

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Movement of Natural Persons under GATS

Communication from Pakistan

The following communication, dated 24 March 1999, has been received from the Permanent Mission of Pakistan.

1. The Secretariat has already circulated a discussion paper on Movement of Natural Persons under GATS as a communication from Pakistan (WT/GC/W/131, dated 22 December 1998) and an informal paper by the Council for Trade in Services (Job No. 978, dated 19 February 1999). These papers briefly review the results of the Uruguay Round in respect to liberalisation of the movement of natural persons and also identify the key impediments to the freer movement of natural persons. They also give the legal and economic rationale for further liberalisation as well as suggest possible approaches to further liberalisation of movement of natural persons under the framework of GATS.

2. Strong legal and economic arguments exist for the further liberalisation of movement of natural persons. As preliminary comments at this stage we would argue that the case for freer movement of labour goes beyond the obligations assumed by WTO Members to meaningfully address sectors of particular interests to developing countries. Both developed and developing countries stand to benefit from liberalisation of movement of labour. However, obstacles exist in the way of freer movement of natural persons. These include the use of economic needs tests (ENTs), multiple qualifications, licensing and certification regulations or non-transparent visa and work permit regimes. Our delegation, therefore, believes that in order to advance liberalisation of the movement of natural persons it would be necessary to address major impediments in this area, and it is in this regard that we would like to make a few suggestions which could lead to productive results.

Major Impediments to MNP

3. A major limitation and uncertainty on market access is due to the widespread use of ENTs. ENTs imply that the relevant government agency would grant market access if certain conditions were met that reflected economic needs of the population or their demand for such services. These conditions may be qualitative and quantitative, taking into account the local market conditions and availability of the local service suppliers. We believe that due to its discretionary nature the ENT poses a major barrier to trade in services. ENTs detract from the predictability of trade through this mode of supply of services and nullify the opportunities for market access otherwise extended in the commitments.

4. The ability of persons to supply services in export markets is also affected by lack of recognition of professional qualifications and licensing requirements. The administration of the visa

and work permit also poses barriers to trade for the movement of natural persons. The lack of transparency in this regime is the most obvious problem. There exists a "psychological" impediment to advancing the freer movement of natural persons. This is caused by the misleading equation of movement of natural persons with migration, despite the fact that the Annex of GATS on the Movement of Natural Persons is very clear that GATS does not apply to measures affecting natural persons seeking access to the employment market of a Member, nor does it apply to measures regarding citizenship, residence or employment on a permanent basis. It does not also prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders. Thus, the claim that any commitment under Mode 4 in GATS can lead to uncontrolled increase in immigrants is completely unfounded.

5. We have very briefly touched upon a few obstacles which we believe are impeding the successful implementation of the MNP under the framework of GATS. We would now suggest a few approaches which can lead to further liberalisation of MNP.

Economic Needs Tests

6. One of the ways to reduce the scope for the application of the ENT could be for countries to agree on certain services sectors where the movement of natural persons would be excluded from the general application of the ENT. The horizontal commitments on mode 4 would thus be supplemented by the list of service sectors where the ENT would not be applied to the movement of natural persons supplying services in that particular sector. Detailed proposals in this regard may be seen in our discussion paper circulated to the General Council.

Visa Regimes

7. In order to have more transparent and objective implementation of visa and work permit regimes, the following measures could be considered:

- Member countries should publish the relevant legislation, implementing regulations and, most importantly, the administrative rules that define the conditions of entry and national treatment. Administrative rules are of particular importance because if these are not made transparent countries will retain a discretionary power to change rules and tighten up entry requirements, thus violating their bindings.
- Member countries should establish a system allowing business persons to report to trade authorities on examples of frustrations and abuses encountered as they seek temporary entry and stay under GATS.
- Member countries should bind their current immigration legislation related to all the relevant categories in their specific commitments.

Qualifications and Licensing Regulations

8. To overcome barriers created by qualifications and licensing regulations, the following measures may be considered:

- Developed countries have set up regional and bilateral frameworks on licensing, qualifications and technical standards which exclude developing countries but promote labour mobility between them. The participation of developing countries in such agreements of mutual recognition should be facilitated.

- International standards would facilitate the movement of labour and further liberalisation in services. However, harmonisation is a very slow, lengthy and difficult process. Perhaps faster progress could be attained if harmonization were to be concentrated on industry-regulated services rather than state-regulated services. Also, a system of partial mutual recognition of qualifications similar to the one installed by the European Union could be adopted as one of the steps towards international standards. This would allow the licensing authorities of individual countries to retain some control over the licensing requirements of foreign professionals.
- Often, licensing requirements include conditions regarding nationality and residency. These conditions constitute a further barrier. In fact, professional services could often be performed more efficiently through cross-border trade with short visits rather than by the setting up of establishments. If these conditions must remain in place, the distinction between consulting and practising could be further developed, allowing movement of labour for consultancy, while maintaining restrictions on establishing practice.
- In establishing these standards and when harmonising the existing regulations it must be kept in mind that many developing countries have large informal service sectors. Consequently, service suppliers do not always have formal experience, training or education. The danger of international standards actually becoming another trade barrier must be avoided by ensuring that it does not imply a huge burden on developing countries to catch up with the standards of services in the developed countries.

Conclusion

9. In conclusion, we would emphasise that the GATS rests on the concept of symmetry in the obligations as between the movement of capital (mode 3) and movement of labour (mode 4). Mode 4 is an important mode of supply of services for developing countries, given their comparative advantage in labour-intensive services. The level of remittances as estimated by UNCTAD stands at US\$ 30 billion globally, but even this figure understates the importance of the movement of persons for developing countries. Barriers to this mode, notably strict and erratically administered visa requirements, licensing requirements and economic needs tests, prevent developing countries' technicians and businessmen from participating in a variety of activities essential to the penetration of world markets for services.
