

# Movement of Natural Persons

## Potential Gains and Prevailing Constraints

*The General Agreement on Trade in Services (GATS) addresses trade in services through four modes of supply. The presence of natural persons, referred to as Mode 4, is one of the four possible ways of trading a service under GATS. Recent estimates, based on limited empirical information, suggest that Mode 3, commercial presence, accounts for more than half of world trade in services and Mode 1, cross-border trade, for about a fourth, while Mode 2, consumption abroad, contributes less than one-fifth. Mode 4 was found to be nearly insignificant, accounting for just over one percent of world services trade.*

*A cursory look at Members' current GATS schedules shows that levels of commitments vary strongly across modes of supply. Within a given sector, trade conditions for Mode 4 tend to be significantly more restrictive than conditions for other modes. Members' schedules are mostly biased in favour of "intra-corporate transferees", hence making the economic value of such commitments dependent on access conditions for Mode 3. Such commitments are of limited interest to Members, which, given their level of economic development, are not significant foreign investors. Furthermore, schedules are also more open for highly skilled labour, where developing countries tend to be net importers, as their comparative advantage lies in relatively unskilled labour-intensive services.*

### I. The Doha Mandate

The Services negotiations started officially in early 2000 under the Council for Trade in Services (CTS). In March 2001, the CTS fulfilled a key element in the negotiating mandate by establishing the negotiating guidelines and procedures. The Doha Declaration endorses the work already done, reaffirms the negotiating guidelines and procedures, and establishes some key elements of the timetable including, most importantly, the deadline for the conclusion of the negotiations as part of a single undertaking.

The guidelines and procedures for negotiations on trade in services refer to the "request-offer approach" as the main method of negotiation. Within the timeframe of the overall negotiating deadline of 1 January 2005, paragraph 15 of the Doha Ministerial Declaration establishes that "participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31<sup>st</sup> March 2003."

### II. Welfare Gains from Mode 4 Liberalisation

The very rationale for international trade, be it in goods or in factors of production, lies in exploiting differences. The larger the differences, the greater would be the potential gains from trade. In case of temporary movement of natural persons (TMNP), potentially large returns would be feasible, if medium and less skilled workers, which are relatively abundant in developing countries, were allowed to move and provide their services in developed countries.

These gains are widely shared within the world economy. Moreover, as their populations age and their average levels of training and education rise, developed countries will face an increasing scarcity of less skilled labour, especially in those occupations where there are few substitutes for human labour. Thus, while recognising the formidable political challenges it poses, TMNP actually offers a strong commonality of interests between developing and developed countries.

The review of existing empirical studies of factor mobility and the new estimates show that there are huge returns to even relatively small movements of labour. An increase in developed countries' quotas on the inward movements of both skilled and unskilled temporary workers equivalent to three percent of their workforces would generate an estimated increase in world welfare of over \$US150bn p.a. (Winters, 2002)

### III. Constraints on MNPs

There are several constraints, which come in the way of realisation of this huge gain in economic welfare. The main outcome of the GATS negotiations in Mode 4 should propose solutions to each of the barriers discussed below:

#### *Economic Needs Tests*

Economic needs tests (ENT) and labour market tests detract from the predictability of trading opportunities available to developing countries and undermine any progress in liberalising market access. However, these tests normally do not apply to skills that are in short supply, or to selected categories of persons. For example, ENTs do not always apply to the entry of highly skilled workers into Canada; for key skilled activities in Australia; for work in firms of a certain size; and for IT professionals in France (UNCTAD 2003).

#### *Granting of Entry Visas and Work Permits*

Measures related to the entry of natural persons into a foreign country, as with visas and work permits, can be a serious administrative obstacle to trade in services by developing countries through Mode 4, nullifying the value of the specific commitments made. Some countries have supported the establishment of a GATS or Trade visa to address the problems usually confronted by nationals of developing countries in this respect. This new visa category is meant to help separate Mode 4 related movements from being considered as part of immigration and to emphasise the special nature of such movements.

#### *Recognition of Qualifications*

Developing countries are particularly affected by the perception of their having low or inadequate professional standards, by lack of recognition of the equivalency of their educational degrees and qualifications, and by the inability of their regulatory authorities to certify professional qualifications in a way that technically and procedurally meets criteria established in developed country markets. However, when developed countries face staffing shortages in certain professions or occupations, they are able to adopt an expedited and facilitated process and recognise qualifications obtained in developing countries. In addition, intra-corporate

transfers are usually not subject to restrictions relating to recognition of qualifications. This suggests that the recognition of qualifications may be unnecessarily stringent and that it is an effective barrier to entry for service professionals from developing regions (UNCTAD, 2003).

#### **Differential Treatment of Domestic and Foreign Natural Persons**

Trade in services through Mode 4 is also constrained by policies that discriminate against foreign services providers. In addition to more stringent qualification requirements for foreign services providers, and citizenship and residency conditions, there is differential treatment in the form of taxes, benefits, subsidies, and government procurement policies. Services providers may be required to make social security contributions in the host country even though they are on deputation abroad for a period less than that required to be eligible for social security benefits in the future.

#### **Linking Mode 4 with Mode 3**

Developing countries' ability to export services under Mode 4 can also be constrained by requirements to establish commercial presence (Mode 3) as a condition for servicing the host country market. For instance, in legal and architectural services, several provinces in Canada and some states in the US require in-province or in-state offices as a prior condition for permitting the services to be imported through any other mode. Commercial presence requirements put developing country at a disadvantage, as their entrepreneurs are unlikely to undertake huge capital-intensive investments for establishing offices overseas.

### **IV. Mode 4 and GATS Negotiations**

The services discussions and negotiations in the WTO have been going slowly. As of 10 July 2003, only 30 members had submitted their initial offers, of which 15 are developing countries. The deadline for initial offers passed on 31 March 2003. Several developing countries indicated that their offers would be linked to whether they would obtain benefits or progress in other areas of negotiations.

As regards developed countries, they have put more emphasis on Mode 3 related movements. However, in the current negotiations they have shown relatively more interest in TMNP, but it seems that the EU and other Western countries are likely to play-off their wants for the first 3 modes in exchange for developing world desires for greater Mode 4 access.

India is a known protagonist of liberalisation of services trade under Mode 4. Now, more and more developing countries are joining India in raising this issue proactively. In a joint statement, presented on July 2003, to a special negotiating session on services, 14 developing countries argued that most of the offers presented to date do not include any substantial improvements to existing specific commitments in Mode 4.

India very recently finalised its broad strategy on the services negotiations at the World Trade Organisation (WTO), an area crucial for this country especially in regard to movement of professionals. While seeking greater opening up of developed countries in this area, it is prepared to offer in turn liberalisation in the financial, health, computer-related, architecture, tourism, book-keeping and professional sectors.

India is greatly interested in what are known as the Mode 1 and Mode 4 negotiations in the GATS. The first relates to business process outsourcing (BPO), which has already raised a controversy with several States in the US banning shifting of such jobs from their domestic market to countries such as India. In this area, India is seeking complete liberalisation. The second is what is known as "movement of natural persons" where India has been seeking a rise in the bound rate for granting visas for independent professionals.

Initial offers submitted by Australia, the US, Iceland and Liechtenstein have made no improvements in market access for Mode 4. In general, these initial offers have not achieved balanced coverage and economically meaningful commitments with respect to all modes of supply. Specific liberalisation commitments continue to give substantially more coverage to measures regulating commercial presence than to measures regulating MNP.

Among new offers, in the area of Mode 4 Norway has scheduled the most extensive commitment, while the EC has made a real liberalisation commitment. Japan's initial offer appears to be closely in line with existing conditions for admission of engineers and specialists, but it is not certain if the economic needs test (ENT) or its elements are eliminated from all measures affecting market access in Japan. New Zealand offered broad coverage of occupations of interest to developing countries but only for investment-related movement. Switzerland intends to remove quotas on the overall number of work permits, but in the absence of a multilateral understanding, continues to maintain its own interpretation of "seeking employment", which excludes MNP as individual service providers, allowing for bilateral deals in this category. In principle, the EC and Canada have made market-opening offers of the same order. For transparency purposes, the Canadian offer indicates if a particular category of person needs a work permit. However, the Canadian quota of ten IT specialists per project does not seem to exist in the country's legislation.

The EC has eliminated the ENT for most of the categories included in its schedule, and introduces a new category of Graduate Trainees, which may be of interest to developing countries as a means of technology transfer. Contractual service suppliers, which hold most potential for export interest of developing countries, have been improved in scope and duration, and include Independent Professionals as a new category. These liberalisation commitments in the initial offers of the EC, Canada, Norway and other countries represent a positive step in the right direction and would contribute towards creating momentum in Mode 4 liberalisation.

### **V. Conclusions**

Despite being recognised as the key area of importance for developing countries, Mode 4, under which benefits accrue directly to developing countries, has not featured prominently in the Doha agenda. This may need to be taken into account at the WTO Ministerial Meeting in Cancun. Effective market access in Mode 4 would depend on how it will be addressed in the context of discussions on domestic regulation under the Article VI and the recognition of qualifications and equivalent experience, and on multilateral progress in making visa and permit systems less restrictive for trade.

### **References**

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2. Winters, Alan (2002), "The Economic Implications of Liberalising Mode 4 Trade," paper prepared for the joint WTO-World Bank symposium on "The Movement of Natural Persons Under the GATS," WTO, Geneva, 11-12 April 2002.

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