

PM Lehloeny

Trade in services: Examples for SADC

Summary

Over the last few decades, the services sector has become an important component of world trade and the main income earner for many countries. Accelerated by the process of liberalisation, the effects of trade in services now traverse all countries. The main participants and beneficiaries, however, remain developed countries, while developing countries continue to play a marginal role. This comes as a result of a variety of factors ranging from developing countries' inexperience in producing services for export purposes, to trade rules that are more favourable to developed countries, to the complexity and cost of the measures necessary for developing countries to make a successful transition to the new arrangements under liberalisation. Notwithstanding the adverse conditions, opportunities exist in the legal framework developed under the WTO for developing countries to participate more meaningfully in trade in service. These include, *inter alia*, the possibility of collaborating with foreign firms and benefiting from their experience, as well as establishing regional joint ventures that can compete more effectively at the international level. In the end, the success of developing countries in penetrating the international services market will be determined by the extent to which their domestic service providers manage to adapt to the new trade environment, how all these countries exercise their options in choosing which services to liberalize and their timing in doing so, as well as their ability to resist pressure from developed countries to act against their better judgement.

Handel in dienste: Voorbeelde vir SAOG

Oor die afgelope paar dekades het die dienste sektor 'n belangrike komponent van wêreldhandel geword en is dit die hoof/vernaamste inkomste verdieners vir baie lande. Verhaas deur die proses van liberalisering, oorkruis die uitwerking van handel in dienste nou alle lande. Die hoof deelnemers en bevoorreedes bly egter ontwikkelde lande, terwyl ontwikkelende lande aanhou om 'n mindere rol te speel. Dit is as gevolg van 'n verskeidenheid faktore wat strek van ontwikkelende lande se onervarenheid om dienste vir uitvoerdoeleindes te produseer, na handelsreëls wat meer gunstig is vir ontwikkelde lande, na die ingewikkeldheid en die koste van die afmetings wat noodsaaklik is vir ontwikkelende lande om 'n suksesvolle oorgang te maak na die nuwe reëlings onder liberalisering. Nieteenstaande die ongunstige toestande, bestaan daar geleenthede in die regsraamwerk ontwikkel onder die WTO vir ontwikkelende lande om meer sinvol deel te neem in handel in dienste. Dit sluit in, *inter alia*, die moontlikheid om saam te werk met buitelandse firmas en te baat van hulle ervaring, sowel as die stigting van streeks gesamentlike ondernemings wat meer effektief op internasionale vlak kan kompeteer. Aan die einde sal die sukses van ontwikkelende lande om deur te dring in die internasionale dienstemark bepaal word deur die bestek/omvang waartoe hul binnelandse diensverskaffers daarin slaag om aan te pas tot die nuwe handelsomgewing, hoe al hierdie lande hul opsies uitoefen om te kies watter dienste om te liberaliseer en hul tydskerekening om dit te doen, sowel as hul vermoë om druk van ontwikkelde lande om teen hul beter oordeel op te tree te weerstaan.

PM Lehloeny, Dept of Mercantile Law, Faculty of Law, University of the Free State, PO Box 339, Bloemfontein 9300.

1. Introduction

1.1 General

Traditionally, services were not a subject of much trade and it is only in recent decades that they have become an important and dynamic part of economic activity. Trade in service is now the dominant employer and producer of income in all developed and the majority of developing countries.¹ Even though there are limitations in the current methods used to determine the precise extent of trade in this sector, WTO estimates indicate that in 1996, exports of commercial services amounted to US \$1.2 trillion, over a fifth of total world trade. This figure could be much higher as it represents only cross-border trade in services and excludes sales through foreign affiliates.²

Because of the diverse forms in which commercial services are found, academic writers and drafters of treaties have often found it difficult to define them with precision. As a result they are largely defined by contrasting them with goods. Thus, it is not uncommon to find services defined in terms of their intangibility, invisibility and transitory character, as opposed to the tangibility, visibility and durability of goods.³

The WTO secretariat has classified services into the following 12 sectors: business services; communication services; construction and engineering services; distribution services; educational services; environmental services; financial services; health services; tourism and travel services; recreational, cultural and sporting services; transport services; and other services not included elsewhere. These are further divided into 155 sub-sectors.⁴

Although the relative share of developing countries in world exports of services is presently quite small, several of them are among the 25 leading exporters in the world.⁵ Furthermore, in some regions where international trade in services is more entrenched, developing countries with small economies feature among countries in which exports of services account for income equal to or greater than that from merchandise exports.⁶ This is an indication that, through careful planning and successful identification of opportunities presented by the on-going moves to liberalize trade in services, it is possible for developing countries everywhere to benefit from this form of trade. Developing countries should see this as an alternative means of earning income which they so desperately need to achieve their goals of development and economic independence.

1 Sauvant and Weber 1996:xi. Also Raworth 2000.

2 Prieto *et al* *Multilateral and regional liberalization of trade in services*:237.

3 International Trade Centre UNCTAD/WTO. *Business guide to the Uruguay round*:257.

4 Sauvant and Weber 1996:vi.

5 Prieto *et al* (*supra*):239.

6 Prieto *et al*.

1.2 Overview

Using the SADC region as a case study, this work aims to achieve a number of objectives: it seeks to find out how much liberalization of trade in services has occurred in developing countries up to now; whether these countries stand to gain from this exercise; and to identify and define the opportunities created by the existing agreements dealing with liberalization of trade in services, multilateral or otherwise, from the perspective of developing countries.

It further highlights some of the problems likely to be encountered by developing countries as a result of liberalization measures they take. It also looks at the precautions which these countries can take to avoid or minimize the impact of the harmful side-effects of liberalization and to ensure that the process is mutually beneficial to all the parties concerned.

2. Various agreements liberalizing trade in services

2.1 The GATS

2.1.1 General

Even though trade in services currently accounts for more than a fifth of world trade, it was not until the end of the Uruguay Round in 1996 that it was multilaterally regulated under one agreement.⁷ The agreement, called the General Agreement on Trade in Services (GATS), was negotiated and signed under the auspices of the new World Trade Organization (WTO). It consists of rules and lists of specific commitments undertaken by various Members concerning treatment of foreign service providers. The rules for services trade are fundamentally similar to those for goods trade, with a few changes made to provide for differences between the two.⁸

The GATS applies to actions of Members relating to provision of services on a commercial basis. These include measures taken by central, regional or local governments and authorities as well as non-governmental entities exercising power delegated by the above-mentioned authorities.

The services affected are those supplied internationally by means of the following modes: cross-border movement of service products; movement of consumers to the country of importation; the establishment of a commercial presence in the country where the service is to be provided; and temporary movement of natural persons to another country in order to provide the service there.

7 Mendoza *et al.* *Trade rules in the making - Challenges in regional and multilateral negotiations*:235.

8 International Trade Centre UNCTAD/WTO (*supra*):255.

2.1.2 General obligations

Some of the important obligations in the GATS include:

The Most Favoured Nation (MFN) Treatment: Each Member is obliged to extend the MFN treatment to services and service suppliers of the other Members. However, provision is made for Members to suspend their obligations for a period not exceeding 10 years under certain conditions. Furthermore, Members may take measures aimed at facilitating trade in locally produced services for consumption by their immediate neighbours.⁹ These exceptions are aimed at allowing Members time to adjust their regulatory regimes before they can liberalize their service sectors as well as to continue to extend preferential treatment to services of their regional partners.

Transparency: In order to make information relating to changes in Members' domestic regulations on services accessible to foreign service providers, the GATS requires Members to disclose measures they take which affect the functioning of its provisions. This includes either publishing or making such measures publicly available, reporting annually to the Council for Trade in Services on changes considerably affecting services covered in the Members' specific commitments and timely response to requests for information by other Members. Members are also required to set up enquiry points to allow for speedy dispensing of information to each other.¹⁰

Moreover, the Agreement specifically calls on developed Member countries to set up contact points for providing developing Member countries' service suppliers with information on their various markets relating to: commercial and technical aspects of the supply of services; requirements for conducting commercial operations; and the availability of services technology.¹¹

These provisions make it easier for Members' service suppliers to obtain information relating to foreign services markets. They also take particular recognition of the unique position of service suppliers from developing Member countries who are relative new comers to the field of services export.

Increasing the Participation of Developing Countries in Services Trade: The Agreement calls for facilitation of greater participation of developing countries in world trade through negotiated specific commitments between Members. This is to be achieved through technology transfer, access to information and distribution channels, and liberalization of service areas in which developing countries have comparative advantage.¹²

However, there is no binding obligation on developed country Members to carry out these measures. As a result, the provision is unlikely to have any real effect.

9 Article II (1), (2) and (3). It complements Article XXIV of GATT which authorizes establishment of custom unions and free trade areas (*post*):8

10 Article III (1)(2)(3).

11 Article IV (2).

12 Article IV (1).

Fair Treatment For Foreign Service Providers: Members are obliged to act justly and reasonably in administering measures relating to trade in services covered in their specific commitments. To make provision for this, they have to establish dispute settlement mechanisms upon request by an aggrieved service provider.¹³

While this provision can be useful in ensuring equal treatment for foreign service providers, the fact that the dispute settlement mechanisms are to be set up in and conducted by the host country makes them susceptible to bias against foreigners. This is more so in the light of the fact that protectionist practices are often initiated or supported by governments.

Mutual Recognition of Qualifications: Members are encouraged to conclude smaller agreements between any number of them aimed at mutual recognition of qualifications required for providing services in each other's markets.¹⁴ Agreements of the sort referred to here will eliminate the necessity of members' service providers having to comply with extra requirements before they can operate in foreign markets. They will also help raise the standards of training which Members' service providers receive.

Rules on Monopolies, Exclusive Service Suppliers and Other Business: Members have to see to it that their monopoly service suppliers operate within the terms of their respective general obligations and specific commitments. To ensure compliance with this provision, the Council for Trade in Services is entitled to request specific information from the member complained about and to be notified of planned issuing of new monopoly rights at least 3 months ahead of its implementation.

Furthermore, to prevent certain business practices by service providers which thwart competition, the GATS requires Members to hold discussions aimed at eliminating such practices if anyone of them requests them. Members are also obliged to provide the relevant information where possible.¹⁵

Restrictions to Safeguard the Balance of Payments. To enable Members, developing countries in particular, to retain sufficient financial reserves to continue with economic transition and development, Members are allowed to temporarily suspend some of their obligations based on specific commitments during times of balance of payments and external financial difficulties. In doing this, a Member must act impartially towards all the other Members, must comply with the provisions of the Agreement of the International Monetary Fund and must not act unreasonably.¹⁶ This concession takes note of the fact that liberalization of the services sector exposes fragile economies to added external risks.

Government Procurement: The general principles of MFN treatment, national treatment and market access are specifically excluded from application in cases of purchases by governments and agencies controlled

13 Article VI (1)(2).

14 Article VII.

15 Article IX (1) and (2).

16 Article XII.

by them, provided such purchases are not for purposes of commercial resale. However, provision was made for future multilateral negotiations on government procurement within two years of the Agreement Establishing the WTO coming into force.¹⁷ As it will be seen later on, such negotiations did occur, resulting in a plurilateral agreement which requires Member Countries to extend national and MFN treatment to government purchases.

Market Access and National Treatment Commitments: To the extent undertaken in their schedules of specific commitments, Members are required to open up their services markets and to extent national treatment to foreign services and service suppliers. This provision serves to allow Members to bind only those service areas that they feel are ready for liberalization. Wholesale liberalization of the entire services sector would, in some countries, leave some areas dangerously unprotected and vulnerable to abuse.²⁰

Dispute Settlement and Enforcement: In the event of disputes concerning violations of members' obligations under the Agreement, provision is made for consultative procedures involving discussions or suspension of equivalent benefits by other members to the wrongdoer, depending on the seriousness of the violation.²¹

While clearly important, the above provision has a shortcoming in that it makes punitive action against defaulters voluntary. Members are likely to ignore calls for sanctions if it means loss of lucrative trade with the defaulting country. An unsound enforcement mechanism threatens the effectiveness of the whole Agreement and exposes economically weaker Members to bullying by the stronger Members.

Annexes: Upon realizing that the negotiations on liberalization of certain service areas might extend beyond the Uruguay Round, the parties decided to add annexes as part of the main text of the GATS. The annexes stipulate extra rules pertaining to these service areas as well as guidelines for further negotiations on liberalization. Service areas covered by the annexes include movement of natural persons, financial services, telecommunications and maritime transport.

2.2 Other liberalization agreements

2.2.1 General

There are other liberalization arrangements on services apart from the GATS. They are either sub-globally, regionally or bilaterally based. These arrangements owe their existence to article XXIV of the GATT,²² which permits

17 Article XIII (1) and (2).

18 Article XVI.

19 Article XVII.

20 Mendoza *et al* (*supra*):258.

21 Article XXIII.

22 Article II of GATS reaffirms this exception to the MFN principle.

Members of customs unions and free trade areas to extend preferential treatment to one another without doing the same for countries outside such customs unions or free trade areas. Various liberalization arrangements often differ with regard to the services sectors they liberalize, the extent of liberalization, their approach to liberalization etc. Some of these agreements are summarized below.

2.2.2 North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) between Canada, Mexico and the United States of America applies to both services and goods. However, for the present purposes only provisions dealing with services will be examined.

The aim of the agreement, as stated in its list of objectives, is multi-fold. It includes, *inter alia*, bringing about increased trade in services between the Parties through the removal of barriers thereto, attracting investment into the Parties' territories, establishing mechanisms for effective implementation of the agreement and setting up the framework for further liberalization in future. These objectives are to be achieved through a set of principles underlying the agreement, namely national treatment, MFN treatment and transparency.²³

The NAFTA, unlike the GATS, follows a "top down" approach in terms of which "all service transactions are considered to be free from restraint unless there are indications to the contrary in the [Parties] lists of reservations and non-conforming measures".²⁴ Consequently, reservations and derogations play an important role in the Agreement. This may convey the impression that the Parties are resistant to liberalization of trade in services. However, the opposite is true as the NAFTA is more liberalizing of services than the GATS. It encompasses every service transaction in all sectors, except those mentioned in the Parties' lists reservation and non-conforming measures.

In certain circumstances, nevertheless, the agreement provides for exceptions. Each Party can take non-conforming action in applying "standard-related measures". Such action includes measures that are concerned with protection of life, the environment, consumers as well as those seeking to ensure implementation of the Agreement.²⁵ "Standard-related measures" may take a form of denial by other Parties of access to their service markets to service providers of a Party that does not meet specified requirements or any other measures of protection which are deemed to be necessary.

The Parties are also each required to set up an inquiry point where the other Parties can obtain information on various issues relating to its "standard-related measures". As in the case of the GATS, the inquiry points make it easier for the other Parties and their service providers to know, *inter alia*, the limits of their right of access to each other's services markets.

23 Article 102.

24 Mendoza *et al* (*supra*):236.

25 Article 904.

Other exceptions to the “top down” approach followed in the NAFTA include situations where: disclosure of information might compromise a Party’s security; taxation measures are concerned; a Party experiences or is threatened with serious balance of payments problems; and disclosure of information would be against a Party’s law or interfere with its enforcement.²⁶ The inclusion of these exceptions in the Agreement serves to protect the national interests of the various Parties and to enable them to take appropriate action in that regard when necessary. This is important in the light of the fact that the NAFTA is among the relatively more liberal agreements on trade in services.

There are also specific chapters on the following topics: government procurement; cross-border trade in services; financial services; temporary entry for business persons; intellectual property; and dispute settlement. It should be noted that government purchases of services (government procurement) is not covered in the GATS. The NAFTA also contains the Party’s Schedules, outlining each Party’s reservations in different service sectors.

2.2.3 Asean framework agreement on services

Another important agreement is the Asean framework agreement on services between Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam. The significance of this Agreement lies in the fact that it is between countries which, like the SADC region, are classified as developing and whose economies are at different stages of development.

The objectives of the Agreement are stated as, *inter alia*, “to enhance cooperation in services amongst Members States in order to improve the efficiency and competitiveness, diversify production capacity and supply and distribution of services of their service suppliers within and outside ASEAN”.²⁷

The agreement provides for creation of cooperation arrangements involving services between all the Member States. However, in recognition of the Member States’ varying stages of economic development and the unreadiness of some of them for participation in arrangements involving certain sectors, provision is made for two or more Member States to implement such arrangements ahead of the others.²⁸

In this way, a situation is avoided where the more advanced Member States may feel that they are being held back by their less advanced counterparts, who in turn may feel they are not ready to liberalize certain service sectors. At the same time, the provision ensures that the cooperation arrangements are concluded, awaiting the time when the rest of the Member States will be ready to implement them.

26 Articles 2102, 2103 and 2104.

27 Article I (a).

28 Article II (a).

There is also a provision calling on Member States to give recognition to each other's educational qualifications and experience, although it is not binding.

Other significant provisions in the Asean framework agreement on services include those on the extent of liberalization, conditions of denial for benefits of the Agreement and dispute settlement mechanisms.

2.2.4 The agreement on government procurement

Pursuant to their undertaking in article XIII of the GATS, Member States of the WTO held negotiations on liberalizing government procurement during the Tokyo Round. The result was the Agreement on Government Procurement. Being a plurilateral agreement, WTO Member States have a choice regarding whether they join it or not.

The primary aim of the Agreement is to require governments not to discriminate between domestic and foreign suppliers when purchasing goods and services for their own use.²⁹ This is achieved by, *inter alia*, imposing on them an obligation to afford MFN and national treatment to foreign products, services and suppliers.³⁰

All the obligations arising from the Agreement apply only to government agencies which have been specified by Member States in their annexes. Member States are also at liberty to state in the annexes the particular services they want the Agreement to apply to.³¹

When making the relevant purchases, the above-mentioned government agencies have to follow set procedural rules. These include inviting tenders, affording an equal and fair opportunity to foreign suppliers to bid for the tenders and awarding the contract to the best qualified supplier in terms of the criteria specified in the notice.³²

With the aim of enticing more developing countries to accede to the Agreement, special provisions are included that extend favourable treatment to these countries. For example, all developed country Members are required to set up information centres in their territories with the object of enabling developing countries to access information relating to government procurement.

For those developing Member States which elect to accede to the Agreement, the consequences are bound to be far-reaching and profound. This is because up to now, almost all developing countries have been giving preference to local service suppliers when it comes to government procurement,³³ and foreign suppliers were considered only if the former could not meet the demand.

29 Preamble.

30 Article III.

31 Article I and Appendix I.

32 Articles VII to XVI.

33 International Trade Centre UNTAD/WTO (*supra*):303-304.

3. Liberalization of trade in services in the SADC region

3.1 General

Generally, very few developing countries produce services for purposes of exportation. Continuing a practice that was prevalent amongst trading nations around the world until recently, they tend to reserve this sector of their economies for provision by arms of government and domestic enterprises which produce for local consumption only. Countries in the SADC region are no exception in this regard, as it will become clear in the pages that follow. As a result, intra-SADC exchange in the provision of services on a commercial basis has remained largely restricted. The same is true for trade in services between SADC and other regions.

Although since inception of SADC numerous agreements concerning services have been concluded between its Member States, these have, in the main, focused on co-operation rather than trade in services.³⁴ SADC has also not concluded any agreements on services trade with other regions as an organization, even though some of its Member States have done so in their individual capacity.

Only now are plans to put together a SADC instrument concentrating on services trade being discussed. While nothing concrete has been agreed upon, the aim is to create a document that will embody a strategy for participation and integration of SADC Member States at regional and global negotiations on trade in services under the GATS.³⁵ Pursuant to this objective, it has been decided that the SADC Trade Negotiating Forum (TNF) should undertake the preliminary negotiations on the content of the agreement. The TNF, in executing this mandate, is supposed to work towards the liberalization of trade in services within the region, as well as co-ordinating strategies and negotiating positions of Member States in the GATS negotiations.³⁶

According to the planned approach, the TNF will build on the progress already achieved in liberalizing trade in services within the region under the different SADC Sectoral Co-ordinating Units.³⁷ These unit form part of the institutional framework created in the various service sectors in which SADC has Protocols, and they are charged with, among others, co-ordinating the day-to-day operations in the implementation of the Protocols.³⁸ In order to ascertain how far the various Sectoral Co-ordinating Units have progressed in liberalizing services trade, it is essential to examine the relevant SADC Protocols and the extent to which their provisions have been implemented.

34 The Maseru protocol on trade and its subsequent amendment protocol, even though they professes to cover services, are centred around merchandise trade and say very little about services.

35 Record of the Meeting of the SADC Trade Negotiating Forum (TNF) on Trade in Services, held in Maseru on 7-9th June 2000.

36 *Ibid*:8.

37 *Ibid*:10.

38 The SADC protocol on the development of tourism:12..

There are about 15 SADC Protocols in various service areas.³⁹ Even though they are mainly co-operation agreements between various Member States, the Protocols go some way in introducing liberalization. The sectors of transport, communications, education and training as well as health are regarded to be part of any country's (in this case any region's) basic infrastructure and *sine qua non* for economic development.⁴⁰ Because of their strategic importance and because of limited space, the Protocols on these sectors, along with the Protocol on Tourism, will be singled out for a more detailed examination.

3.2 The protocol on transport, communications and meteorology

It is by all means the more progressive of the SADC Protocols in terms of its liberalization efforts, especially in the area of road transport. It states its goals as being, *inter alia*, the removal of obstacles to the movement of persons, goods and services within the region.⁴¹ It also incorporates principles such as non-discrimination, reciprocity and extra-territorial jurisdiction,⁴² which are central to the GATS and other international agreements instrumental in the liberalization of trade in services.

Furthermore, the Protocol has a clear-cut plan for how the liberalizing measures are to be effected in those areas that have been earmarked for that purpose. An example of this is seen with the provision on market access by the Member States to one another's road transport where carriage of goods is involved. The measures are to be effected in three well-defined phases. These will culminate in Member States' carriers being able to transport goods anywhere within and outside the region, provided that either the origin or destination of the goods is inside the SADC region.⁴³ Borrowing from the Asean framework agreement on services referred to in chapter 1, the same provision allows two or more Member States to conclude bilateral agreements ahead of others if they are in a position to do so.⁴⁴

Implementation of the Protocol on transport, communications and meteorology is also already in progress. According to the Southern Africa Transport and Communications Commission, cross-sectoral assessment of implementation of the Protocol reveals that it is in the average of 52.5 %, 46.9 % and 23.6 % for the respective sectors.⁴⁵ This is largely because the institutions established under the Protocol to see to its implementation are already in place and functional.

39 It is not possible to give an exact figure as some Protocols are still being drafted and others have not been ratified.

40 Also banking and utilities. Refer to Sauvant and Weber 1996:xi.

41 Article 2.4(b).

42 Article 5.4.

43 Article 5.3(1), (2) and (7).

44 Article 5.3(4).

45 Discussion document: Protocol on transport, communications and meteorology. Agenda Item 4. Meetings of Committee of Senior Officials and Committee of Ministers. Namibia. 28th June to 2 July, 1999:5.

It should be noted, however, that in determining the extent of implementation of the Protocol, it is not only its actual application on the ground by different Member States that is taken into consideration. Some of the measures leading up to and surrounding such application are also considered. These include policy formulation, legal reform, mobilization actions as well as impact monitoring.⁴⁶

Thus, for instance, even though the Protocol is said to have been implemented up to 52.5 % in the transport sector, it does not follow that the effects of this are already being seen or felt on the ground. In fact, it is reported that, taking the Protocol as a whole, no less than 56 % of its content is yet to be implemented.⁴⁷ Given that only a few of the Protocol's provisions introduce liberalization measure, and that implementation of its provisions has to a larger extent not been carried out, a great deal of work still remains to be done before considerable liberalization of trade in the relevant service sectors becomes a reality.

3.3 The protocol on education and training (the education protocol)

Even though it also introduces some measure of liberalization to the relevant sector, it is much less progressive. After its full implementation, it envisages a situation where all obstacles to quality education within the region, including immigration formalities, will have been removed.⁴⁸ In the interim, it aims to standardize admission requirements and accreditation of qualifications in the region's education institutions.⁴⁹ Member States have also bound themselves to treating students from the region as home students in each other's universities for purposes of fees and accommodation within ten years of the Protocol's entry into force.⁵⁰

The remainder of the Education Protocol's provisions deal with what can at best be described as measures of co-operation as opposed to measures liberalizing trade in services. They are generally concerned with mutual assistance and nothing more. Thus, the Education Protocol's contribution to the liberalization of trade in the region's education sector is quite limited.

To compound on the Protocol's shortcomings, progress in implementing its provisions has been stalled by the failure of some Member States to ratify it. Its provisions will only be binding on the Member States after it has been signed by two thirds of them,⁵¹ and this has not occurred.

46 *Ibid.*:3.

47 *Ibid.*

48 Article 3 (f) and (g). Also Article 7(6).

49 Article 4 (c).

50 Article 7(5).

51 Article 19.

3.4 The SADC protocol on the development of tourism (the tourism protocol)

Its significance and that of its subject matter lies in the increasingly important role which tourism plays as the top income earner for some developing countries and regions.⁵² As such, it deserves special attention and consideration from the SADC for its potential benefits to the region's economic growth and development.

The Tourism Protocol sets out to achieve a number of goals. These include increasing the region's competitive advantage through collective efforts and co-operation; improving the quality and standards of the region's tourism industry; promoting the different aspects of the region as a tourism destination by highlighting each Member States' unique tourist attractions; and making intra-regional movement of tourists easier by relaxing or eliminating travel restrictions.⁵³

Member States are also required to work towards improving the region's transport and communication facilities so as to make visitor's travel as smooth as possible.⁵⁴ Moreover, they have to unite in developing marketing and implementation strategies for tourism and in responding to market demand in the region.⁵⁵

As with the Transport, Communication and Meteorology Protocol, the implementation of the Tourism Protocol is well underway. All but one SADC Member States have ratified it and the institutional mechanisms set up to oversee its implementation are functional.

The Regional Tourism Organisation of Southern Africa (RETOSA), being one of the institutional mechanisms referred to above, has played the leading role in promoting the objectives of the Tourism Protocol since its establishment in 1996.⁵⁶ Its mandate is to market and create a solid destination identity for the region in the international market,⁵⁷ and its endeavours in that regard are already showing signs of bearing fruits. In 1997, 9 % growth in arrivals was recorded over 1996. A similar growth rate was expected in 1998 over 1997, and this trend is expected to continue for a period of five years ending in 2002.⁵⁸

In executing its mandate, RETOSA has engaged in a variety of different activities. In 1998/99, for example, it participated in three international travel fairs, where it presented exhibitions; it developed a regional directory, the aim of which was to address the need for promotional materials having a regional perspective; it developed a regional website to make information on Southern Africa accessible to the travelling public; and arranged tours for

52 Mendoza *et al.* (*supra*):241-242.

53 Article 2.

54 Article 5.

55 Article 7(2)(a)

56 The Draft Tourism Sector Report 1998/99:8.

57 *Ibid.*:9.

58 *Ibid.*:4.

travel and consumer media in order to generate publicity for the region as a tourist destination. Presently, RETOSA has twelve projects worth US \$5.188 million underway.⁵⁹

Although the implementation of the Tourism Protocol has taken off to a good start, still an enormous amount of work has to be done to realise the economic potential of the tourism sector in the region. At present, a wide gap remains in the levels of tourism development between different SADC Member States and, according to the Tourism Co-ordination Unit's 1998/99 report, "the inequalities are wide and the scope and opportunities for development are uneven".⁶⁰ If the untapped economic opportunities existing in the region's tourism sector are to be exploited to the full, these disparities need to be addressed through right policies and implementation thereof.

3.5 The SADC protocol on health

While its provisions indirectly pave the way for future liberalization of trade in health services, they are concerned with co-operation and co-ordinating policies between Member States. Its objectives comprise numerous collaborative efforts between Member States in the health sector including, among others, control and preparedness for epidemics as well as promoting and co-ordinating the development and training of health personnel.⁶¹

Unlike the Education Protocol, for instance, whose stated ultimate goal is the eventual elimination of all immigration requirements so as to allow free movement of students and teachers in the region, the protocol on health does not profess to having such plans for the region's health sector personnel. Furthermore, it still has not been signed by the requisite two-thirds of the Member States, and therefore, its implementation has not commenced.

3.6 The agreement on trade, development and co-operation between the European Community and the Republic of South Africa

As has been pointed out, even though SADC itself has not concluded any agreements on trade in Services with other regions or countries, some of its Member States have done so individually. One such agreement is the Agreement on trade, development and co-operation between the European Community (EC) and the Republic of South Africa (RSA), covering both goods and services. This Agreement is likely to have a significant impact not only inside the RSA, but in the SADC region as a whole because of the extensive dominance and influence of the former in the region.

It provides for the establishment of a free trade area (FTA) between the two Parties. This FTA, which covers liberalization of trade in services among

59 *Ibid.*:4-6.

60 *Ibid.*:11.

61 Article 3.

other things, is to become operational within twelve years for the RSA and ten years for the EC, beginning from the date of entry into force of the Agreement. There is also an undertaking by the Parties to seek ways of further liberalizing trade in services between them. The measures taken must, according to the agreement, abolish all discrimination in the services sectors covered by the Agreement and must include all modes of supply.⁶²

Particular emphasis is placed on the strict adherence by the Parties to the provisions of the GATS, especially those dealing with the most-favoured-nation treatment. Such adherence covers negative measures like suspension of the MFN treatment where the Parties afford advantages to one another in terms of article V of the GATS or other exemptions listed by either Party in their GATS commitments.⁶³

Lastly, save in cases of balance of payment difficulties, the Parties are obliged to allow current transactions involving their respective residents to be paid for in freely convertible currency. South Africa, nevertheless, may take preventive action against its residents who wish to make illegal capital outflows.⁶⁴

As evidenced by the preceding discussion, intra-SADC trade in services is still largely restricted. Equally small is the level of liberalization, which varies according to the individual service sectors. One of the main reasons behind this lack of progress is no doubt because the sophistication and quality of services, and therefore their tradability, often go hand-in-hand with the level of economic development. This is why, for example, it is not common to find a poor country with highly sophisticated and efficient service systems.

We have also seen that the development of trade in services and liberalization thereof in SADC is being pursued on two fronts. On the one hand, there is the on-going dialogue between SADC Member States regarding regional strategy for services trade within and outside SADC. This is still in its initial stages and an early agreement is unlikely.

On the other hand, Member States are also acting individually to conclude separate agreements with other countries and regions. If the Agreement on Trade, Development and Co-operation Between the European Community and the Republic of South Africa is anything to go by, liberalization on this front will be much quicker and broader in scope. In the end, a situation is likely to emerge where intra-SADC trade in services is suppressed, while trade with other regions or countries thrives.

With all these developments taking place within SADC, as well as the wider efforts to liberalize trade in services globally, a number of questions arise regarding the effects liberalization of trade in services will have in developing countries. These questions include, *inter alia*, whether much will be gained by developing countries from liberalization of trade in services; which, between intra-regional trade in services and services trade with the

62 Article 30 (1).

63 Article 29 (1) and (2).

64 Article 32 (1) and (1).

outside world, should come first in developing countries; and how developing countries can participate in international trade in services with minimum harm to their own interests.

4. Do developing countries really stand to benefit from liberalization of trade in services?

4.1 General

So far in this work, liberalization of services trade has been portrayed as desirable and beneficial. Countries around the world, both rich and poor, are being encouraged to open up their services markets and join this new trend in international trade which is set to generate increased growth in their economies. However, it remains to be seen whether there really are benefits for the poorer countries in this new practice or, as others have suggested, it is merely a ploy by industrialized countries to lure the former into surrendering their services markets for little or nothing in return.

At the multilateral level, the GATS has up to now mainly set up a stage for future liberalization of trade in services. The commitments that the Member States have made only eliminate minor obstacles while preventing imposition of fresh barriers.⁶⁵ Likewise, at the regional and bilateral levels only a few developing countries have concluded liberalization agreements with other countries than their regional neighbours, which in most cases are also developing countries. It is, therefore, at this time that developing countries should pause and ponder the wisdom, or otherwise, of making further commitments liberalizing trade in services.

Presently, judging the possible benefits of liberalization of services trade is made difficult by a number of factors. Firstly, unlike in merchandise trade where imports are controlled through tariffs and the effects thereof can be calculated fairly easily, in services trade States' markets are protected by domestic regulations which discriminate against foreign service suppliers. This makes quantifying the effects of these regulations or their removal problematic. Secondly, the essential data required to assess the economic effects of liberalizing various services is lacking.⁶⁶

Because of these problems, conflicting opinions have been expressed from various quarters concerning the issue of liberalization of services trade. The two main camps in this debate are developed countries, on the one hand, and developing countries, on the other. The former advocate liberalization, while the latter generally resist it.⁶⁷ Some of the arguments advanced by the two sides are outlined below, those against liberalization coming first.

65 International Trade Centre UNCTAD/WTO (*supra*):28.

66 *Ibid.*:283.

67 Trebilcock and Howse, *The regulation of international trade*:225.

4.2 Disadvantages of services trade liberalization and problems likely to be faced by developing countries as a result

4.2.1 Motivation for inclusion in the multilateral negotiations

It was mainly due to pressure from the United States of America that the issue of trade in services was first place on the agenda for multilateral negotiations during the Uruguay Round. According to Trebilcock and Howse, the U.S.A. became aware that its dominance of the global markets in the basic manufacturing sectors was quickly diminishing, while it continued to command a superior position with respect to the services sector.⁶⁸ Its insistence on the inclusion of services trade in the negotiations on liberalization was, thus, a way of ensuring its continued dominance of world trade.

Furthermore, the definition of “services” proposed by the U.S.A. for use within the context of the WTO was similarly influenced by self-interest. It effectively excluded all service sectors in which developing countries might have comparative advantage, such as labour, while focusing the attention on those which would maximize benefit to the U.S.A. and other developed countries.⁶⁹

Thus, when dealing with the issue of liberalization of trade in services, developing countries must always be mindful of the fact that it was, from the very beginning, initiated for purposes quite removed from the own benefit or interests.

4.2.2 The cost of adjusting to the new trade regime

Adjusting to the new services trade regime under the WTO will come at a heavy cost for many developing countries, especially least developed countries. To start with, most of them lack sufficient capacity to successfully engage in tradable service activities and to produce them for export purposes. Moreover, they are generally not sufficiently equipped to absorb the shocks generated by trade liberalization.

4.2.3 Unrealistic transition periods

Many of the agreements dealing with liberalization of services trade often provide for a preparatory period before a particular agreement comes into force. The main aim of this period is usually to facilitate a smooth transition to the new trading arrangement by the parties. However, the preparatory period is often unrealistically brief and insufficient to achieve its intended purpose.

68 *Ibid.*:255.

69 *Ibid.*:226.

In trade in goods, efforts to bolster competitiveness and export capacity of developing countries have, in many cases, suffered repeated setbacks over many decades. This was the case even when trade preferences were extended to these countries.⁷⁰ To assume that in the case of services similar challenges will have been achieved within a few years is far-fetched.

In addition, Article XIX of GATS prescribes a time limit of five years after the date of entry into force of the Agreement Establishing the WTO for the next round of negotiations on specific commitments. This period is simply too short. As one UNCTAD report observed, “[a] longer time-limit for further negotiation may be more conducive to effectively evaluating the benefits developing countries have gained based on clear statistical data.”⁷¹

4.2.4 Demands of progressive liberalization

Unlike with most agreements, under the GATS the negotiations on liberalization did not end with the signing of the Agreement, but will continue even during the implementation stage. Given the fact that important decisions with significant implications will be taken throughout this period, it is incumbent upon Member States to remain alert at all times and to carefully monitor the proceedings within the WTO.

However, the WTO system being immensely complex,⁷² many developing countries may lack adequate expertise to cope with the task. Moreover, the procedure may prove to be too costly for them to sustain. As a result, they may end up missing out on some of the ever-crucial negotiations whose outcome will invariably affect them.

4.2.5 Anti-competitive practices

In a number of service sectors, anti-competitive trade practices are quite common at international level.⁷³ As there is no clear obligation on the part of countries to control these practices, it remains risky for the more vulnerable developing countries to include the sectors concerned in their liberalization measures. Until such time that more stringent regulations are formulated, benefiting from liberalization of trade in services will remain largely out of reach for these countries.

In addition, despite the absence of a clear prohibition against restrictive business practices of private corporations, the GATS specifically requires its Member States to ensure that monopoly service suppliers comply with their MFN obligations and specific commitments.⁷⁴ There is no doubt that monopoly in the supply of services is a phenomenon that is prevalent mainly in developing

70 SADC-EU Trade Liberalization Seminar — Introduction and Summary of Proceedings: 24.

71 UNCTAD. The outcome of the Uruguay round: An initial assessment:170.

72 International Trade Centre UNCTAD/WTO (*supra*):21.

73 UNCTAD. *Op cit.*:155.

74 Article VIII.

countries, while it is mainly corporations from developed countries that are guilty of restrictive trade practices. This disparity in the treatment of two practices further reinforces the view that interests of developing countries are ignored in the efforts to bring about liberalized international trade in services.

4.2.6 Asymmetries in the treatment of capital and labour

Further asymmetries are evident in the way the movement of capital and that of labour are treated in the GATS. According to the Annex on Movement of Natural Persons Supplying Services, “[t]he Agreement shall not prevent a Member from applying measure to regulate the entry of natural persons into, or their temporary stay in, its territory”. It further provides that, “the Agreement will not apply to measures affecting natural persons seeking access to the employment market of a Member, nor will it apply to measures regarding citizenship, residence or employment on a permanent basis”. Similar limitations, however, are not applied to the movement of capital.

Again the main distinguishing element between the two subjects of interest seems to be who stands to benefit the most from them. Presently, developed countries are undoubtedly best positioned to benefit from the free movement of capital because of their superior export capacity and competitiveness. On the other hand, developing countries have multitudes of unemployed workers that would benefit from removal of restrictions on movement of natural persons. Once more the interests of developing countries are compromised, while those of developed countries are promoted.

4.2.7 Absence of binding obligations with regard to improving participation of developing countries in trade

According to Article IV of the GATS, “[t]he increasing participation of developing country members in world trade shall be facilitated through negotiated specific commitments by different members pursuant to Parts III and IV of this Agreement relating to, *inter alia*, the improvement of their access to distribution channels and information networks”.

This provision is supposed to signify recognition in the GATS of the existing disparities in the situation of services in developed and developing countries. However, as it has rightly been said, it is a statement of good intentions and nothing more.⁷⁵ In other words, it stops short of imposing any obligations on developed countries to carry out the specified measures and the time frame within which they should do it.

Despite the many problems associated with liberalization of services trade in developing countries, there are, as indicated earlier, numerous arguments made in favour of liberalization. These arguments highlight the benefits developing countries will gain from liberalization as well as the dangers of failing to follow this new trend in global trade. A number of these arguments appear in the discussion that follows.

75 UNCTAD (*supra*)155.

4.3 Advantages of liberalization of trade in services for developing countries

Proponents of liberalization of trade have argued that one of the reasons for the skepticism voiced against it is because, in many countries, the potential benefits of the multilateral trading system are not fully appreciated by governments and their business communities.⁷⁶ This, it is said, is attributable to the extreme complexity of the system, among other things.

Whatever the cause of the skepticism, it would be a mistake for developing countries to omit to explore trade opportunities that might be offered by agreements such as the GATS. This is particularly so in the light of the dire need of these countries for export trade that would boost economic growth and development. Some of these opportunities are outlined below.

4.3.1 Attracting essential investment

For industries such as manufacturing and agriculture to thrive and become globally competitive, a country needs well-established and efficient services in sectors like banking, insurance and telecommunications.⁷⁷ By introducing liberalization measure in their financial sector, developing countries will be able to attract more foreign investment into those essential services.

4.3.2 Opportunities to collaborate with foreigners

Liberalization commitments undertaken by developing countries create new opportunities for their service providers to collaborate with their counterparts from other countries. This enables the former to benefit from the latter's technology, especially if they are from developed countries. Using the conditions imposed on foreign service providers in their governments' schedules of commitments, service industries in developing countries can, for example, approve only foreign service suppliers who bring along state-of-the-art technology and agree to pass on the skills on its use to local staff.⁷⁸

4.3.3 Benefits of electronic commerce

In the area of telecommunications and computer technology services, electronic commerce has created trade opportunities for developing countries never seen before. The internet and related technologies have transformed international trade and made it very cheap and accessible for everyone, including small, local businesses.⁷⁹ Suddenly traders can conduct business with anyone, anywhere around the world without having to travel or to encounter border restrictions. Liberalizing the telecommunications sector

76 International Trade Centre UNCTAD/WTO (*supra*):283.

77 *Ibid.*:284.

78 *Ibid.*:214.

79 South African Department of Communications. The E-commerce Debate:49.

will make it easier for these technologies to reach the majority of the people in developing countries who, as yet, do not enjoy their benefit.

The electronic commerce technologies also have the potential to attract investment into remote places previously regarded to be too costly to run a profitable business from.⁸⁰ Because these technologies allow companies and individuals to do business from nearly anywhere, the appeal of the traditional centres of business is likely to wane as the electronic commerce takes root.

4.3.4 Opportunities for establishing regional joint ventures

The commitments undertaken by developing countries under the GATS have created opportunities for them to form regionally based joint ventures and other collaborative arrangements.⁸¹ By pooling their resources together, service providers from developing countries stand a better chance of successfully competing against their counterparts from developed countries.

It is clear from the above discussions that the decision to liberalize trade in services is not one that should be rushed into blindly. While liberalization promises to open unprecedented trade opportunities for developing countries, it is also a process that is fraught with a multitude of hazards for them. Some of these hazards have the potential to ruin the economies of the poorer countries, making them poorer still.

In the face of the ever-mounting pressure on developing countries to liberalize, they have to work out a way of taking advantage of the new trade opportunities at the least cost to themselves. An attempt is made in the next chapter to find a solution to this problem.

5. The way forward for developing countries

Services are presently responsible for 50% to 60% of income in developed countries. They also account for a majority of jobs in North America.⁸² Given that this group of countries comprises the major participants in international trade, there is little doubt that it is in services that the future of global trade lies. It is for this reason that developing countries should take more than a passing interest in them.

As it was seen in the last chapter,⁸³ initiatives to place trade in services in the Uruguay Round agenda sparked off some controversy among the contracting parties. Most of the concerns which led to dissent at that time, mainly from developing countries, still remain today.

80 *Ibid.*:49.

81 International Trade Centre UNCTA/WTO (*supra*):287.

82 Trebilcock and Howse (*supra*).

83 *p. ante*.

To give a few examples, of the estimated \$110 billion to \$510 billion expected to be generated from the implementation of the Uruguay Round results in 2005, only about one third of the amount is expected to accrue to developing countries.⁸⁴ Worse still, according to the International Trade Centre, “[w]hile the dynamic economies of the East and South East Asia will be the main beneficiaries (from the remaining one third), the African countries and the least developed countries in other regions will benefit only marginally, *if at all*”.⁸⁵

Even in sectors such as tourism, where developing countries are traditionally regarded to have comparative advantage, things are also not exactly as they seem. Although balance-of-payments figures point to developing countries enjoying good profits in the sector, the bulk of the money ends up in the hands of firms from developed countries which have successfully developed networks of hotel chains; travel agencies and computer reservation systems.⁸⁶

There is also likelihood that whatever gains that will accrue to developing countries, they will take a long time before they materialize. Following the liberalization of various service sectors, it will be some time before service providers in developing countries can learn from their foreign competitors and eventually be able to compete against them. This is likely to lead to frustration and doubts concerning the benefits of liberalization.

In spite of these problems, the compromises reached at the Uruguay Round negotiations concerning liberalization of services provide some measure of relief for developing countries. With a view to reconcile the divergent opinions, the parties to the negotiations agreed that liberalization of services trade would be negotiated as part of Uruguay Round, but that the resultant agreement (GATS) would be legally separate from GATT. This allowed the GATS to be within the framework of the WTO, while at the same time enabling Members to prescribe service sectors they wished to liberalize and the condition under which this will happen.⁸⁷

Furthermore, the provisions of the GATS also provide that, in carrying out liberalization, national policy objectives and the level of development of the respective Member States must be taken into account. The same provisions, moreover, state that there should be “appropriate flexibility for individual developing countries for opening fewer sectors, liberalizing fewer types of transactions and progressively extending market access in line with their development situation...”⁸⁸

Relying on these concessions from the Uruguay Round negotiations, developing countries must take their time to weigh their options carefully before making any hasty decisions regarding their position on services. They should

84 International Trade Centre UNCTAD/WTO (*supra*):255.

85 *Ibid.*

86 *Ibid.*:156.

87 Refer to Article XX of GATS on Schedule of Specific Commitments.

88 Article XIX.

resist any pressure or temptation to undertake liberalization measures against their better judgement.

Of course, exercising caution does not mean that developing countries should not labour to identify and unlock opportunities presented by the various legal instruments on services and to exploit them to their advantage. If there is one thing which has held back development in developing countries over the years, it is probably their failure to recognize opportunities for what they are and to seize them at the appropriate moment. Rather than take the initiative to change their circumstances, they tend to wait until it is too late. This should be avoided with services.

With respect to liberalization of trade in services specifically, while we have seen that it involves some risks, it also has the potential to greatly improve the economic situation of developing countries, provided it is properly handled. One of the outstanding examples of how liberalization in this area of trade can be useful to developing countries is to be found in the potential benefits of easy access to the latest telecommunications and computer technology.

It is widely accepted that the recent advances in telecommunications and computer technology are going to fundamentally change the way people live. According to the South African Department of Communications' E-Commerce Debate, "[j]ust as the industrial society built on and dominated the agricultural society, the knowledge society (based on telecommunications and computer technology) is now building on the platform provided by the industrial society".⁸⁹

It is further said that the use of these technologies in trade creates new opportunities for developing countries to compete on a more level playing field against their developed counterparts. This is because they reduce the latter's present advantages of cost, communication and information.⁹⁰ "The question for the less industrialized developing countries", the document contends, "is whether they can use appropriate technologies to leapfrog into the knowledge society, by-passing some of the stages of the industrial paradigm".⁹¹

It is clear from the above example that it is in the interests of developing countries to have unrestricted and easy access to the technologies referred to. Not only do they offer service providers in developing countries an opportunity to participate meaningfully in world trade at an affordable cost, but they also promise to reduce the economic gap between them and developed countries. Liberalizing the relevant services sectors in developing countries would facilitate speedy and less cumbersome acquisition of the technologies by service providers in these countries.

The question still remaining is, what approach is appropriate for developing countries to adopt in undertaking liberalization measures? It is suggested

89 South African Department of Communications. *Op cit.*:5.

90 *Ibid.*

91 *Ibid.*

that, as a first step, they must conclude liberalization arrangements amongst themselves in their respective regions before opening up their services markets to the wider world. This will expose service providers in developing countries to foreign competition, while initially limiting its intensity. In the process, they will acquire the necessary experience in dealing with outside competition at the minimal risk of being exterminated thereby.

Moreover, service providers in developing countries must pool the resources together by forming regionally based joint ventures. Such co-operation, as has been shown,⁹² will give them a better chance of competing successfully against their counterparts from developed countries.

As mentioned previously,⁹³ Article XXIV of the GATT and Article II of GATS permit the Parties to these agreements to form regional arrangements of the kind referred to above. By taking advantage of these provisions, developing countries can establish the said arrangements to develop and strengthen trade in services in their regions.

This is already happening in some regions as was seen with the ASEAN Framework Agreement on Services.⁹⁴ In that particular case, the Agreement seeks, amongst other things, to enhance co-operation in the area of services between the Member States. Its ultimate goal is stated as, "to improve the efficiency and competitiveness, diversify production capacity and supply and distribution of services of their service suppliers within and outside ASEAN".⁹⁵

The co-operation efforts of the ASEAN countries are already showing signs of success with respect to their share in world trade in services. As it was shown earlier, the bulk of the returns of the Uruguay Round results expected to accrue to developing countries in the foreseeable future will go to the East Asia and The South East Asia (ASEAN) regions.⁹⁶ This is an indication that ASEAN's above-stated goal is beginning to be realized.

All developing countries should copy this example if they are to have a realistic chance of successfully developing and exporting services. Once the efficiency and competitiveness of their service providers have adequately improved, then developing countries can open up their services markets to the rest of the world, gradually liberalizing the various sectors as and when they are ready.

In conclusion, industries, business enterprises and trading communities in developing countries need to realize that their governments negotiated the various legal instruments on services for their benefit. They must also realize, however, that trade, as it has been rightly said, does not expand automatically in the wake of the removal of trade barriers.⁹⁷ Positive results will only come if those involved devise and adopt appropriate strategies.

92 *p ante.*

93 *p and p.ante.*

94 *p. ante.*

95 *Ibid.*

96 *p. ante.*

97 International Trade Centre UNCTAD/WTO (*supra*):8.

Thus, business and trading communities in developing countries must work together with their governments to convert the trade opportunities created into actual economic gains. In the end, however, "their ability to derive full advantage from the system will greatly depend on their knowledge and understanding of its rules".⁹⁸ The general preparedness of governments in developing countries and the skills of their negotiators will also play a crucial role.

6. Conclusion

We have seen that the services sector is increasingly assuming a position of prominence in world trade, and that it will continue to do so for the foreseeable future. Along with this, it has also been shown, there is growing interest in getting countries worldwide to open up their services markets to foreign competition. This has taken the form of countries being encouraged to sign binding liberalization agreements at various levels.

While all of this is going on, it has been revealed, the participation of developing countries in services trade has remained largely marginal. This is attributable to factors such as lack of the relevant technologies and exposure, anti-competitive trade practices by developed countries, indifference to interests of developing countries in liberalization arrangements and the failure by developing countries themselves to take necessary action and at the right time.

These factors place developing countries in a disadvantaged position and make liberalization hazardous. Nevertheless, despite the risks involved, we have seen that there are potential benefits for developing countries in liberalization of trade in services. Examples of these are easy access to essential technology and the ability to collaborate with and learn from foreign service providers.

In order to derive maxim gain from this situation, it has been shown that developing countries need to acquaint themselves with the agreements liberalizing trade in services and the accompanying procedures for their implementation. This will enable them to identify favourable provisions and to take advantage of them to improve their situation and to minimize harm to their economies. Articles XXIV of GATT and II of GATS, which permit co-operation and joint ventures among regional neighbours, are examples of such provisions. In addition, we have seen that the task of converting the opportunities created by liberalization agreements into actual gains requires cooperation and commitment of both governments and business communities in developing countries.

98 *Ibid.*:1.

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