The Movement of Natural Persons and Trade Liberalisation: WTO Negotiations on Service Agreements

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The Movement of Natural Persons and Trade Liberalisation: WTO Negotiations on Service Agreements

Savitri Bisnath

Currently Savitri Bisnath works at the South Centre, here in Geneva, which advises countries of the South on issues of trade and specifically the negotiations at the WTO. We invited Savitri because she surely can make a substantial contribution to the debate on gender, migration and development in the context of such a big global, transnational organisation as the WTO. She is going to address Mode IV, a special instrument related to the General Agreement on Trade in Services (GATS), and we have seen that women and especially female migrants are foremost employed in the service sector. So, what kind of openings, or what kind of restrictions, or what kind of possibilities do this Mode IV and these agreements provide for women? As Alide told me yesterday, Savitri is walking around the Uruguay Round legal texts, so these are a sort of Bible of our modern times for women like her who advise governments on trade negotiations and policies.

Savitri Bisnath
Good afternoon. It is a honour to be invited to participate in this event. I hope that what I have to say is useful and adds another dimension to your discussion so far. What I want to try to do in the following minutes is to bring into our discussion a multilateral actor, namely the WTO, and one strategic multilateral agreement, the GATS, in order to explore the possibility for strategic intervention. I want to begin to
answer one of the challenges that Jyoti posed yesterday. First I’ll begin with some useful definitions for our discussion, because if certainly most of you know about the WTO, it is not sure that everyone knows about the details.

Established on 1 January 1995 as a result of the Uruguay Round Trade Negotiations, the WTO is the legal and institutional foundation of the multilateral trading system. It provides the principal contractual obligations that determine the framework for and implementation of domestic trade legislation and regulations. WTO is also the institution in which the trade relations between nations evolve, and they do this through negotiations and through the Dispute Settlement Unit. As such it is the primary institution empowered to enforce and implement global economic governance. Given its mandate and according to its former director general Ruggiero: ‘The WTO is in a certain sense a product and a symbol of the globalisation process.’ The GATS is the first set of multilateral legally enforceable rules covering international trade in services. It has three main objectives:

1. To progressively liberalise trade in services through successive rounds of negotiations which aim to promote the interests of the WTO member states. And we are currently under negotiations at the WTO
2. To encourage economic growth and development through liberalisation of trade in services
3. To increase the participation of developing countries in world services trade, especially through an expansion of their services exports through the development of their export capacity. The 29 articles of GATS cover all services sectors as well as the modes or ways of providing a service.

Four modes have been defined at the level of the WTO, though exporters and nation-states rarely see them in this way. Mode I refers to the cross-border supply of a service, for example a medical diagnosis, the taking of an X-ray and sending it electronically to another hospital in another country.

Mode II, or consumption abroad, could refer to one person from Switzerland going to Egypt for a holiday; what money is used in Egypt will be seen as part of the services income.

Mode III, or commercial presence, refers to the fact of a service supplier establishing a commercial presence in another WTO state; franchise of McDonalds will be one of the most popular examples.
Mode IV, which is what concerns us in this meeting, covers the presence of natural persons who move from one WTO member country to another WTO member country to provide a service.

In the GATS, a natural person, man or woman, is distinguished from a juridical person, which is a corporation. This distinction is very important to the WTO because a lot of it is about trade law. It is clear that WTO sees a 'natural person' only as a provider of a service. So for the purposes of the GATS there is no need to distinguish between a man or a woman or their social means.

These different modes of supplying a service are all linked. However, for this discussion, I'll only focus on mode IV. In addition to mode IV, article 5 of the GATS is also important for our discussion. It addresses labour markets integration agreements, and states that members can be party to agreements establishing full integration of the labour market between or among parties providing that such agreements exempt citizens from requirements concerning residency and work permits. For example Switzerland is part of an agreement with Germany, Austria, and two other member states... Citizens from Austria or from Liechtenstein are thus able to come to Switzerland without requiring the kinds of work permits that people from other countries need.

In other words members are able to be signatories to labour market integration arrangements even though they have been signatories to the GATS agreements. A footnote in this article 5 explains that typically such an agreement provides foreign citizens the free entry to the employment market: this is really critical, implying a labour market as opposed to opening a corporation elsewhere and going towards what is named an intra-corporate transferee, which implies no direct access to the labour market. This implies direct access to the labour market and includes provisions such as conditions of pay-employment and social benefits. In addition to the definition of Mode IV articulated in article 1 of the GATS, the agreement also has an annex and this annex is called the Annex on the Movement of Natural Persons Supplying Services. Mode IV is about the presence of natural persons while the annex concerns the movement of natural persons. Paragraph 2 of this annex states that ‘the agreement shall not apply to matters affecting natural persons seeking access to the employment market of a Member, nor shall it apply to matters concerning citizenship, residence or employment on a permanent basis’. It is important to keep in mind
that the annex is to be considered an integral part of the GATS agreement.

The GATS relating to Mode IV can not completely be understood unless we consider all of these other articles and annexes. Does the annex suggest that access to the GATS cannot be applied to persons seeking access to the labour market, nor to migrants seeking access on a permanent basis. Associated with each mode of supply one can identify domestic and international regulations and restrictive measures; in the case of Mode IV, visa requirements and work permits are cases in point, but given what mode IV has said and what article 5 has said and what the annex says, it is all very confusing. Is it about movement? Is it about presence? Is it permanent? Is it only temporary? Can it in some instances be permanent? If you are confused your confusion is not a result of my talk. It is a result of the fact that the GATS is incomplete and certain things need to be clarified and members are trying to clarify those things, but of course, the space in which this is done is a very political space. Nonetheless this space has, I think, opportunities for different kinds of interventions.

Today, WTO discussions in the context of mode IV have been on improving transparency on immigration and labour market regulations as well as on recognition and licensing agreements. Thus the GATS is an important instrument for us to keep within our horizon, because it is the first multilateral trade policy agreement which covers the movement and presence of natural persons. As such I submit that what is negotiated and agreed at the WTO will influence and inform discussions on international migration law. The GATS agreement is currently under negotiation as I mentioned before and the member states of WTO are in the process of defining their levels of liberalisation in certain sectors and within specific modes. In terms of mode IV, what we are in currently is the phase of office negotiations. WTO member states are making offers in different sectors and these offers can be public or bilateral, depending on what member states want to do. This is then seen by another member of the WTO who may negotiate bilaterally with that country for maybe reducing certain barriers or opening up certain subsectors. This is known as the offers-and-requests phase. So some members are specifying certain requirements for entry; these include labour market tests, economic needs tests and educational and residency requirements. In other words, members as specifying that the
case has to be made that there is no qualified citizen available in the country in question to provide the service for a work permit to be granted to a citizen of another country. It is critical for us to keep in mind that the GATS distinguishes between permanent and temporary migration; the currently defined 'temporary' migration covers as little as three months to as much as five years. It really depends on the country that we are considering and also on the service in question. Most WTO member states who have made commitments in mode IV have done so in specific sub-sectors such as banking, and these commitments are typically linked to commercial presence. Some WTO members have also listed categories of service providers, a popular category is the intra-corporate transferee who is often an executive or manager or specialises in a certain area, IT being the most popular one in this moment.

In other words, the preference at the moment is for so-called high skilled workers. It is important to keep in mind that these preferences mainly represent the position of high-ways countries. Why is that? Because most high-ways countries are service exporters. Many who now are also destination countries. Out of this preliminary analysis of the commitments several questions arise.

How do we reconcile the need for high-ways countries to fill low-skilled jobs because of labour shortages which therefore calls for intra-corporate transferees? How many women constitute the category of intra-corporate transferees? I submit from my popular knowledge, because there is no information on this, that women constitute a small percentage of intra-corporate transferees. This then raises another question: why is this the case? As you all know, the answer to this requires that we interrogate the positions of women and girls in their families, communities and countries, as well as their countries' position in the international geopolitical order.

Before I end, I want to make a point about labour rights. The liberalisation of world trade coupled with the deregulation of markets and the flexibilisation of work is arguably threatening the rights of workers everywhere. Further free market policies are promoting an environment in which the transnational corporations' search for the highest profit margin is made easier. International competition often means that companies are constantly seeking to reduce costs by increasing the flexibility and intensity of work. Meanwhile labour organisations are finding it more
and more difficult to bargain effectively at the local and national levels. However, as Jyoti noticed yesterday, during the last twenty-five years women’s opportunities for paid work have increased in many countries and they continue to move. Despite these gains, gender disparities persist in education, training, wages and employment. It is also urgent in the context of this debate and at the level of trade liberalisation that these disparities are discussed.

In conclusion, I want to put forward two strategic arguments. I must say that I put them forward in the spirit of trying to contribute to a debate that is in process, I will not say that I defend what I am saying to the end; in fact I am only starting to make sense of this myself as the GATS agreement continues to be more clearly defined.

I want also to apologise for not speaking in a more feminist way vis-à-vis this agreement. But my difficulty in speaking in a more feminist way about this agreement points to the attention that I feel as an economist working with an instrument that is on the surface incredibly gender-neutral, but in practice has tremendous profound implications.

In my work, nobody will tell me ‘You are not talking about women’. But in this meeting it is different.

1. In terms of the internal logic of international trade theory and the ideology of the WTO, it is coherent to assume that just as the erosion of barriers to transborder movements of goods will increase economic efficiency, so too will the erosion of the barriers of the movement of people to produce a service. From an economic theory point of view, it is coherent for WTO members to lift barriers affecting the movement of people so we can facilitate economic efficiency. However, the free movement of people is not only about economic efficiency, it is about politics. Some members have even brought up the issue of culture; they would allow certain people from certain countries to come to promote cultural improvements, because of national or historical ties.

2. The WTO is dedicated to breaking down economic barriers; however, this seems to be more accurate in the case of goods. We should not be concerned that French wine will displace Swiss wine, because it is really about competition and the market will create a certain equilibrium. So whichever wine is better will persist, and whoever is not making a good wine will be motivated to produce a better wine. Why doesn’t this apply to the presence of persons? Why do we need an economic needs test which has to prove that such and such country has no person with a
certain qualification before another person who has that qualification can be allowed to enter? At some level, this sounds really mundane and very much like an academic exercise, but I submit that in these discussions, and particularly because we are in the initial stages of clarifying the GATS, it is important to point out these contradictions to trade negotiators and others who are interested, so that we can begin or continue to take into consideration not merely economic efficiency and protectionism, but also the realities of the world in which we live, and less repressive ways of facilitating those realities.

I'll end here, thank you.

Fenneke Reysoo
Thank you very much, Savitri. I think this gender neutral document has to be submitted to scrutinising eyes to understand all its implications. Nation-states and multilateral organisations are very strongly influencing migrations flows.

In order to open up the discussion, I want to ask Jyoti to comment and give some reflections on what Savitri has been saying. When I heard Savitri talk about natural persons going to a country to provide services, the first thing that came to my mind is that the majority of migrant women work in the services sectors (as domestics and sex-workers). Is WTO addressing these categories at all? Does mode IV open up possibilities for fighting trafficking in women?

Jyoti Sanghera
I really very much welcome this very basic one-o-one on the WTO and GATS and would like some more information. It appears to be a complicated document, and also I think that as women we tend to stay away from the trade aspects, whereas this is an area that is critical and one which we do need to engage with. So I would have liked you to go on for half an hour to give us more information, but hopefully that will happen on another occasion.

For me one of the most critical questions that came up here was that while the world is being restructured on the lines of economic imperatives and economic efficiency, competition and markets (these are the buzz words today), when it comes to the crux of the matter really it is a clash between economics and politics. The political aspect is still in my point of view centre stage, which is why it is important to
stay with our ambit of politics which is feminism and beyond that even more, to look into the theoretical framework, to look at a postcolonial perspective as a heretical perspective which give us a certain ‘angle’ to look at these issues today. But when is it that member states or pow-
ers that be, when is it that they relinquish the exigencies and the impera-
tives of economics to submit themselves to political agendas? And how do we define our political agenda and our political project today, such as we can both combine economic language and keeping our political agenda centre stage?

This is for me the biggest challenge today and the plain field that is going to test this case is migration and the lives of migrant workers. So I am going back to you. I don’t really have an answer to what Fenneke raised, how will trafficking be discussed within the context of WTO. I don’t really understand the various elements of this document (GATS) and what it entails. I do want to say that a lot of the work migrant workers do is invisible work or work which is hidden. And a lot of that work is not even considered work, for example women in the sex industry. So it is not even work, and the rest of it is invisible or not valued or valorised, it is so-called shadow work. Our first task is to think how we can bring this shadow work into the limelight. That work which is not considered work, how do we assign it in the realm of work?

And then perhaps we may begin to have more coherent conversations in the arena of labour which Savitri mentioned. Or are we con-
stantly fighting a losing battle? If we talk about alternative develop-
ment, and women as agents of alternative development, my question to all of us here, What does that alternative development look like in a world which is so globalised and so quickly swallows up spaces that we call alternatives and co-opts those spaces? How long does alternative remain alternative and are there spaces outside this global world that we call globalisation in order to have space to breathe in long enough to claim our own? These are my main questions. I think it was very good to open this discussion up.

Fenneke Reysoo
This is really thought-provoking and Jyoti touches on the crux. And I am happy that we have the discussion at this level.
Wendy Harcourt
A provocative question. Also economics is not neutral, and in the same way that the law is not neutral. I think that is one of the reasons for you to bring in a gender analysis, because you have worked with a very neoliberal Chicago school definition of what is an economic person and the assumptions behind it. But you know as well as I do that feminist economists try to deconstruct that view of economics and I assume the South Centre is also trying to do that. What I am interested in is, is it possible to introduce such a debate and discussion into the WTO, because it is put in such a legal jargon? Have there been attempts to do that, and do you see space for that type of discussions? That would be very helpful, because there is a feminist economist debate which could help to push a feminist agenda.

Savitri Bisenath
At the level of the WTO as an institution, to my knowledge, there has been no attempt to bring up the issue of gender. At the level of the membership, I believe that the delegates don’t see the link with gender, they don’t have a feminist economist framework to make their analyses. There may be individuals in countries and capitals who see this, but they may be in the social ministries and not in the economic ministries, and people from various ministries don’t talk together. If they do, they do not speak the same language.

There are different NGOs who are trying to push the borders of the work of the WTO, but of course they are not insiders, they are outsiders.

Question
Quelle est votre place à vous? Quelle est votre propre stratégie? Qu’est-ce que le South Centre?

Savitri Bisenath
An intergovernmental organisation made up only of developing countries.

I am very pragmatic and constantly changing my strategies. I do think that there has to be some level of engagement at the WTO, there has to be a level of engagement at the South Centre, there has to be a level of engagement with our governments; as you know it has
to be multi-strategy, there is very little political will of people making policy especially at the level of the WTO for questions that have to do with women’s autonomy.

**Question**
Peut-on parler de régulations internationales lorsqu’elles masquent des rapports de force et de pouvoir? La migration est considérée comme une marchandise. Quel organisme peut défendre le statut du migrant si ce dernier n’est plus considéré que comme une marchandise?

**Savitri Bisnath**
This is a controversial coherent conclusion to what I said when I talked about breaking down barriers for goods and couldn’t we use that same argument about people. In the end we will be commodifying people as well and what will be the consequences of that? I think we have to interrogate the nation-state. Of course there is that discussion about will it result in the erosion of the nation-state, but is there a way to conceptualise the nation-state which then allows citizens of the world to have movement while at the same time defending a country from occupation or invasion, etc., etc.? Unfortunately, I have not come up to a conclusion. But your question raises the question of how we view the nation-state.

**Domenica Ghidei Biidu**
Both of you have been raising very important issues of definition, for example the visibility or non-visibility of women’s work. We have come to the same conclusion on women in refugee situations, in which certain activities done by women are not recognised because they are done in the private realm, they are not really seen as political activities, while the persecutions of the States against these women are considered being political activities. It has taken refugee women ages to make this recognised, and seen and visible as having been political work. To do the laundry for the freedom fighters, the so-called freedom fighters. So that has similarity with how do you recognise this kind of work. What we have experienced in the North is that another factor is influencing it: ethnicity. When black women were having these problems it was very difficult to be recognised, but when it occurred in Europe, for example in the Balkan war, then the others have been recognised as
being part of us and certain perpetrations were easily recognised as persecutions. While before they were not. Just to share the similarities in the whole discussion.

And about the second point on nation-state and on migrants: there was a discussion about the question that if there are so many millions of migrants in the world, can they be seen as an entity to negotiate their rights? And of course in all negotiations of rights there must be a state to be able to be a party in many agreements. So that was how during the forum in Amsterdam the migrants said, OK, let’s create a virtual state, called Migration State, in which we are parties in all negotiations and then we can say these are our rights and this is what we need. So that is also a very important issue that brings about questioning How can we make an entity of the experience of being a migrant? Migrants do not have their own state to negotiate their rights, and then you have refugees of course for whom there is no state protection and there the UN is coming in. These are the differences and similarities we can bring together and learn from by transcending our borders of economy and jurisdiction and things like that.

Liane Mozère
I want to comment shortly on what Jyoti said. What tools can we have in the globalisation process? I think it is important to keep in mind and to focus and to highlight what I would think would come from a standpoint theory in feminism. It depends on the standpoint from which you are looking at things. The idea of agency, if I go back to my example of Filipino domestic workers: they make use of the tools of globalisation for their own purpose. For example, there is a domestic worker in Hong Kong who edits an international journal, which is called Tinnik Fil - ipino. There are only poems, narratives, articles, photos from Filipino domestic workers. Domestic workers say, When we read Tinnik Filipo we feel at home. It is a way to subvert and use the possibilities of globalisation pragmatically I would say, step by step.

Arona Moreau
Il faut vraiment croire que l’OMC ne s’occupe pas de la question du genre! Dans les pays du Sud, les femmes sont presque toutes actives à cent pour cent, notamment dans les zones rurales. Mais 75% de la population rurale entre 25-50 ans font partie de l’exode rural et sont
donc allés dans les villes. La charge active revient aux femmes. La productivité et la rentabilité sont les concepts phares de l’OMC quand il faudrait prendre la réalité sociale, culturelle, historique, politique, etc., de ces pays en compte.

**Savitri Bsnath**

In fact this is very good that you bring this up. It gives everyone in this room a sense of debate. People who work on these issues have to confront WTO. And I believe we have to have good answers for them. My personal process is to figure out how we can engage, in order to facilitate a certain politics. In fact, not as representative of the South Centre, but as a natural person, I would say that the work of WTO is dependent on the work of women and men. Not only work that is paid, but work done in the reproductive caring sector as well as work done in the informal sector which is increasingly done by women. In fact, what the WTO is formally facilitating is the access to markets and indirectly the production of goods and services for the formal sector. But that sector is supported by women and men, who cook, help their families, take care of their parents, take care of their children. There is a lot of very complicated things that go into creating the multilateral trading system, which is not only the institutions. So in fact, even when WTO is not overtly concerned about gender or gender relations, it is a rather narrow perspective, because they too in effect.

**Christine Verschuur**

Ce qui est intéressant dans le travail de Savitri, c’est qu’il s’agit d’un institut qui essaie de trouver les interstices où on peut essayer de faire bouger les choses et d’influencer un certain nombre de lois commerciales qui contrôlent le monde. Il ne faut pas confondre Savitri avec l’OMC. Elle cherche justement les interstices pour influencer l’OMC. Nous, les féministes, on dit ‘il faut changer le monde’, mais on reste dans le vague, on ne va pas dans les choses concrètes, et il faut que l’on se lance. Ça me rappelle une remarque de Joanna Kerr l’an dernier, nous disons constamment qu’il faut prendre en compte le genre, mais on ne sait pas comment faire. Voici donc un exemple très concret par rapport au problème de la migration, il y a un point très concret auquel on pourrait s’accrocher et se dire que c’est là-dessus qu’il faut se battre pour faire changer quelque chose.
Deuxième remarque: on parle des travailleurs comme des marchandise. Je dirais les choses autrement: le travail est la denrée la plus importante, exportée par les femmes du Sud notamment. Comment réguler cette circulation du travail? Les travailleurs ne sont pas des marchandises, mais la force de travail fabriquée par les femmes du Sud est ce qui permet cette accumulation gigantesque de capital. Donc les inégalités se reproduisent. Un cheval de bataille pourrait être ce mode IV qui règle seulement le travail qualifié. Il faut faire en sorte que le travail reproductif soit valorisé aussi comme un travail qualifié.

Ayons une position radicale comme ça! Le travail de Savitri se situe à la racine des poursuites contre les inégalités entre le Nord et le Sud. Si nous ne régulons pas ça, nous continuerons d’avoir des gouffres de plus en plus grands entre le Nord et le Sud.

**Richard Muragwabugabo**

Mes questions s’adressent à Savitri et à Annemarie Sancar, de la DDC.

J’apprécie bien de trouver des voies de sortie pour faire bouger les choses. Alors quand Savitri se prononce pour l’ouverture plus grande, voire l’abolition des frontières, cela m’interpelle. Actuellement, dans les pays du Sud, on constate une féminisation de l’agriculture. On sait que les femmes ont très peu de moyens. Le seul moyen dont elles disposent, c’est leur travail physique. Au Nord, on a plus de subventions. N’y a-t-il pas un risque de disparition des petites agricultures dans lesquelles les femmes sont impliquées? Concernant la concurrence, ne s’agit-il pas d’une concurrence biaisée par le genre, parce que les hommes et les femmes partent de bases différentes? Voilà pour Savitri.

Pour Annemarie, il s’agit de deux petites questions. Dans votre outil d’analyse pour les projets, quelle place occupent les inégalités structurelles liées à la religion, à la culture, etc., du point de vue local, national et international? La deuxième question concerne l’approche de développement que vous adoptez. Adoptez-vous le modèle dominant qui est basé sur le modèle néoclassique ou bien proposez-vous un autre mode de développement? On sait que le mode de développement dominant est inégalitaire. Est-ce que l’on peut arriver à l’égalité de genre sur la base d’un modèle qui est inégalitaire?
Savitri Bisnath
My answer to your two questions is, You are absolutely correct. I have several points to my answer. I work at the South Centre. We work with developing countries’ negotiators to assist them in the WTO negotiating process. In effect, we provide them with what they need. As you know, there is a lot of politics within the WTO, but everyone goes there in part believing in the value of foreign exchange, foreign trade. The developing countries are at a disadvantage at many levels and in many sectors. In services for example, if developing countries open up in the way that is currently being discussed, it may be possible that services sectors will not develop in many developing countries, that in fact we will be consumers and not producers of many kinds of services. My approach has been a very pragmatic one. I work to assist developing countries in their negotiating positions. As an academic researcher, I may have certain views on certain things I do feel a responsibility to share with the people with whom I work. But I cannot control decisions that are national, political, multilateral, etc. I started the way I did, and discussed it at this particular level with the assumption that this is where we are and this is where we will be. We will not go back to a time say in the eighteen hundreds, when the UK could resort to protectionism to create the infrastructure which enabled it to be now an exporter of goods and services. We will not go back to an era when the US were able to do that and have done that so well that they are now exporting. We are at a point that developing countries make up 144 member states of the WTO, and they have signed the Uruguay Round Agreements, and despite many things that they say at the multilateral level, we live in a system that is biased, which is political, which is infected with unequal polarisations at every level and my approach is to try to make the best of that that I can.

Annemarie Sancar
To the first question on various kinds of discriminations, ethnic, cultural, religious, etc., SDC tries to consider all kinds of discriminations. These can be social as well as ethnic, as well as religious. My job is to consider specifically power relations between men and women. One of my challenges is to find possible combinations between different kinds of discriminations and therefore it is very important to analyse context, in order to see where discrimination is happening and along
which lines it is being legitimised and explained to people. This can be a minority group, still inside this minority group there is a great imbalance between men and women. We can join minority groups to fight against their position as a minority group, but we will always look at how gender is handled inside this minority group.

In India, Pakistan and Bangladesh, SDC tries with a new approach which is called the ‘fighting discrimination approach’, not a gender approach in itself. It fights against caste-lines. But we introduce a gender perspective.

The second question. SDC fights against poverty, SDC has also a strategy of empowerment. SDC works in a bilateral relationship. If you ask me this question there is no general answer.