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YEARS

1964-2014

LDC Services: Geneva Practitioners Seminar Series: “Making Sense of GATS and Applying Good Practices in Services Negotiations”

Seminar 1: “Why the GATS matters for LDCS”

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The Modes

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8 December 2014



LDC GENEVA PRACTITIONERS SERVICES SEMINAR SERIES:

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THE MODES OF SUPPLY
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OUTLINE

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- Introduction to the Modes;
- Details by Mode: Importance, Participation, Challenges.

INTRODUCTION: THE MODES OF SUPPLY

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- The GATS does not define a service:
 - ✦ Art. 1 (3) (b) "services" includes any service in any sector, except services supplied in the exercise of governmental authority;
 - ✦ This is not a definition per se; It delineates Agreement's scope.
- Modal approach to defining "Trade in services":
 - ✦ "Trade in services" is defined as the "supply of a service" including "the production, distribution, marketing, sale and delivery of a service."
 - Detail is then given of modes of supply.

MODE 1-CROSS BORDER SUPPLY

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- Article 1 (2) : (a)
 - ✦ From the territory of one Member into the territory of any other Member.
- **Service moves across borders with no movement of supplier or consumer:**
 - Business processing outsourcing;
 - Tele medicine;
 - Electronic legal opinions;
 - Electronic banking;
 - Call centres, etc...

Importance of Mode 1 for LDC service sector development

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- Examples of LDC participation in Mode 1:
 - BPO-Senegal: ILO Report-...Business Process Outsourcing, ...***consistently remain (s) in the top 5 employers by enterprise both for 2009 and for the 2009-2013 period***
 - ✦ ***Private Sector Demand for Youth Labour in Ghana and Senegal***
http://www.ilo.org/public/english/employment/yen/downloads/psi/psi_study.pdf
 - LDC consultants in various disciplines-Ugandan lawyers, engineers, architects...
 - ✦ Are they aware that their deals fit within Mode 1?
 - South-South dimensions.
- Challenges in taking advantage of Mode 1:
 - Enhanced skills development- IT skills, language, degrees, literacy:
 - Infrastructure development in support of Mode 1 platforms: Examples of direct policy focus on ICTs...
 - Regulatory capacities- consider mobile money regulatory concerns-Uganda.

MODE 2- CONSUMPTION ABROAD

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- **Article 1 (2) (b)**
 - In the territory of one Member to the service consumer of any other Member.
- **The service consumer of one Member enters the territory of another WTO Member to consume a service.**
 - Tourists;
 - Patients seeking medical attention;
 - Language students in foreign countries.

Importance of Mode 2 for LDC service sector development

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- **Examples** of LDC participation in Mode 2:
 - Tourist receipts in several LDCs on the increase-Tanzania, Uganda, Senegal, Rwanda, etc..
 - Some LDCs becoming regional hubs of education services- Uganda for East Africa.
- **Challenges** in taking advantage of Mode 2:
 - Supportive infrastructure: schools, hotels; road networks- to make the consumption experience the best possible;
 - Some sectors overwhelmed even with domestic supply ability- health;
 - Regulation by sector: e.g in education-treatment of foreign students for purposes of fees (an EAC challenge); portability of insurance (medical) etc;
 - Private sector often quote concerns with access to computer reservation systems (tourism).

MODE 3- COMMERCIAL PRESENCE

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- **Article 1 (2) (c)**
 - By a service supplier of one Member, through commercial presence in the territory of any other Member.
 - **Art. XXVII (d)**
 - “commercial presence” means any type of business or professional establishment, including through:
 - ✦ (i) the constitution, acquisition or maintenance of a juridical person, or,
 - ✦ (ii) the creation or maintenance of a branch or a representative office,
- within the territory of a Member for the purpose of supplying a service.

MODE 3...

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- **A service supplier of a WTO Member enters the territory of another Member and sets up a representative branch/office etc.**
 - Branches of Royal Dutch Shell- Netherlands sets up commercial presence;
 - Branches of Shoprite-South Africa sets up commercial presence;
 - Bank of Africa- Nigeria sets up commercial presence.

Importance of Mode 3 for LDC service sector development

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- Examples of LDC participation in Mode 3:
 - Branches of Ugandan private universities (KIU) in Kenya, Tanzania;
 - LDCs are hosts to many branches of multinationals- Shoprite (retail-SA); Kenya Commercial Bank (Banking-Kenya); MTN (Mobile telephony-Nigeria) etc.
- Challenges in taking advantage of Mode 3- focus on exports:
 - Availability of finance.

MODE 4: TEMPORARY PRESENCE OF NATURAL PERSONS TO SUPPLY SERVICES

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- Art. 1 (2) (d);
 - ✦ the supply of a service by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.
 - ✦ Art. XXVIII (g): defines "service supplier" as "any person that supplies a service"
 - ✦ Art. XXVIII (j): defines a "person" as either a natural person or a juridical person.

DEFINITION OF MODE 4 CONT'D

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- ✦ **Art. XXVIII (k):** defines a “natural person of another Member” as a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member: is a national of that other Member; or has the right of permanent residence in that other Member.
- ✦ **Article XXVIII (i)** "juridical person of another Member" is a juridical person constituted or otherwise organized under the law of that other Member and engaged in substantive business operations in the territory of a WTO Member.

TYPES OF NATURAL PERSONS: AS A SERVICE SUPPLIER

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- **Such natural person must:**
 - Be a national (or permanent resident) of another WTO Member;
 - Enter the territory of another WTO Member to supply a service;
 - Likely be self-employed and remunerated directly by a services consumer in the host country.
- **Example:**
 - A Ugandan lawyer leaves Uganda to enter the territory of Kenya (another WTO Member) to represent a client in a court hearing.

TYPES OF NATURAL PERSONS: AS AN EMPLOYEE OF A SERVICE SUPPLIER

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- **Such natural person must be:**
 - A natural person of a WTO Member;
 - Employed by a service supplier of another WTO Member;
- **As the natural person must be in the territory of another Member, and the service supplier must also be "of any other Member" , in such case, both natural person and the service supplier must be of foreign origin.**
- **Example:**
 - Royal Dutch shell in Nigeria brings in a Ugandan engineer from the Shell Kampala branch to service some machinery.
 - The employer (Royal Dutch Shell Nigeria) is the contract holder and will deliver the service to a consumer in Nigeria.
 - Both the Ugandan engineer and Royal Dutch Shell-being a Dutch (read EU) company with a branch in Nigeria would all be foreign.

EXAMPLES OF NATURAL PERSONS IN MEMBERS' SCHEDULES...Background note by the WTO Secretariat

<i>Independent Professionals (IP):</i>	Self-employed persons of B (sender) who are present in A (receiver) to supply a service to a local client pursuant to a service contract. The term 'professionals' should not be misunderstood to mean that these persons are supplying only 'professional services' as defined in the WTO's Services Sectoral Classification List. In principle, they could be supplying many other services.
<i>Contractual Service Suppliers (CSS):</i>	Employees of a service supplier of B without a commercial presence in A, who are present in A to provide a service pursuant to a service contract concluded between their employer and a local client. CSS receive their remuneration from their employer, and not from the client; they are "natural persons of a Member who are employed by a service supplier of a Member.
<i>Intra-Corporate Transferees (ICTs):</i>	Employees of a service supplier of B that has a commercial presence in A, and who are transferred to the affiliate in A.
<i>Business visitors (BV)</i>	Employees of a service supplier of B who are seeking entry into A for the purpose of setting up a commercial presence or of negotiating the sale of a service on behalf of an enterprise. BV do not receive any remuneration from a source located within A and are not engaged in making direct sales to the general public or supplying services themselves. They are just facilitating future trade, which may take place through a variety of modes of supply.

THE ANNEX ON MOVEMENT OF NATURAL PERSONS

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service;
2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis;
3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment;
4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.

MODE 4: WHO IS IN? WHO IS OUT?

IN	OUT
<ul style="list-style-type: none">• Employees of foreign service suppliers in host country (ICTs)• Employees of foreign service suppliers abroad to fulfil a contract (CSS)• Natural persons as independent service suppliers fulfilling a contract (IPs)• Business Visitors;• Holders of short term contracts;• Foreign suppliers of services to domestic companies on a contractual basis as self-employed persons.	<ul style="list-style-type: none">• Employees in the goods sector• Nationally owned service suppliers; Royal Dutch shell in the Netherlands as service supplier is not in territory of another WTO Member.• Employees of nationally owned host country firms: British national working for Royal Dutch Shell in Amsterdam;• Persons with citizenship, permanent residence and/or work permit;• Holders of long term contracts because mode 4 is temporary.• Permanent migrants

Importance of Mode 4 for LDC service sector development

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- Evidence from scholars: 3% of developed labour force on temporary scheme yields \$200 billion annually (Rodrik D, 2002) and \$ 150 Billion (Winters, 2003)
- Examples of LDC participation in Mode 4:
 - Ugandan lawyers in Kenya;
 - Lesotho professors in South Africa;
 - Zambian teachers in South Africa;
 - Ugandan nurses in private foreign owned hospitals, etc
- Challenges in taking advantage of Mode 4:
 - Capacity issues:
 - ✦ Education, vocation training, skills development, experience.
 - ✦ Balancing Mode 4 interests in sensitive sectors-health.
 - Regulatory issues:
 - ✦ Information on opportunities, strict visa processes (lack of, for the most part, Mode 4 specific regimes in Members immigration policies) non-recognition of qualifications, costs (visas, work permits, etc) difficulty in ensuring temporariness/return, etc;
 - ✦ Developing national regulations in support of Mode 4 utilization- Uganda's case.
 - Market access and national treatment realities:
 - ✦ Mode 4 commitments are narrow and shallow.
 - Identifying the right interlocutors for negotiations:
Immigration/ Trade?

- Modes of supply animation:
- http://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s3p1_e.htm.