

TRADE IN SERVICES—PERSPECTIVE OF THE DEVELOPING WORLD

*Peter Gakunu**

My task today is to give the viewpoint of the Developing World on the question of services. I hope that I will be successful, especially after the very challenging and interesting presentation made earlier by Professor Aronson. As you know, there are certain aspects that I mentioned yesterday on the intellectual property panel that overlap here, so I will try to relate to some of them with respect to the development of trade in services.

With respect to the question of a definition and the coverage of trade in services, developing countries are seeking to restrict the definition to cross-border trade. In essence, they say that services across national borders should be included, but that the definition should exclude transactions between residents or enterprises in the same country.

Given the close relationship between trade in services and foreign investment, or other factor movements, it would seem that any definition of trade in services must also include investment, or at least factor movement. Such a comprehensive view, however, would raise some difficulties. It would extend the negotiations into such areas as immigration, and investment relations, whereas the focus seems to be on the trade issues relative to trade in services. It is a question of whether, for example, the mayor of a major U.S. city would agree to, an international agreement on services relating to labor. It might be necessary, therefore, to minimize the degree of intrusion that the investment question has in the area of services. Nevertheless, whichever definition we may agree to it will be necessary to specify the particular service sectors or transactions to which the agreement would apply. The various methods for achieving this might include either a specific sector of negotiations, or an explanation of included or excluded sectors.

We need to go further in the light of individual national interests. The priority of developing countries is to obtain an agreement that would foster the acceleration and development of their services industries, particularly with regard to their export and competitive

* Director, Trade Cooperation Division, African, Caribbean and Pacific Group ("ACP Group"), Brussels, Belgium.

capacities. The present conclusion is that we should leave those who are competitive to be competitive in those services, and those who are not competitive to continue to depend on those who are competitive. Such an approach would tend to favor the developed countries which have already developed the capacity and the competitiveness necessary in this sector.

In the context of the negotiations, as we have already heard, the OECD countries would like for the negotiations to permit the liberalization and expansion of trade in services. Meanwhile, the developing countries continue to emphasize that liberalization should not be considered as an end in itself. It must be compatible with the pursuit of developmental objectives. In fact, the acceptance of this notion has been advanced by developing countries as the main criterion for the acceptance of continued negotiations in this area. If you allow me, I would like to deal a little more with the question of liberalization of trade in services versus the development approach to trade in services.

The Montevideo Declaration places the trend of liberalization in the context of promoting the economic growth of all trading partners and the development of developing countries. Some proposals by the developed countries, however, treat economic development as a natural consequence of trade liberalization. This notion tends to automatically link economic and trade development. This has been rejected by most developing countries. They do not see the link between the two as automatic. Consequently, developing countries stress that developmental aspects must be a central feature of any agreement. Additionally, development must not be treated as an after-thought, an appendage to a new GATT structure on services, or be thought of only in terms of exceptions to primary obligations. Therefore, the main objective of a services agreement is not trade liberalization per se, but liberalization as a means to trade expansion and growth for all countries, particularly the developing countries.

Trade liberalization must be seen as a way or an avenue to the developing countries' path towards development, not one merely for commercial purposes. I can understand, for example, the position of Citibank. It is one thing to have free access in terms of trade in services in the developing world, but it becomes difficult for the developing world to understand this free access. To render a "service" means that you already have an interest. The developing countries require of companies like Citibank that these companies have interests in the specific field that we are dealing with. I am sure that when we look at the Japanese example, you will see that Japan has for

many years been interested in this particular area because Japan has tended to have interests outside its national frontiers. Today you find Japan establishing industries in the United States. Therefore, there is a need for Japan to expand its operations and interests in the area of services. The developing countries have not developed an industrial set-up or any kind of service worth anything, even within their own national frontiers. It becomes very difficult for the developing world, therefore, to accept the notion of total liberalization of markets to national competition when their domestic companies have not even developed any particular competence within their own frontiers.

Of course, the notion of development is itself subject to different interpretations and will not allow for a broad range of policy options. However, it would at least require that there be some basic rules whereby each country should be allowed to determine both its own development policies and the measures for regulating foreign investments. These policies or measures may often be useless for the encouragement of capital and technology flows. In the long run, however, these policies tend to be restricted by the kind of bilateral agreements signed by governments in our particular part of the world.

It has to be recognized that a multilateral framework goes beyond relying exclusively on operational multilateral forces. For example, with regard to American measures to control monopolies and unfair business practices, or in terms of public health or national security, you do not merely have ideas about market forces. There are other considerations when looking at the developmental aspects of trade in services. Therefore, the developing countries have tended to emphasize the developmental aspects of services.

In effect, the ACP, a group of countries which I represent, also views this issue in this context within the Lomé III Convention which is now in operation. Lomé III was concluded in 1984. The development of trade in services is mentioned in the Lomé Charter. It speaks of the development of services from the production stage up to the final distribution of the product itself. We are in doubt as to whether we can work within a framework that you develop. In fact, in the current round of the negotiations, one of the questions that we are trying to answer is what kind of service framework do the ACP states and the EEC want in the successor convention. Many specific interests have been expressed in the Uruguay Round, particularly by the United States. From the European perspective, the Americans are not even clear in their own minds as to what kind of service framework they would like from the GATT. Perhaps in looking at the negotiations in such a way, we can try to develop an

appropriate framework by which we would anticipate developments in the context of the current GATT negotiations.

With respect to market access and the right of establishment, it is to be noted that market access is not conceived of as an existing right in itself. To do so would imply a legal right to trade, which does not exist. Therefore, there is no *right* of access to a market whether for goods, services or factors of production. Market access can only be established through bilateral or multilateral negotiations. That is what Professor Aronson was showing this morning; in that you have market access either through negotiation on the national (bilateral) level, or you have market access provisions at the multilateral level. So, it has been strongly suggested that market access for services should be negotiated through packages of liberalization measures, changes of specific undertakings or concessions. Access could then be generalized to the application of firm principles. Increased market access will provide immediate benefits to the developed countries due to the readiness of their industries to utilize expanded market opportunities. It will probably be of even greater importance to developing countries, with a view towards their greater need for increased participation in international trade, that a greater rate of expansion for the export of services will be required. It is here that I have tried to meet halfway some of the comments that have been made this morning.

It is quite clear, however, that most developing countries are not currently in a position to utilize expanded export opportunities that may ensue from the exchange of market access commitments. Indeed, a formal exchange of market access commitments would, therefore, not be in the interest of a number of developing countries. It is easy to acquire more significant market access burdens than benefits, especially in view of the relatively small role that exports play in developing nations' service economies. Nevertheless, certain proposals are being made by a number of developing countries to examine how these burdens can best be resolved. Examples of such proposals include Mexico's proposal for relative reciprocity, and Egypt's proposal for preferred access for developing countries. I understand that these proposals are not acceptable to the United States because they will mean making exceptions to the general rule. Then again, in regard to this particular area, even the GATT itself is an exception to the general rule. So, it is possible that from one of these proposals we might find an alternative approach to this problem.

With respect to the MFN standard that I discussed yesterday, there is something in the efforts to relate MFN treatment to the obligations

and requirements of the developing world. We may have to offer different obligations to various groups of countries. Thus, developing countries require a set of obligations different from those demanded by developed countries in the context of a framework concerning trade in services.

With respect to national treatment, if we recognize that all countries have the right to regulate the entry, presence and establishment of foreign suppliers of services, then it would be difficult to expect them to extend equal treatment for nationals and foreigners in the same matters. The national treatment standard would thus seem to be quite inappropriate in its application to trade in services, especially in relation to the treatment of foreign suppliers of services. Unless, of course, national treatment is accompanied by immigration or investment regulations which I mentioned earlier.

Earlier today, a comment was made with respect to transparency, prior notification, multilateral approval of national regulations, and the concept of a super-national body to review proposed national policy measures prior to adoption. It is very much doubted that even the United States would be willing to submit its own trade policy measures to prior notification or multilateral approval. I do not see the United States Congress, for example, agreeing that its internal laws must be submitted for approval to a multilateral institution. In any case, it would seem impossible to agree on the criteria for determining what is an appropriate regulation, because I do not think that U.S. regulation, in a given area, is more appropriate for the part of the world where I come from. What may be appropriate here, may not be appropriate in another country. I am sure that the national legislation of the United States differs completely from that of Mexico.

Finally, there is the problem of trying to determine the criteria of what actually constitutes an appropriate trade regulation. The diversity of economic conditions among countries suggests that the notion of a single appropriate regulation would be quite unrealistic. It may thus be more realistic to limit the notion of transparency to both the publication and impartial administration of trade measures and a dispute settlement system for cases of possible violation of a services agreement.

Those are the general comments I wanted to make, but perhaps I need to return to the point concerning the relationship between an agreement on services and the existing domestic laws and regulations. The negotiating mandate which was reviewed this morning states that any agreement in services should respect the policy objectives of a

nation's laws and regulations governing services. At the same time, the negotiations are also oriented towards removing or reducing barriers. This would be accomplished by simply establishing for the participants the conditions of transparency and concessions, whereby liberalization might occur. In essence, most of the developing countries are proposing that any restrictions on market access, presence, or establishment, must be subjected to progressive liberalization.

Naturally, developing countries point out that the concept of barriers should not include foreign investment regulations or measures applied for balance-of-payments purposes. This brings in the issue of matters that may arise in the context of World Bank or IMF measures. Problems may be found if developing countries are taking certain measures imposed by these agencies which might contradict with a GATT legal framework. There would appear, in that case, to be an underlying conflict between the concept of barriers and the respect for existing laws and regulations. There is a need, therefore, to develop appropriate ethics for achieving progressive liberalization which will be in conformity with the interests of developing countries.

I want to end my statement with the developing countries' objectives in negotiating a framework in this area. The definition of trade in services should be limited only to cross-border trade. This must be subject to a general reservation with regard to sovereignty, competence, immigration, and foreign regulatory instruments. The services industries in developing countries should be allowed increased access to technology and the development of technological abilities. There will be a need for structural changes in the service economies of developing countries because of this new framework. There will be a need for improvement in international competitiveness, including the enhancement of a national competitive advantage, growth in export capabilities, and the increased participation in national trade in services. As I said before, liberalization, in the context of the Uruguay Round, must allow for measures which promote the development of a service industry in the developing countries, access to technology, effective development of national technological and human resources, and the enhancement of a competitive capacity for international trade.

As the framework is presented at this time, it is not a feasible framework for the developing countries, especially if one analyzes it from the "poorly-developing country" approach. Otherwise, the people of the developing countries would become just an employee of a service firm which intends to set up in a developing country.

As an example, let us assume that it were agreed that telecommunication services would be provided by the most efficient producer. In my country, Kenya, this means that the Post and Telecommunications corporation, a quasi-governmental institution, would have to rely on the United States, or whomever is providing the particular service. Even if the American firm established an agent in the country, we would have no right to it. We would be there only as an employee.

This raises two questions. One is the generation of revenue. Revenue that is currently generated locally would be taken out of the country never to return. Second, there would be no local content remaining in the country. It would become very difficult, not for myself who would benefit as an employee, but for the country. The country would have done away with the possibility of developing its own capability in this area and would forever depend on imports.