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Disappointing results for south so far in GATS talks
Martin Khor^[1]

The services negotiations in the WTO have so far not attained an overall balance of rights and obligations, the increase in developing countries' service exports has been small, and the initial offers by major trading partners has been disappointing for developing countries, according to an UNCTAD secretariat paper.

The paper, "Trade in services and development implications" was prepared for the Commission on Trade in Goods and Services and Commodities, which held on 16 March two panel discussions on services.

The UNCTAD secretariat paper gives a comprehensive treatment of services and

development, covering trends in the global services economy, issues in infrastructure

services, policy reform in the services sector, economic integration and services and the WTO services negotiations.

The paper says that the assessment of trade in services continues to be a main concern for developing countries, as lack of assessment and information is a main impediment to their more active participation in the services negotiations. Lack of assessment also prevents the elaboration of sound domestic services policies.

For now, only rough, partial or sector-specific assessment exists, said the UNCTAD secretariat paper, adding that thus far, the assessment has shown that an overall balance of rights and obligations has not been attained under the GATS; the increase in developing countries' world service exports has been

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small; and the objectives of Article IV have not been achieved (because of export barriers, supply constraints and lack of commercially meaningful commitments).

The paper said that the assessment also showed that benefits of privatization and liberalization are not automatic; that there is a need for policy flexibility and proper sequencing of liberalization; priority attention is needed to ensure access to essential services; and there is need for assistance for nascent service sectors and SMEs (small and medium sized enterprises) in developing countries.

In the perception of developing countries, a preliminary analysis of initial offers by the major trading partners reveals a number of things, said UNCTAD.

"Several offers seem to go back on previous commitments or lack real change in the level of commitment, despite modifications. This is done either by redefining the sector/sub-sector to which a commitment applies or by going from one partial commitment to another one.

"Initial offers often use new classifications (even with respect to sectors that are not officially part of the WTO classification list) that have received no multilateral approval and are still under discussion. This leads to uncertainty as to what exactly a country is offering.

"Also, offers seem to indicate that some countries are not abandoning any MFN exemptions, but rather introducing new ones. This can be cause for concern, as the impact of even the existing exemptions has not yet been assessed. Offers also appear to concentrate on certain industries, mostly bypassing certain sensitive sectors, for example, health, audiovisual or labour-intensive services, particularly those supplied through Mode 4 and at lower skill levels, where developing countries have their comparative advantage.

"Finally, certain offers refer to the notion of reciprocity. While the GATS request-offer process naturally builds upon bargaining and exchange processes, flexibility should be maintained for developing countries."

Given that development is at the heart of the Doha Work Programme, GATS negotiations should seek to ensure better prospects for developing countries in terms of a more balanced and equitable distribution of benefits from trade liberalization. Liberalization in

Mode 4 and sectors of particular interest to developing countries will be the litmus test.

The UNCTAD secretariat paper also highlighted two recent WTO dispute settlement cases involving services that pointed to the difficulties facing developing and also developed countries in scheduling their services commitments and of anticipating the potential implications of such commitments.

The first was the Telmex dispute, which is about whether Mexico's laws and regulations for the supply of public telecom services are consistent with its commitments under the GATS.

The main issues are whether provision by Telmex (a major supplier) of interconnection to US basic telecom suppliers is based on cost-oriented and reasonable rates, terms and conditions; whether Telmex is engaging in anti-competitive practices; and whether Mexico has failed to ensure that US basic telecom suppliers have access to, and use of, public telecom networks and services.

The Panel ruled that in determining whether interconnection costs are reasonable, only the actual costs of interconnection are to be taken into account (excluding infrastructure construction and maintenance costs), that Mexico had not taken appropriate measures to prevent Telmex from engaging in anti-competitive practices, and that Mexico had an obligation to provide access to and use of private circuits.

While the Panel emphasized that its findings in no way prevent Mexico from pursuing development objectives, this case nonetheless points to the difficulty in formulating commitments in a manner that truly safeguards development options, the paper said.

The second case relates to cross-border gambling services. Here, the United States claimed - unsuccessfully - that it had intended to exclude Internet gambling from its commitments. The ruling also provides an interpretation of the general exceptions clause of the GATS (Article XIV), indicating that, in invoking Article XIV, Members have an obligation to consult with the other party or parties to find a least trade-restrictive measure.

It also exposes the systemic difficulty for smaller countries to oblige their trading partners (particularly major players) to comply with rulings against them, said UNCTAD.

Both the Telmex and the Gambling case highlight the difficulty of foreseeing the potential implications of scheduled commitments (even for countries with considerable experience in the negotiation of international trade agreements) and the need to carefully schedule the intended commitments, added the UNCTAD secretariat paper. They flag the risk that panels and the Appellate Body may interpret schedules of specific commitments in a manner different from what the scheduling country had intended.

The UNCTAD secretariat paper also deals with aspects of the ongoing GATS negotiations on rules, including emergency safeguard measures, subsidies, government procurement and domestic regulation.

On possible emergency safeguard measures (ESM), the paper said that this has been identified as an area of prime developmental importance, although there is a lack of consensus on the desirability and feasibility of such measures.

The ASEAN Members' draft ESM agreement, which was the main impetus for discussions, had an annex containing the main difficult areas, such as the possibility of applying safeguard measures to established foreign suppliers (Mode 3), the definition of domestic industry, the impact of a safeguard measure on national treatment and most-favoured-nation (MFN) treatment, and acquired rights.

The UNCTAD secretariat paper said that there are several grounds on which to justify ESM in services. The nature of services trade renders it prone to unforeseen developments, and a safety belt could assist countries in their liberalization efforts. It could also help address adjustment costs.

Safeguard measures are an important political tool that can make the difference for Governments in terms of appeasing the potential "losers" of liberalization and reform, while disciplining Governments to restructure within a particular window of time. There nonetheless remain concerns to be addressed.

On subsidies, UNCTAD said that these can have a detrimental effect on international trade, in particular exports of developing countries. Many Governments subsidize their services sectors including through export support to their services suppliers. In Australia, between 1997 and 2002, assistance to services exporters

amounted to \$1.35 billion. This assistance was granted to almost every services sector through direct financial assistance, funding to institutions and tax expenditures available to exporters.

According to the UNCTAD secretariat paper, negotiations on subsidies disciplines must pay attention to the special concerns of developing countries, e.g. subsidies aimed at building competitiveness in priority service sectors and meeting social and development objectives and the priority removal of trade-distorting subsidies of developed countries.

On government procurement, the paper clarified that GATS MFN, market access and national treatment obligations do not apply to government procurement (GP) by governmental agencies 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.

A major stumbling block in the present negotiations in GATS is the lack of clarity on the mandate and particularly on whether market access issues are covered. A recent EC communication proposes a framework for services GP - basically providing for commitments on GP to be taken within the framework of schedules of specific commitments, listed in a fifth column on limitations on GP.

Developing countries are hesitant to open up their markets for GP to international tendering because they fear that foreign suppliers will crowd out local firms and the latter will at the same time be unable to gain access to foreign GP markets because of lack of competitiveness and the complexity of the tendering process, said UNCTAD.

Concerns have also been raised on the implications of transparency disciplines on market access and developing countries' use of GP as a tool to pursue social and development objectives. However, in light of the potential beneficial effects of competition, more analysis is needed on costs and benefits of these different options.

On domestic regulation, the UNCTAD paper clarified that Article VI.4 of the GATS mandates the development of necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements

and procedures do not constitute unnecessary barriers to trade in services.

When pursuing this mandate, there is a need to establish a balance between preserving the right to regulate and ensuring that legitimate measures are not applied in an arbitrary manner or as a disguised barrier to trade. The right to regulate is of particular importance for developing countries, as many of them do not yet have an optimal regulatory and institutional framework in place.

Recent contributions address measures relating to administrative procedures for obtaining visas or entry permits, experiences with disciplines on technical standards and regulations, issues related to transparency and the relationship between future VI.4 disciplines and market access and national treatment. Qualification requirements and recognition issues have also figured prominently, said the paper.

Another aspect is possible disciplines on transparency, where some view the concept as going beyond publishing information on measures pertaining to services trade, to include also prior notification and comment procedures.

Such an expanded concept of transparency may create administrative burdens and costs for developing countries, which are concerned about any undue influence that foreign companies and Governments could exert on their domestic regulatory processes. Careful consideration of such a broadened notion of transparency is needed, urged UNCTAD.

Necessity is seen as a concept to strike a balance between the right to regulate and the requirement not to unduly restrict trade, said the UNCTAD secretariat paper. Thus, developing countries need to ensure that any possible future disciplines do not prejudice their flexibility to undertake regulatory and institutional reform and their ability to meet public policy objectives.

Technical standards, including standards at the international level, are also being discussed. Any work on international standards would have to bear in mind the particular difficulties of developing countries in participating effectively in international standard-setting bodies and processes.

The UNCTAD paper concluded that specific consideration may need to be given to: developing countries' need for flexibility and

ways to implement it (e.g. regarding the concepts of transparency, less trade restrictiveness, or national policy objective); the creation of S&D obligations and ways to ensure their effectiveness (e.g. regarding technical assistance in the context of regulatory reform, and ways to facilitate developing countries' effective participation in international standardizing bodies); and the overall context of any future disciplines. Ultimately, to maximize developmental gains, future disciplines on domestic regulation should facilitate exports of developing countries, particularly through movement of natural persons.

The UNCTAD secretariat paper also comments on the growth of regional trade agreements (RTAs) covering services trade. While some RTAs in part mirror the GATS (e.g. domestic regulation or recognition issues), others go beyond it (e.g. a priori transparency, GATS plus) or fall short of it (e.g. excluding the local level from the coverage).

Multiple negotiating processes have resulted in a complex and overlapping network of rules with different obligations. This creates challenges for developing countries, the paper said, adding that North-South RTAs, for example, might frequently entail liberalization that is deeper and faster than the one achieved at the multilateral or regional (South-South) level. This may put particular pressure on developing countries' domestic regulatory frameworks.

Also, imbalances in negotiating strength and capacities may create pressures and result in far-reaching obligations that may not reflect a developing country's development priorities. With respect to rule making, several RTAs include provisions for prior comment on proposed changes to services regulations on either a "best endeavour" or an obligatory basis, an aspect that goes beyond the GATS.

RTA negotiations following a negative list approach, which automatically includes new services, may result in developing countries binding their market opening at a stage that is more liberal than their multilateral GATS commitments. This may happen without them having a comprehensive understanding of the potential implications thereof, said the paper.

Economic implications of deeper commitments may be even more far-reaching if they are negotiated between a developed country and a

South-South regional grouping, with the former only slowly realizing its own integration process. Such circumstances could impede South-South trade, which may be overtaken by North-South imports.

Thus, whether, how and with whom services liberalization should be pursued in a regional context remain crucial decisions that need to be taken carefully and on the basis of a regional group's specific economic, social and developmental circumstances, said the UNCTAD secretariat paper.

On policy reforms in the services sector, UNCTAD said that developing countries' main challenge is how to strengthen domestic supply capacity and reconcile trade, development, social and equity considerations. Liberalization of trade in services has become a concern for many stakeholders, particularly when reform reaches into areas previously considered the public sector domain.

The choice of policies ranges from preserving the role of the Government in public goods to full privatization and liberalization of a sector. All these may be viable depending on the prevailing economic and social conditions in a country and in the international markets. At the same time, commitments under bilateral, regional, and multilateral trade negotiations on services limit certain policy options. In making such commitments, developing countries need clarity and an assurance that these are the best development options.

The experience of developing countries reveals that, for positive outcomes to result, liberalization must proceed at a speed that is not too rapid for local actors, the regulatory framework and social safety net must be adequate, and there must be a competitive business environment and suitable accompanying policies to ensure that economies enhance their capacity to integrate beneficially into the world economy, said the paper.

The importance of sequencing reforms is well established in theory, but the specific content of this sequencing is less clear, and having a number of benchmarks on how to proceed would facilitate decision-making. It should be recognized that there is no "one size fits all" policy framework, either across services sectors or across countries. The challenge is to elucidate what policy framework should be used for what sectors and under what national and international conditions services'

contribution to economic growth and sustainable development will be enhanced.

The UNCTAD secretariat paper provides case studies from China and Thailand to show problems arising from domestic reforms.

China's assessment of reforms in its banking sector is that increasing participation of foreign banks improved the financial system and provided more advanced services to consumers. However, domestic banks are losing market shares with the shift of high-end consumers and capable executives to foreign banks.

In the distribution sector, Chinese SMEs found it difficult to develop their business in the face of competition from big foreign competitors (e.g. China's biggest retailer had a sales volume of less than 1% of that of the biggest retailer from the United States).

After China's accession to the WTO, 28 new foreign-invested retail chain stores have been established. Though customers may enjoy better services and cheaper merchandise, many small local retailing stores collapsed. The challenge is now how to deal with such situations, since these firms are crucial to employment and economic dynamics. China's conclusion is that liberalizing gradually is key, the UNCTAD paper said.

Thailand has gradually liberalized its retail trade since the late 1980s. Starting from 1997, and as a reaction to the financial crisis, FDI in retail services increased remarkably. This brought benefits and costs. Some retailers offered cheaper products and more varieties, improved their distribution networks and inventory control, and generated employment.

But the closing down of many small traditional shops (several thousands a year) and the disappearance of traditional middlemen led to a negative reaction in a large segment of the population. In response, the Government undertook regulatory action to prevent further negative ramifications, especially for small, traditional retailers.

Examining issues in infrastructure services, the UNCTAD paper said that the function of providing essential services has traditionally fallen within the public domain, with the last decades seeing a trend towards opening up essential service sectors to foreign or domestic competition. Privatization and liberalization have produced mixed results, either increasing

prices for the poor or entailing other adjustment costs (e.g. loss of employment).

Liberalization and privatisation have to be accompanied by appropriate regulatory measures and have to be carefully managed, and mixed experiences are considered the result of regulatory failures. If the transition process had been adequately managed and regulated, it would in theory have been possible to reap the benefits of liberalization and privatisation in full. However, said the paper, even for countries with strong regulatory frameworks, there is no guarantee of success in privatisation processes as the United Kingdom (railway) and California (energy) cases show.

Southern Africa and the free movement of natural persons; linking regional developments with the multilateral trade Negotiations.

*By Elijah Munyuki
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The free movement of “natural persons” simply refers to the dismantling of barriers such as visa requirements which operate to restrict the movement of human beings across national borders. Nation states have all sorts of requirements which an individual has to comply with in order to gain entry into their territories. Nation states normally negotiate the removal of such barriers at a bilateral level, or as in the context of the EU at a regional level as part of the package for regional integration. In Africa the nation state as it is known today is a creation of the colonial enterprise. This involved Europeans literally and arbitrarily carving up chunks of territory for themselves. The process imposed highly divisive frontiers and split communities along socially impractical boundaries. The question of the suitability or otherwise of these boundaries has been quietly dropped from debate by African governments. The reality however is that these boundaries remain in place, maintaining the fiction of different people across each nation state. Elsewhere the creators of these barriers, the Europeans, have dismantled them with respect to each other, and their people move freely within the EU, and freely beyond the EU into Africa, where ironically Africans themselves are still slaves to the national frontier and its attendant visa requirements.

This comes at a time when the movement of people between and amongst nation states has become an issue at the multilateral trade level, the WTO under the GATS negotiations. The

inclusion of the issue under the WTO is a sign that the bulk of its membership is agreeable that international trade is not only about the free movement of goods and capital and investment rules. After all no goods, no capital, no investment can exist on their own without the human labour. On the other hand, movement of “natural persons” in trade agreements means only their labour services, i.e. their economic function – not as social and cultural humans.

Events in the South; Africa

It is ironic that between South Africa and its two biggest trading partners in the SADC region the free movement of people was preceded by the free movement of animals. Mozambique, South Africa and Zimbabwe agreed to allow wildlife roam across their borders by creating the Transfrontier Park. Lately the South African and Mozambican governments have agreed to scrape visa requirements for their nationals.

The recent agreement between South Africa and Mozambique is a significant advance for the free movement of people between the two nations. Cynics might be justified to argue that the agreement reflects the dominance of South African capital in Mozambique. Mozambique is a growing destination of South African business. About 85% of South Africa’s exports to Africa are to 10 countries. Zimbabwe, Mozambique and Zambia are South Africa’s three largest trading partners. The increasing army of South African executives cannot be expected to put up with the nuisance of visa requirements to enter Mozambique. If one adopts this slant, the real development is all about the free movement of capital, South African capital that is.

However it is also worthwhile to look at the other side. Mozambique has an economy far much smaller than South Africa’s. It has no significant manufacturing or even agricultural infrastructure. It has millions of unskilled and unemployed people. For decades these people have exported their desperation into South Africa. Stringent border crossing conditions have invariably led to Mozambique contributing a lot to South Africa’s illegal immigrant problem. Mozambicans jumped the border between the two nations to seek employment on the farms and also to engage in informal trade in goods. Despite noises from unhappy and unskilled South Africans, the majority of the Mozambican illegal immigrants would tend to drift into jobs which the South Africans were not attracted to. Farmers could

offer very low wages to illegal immigrants, something they could not do to South Africans because of a regulated labour environment.

The decision is important for a number of reasons:

- coming at a time when the GATS negotiations are going through a rough patch the agreement should be seen in the Mode 4 context as a starting point for the free movement of people and eventually labour; the agreement gives the South a high moral leverage in the current GATS negotiations, in particular in the face of the EU's position. A link must be made with the FTA/EPA negotiations between Africa and the EU so that Africa demands from the EU in the EPAs what she demands in the GATS negotiations.
- the SADC region has for a long time held seemingly lofty pretences of regional integration. The dismantling of barriers against the movement of people between South Africa and Mozambique is an important step towards a "borderless" SADC; and
- illegal crossings of the South African border is fraught with danger, death being one of the several dangers. The stringent border crossing requirements have for years permitted human traffickers to make a lucrative business.

Free movement of natural persons in the multilateral context

The free movement of natural persons is one of the issues being negotiated under the current multilateral trade negotiations. The negotiations show a very sharp difference between the demands of the industrialised and developing countries.

It is very important to developing countries for a practical agreement to be concluded on the movement of natural persons under the GATS modalities. The North has however been very slow to make any commitments which would benefit the South with respect to the movement of natural persons. According to Mrs. Puri from UNCTAD, quoted in the SUNS February 7, 2005, who was speaking at the start of a panel discussion on "trade in services and development" at the Commission on Trade in Goods and Services and Commodities under UNCTAD, gains of up to US\$200 billion could accrue to developing countries from liberalization of movement of workers.

She stressed the importance of the movement of natural persons (MNP) or Mode 4, saying that only when there is a big leap in the way Mode 4 is being treated, would the developing countries move forward in other areas of the negotiations as they need to attain balance in costs and benefits.

She cited two studies which have shown that the gains to developing countries from liberalizing movement of workers would be \$156-200 billion, or ten times more than their gains from other areas of WTO negotiations. And a recent *WIDER* study also showed benefits of 3-11% in global GDP from the freer movement of skilled personnel.

The GATS impasse has been caused in part by the North demanding commitments from the South on areas the North has the greater advantages (e.g., financial markets) and not making any positive commitments on the aspects where the South has advantages such as labour. Trade diplomats from developing countries have cited the need for improved offers on Mode 4 from developed countries as a necessary input for progress on GATS modalities.

Caution needed against brain drain

However it is important that any progress on Mode 4 negotiations should not be seen as worsening the brain drain from the South into the North. Many well-educated African professionals are lured by the prospects of better living standards in the North. Of the top 15 countries in the world with a large proportion of their graduates living in OECD countries, 9 are African countries. Angola and Mauritius had more than 50%, Mozambique, Ghana and Tanzania more than 40%, and Uganda, Kenya, Burundi and Sierra Leone around 37-38%. Figures for hot-spots such as Zimbabwe which has suffered a serious drain could well be higher than these numbers. Zimbabwe has particularly lost thousands of nurses and other medical personnel to the United Kingdom. The British education sector has also benefited tremendously from teachers recruited from Zimbabwe. It is crucial for African countries to retain and increase highly skilled and professional human resources as opposed to training them for the benefit of the North. Negotiations on Mode 4 issues should be careful not to increase the loss of human assets which Africa continues to suffer despite increasingly difficult visa requirements into the North.

FTAs involving Southern Africa and the free movement of people

In the Southern and Eastern Africa context, members of the COMESA bloc agreed to conclude a Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence. However progress on this aspect has been limited to individual and bilateral initiatives which are permitted under art.164.1 of the COMESA Treaty. The gradual disintegration of the COMESA bloc with some members pulling out of the treaty is a major cause for concern. The SADC bloc to which some COMEAS members also belong is equally slow on creating conditions for the free movement of natural persons. Southern and East Africa operate on ad hoc arrangements as far as the movement of natural persons is concerned. This makes it all the more important for a huge economy (in the African context) such as South Africa to facilitate smoother human movement with its neighbours.

Broader South-South initiatives.

A number of African countries are members of the Global System of Trade Preferences (GSTP). This is a preferential trade agreement exclusive to countries of the South. Very many African countries are not members of this initiative (this includes South Africa). As a South-South initiative the GSTP agreement could be an important facilitator of the free movement of natural persons within the South-South countries. Unfortunately this agreement has no provision for this issue. This could be remedied by adopting a preference scheme for services under the GSTP. This requires an amendment to the GSTP agreement since it has no provision for trade in services.

The fact that GATS Mode 4 negotiations are stalled simply shows that some members of the WTO are not at all serious about removing the barriers to the free movement of natural persons. They are very serious, and quite rabidly so, about the free movement of goods and services to markets beyond theirs. It is important that the South should take the initiative at both regional and multilateral levels and make gains based on its human resources. However this agenda should be wary of the attitude of the North. An example will suffice:

Article 13 of the Cotonou Agreement; Africa, Asia take back your people!

The focus of the current WTO negotiations remains on the free movement of goods and

capital. Unfortunately this is reproduced in the many FTAs being concluded between the North and South. The stance taken by the Cotonou Agreement is quite curious to say the least. In short the Cotonou agreement makes no commitment to liberalise the movement of natural persons; it makes commitments to liberalise markets for trade in goods, and this is demanded of the South. Article 13 of the Cotonou agreement simply means that the EU is telling the ACP states to take back their nationals who have illegally entered the EU over the years. Despite the several hollow paragraphs and well-meaning pretences, the real thrust of art.13 is to have each of the ACP states to “accept the return and readmission of any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State’s request and without further formalities.” Article 13 of the Cotonou agreement is basically *a huge barrier to the free movement of natural persons from ACP states into the EU*. Interestingly the ACP States have not adopted such a barrier on natural persons from the EU. It defeats the mind how ACP states can really believe they can get an EU commitment in the GATS Mode 4 context when the EU has built in the art.13 fortress against the free movement of natural persons in the ACP-EU FTA. Article 13 talks of “normalising migratory flows” as if these migratory flows are abnormal. The Cotonou agreement legalises the erroneous perception that the EU is flooded by immigrants from the South. A survey^{2[2]} of British newspaper readers showed that the average Briton believes over 20% of the British population is made up of immigrants, the fact however puts immigrants at well under 10% of the population. This is an emotive and political issue. Article 13 of the Cotonou agreement is simply saying *“take back your people, we don’t want any more of them!”* The implication of art.13 is that ACP states should think twice about the best strategy for the GATS Mode 4 negotiations, as well as in the current EPA negotiations which include movement of goods and capital. **The clear intention of the North is not to budge as far as labour immigration is concerned.** The South should expect a win-win deal. If the North will not budge on issues of vital interest to the South then there is no point coming to a compromise on issues which benefit the North. Put simply, the South should also drag its feet (or stop them completely) on other GATS modalities.

^{2[2]} See *The Economist*, April 23rd 2005, p39.

Regional integration and asymmetries

The agreements between South Africa-Mozambique-Botswana should be viewed in this context. They show that despite the North's reluctance to move on Mode 4 commitments, some in the South are willing to set the tone for the free movement of natural persons. The agreements should also be seen in the regional integration context; the irony here being that regional trade protocols such as SADC have no modalities for the liberalisation of the movement of natural persons. The agreements push the regional integration agenda despite the absence of the free movement of natural people from that agenda. From one angle, the agreements are a positive step towards regional integration. Very senior cabinet officials in the South African government were quoted as vowing that there will not be any such arrangement with Zimbabwe, citing the levels of Zimbabwean visitors at the Messina border town with Zimbabwe as unacceptable (the irony here being that the quoted officials were actually talking of legal, as opposed to illegal visitors!). But because of their bilateral nature, they are also a negative step towards regional integration.

The COMESA agreement further creates asymmetries by allowing member states to adopt individual or bilateral agreements for the free movement of people. This is the tenor of article 164 of the COMESA treaty.

By excluding certain countries from the liberalisation of the movement of natural persons the bilateral agreements introduce asymmetries which are inconsistent with full regional integration. Allowing the free movement of people on a regional basis such as the SADC bloc would support regional integration at the same time as it would give moral leverage in the GATS negotiations. We should prevent the emotional and irrational anti-immigrant beliefs which operate in the North to operate in Africa. After all people move between the South and the North, and within the South. In negotiating the regime for the free movement of natural persons it is important that the natural persons concerned should be free to move within their own turf.

Outsourcing of IT-enabled services a potential boon to the South

Kanaga Raja^{3[3]}

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- The share of developing countries in the global outsourcing market of IT-enabled services (ITES), given the right strategies and policies, is expected to increase to the tune of \$40-60 billion in 2008, making this sector an important driver of economic growth in several developing countries, according to an UNCTAD expert meeting on new and dynamic sectors of world trade.

The UN Conference on Trade and Development (UNCTAD) expert meeting (7-9 February) is discussing the participation of developing countries in these new and dynamic sectors of world trade.

The last decade has witnessed a growing international market for outsourcing of ITES and this trend has shown a marked acceleration during the first five years of the new Millennium, making it one of the most dynamic sectors of the global services trade.

The global ITES spending is estimated to exceed \$1 trillion by 2006, UNCTAD said, with the share of developing countries in this market expected to increase to the tune of \$40-60 billion in 2008.

While Ireland and Canada were among the early entrants into this sector, several developing countries have taken advantage of their skilled workforce and lower labour costs to enter the market for offshore services. Apart from India and the Philippines, other developing countries that have entered the market included China, Malaysia, Vietnam, Bangladesh, South Africa, Ghana, Senegal, Kenya, Hungary, the Czech Republic, Mexico, Jamaica, and Barbados.

The expert meeting focused on three sectors, namely textiles and clothing, renewable energy products including bio-fuels and outsourcing of ICT-enabled services.

Textiles and outsourcing services are viewed by UNCTAD as dynamic sectors of world trade that have displayed high annual growth in export value and/or substantial increases in their share of world trade, while renewable energy products is a new sector of traded goods.

The expert meeting was an outcome of the Sao Paulo Consensus of UNCTAD XI held in Brazil last year that called for the convening of sectoral trade reviews of dynamic sectors in world trade, and its importance for developing countries.

Tracing the overall trends in developing countries export performance and their participation in dynamic and new sectors of world trade and the main factors affecting this process, an UNCTAD secretariat note highlighted the rising importance of manufactures trade for developing countries.

The overall proportion of manufactures in developing country exports climbed continuously from only 20% in 1980 to 75% in 2003. Manufactures, including electronics, computers and office equipment, telecommunications, automobiles, clothing and machinery, now account for 8 of the top 10 exports from developing countries.

However, there still remain significant regional differences in export diversification, with export diversification being most advanced in East Asian economies, where over 80% of goods exports were manufactures in 2003. On the other hand, the share of manufactures in goods exports from Latin America and the Caribbean in 2003 was 57%, and that of Africa only 47%, mostly in the area of processed primary commodities.

The secretariat note however warned of the "low and declining value-added trap" facing developing countries in that the extent of benefits from participating in trade in dynamic and new sectors is determined, to a large degree, by the size of domestic value added. The East Asian NIEs in particular managed to successfully combine diversification and trade expansion with growth in manufacturing value added and GDP.

For example, East Asian clothing manufacturers moved up from assembly of cut fabric into more complex operations, and they have become full-package suppliers for international buyers receiving orders from large retailers and sub-contracting to their networks of producers.

However, many other developing countries, the secretariat note said, often find themselves caught in a low and declining value-added trap arising from "export illusion" caused by high import content of exports, wherein export earnings do not reflect the true domestic value added; and "fallacy of composition", which arises when too many countries rush into the same sectors or products, thereby driving down terms of trade and export earnings and thus denying themselves the achievement of the

original objective of improving domestic value added through diversification.

Addressing these twin problems should be a key policy priority for developing countries, the note said but did not indicate how the problems could be addressed.

At a media briefing, Mrs. Lakshmi Puri, director of the UNCTAD trade division, said that the UNCTAD initiative was being undertaken through supporting analysis and research in this area, intergovernmental consensus building on policies that are required and technical cooperation and capacity-building work.

In terms of research, she cited four elements that will be tracked including identifying what the most dynamic sectors are, the specific product lines, what countries are ahead in the game in these new sectors and which developing countries are able to capture a share of the new and dynamic trade market.

Albert Kan Dapaah, the Minister of Communications and Technology of Ghana said that it was important for his country to get into the business process outsourcing (BPO) market since Ghana's export revenues on its traditional products like cocoa and gold has only been in the region of \$2 billion. US companies, he said, are outsourcing as much as \$30 billion a year, with 60% of it going to India. If Ghana could get 10% of this, it would obtain \$3 billion, which is greater than its export revenues at this time.

The minister pointed to the fact that Ghana had a large pool of unemployed graduates to tap into the BPO market as well as the necessary bandwidth for Internet access.

He however noted some challenges facing not only his country, but also others in Africa including poor telecom infrastructure and the lack of appropriate financing mechanisms to permit them to upgrade their infrastructure.

Mrs. Puri added that a country does not need to overhaul its economy to attract BPO but that this can be done through setting up a carve-out or enclave to host the capacity to out-source - something that is doable.

She said that UNCTAD will also be looking into the issue of donor support for specific capacity building projects for the LDCs and other countries in Africa.

Mrs. Puri also identified other services sectors where developing countries have a comparative advantage including in audio-visuals, tourism, construction services, professional services, education and healthcare services and energy and environmental services, as well as the emerging traditional knowledge-related services.

UNCTAD said that among the key issues in enhancing developing country participation in outsourcing ITES include formulating a clear national IT and ITES strategy; building domestic capacity through education, skill development and training, public-private partnerships and strengthening telecom infrastructure; enhancing market access for developing countries; and fighting protectionist trends.

Also needed are a development-friendly outcome of the services negotiations in the Doha round that improves trading prospects of developing countries in this sector and international support to domestic capacity building efforts of developing countries.

With respect to services exports, the UNCTAD secretariat note said that many low-income countries, including the LDCs and the Small Island Developing States, have succeeded in expanding services exports over the past two decades. This has occurred mostly through increased tourism exports (GATS Mode 2) and exports of healthcare, domestic care, education and construction services (GATS Mode 4). It is estimated that in 2003, developing countries received over \$130 billion in workers' remittances alone, a figure nearly twice as large as total ODA of \$68.5 billion.

This indicates substantial scope for supply of services by developing countries and the potentially important contribution of temporary movement of labour (GATS Mode 4) to their export earnings, UNCTAD said.

More recently, some developing countries have established substantial export capacity in ICT-enabled services through GATS Mode 1 outsourcing, including areas such as computer software, engineering, accounting, call center and transcription services.

It is estimated that the global market size of IT-enabled services and business process outsourcing (BPO) will be \$300 billion in 2004. Another estimate suggests that worldwide BPO will increase to \$585 billion by 2005.

Since outsourcing provides a win-win outcome for both home and host countries, the UNCTAD secretariat note suggests that trade, development and economic policies of developing countries themselves and the international business climate must not, therefore, artificially restrict outsourcing.

Unequal movement of capital and labour promotes greater global inequalities

*Helene Bank and Riaz Tayob,
SEATINI*

The WTO services negotiations under the GATS, on cross border movement of natural persons - Mode 4, creates strong emotions both in the negotiations and in the societies of the member countries - especially in the North.

Virtually all deadlines of the GATS negotiations have passed. Industrialized countries accuse developing countries of not showing flexibility, and that they have formulated their offers in a way that in effect withdraws commitments from the Uruguay round concluded in 1994. On the other hand, at a GATS panel arranged by UNCTAD, February 2005, A. Faleiro, representing Brazil, argued that few members have offered something new on Mode 4, and that there is a strong perception that the major drivers (such as the US, EC, Canada and Japan) are going backwards on their commitments. Such a trend is confirmed by the Cotonou agreement Article 13, demands the ACP countries "accept the return and readmission of any of its nationals who are illegal present on the territory of a member State of the EU."

The majority of developing countries have made Mode 4 liberalization one of their main requests to the industrialized countries. There are several reasons for that, one is the obvious comparative advantage developing countries have in competitive wages; another is that workers abroad contribute substantial to foreign currency through remittances.

The striking imbalance between free movement of labour and free movement of capital in the international economy is backed by the WTO agreements mode 3, TRIMS, the thousands of regional trade and investment agreements (including the Cotonou agreement) that liberalizes capital movement. A major reason for the need of substantial liberalisation of labour markets is the imbalance between the highly mobile movement of capital as one factor of production on the one hand, and the

lack of flexibility of labour on the other hand. The North's refusal to address Mode 4 issues is at odds with the free market ideology they use against developing countries in other areas of the negotiations (free trade is premised on factor price equalisation of both capital and labour).

If a country commits to mode 3 liberalization for a sector under the GATS, the right for foreign investors to establish a commercial entity, it has at the same time committed itself to free current account transfers (without a safeguard mechanism as correctly pointed out by Malaysia). However, the commitment does not automatically cover cross border labour transfer. This creates asymmetry, because many developing countries are wage competitive and therefore competitive in labour intensive services. Until now, the OECD-countries have not been willing to link investments and labour market access.

Stricter visa and immigration regulations, and also the re-emergence of racism, Nazism and faith based discrimination can be rooted in increasing or stabilized high unemployment (EU 9.6 %, US 5.4 %). However, the profitability crisis on capital in the West cannot be underestimated. This crisis is one of the main reasons for the aggressive requests to developing countries on services liberalization Mode 3. Even poor African LDC's are being requested to privatize and liberalize their services sectors under the GATS. Potential high profit sectors, such as water, education, telecommunication, banking and financial services are in the centre of the demand for liberalization. When African ministers and negotiators met the USTR R. Zoellick in Cancun in 2003, he told them up front that: "What I really need of you is market access". He is right, and he was honest.

Despite the mounting pressure, developing countries seem firm and united regarding their interests in Mode 4 liberalization. During the GATS negotiations in Geneva at the end of February, trade diplomats from developing countries, including African and LDC's, argued that the needed elements for progress are improved offers from the developed countries under mode 4. If the May 2005 deadline results in offers from the US, Europe etc without improvements in market access via mode 4, key developing countries are unlikely to table or improve their revised offers.

Restrictions to the movement of people have become a highly political issue in our own

region too. It has not always been like that, not during the liberation struggles, and not during the struggle against apartheid.

It is interesting that South Africa, as a major capital exporter in the region, follows this western immigration and visa legislative pattern towards its neighbours (although South Africa has a progressive policy regarding health professionals from the region).

This increase in protection against neighbours in the Southern African regions is not countered even through regional trade and customs agreements. In regional agreements, such as SACU, COMESA, SADC, EAC, there are very limited commitments for people to move across borders. Even under the Global System of Trade Preferences (GSTP) for South-South preferential trade, there are currently no Mode 4 provisions.

So while the OECD-countries are very determined that western professional staff should have unrestricted access as core personnel to companies, African countries themselves seem to have no politics of preferential integration of their own labour. The result is that it is often easier for a European to enter for example South Africa than for their fellow Africans from neighbouring countries.

Once again, one can argue that this is a natural response to the high unemployment rates. On the other hand, raising unemployment in the EU has not changed the union's commitment to free movement of labour in the region as a strategy for regional integration reflecting a longer term vision.

Though, the free movement of labour in the enlarged EU has also a stated and underlying strategy of undermining the labour unions in Western Europe in order to reduce EU wages to a more competitive level globally. This creates an increasingly brutalized labour market in the EU where most of the new employment is being created in services sectors.

In this process of integration and developing competitive labour in the EU, there is no need for them to confuse their strategy with external labourers. With unemployment rates that threaten any EU government's re-elections and the profitability crisis increasing, developing countries can expect firm demands that rather increase than decrease the imbalance of the free movement of capital to labour.

Editorial*Helene Bank**SEATINI*

Articles in this issue touch upon a very sensitive question in international trade negotiations. At the same time as OECD-countries fought hard to use an investment agreement as a vehicle for increased capital mobility, under WTO agenda, access to their labour market is becoming ever more restrictive. In the GATS negotiations, the OECD countries are pushing for high quality offers in areas of interest to them.. Many of these requests are linked to the right to establishment (investment) and freer movement of capital. In unanimously requesting Mode 4 liberalization, developing countries are well aware of the Achilles Heel of the West. Still, it is the political and economic realities that guide them in their persistence for balancing of the trade rules.

So what are the challenges for African countries in a Regionalisation context?

First of all there is a need to recognize that labour is not just labour. Globalisation integrates and marginalizes. There is the high skilled labour and low skilled labour. There is a race to the top and the race to the bottom. Globalisation pushes a dual system comprising the formal economy and an informal economy in all countries. It divides the labour market within countries into the globalised beneficiaries and the marginalized workers and poor. To deal with it is not a simple task.

Of course there are opportunities for African countries and individual Africans of increased market opening for jobs for high skilled labour. Where it succeeds, it could increase remittances from the workers abroad. In best cases, it can also mean transfer of know how and technology back to Africa on the assumption that Africans who move abroad continue to send remittances and also return one day. However, one cannot build a stable economy through the export of much needed professionals.

The reality of brain drain cannot be underestimated. The brain intensive labour, especially from the North – seems to move relatively unrestricted all over the world and take advantage of the globalisation processes. Such mobility is not available to many skilled African personnel. As Munyuki pointed out in his article, of the top fifteen countries in the

world with a large proportion of their graduates living in OECD-countries, nine are African. Brain drain has become not only a domestic challenge, but a regional one.

Why do African regions not tackle brain drain as a regional issue and why does South Africa have the strictest visa rules in the region? Why does the SADC region not develop a strategy for a freer and more flexible movement of at least graduated citizens of Southern Africa? Such a strategy would give a much needed flexibility that could contribute to give professionals new opportunities and slow down the brain drain.

However, globalisation is even more about marginalisation. The majority of workers that cross borders are those workers that are searching for a basic income for themselves and their families. The recent GATS liberalization deals primarily with skilled personnel, so called core personnel for the corporations, not low skilled workers.

There is a danger that GATS Mode 4 workers may be treated differently from other workers in the host Member's labour market. For example in some sectors in the OECD-countries some of these workers are described by employment agencies as "independent contractors". This is done to evade labour market regulations which would otherwise protect the migrant workers in the same manner as the host country's workers. These fears are real, and are confirmed by a reading of GATS article XVII. Ironically article XVII.1 enjoins member states to treat all services providers in a manner no less favourable than that it accords to its own services and services suppliers, but article XVII.2 goes on to permit a member state to treat foreign services and service suppliers in a different manner than it does to its own like services. Such different treatment complies with article XVII.1 if it is formally made. In short nothing really stops the host member country from treating Mode 4 workers differently. This article actually legalises labour market discrimination on the basis of nationality.

The sheer impossibility of monitoring all of the GATS Mode 4 'contracts' by governments or unions means that there will be massive abuse: the German construction and butcher sectors are good examples of serious breaches of the immigration laws that have simply abolished the 'floor' of minimum wages and conditions for the whole sector. Even though the

immigrant workers are professional and skilled in their working operations, they are often not treated as regular workers. They are, therefore, very vulnerable and can be seriously exploited.

Between nations there are two clear comparative advantages, firstly low wages and secondly a plentiful labour supply. These advantages exist in many nations. To our knowledge, there has not been a demand from unions for a global minimum wage and there is no ILO convention for such a wage. To our knowledge the unions in the north have also not demanded that workers in the south be paid northern wages, even when providing cross border services under GATS provisions. It makes no sense to demand a global minimum wage. Yet, this is what factor price equalization aims to produce, a global standard wage. What is unfolding is negative harmonisation – a race to the bottom.

However, there is an ILO Convention that says each country should have provisions by which it sets a minimum wage for its own people. Wages to be paid to people working within one country is a different case. It is untenable that a worker should be paid less than others, or be deprived of protection against discrimination, abuse, harassment, unjust dismissal, etc. because she/he comes from another country. In fact, that would contravene not just labour legislation but a raft of human rights conventions. There is a serious principle of equity at stake here that we should not compromise on, even in the face of contradictions. All workers inside a country face the same in-country costs and temporary migrants and workers are also struggling to make enough money to send remittances back

home. The treatment to be afforded to migrant workers is decided within the host country, not the WTO.

Strong labour unions domestically, and of course with the support of their colleagues abroad, can promote such equity in rights and fight for domestic minimum wages for all workers including migrant workers. The struggle for equal pay for equal work should not be determined by citizenship or work permit status as it opens too many avenues for abuse and undermines the equality and dignity afforded to each human being. However, the debate on Mode 4 liberalization, delinked from the issue of liberalization of capital, tend to result in strategies that aims at decreasing the costs of goods and services, instead of policies that aim to increase employment and which have a wage rising and distributive effect.

Thus, African countries should sustain their demands for Mode 4 liberalization and link these demands conditionally to progress in other areas of interest to them. At the same time, they could counter the aggressive requests from the OECD-countries with tougher demand for a balanced treatment of capital and labour mobility and advocate rules that ensure such a balance and equity. Finally, for Africans there maybe significant gains from a regional strategy targeted at fuller employment, and in support of which to relax the visa rules and improve regional labour mobility to promote development and intraregional skill transfers.

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