

Africa Regional Workshop on WTO Negotiations

Organised by TRALAC and the Commonwealth Secretariat

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Presentation by H.E. Mr. Charles Ntwaagae, Ambassador of Botswana on “GATS and DDA Negotiations”

First and foremost, I would like to thank both TRALAC and the Commonwealth Secretariat for giving me the opportunity to share with you the state of play and some of the concerns of the Geneva negotiators in relation to the developments in the negotiations in trade in services.

My task has been made somewhat easier by the excellent presentation by Ms. Sabrina Varma from the South Centre, on the developments in the ongoing negotiations. The background information on the GATS rules and provisions in the document she has circulated, would also provide a useful basis for our discussions.

If this is acceptable to you, I propose to complement what Ms. Sabrina Varma has stated by focussing more specifically on the problems, which many of us from Africa, who are actively participating in the negotiations in Geneva are encountering. In doing so, I will attempt to make some suggestions for discussions amongst us on the approach, which could be adopted to resolve some of these problems.

Let me begin by stating that as far as Trade in Services negotiations are concerned, a number of African countries find themselves in a dilemma. The dilemma arises because the preliminary assessment of the benefits that would accrue from the offers of liberalization commitments tabled by developed countries, indicate that African countries would not be able to derive any significant gains from these liberalization measures in developing their services export trade. At the same time, since the rules for negotiations require that all developing countries

should participate in the negotiations by making offers to undertake liberalization commitments, taking into account, the provisions for special and differential treatment in the GATS and in the Doha Ministerial Declaration, the countries which have not tabled offers are under pressure to table them. The revised deadline for submission of offers was 31 May 2005. However, by the end of July 2005, 68 initial offers had been presented, representing 92 countries (which include member countries of the European Union). There are therefore 24 initial offers outstanding and including LDCs, 55 initial offers remain outstanding. These include the majority of Commonwealth Countries and almost all least developed countries, the majority of which are African countries, as well as a number of other developing countries which have nascent service industries. My country is in the latter group of countries.

I would like to add that what I have said, should not create an impression that the only reason for the reluctance of a number of African countries to table their requests and offers is the unsatisfactory nature, in both quantitative and qualitative terms, of the developed countries' offers. There are other reasons, which are more fundamental.

The issue at the policy level, which is of major concern to them is, whether, given their stage of development, they are in a position to undertake legally binding liberalization commitments under the GATS rules, which would prevent them from making in future, any modifications in the measures taken. They recognise the importance of liberalization, they however consider that such liberalization measures would have to remain autonomous for at least a number of years more. Further, these countries feel that the process of liberalisation has to be gradual, tailored, and properly sequenced, taking into account the strengths and weaknesses of the domestic industry situation in each country.

Before turning to the discussion of the economic rationale for this view, I would like to explain very briefly why the offers tabled by developed countries may not, from the perspective of African countries, provide them with significant gains or advantages.

UNCTAD has identified from the numerous sectors covered by GATS, four sectors in which developing countries which are at relatively lesser stage of development and the least developed countries would be able to develop export trade, if the present barriers affecting their trade were to be removed. These include construction services, environmental services (such as cleaning and sewage services), health services and tourism. The ability of these countries to develop trade in at least first three sectors, would however greatly depend on whether or not the sectoral commitments made by developed countries provide for movement of natural persons. For an example, in construction contracts, the firms from developing countries would have a competitive advantage, over firms from developed countries, only if the country where construction work is to be undertaken allows them to bring in labour for work under the contract. The offers made do not provide for removal of restrictions, which apply to the movement of such labour.

It is evident, that a large number of these countries could benefit from the liberalisation measures taken in this round in these sectors, only if the horizontal and sectoral commitments provide for removal of restrictions which apply at present to the movement of natural persons – both skilled and unskilled. With regard to skilled workers or professional services, the offers tabled provide for improvements that are only of a cosmetic or inconsequential nature. The quotas fixed for visas for these workers may not be significantly increased. Moreover, none of the offers envisage a relaxation of restrictions applicable to unskilled workers, which in the long run, may benefit least developed and other developing countries, particularly in Africa.

Some of the countries in Africa, particularly those where a pool of qualified persons who can be trained in information technology is available and where telecommunication facilities are well developed, may be able to develop trade in back office services as countries like India, China have been able to in the recent past. It is often argued that in certain sectors, particularly in those where it is becoming possible to provide services by using information technology, the movement of natural persons is becoming gradually less and less important. It is relevant to note however, that despite the growing importance of cross border

electronic delivery in such back office services, a recent OECD study points out that the movement of natural persons still remains and would continue to remain a crucial mode of delivery in this sector. This is brought out by the recent experience of the Indian export of back office services. Even though since 1988 the percentage of services supplied at the site of clients has been declining, in 2002 over 60 per cent of services were still supplied by temporary movement of programmers at the clients' site overseas.¹

The African negotiators have therefore come to the conclusion that because of the nature of the offers as well as the nascent stage of development of their service industries, the liberalisation commitments that may be assumed by their developed countries partners, are likely to bring to their service exports only marginal benefits. This pessimistic assessment is supported by some of the recent macroeconomic studies, which indicate that major beneficiaries of further liberalization of trade in services, are likely to be - apart from developed countries - the emerging economies from Asia and Latin America. The welfare gains for African countries, with a few exceptions may be extremely limited.²

As I have stated earlier, apart from the unsatisfactory nature of the offers tabled so far by our major trading partners, there are other more fundamental factors that have been responsible for the inability of a number of African countries to table their offers for commitments. Let me now turn to the discussion of three of these factors.

With regard to trade in goods, with particular reference to deciding on the extent and timing of liberalization, national policy makers normally examine both the positive and negative impact such measures would have on trade and domestic production, taking into account the ability of the agricultural producers and manufacturing industries to meet foreign competition. In deciding on taking liberalization measures in the services sector, the policy makers have to take into account also another factor.

¹ OECD, GATS: The Case for Open Service Markets, pages 78 and 79.

² See note 1 above, page 37.

Unlike industries manufacturing goods, most, if not all, service industries are regulated by governments. The need for regulations arises because in service industries there is considerable concentration of ownership; some of the service industries, like those producing electricity and water are also natural monopolies. They further provide services that are essential to industrial users and consumers.

The objective of such regulations varies. In the case of banking, their aim is to protect the interests of the depositors and to ensure macroeconomic stability. In sectors like educational and health services as well as in electricity and water, the objectives are social; these include universal supply of such services to consumers at affordable prices.

It is being increasingly recognised that before liberalising and allowing foreign firms to supply services on a cross border basis or through establishment of commercial presence, it is necessary for governments to ensure that there is an effective mechanism in the country for regulating the concerned industry. Where such a mechanism does not exist, it is necessary to establish it; in sectors such as telecommunications, banking and insurance and where generally such a mechanism already exists, it is necessary to examine whether any change in their institutional framework and terms of reference is necessary to meet the new situation that would be created by the entry into the market of foreign service suppliers. In the case of telecommunications, for instance, such services are provided in a number of African countries by government or by one or two suppliers. The national regulatory authorities, are not always fully equipped and ready to deal with the new situation that is created by the entry into the market of new firms. Experience has shown that hasty liberalization, without developing regulatory systems or reforming the existing ones can lead to disastrous results. According to some analysts, the main reason for the Asian financial crisis in early nineties, was the result of rushing by the concerned countries into liberalization of financial sectors without paying adequate attention to the need for the reform of their regulatory systems.

The need to ensure appropriate regulatory systems, before binding commitments are made in trade negotiations has made most of the developed countries to liberalize in the service sectors first on autonomous basis. In the Uruguay Round for instance, they offered commitments mostly in respect of some of the liberalization measures, which they had taken on an autonomous basis ten years or so earlier. In the Doha round also, indications are that, by and large, they would be only binding the liberalization measures they have taken since the conclusion of the Uruguay Round. During this period, they kept their regulatory mechanisms under constant review.

Time limitations would not permit me to deal more with this aspect at this stage. It would, however, be sufficient to note that a number of developed countries in Europe and elsewhere have completely reorganized, during the last two decades their regulatory bodies in the financial, telecommunications, health and other sectors to enable them to deal with the new situations created by the technological developments and liberalization measures taken by their governments.

According to some analysts, one of the weaknesses of GATS is that its framework fails to recognise that the countries must have in place before they undertake binding liberalisation commitments, effective regulatory systems. The rules adopted for negotiations in the Doha Round have also failed to give importance to this aspect. As the OECD study to which I have referred earlier attributes this to the “learning by doing approach” which negotiators had to adapt to the sheer novelty of the subject matter. In negotiation in the area of services, the negotiator had no past experience to go by; they “were essentially faced with a blank page or a new situation of which they had no understanding”³. As I have stated earlier, the developed countries are trying to meet this loophole in GATS, by liberalising first on autonomous basis and offering commitments in negotiations after they are satisfied that the appropriate regulatory mechanism is in place. Some of the developing countries like India and China appear to be following in this round the example of the developed countries in this matter.

³ See note 1, page 45

In Africa, Mauritius and South Africa are among the few countries, which appear to have taken simultaneous action for the reform of regulatory systems and for liberalization of trade and investment on autonomous basis in the financial sector. The rest of the countries have not been able to make any conscious efforts for reform of the regulatory programmes in these and other sectors. They are therefore somewhat reluctant to liberalise in this round by making binding commitments.

The other reason for the reluctance is that GATS, unlike GATT, does not contain any provisions that would permit countries to take emergency safeguard measures to restrict or prohibit imports, where increased service supplies from other countries or by foreign suppliers established in the country are injuring domestic producers. Neither does it contain provisions on use of subsidies by governments. The GATS envisaged that the negotiations in these two areas should be commenced immediately after it was adopted and completed within a period of three years i.e. by the end of 1998. Even though these negotiations have been taking place since then, it has not been possible to make any significant progress.

The main reasons for this, appears to be lack of interest on the part of the developed countries as well as on the part of those developing countries, which have now become important exporters of services, to negotiate for disciplines in this area in this round. African countries have been maintaining in discussions at a political level, that they would not be able to accept commitments for significant liberalization of trade in this round, unless simultaneous efforts are made for the development of rules on emergency safeguard measures and use of subsidies during the course of the round. The small size of most developing country delegations has, however, so far prevented them from participating actively in the negotiations that are taking place in the Council for Trade in Services in these two areas.

The third complementary reason for the reluctance of a large number of African countries – and I would include my country in this – is the lack of expertise that is needed for preparing scheduling commitments. It is often said that GATS is more development oriented than GATT, in that it provided flexibility to developing

countries in imposing “conditions”, to liberalisation commitments they offer. Most of the African countries are not able to foresee the type of conditions they should impose, in order to ensure that they retain policy space that is necessary to enable them to take measures that are necessary for the attainment of national policy objectives after the liberalization commitments become applicable. The difficulties that are encountered in the type of conditions that should be imposed are evident from the fact that even a country like the United States was not able to foresee that commitments they were making would prevent them from prohibiting companies in outside countries from engaging in internet gambling in the country.

With this overview of the problems that a number of developing countries are facing in participating in the negotiations in the area of trade in services, let me raise some questions for discussion among us and put forth a few suggestions on the approach we could adopt in advancing negotiations in this area.

- What should African countries which have not been able to table requests or offers for liberalization do? It would appear that least developed countries have been taking the approach, that in this round, given their stage of development, they should not be required to take any new commitments. Is there likelihood of these proposals being accepted? If not, what should be their fall back position? What would be the implications of not making commitments in this Round? Is a standstill in new commitments an option?
- A related question is what approach should be adopted by countries that are not least developed but have not been able to make offers? Would it be desirable for these countries to suggest that they should be also exempted from making commitments in this round? If so, on what grounds?
- If it is considered, that it would be unrealistic to expect that countries, including those which are least developed, would not be requested to make at least some contribution, the question which arises, is how they could be assisted, in preparing their offers in the limited time

period now available. In the past, a number of such countries had relied on experts from international organisations. However, the advice given was not always found useful and resulted in many cases whereby countries accepted obligations that failed to take into account the situation of the industry in the country, as the experts did not have enough knowledge of the competitive strengths of the national service industries and of the trading environment in those countries. They did not also make adequate effort to examine whether the necessary regulatory mechanism had been developed. Because of this, would the alternative be for African countries which have not so far been able to prepare offers, to look to the countries from the region which have made offers, and request them to assist them by sharing information on the factors that were taken into account in selecting sectors for liberalisation and in imposing conditions on the commitments offered. If so, what would be the nature and format of such consultations?

- One suggestion which is reflected in a paper prepared for discussions in the Geneva Group of Commonwealth Developing Countries which I chair, is that instead of requiring these countries to make offers, they could be given credit by requiring them to notify to the WTO, liberalization measures which they have taken on an autonomous basis. The only obligation the notifying countries would be expected to assume in respect of such notified sectors, is to maintain transparency by notifying subsequently whether any modifications have been made in the notified liberalization measures.
- Such transparency would help the foreign service suppliers in taking advantage of the liberalization measures taken in developing their trade and could therefore be considered as contribution which developing countries, that are not in a position - at this stage - to make legally binding commitments. If some of you consider these ideas to be worth pursuing, I could request the Geneva-based Adviser of the Commonwealth Secretariat – Mr. Vinod Rege – to review the

preliminary paper which he has prepared for further discussions and examination by the Group.

- In this context it may be relevant to note that it is often argued that foreign investment would flow in the service sector to the African countries only if they make to the maximum extent possible, binding commitments in the round. Some analysts consider that this claim is exaggerated. Experience of countries like India and China in the past decades has clearly demonstrated that foreign investors are willing to come in and establish their commercial presence even where liberalization measures are taken on autonomous basis. Some of the empirical studies would go to suggest that the decisions on investment by multinational companies, whether they belong to manufacturing or service sectors, are influenced by such considerations as market potential, availability of physical and human resource infrastructure, and macroeconomic and political stability in the country. Whether or not the liberalization measures are bound in the WTO or not is perhaps the least important among the factors that influence investment decisions. It is only in cases, where the choice has to be made between two countries where conditions are similar and one of them has made a commitment and the other has not, that the choice may go to the country which has made the commitment.
- A related issue which we should address is what measures could be taken to assist African countries to build up appropriate regulatory mechanisms? Should WTO play any role in ensuring that assistance required in building up such mechanism or reorienting it where it already exists, is provided by the international organization having required expertise?
- How can African countries ensure their effective and improved participation in the discussions and negotiations that are taking place in GATS Rules on:
 - Emergency safeguard measures, and

- Use of subsidies?

In this context, I would like to say that a paper on the possible new rules that could be adopted on emergency safeguard measures, is under discussion in the Geneva Group of Commonwealth Developing countries. It is the intention of the Group to make it more broadly available, if after it is finalized on the basis of the comments made and views expressed in the discussion in the Group.

In conclusion, I would like to express the hope that the issues I have raised would provide a useful basis for reflection and discussions this morning and add clarity to the approach which the negotiators from the Commonwealth African countries could adopt in order to advance negotiations in this area.