Japan and the WTO’s agreement on TRIMs and GATS

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Abstract
This article argues that in the framework of the WTO, the interests of Japan and other developed countries in general coincide with regard to the WTO’s agreements on TRIMs and GATS, for enhancement of the economic interests of their respective multinational corporations. Thus it was despite considerable resistance from the developing countries that the developed countries managed to include the TRIMs agreement into the Uruguay Round. Japan supports the new WTO round on trade liberalization that particularly includes expansion of multinational investment rules in the WTO. Further expansion of services, in the framework of GATS, is also on the broad agenda of Japan. It is in this context argued that the corporations of the US, the EU, Canada and Japan are the main beneficiaries of TRIMS and GATS, as they dominate various services sectors although these agreements and their expansion have been criticized and resisted by most of the developing countries. However, Japan is argued to be relatively less pressing for liberalization of services as its own services sector has remained somewhat protected.

Keywords: Japan; WTO; TRIMs; GATS; MNCs

I. Introduction
The interests of Japan and other developed countries coincide with regard to the WTO’s agreements on TRIMs (Trade related investment measures) and GATS (General Agreement on Trade in Services), in pursuance of the economic interests of their respective multinational corporations. Thus in general it can be argued that the WTO and its related agreements tend to serve Japan’s interests well despite the fact that its services sector faces some criticism from external actors, such as the US.

Japan considers that the WTO constitutes a rule-based system and supports its several pursuits. Such a consideration and other issues related to TRIMs and GATS have been examined as important areas in the context of Japan’s role and participation in the WTO. Moreover, Japan’s support for organizing a new round of WTO negotiations on TRIMs and services, to respond to various challenges and to cater for its various interests has been discussed.

II. Japan and the WTO Agreement on TRIMS
a. Trade-Related Investment Measures
The WTO’s TRIMs Agreement aims at eliminating the trade-distorting effects of investment measures taken by WTO members. It does not introduce any new obligations, but merely prohibits TRIMs considered inconsistent with the provisions of the GATT
1994 for both agricultural and industrial goods. Actually during the Uruguay Round negotiations, developed countries argued for the elimination of all TRIMs, rather than just minimizing and avoiding their adverse effects on trade (UNDP, 2003b, p.238). The US and Japan favored an all-encompassing investment regime, including the right of establishment and national treatment, with TRIMs as one part of it (UNDP, 2003b, p.238).

However, the attempt could not materialize, as there was strong opposition from many developing countries to introduce investment policies and rules in the trade negotiations. Developing countries called for strict adherence to the GATT mandate and for limiting negotiations to investment measures with direct and significant adverse effects on trade (UNDP, 2003b, p.238). Therefore, the present TRIMs agreement is limited only to prevent ‘trade-related investment measures’. Other investment policies, such as a country’s policy on foreign investment, criteria for entry of firms, and the conditions for their establishment, are thus excluded from TRIMs agreement; however, Article 9 called for a review of the agreement’s operation within five years of its entry into force (UNDP, 2003b, p.238).

Nevertheless, major differences remain on the issue of bringing investment under multilateral trade disciplines. Japan’s argument is that while the General Agreement on Trade in Services (GATS) provides a certain level of rules for investment in service sectors, international rules for investment, particularly in manufacturing sectors, have been less developed (WTO, 1999a). For it, the present agreement is far from satisfactory, particularly from the viewpoint of firms which need predictability in their investment projects. According to Japan, the next WTO negotiations, therefore, should include multilateral rule making on investment.

It is in this context that being not satisfied with the TRIMs agreement, Japan and other developed countries, maintained intense pressure for the inclusion of four new issues (investment, competition policy, trade facilitation, and government procurement) at the first WTO ministerial conference, held in Singapore in 1996. Investment was probably the most important to them, (UNDP, 2003b, p.239) as it became the biggest and most controversial issue in the run-up to the first Ministerial Conference. Despite most developing countries’ resistance to the inclusion of the above noted four issues (subsequently dubbed the ‘Singapore issues’), members agreed that all four should be studied further with a view to recommending whether negotiations should take place on them at a future ministerial conference.

Mainly it is Japan and the EU that continue with proposals to get developing countries to do away with regulatory obstacles to investment, as well as a plan to grant multinational corporations the right to sue the governments of countries where their rights to properties and business activities are violated. They try to provide a most-favored-nation status under which recipient nations of investment would be prohibited from applying discriminatory practices to multinational companies based on their countries of origin. They also make efforts to provide greater transparency concerning regulations governing investments by companies of foreign origin.

Also, it was mainly due to efforts by Japan and the EU that the OECD began trying to reach a Multilateral Agreement on Investment (MAI) among its members. The
The main features of the proposed MAI included the right to establishment, national treatment, banning of performance requirements, right of entry and exit of funds, etc. The common motives are the interests of transnational corporations, since the vast majority of transnational corporations are based in the OECD countries, to ensure uniform global rules that would reduce both their transactions costs and the uncertainty surrounding their investment decisions while simultaneously giving secure property rights (UNDP, 2003b, p.242).

Though the efforts in the OECD could not succeed, signifying how difficult it is to agree on investment issues even among countries at similar levels of human development, Japan and the EU continue to propose such rules protecting investment at various trade liberalization talks at the WTO. Japan particularly aspires to improving the transparency and stability of the legal systems in host countries (WTO, 1999a). For Japan, the establishment of multinational investment rules in the WTO would enhance predictability for investors, and thus further expand foreign direct investment and world trade.

Many developing countries, however, have opposed such proposals arguing that these would result in attaching excessive emphasis on the rights of multinational corporations. Developing countries view the objectives of investor protection as an attempt to revive the failed Multilateral Agreement on Investment in order to benefit the multi-national corporations. Thus, instead of agreeing to introduce new issues such as investment, the developing countries strive for the review and reform of existing WTO agreements before any new issues are added to the trade agenda.

Actually TRIMs agreement is viewed by many developing countries as a major obstacle as they are particularly concerned about the agreement’s negative effects on employment and value added, because it prohibits late-industrializing countries from pursuing domestic content policies (UNDP, 2003b, p.239). Moreover, the developing countries argue that some of the most successful countries have not relied heavily on foreign direct investment, e.g., Japan and South Korea relied only marginally on foreign direct investment for their success (UNDP, 2003b, p.246).

However, Japan contends that establishment of investment rules in the WTO will benefit both developed and developing countries. The expansion of foreign direct investment resulting from the establishment of investment rules would stimulate the economies of developing countries, by expanding their employment and improving their level of technology (WTO, 1999a). Performance requirements, which developing countries have adopted as a means for economic development policies, ‘may not only restrict or distort trade, but may make it difficult for investors to develop their own international business operations in an efficient manner’ (WTO, 1999a).

Japan also prefers that the existing WTO dispute settlement mechanism should be used for disputes under future investment rules in the WTO (WTO, 1999a). Its own complaint regarding certain measures affecting the automotive industry of Indonesia became a prominent case under TRIMs. In 1997, Japan asked a WTO panel to investigate its complaints that Indonesia was in violation of a number of articles of the
TRIMs agreement. (The EU and the US reserved third-party rights in the case). On 23 July 1998, the Dispute Settlement Body (the DSB) adopted the Panel Report that the local content requirements linked to certain sales tax benefits and customs duty benefits violate the provisions of certain articles of the TRIMs agreement and also that of GATT. Indonesia subsequently terminated its National Car Program, and thus the case was resolved in Japan’s favor.

Overall, Japan continues to call for the establishment of multilateral investment rules under the WTO. The 2001 WTO Ministerial Conference in Doha remained deadlocked on investment and three other ‘Singapore issues’ (competition policy, trade facilitation, and transparency in government procurement). Most developed countries, especially Japan and the EU, wanted to start negotiating an agreement on these four issues after the Doha conference, while many developing countries opposed such endeavors.

III. Japan and the GATS (General Agreement on Trade in Services)

Another important area in the WTO is trade in services. Its importance can be realized from the fact that services is the fastest growing component of international trade, increasing from US$ 0.4 trillion in 1985 to US$ 1.4 trillion in 1999 - equal to almost one-quarter of global trade in goods and about three-fifths of foreign direct investment flows (UNDP, 2003b, p.255). In 1997 developed countries accounted for about two-thirds of trade in services (exports and imports) (UNDP, 2003b, p.255). The share of services in Japan's GDP has been growing steadily; it accounted for 70.1% of GDP in 2000, up from 68.8% in 1995 (WTO, 2002b). This sector is also the largest contributor to output and employment in the Japanese economy accounting for 70.1% of GDP in 2000, and for 68.6% of employment in 2000 (WTO, 2002b).

Primarily, the General Agreement on Trade in Services (GATS) provides a legal framework for trade in services, defined to cover a range of areas including transport, investment, education, communications, financial services, energy and water services and movement of persons (UNDP, 2003b, p.255). The agreement also calls for the progressive liberalization of regulations that retard trade and investment in services (UNDP, 2003b, p.255).

Under the GATS, countries have to select sectors and subsectors that they will subject to principles of market access and national treatment, and to lay down conditions for such access and treatment (UNDP, 2003b, p.257). Since the MFN exemption is an irregular departure from one of the most fundamental principles upon which the multilateral trading system has been founded, Japan stresses that only necessary and minimum exemptions should be allowed (WTO, 1999b). However, Japan regards the current situation of MFN exemptions far from satisfactory (WTO, 1999b). Japan's own Schedule of Specific Commitments under the GATS covers 121 of the 160-odd sectors; Japan has not taken any MFN exemptions (WTO, 2002b).

Furthermore, there were a number of issues left unsettled in the Uruguay Round of negotiations and thus further work was mandated in various parts of the GATS. It was in 1997, that agreements were reached on basic telecommunications and financial services, resulting in substantial liberalization commitments-especially in the form of access to
investment. However, it is argued that these agreements were concluded as a result of pressure on developing countries by the EU and the US.

In 1995, negotiations on the financial services sector failed when the US withdrew, mainly due to the reluctance of many developing countries to open their markets to the US financial services corporations. Thus, the financial services negotiations were an unsolved leftover from Uruguay Round negotiations on services (GATS). However, negotiations were relaunched in April 1997. As many developing countries were averse to further liberalize their financial services sectors, the European Commission and the US made efforts to bring about the desired change. In December 1997, an agreement was signed on the liberalization of the financial services sectors, including banking and insurance.

This agreement, which entered into force on March 1, 1999, is designed to remove many obstacles for financial services corporations wanting to enter developing countries' markets, which have policies in place to protect the domestic banking and insurance sectors. In practice, the overall benefits are supposed to accrue to the banking, securities and insurance corporations based in the EU, the US and Japan that can now enter new markets in developing countries. The prospect of services companies from the developing countries competing in developed markets is illusory, though the EU, the US and their financial services corporations argued that the market openings will make the banking and insurance industries in developing countries more efficient by increasing competition. Generally developing countries are likely to lose a number of jobs as local banks face competition by developed financial services corporations with far greater resources.

Domestically, the services sectors in the developed countries are considerably mature and well-performing. As far as Japan is concerned, it has introduced financial reforms to make the sector more efficient and competitive, though these reforms have concentrated on strengthening prudential norms (WTO, 2002b). The banking sector has undergone a substantial reorganization, and the authorities also maintain that foreign banks with Japanese branches or agencies are subject to regulations no less favorable than those applied to domestic banks (WTO, 2002b). At the same time, Japan tightened control of certain shareholders to prevent inappropriate management of banks (thereby improving corporate governance) (WTO, 2002b). The authorities consider that prudential requirements are no more onerous for nationally licensed subsidiaries of foreign banks than for domestic banks (WTO, 2002b).

Like banking, Japan's insurance sector has also undergone substantial change (WTO, 2002b). Overall, for Japan trade in financial services (except for insurance) increased in 1999 (WTO, 2002b). In 2001, Japanese banking and securities firms generated cross-border exports of ¥329 billion, up from ¥232 billion in 1999; imports declined to ¥200 billion in 2001, from ¥309 billion in 1999 (WTO, 2002b).

The original deadline of the WTO Basic Telecommunications negotiation was April 30, 1996, which was postponed until February 15, 1997. In the negotiations held in January and February of 1997, many new commitments were submitted from over sixty
countries and the agreement was reached on February 15, 1997. Through global liberalization of the basic telecommunications services such as voice telephone services, the agreement aimed at the introduction of competition, the reduction of service rates, and diversification of services. The agreement applies the principle of most-favored-nation treatment, instead of the reciprocity principle, in the arena of telecommunications. The WTO Dispute Settlement System can also be applied and countries and regions that have submitted offers include Japan and Pakistan.

Along with the enforcement of the agreement, Japan abolished foreign ownership restrictions on Type I telecommunications business carriers (excluding NTT and KDDI). Later, Japan implemented further regulatory reform in the telecommunications sector with a view to enhancing competition (WTO, 2002b). Telecommunications charges have come down, and moreover in the telecommunications industry, the limit on foreign ownership restrictions of NTT was relaxed from 20% to one third, and an independent dispute-settlement commission was established (WTO, 2002b).

However, at the same time, Japan faces some criticism as the US argues that, despite taking some steps to promote deregulation in the telecommunications sector, Japan's market remains monopolistic, afflicting Japan with rates for telephone and internet services well above developed-country standards and that might be contrary to the terms of the 1998 WTO Basic Telecommunications Agreement.

Almost all of Japan's internationally traded goods are shipped by maritime transport and in 2000, the volume of Japan's seaborne cargo increased by 4.6%, accounting for 16.6% of the world's total (WTO, 2002b). Maritime transport, which was not completed in the first round of negotiations, was included in the 2000 negotiations. As for this sector, Japanese authorities maintain that there are no discriminatory measures preventing foreign participation in international maritime services (WTO, 2002b). The authorities are of the view that Japan's bilateral agreements on passenger or cargo shipping provide national treatment to partners on a reciprocal basis (WTO, 2002b). However, governmental restrictions allow only Japanese-flag carriers to carry cargo and passengers between Japanese ports (WTO, 2002b).

Overall, the inclusion of trade in services in the Uruguay Round was largely due to initiatives by transnational financial and telecommunications corporations. This was resisted by the developing countries. At the end of the Uruguay Round, it was also agreed to continue negotiations on one mode of supply (movement of natural persons) under the GATS, however, commitments on the movement of natural persons are limited in scope (UNDP, 2003b, p.257). In this context, it is also argued that the lack of commercially meaningful commitments by developed countries on the movement of natural persons is the basic source of the imbalance in services trade (UNDP, 2003b, p.272).

While developed countries are pressing hard to further expand the commitments such as in financial services and health and other basic services, GATS lacks operationalization of its provisions on the movement of labor (UNDP, 2003b, p.272, 274). The sectoral negotiations on financial and telecommunication services, etc. did not provide reciprocal benefits for developing countries, and it is argued that this has created a heavy bias in favor of the movement of capital, technology-intensive services and developed countries (UNDP, 2003b, p.274). Transnational corporations based in foreign
countries account for about 33 percent of global services, while the transfer of labor accounts for only 1 percent (UNDP, 2003b, p.274).

At the end of the Uruguay Round the GATS also left open for future negotiations articles on government procurement and subsidies. Negotiations on these issues could not be concluded and have become part of the new round of negotiations. Japan has been advocating, with other Members, that the scope of the next round of services negotiations should cover all sectors and modes of supply (WTO, 1999b). Japan argues that by doing so, all members, including developing countries, could accommodate their respective interests.

IV. Conclusion

Japan finds itself with better opportunities to safeguard its interests in the context of the WTO agreements on TRIMs, GATS, and the WTO dispute settlement system. However, as there are a number of unresolved issues regarding the implementation of the Agreement on TRIMs and the GATS, Japan maintains its priorities for the ongoing developments in the WTO.

It was despite considerable resistance from the developing countries that the developed countries managed to include the TRIMs agreement into the Uruguay Round. The EU and Japan have also made attempts to conclude a multilateral agreement on investment. Their common interests relate to their respective transnational corporations, thus trying to reduce transaction costs and uncertainty surrounding investment decisions for their MNCs. The developed countries, particularly Japan and the EU, also continue to push for the inclusion of four new issues (investment, competition policy, trade facilitation, and government procurement). All these agreements also tend to safeguard the rights of the multinational corporations, mainly located in the developed countries.

Japan contends that establishment of investment rules in the WTO benefit both developed and developing countries by stimulating the economies and by improving their level of technology. It supports investors to develop their own international business operations in an efficient manner with the least number of restrictions from the host countries. It is in this context that Japan strives for the establishment and expansion of multinational investment rules in the WTO; with the basic purpose to enhance predictability for its investors. Thus, Japan is not satisfied with the present international rules for investment (TRIMs agreement) and strives for major developments in this area. Japan supports the new WTO round on trade liberalization that particularly includes multilateral rule making on investment.

Further expansion of services, in the framework of GATS, is also on the broad agenda of Japan. The current situation of MFN exemptions is far from satisfactory for Japan. It advocates that the scope of the next round of services negotiations should be further expanded, covering all sectors and modes of supply. It is in this context argued that the corporations of the US, the EU, Canada and Japan are the main beneficiaries of TRIMS and GATS, as they dominate in financial, banking, electrical, telecommunications, health, education and other services. But as far as developing
countries are concerned, these agreements and their expansion have been criticized and resisted by most of them.

Moreover, it is important to note that, on the liberalization of trade in services, though developed countries demand liberalization of financial and professional services on the part of developing countries, Japan is argued to be relatively less pressing as compared to the US and the EU. The main reason argued is that Japan’s own services sector has remained somewhat protected. Critics, such as the US, while referring to the barriers in the Japanese economy that restrict access for foreign goods, services and investment, at times also raise questions about Japan's commitment to WTO rules in practice.

1 Some of the case details are that in 1993, Indonesia formulated rules linking local content to preferential tariff and luxury tax rates for cars sold in Indonesia. Under the February 1996 National Car Program, Indonesia allowed companies designated as ‘pioneer firms’ to import auto parts tariff-free, and to sell ‘national cars’ luxury tax-free, for three years. On June 4, 1996, it amended the National Car Program providing that ‘national cars’ produced abroad could be imported duty-free into Indonesia, and could be sold luxury tax-free. After initiation of cases by Japan, and also by the US and the EU, the WTO Panel report ruled that Indonesia’s National Car Program was in violation of the TRIMs Agreement. On 23 July 1998, the DSB adopted the Panel Report and requested Indonesia to bring its measures into conformity with its obligations under the WTO Agreement.

2 In Japan, the Telecommunications Business Law regulates telecom companies offering fixed-line, mobile, including PHS (personal handy phone system) phone services, and Internet access. Companies that own telecom lines, such as NTT East Corp., NTT West Corp., NTT Do Como Inc. and KDDI Corp., are categorized as Type 1 telecommunications service providers. Such carriers need the approval of the Telecommunications Ministry to discontinue services or add new ones. Smaller firms, such as Internet service providers, that lease telecom lines from the NTT group or other companies, are referred to as Type 2 carriers. These firms which make up more than 90% of Japan's telecom industry, are more loosely regulated, and simply have to notify the Telecommunications Ministry of their intention to end a particular service.

References


