudi Arabia, and the United States place limits on the students studying abroad, restricting their choice of foreign institutions or requiring students to return to home country after completion of their studies.

3) Commercial Presence ('mode 3') of higher education institutions.

A fundamental responsibility of the government is to authorize the presence of foreign actors, individuals and institutions, to enter the country and provide education within its borders. Each country establishes the terms under which a foreign individual may enter their borders and how long they are allowed to stay. Some nations have very liberalized authorization requirements with limited requirements on visa and institutional registration; others have very strict visa and highly specialized requirements that institutions must meet prior to entering the country.

Ownership, financial limitations, quality control: the most significant complicating factors emerge in the context of foreign investment through *commercial presence* when branch campuses and other outposts are established in foreign locations. When campuses move across international borders, three main actors emerge: the home institution that is establishing a campus overseas, the importing government/regulating bodies, and the exporting country government/regulating bodies (Owens & Lane, 2014). Issues of ownership, rights and finances are complicated as these three actors have competing and often conflicting roles and responsibilities. Jurisdictions overlap several areas: mission; ownership; investment; revenue; and regulation (Lane & Kinser, 2011a). Nations have decided to approach these through various methods, often requiring some type of domestic representation in the ownership and governance structures.

Limitations on Commercial Presence	
Market Access	National Treatment
Foreign equity limitation (49% to 51%)	Faculty qualifications requirements
Juridical persons (corporation) requirement	Funding from state sources limitation
License requirement to operate	Nationality requirement for owner, board, director
Nationality requirement for owners, board, director	

Finance and ownership: When an institution seeks to set up a physical presence, a whole host of authorization challenges are triggered. For example, an institution may be required to set up a locally chartered corporation, which in many cases would operate as a wholly or partially owned subsidiary of the home institutions. Some nations, for example, have specified ownership requirements that insist on local partners with significant financial investment in the venture. Thus, the foreign direct investment (FDI) can take multiple forms.

When Monash University (Australia) established a campus in Kuala Lumpur, their local partner SunWay retained a 51% ownership stake in the local entity and they developed a management-operating agreement assigning responsibility for the various administrative and academic expectations. Yet, Monash University campus in Malaysia in a joint venture with a Malaysia company while its South African campus is a wholly owned subsidiary (Lane, 2010).

Financial and quality/standard incentives: Some countries set up "free-trade" zones for the purposes of recruiting foreign educational institutions. One of the most well known is the Dubai International



Academic City, which authorizes exemptions for institutions within its borders from certain educational and corporate regulations established by the federal government, including establishing a parallel quality assurance regime so that institutions do not have to comply with local quality assurance regulations. There is a significant interplay between quality assurance and educational sovereignty that emerge when opening borders to foreign institutions of higher education, there are questions about whether quality assurance standards should be the same for branch campuses, or if some distinctive process should be established. Nations have made different decisions on this point, so there is as yet no consensus.

Financial limitation: local regulations may require different financial implications (e.g., direct subsidies, research support, preferential tariffs, repatriation of revenues, corporate taxes, etc.). For example, government restrictions on tuition and fees could significantly inhibit a foreign institution's ability to recover costs.

Quality control: quality assurance refers to the policies and procedures countries use to identify legitimate institutions of higher education and establish standards for their operation. Quality assurance regimes emerged in most countries over the last 30 years as a widespread strategy to legitimize recognize the growing number and diversity of tertiary higher education institutions, and to ensure that they had appropriate educational standards. Most countries eventually established a quality assurance agency dedicated to evaluating institutions operating within its borders and establishing quality standards for academic institutions and programs. Thus, nations place limitations on MA to higher education via local quality assurance regulations.

For example, Cost Rica on MA and NT on campuses and commercial presence maintains the following quality assurance measures: “the establishment of public limited companies or any type of commercial enterprise for the purpose of providing university education is prohibited. The national Council of University Higher Education (CONESUP) authorizes the establishment and operation of private universities in the country (including fees, plans, study programmes, supervision, etc) and is responsible for approving the teaching staff and executives of such universities” (Costa Rica WTO GATS schedule of commitments).

4) Presence of natural persons ('mode 4') in higher education.

Movement of natural persons: instead of dealing with higher education faculty directly, most countries have decided to address movement of labour rules to all services sectors of the country. Often academic faculty and staff fall within the same provisions for cross-border labour issues as any other type of temporary worker, regardless of sector. For the vast majority of countries, there is no guaranteed treatment at all for the presence of natural persons mobility within the higher education sector. There are several countries that do specify minimum qualifications or prior experience; otherwise this mode of mobility shares the same freedom to move across border as any other worker.

Financial implications: on faculty moving across borders, there may be tax implications on the income earned.

Quality control: quality assurance regulations for presence of natural persons tends to specify the qualifications necessary for visiting faculty or other foreign academics to provide instruction. For example, this means recognizing terminal degrees awarded in other countries. Quality assurance may also have

regulations surrounding the number of foreign academics allowed, or their eligibility to teach certain subjects.

For an overview, the below table organizes some of the most important policy issues in international higher education trade according to the modes of trade and the barriers that are associated with each of them.

			Key Policy Issues			
	Mode	Example	Permit, license, visa	Ownership	Quality assurance	Finances
1	Cross-border supply	E-education, virtual university	Authorization of activity; chartering		Fraud; illegitimate activity	Tuition and fees
2	Consumption abroad	Students studying in another country	Student visa; intent to return		Credential harmonization	Student financial aid; economic impact
3	Commercial presence	Branch or satellite campus; franchises; twinning arrangements	Chartering; free-trade zones; license requirement to operate; nationality requirement for owners, board, director	Foreign equity limitation (49%-51%); juridical persons (corporation) requirement; license requirement to operate; nationality requirement for owners, board, director	Equivalency of standards	Subsidies; FDI; corporate taxes; state sources funding limitations
4	Presence of natural persons	Faculty travelling to foreign country to teach	Work visa requirements, time limitations on the presence of foreign faculty; economic needs tests.		Faculty qualifications and expertise requirements	Personal income taxes

Step 4: Engaging the NSAs

This conversation between the MT or MFA and the sectoral MDA persons will also make it clear soon where there are gaps within the knowledge of the government officials and where it would be beneficial to engage the private sector, or other NSA, such as the universities or other higher education institutions, as in this example. Setting up a new educational entity in a foreign country is similar to when multi-national companies expand their services to new countries and university leaders should be well advised to work with their colleagues in trade to understand the challenges associated with such activities.

Group Work

Outcome: At the end of the exercises the participants should have better skills and understanding on how to improve the institutions in their countries to have more coordinated TiS negotiation positions. The exercises would be particularly useful if a group of officials from one country could attend it at the same time and work together.

The exercises have been modified for the purposes of TiS from the *UNCHS Elected Leadership Series* toolkit part II.

Exercise 1: Effective coordination characteristics

The objective: The intent of this exercise is to provide participants with an opportunity to rate how well they think their respective governing bodies are doing in scoring on characteristics for effective institutional coordination mechanisms for TiS and to discover ways to improve the quality of governance based on these characteristics.

Time needed: 90 minutes

How to go about:

1. Distribute copies of *Handout 1* and tell participants they are to complete a survey on how well they believe their respective governing bodies are scoring on characteristics for effective institutional coordination mechanisms for TiS described in the beginning of the toolkit. Give participants about fifteen minutes to complete the survey.
2. When participants have completed the survey, ask for volunteers to report on the reason for any relatively high scores over 40 and any relatively low scores below 20.
3. Divide participants into groups of three to four participants each. Give each group the task of choosing at least one score from each participant's report card rated at 4 or below. Ask them to agree on a course of action that the government or other stakeholders could take to raise and sustain the rating. Give participants about forty-five minutes to complete this task.
4. At the end of forty-five minutes, reconvene participants and ask for reports from each group. After reporting, engage participants in a discussion of the exercise. Consider asking: (i) What prediction participants would make about the results if their governing bodies were to complete the *handout*? Would asking other government officials back home to fill the handout help to launch some improvement actions? ; (ii) Let the participants reflect on the importance of the 6 characteristics for coordination capacity of the government for TiS negotiations.

Handout 1

Instructions: Read the six characteristics of effective institutional coordination and consultation mechanisms for TiS proposed within this toolkit. As you read each of the characteristics, reflect on the progress made by your governing bodies in fulfilling them. We have provided you with a 1 - 10 scale for rating the progress. 1 on the scale equals the least possible progress, and 10 equals the most possible progress in fulfilling the aims of the characteristic. To complete the survey, indicate the progress you believe your government has made by circling the appropriate number to the right of each characteristic.

Characteristic	Characteristic elaboration	Rating									
		1	2	3	4	5	6	7	8	9	10
<i>Clear and agreed mandate of a coordinating entity</i>	There exists formal decision-making structure(s) and processes to coordinate negotiation positions. The structure has a clear mandate; authority; it is legally established by a decree. The decree outlines the obligation of coordinating with MDAs.										
<i>Political support</i>	Coordination has a component linking it to the highest levels of the government for endorsement, in order to ensure political will and implementation, also at the technical levels.										
<i>Human Resources</i>	Agencies have the human resources and capabilities to carry out coordination work.										
<i>Financial Resources</i>	Coordination requires minimal extra resources, as coordination is undertaken within existing government structures and coordination work is already accounted for as a normal part of the governments functioning.										
<i>Clear roles and responsibilities</i>	Government positions are based on adequate information, related to government's stated priorities, which means that the different MDAs are aware of their responsibilities and participate) and coherently presented (some MDA has the responsibility to formulate and coordinate technical positions).										
<i>Formal public consultations</i>	There exists a close collaboration with the private sector and consumer and other civil society organizations involved in TiS, as these stakeholders are indispensable. The non-state actors have capacity to provide inputs and government has ways to communicate needed information.										

Exercise 2: Where is the frustration?

The objective: The aim of the exercise is to get participants thinking and talking about a frustration they have within the operation of their own government on TiS and the need to focus on the causes of the problem.

Time needed: 90 minutes

How to go about:

1. Keeping in mind some of the challenges that Brazil has had to overcome to achieve its TiS coordination mechanisms, have participants write down on top of an index card some specific frustration they have on TiS structures or processes within their own government's operations. The declaration could indicate some action or actor that is lacking but needed or something done but not needed. When participants have concluded this task, ask them to use the bottom half of the card to write an answer to the following question: **If you could do one thing to deal with this frustration, what would that be?**
2. After participants have written their answers on the cards, ask them to tape or pin their cards around the walls of the room, to spend a few minutes walking around and reading what is written on other participants' cards and to return to their seats after reading them.
3. Most probably, the statements made are fundamental organizational problems, which will persevere unless real efforts are made to identify and deal with the conditions causing them.
4. Divide participants into pairs. Explain that one member of each pair is to serve as a problem-solving consultant and the other member as his or her client. Ask consultants in the various pairs to ask their clients to describe their frustration more fully and explain why their proposed way of dealing with it would help. Ask the consultants to continue by asking several questions that are written on a sheet of chart paper of their clients about the nature and source of the frustration: (i) Who is affected by it and how? ; (ii) How often does it happen?; (iii) What seems to be causing it?; (iv) What now?
5. Tell members of each pair that when the consultant and client have completed their analysis of the first frustration, they are to change roles and repeat the process. Tell them they have thirty minutes to complete the two rounds of problem solving.
6. After thirty minutes, participants reconvene to report the results of their problem solving discussions. Tell participants to focus their reports on answers to these questions: Did the discussion in each case connect the frustration as presented to a more profound problem in the government? What was decided about possible next steps to correct or resolve the problems?
7. After each of the pairs has reported, ask for a general question about the implications of the exercise for problem finding and solving in government organisations.

Exercise 3: Trade and MDA officials' conversation

Time needed: 45-60 minutes

How to go about:

1. Make groups of 2-4 people, preferably some with trade and some with service sector knowledge. If private sector or CSO representatives are present, divide them among the groups. Try to make groups where people from the same/similar service sector are represented to facilitate their cooperation.
2. Prepare and provide to the groups lists of tradable services (WTO or UN CPC classification) in order that they could select one services sector or subsector within their own countries, or one, which they are already familiar with.
3. Have the small groups go through the Q&A exercise described in Boxes 21 and 22 above within the context of their chosen sector/subsector. If appropriate, provide them with the OECD Q&A hand-outs on some of the specific sectors.
4. Participants should prepare to present how their service is traded according to the four modes of supply and what are the limitations that apply within each of the modes in their home country. Finally, taking their home country situation into consideration, can the groups make recommendations on what kind of services and treatment they would need from other countries and what would they have to offer?

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Support to Enhance Development of Trade in Services Negotiations

With support from the UK Trade Advocacy Fund, ILEAP, CUTS International Geneva and the University of Sussex's CARIS are undertaking a series of interventions that seek to contribute to the increased and more effective participation of LDCs, LICs, LMICs and RECs in multilateral, regional and bilateral services trade negotiations.

Through the studies, toolkits and training to be delivered, the envisaged results aim to assist these stakeholders in increasing their participation in services trade.

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