The Liberalization of Professional Services

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Abstract

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The paper is intended to contribute to a growing literature on the liberalization of trade in services and, in turn, provide a balanced view to policy makers on the impact of liberalization of trade in professional services.

The basis for the international trade in professional services was discussed through a review of the role of services in the economy, the concept of liberalization, and the role of the various multilateral agreements in the implementation of the liberalization process.

The benefits and disadvantages of liberalization of trade in professional services were based on the perceptions of the key informants representing various professional groups and institutions as well as theoretical discussion on the gains from trade.

On the institutional constraints, a review of the Constitutional provisions on the practice of professions, labor laws, as well as the various regulatory laws governing the practice of certain professions in the country was done.

The discussions on the readiness of our professionals to compete internationally were based on the review of related studies and perceptions of key informants coming from professional organizations, educational institutions, and the Professional Regulation Commission.

The paper concludes with a discussion on some feasible measures that can hasten the process of liberalization of trade in services including the role of Mutual Recognition Agreements (MRAs). Despite the possible practicability of implementing liberalization through MRAs, there are certain issues to be tackled including, among others, bridging the gaps in licensing requirements, citizenship and residency requirements for professional practice.
The Liberalization of Professional Services

Dr. Tereso Tullao, Jr.*

Background of the Study

With the conclusion of the Uruguay Round on trade negotiations and the establishment of the World Trade Organization (WTO), it is imperative for the Philippines to review the policy implications of its commitments to the General Agreement on Trade in Services (GATS), particularly in the liberalization of trade in professional services. The implementation of any public policy will depend on the weight given to the social benefits to be derived over the costs that would be incurred. Because certain sectors will benefit from any policy action of the government while other sectors may bear the costs, both camps will exert great efforts to convince policy makers and the public on the advantages and disadvantages of any public policy proposal. Thus, professional organizations in the country may view the proposed liberalization of trade in professional services with apprehension due to possible displacements. On the other hand, users of services of these professionals are bound to benefit from a variety of options, reduced costs, and improved and efficient services under a more liberal environment.

Proposals for policy changes likewise call for a process of evaluating their costs and benefits. This process, in turn, requires the dissemination of information, discussion on the implications of policy changes and consultations with the concerned publics. Thus, this policy paper is intended to contribute to a growing literature on liberalization of trade in services and to provide a balanced view to policy makers on the impact of liberalization of trade in professional services. This paper attempts to answer the following objectives:

1. Identify the basis for the international trade in services;

2. Determine the advantages and disadvantages of liberalizing trade in professional services under the GATS;

3. Analyze the institutional constraints (Constitutional provisions, legal, and other impediments) on the practice of a profession in the country;

4. Determine the apprehensions of professional organizations, and their readiness to face global competition as the economy is opened to foreign professionals; and

5. Identify policy implications of liberalization of trade in professional services.

The basis for the international trade in professional services was discussed through a review of literature on the role of services in the economy, the concept of liberalization, the role of the General Agreement on Trade in Services (GATS), the ASEAN Framework Agreement on

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Services (AFAS) and the Mutual Recognition Agreements (MRAs) in the implementation of the liberalization process.

The benefits and disadvantages of liberalization of trade in professional services were based on the perceptions of the key informants representing various professional groups and institutions as well as theoretical discussion on the gains from trade.

On the institutional constraints, a review of literature on the Constitutional provisions on the practice of professions, labor laws, as well as the various regulatory laws governing the practice of certain professions in the country was done. The remedial measures undertaken by the country in order to make these laws consistent with our commitments under GATS were also identified.

The discussions on the readiness of our professionals to compete internationally were based on the review of related studies and perceptions of key informants coming from professional organizations, educational institutions, and the Professional Regulation Commission.

Scope of the Study

Professional services as defined in the GATS include among others, legal services, accounting, auditing and bookkeeping services, taxation services, architectural services, engineering services integrated engineering services, urban planning and landscape architectural services, medical and dental services, veterinary services, services provided by midwives, nurses, physiotherapists and para-medical personnel and others. For the purposes of this study, professional services refer to services rendered by individuals who have acquired a license through examination and/or accreditation from the Professional Regulation Commission (PRC) prior to the practice of a profession.

1. The Process of Liberalization in the Professional Services

1.1. The Role of Services in the Economy

The services sector of the economy covers the non-agricultural and non-industrial productive and distributive activities in the transportation, communication and storage, trade, finance, real estate, private services and government service industries. The share of the sector in national income is quite substantial and has been increasing over the years. In 1983, about 38 percent of the gross domestic production came from the services sector, and in 1997, its share jumped to over 46 percent. The sector, which is a major source of employment for the country’s labor force, absorbed almost 40 percent of the total employed persons in 1997. In addition, the service industries are becoming major players in international trade. The share of exports of the services sector is quite substantial and has been estimated to be close to 35 percent of total trade in 1994 (Perspectives on MAPA, 1996).

The rapid growth of the services sector in the Philippines and in other parts of the world have been attributed to various factors such as, the greater openness of economies to international commerce, moves toward efficient production, intense competition that accompany the process of globalization, and the rapid introduction of technologies. However, the growth potentials of the
sector are not fully realized because of difficulties and the reluctance of industries to undertake the necessary reforms due to government ownership, monopoly power, use of traditional technologies, importance of community service obligations, and weak consumer pressure (Perspectives on the MAPA, 1996).

It is in this light that the process of liberalization becomes a crucial agenda for development. It is undertaken to exploit the potentials of the sector in contributing to national income, employment, and growth.

1.2. Avenues for Liberalization

1.2.1 Concept of Liberalization

Liberalization is a process of increasing the openness of the domestic economy to the global market. Opening up the domestic market to international competition entails removal of barriers to the free flow of goods and services across borders and the adjustments of domestic industries. These hindrances are caused mainly by market imperfections and institutional and legal barriers. As a consequence of opening up to global commerce, foreign products and services are allowed to enter the domestic market with ease and compete with local industries. The purpose of liberalization, therefore, is to push various sectors of the economy towards a more efficient use of its resources. The results of this process are lower costs of production and improved quality and increased quantity of products and services available to the domestic market. These objectives are attained through competition, institutional reforms, and structural changes where domestic players are able to adjust towards a more efficient production level and to approximate the production technology and costs of foreign competitors.

1.2.2 General Agreement of Trade in Services (GATS)

One of the major outcomes of the Uruguay Round of trade negotiations is the formation of the World Trade Organization (WTO) in 1996. With the establishment of the WTO, two major agreements governing global trade were constituted. The General Agreement on Tariffs and Trade (GATT) guides the global trade of goods, while the General Agreement on Trade in Services (GATS) establishes the rules for the international flow of services.

The GATS consists of a set of rules limiting the intervention of governments and other institutions in the global trade in services. It removes obstacles to market entry and provides equal treatment of foreign service providers in reference to the privileges enjoyed by their domestic counterparts as they comply with government rules and regulations (Yew, 1997). There are three parts in this multilateral agreement: (1) scope and coverage; (2) general obligations and disciplines; and (3) negotiated commitments to progressive liberalization.
1.2.2.1 The Scope of GATS

The agreement covers four supply modes in the provision of services internationally:

*Cross-border supply:* Services are supplied from the territory of one party to the territory of another party through telecommunications, mail, and other means.

*Consumption abroad:* This is the purchase by foreigners of services in the territory of another country.

*Commercial presence:* Service providers are allowed to conduct business in another country through the establishment of offices, branches, agencies, joint ventures, and other forms of equity participation.

*Movement of natural persons:* Professionals from one territory are employed as service providers in other countries.

1.2.2.2 Major Obligations Under GATS

*Most Favored Nation Treatment (MFN):* Countries shall not discriminate in the extension of concessions to all signatories of the agreement. A benefit given to services and services providers of one member country shall be accorded to services and services providers of other member countries. However, the MFN treatment does not prohibit a group of member countries from extending among them preferential concessions to facilitate and enhance trade in services (Article II(1) of the GATS).

*Transparency:* This obligation calls for the publication and dissemination of all relevant laws and regulations regarding the conduct of trade in services in member countries.

1.2.2.3 Progressive Liberalization

*National Treatment:* The service or service providers of member countries operating in another member country shall be given the same treatment as the citizens of the host member country in the conduct of their commercial operations.

*Market Access:* This refers to the lifting of entry restrictions on service providers like quotas, restrictions on commercial presence, limitations on equity participation, and other barriers on the free flow of services and services providers. There are, however, certain non-discriminatory barriers to trade in services which limit market access to a certain degree including, among others, qualification requirements and procedure,
technical standards, and licensing requirements. These are not considered unnecessary barriers to trade in services provided they are based on objective and transparent criteria.

1.2.2.4. Commitments

There are two types of commitments under the GATS: (1) horizontal; and (2) specific. Horizontal commitments are general limitations on market access and national treatment; while specific commitments are particular and more defined limitations (Domondon, 1997).

On horizontal commitments, the Philippines has committed to review the labor market test within two (2) years after accession. The labor market test is a requirement under the Philippine Labor Code which stipulates that a non-resident alien may be granted an employment permit “after a determination of the non-availability of a person in the Philippines who is competent, able, and willing, at the time of application, to perform the services for which the alien is desired,” (The Labor Code of the Philippines, Art. 40).

The Philippines has no specific commitment but has identified the transport, communication, finance, and tourism sectors for possible liberalization under the GATS. In the practice of accountancy, the Philippines has not made any specific commitment on any of the mode of supply although it is committed to progressive liberalization. This means that “it is required to enter into successive rounds of negotiations beginning not later than five (5) years from the date of entry into force of the WTO agreement” as provided for in Vol. 28 of the Uruguay Round Legal Instruments (Domondon, 1997).

The major contribution of the GATS is to put a cap on the extent of protection of many service industries. The Philippine commitment is for a stand still or the status quo in trade in services.

1.2.2.5. Mutual Recognition Agreement (MRA): A Case for Accountancy

The Working Party on Professional Services under the Council for Trade in Services has adopted guidelines for MRAs in the accountancy sector entitled “Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector”. According to Domondon (1997) “the accountancy profession was selected as a priority for liberalization because of its impact on the growth and globalization of the capital markets.”

Mutual Recognition Agreements are permitted under Article VII (Recognition) of the GATS. However, these guidelines are not binding but are intended to ease the
negotiations on mutual recognition of professional qualifications. Moreover, these “guidelines set out benchmarks for negotiating MRAs to assure that foreign qualifications are evaluated in a non-arbitrary, non-discriminatory way, and to make sure that the process is fair and open” (Yew, 1997).

Mutual Recognition Agreements do not automatically extend the right of professionals to practice in another country. They are supposed to establish procedures that assess how the differences between qualification systems can be bridged, and consider the mechanisms for the recognition of home country requirements in the host country. Yew (1997) pointed out that “professionals seeking recognition must accept that they may be required to take further courses, gain local experience or undertake some further assessment before they are allowed to practice in a host country.”

1.2.3. ASEAN Framework Agreement on Services (AFAS)

Because of the slow process of negotiations towards liberalizing trade in services under the GATS, certain countries have opted to hasten the process of liberalization. In addition, Articles II(1) and V of the GATS provide for the formation of agreements between and among member countries to remove discriminatory measures and provide an environment conducive to a free flow of trade in services between and among them. These provisions enable the Philippines and other ASEAN member countries to enter into an agreement more liberal than the GATS without extending the same concessions to all GATS members.

According to the ASEAN Secretariat, “a more liberal trading regime in services in the ASEAN will increase competition among service providers in the region and make them more cost efficient thereby benefiting those who consume their services.” Since, typically, industrial firms require various types of services as intermediate inputs, once these cost savings are passed on to the industry, this will lower production cost of ASEAN industries and make them even more globally competitive (AFTA Reader, 1995).

The growing importance of the services sector in the ASEAN region and the global trend towards increasing liberalization of trade in services persuaded member countries to enact the ASEAN Framework Agreement on Services (AFAS) which was signed on Dec. 15, 1995 in Bangkok, Thailand. The objectives of the AFAS are to enhance cooperation in trade in services within the region by eliminating substantial barriers to trade in services, expand the scope and depth of liberalization of trade in services, and create an ASEAN free trade area in services in the long-run. Member countries were asked to make commitments beyond those made in GATS to hasten the liberalization process (AFTA Reader, 1995). Several sectors have been determined to be priorities for liberalization. These include: financial services, maritime transport,
telecommunication, tourism, construction, air transport, and business services (ASEAN Secretariat, 1996).

Guidelines in the liberalization of trade in services entail the elimination of existing measures and the prohibition of the setting-up of new ones that are discriminatory and pose market access limitations. The commitments are beyond GATS, sectoral, bilateral, and are preferential to ASEAN service suppliers. The offers of the Philippines in the first package of commitments are in business and professional services, specifically auditing and tourism.

1.2.3.1. Alternative Approach to Liberalization in ASEAN

In order to hasten the process of liberalizing trade in services, the Coordinating Committee on Services (CCS) formulated an “Alternative Approach to Liberalization of Services in ASEAN”. The objective of this plan is to set the long term target for liberalization of services through a free flow of services by 2020.

The plan is quite ambitious since it covers all services sectors and sub-sectors as defined by the WTO with the exclusion of the exercise of governmental authority. The free flow of services across regions will be achieved through national treatment of services and service providers and the elimination of barriers to market access in the four supply modes. Examples of liberalization measures include commitments beyond GATS, binding of existing regimes, liberalization of current restrictions, harmonization of requirements, and the Mutual Recognition Agreement (MRA). Mutual Recognition Agreements (MRAs) are recognized under the Framework Agreement on Services (Article V). These bilateral or multilateral arrangements pertain to the process and conditions of accepting and recognizing qualifications of foreign professionals in terms of education, experience, licensing or certification, obtained in their home territory for licensing, certification and practice in a host territory.

As a consequence of this plan, several concrete actions need to be pursued. These include sector identification, identification of appropriate modes of supply, identification of barriers per mode of supply, harmonization, and process of reciprocity. Sector identification, in turn, will depend on several sectoral characteristics including, among others, sectoral interests, readiness to bind existing regime, degree of competitiveness, existing regime of liberalization, pending liberalization measures, and existing cooperation activities.

1.3 Perceptions of Professionals on the Concept of Liberalization

Based on the results of the interviews with key informants of selected professional organizations, there is a general awareness on the concept of liberalization in the trade in professional services. They see this as a form of “free trade in the practice of
professions” across national boundaries. In addition, the process of liberalization “provides opportunities for building international understanding and trust, world-wide employment, economic growth, and the global economic infrastructure for international prosperity and peace.”

Although they are aware of this trend towards global integration in the practice of professions, some are quite uncertain whether it will be applicable to the Philippines in the presence of legal limitations. In particular, “RA 4419 states that only Filipino citizens can practice medicine and dentistry in this country, except for charitable purposes.” On the other hand, some view that their industry, particularly the professionals in the software industry, are open to exchange of professionals internationally, although they cite difficulties with visa and POEA requirements.

However, this general positive sentiment is countered with a perception that liberalization is “another form of colonization of Third World countries.” There is also a respondent who is not certain on the process, and he feels that improving working conditions in his profession is a far more pressing issue than liberalization.

Aside from being aware of the concept of liberalization, the key informants also accept the need to liberalize trade in professional services, with many reservations. Liberalization gives “professionals and firms a chance to compete globally.” Moreover, “if the set of multilateral agreements and negotiated rules will provide a level playing field” liberalization in the trade of services can be a means towards promoting economic growth. Although they favor liberalization, they also want preferential treatment of domestic professionals. As one respondent commented, “the present situation of favoring foreigners over their Filipino counterparts has to be corrected first, before foreigners are given access to the local market.”

Although many of the key informants are aware of the general concept of liberalization, they are not aware of the specific issues, such as, the MRA, supply mode, national treatment, MFN, and market access, among others.

2. The Benefits of Liberalization

There are two main benefits to a freer international trade: production and consumption gains from trade. Production gains from trade imply an increase in the level of national income resulting from specialization and the efficient use of resources. Unrestricted flow of goods internationally forces domestic producers to be internationally competitive. This means that domestic industries will have to produce up to the point where the cost of production will approximate world prices (Salvatore, 1998). If in the Philippines the cost of production is lower than world prices, this will encourage greater production, income and employment as exports increase. On the other hand, if the country’s production cost is higher than international prices,
adjustments need to be made in order to restrict production and the importation of excess demand. This domestic adjustment will also lead to higher income and employment as resources displaced from these import-substituting industries are moved towards more efficient and globally competitive industries.

Consumption gains from trade are the benefits enjoyed by consumers who are able to purchase goods at a lower price, buy goods with higher quality, and have a chance to choose from a wider variety of commodities produced domestically and internationally.

The traditional explanations for the direction of trade internationally refer only to products, while factor inputs like capital and labor are assumed to be immobile internationally, and many of the industries in the services sector produce non-tradable (not traded internationally) goods. However, as observed earlier, technology improvements, relaxation of institutional barriers, and growing globalization have transformed these erstwhile non-tradable goods to tradable goods. Thus, the production and consumption gains from trade may also apply to the global trade in services.

Since one of the avenues in pursuing liberalization of trade in services is through Mutual Recognition Agreements, Yew (1997) has cited some of the major benefits of the MRA, namely that it: (1) liberalizes the trade in professional services and results in the free movement of professionals across borders; (2) increases the comparative advantage in professional services; (3) enables importing countries to use imported skills for the improvement of the profession; (4) allows various regulatory bodies involved in granting rights to practice to save time and resources by working together and engaging in more effective division of labor; and (5) enhances mutual learning and the transmission of regulatory experience, thus raising professional standards and the level of access to professional services.

2.1 Perceptions of Key Informants on the Benefits of Liberalization

Many benefits cited by the key informants are consistent with the production and consumption gains referred to in traditional theories of international trade. A respondent mentioned that part of the liberalization of trade in professional services “promotes the healthy exchange of professional services and provides an easy access to quality services. It can also improve professional standards by enhancing professional competence.”

The benefits cited by the key informants can be classified into three categories: (1) transfer of technology; (2) improved provision of services; and (3) higher level of income.

A number of the key informants believe that liberalization of trade in professional services can contribute to the transfer of modern technology to our country. This can be
done through the exchange of professionals and exposure to international employment. From these experiences in sharing of knowledge and technology, domestic professionals are challenged to be more competitive. In addition, liberalization is also a way of “recapturing Filipino expatriates” to practice their professions domestically.

The key informants anticipate that liberalization will lead to an improvement of the delivery of professional services. Due to foreign competition, the process of removing the barriers to trade in professional services can “elevate professional standards in terms of efficiency,” and enhance professional competence by making them “more aware of their ethical standards, proper procedures and rules in providing professional services.” Thus, consumers and other sectors of the economy will have access to quality services, which in turn can make them more cost efficient and improve their products and services.

Another benefit of liberalization that the respondents mentioned is the improvement of income. However, this was only mentioned by service providers where the Philippines is a net exporter like nursing and the software industry. The removal of discrimination and the enhancement of market access through liberalization implies the expansion of their market base, and thus an increase in their employment opportunities and income.

3. The Disadvantages of Liberalization

3.1 Structural Adjustment Costs

According to the theory of trade, the process of opening up a relatively protected domestic market to international trade will entail adjustment costs specially on protective sectors. These sectors which are often displaced by competitive imports will have to adjust by limiting production and shifting resources to other industries where the country has a comparative advantage. The assumption that the process of adjustment is done in a costless manner is quite unrealistic in the light of difficulties encountered by displaced workers, and the cost of relocation and retraining.

In addition, the adjustment cost may worsen depending on the market power held by foreign players in the liberalization process and the degree of protection enjoyed by the domestic players. If foreign players have monopolistic powers even in their home territories, they can easily dislodge small local competitors in the host territory and the adjustment costs will be magnified.

Pobre (1997) cited the example of the practice of accountancy in the United States, where a few large accounting firms dominate the domestic market. He added that because of their “mega-size staffs, clientele and revenues,” these multinational accounting firms have also controlled global accounting. These very few accounting firms are further expanding their global market power through “a continuous series of mergers and mega-mergers that have left the remaining firms larger and more powerful
"than before." Smaller firms are easily displaced since they cannot compete with these big firms which have the economies of scale, the huge resources for research, and the specialist staff necessary in coping with the increasing complexities of the field.

With the implementation of the obligations under GATS of national treatment and market access in the field of accountancy, Pobre speculated that the country’s “accounting firms, which now represent the principal firms either as correspondents or as member of a world-wide federation or partnership, might be merged with or absorbed by their foreign principals. Should this happen, they may lose their identity and autonomy.”

3.2 Perceptions of Key Informants on the Disadvantages of Liberalization

There are three major disadvantages mentioned by the key informants: (1) displacement; (2) reverse transfer of technology; and (3) dual internal labor market.

Given the inadequacies of local professionals to compete with the big players in the field, some of our professionals may be displaced and “left out due to the stiff competition” coming from foreign players. In fact, even the big domestic professional providers may only end up as “support groups”. The respondents attribute the inability of local professionals to compete to limited resources of these professional providers.

A second disadvantage is the resulting reverse transfer of technology or brain drain. In the case of professionals in information technology, the better compensation package abroad may encourage them to migrate. Such a trend will have an impact on the cost of training and the reverse transfer of technology. The industry and other domestic industries using the services of information technology professionals may lose their comparative advantage as the cost of training new and fewer professionals increases. The massive outflow of educated professionals to greener pastures abroad, moreover, can lead to a reverse transfer of technology. In effect, a developing country like the Philippines is subsidizing the education of the professionals in advanced countries.

The third disadvantage viewed by the respondents is the possible formation of a dual internal labor market as trade in professional services is liberalized. In recruiting foreign professionals in the country, firms may offer special privileges and higher compensation packages than those given to local professionals. This creates a two-tier system of compensation which is quite prevalent in multinational corporations. Liberalization does not only displace domestic professionals but creates a dual system of compensation, one for the expatriates and another for the locals.

Such development may create demoralization among domestic professionals because they are not treated in the same way as their foreign counterparts in their own country. And yet the reason why these foreign professionals are able to practice domestically is the application of the GATS rule on market access and non-discrimination. Foreigners are treated like the citizens of the host country in the practice of their professions and yet it is possible to have discrimination in compensation. This negative consequence may exacerbate human relations problems arising from cultural differences among professionals.
4. Readiness of Filipino Professionals for Liberalization

4.1 Impact of Liberalization on Professional Overseas Filipino Workers (OFWs)

It is estimated that more than 300,000 (legal) Overseas Filipino Workers were deployed in 1997 in various parts of the world and only about 8% are classified as professional and technical workers. Overseas Filipino Workers are considered one of the leading foreign exchange earners of the country remitting some USD 5.7 billion in 1997 alone. It is argued the liberalization of professional services will have a positive effect on the deployment of some OFWs since the Philippines has a comparative advantage in the export of professional and low-skill services. According to POEA figures, substantial increases in contracts for architects, engineers, surveyors, draftsmen and engineering technicians have been observed in recent years. In addition, there is a growing demand for medical-related services, accountancy and computer services. Among the 18,000 professionals deployed overseas in 1997, more than 90% are engineers and nurses. Thus, the removal of barriers under a more liberalized regime may boost again the deployment of nurses abroad, a profession which has suffered substantial reduction in overseas employment in recent years due to strict entry requirements.

The continuing demand for overseas employment for Filipino professionals, however, will be tempered by the technical expertise of our professionals to meet international standards and more importantly by labor market test and quota restrictions, an allowable commitment in the GATS particularly in the supply mode of movement of natural persons. On the other hand, the cross-border supply mode through the use of telecommunications offers huge employment and export earning opportunities for our information technology and other computer specialists, product designers, logistic managers, customer service providers, architects, construction, engineers and others.

4.2 Views of Respondents

Several key informants feel that many professionals and professional firms are not yet ready to compete internationally if the country pursues further liberalization in the field of professional services. Although very few are ready, like some CPA firms with internationally competitive staff, the general sentiment is that Filipinos are not yet ready. One respondent mentioned that “unless the government takes action towards implementation and enforcing of professional laws, no sector will be completely ready.”

On the other hand, the key informant from the nursing profession feels that Filipino nurses will be ready by 2020, the timetable set by the APEC. The Philippine Nurses Association is aware of liberalization and it is cooperating with government and non-governmental organizations and international agencies on the new trends and issues affecting health and nursing development.
Similarly, professionals in the software industry are already facing international competition because of the nature of the industry. However, they are faced with several structural weaknesses, including among others, under-capitalized companies, low budget for research and development, limited domestic demand for their services, poor international marketing network, and high cost of hardware, software and books and other accessories.

5. **Policy Implications and Other Issues**

5.1 **Institutional Barriers to Liberalization in Professional Services**

One of the difficulties in liberalizing the services sector is the abundance of non-tradable goods supplied in several of its industries. However, some of these services have become non-tradable goods not only because of their physical immobility to cross international borders but mainly because of legal and institutional barriers. In the Philippines, there are Constitutional provisions which give preference to Filipino labor, a labor law which restricts the employment of foreigners, and several regulatory laws which govern the practice of professions exclusively for Filipinos.

Section 12, Article 12 of the 1987 Constitution provides that “the State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods and adopt measures that help make them competitive.” In addition, Section 14, Article 12 states further that “the practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.”

The reason for this preference for Filipino citizens is not only to be partial to the available human talents but also for the protection of the national patrimony, safeguarding of the public interest and the preservation of the national culture (Villacorta, 1998). This Constitutional limitation, however, can be waived by Congress by the passing of appropriate laws. Thus, in the light of globalization and the current thrust towards liberalizing trade in professional services, Congress can enact laws serving as exemptions from this Constitutional provision for purposes of reciprocity and in conformity with international agreements.

The Labor Code of the Philippines, on the other hand, has a labor market test that serves as a precondition before a foreigner is accepted for employment in the country. Article 40 of the said law provides that a non-resident alien may be granted an employment permit “after a determination of the non-availability of a person in the Philippines who is competent, able, and willing, at the time of application, to perform the services for which the alien is desired.”

Because of the country’s GATS commitment to review the labor market test, the Department of Labor and Employment conducted in 1997 a consultation workshop with various sectors regarding this requirement of the Labor Code. The proposed amendment to Article 40 of the Labor Code was presented in the workshop for comments. The proposed amendment reads as follows:
“The employment permit may be issued to a non-resident foreign national subject to the labor market test. However, the Secretary of Labor and Employment, shall be authorized to grant exemptions from the labor market test on a case to case basis in industries or occupations where the expertise of the foreign national is needed, if there is transfer of technology, in joint venture agreements or in other cases similar to the preceding enumeration.”

The revised provision authorizing the Secretary of the DOLE to grant exemptions may be considered as a move towards further liberalization since the GATS commitment is just to review the labor market test in the employment of foreign nationals. However, there is still an element of discretion and possible discrimination since the exemptions are granted on a case to case basis.

The practice of professions in the country is governed by various regulatory laws including Presidential Decree 223 as amended by Presidential Decree 657 creating the Professional Regulatory Commission. These laws do not allow foreigners to practice in the country save for extraordinary exemptions. Moreover, foreigners are restricted from taking the licensure examinations and from registering as professionals unless the Philippines has reciprocity agreements with their home countries. Registration of foreigners as professionals is further restricted by a three- year residency requirement.

The exemptions to this general rule is provided for under Section 5.J of Presidential Decree 223 as Amended by Presidential Decree No. 657 which states that:

“The Commission may authorize the issuance of a certificate of registration without examination or a temporary special permit to practice the profession to any foreigner regardless of whether or not reciprocity exists in the practice of his profession between the Philippines, on condition that the foreigner is internationally known to be an outstanding expert in his chosen field, well-known specialist, and his services are urgently necessary either for lack or inadequacy of local experts or his services will promote the advancement of the profession in the Philippines.”

Although there are remedies to the Constitutional, legal and regulatory barriers in the practice of foreign professionals in the Philippines, these measures are more in the area of exemptions rather than the rule. As such these may not be faithful to the spirit of liberalization of trade in services as envisioned by the GATS. The market access and national treatment obligations are the rules of the game under a liberalized environment rather than the exceptions.

In this perspective, negotiating various Mutual Recognition Agreements are becoming the practicable avenue for liberalization of trade in professional services. Once MRAs are established, local professionals will
need to adapt to new competition and there will be less adaptation required to various national requirements but more adaptation to new global requirements. Since negotiations towards MRAs take time, foreign professionals wishing to practice abroad, in the meantime, will have to bear the burden of local adaptation prior to mutual recognition (Yew, 1997).

Despite the feasibility of using MRAs as avenues for liberalization, there are still certain issues to be settled in the implementation of MRAs. These debatable concerns cover, among others, the matters of how to bridge the gap between the differences in educational qualifications and other training requirements of professionals of countries entering into an agreement, apprehension that MRAs might lower the professional standards of agreeing countries, and the citizenship and residency requirements in the practice of professions internationally.

Since MRAs are international agreements on mutual recognition of professionals across borders, the role of international federations of professional organizations is crucial. Although the practice of professions is legislated nationally, the inputs and recommendations of duly recognized professional organizations are the ones integrated in the enactment of regulatory laws. Thus, the inputs of international professional groups will be significant in setting up a system defining the scope and coverage of the profession, the educational and training requirements prior to licensure, licensing procedures and other requirements before registration. These organizations are in the best position to recommend ways of narrowing international variances in the licensing of professionals towards mutual recognition.

It is therefore imperative that various professional organizations in the Philippines should take an active role in their respective international professional groups so that their views can be heard particularly in the formulation of an MRA in their profession.

For the success of an MRA, there are suggestions that it should be implemented in phases so that the scope of a mutual recognition process is limited at the initial stage of liberalization. The introduction of liberalization stages is necessary as a practical way of narrowing the gap in the variability of professional practice globally. For example, limiting the practice of a profession in a host country in terms of scope of permissible activities and forming differential market access per supply mode may be a workable path towards full implementation of an MRA (Yew, 1997).

5.2 Views of Respondents on the Process of Liberalization

After weighing the benefits and costs of liberalization of trade in professional services, some key informants concluded that “there is nothing wrong with liberalization but foreigners should be allowed to enter in highly specialized fields where they can have a tremendous impact.” For example, foreign professionals should be allowed to practice in the country for academic purposes and if they can serve as conduits in the transfer of technology. In addition, foreign professionals can practice domestically by forming joint ventures with established Filipino professional firms.
These views are consistent with the proposal of implementing the process of liberalization in phases in order to reap the benefits of technology transfer but at the same time giving preference to Filipino professionals as mandated by the Constitution.

Because of the sweeping implications of liberalization of trade in professional services on the economy in general and the professional organizations in particular, one respondent’s view is that there is a need for an information campaign on liberalization and the country’s commitments in the GATS and the AFAS and the establishment of Mutual Recognition Agreements.

If the Philippines is going to be consistent with its commitments with the GATS, one respondent feels that there is a need to revise and change nationalist, as well as protectionist, laws to accommodate foreigners in the practice of professions in the country. It was added that the country will have to be pro-active since it cannot maintain a standstill commitment in the GATS for a longer period because of the GATS thrusts toward progressive liberalization.

For the software industry, there is a need to increase software investment and strengthen software export financing, improve marketing activities, support IT education and research and development. In terms of investment, there is a need to create special financing schemes, encourage investors to pool venture capital funds, and for software exporters to issue IPOs. With regards to marketing, there is a need to sustain participation in export development missions and fairs, organize high level missions promote trade missions, and establish tie-ups and joint ventures with foreign companies (Policy Issues, Technology Based Exports, 1998).

6. Conclusions

Liberalization, in general, is a series of reforms intended to increase the openness of the domestic economy to the global market. These reforms involve the removal of barriers caused by market imperfections, institutional and legal barriers as well as the accompanying structural adjustments of domestic industries. Efficient use of resources is the overall objective of the process manifested by a lower cost of production and improvement in the quality, and an increase in the quantity, of products available to the domestic market. These objectives are attained through competition, institutional reforms and structural changes where domestic players are able to adjust towards a more efficient production level and approximate the production technology and costs of foreign competitors.

The thrust of liberalizing trade in services has been driven by several factors including the substantial economic role it plays in terms of generating national income and employment, its rapid growth accompanied by technological progress, as inputs for other productive sectors and the greater openness of countries engaged in global trade. However, the growth potentials of the sector are not fully realized because of
difficulties and the reluctance of industries to undertake the necessary reforms due to various reasons.

The liberalization in the field of professional services has been established in global agreements like the GATS under the WTO and regional arrangements like AFAS under the ASEAN. These covenants were executed in order to reap the numerous benefits liberalization can bring, including improvement of professional services, transfer of technology and higher income for professionals.

There are however, some social adjustment costs that go with the process of liberalization of trade in services. The frequently mentioned disadvantage is the displacement of existing professionals resulting from the sizeable market power and resources of the global giants in the field. Some people view that liberalization may also lead to a reverse transfer of technology, specially if it is accompanied by the movement of resources and permanent emigration. Another negative effect often cited is the possible development of a dual internal labor market, one for the expatriates and another for the local professionals.

This thrust towards a freer flow of professional services internationally meanwhile, is being curbed by domestic factors. In the Philippines, there are Constitutional, legal, and regulatory restraints on the entry and employment of foreigners in the professional fields. However, these restrictions are softened by provisions on exemptions based on various grounds. These remedial measures are meant to answer extraordinary circumstances and not really to liberalize the practice of professional services in the country.

It is in this light that feasible measures are prepared to hasten the process of liberalization of trade-in services like the Mutual Recognition Agreements (MRAs). Despite the possible practicability of implementing liberalization through MRAs, there are certain issues to be tackled including, among others, bridging the gaps in licensing requirements, citizenship and residency requirements for professional practice.

7. Recommendations

In the light of globalization and the current thrust towards liberalizing trade in professional services, the courses of action that could be taken are summarized as follows:

7.1 Establish MRAs for the Different Professions to be Implemented in Phases: For an MRA to succeed, it should be implemented in phases so that the scope of a mutual recognition process is limited at the initial stage of liberalization. The introduction of liberalization stages is necessary as a practical way of narrowing the gap in the variability of professional practice globally.

7.2 Involve the Professional Organizations: It is also imperative that various professional organizations in the Philippines take an active role in their
respective international professional groups so that their views can be heard particularly in the formulation of an MRA in their profession. The inputs of international professional groups will be significant in setting up a system defining the scope and coverage of the profession, the educational and training requirements prior to licensure, licensing procedures and other requirements before registration. These organizations are in the best position to recommend ways of narrowing international variances in the licensing of professionals towards mutual recognition.

7.3 **Conduct Extensive Information Campaign on Liberalization**: Because of the sweeping implications of liberalization of trade in professional services on the economy in general and the professional organizations in particular, there is a need for an information campaign on liberalization and the country’s commitments in GATS and AFAS.

7.4 **Increase Software Investment and Strengthen Software Export Financing, Improve Marketing Activities, Support IT Education and Research and Development in the Software Industry**: In terms of investment, there is a need to create special financing schemes, encourage investors to pool venture capital funds, and for software exporters to issue IPOs. With regards to marketing, there is a need to sustain participation in export development missions and fairs, organize high level missions, promote trade missions, and establish tie-ups and joint ventures with foreign companies.

7.5 **Improve the Competency of and Support for the Filipino Professions**: The success of the implementation and reaping the benefits of liberalization does not rest on the removal of institutional barriers alone nor on the reduction of the market power of foreign players nor on the limited implementation of supply modes under MRAs. The more important aspect, on a long term basis, is the improvement of the country’s professionals in order to face international competition. This will involve: 1) reforms in the professional licensing process, 2) re-engineering professional regulation, and 3) re-tooling through continuing professional education but more so on the improvement of the educational sector and the training programs needed by Filipino professionals to be globally competitive.
Bibliography


