



Trade in Services and China's Accession Negotiation

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Part I

Negotiation Process

Differences between goods and services

- Existence of 4 modes of supply
- Intangibility of services and absence of border measures
- Lack of reliable statistics
- Scheduling of commitments

Coverage of GATS

1. Four Modes
2. Altogether 12 Sectors and 160 sub-sectors
3. Commercial Services (excluding governmental services)
4. Annex on Air Transport Services:
not apply to measures affecting Traffic Rights

Governmental Services

In the GATS, “services” includes any service in any sector except services supplied in the exercise of governmental authority.

– Article I:3(b)

Some examples:

Police, fire protection, infrastructural services (roads, etc.),
monetary policy operations, customs administration, ...

...and any other public service (health, education, etc.) meeting the relevant criteria.

Services and the role of governments

Responsibility of public authorities to ensure that some key services are available to the public

- Services of infrastructural importance (transport, energy, etc.)
- Role of non-economic objectives (Police, fire-fighting, health, education, etc.)
- Need to ensure “universal service” (Telecom and Postal)
 - i.e “to guarantee access for everyone, whatever the economic, social or geographical situation, to a service of a specific quality at an affordable price”.

“Governmental services” and other forms of governmental involvement

Difference with Government procurement (GATS Art. XIII)

- Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

Negotiation Strategies

- Building a team

- Lead Negotiator/Coordinator

- (in China's case: *MOFTEC/MOFCOM*)

- Sectoral Negotiators

- Authorities/Agencies responsible for the regulation of Services Industries:

- Financial Authorities, Foreign Investment Regulators, Regulators for Professional, Telecom, Postal, Distribution, Education, Environmental, Cultural, Tourism, Transportation Services, etc.

Negotiation Strategies

- Risk Assessment
- Cost/Benefit Analysis
- Drawing the red line
 - Provide necessary protection or breathing space to domestic industries
 - Prevent possible foreign monopoly of certain sectors/domestic markets due to lack of domestic players/competitors
 - Ensure the integrity of domestic regulatory framework
 - Protect specific national interests

Scheduling Issue (I)

Three key issues

- Market access (XVI)
 - mostly quantitative barriers
- National treatment (XVII)
 - *de jure* and *de facto* discriminatory barriers
- Domestic regulation (VI)
 - all other regulation

Some examples

- Market access: quantitative restrictions, limitation on the number of suppliers; foreign equity limitation
- National treatment: discriminatory measures, subsidies granted only to nationals (*de jure*); prior residency requirement (*de facto*)
- Domestic regulation: non-discriminatory qualification and licensing requirement and procedures and technical standards

Scheduling Issue (II): Clearly define what you want to offer

1. CPC classification: exclusion and part of CPC XXX if necessary
2. Definition and description: as detailed as possible
3. Public services vs. private services

Domestic Regulation

- Necessity test
 - policy objectives
 - least trade restrictive measure
 - reasonably available alternative means
- Transparency
 - beyond Article III
- Detailed rules on licensing
- Qualifications

Equivalence: Members to take account of requirements fulfilled in other countries
- Technical standards
 - presumption in favour of regulation based on international standards
 - requirement to base regulation on international standards

(Contained in China's Working Party Report, para.306-para.308)

Newly acceded members paid more

members	Average number of sectors committed	Range (lowest/highest number of scheduled sectors)
Least-developed	24	1-110
Developing & transition	54	1-154
Developed economies	108	87-117
Accession since 1995	104	37-154

Services Negotiations during China's Accession Negotiation to the WTO

- Members that conducting comprehensive services negotiations with China:
 - Japan (Agreement reached on July9, 1999)
 - U.S. (Agreement reached on Nov15, 1999)
 - Canada (Agreement reached on Nov26, 1999)
 - EU (Agreement reached On May19, 2000)
 - Switzerland (Agreement reached On Sep26, 2000)
- Members that conducting sectoral negotiations with China: Australia, Norway, India, Thailand and others

China's experience in Trade in Services Negotiations during the accession process

Gradual Liberalization (1-6years)

The majority of China's commitments on trade in services were implemented within 3 year after China's accession to the WTO, while certain commitments were implemented within 6 years after China's accession.

Negotiations on trade in services involve

- Commitments on the Liberalization of Specific Sectors
- 7 amendments were made by 1997 since the submission of China's original commitments in 1991. more and more sectors were included in the schedule and the level of commitments were upgraded.
- Comprehensive negotiations from 1997 to 2000

Status of Developing Country: Transitional Period of Liberalization

- Geographic limitation
- Quantitative limitation
- Phase-in period
- Ways of establishments
- Business Scope

Elimination of Geographic limitations

- Legal services: one year;
- Telecom services: paging 2 years, mobile phone service 5 years, fixed line 6 years;
- Distribution Services: 3 years;
- Banking services: 5 years;
- Tourism services: 6 years;

Wholly foreign-owned enterprises allowed

- Architectural and engineering services: 5 years;
- Advertising services: 4 years;
- Management Consulting services: 6 years;
- Packaging services: 3 years;
- Maintenance and repair services: 3 years;
- Express delivery: 4 years;
- Construction services: 3 years;

Wholly foreign-owned enterprises allowed (Continued)

- Distribution services: 3 years;
- Non-life insurance services: 2 years;
- Hotel and restaurant services: 4 years;
- Tourism services: 6 years;
- Storage and Warehousing services: 3 years;
- Freight forwarding services: 4 years;

Business Scope expanded

- Insurance services: 3 years after accession, foreign insurers will be permitted to provide **health insurance, group insurance and pension /annuities insurance** to foreigners and Chinese;
- Banking services: 5 years after accession, foreign financial institutions will be permitted to provide services **all Chinese clients.**

Example: Distribution Services

Wholesaling Services

- 1 year after accession to the WTO, joint ventures permitted. All imported and domestically produced products, except books, newspapers, magazines, pharmaceutical products, pesticides and mulching films, chemical fertilizers, processed oil and crude oil will be gradually liberalized within 5 years.
- 2 years after, foreign majority ownership will be permitted and no geographic or quantitative restrictions will apply.
- 3 years after accession, none except for chemical fertilizers, processed oil and crude oil within five years after accession.

Retailing Services

- joint ventures in five Special Economic Zones six cities (Beijing, Shanghai, Tianjin, Guangzhou, Dalian and Qingdao). Upon accession, Zhengzhou and Wuhan will be immediately open to JVs.
- 2 years after accession, foreign majority control will be permitted in all provincial capitals, Chongqing and Ningbo will be open.
- all products, except some products with phase-in period.
- None, within 3 years after accession

Purpose of Transitional Period: Get Domestic Service Industry Prepared

- Transition from planned economy to market economy
- Give domestic service providers time to adjust facing foreign competition.
- Give time to regulators to improve the capacity of supervision.

Sensitive Sectors

Service sectors still with substantial market access limitations are limited:

- Telecommunication services, Life insurance, Securities services : majority share-holding is not allowed;
- Audio-visual services: most sub-sectors are not committed;
- Legal services: Chinese law services are not allowed.