

A paper submitted to participants by Colombia in May 2012.

Colombia elaborates on the two different approaches proposed by participants, a positive listing vs a negative listing.

SERVICES PLURILATERAL INITIATIVE

Homework questions

POSSIBLE ARCHITECTURE OF AN AGREEMENT: POSITIVE AND NEGATIVE-LIST APPROACHES

Colombia's experience

1. During the last years Colombia has negotiated / is negotiating Free Trade Agreements (FTA's) that include provisions to regulate trade in services and investment.
2. The first negotiating option for Colombia is following a NAFTA approach, which covers services trade through different chapters: Cross-Border Trade in Services (modes 1, 2 and 4), Investment, Telecom, Financial Services (self-contained chapter) and Temporary Entry of Business Persons.
3. However, there have been cases in which GATS architecture has been used.
4. In the case of the EFTA-Colombia agreement, that group of countries proposed a GATS services chapter but there was one particularity as it had the option of choosing a positive or negative liberalization approach. At the end both parties chose the first one but it is important to highlight this precedent for RGF analysis, in case it would be relevant.
5. Colombia has reflected its current level of liberalization in both types of approaches. It has been a more complex task in the case of a positive lists scheme, especially regarding future measures and a transparency mechanism to identify the applicable legislation.
6. Colombia has identified some services sectors where there could be a need to introduce new regulations in the future, in order to meet national policy objectives. Those future measures could breach one or various obligations under the services chapter so Colombia has tried to reflect it under both approaches. Particularly, in the case of a positive list, for those sectors the alternative used has been taking unbound commitments. There is an example of a future measure for one of the sectors identified sectors and the way Colombia has reflected it under both liberalization approaches:

ANNEX II		POSITIVE LIST	
Sector	Research and development services	Sector or subsector	Research and development services
Obligations concerned	Market Access	Limitations on market access	
Description	<u>Cross-border Trade in Services</u> Colombia reserves the right to adopt or maintain any measure.	Modes 1 and 2	Unbound

7. Additionally, to cover broader sensitive areas (across-sectors) that require particular treatments, some "special notes" were included. These notes guarantee the government the possibility to implement measures that might affect the liberalization commitments, but only for very specific and limited reasons (similar to Annex II under a negative list approach). Maybe the archetypical example of such notes is the one aimed to protect the "economical disadvantaged minorities".
8. Unfortunately it has not been possible to design a clause that contains an inventory of current measures that support each commitment under a positive list approach. Alternatively it has been used a "review" provision, which aim is further liberalizing trade in services, and in doing so the task consists in reviewing the schedules of specific commitments periodically, to provide for a reduction or elimination of remaining discrimination between the parties.
9. It is also important to mention that even in the case of an annex II reservation, there is a need to consider the development of procedures to increase the transparency of those kind measures. It means that a country, according to annex II, can issue a measure in future which is against any of the obligations of the chapter provisions. However, there has not been developed a transparency mechanism to make that measure available to the other party.
10. A final remark has to be made in relation to the NMF clause. In the positive list approach agreements, there is always a very broad NMF exception that covers both Agreements notified under Article V of GATS and advantages conferred to adjacent countries that facilitate exchange to contiguous frontier zones. Nonetheless, a commitment to afford adequate opportunity to negotiate similar deeper commitments is included (when technically feasible).