Policy Space and Investment Rules under GATS: Integrating Social Dimensions from a Gender lens

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Context and relevance

- Services represent a large and growing part of the global economy
- The share of services trade is around 20% partly reflecting the difficulties in trading services across borders
- FDI in services is estimated to be nearly 50% of all FDI
- Mode 3 route is important since the ability to trade in Mode 1 and 2 is linked with some sort of commercial presence

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- In the context of increased market mediated delivery of essential services, the issue of universal and affordable access to essential services would be critically important from *a gender perspective*
- Universal provision of affordable education, health and basic services is going to be the key to meeting the MDG goals including on gender
- Services liberalization needs to be more deliberately considered in the light of MDG related concerns since it has the potential to influence *how, where* and at *what cost* would essential services be continued to delivered in poorer countries

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GATS offered a four fold categorization of services supply:

- Mode-1: cross-border movement of the service ("cross border trade") e.g.: e-learning, virtual universities
- Mode-2: cross-border movement of the service consumer ("consumption abroad"); e.g.: tourism abroad, students going abroad to study
- Mode-3: cross-border movement of the corporate service provider through investments ("commercial presence"); e.g. a particular country allowing foreign companies to buy domestic enterprises, setting up offices, franchises with local organizations
- Mode-4: "cross border movement of natural persons"; e.g. nurses, teachers and others working abroad temporarily.

The GATS approach

- 'Request' and 'offer' mode
- Positive listing approach
- 'Voluntary' determination of sectoral scope and pace

GATS approach: Key Limitations

- Rapid technological changes in services delivery modes
- Limited ex-ante knowledge and assessment capacity of services liberalization
- Liberalization often takes place in a setting of weak or almost non-existent regulatory oversight
- Dynamic development context embedded in an evolving political context
- Roll back of commitments by and large infeasible
- Built in progressive Liberalization clauses

WTO's Services Agreement in principle demonstrates considerable flexibility to take into account development concerns….

- The preamble outlines that the objective of an early achievement of progressively higher levels of liberalization of trade in services through successive negotiating rounds while seeking to secure an overall balance of rights and obligations while giving *respect to national policy objectives.*
- Also, the GATS agreement recognizes the right of governments to regulate and introduce new regulations on the supply of services within their territories to *meet national policy objectives*.

- Article IV dealing with the increasing participation of developing countries mandates that negotiations of liberalization of market access shall be facilitated *in sectors and modes of supply of export interest to them.*
- Article IV.3 also notes that *priority for special economic situation and their development, trade and financial needs of least developed countries would also be given*

- In Article XIX on negotiation of specific commitments, it is noted that the process of liberalization shall take place with *due respect for national policy objectives and the level of development of individual members both in an overall and in individual sectors*.
- Article XIX.2. provides that there shall be *appropriate flexibility for individual developing countries for opening fewer sector, liberalizing fewer types of transactions, progressively extending market access in line with their development situation*

However, real world negotiating pressures and presumably inadequate negotiating capacity may lead to outcomes which may compromise policy space of governments into the future….(see select country experiences in the reference on the last presentation slide)

Mode 3 commitments in the Schedules of Cambodia & Nepal

- Amongst the first Least Developed Countries to join the WTO since its creation in 1995.
- The accession process spanning nine years was not informed by any comprehensive research or public debate on the costs and benefits of joining the WTO relatively less so in the case of Nepal
- Cambodia undertook concessions which are far deeper than the levels of commitments made by other WTO members
- Cambodia: Schedule commitments in eleven sectors: Accountancy, Consultancy and tax services, Legal Services, Architectural and Engineering Services, Telecommunications Services, Audio-visual Services, Distribution Services, Educational Services, Insurance Services, Banking Services, Health Related Services, Tourism and Travel Related Services,
- MA and NT restrictions (mostly scheduled horizontally) leave limited policy space

- Educational services: Foreign participation in educational services is not restricted.
- Health-related services: Cambodia permits cross-border investment in hospital services. For commercial presence, foreign ownership and management of private hospitals and clinics is permitted as long as at least one director, for technical matters, is Cambodian. Foreign firms are allowed to provide dental services through joint ventures with Cambodian legal entities.
- **Tourism and travel related services:** Cambodia does not restrict foreigners' participation in this sector. Foreign companies may establish a commercial presence to operate hotels, restaurants, travel agencies and tour operator services, provided they register with the Ministry of Commerce for business licenses.

- Nepal: Scheduled commitments in eleven sectors: Business Services: Communication Services, Construction and Related Engineering Services, Health Related and Social Services, Distribution Services, Educational Services and Environmental Services, Financial Services, Tourism and Travel Related Services, Recreational, Cultural and Sporting Services, Transport Services
- There exist only narrow limitations to guide FDI into priority sectors and activities with strong developmental effects although new businesses and conditions attempt to protect Nepalese nationals and domestic businesses

- Educational and environmental services: No restriction, except that incorporation in Nepal is required and a cap of 51 percent has been placed on foreign equity. This limit will be eased to 80 percent five years from accession.
- Tourism and travel related services: No restrictions, except that incorporation in Nepal is required and foreign equity has been capped at 51 percent for travel agencies and tour operators, and at 80 percent for hotel, lodging services and graded restaurants.
- Recreational, cultural and sporting services: No restriction, except that incorporation in Nepal is required and foreign equity has been capped at 51 percent. Also, foreign investment should be a minimum of US$ one million. The limit on foreign equity will be eased to 80 percent after five years from accession.

3 Key messages

- UNDP has been arguing that future services rules (indeed all trade rules!) should be made more development friendly and business interest/external pressures should not be the lens for negotiations for accelerated achievement of MDGs
- Services liberalization without appropriate regulatory systems is akin to placing the cart before the horse and would not yield optimal benefits and help meet development goals including on gender
- Since reversibility of obligations and commitments is practically infeasible, serious research, informed debate and deliberate evidence based policy making should inform negotiations before any binding commitments are undertaken

Key Reference:

Policy Space and Investment Rules and GATS, Raghav Narsalay, Pedro Ortega, Biplove Choudhary and Sumiti Yadava, UNDP RCC June 2009 available at:

http://www2.undprcc.lk/resource_centre/pub_pdfs/P1109.pdf