

# **SERVICES LIBERALISATION AND DEVELOPING COUNTRIES DOES LIBERALISATION PRODUCE DEPRIVATION?**

No. 39, September 2004

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## **Foreword**

On 6 May 2003, the Minister for Development Cooperation asked the Advisory Council on International Affairs (AIV) to produce an advisory report on the liberalisation of trade in services and, in particular, its effect on developing countries. Since circumstances keep changing due to the ongoing negotiations in the World Trade Organisation (WTO), it emerged during the preparation of the advisory report that certain parts of the request were no longer especially relevant. The AIV has therefore focused mainly on the following questions from the request:

- In which sectors and modes of supply do which developing countries have an advantage?
- How can negotiations improve the export of services from developing countries to developed countries?
- How can WTO agreements on domestic regulation (horizontal discipline) help to improve the export of services from developing countries to world markets?
- How much scope is there within the European Union for extending provisions on mode 4 to include low-skilled forms of labour, a longer stay and/or wider coverage?
- In what areas can technical assistance be provided?

In the present advisory report, the AIV presents its views on the advantages and disadvantages of further liberalisation of trade in services and its effects on developing countries. Compared to the liberalisation of trade in goods, the proposed liberalisations in the service sector are very case specific. This report therefore cannot suggest general policy lines, and its recommendations will often be limited to subareas. The main message is that developing countries should not – and need not – be left behind, but that it is vital to examine on a case-by-case basis whether a country's economy, policies and institutional capacity contain adequate safeguards to ensure that liberalisation does not ultimately have the wrong effect. Determining whether or not concessions need to be made is therefore a matter of looking at each specific situation.

Chapter I looks at the importance of services and trade in services. Chapter II provides a brief overview of the main features of the WTO Agreement and the General Agreement on Trade in Services (GATS). Chapter III deals with the opportunities and risks of liberalisation for developing countries. Chapter IV looks back at the failure in Cancún and outlines possibilities for progress in the negotiations. Chapter V deals specifically with the possibilities offered by mode 4 of GATS. The report concludes with a number of recommendations in Chapter VI.

The report was prepared by a mixed working group of the Development Cooperation Committee. Its members were: Professor C.J. Jepma (chair), Professor B. de Gaay Fortman, F.D. van Loon, G.H.O. van Maanen, Professor L.B.M. Mennes and Ms E.M. Schoo, as well as Ms N.W. Meuter-Dikkers of the European Integration Committee. J. de Kuiper assisted the working group as its civil service liaison officer. The secretary was Ms J.A. Nederlof, assisted by Ms S. Malik, Ms M. Shabaan and Ms D. de Jong (trainees). M. Broekhof of the Stichting JIN (Foundation Joint Implementation Network) assisted in the completion of the report.

The report was adopted by the AIV on 10 September 2004.

## Introduction

A further liberalisation of trade in goods and services is important for both developed and developing countries. In this context, it is vital that the multilateral negotiations in the framework of the World Trade Organisation (WTO) lead to tangible and satisfactory results.

It is therefore gratifying to note that, following the deadlock in the negotiations in the summer of 2003 in Cancún, a WTO agreement was nevertheless drawn up a year later in Geneva. This has achieved so much progress that a certain amount of optimism regarding the satisfactory outcome of the current round of negotiations is once again justified.

This advisory report focuses specifically on the liberalisation of trade in services, the ongoing negotiations within the framework of the General Agreement on Trade in Services (GATS) and the implications of these negotiations for various categories of developing countries.<sup>1</sup> Like the other WTO negotiations, the GATS negotiations are based on the assumption that, if countries reciprocally increase the access of goods and services to their markets, the prosperity of all concerned will increase at macro level. The prosperity gains are expected to be so substantial that potential losers can be compensated and the costs of adapting economies can be absorbed. However, this is not always self-evident in the case of developing countries. The extent to which the assumption applies to them in the context of GATS depends on whether they have met the conditions that help to ensure that the liberalisation of trade in services does not run counter to local initiatives or erode local power. Further research is sometimes necessary to weigh up the advantages and disadvantages.

It is therefore difficult to calculate the precise extent to which further services liberalisation could help to increase prosperity, if only because there are so many different kinds of services. This applies even more strongly to the impact on poverty reduction. Indicative figures are nevertheless available. A source from 2003 notes that, in the case of a 50% liberalisation of trade in services, the annual prosperity gains would be in the region of \$40 billion for both developed and developing countries.<sup>2</sup> However, the potential benefits of the current GATS negotiations round are expected to be much more limited. For example, the Netherlands Bureau for Economic Policy Analysis has suggested that, in the case of the Netherlands, these benefits would ‘probably be limited to a couple of hundred million euros’.<sup>3</sup> Similarly, it would be wrong to harbour exaggerated expectations concerning the effects of services liberalisation on economic growth and poverty reduction in developing countries, especially in the short term. The process towards further services liberalisation may ultimately be more important than the outcome of the current negotiation round. This is, after all, the first of its kind, while the negotiations on the liberalisation of trade in goods are now entering their ninth round.

- 1 For the purpose of the WTO and GATS negotiations, the Netherlands is part of the European Union. Its ability to submit proposals independently is therefore limited and indirect.
- 2 Interministerial Policy Review, *Effectiviteit en coherentie van ontwikkelingssamenwerking* [Effectiveness and coherence of development cooperation], 2003, p. 60.
- 3 Netherlands Bureau for Economic Policy Analysis, *A new WTO round for services. Possible consequences for the Netherlands*, 2004, p. 10.

The position of developing countries at the negotiations has gradually changed since the start of the GATS process in 1995. After initial restraint, they presented themselves in Cancún as an intransigent bloc that would no longer allow itself to be dictated to by Western countries. Less than a year later, the leaders of the bloc, India and Brazil, were invited in Geneva to participate in the negotiations at the highest level. This helped to ensure that better prospects for successful negotiations, and thus for freer global trade and all the positive economic opportunities this implies, were secured in Geneva.

The role of developing countries as suppliers/exporters of services has also gradually changed. It is becoming increasingly clear that these countries possess an important advantage: a cheap and flexible workforce. Many companies from developed countries have already capitalised on this by transferring their manufacturing activities to developing countries. A relatively recent development is the trend in the European Union whereby companies also outsource the service component of their business to developing countries or even hire workers from outside the Union on a temporary or long-term basis to perform this work. Not only multinationals, but also smaller companies, are becoming increasingly able to optimise their production processes from an international perspective by selecting the location that offers the best cost-quality ratio for their service activities (from low-skilled administrative services and data management to highly-skilled research and design). Internationalisation is becoming essential for maintaining a competitive edge in almost all branches of industry. This is also increasingly true for services requiring highly-skilled personnel, of which it was previously thought that they could be carried out only in developed countries.

Global trade in services is thus changing and this has implications for the relationship between developed and developing countries. Many Western companies point out that their margins are coming under increasing pressure due to international competition and globalisation, forcing them to cut costs as much as possible. As a result, the debate from thirty or forty years ago concerning the loss of jobs to low-wage countries due to the transfer of industrial activities now appears to be repeating itself in relation to the service sector.

The persistent character of unemployment in the European Union and the limited increase in employment in the current economic climate in the United States are also relevant here. It is tempting to blame these developments on the shift of service activities to low-wage countries, but this ignores the long-term benefits of liberalisation.

Multilateral negotiations on trade in goods have been taking place within the WTO since the 1950s. In the 1994 Uruguay Round, they were supplemented by negotiations on freer access of agricultural products and services, while GATS came into force in 1995. The GATS negotiations, however, move forward in small steps, partly because of their voluntary nature. Poor insight into their implications also helps to explain the limited progress. Developing countries, in particular, are hesitant to formalise the expansion of market access, for example because they are unable to determine whether – and to what extent – foreign competition will threaten their domestic public and private service sectors. In addition, the GATS negotiations themselves are so technical that many developing countries lack the capacity to participate properly. Instead, they often try to keep up with the process by means of trial and error, and if they achieve progress at all it is often at bilateral or regional level and outside the GATS framework. This is unfortunate, because it is exactly the multilateral process within the WTO/GATS that offers favourable safeguards to developing countries: the negotiations take place on the basis of a level playing field, there is a dispute settlement body and developing countries receive special and differentiated

treatment. In other words, the liberalisation of trade in services via the GATS negotiations may be regarded as the royal – but arduous – road. There are also easier roads – via bilateral or regional negotiations – but they are more risky for developing countries. It is important to ensure that the slow pace and complexity of the GATS negotiations are not used as arguments for deviating from the royal road.

# I Services

## I.1 Importance of services

GATS does not define 'services' as such. By inverse analogy with the Treaty of Rome, however, services may be understood as consisting of those commercial activities that do not fall under the provisions on goods, capital or persons.<sup>4</sup> The agreement does provide examples of services, after dividing them into eleven sectors and 160 subsectors. The key sectors from an economic viewpoint are the three t's (tourism, travel and transport) and 'other' commercial and non-commercial services such as financial services and insurance, health care, culture, telecommunications, distribution and business services.<sup>5</sup>

In developed countries, the service sector has for decades been the fastest growing part of the economy. It has become the most important sector in almost the entire industrialised world, accounting for 50 to 70% of total production. However, this key position is not reflected in international trade statistics. As evident from Table 1, the share of services in the total exports of the industrialised world lies between 23 and 25% (imports: 15 to 25%), while their share in the total exports of the larger developing countries varies between 13 and 18% (imports: 16 to 25%).<sup>6</sup> The pattern of international trade apparently

**Table 1. Share of goods and commercial services in total trade, 2002<sup>7</sup>**

(in \$ billions and percentages based on balance of payments)

|                                  | EXPORTS |       |       | IMPORTS             |       |       |
|----------------------------------|---------|-------|-------|---------------------|-------|-------|
|                                  | Value   | Share |       | Value               | Share |       |
|                                  |         | Total | Goods | Commercial Services | Total | Goods |
| WORLD                            | 7,900   | 80,1  | 19,9  | 7,810               | 80,2  | 19,8  |
| NORTH AMERICA                    | 1,258   | 75,5  | 24,5  | 1,640               | 84,9  | 15,1  |
| LATIN AMERICA                    | 414     | 86,4  | 13,6  | 408                 | 84,1  | 15,9  |
| WESTERN EUROPE                   | 3,336   | 77,1  | 22,9  | 3,147               | 77,3  | 22,7  |
| CENTRAL EUROPE/<br>BALTIC STATES | 379     | 84,2  | 15,8  | 358                 | 81,8  | 18,2  |
| AFRICA                           | 173     | 82,1  | 17,9  | 165                 | 75,6  | 24,4  |
| ASIA                             | 2,097   | 84,7  | 15,3  | 1,913               | 80,8  | 19,2  |

4 Article 50 of the Treaty establishing the European Community.

5 More than 90% of WTO members cite tourism as their main service industry, followed by financial and business services. WTO, *Special Studies 6, Market Access: Unfinished business, Post-Uruguay Round Inventory and Issues*, February 2003

6 Tables 1, 2 and 3 were prepared by Professor C.J. Jepma on the basis of WTO, *International Trade Statistics 2003*, p. 24.

7 In Tables 1 to 3, trade by region is based on a summary of the data for the countries concerned.

does not reflect that of production, perhaps in part because certain services are difficult or impossible to transport within or between countries or because the trade in goods is already more liberalised than the trade in services. That should come as no surprise, as the negotiations on services have only just started, while the negotiations on goods within the GATT/WTO framework already go back fifty years.

**Table 2 Worldwide exports of commercial services by region and economy, 1992-2002**

(in \$ billions)

|                                  | 1992    |           | 1993    | 1994      | 1995      | 1996      | 1997      | 1998      | 1999      | 2000      | 2001      | 2002      |
|----------------------------------|---------|-----------|---------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|                                  | value   | %         | value   | value     | value     | value     | value     | value     | value     | value     | value     | %         |
| WORLD                            | 924,200 |           | 941,800 | 1.037,800 | 1.188,900 | 1.274,700 | 1.326,700 | 1.340,500 | 1.391,100 | 1.475,700 | 1.478,100 | 1.570,100 |
| NORTH AMERICA                    | 178,700 | <b>19</b> | 187,100 | 203,900   | 223,300   | 244,500   | 263,000   | 270,900   | 293,900   | 315,800   | 306,200   | 308,900   |
| LATIN AMERICA                    | 34,600  | <b>4</b>  | 36,600  | 41,200    | 44,100    | 46,000    | 49,500    | 52,700    | 53,800    | 59,700    | 58,200    | 56,200    |
| WESTERN EUROPE                   | 480,900 | <b>52</b> | 462,600 | 497,000   | 568,100   | 596,000   | 609,000   | 652,700   | 669,100   | 683,300   | 698,700   | 763,300   |
| CENTRAL EUROPE/<br>BALTIC STATES | -       | -         | -       | -         | -         | -         | -         | -         | 53,000    | 45,700    | 50,400    | 54,000    |
| AFRICA                           | 21,800  | <b>2</b>  | 21,900  | 22,500    | 25,700    | 28,000    | 28,500    | 27,600    | 30,200    | 30,200    | 30,400    | 31,000    |
| MIDDLE EAST                      | -       | -         | -       | -         | -         | -         | -         | -         | 25,500    | 28,000    | 33,100    | 29,900    |
| ASIA                             | 165,200 | <b>18</b> | 187,400 | 221,200   | 262,100   | 286,100   | 300,400   | 258,000   | 270,500   | 303,300   | 300,700   | 321,600   |

**Table 3 Worldwide imports of commercial services by region and economy, 1992-2002**

(in \$ billions)

|                                  | 1992    |           | 1993    | 1994      | 1995      | 1996      | 1997      | 1998      | 1999      | 2000      | 2001      | 2002      |
|----------------------------------|---------|-----------|---------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|                                  | value   | %         | value   | value     | value     | value     | value     | value     | value     | value     | value     | %         |
| WORLD                            | 939,100 |           | 953,100 | 1.037,000 | 1.190,900 | 1.261,700 | 1.302,600 | 1.326,800 | 1.376,800 | 1.460,900 | 1.469,600 | 1.545,500 |
| NORTH AMERICA                    | 132,500 | <b>14</b> | 140,000 | 150,900   | 160,200   | 172,800   | 188,000   | 201,700   | 221,100   | 248,500   | 244,900   | 247,500   |
| LATIN AMERICA                    | 42,500  | <b>5</b>  | 47,900  | 52,000    | 54,200    | 55,900    | 63,700    | 66,300    | 63,800    | 70,700    | 71,200    | 64,900    |
| WESTERN EUROPE                   | 449,900 | <b>48</b> | 427,200 | 460,900   | 531,800   | 554,700   | 558,600   | 610,100   | 631,700   | 641,600   | 658,700   | 716,000   |
| CENTRAL EUROPE/<br>BALTIC STATES | -       | -         | -       | -         | -         | -         | -         | -         | 47,300    | 43,600    | 50,300    | 56,200    |
| AFRICA                           | 29,400  | <b>3</b>  | 30,500  | 30,800    | 34,400    | 35,500    | 37,600    | 38,100    | 37,100    | 38,800    | 39,400    | 40,300    |
| MIDDLE EAST                      | -       | -         | -       | -         | -         | -         | -         | -         | 43,200    | 43,600    | 47,500    | 44,400    |
| ASIA                             | 215,100 | <b>23</b> | 233,800 | 270,700   | 327,600   | 351,500   | 358,000   | 320,100   | 335,900   | 363,500   | 354,700   | 366,800   |

The still limited position of services is also evident from the trade statistics for developing countries (Tables 2 and 3). At the same time, it is noteworthy that the share of services in the total exports of developing countries (on average approximately 15%) is somewhat better than expected, bearing in mind that the service economies of developing countries

are not yet as developed as those of industrialised countries.<sup>8</sup> This suggests that developing countries may possess a comparative advantage with regard to the production of services. Their share of the total global export of services already amounts to almost 30%, due almost entirely to the strong position of Asian countries, and this corresponds to their 30% share of the total global production of goods. At the same time, it is clear that Latin America and Africa still occupy a very modest position in the service sector. In 2002, incidentally, the share of developing countries in the global import of services also stood at approximately 30%.

It is important for developing countries to possess effective and competitive service sectors. For example, without access to efficient financial services, telecommunications and transport, it is harder to convert savings into productive investments, domestic production will generally increase more slowly, access to modern technology will be limited and trade will flow less smoothly. It is therefore often also in the interests of developing countries to unilaterally open their borders to services from developed countries.

In these developing economies, in particular the larger emerging markets, where in comparison to industrialised countries the service sector accounts for a more limited but rapidly growing share of economic activity as a whole, the realisation that services are an important source of growth is starting to sink in.<sup>9</sup> By extension, moreover, many developing countries are increasingly recognising that the liberalisation of the international trade in services may be in their interests. According to the World Bank, a liberalisation of trade in services could in theory produce much larger benefits for developing countries than those resulting from a further liberalisation of trade in goods.<sup>10</sup> This is because, as a result of trade liberalisation, the price of goods in developed countries is still approximately twice that in developing countries, while the price of services and labour – the production of services is on average more labour intensive than the production of goods – is on average at least ten times higher. The international wage gap applies not only to unskilled labour, but also to many types of medium and highly-skilled and specialised labour. It is precisely these types of labour that appear to lend themselves increasingly well to production processes that are optimised from an international perspective, in which certain activities are outsourced to those foreign locations that offer the best cost-quality ratio.

The trend towards outsourcing partly implies the transfer of employment opportunities to developing countries (see box 1). Estimates regarding the number of jobs disappearing from industrialised countries vary significantly. In the case of the United States, for example, figures in the region of three million have been mentioned, which corresponds to a few per cent of total employment. As far as Europe is concerned, there appear to be no systematic data on the employment aspects of outsourcing. With regard to this issue, incidentally, the focus in Europe so far appears to be less on developing countries and more on the new EU members.

8 The service sector in developing countries currently accounts for approximately half their GNP. In LDCs, it is even more important than agriculture in terms of GNP. World Bank, *Global Economic Prospects for Developing Countries*, 2001.

9 Between 1999 and 2000, the growth of commercial services in developing countries (8.9%), and even in LDCs (6.3%), exceeded the growth of this sector in developed countries (5.9%).

10 World Bank, *Global Economic Prospects: Realizing the Development Promise of the Doha Agenda 2004*, Washington, 2003.

Be that as it may, outsourcing and its alleged effects on the labour market have certainly become a serious political issue in the United States, as have potential measures to discourage companies, by means of sanctions, from outsourcing on a large scale. If this trend continues, it could mean a dangerous and – for developing countries – unfavourable change of direction. After all, from previous experience it is not clear whether the assumption that an exported job cannot eventually be replaced is actually correct. It is therefore in the interests of developing countries that any obstacles to outsourcing resulting from positive or negative incentives for companies are removed if a similar trend develops in Europe.

*The AIV recommends that, on the basis of an inventory of measures that could or do form an obstacle to outsourcing, the government urges EU member states at least not to introduce any new restrictive measures, starting from a mutually agreed date.*

**Box 1 Examples of the outsourcing of services to developing countries**

In low-skilled service sectors examples of outsourcing include the administration of credit cards and insurance policies, and data processing (direct mail and telephone directories) in China and Cambodia. Another example is the transfer of the entire Dutch literary canon to the Digital Library of Dutch Literature by data processors in the Philippines, who have been copying Dutch books for decades. ‘Precision is more important than knowledge of the Dutch language,’ according to the editor-in-chief.<sup>11</sup>

Examples of promising highly-qualified services include the IT industry in India, surgery in Thailand and cosmetic surgery in South Africa and Costa Rica. Other opportunities for developing countries are located in the area of audiovisual services. For example, the Indian film industry is increasingly collaborating on productions in the United States and Canada: from 198 titles in 1998 to 412 titles in 2000. Thailand is also an increasingly large player in this industry, especially in the area of TV productions, commercials and music videos. Fifty-one of the 150 largest international construction companies are from developing countries. China alone accounts for twenty-four of them, while Brazil, Egypt, India, Lebanon and South Africa are also involved in this market.<sup>12</sup>

11 NRC Handelsblad, 25 June 2004. Digital Library of Dutch Literature: <<http://www.dbln.org>>.

12 Examples may be found in ‘Opening up Trade in Services: Opportunities and Gains for Developing Countries’, OECD Observer, August 2003.

## **II GATS**

### **II.1 The WTO framework**

Within the WTO framework, a separate multilateral agreement is devoted to the liberalisation of trade in services: the General Agreement on Trade in Services (GATS). The aim of the agreement is to develop a credible and reliable system of international rules and principles for promoting trade and thus promote the economic growth and development of all trade partners. The objectives of the GATS negotiations, which focus on trade liberalisation, are free market access and equal treatment of domestic and foreign companies. As customary in the WTO, there is a strong emphasis on maintaining a level playing field, and there are facilities for the settlement of trade disputes. The uniformity of the regulations also promotes trade. In addition, the negotiations are specifically aimed at promoting the participation of developing countries in the trade in services. In August 2004, the WTO/GATS had 147 member states, including 110 developing countries. The latter differ substantially in terms of their level of development and the extent of their active participation in the WTO.

The first discussions on services started in 1994 during the Uruguay Round, under the mandate of a WTO ministerial meeting in Marrakech (Morocco). They addressed the practical development of a legal framework for the liberalisation of international trade. GATS entered into force in January 1995.

The current four-year round of multilateral WTO talks, in the framework of which the GATS negotiations also take place, is called the Doha Round, after the city in Qatar where the ministerial conference was held in November 2001. Here it was agreed that the interests of developing countries would take centre stage in the current round. The resulting Doha Development Agenda (DDA) was evaluated in mid-September 2003 during the ministerial conference in Cancún (Mexico) and will culminate with the next ministerial conference in Hong Kong in 2005.

Some of the negotiations in the GATS framework, such as those on telecommunications, financial services and maritime transport, should actually have been concluded in Cancún, as they had almost been completed by the end of the Uruguay Round. Due to the premature conclusion of the conference, however, services were not even discussed. Likewise, in Geneva in the summer of 2004, the negotiations on agriculture took up so much time that once again little attention was devoted to services.

### **II.2 Position of developing countries in the WTO**

Developing countries have traditionally occupied a special position in the WTO negotiations. Western countries sometimes point out that, due to their limited economic weight and the many exemptions they enjoy in relation to the multilateral negotiations, which are based on reciprocity, many developing countries can in fact be regarded as free-riders in the liberalisation process. They thus supposedly benefit from easy access to Western markets without having to offer much in return. Oft-cited examples include the fact that import duties for similar products are on average higher or much higher in developing countries than in developed countries and the widespread violation of intellectual property rights in developing countries due to weak control.

On the other hand, it is argued that the WTO negotiations are dominated by the industrialised countries and therefore focus on their interests. The international trade system thus supposedly discriminates against developing countries. Arguments to support this include the high level of protection for agriculture in the industrialised world and the fact that protection tends to increase in accordance with the stage of a product's development.

In practice, the fact that sometimes widely divergent standpoints can be – and are – adopted on the position of developing countries in international trade negotiations, given that they constitute a highly heterogeneous group, injects tension into the negotiation process. This is also affecting the current GATS negotiations, as they largely coincide with – and since 2001 have been incorporated into – the WTO negotiations.

### **II.3 The GATS system**

First and foremost, the WTO and GATS negotiations are both governed by the unwritten basic rule of *quid pro quo*. This is also known in the literature as the reciprocity principle, according to which liberalisation in one service sector should be counterbalanced by liberalisation in the same or a different sector. In practice, however, positions within GATS are counterbalanced by positions in other areas of the Doha process (e.g. agriculture) or even by positions falling outside its scope. In addition, developing countries are allowed to derogate from the proportionality requirement.

GATS further differentiates between:

- A. Principles that every member must apply at all times (the 'General Obligations and Disciplines'):
  - Most-favoured-nation treatment (Article II). According to this time-honoured principle, every member is required, as soon as it undertakes a commitment, to apply this 'favourable' measure equally to all other members. Only on very rare occasions does GATS permit exceptions to this principle, which is in fact also based on non-discrimination, and even then only on a temporary basis. It is therefore a powerful and binding principle and perhaps one of the reasons that countries sometimes prefer more flexible bilateral or regional agreements over GATS.
  - Transparency (Article III). In order to truly grant equal opportunities to all suppliers, all members must publish their relevant legislation and any changes to it.
  - Domestic regulation (Article VI). The rules on the administration of justice and supervisory bodies should be the same for foreign service suppliers and domestic companies and should be applied equally.
- B. Principles that need to be fleshed out in the negotiations on offers and commitments (Specific Commitments):
  - Market access (Article XVI). According to this principle, every member of GATS must be granted access to the service markets of the other members. However, every member is entirely free to determine whether and to what extent it is willing to undertake formal commitments. In addition, by virtue of the effect of the principle of equal treatment, members are free to choose to discriminate to a certain extent in favour of domestic suppliers.
  - Non-discrimination in the sense of equal treatment ('national treatment', Article XVII). According to this principle, every member must accord similar treatment to foreign suppliers and comparable domestic suppliers. Members are free to deviate from this principle in certain cases. Thus, for example, a country can circumvent the principle by linking the access of foreign companies to its service market to a licence, while not imposing such a requirement on domestic companies.

## **II.4 Aim and scope of the agreement**

The aim of the agreement is to expand free market access for foreign companies and to treat them equally to domestic companies. With regard to scope, GATS differentiates four forms of cross-border service provision, also known as ‘modes of supply’:

- Mode 1 – Cross-border supply: the service itself crosses the border, by analogy with the international trade in goods (e.g. transport services)
- Mode 2 – Consumption abroad: the consumer – a natural person – moves abroad in order to take advantage of the service (e.g. tourism, beauty clinics)
- Mode 3 – Commercial presence: the consumer or supplier – a legal person – moves abroad to consume the service (e.g. establishment of a branch or daughter company)
- Mode 4 – Presence of natural persons: the supplier – a natural person – moves abroad to supply the service on a temporary basis (e.g. grape pickers, computer experts, nurses).

From an international trade perspective, mode 1 and mode 3 (as a catalyst for foreign direct investment) are the most important. In 2000, approximately 80% of the trade in services was conducted via these two modes.<sup>13</sup> Mode 2 accounted for 20% of trade, while the contribution of mode 4 was extremely limited.<sup>14</sup>

The agreement theoretically covers all service sectors, with the exception of public services.<sup>15</sup> These are services that are in principle supplied by the government and are – or at least ought to be – available and accessible to all, including the poorest members of society, on a non-commercial basis and without competition. Examples include basic health care and education.

However, it is up to countries themselves to determine which services are considered public. In a number of developing countries, for example, energy is still supplied by the government on a non-commercial basis, while in other countries the energy market has already been privatised and liberalised, with several suppliers competing for the favour of private and business customers. It is also possible that certain sectors are partly public and partly privatised. The success of such privatisations appears to depend to a large extent on the quality of the legislation and the relevant governmental supervisory organisation. In such cases, only the public, non-privatised sectors may be excluded from GATS.<sup>16</sup>

## **II.5 Undertaking commitments**

Negotiating under the rules of GATS is a constant game of offers and counteroffers. Member states request other member states to expand their market access for certain

13 The scope of transactions under mode 1 can be determined directly from the trade statistics. Those under mode 3 are usually determined on the basis of the added value of establishments with a foreign majority interest.

14 OECD, *Service Providers on the Move: The Economic Impact of Mode 4*, March 2003.

15 Article I GATS: Services supplied in the exercise of governmental authority.

16 In addition, the annexes to the agreement exclude a few services that are in fact privatised, such as those performed by central banks and overflight and landing rights already laid down in bilateral aviation agreements.

service sectors, and this is followed by an offer which is then negotiated at bilateral level. The negotiations can lead to new requests for market access, and so on. This is rather time-consuming, all the more so because, as mentioned earlier, GATS differentiates eleven sectors and 160 subsectors, four modes of supply and two conditions (regarding market access and non-discrimination), which are all negotiated individually by the member states.<sup>17</sup>

In the framework of the agreement, every GATS member is expected to draw up a list of voluntary offers that become binding if they are formally adopted after the negotiations.<sup>18</sup> The lifespan, scope and sector of these commitments can subsequently be refined, which means they can be tailored to other member states, obviously with due regard for the principle of most-favoured-nation treatment. The desired commitments concerning market access and national treatment must be published in schedules and commented on in plenary sessions. For each sector and subsector, these schedules indicate that a member state has not placed limitations on the market access of foreign service suppliers or the equal treatment of foreign and local suppliers ('none'); that it has not made commitments in relation to market access ('unbound'); or that it has linked its commitments to domestic legislation ('bound').<sup>19</sup>

17 This yields 1,280 different combinations.

18 The agreement provides for sanctions if commitments are not fulfilled, but these have so far not been invoked. Incidentally, the agreement does allow for the possibility that a commitment is withdrawn, provided it is replaced by a commitment of similar value. In this way, all members are at least assured of a standard level of treatment (Article XXI).

19 The schedules of all WTO members can be consulted on the internet at: <<http://www.wto.org>>.

### **III Opportunities and risks for developing countries**

#### **III.1 Preferential position**

Reciprocity is a key principle in trade negotiations. Although all trade partners benefit in theory, developing countries – in particular least developed countries (LDCs) – generally have less to offer and less capacity to conduct tough negotiations.<sup>20</sup> Participation in the WTO/GATS is therefore particularly attractive for developing countries, as the negotiations in this framework are conducted on the basis of the equality of all member states and decisions are taken by consensus.<sup>21</sup> Developing countries thus have a right of veto – just like developed countries – which they can use to block the negotiations, as they did in Cancún.

The aim to secure a level playing field for all countries in a multilateral framework, the procedures for dealing with complaints and disputes and the simplification of access to national legislation are achievements that work in favour of developing economies. The possibility for developing countries to invoke exemptions during the liberalisation process is more likely to lead to success in a multilateral framework than in bilateral negotiations, where the industrialised countries exert stronger pressure. It is also important that, when developing countries eventually decide to liberalise, they do so in relation to the largest possible number of countries. Competition between service suppliers will only be optimal in a multilateral framework.

In practice, many developing countries are at a disadvantage in the negotiations, due to their lack of knowledge and often limited experience and manpower. They sometimes, for example, privatise public services too early to be able to offer concessions in this area during the negotiations. The industrialised countries recognise that the negotiating power of the developing countries is limited, and various adjustments have been incorporated into the agreement to make it more flexible.

Flexibility (Article XIX(2) GATS) is the main formula for approaching developing countries. As already noted, they are allowed to liberalise their markets according to their level of development. This gives them the right, for example, to protect vulnerable sectors by means of less far-reaching commitments, which means they do not have to remove all trade barriers at once. This Special and Differential Treatment (SDT), which also allows developing countries longer implementation periods, is discussed in detail in the ‘Guidelines and procedures for the negotiations on trade in services’. Article 1 states that ‘the negotiations shall be conducted on the basis of progressive liberalisation as a means of promoting the economic growth of all trading partners and the development of developing countries’. Article 3 points out that ‘due consideration should be given to the needs of small and medium-sized service suppliers, particularly those of developing countries.’<sup>22</sup>

20 Developing countries are divided into middle income countries, which are classified by the World Bank as having an annual GNP per capita of less than \$1000, and least developed countries, with an income of less than \$800 per capita. At present, 49 countries are classified as LDCs.

21 Article IX(1) of the Agreement establishing the WTO, available at:  
<http://www.wto.org/documents~e/ursum#agreement>.

22 WTO, *Guidelines and procedures for the negotiations on trade in services*, 29 March 2001.

### **III.2 LDCs**

Agreement on another important aspect of the Doha Development Agenda, the modalities for the special treatment of LDCs, was achieved with great difficulty in Cancún.<sup>23</sup> LDCs are entitled to an even more flexible approach so that they can participate in GATS. Their declining share of global trade – from 3% in the 1950s to 0.5% in the first years of the third millennium – renders this special treatment even more necessary.

Articles II(4) and II(5) of the modalities recognise that, due to their economic situation, LDCs experience serious problems in the negotiations on offers. All member states must exercise restraint when accepting commitments from LDCs. Depending on their level of development, LDCs also may decide to limit market access to just a few sectors.

The modalities also mention establishing distribution channels in these countries and improving access to modern technologies as measures to promote the growth and development of the economies of LDCs. For example, computer programs could be developed to provide LDCs and other developing countries with a yardstick for evaluating liberalisation proposals. By entering the parameters of the specific case and comparing them to a standard checklist, the prospects of liberalisation having a favourable impact could be determined.

Another measure is to encourage developed countries to improve market access for those sectors that are of special interest to developing countries. For this purpose, developed countries have established special contact points where LDCs and other developing countries can obtain information about their markets. In addition, the WTO has established an International Trade Centre (ITC) to provide trade-related technical assistance to LDCs, in particular. The fact that the Dutch government recognises the importance of such assistance is clear from its € 1.4 million contribution to the ITC in 2003.

*The AIV recommends that, in the framework of its development cooperation policy, the government further assists developing countries – especially LDCs – with institutional development and the monitoring and application of trade rules, in general, and with conducting WTO and other trade negotiations and formulating offers, in particular. This requires strengthening the institutions responsible for monitoring, upholding and applying trade rules. Additional options include support in establishing chambers of commerce and agencies.*

*The AIV also recommends establishing training programmes and courses to increase the negotiating capacity of developing countries. In the AIV's opinion, experts from developing countries can be employed for this purpose, which would also help to strengthen South-South cooperation. Finally, with a view to assisting developing countries in the negotiation process, a digital handbook facilitating the performance of 'liberalisation assessments' could be jointly developed.*

### **III.3 Risks for developing countries**

Liberalisation of the service sector is not only a promising prospect; there are also problems that continue to require the attention of both developed and developing countries.

<sup>23</sup> Council for Trade in Services, *Modalities for the special treatment for least developed country members in the negotiations on trade in services*, 3 September 2003.

As already noted, developed countries fear that jobs will move to low-wage countries, but it is not entirely clear how harmful it actually is when work that can be performed more cheaply elsewhere disappears. In a healthy economy, the resulting savings will certainly increase purchasing power and promote growth in the long run. If this economic growth takes place in an innovative environment in which a lot of attention is devoted to the quality of education and research and the flexibility of labour markets, new technologies, production systems and product-market combinations will help to create new high-quality employment opportunities. In practice, however, things are often different. The move towards outsourcing was partly fuelled by the need of companies to save costs in the weak job market in the European Union and – for the past two years – the United States. When there appears to be jobless growth, as there is in the United States, policymakers must ask themselves whether the drop in employment is really just a consequence of developments such as the transfer of activity to developing countries, the outsourcing of services or the import of cheaper workers from developing countries. In fact, it is more likely that more jobs have disappeared due to competition, technological progress and economic slowdown.

It seems more likely that the rapidly expanding possibilities of outsourcing have brought to light fundamental structural obstacles to economic growth. It is increasingly understood that the new, globalising economy also forces developed countries to adopt stronger policies in the field of education, innovation and labour flexibility (both geographical and substantive).<sup>24</sup>

#### **III.4 Vulnerability of developing countries**

It is particularly unfavourable for developing countries to be in a state of uncertainty regarding the practical implications of their commitments. It may even discourage them from actively undertaking commitments. The fact that GATS does not yet allow countries to suspend or withdraw commitments undertaken at an earlier stage, even if their domestic markets are seriously disrupted, further reinforces their reluctance. Although safeguard measures are available under GATS, there is absolutely no agreement on the definition of the conditions for receiving such protection or the procedures that would need to be followed. Such an escape clause is very important for developing countries, however, as it means that they do not have to expose their vulnerable economies and weak institutional structures to liberalisation too early or too irrevocably.

*The AIJ recommends that, when the grounds for the use of emergency safeguard measures (Article X GATS) are formulated, provisions granting developing countries the right to suspend or withdraw commitments that seriously disrupt their domestic markets are incorporated. This should include the design of a mechanism that can identify the vital interests of developing countries, which would make it possible to remove unforeseen disadvantages for these countries, preventing further delays in the actual negotiations.*

In addition, developing countries can develop cold feet with regard to liberalisation because they are unable to fully understand its potential economic benefits. It would be helpful if they could learn from the experience of other countries. To promote understanding and

24 Dr N.G. Mankiv, Chairman of the Economic Advisors, speech to the National Association of Business Economists, Washington Economic Policy Conference, March 2004.

transparency, Article XIX(3) GATS therefore encourages the member states to carry out assessments, but few have so far responded to this call.<sup>25</sup>

*The AIV advises the government to promote implementation of Article XIX(3) GATS. To this end, the Netherlands should provide resources to establish or strengthen the assessment capacity of developing countries or supply the research capacity needed to perform the assessments referred to in the article.*

### **III.5 Competition**

Other factors that cause developing countries to take a cautious approach to liberalisation are related to their own capacity to compete, the risk that opening up to foreign services will force out local suppliers, and the complexity of the macroeconomic analysis for determining potential effects on prosperity.

The liberalisation of services increases the pressure for their privatisation. Certain services are regarded as a government responsibility par excellence, due to the natural monopoly of the state with regard to care of its citizens, and their strategic importance for the rest of the economy. Public services are exempt from liberalisation under GATS. Discussion of these services within GATS therefore cannot be separated from the wider discussion on the appropriate division of tasks and responsibilities between the public and private sectors, or the subsequent discussion on how the government supervises and – where necessary – regulates and which private sector activities can be opened up to national and international competition. This discussion obviously takes place in both developed and developing countries, and experience teaches that there are no universally applicable answers.

In the case of utility services, in particular, fixed costs are sometimes so high that competition between different suppliers is simply impossible. Examples of this include the networks for the transport of energy and water as well as fixed telephony and public transport networks. At the very least, quality risks must be minimised. In other cases, it has become clear that utility services cannot be improved as long as they are delivered by state-owned monopolies, and that progress can only be achieved through well-regulated privatisation.

#### **Box 2 The Mexican telecommunications sector**

In 1990, the Mexican government privatised the state-owned telecommunications company Telmex and opened up the telecommunications market to domestic and foreign suppliers. The sector grew in spectacular fashion: the coverage of the fixed and mobile networks increased and the level of service went up. In 1996, the government appointed a federal regulator. Everything appeared to have gone by the book.

Nevertheless, Mexico did not succeed in realising a key goal of this liberalisation, namely to enable everyone to communicate cheaply. It emerged that investments only benefitted large companies (in particular Telmex) and that smaller companies

<sup>25</sup> To measure progress, the starting situation must be determined prior to the assessment.

and companies in rural areas were not given a chance to develop. As a result, many Mexicans remained without connections, especially in rural areas, and the digital divide continued to expand.

Research conducted in 2002 attributed the poor functioning of the freer market mainly to an ineffective regulator,<sup>26</sup> who was only appointed a few years after the reform and was not granted enough power to enforce the rules and facilitate domestic and foreign competition. In addition, due to constant interference by the Minister of Transport and Communications, the regulator's independence was not guaranteed. In summary, the government privatised the state enterprise properly, but subsequently failed as far as the consequences of liberalisation were concerned, especially in relation to the poorest people in the country.

Source: Catrinus Jepma and Elise Kamphuis (eds.), *Developing Countries and GATS*, University of Groningen, June 2003.

In short, the debate on the privatisation of utility services is characterised by different experiences and positions, which explains why there are different opinions on liberalisation in various developed and developing countries. For the time being, caution is called for. In the Netherlands and other European countries, the privatisation of public utility companies only started after their services had achieved a level of coverage of almost 100%. When considering privatisation, it is important to examine whether it could have a negative impact on the level of coverage.

Experience also teaches that opening up service sectors in developing countries to foreign companies can easily lead to the elimination of fragile local companies, especially under mode 3 (establishing a branch or daughter company in another country). Although in the long run it is also best for developing countries to provide services as efficiently as possible via open competition between local and international suppliers, in the short term this can lead to economic decline and even political instability. Local service suppliers should be given the chance to develop and adapt to international norms and standards without immediately being eclipsed by much larger and financially stronger foreign competitors. Especially in the service sector, where the factor of labour is by definition so important and where already scarce qualified workers can be easily lured away, this is a real risk. On the other hand, there is also a risk that inefficient national monopolies will be protected, with all the obstacles to economic development this entails. An example of this is the reluctance of the Chinese and Indian authorities to allow foreign direct investment from the West in the financial sphere. In these countries, inefficient state and non-state enterprises that employ large numbers of workers are often propped up for political reasons, for example via the provision of 'cheap' loans by banks affiliated with the government, which are paid for from public finances or bank revenue. These countries have reason to fear that liberalisation under GATS would not only threaten the position of these weak, propped-up companies, but also expose the weak and controversial position of their financial backers.

26 J. Mariscal, *Unfinished Business: Telecommunications reform in Mexico*, Westport, 2002.

The question how long labour in developing countries can remain so much cheaper is also relevant in this context. In the long run, for example, IT salaries in India will rise across the board. Foreign companies that outsource their services to India pay higher salaries than local companies. In order to find employees, local companies will eventually have to start paying more as well.

Poor infrastructure may also start to have an effect on developing countries. For example, large companies in India usually have their own emergency power units or their own employee bus services, as both the electricity network and public transport in the country leave much to be desired.<sup>27</sup> This creates employment but also drives up costs. The challenge is to strengthen local service companies in such a way that the best ones are able to cope with – or better yet able to benefit from – the presence of foreign competitors in their own market, without resorting to the protection of local monopolies.

*The AIV believes that, in the framework of development cooperation aimed at strengthening middle management, the government should expand its activities to strengthen the local private sector, especially in the area of services. This can be achieved, in particular, by strengthening legislation, the administration of justice and supervisory organisations. If these vital government tasks lack credible force, the business sector – and in particular the service sector – will find it difficult to develop successfully. Because the interplay of the public and private sectors – each in its own role – is so important for the effective and responsible functioning of the business sector, the AIV also recommends that the government provide more development assistance in the framework of public-private partnerships than it has in the past.*

### **Box 3      Public-private partnerships**

Two examples of public-private partnerships were established in 2004. In June, the government signed a covenant with the Netherlands Water Partnership to jointly strengthen the water sector in developing countries. This brings one of the Millennium Development Goals for 2015 – to reduce by half the number of people without access to safe drinking water and sanitary facilities – a step closer. A few weeks later, the Dutch Association for the Development of the Financial Sector (NSFS) was established following consultations between the government, commercial banks and the Netherlands Development Finance Company (FMO). In order to achieve economic development, developing countries and countries with emerging markets need an effective financial sector. This includes banks and insurance companies that offer financial products such as loans to farmers and micro-credit to small entrepreneurs. In this context, for example, the government of an Asian country could approach the NSFS – via the Dutch embassy – for advice on the appropriate regulatory framework for establishing an effective system of mortgage lending.

Source: Ministry of Foreign Affairs, press release, 14 July 2004.

27 Newsweek, 21 February 2004.

The risk that local activities will be priced out of the market exists not only as a result of direct investments on the basis of mode 3, but also under the other GATS modes. However, the nature of this displacement effect is so country and sector-specific that it is impossible to create a blueprint for the desired level and pace of liberalisation. With mode 1 – cross-border provision of services (e.g. outsourcing to developing countries) – there is a risk that the local service sector will deteriorate, because workers will prefer to earn a higher salary by working for a foreign company. In addition, as argued above, wages in developing countries will inevitably rise in the long run. With mode 2 – foreign consumption – there are examples of health or tourist services for Western consumers in developing countries becoming so successful that the local population is faced with a deterioration in services, such as a shortage of water, which is channelled primarily to tourist hotels, or a lack of doctors, who prefer to work in clinics serving foreigners. With mode 4 – temporary labour migration – it is possible that a large and sustained outflow of young, highly-qualified individuals will have a positive effect in the short term (e.g. as a result of remittances to their countries of origin), but that in the long run their departure will harm the growth potential of developing countries as a result of brain drain.

For recipient countries, labour migration is positive in the long run, especially if the migrants are young, healthy and highly qualified. The reason for this is that they can easily find work in another developed country and are more likely to move on than claim social security if they lose their jobs in the recipient country. Research also indicates that the older and less qualified the labour migrant, the greater the chance that he or she will eventually claim social security.<sup>28</sup> From a financial perspective, it is therefore less risky for the Netherlands to stimulate the arrival of highly-qualified migrants and knowledge migrants. It also dovetails with the aim of establishing an innovative knowledge economy in the Netherlands.<sup>29</sup> However, this should not come at the expense of the potential of developing countries. The balance between the positive and negative consequences of temporary labour migration are discussed in greater detail below.

### **III.6 Brain drain**

As long as it remains possible to earn significantly more in other countries, it is worthwhile to work there on a temporary or permanent basis. GATS only allows temporary labour migration, but it is a fact that labour migrants do not always return to their countries of origin, but move on to other places. This can lead to a shortage of educated managerial staff and entrepreneurs in developing countries. Dynamism and research capacity disappear, services and facilities deteriorate and investments in the training of the labour migrants are lost. A well-known example is the case of India, where approximately one-third of qualified IT experts leave for the United States each year. In the long run, this exodus hampers the growth and development of the domestic sector and may have a negative impact on economic growth. There can also be a chain reaction. Jamaican nurses go to work in the United States, for example, and Nigerian nurses fill the resulting gap in the Jamaican labour market.<sup>30</sup> Nigeria, at the end of the chain, comes off worst and is

28 Statistics Netherlands, *Een nieuwe WTO-ronde voor diensten. Mogelijke gevolgen voor Nederland* [A new WTO round for services. Possible implications for the Netherlands], no. 51, February 2004.

29 Advisory Committee on Aliens Affairs, *Regulering en facilitering van arbeidsmigratie* [Regulating and facilitating labour migration], March 2003.

30 C.J. Jepma and E. Kamphuis in *Economisch Statistische Berichten, Cancún: Vrijhandel van arbeid* [Cancún: Free trade in labour], 2003.

left with a shortage of medium and highly-skilled workers. There is a risk that human capital that has been trained locally with scarce resources will move away from where it is most needed for local development. In addition, the chance that labour migrants will return to LDCs from the diaspora remains small as long as there is no lasting improvement in economic prospects.

**Box 4      The Indian computer sector**

The Indian computer sector has developed strongly in recent years, due in part to government incentives such as various tax benefits. India also possesses a large number of English-speaking IT experts who want to provide services abroad under mode 4. The remittances that these workers send back to India contribute to its positive balance of payments. The McKinsey Global Institute calculated that in 2001 India had approximately 510,000 computer experts, of whom two-thirds were employed domestically and one-third abroad.<sup>31</sup> Under the slogan ‘the more, the better’, India has requested other WTO members to admit more Indian IT experts into their countries under mode 4 for a period of one to three years, on the assumption that more remittances will contribute to an even better balance of payments. However, various calculations indicate that there is a limit to this success. It is often overlooked that people that have worked in another country for a number of years are quite often given the opportunity – and are quite often inclined – to settle there permanently. Calculations based on the current outflow of Indian computer experts to foreign countries suggest that until approximately 2010 the country’s balance of payments will improve as a result of this export. Should the outflow increase from its current level of 30,000 to 50,000 or more, however, the balance of payments may start to deteriorate around 2010. By that time, India will not only have exported more experts than it requires for its own purposes, but it will also have let go some of its most highly-qualified workers. As a result, India will no longer be able to meet domestic or foreign demand, and in the long run the sector will no longer be able to innovate. Exports in this sector will decline, and the balance of payments will deteriorate.

Source: Catrinus Jepma and Elise Kamphuis (eds.), *Development Countries and GATS*, University of Groningen, June 2003.

This requires some qualification. In Ghana, for example, many trained doctors can barely find suitable employment, as domestic hospitals lack facilities and medicines.<sup>32</sup> Under these circumstances, does the departure of these otherwise unemployed doctors for the United Kingdom still qualify as a brain drain? In India, it is sometimes said that it is better to have a brain drain than a brain in the drain. In the case of the Philippines, it is even

31 McKinsey Global Institute, *India: The Growth Imperative*, September 2001.

32 But what constitutes suitable employment? Many recently qualified doctors in developing countries consider it beneath their newly acquired standing to work in rural areas. The brain drain from the rural areas to the cities and from public to private health care has prompted India to institute a period of compulsory public service for new doctors.

possible to speak of a brain export. Nurses are purposely trained as a type of export product to support the national budget. Incidentally, it appears to be perfectly possible to discuss impending shortages in countries of origin. In 2003, under pressure from South Africa and the Caribbean countries, where a healthcare crisis was looming, the British government decided to no longer recruit nurses from these countries until further notice, in accordance with the Commonwealth Code of Practice for the International Recruitment of Health Workers.<sup>33</sup>

<sup>33</sup> OECD Observer 2003, *Service Providers on the Move, Labour Mobility and the WTO/GATS*. In 2002, the Netherlands also decided to stop recruiting nurses from South Africa.

## **IV Review of Cancún and prospects**

### **IV.1 Failure of Cancún**

The WTO ministerial conference in Cancún in September 2003 was eagerly anticipated. It presented an opportunity to get down to business, after which the Doha Round would be back on schedule. In the field of services, the conclusion of the negotiations on telecommunications, maritime transport and financial services was on the agenda. As is well known, however, the conference broke down before the final day. The highly charged agenda, which included the so-called Singapore issues (investment, competition, transparency in government procurement and streamlining of customs formalities), tariffs for industrial products and the weighty issue of agriculture, overburdened the negotiations. Despite commitments they had announced beforehand, the European Union and the United States were not willing to make real progress on the issue of agriculture. At the conference they therefore ended up at odds with the Group of 21 developing countries (G21), under the leadership of India and Brazil,<sup>34</sup> and the Group of 19 Least Developed Countries (G19). When four West African countries (Benin, Burkina Faso, Mali and Chad) subsequently refused to compromise on their interests in the cotton trade, the deadlock was complete.

On balance, it can be regarded as positive that the position of the economic superpowers was put into perspective and that developing countries took a stand and submitted proposals for the first time. At first glance, this appeared to have only negative implications for the developing countries: no commitments on the issues of agriculture and cotton (both of which are very important to them) and the risk that individual countries or regional trade blocs would start to conclude bilateral agreements instead of going through the WTO, where, as already noted, developing countries are guaranteed a level playing field as much as possible. Looking back a year later, however, this situation does not seem to have done the developing countries any harm. During the WTO negotiations in Geneva, as leaders of the new power bloc, India and Brazil were invited to join the highest level of the negotiations. More important, however, is how much can still be achieved in the follow-up negotiations.<sup>35</sup> Despite everything, an initial breakthrough on the issues of agricultural subsidies, cotton and sugar was achieved in July 2004 following discussions in Geneva. Perhaps this will help to relaunch the current round of negotiations and pave the way for its successful conclusion during the next WTO summit in Hong Kong in December 2005, but this is far from certain. Whatever happens, successful completion of the DDA would be of vital importance to developing countries, not just because, according to the World Bank's estimates, a successful round would increase global prosperity by approximately \$500 billion a year in 2015, but primarily because more than half that amount would go to poor countries. This could potentially reduce the number of people living in absolute poverty by approximately 150 million.

34 The other members of the G21 are Argentina, Bolivia, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, Guatemala, Indonesia, Mexico, Nigeria, Pakistan, Peru, the Philippines, South Africa, Thailand and Venezuela.

35 It is significant that the peace clause adopted during the Uruguay Round, in which WTO members undertook not to lodge anti-dumping actions with respect to agricultural goods, expires at the end of 2004. A large number of new actions may put pressure on the United States and the European Union to put forward genuine proposals in this field.

## **IV.2 Prospects for the negotiations**

The current round of GATS negotiations is partly devoted to finding compromises in the field of services liberalisation, where interests are sometimes in harmony and sometimes opposed. Whether the negotiations will achieve lasting results that create advantages for the various parties depends on a number of factors.

First of all, the GATS negotiations are linked to the WTO negotiations on trade in goods as a single undertaking. The failure of Cancún temporarily halted the negotiations. This means that they have been delayed, despite the green light that was given in Geneva. This delay, in combination with the US elections in November 2004, the election of the new European Commission and the enlargement of the European Union in mid-2004, suggests no further serious decisions can be expected before the spring of 2005. Because it is linked to GATT, progress in GATS now depends on progress in the field of agriculture and other thorny issues. Proposals to uncouple GATS from the GATT negotiations have so far not been received with open arms in the West, as the interests of developed and developing countries differ widely. Roughly speaking, the developed countries are net consumers of services and the developing countries are net consumers of agriculture. Nevertheless, it seems wrong that significant progress in GATS could be permanently held hostage in the unwelcome event that the other Doha negotiations continue to drag on.

*The AlV recommends that the government examine whether the agreement that the Doha negotiations should be seen as a single undertaking (nothing is decided until everything is decided) can be amended if significant progress fails to materialise in other areas of the negotiations, as power games should not become more important than the intended effects of liberalisation. Issues on which agreement has been reached in the past and secondary issues with potential should then be granted special status in the negotiations. An example of this are the TRIPS negotiations on the issue of medicines, which were concluded in 2003.<sup>36</sup> Uncoupling GATS from GATT – and thereby from stumbling blocks such as agriculture – could lead to progress in the liberalisation of trade in services.*

Secondly, it might be possible to stimulate progress in the GATS process by increasing understanding of the effects of services liberalisation. Once again, this appears to apply primarily to developing countries. Traditional trade theory teaches that on balance trade liberalisation is advantageous for the participating countries, but also that there will be both winners and losers within these countries in the short term. A better understanding of the risks of services liberalisation and the conditions that need to be met to limit them may help to reduce reluctance among developing countries.

Incidentally, assessment of the effects of liberalisation is one of the requirements of the GATS Agreement (Article XIX(3)), but one that has thus far not produced any tangible results. The industrialised countries are procrastinating, while the developing countries want to make it a precondition for liberalisation.

*The AlV recommends that, on its own initiative, the Netherlands commission studies into the economic effects of the liberalisation of trade in services in developing countries and*

<sup>36</sup> After two years of negotiations, agreement was reached on the trade in affordable medicines to combat AIDS, malaria and tuberculosis at the end of August 2003. A coalition consisting of the United States, Brazil, India, Kenya and South Africa took the lead in the negotiations. The agreement has not yet been formally incorporated into the WTO Agreement.

*that it encourage the European Union to address the issue, too. The effects of liberalisation on the economies of developing countries have not been clearly identified, and this reduces the willingness of developing countries to liberalise.*

Thirdly, progress may depend on achieving breakthroughs on a number of key sensitive issues within GATS, which would cause other issues to start moving. Although there is still not a clear picture of these issues, it appears that liberalisation under mode 4 (temporary labour migration of natural persons) in particular is developing into an issue that is sensitive politically and thus for the negotiation process. Many G21 countries have indicated that they attach great importance to the adoption of a more flexible approach to the access of temporary migrants from developing countries to the labour markets of Western countries.

Finally, there are still plenty of issues in the negotiations concerning the legal instruments of GATS that can be tackled before actual liberalisation of the market. For example, the debate on the definition of safeguard measures has already been going on for several years. A breakthrough on this issue would have a liberating effect. In addition, there is the issue of subsidies, which discriminate in favour of domestic companies in many different ways. The effort to draw up an inventory of trade-restricting and anti-competitive subsidies is still in its infancy. The agreement concluded in Geneva does not alter this. Public procurement, too, is often still settled by means of backroom deals, which is always to the disadvantage of foreign companies. Finally, there is still no adequate procedure for publishing national regulations, despite the fact that regulatory transparency is a prerequisite for a free market for services.

*The AlV recommends that the Netherlands encourage the international community to take advantage of delays and pauses in the negotiations to tackle the horizontal issues in GATS (e.g. emergency safeguard measures). This should be pursued both in Brussels, during the adoption of the European Commission's negotiating mandate, and at WTO level in Geneva. Success in this area could significantly improve the climate of the actual negotiations.*

## V Specific aspects of mode 4

In the aforementioned modalities for the special treatment of least developed countries, the LDCs themselves single out mode 4 as the most promising opportunity from their perspective. At the moment, the best opportunities for developing countries are probably in the fields of computer services, health care, tourism, construction, audiovisual services and transport. It is also likely that liberalisation in mode 4 will set in motion a positive process that benefits the entire service and non-service economy. Greater mobility of service suppliers generates more trade and investment, which in turn lead to greater demand for service suppliers in such fields as aftercare, network maintenance, customer service, helpdesks, etc.

The above-mentioned trend was already visible in the overview of incoming requests for service market access published by the European Union at the end of March 2003. Of the twenty-six requests for market access under mode 4, twenty-four were from developing countries.<sup>37</sup> In the other direction, the European Union (which negotiates on behalf of all member states) submitted requests for access under mode 4 to India, Ecuador, Peru, Malaysia and the Philippines, among other countries.

Mode 4 consists of ‘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’ (Article I(2)(d) GATS). In Dutch, this is referred to as the ‘temporary presence of natural persons’. Examples of this include:

- intra-corporate transferees (e.g. a Japanese national who wishes to work for ABN/AMRO in the Netherlands);
- business visitors (e.g. a Chinese businessman who wants to work in a Dutch company for six months);
- contractual service suppliers (e.g. an Indian computer expert from an Indian company carrying out a specialised assignment in the Netherlands or a Mexican company that sends its employees to California to pick oranges); and
- independent professionals (e.g. an independent businessman from Sri Lanka who wishes to spend a year in Germany).<sup>38</sup>

One of the annexes to GATS goes on to state explicitly that the agreement does not apply to measures affecting persons seeking access to the labour market in general, nor to measures regarding residence on a permanent basis. The problem is that the duration of temporary residence is nowhere explicitly stipulated. Intra-corporate transferees, for example, can work in another country for a period of two to five years. In contrast, business visitors are only permitted to spend six months in the EU member states, which is already double the period permitted in 2003. Temporariness is defined only to the extent that permanent migration is excluded. This has turned mode 4 into an interesting bridge

37 OECD/World Bank, *A Quick Guide to the GATS and Mode 4*, background document for IMO Seminar on Trade and Migration, Geneva, November 2003.

38 In 2003, 43% of persons working in another member state under mode 4 were intra-corporate transferees and only 1% were independent professionals. Hamid Mamdouh, Director of the Trade in Services Division of the WTO, during a speech in Geneva, November 2003.

between trade and migration and rendered it so politically sensitive that full market access for service suppliers from developing countries will probably always remain untenable. In this context, the example of the European Union, where the free movement of people and services has still not been fully realised in practice after almost fifty years, is not encouraging.

#### **V.1      Temporary presence versus permanent migration**

In order to generate more support for extending the temporary presence of foreign workers, it is important to conclude transparent, watertight and enforceable agreements concerning the concept of ‘temporariness’, since, in the words of a WTO official, ‘there is nothing more permanent than temporary migration’ (see footnote 38). In practice, it is indeed the case that the longer a person works abroad, the more likely he is to try to make his residence status permanent and the greater the risk that he will become an illegal resident. Estimates indicate that 80% of temporary immigrants eventually stay in their host countries. These figures fuel negative feelings in those countries, where the local population fears the erosion of its way of life. It is therefore particularly important that the temporariness of labour migration is regulated and that a clear distinction develops between mode 4 and migration.

The AIV recommends that the government seek agreement within the European Union on the definition and interpretation of GATS rules, in particular concerning the concept of temporariness. This would facilitate the application of predictable and transparent admission rules along the external borders of the recently enlarged European Union and help prevent ‘work permit shopping’ and transmigration.<sup>39</sup>

If the concept of temporariness is defined more explicitly and is the same for all European countries, it will increase predictability for the countries of origin, the recipient countries and the migrants themselves. For example, return could be enforced by means of sanctions at the end of the agreed period. Options include the payment of a deposit by the inviting company or the individual migrant on admission (which would only be returned when the migrant returns to his country of origin) or fining companies whose temporary workers do not return at the agreed time. Obviously, it would be easier to use such measures against multinational companies with intra-corporate transferees than against individual, independent service suppliers.

It is preferable, however, to promote return by means of positive sanctions. It is easier to convince a temporary labour migrant to return to his country of origin if he knows that after a certain period of time he will be welcomed again as a temporary service supplier. Such circular migration (shuttling) promotes an optimal circulation of knowledge and experience. Temporary admission for the purpose of labour migration under mode 4 could thus truly offer an alternative to permanent migration.

39 See also AIV, *From internal to external borders: Recommendation for developing a common EU policy asylum and migration policy by 2009*, advisory letter, The Hague, March 2004, p. 14. In this advisory letter, the AIV recommends ‘at least increasing coordination between the EU member states. In practice, this could be achieved by instituting a European notification requirement whereby member states inform each other of the number of labour migrants they have admitted and the sectors in which they have admitted them.’

In recipient countries, temporary labour migrants gain knowledge, experience and contacts which they can put to use in their countries of origin after their return. Many IT workers returning to India from the United States have established companies there. A study by UNCTAD even indicates that 74% of the Indian respondents and 53% of the Chinese labour migrants residing in Silicon Valley intend to establish similar companies in their countries of origin.<sup>40</sup>

The AIV recommends that, in line with its policy memorandum on migration and development of July 2004, the government examines the scope for circular migration within the European Union. In particular, the creation of a special GATS visa or similar multiple entry visa (green card) for temporary labour migrants under mode 4 deserves further consideration. The duration of the stay should depend on the requirements of the country of destination.

With regard to knowledge migrants, the AIV sees possibilities in the phenomenon of brain circulation, whereby highly-qualified individuals from developing countries are able to participate in or teach courses, become actively involved in international networks and attend conferences in developed countries. Digital communication subsequently facilitates the ongoing exchange of ideas.

In addition, the AIV recommends that the government examines the possibilities for establishing twinning partnerships with institutions in developing countries through public/private partnerships involving, for example, universities and hospitals. In this way, institutions in developing countries can be offered the opportunity to establish links with persons and institutions in developed countries that possess expertise and experience relevant to them. The AIV recommends that the government promotes reciprocal visits – such as exchanges, conferences and short courses – for example by simplifying the rules for admission and for issuing travel documents.

## **V.2 Low-skilled versus highly-qualified**

Although in theory GATS opens the door to workers of all levels, developed countries still limit admission to highly-qualified workers by means of restrictions in their schedules. In the case of low-skilled labour (where the developing countries enjoy a comparative advantage), they offer significantly less scope for temporary admission, both under GATS and in general.

One reason for this is that all OECD countries are bound by minimum requirements regarding pay, social legislation, and health and safety in the workplace. Importing workers for a specific task in exchange for little pay and poor accommodation, as in the case of Polish agricultural and horticultural workers, is explicitly not the aim of GATS. These requirements, however, reduce the formal demand for low-skilled workers from developing countries. In all probability, the gradual ageing of the European population will increase the need for care, assistance in the home and medical activities, which means that a shortage of suitable and available workers can be expected. The same applies to the demand for low-skilled persons for a wide range of simple tasks.

40 UNCTAD, *Increasing Participation of Developing Countries through Liberalisation of Market Access in GATS Mode 4 for Movement of Natural Persons Supplying Services*, 2003.

This suggests that EU member states should ask themselves whether, given the desired level of care and vitality of their economies, the current policy of not applying migration under mode 4 to low-skilled workers should perhaps be reviewed. A serious debate on these issues is in the interests of all.

The AIV notes that the current policy of not applying migration under mode 4 to low-skilled workers merits serious debate and that it plans to devote attention to this issue in a future advisory report.

In addition, it would be useful in the short term to examine whether it is possible to extend the definition of specialist in the GATS provisions on mode 4 so that it includes groups that fall between low-skilled and highly-qualified workers. This would be relevant for developing countries that possess a lot of labour potential precisely in this middle category, which includes technical support staff, junior staff in training and IT experts without university degrees. Nurses also fall into this category.<sup>41</sup>

*The AIV recommends that the government already extends the GATS definition of specialist as used in this country to include semi-qualified groups. The expansion of market access for such groups will work in the favour of developing countries. The AIV also advocates redefining the existing categories of workers within GATS, as countries often do not recognise each other's educational qualifications, even within the European Union.*

### **V.3 Regulation and obstacles**

One of the instruments for regulating temporary labour migration is the economic needs test (ENT), which is used by approximately fifty WTO member states. The Netherlands gives preferential treatment to 'priority labour supply'. This means that before a foreign worker is admitted to the country, the authorities must first examine whether the vacancy can be filled by a worker from the Netherlands or the European Union. The ENT is applied primarily in the fields of medicine, dentistry and financial services. In practice, it is a substantial administrative obstacle that chiefly slows down temporary labour migration and potentially encourages corruption. Its disadvantages thus appear to outweigh its possible advantages.

*The AIV recommends that the economic needs test be abolished, given that in any case there is little demand for admission under mode 4.<sup>42</sup> For the same reason, the AIV sees little need for the introduction of quotas on labour migrants.*

Other barriers to temporary labour migration were presumably not included in the admissions process intentionally but nevertheless constitute serious obstacles. Due to lengthy visa and permit application procedures, the non-recognition of qualifications and diplomas, and double taxation (in both the recipient country and the sending country), temporary labour migration and knowledge migration is becoming increasingly unattractive for workers from other – in particular developing – countries. For a description of developments in

41 At present, only approximately 200 nurses from developing countries come to the Netherlands each year.

By way of comparison, the United Kingdom, which conducts an active recruitment policy in these countries, recruits approximately 10,000 nurses per year.

42 In practice, only a very small share of services is provided in this way. In 2002, for example, it accounted for only 1%. Source: OECD, Working Party of the Trade Committee, *Service Providers on the Move: The Economic Impact of Mode 4*, March 2003.

Dutch and European admission policy regarding labour and knowledge migrants, see the advisory report of the Advisory Committee on Aliens Affairs (ACVZ) on the regulation and facilitation of labour migration and the AIV's advisory letter on EU asylum and migration policy.<sup>43</sup>

#### V.4 Remittances

Labour migration under mode 4 has certain positive implications for the economies of developing countries. For example, the World Bank estimates that in 2003 labour migrants transferred approximately \$93 billion to family members in their countries of origin. After direct investment by foreign companies, this is the largest flow of funds to developing countries and almost double the amount of all development assistance. Moreover, this sum only includes transfers made via official financial institutions. In addition to these officially registered transfers, there is a much larger flow of goods, and money taken home in cash or sent via informal channels. These funds generally go to family members, who use them for immediate consumption or investment.<sup>44</sup> Money transferred as a consequence of temporary labour migration under mode 4 constitutes only a small share of the total amount.

#### V.5 Number of labour migrants

Estimates of the number of labour migrants suggest that over 1.5 million highly-qualified people from developing countries are working in industrialised countries. Figures concerning the number of highly-qualified people that move to a neighbouring country where conditions are slightly better (South-South migration) are harder to find. At any rate, South Africa is a key destination for highly-qualified people from sub-Saharan Africa, and the United States attracts many from Jamaica, Mexico and other Latin American countries.<sup>45</sup>

Recent research indicates that the Netherlands attracts few semi-qualified and highly-qualified labour migrants from developing countries. In all service sectors, relatively small numbers of people are involved, even from countries with which the Netherlands traditionally maintains good relations, such as South Africa (581), Indonesia (566) and Suriname (364).<sup>46</sup> It may therefore be assumed that the Netherlands hardly contributes to brain drain. Where such a risk might exist, for example in the field of health care, the government has concluded agreements concerning the non-recruitment of nursing staff from developing countries. It is difficult to draw comparisons with European or other industrialised countries, however, as definitions and terms are not the same and comparable empirical data are not available.

43 ACVZ, *Regulering en facilitering van arbeidsmigratie* [Regulation and facilitation of labour migration], March 2003. AIV, *From internal to external borders: Recommendation for developing a common EU policy asylum and migration policy by 2009*, advisory letter, The Hague, March 2004.

44 World Bank, *Global Development Finance*, 2004, p. 169. Development assistance only accounts for 2.5% of the total capital flow to all developing countries. It is not indicated how much of total remittances are transferred by labour migrants in the service sector.

45 Robyn Iredale, 'The Migration of Professionals: Theories and Typologies', in *International Migration*, vol. 39, 2001.

46 ACVZ, *Regulering en facilitering van arbeidsmigratie* [Regulation and facilitation of labour migration], March 2003, p. 81. These migrants work mainly in the health care and ICT sectors.

## **VI Summary and recommendations**

### **VI.1 GATS and services**

If countries reciprocally increase the access of goods and services to their markets, the welfare of all concerned increases. It is often assumed that the resulting gains in prosperity would be so substantial that potential losers could be compensated and the costs of adapting economies could be absorbed. However, it is questionable whether this assumption is still justified, especially in the case of developing countries. This is because, in practice, the key issue seems to be whether these countries have met the conditions that help to ensure that liberalisation of the international trade in services does not turn against local initiatives or cause too much harm to local power structures. The most important message in this advisory report is therefore that developing countries should not – and need not – be left behind, but that it is vital to examine on a case-by-case basis whether a country's economy, policies and institutional capacity contain adequate safeguards to ensure that liberalisation does not ultimately have the wrong effect.

It is difficult to indicate exactly how much services liberalisation will contribute to these gains in prosperity, if only because the General Agreement on Trade in Services (GATS) distinguishes between eleven sectors and 160 subsectors. GATS is the forum for the negotiations on services. The current four-year round of multilateral negotiations focuses in particular on the interests of developing countries.

Developing countries, however, got cold feet with regard to liberalisation because the negotiations were technical and complicated, and because many of them did not fully understand the economic benefits of liberalisation and feared being played off against each other. In the framework of the Doha negotiations, under the leadership of India and Brazil, developing countries have now successfully started to form blocs on issues such as agriculture, sugar and cotton. The effect of such initiatives might also extend to GATS. In order to promote understanding and transparency regarding the effects of the negotiation process, an article encouraging the member states to carry out assessments was included in GATS, but few have so far responded to this call.

*The AlV advises the government to promote the performance of individual country assessments regarding the status of services liberalisation. The Netherlands should supply the necessary research capacity for this purpose and/or provide resources to establish or strengthen the capacity of developing countries to perform these assessments by themselves. By doing so, the Netherlands could serve as an example for the other EU states.*

*In addition, the AlV recommends that, on its own initiative, the Netherlands commission studies into the economic effects of the liberalisation of trade in services in developing countries and that it encourage the European Union to address the issue, too. The effects of liberalisation on the economies of developing countries have not been clearly identified, and this reduces the willingness of developing countries to liberalise.*

### **VI.2 Negotiations**

Another reason for the reluctance of developing countries is the rule that, in principle, countries cannot withdraw commitments previously undertaken under GATS.

*The AIV recommends that, when the grounds for the use of emergency safeguard measures (Article X GATS) are formulated, provisions granting developing countries the right to suspend or withdraw commitments that seriously disrupt their domestic markets are included. This should include the design of a mechanism for identifying the vital interests of developing countries. This would make it possible to remove unforeseen disadvantages for these countries, preventing further delays in the actual negotiations.*

Furthermore, the negotiations on services have been incorporated into the Doha Round, which also covers negotiations on other issues. Agriculture, for example, is a well-known stumbling block. It is regrettable that developments within GATS appear to depend primarily on developments outside it.

*The AIV recommends that the government examines whether the agreement that the Doha negotiations should be seen as a single undertaking (nothing is decided until everything is decided) can be amended if significant progress fails to materialise in other areas of the negotiations, as power games should not be allowed to overshadow the intended effects of liberalisation. Issues on which agreement has been reached in the past and secondary issues with potential should then perhaps be granted special status in the negotiations. The TRIPS negotiations on the issue of medicines, which were concluded in 2003, are an example of this. Uncoupling GATS from GATT – and thereby from stumbling blocks such as agriculture – could perhaps lead to progress in the liberalisation of trade in services.*

*In addition, the AIV recommends that the Netherlands encourage the international community to take advantage of delays and pauses in the negotiations to tackle the horizontal issues in GATS (e.g. emergency safeguard measures). This should happen both in Brussels, during the adoption of the European Commission's negotiating mandate, and at WTO level in Geneva. Success in this area could significantly improve the climate of the actual negotiations.*

The outsourcing of services to low-wage countries by companies in developed countries is very important for developing countries. At the same time, outsourcing is a controversial issue in developed countries because of its short-term effects on employment.

*The AIV recommends that, on the basis of an inventory of measures that could or do form an obstacle to outsourcing by means of positive or negative incentives, the government urges EU member states at least not to introduce any new restrictive measures, starting from a mutually agreed date.*

In addition, developing countries require direct assistance in order to acquire the capacity to conduct negotiations and implement trade rules.

*The AIV recommends that, in the framework of its development cooperation policy, the government further assists developing countries – especially LDCs – with institutional development and the monitoring and application of trade rules, in general, and with conducting WTO and other trade negotiations and formulating offers in particular. This requires strengthening the institutions responsible for monitoring, upholding and applying trade rules. Additional options include support in establishing chambers of commerce and agencies.*

*The AIV also recommends establishing training programmes and courses to increase the negotiating capacity of developing countries. In the AIV's opinion, experts from developing*

*countries can be employed for this purpose, which would also help to strengthen South-South cooperation. Finally, with a view to assisting developing countries in the negotiation process, a digital handbook facilitating the performance of ‘liberalisation assessments’ could be jointly developed.*

In order to ensure that consultations with Western companies take place on a level playing field, it is vital to introduce a basic level of skills in local businesses in developing countries by providing opportunities for retraining and in-service training.

*The AIV believes that the government should extend its development cooperation activities aimed at strengthening the local private sector, especially in the area of services. This can be achieved, first of all, by strengthening legislation, the administration of justice and the supervisory organisations. If these vital government tasks lack credible force, the business sector will find it difficult to develop successfully. Because the interplay of the public and private sectors – each in its own role – is so important for the effective and responsible functioning of the business sector, the AIV also recommends that the government provides more development assistance in the framework of public-private partnerships than it has in the past.*

### **VI.3     Regarding mode 4**

The developing countries themselves single out mode 4 as the most promising opportunity within the GATS framework. Mode 4 covers the temporary presence of natural persons performing a specific task in another country. One of the annexes to the agreement states explicitly that GATS does not apply to measures affecting persons seeking access to the labour market in general, nor to measures regarding residence on a permanent basis. The problem is that the duration of temporary residence is not explicitly stipulated.

*The AIV recommends that the government seeks agreement within the European Union on the definition and interpretation of GATS rules, in particular concerning the concept of temporariness. This would facilitate the application of predictable and transparent admission rules along the external borders of the recently enlarged European Union and help prevent ‘work permit shopping’ and transmigration.*

A more explicit definition of the concept of temporariness would increase predictability for countries of origin, recipient countries and the migrants themselves. Sanctions and fines could be used to enforce the timely return of labour migrants, but it is almost impossible to use such measures against individual service suppliers. It would seem more effective to promote return after a certain period of residence by offering some kind of reward. It is easier to convince a temporary labour migrant to return to his country of origin if he knows that after a certain period of time he will be able to return temporarily to the country of destination. Such circular migration (shuttling) promotes an optimal circulation of knowledge and experience, and creates a win-win situation for countries of origin, countries of destination and the labour migrants themselves.

*The AIV recommends that, in line with its policy memorandum on migration and development of July 2004, the government examines the possibilities for circular migration within the European Union. In particular, the creation of a special GATS visa or similar multiple entry visa (green card) for temporary labour migrants under mode 4 deserves further consideration. The duration of the stay should depend on the requirements of the country of destination.*

With regard to knowledge migrants, the AIV sees possibilities in the phenomenon of brain circulation, whereby highly-qualified individuals from developing and developed countries become involved in international networks, attend conferences, etc. Digital communication facilitates the exchange of ideas.

*In addition, the AIV recommends that the government examines the possibilities for establishing twinning partnerships with institutions in developing countries through public-private partnerships involving, for example, universities and hospitals. In this way, institutions in developing countries can be offered the opportunity to establish links with persons and institutions in developed countries that possess expertise and experience relevant to them. The AIV recommends that the government promotes reciprocal visits – such as exchanges, conferences and short courses – for example by simplifying the rules for admission and for issuing travel documents.*

Although in theory GATS opens the door to workers of all levels, developed countries still limit admission to highly-qualified workers by means of restrictions in their schedules. In the case of low and semi-skilled labour (where the developing countries enjoy a comparative advantage), they offer significantly less scope for temporary admission. Due in part to the ageing of the population in the Netherlands and other industrialised countries, however, there is an increasing need for assistance in the care sector, with household activities and with a wide range of simple tasks. In the AIV's opinion, EU member states should therefore ask themselves whether the time has not come to review the policy of not applying migration under mode 4 to low-skilled workers.

*The AIV notes that the current policy of not applying migration under mode 4 to low-skilled workers merits serious debate and plans to devote attention to this issue in a future advisory report.*

*In addition, the AIV recommends that the government already extends the GATS definition of specialist as used in this country to include semi-qualified groups. The expansion of market access for such groups will work in favour of developing countries. The AIV also advocates redefining the existing categories of workers in GATS, as countries often do not recognise each other's educational qualifications, even within the European Union.*

*Finally, the AIV recommends that the economic needs test be abolished, given that in any case there is little demand for admission under mode 4. For the same reason, the AIV sees little need for the introduction of quotas on labour migrants.*

Mr F. Korthals Altes  
Chairman of the Advisory Council on International Affairs  
Postbus 20061  
2500 EB Den Haag

The Hague  
6 May 2003

Dear Mr Korthals Altes,

The Fourth Ministerial Conference of the WTO held in Doha in November 2001 declared that development of developing and least developed countries should be among the main aims of the negotiations on services. This declaration reaffirmed in general terms what was set out in more detail in the WTO guidelines for the negotiations on services, with reference to Articles 4 and 19 of the GATS. Below are relevant passages taken from the guidelines:

- The negotiations shall aim to increase the participation of developing countries.
- There shall be appropriate flexibility for individual developing country members.
- Special priority shall be granted to least developed country members.
- The process of liberalisation shall take place with due respect for national policy objectives, the level of development and the size of economies of individual Members.
- Special attention shall be given to sectors and modes of supply of export interest to developing countries.

These passages were drawn up with a double-edged purpose: developing countries would be offered improved access to markets abroad and they would have to open up their own markets in the interest of development. Given the urgency (all WTO negotiations must be concluded by 31 December 2004) and the limited scope to influence national policy in developing countries, this request for advice focuses only on the first of these: offering developing countries market access for services.

I request the Advisory Council on International Affairs to examine how developing countries can benefit from improved access to the services markets of developed countries, the member states of the European Union in particular. Given the great differences between developing countries and their interests in the negotiation on services, it would be useful for the purpose of this study to group them by income level (LDCs, LICs, etc.) or share of services in GNP or region. The following questions could be studied:

- In which sectors and modes of supply do which developing countries have a comparative advantage?
- To what extent do the offers made by the EU in mid-April 2003 to various developing countries satisfy the commitment to pay special attention to needs and conditions within them?
- How can negotiations improve the export of services from developing countries to developed countries?
- What are the main non-discriminatory obstacles facing service suppliers from developing countries?

- How can WTO agreements on domestic regulation (horizontal discipline) help to improve the export of services from developing countries to world markets?
- Given the importance of mode 4 to developing countries, how much scope is there within the European Union for extending provisions in this field to include lower qualified forms of labour, a longer stay and/or wider coverage of the services sector? Perhaps attention should be paid to possible drawbacks of mode 4, such as brain drain.
- In which areas is technical assistance to developing countries most effective?

Yours sincerely,

A.M.A. van Ardenne-van der Hoeven  
Minister for Development Cooperation

**List of abbreviations**

|               |   |
|---------------|---|
| <b>ACVZ</b>   | Advisory Committee on Aliens Affairs                  |
| <b>AIV</b>    | Advisory Council on International Affairs             |
| <b>DDA</b>    | Doha Development Agenda                               |
| <b>ENT</b>    | Economic needs test                                   |
| <b>EU</b>     | European Union  |
| <b>GATS</b>   | General Agreement on Trade in Services                |
| <b>GATT</b>   | General Agreement on Tariffs and Trade                |
| <b>GNP</b>    | Gross national product                                |
| <b>IMO</b>    | International Migration Organisation                  |
| <b>IT</b>     | Information technology                                |
| <b>LDCs</b>   | Least developed countries                             |
| <b>OECD</b>   | Organisation for Economic Cooperation and Development |
| <b>SDT</b>    | Special and Differential Treatment                    |
| <b>TRIPS</b>  | Trade Related Aspects of Intellectual Property Rights |
| <b>UNCTAD</b> | United Nations Conference on Trade and Development    |
| <b>WTO</b>    | World Trade Organisation                              |

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