

Liberalization of service mobility, immigration regulations and national labour market policies

The interaction between liberalization of service mobility and national law

2 November 9.00 – 17.00, Graduate Institute of International Studies, Geneva
Voie-Creuse building (3rd floor), room CV342
16 La Voie Creuse, 1201 Geneva

The General Agreement on Trade in Services provides new ways to conduct international trade, one of which involves cross-border movement of natural persons. Self-employed service providers, and employees of service providers, are allowed entry and temporary residence to provide services in an, in theory, increasing number of service sectors. However, this form of service provision is no longer confined to the realm of trade law. International trade now enters the domains of immigration policies and domestic labour market policies, two subjects that states are reluctant to yield to international binding agreements.

The inclusion of services in the WTO trading system came with the promise to liberalize service mobility (mode 4, movement of natural persons). This promise was provided as a trade-off for the inclusion of commercial presence (mode 3). Moreover, service mobility is often seen as an opportunity for economic growth in both developed and developing countries, as well as a solution to (upcoming) labour market shortages in developed countries. This stands at stark odds with the reality of a low level of mode 4 commitments, limited progress in current WTO negotiations relating to mode 4, and trends in domestic labour market and immigration policy fields.

Traditionally, trade negotiations aimed at the reduction of obstructive border measures, involve national trade ministries. However, WTO obligations now ‘reach beyond the border’ and are increasingly aimed at the removal of barriers to trade derived from domestic regulation. Therefore, other national ministries are drawn into the negotiation process, and are ultimately responsible for the implementation of international obligations. In particular in the fields of immigration and domestic labour market policies, these obligations will often seemingly contradict with their normal mandate.

In cases where WTO Members are also European Union Member States, a legal triangle exists between the WTO, the EU and each Member State. The Commission of the EU has shared competence with the Member States in WTO negotiation rounds. Moreover, from a WTO law perspective, EU law can be seen as domestic law which has to be brought in line with obligations derived from the WTO. On the other hand, EU law itself must be implemented in the national legal order of the Member States. Thus WTO obligations can be implemented directly at the national level as well as via EU law.

This conference will aim to provide an overview of WTO service mobility liberalization from negotiations to implementation. By bringing together specialists from all the above specified legal orders, the idea is to bridge the theory of international trade liberalization and the reality of restrictive domestic policies, as well as to identify existing hurdles at all levels.

Topics to be addressed are:

- An overview of positive and negative effects of service mobility liberalization
- WTO reciprocity, balancing liberalization of trade in services
- The arguments to restrict mobility relating to differing skill levels of service providers
- WTO negotiations and implementation of commitments, the role of the EU
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- Current immigration and labour market policies in selected EU Member States
- The temporary nature of service provision and ensuring return
- Separating service mobility from general domestic policies
- Streamlining international commitments and existing national policies

Speakers

- Peter Sutherland, keynote speaker, Chairman of Goldman Sachs International, Chairman of the London School of Economics and UN Special Representative for Migration and Development, former Director General of GATT and The World Trade Organisation (1993-1995)

An interdependent world and the movement of people. Economic globalisation and free movement of people; reaping advantages and the requirement to accept responsibilities to the movement of people for governments. General and overarching theme of this conference.

- Antonia Carzaniga, Counsellor in the Trade in Services Division at the World Trade Organization in Geneva.

GATS mode 4, an overview from the perspective of the WTO secretariat

- Marion Panizzon, Assistant Professor of International Economic Law at the Faculty of Law, University of Bern and the World Trade Institute.

Switzerland's new Alien Act and the Alien Act's interaction with movement of natural persons provisions in its second-generation FTAs and Free Movement of Persons Agreement which Switzerland has in place with the EU and with EU mobility partnerships.

- Mina Mashayekhi, Head of Trade Negotiations and Commercial Diplomacy Branch Division on International Trade in Goods and Services, and Commodities UNCTAD.

GATS mode 4, negotiating service mobility, requirements and consequences. Developmental implications of international negotiations; what is required from governments and what can be gained.

- Simon Tans, PhD candidate Centre for Migration Law, Radboud University Nijmegen, PhD: Service provision and migration: changing norms in EU law, international trade regulation and Dutch and UK immigration rules.

GATS mode 4, historic promises, current negotiating offers and the reality of reluctance. The implementation of GATS mode 4 commitments, and EU case law relating to movement of TCN posted workers in Dutch and UK law.

- Jerome Larosch, Dutch government, Senior Policy Advisor, Ministry of Economic Affairs

The Dutch government perspective on negotiations and implementation of international service liberalisation commitments. Practical problems relating to immigration policy and labour market policies

- Swiss government official

The Swiss government perspective on negotiations and implementation of international service liberalisation commitments. Practical problems relating to immigration policy and labour market policies

Participants will consist of specialists from inter alia: WTO secretariat, Swiss and Dutch government policy makers, EU and Dutch mission to the WTO, the ILO, and the IOM.

Participants are requested to think on the topics in advance, in particular to facilitate the general discussion. The idea is to identify problems and solutions relating to the topic by bringing together specialists from the three legal orders involved. The intention is to move beyond existing debates held in each level and to utilize the bringing together of international trade specialists as well as national policy makers.

- 9.00 – 9.15 Welcome and introduction
- 9.15 – 9.45 Antonia Carzaniga
GATS mode 4, an overview from the perspective of the WTO secretariat.
- 9.45 – 10.15 Mina Mashayekhi
GATS mode 4, negotiating service mobility, requirements and consequences. Developmental implications of international negotiations. What is required from governments and what can be gained.
- 10.15 – 10.45 Questions and discussion
- 10.45 – 11.15 Coffee
- 11.15 – 11.45 Marion Pannizon
Switzerland's new Alien Act and the Alien Act's interaction with movement of natural persons provisions in its second-generation FTAs and Free Movement of Persons Agreement which Switzerland has in place with the EU and with EU mobility partnerships.
- 11.45 – 12.15 Simon Tans
GATS mode 4, historic promises, current negotiating offers and the reality of reluctance. The implementation of GATS mode 4 commitments, and EU case law relating to movement of TCN posted workers in Dutch and UK law.
- 12.15 – 13.00 Questions and discussion
- 13.00 – 14.00 Lunch
- 14.00 – 14.30 Jerome Larosch
The Dutch government perspective on negotiations and implementation of international service liberalisation commitments. Practical problems relating to immigration policy and labour market policies.
- 14.30 – 15.00 Swiss government official
The Swiss government perspective on negotiations and implementation of international service liberalisation commitments. Practical problems relating to immigration policy and labour market policies.
- 15.00 – 15.30 Questions and discussion
- 15.30 – 15.50 Coffee
- 15.50 – 16.10 Peter Sutherland
An interdependent world and the movement of people. Economic globalisation and free movement of people. Reaping advantages and the requirement to accept responsibilities to the movement of people for governments.
- 16.10 – 17.00 Questions and general discussion
- 17.00 End of conference