

**AN ANALYSIS OF THE EFFECTS OF THE GENERAL AGREEMENT ON  
TRADE IN SERVICES (GATS) ON KENYA**

**BY**

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## **ABSTRACT**

At the heart of the WTO are the WTO agreements, negotiated and signed by the majority of the world's trading nations and ratified at their parliaments. One of these agreements is the GATS. These contracts are binding governments to keep their trade policies within agreed limits as they form the legal ground-rules for international commerce. The study analyses the effects of the General Agreement on Trade in Services (GATS) on Kenya. The research analyses the impact on Kenya after adapting the GATS recommendations from 1995 to the present. The GATS is the only agreement at the international level, which regulates and liberalises trade in financial services as well as investment of financial services providers. The GATS agreement was negotiated in the Uruguay Round (1986-1994) and since 1995 had to be applied by the entire WTO membership. GATS are part of the World Trade Organisation (WTO). The WTO is a multilateral organisation whose rules have a powerful effect on the trade and domestic policies of member states and on the livelihoods and lives of their people. Kenya made commitments under the GATS in various service sectors, which includes communication, banking and finance, education, tourism and many other service sectors. The paper analysed the positive and negative consequences to the various service sectors that were liberalised under the GATS in Kenya. The main areas that the researcher used as a yardstick include environmental, political, economic, technological and social effects of liberalising the service market under the GATS in Kenya.

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## **DEDICATION**

My study is dedicated to niece Moreblessing Dzinzi and to developing countries participating in the World Trade Organisation (WTO).

**“In international politics there are no permanent friends rather there are permanent interest...”**

**(Badza)**

## ACRONYMS

AIDS-	Acquired Immune-deficiency Syndrome
COMESA-	Common Market for East and Southern Africa
CBK -	Central Bank of Kenya
CCK -	Communications Commission of Kenya
EU-	European Union
EPC -	Export Promotion Council
FDI -	Foreign direct investment
GATS -	General Agreement on Trade in Services
GATT -	General Agreement on Tariffs and Trade
GMPCS -	MoU - Global Mobile Personal Communications by Satellite Memorandum of Understanding
GDP -	Gross domestic product
HIV-	Human Immune-Deficiency Virus
IMF-	International Monetary Fund
ICT -	Information Communication Technology
MNCs-	Multi-National Corporations
MFN -	Most Favored Nation

MNCs - Multinational National Corporations

NCWTO- National Committee on World Trade Organisation

OECD - Organization for Economic Cooperation and Development

SAPs - Structural Adjustment Programmes

TKT- Telkom Kenya Limited

US- United States

UNDP- United Nations Development Programme

WB- World Bank

WTO- World Trade Organisation

## CHAPTER 1

### INTRODUCTION

#### 1.1 Background to the Problem

The research is an analysis of the effects of the General Agreement on Trade in Services (GATS) in Kenya from the year 1994 up to 2012. Trade in Services was first negotiated during the Uruguay Round of negotiations (1986 – 1994). The sector was largely ignored at the multilateral level during the earlier seven rounds of trade negotiations. The GATS and the Agreement on Intellectual Property Rights came with the establishment of WTO in 1995. The Agreement created the first ever international or multilateral set of rules covering Trade in Services. The Agreement covers all internationally traded services except services provided under government authority, air traffic rights, issues related to employment citizenships residence or employment on a permanent basis.

The GATS agreements' key objective is to promote liberalisation of trade in services as a means of achieving economic growth for all countries. The Agreement adopts a positive list approach where countries choose the sectors to liberalise and the speed of liberalisation according to their levels of development. This is clearly provided for in the Agreements Articles IV, V and XIX.II and emphasised in the various ministerial conferences since Doha. The negotiations under the guidelines proceed on a request and offer process for liberalisation of specific sectors. Trades in Services are by their nature intangible and invisible unlike goods, which are tangible and visible. The Agreement like the General Agreement on Trade and Tariffs (GATT) agreement is built upon the fundamental principles of the Most Favoured Nation (MFN), National Treatment and transparency to ensure predictability in the conduct of Trade in Services. The guidelines for negotiations and the successive ministerial conferences from Doha to Hong Kong emphasize on the need for countries to liberalise their service sectors according to their levels of development and the increasing participation of developing countries. GATS does not define a service but it

defines Trade in Services as the supply of services through four modes of supply which include cross boarder supply, consumption abroad, commercial presence and movement of natural persons.

However, for many developing countries adopting the GATS into their economies led to a number negative consequence for those nations. This paper will seek to assess the extent to which Kenya has benefited from implementing the GATS recommendations. The study will review the history and structure of the GATS and then discusses its coverage in Kenya and by sector. Subsequent sections outline the work done on the benefits of service sector liberalisation, and the final sections contain recommendations for further action.

## 1.2 Statement of the Problem

Trade in services in Kenya remains the most important sector of Kenyan economy, both in terms of GDP and employment creation. According to the Central Bureau of Statistics of Kenya (2012:16) “in 1960, services contributed only 44% of Kenya’s GDP, while in 2012 services are estimated to be contributing about 60% of its GDP. In regard to employment, its share was about 49.6% in 1997 while in 2012 services contribution is estimated to be about 68%. The services sector has always had an overall surplus in the current account in the country’s balance of payments. The most important sectors for export in Kenya over the years have been tourism, transport, travel, communication, insurance, royalties and licenses and fees, other business.” The importance of services in Kenya’s economy is even more pronounced when its contribution to wage employment is taken into consideration. The leading service sub-sector in the country’s wage employment is “Community, Social and Personal Services,” which accounted for 36% and 42.8% of total wage employment in 1998. The second most important service sub-sector with regard to employment since 1990s has been “Wholesale and Retail Trade, Restaurants and Hotels with a share of 7% and 9.1% of the total wage employment in 1998. Transport and Communication occupies the third position, having been displaced by the ‘Wholesale and Retail Trade, Restaurants and Hotels’ sub-sector by the end of 1990s. These statistics from the Central Bureau of Statistics of Kenya (2012: 16) proves a point that Kenyan economy benefited from liberalising the services industry in conjunction with the GATS resolutions.

However, in the face of all these benefits, Kenya like other developing countries has also been negatively affected by liberalising the country's service sector in compliance with the GATS. After the adaptation of the GATS domestic service providers in Kenya have not been able to cope with increased foreign competition and some have even stopped operating. This has resulted in disruptions on service provision and political tensions in Kenya. Adoption of the GATS resolutions opened doors for more foreign investors to invest in the service industry of Kenya, thereby weakening underfunded indigenous service providers who would have the capacity to withstand foreign competition, which will also be unveiling first class, expensive and efficient technical capacity.

Chanda (2008: 12) wrote that "there are several criticisms that have been leveled at the GATS in Kenya, mostly by non-governmental organizations and consumer and public interest groups. These concerns are highly interrelated and mostly center around issues of national autonomy and sovereignty, the likely adverse effects of liberalising services, and the tradeoff between commercial interests and efficiency type considerations on one hand and social, developmental, and equity goals on the other. The government is agreeing not to limit the number of providers, the number of students they may enroll the legal form of new entrants (cooperative organization, for-profit company, statutory organization) or limit foreign ownership of providers. This erodes the ability of the state to control the growth of the private sector, which is a particular concern in poorer countries in which the public sector educational institutions are unable to meet demand, but private sector growth may fuel inequalities". When governments commit to GATS' national treatment provisions, they agree to treat foreign providers no worse than the way they treat domestic providers. If a foreign provider wishes to provide educational programs, they should not be discriminated against in approvals processes, financial viability tests, quality assurance requirements, or recognition of qualifications. Government cannot discriminate in favor of locally owned or locally based providers. This exposes infant industries to premature extinction.

### 1.3 **Justification of Study**

The research will provide a good opportunity for developing countries to re-assess their position in the General Agreement on Trade in services (GATS). Previously, many developing countries have not fully understood the special needs, capacities, obstacles, short-term and long-term interests of liberalising their service sectors. This partly explains why many of these countries have been reluctant, slow and often apprehensive in making decisions on the schedule of commitments to make as part of services liberalization within the GATS framework. The purpose of this research is to enable policy makers in Kenya and in other developing countries to have an understanding of the effects of adopting the GATS resolutions.

The purpose of this work is to identify implications of the GATS on developing countries, particularly Kenya. This is an important time to undertake such a review as preparations for a future round of multilateral service negotiations. It is imperative that developing economies clearly understand the implications of a new service round and develop objectives and strategies for engaging in these negotiations.

The other reason behind conducting this research is to contribute or to add details that have not been included in new or existing literature.

The recommendations that will emerge from this research can also be used as a platform for policy formulation.

#### 1.4 **Objectives of study**

The study seeks to:

- ❖ The nature and purpose of GATS in economic relations
- ❖ Establish the rationale for Kenya in ratifying the GATS
- ❖ Establish the impact of the GATS to the Kenyan economy
- ❖ Offer policy recommendations to relevant authorities
- ❖ Establish areas of service export interest for Kenya, develop ideas for possible new market access request (concessions) that Kenya may make to other contracting parties during the next rounds of GATS negotiations including the rationale for the requests.

## 1.5 Hypothesis

In as much as Kenya has benefited from implementing the GATS resolutions it also brought for itself an array of disadvantages.

## 1.6 Methodology

This section of the study presents the research methodology used to assemble data. Research methodology implies the way in which a researcher retrieves data from the selected sampling frame, methods to collect data instrument to be used and how is the data scrutinised and presented. Leedy and Ormrod (2010: 100) define research methodology as the “framework to extract meaning from the data collected”. The research is two pronged; it utilized two approaches to data collection. Firstly, the study utilised desk research wherein academic and professional journals, articles, newspaper articles, academic books were extensively reviewed to get an insight on the effects of the GATS on Kenya. Secondly, the researcher administered questionnaires and in-depth interviews, which were essential in gathering pertinent data and information during field research.

### 1.6.1 Research Design

Blanche et al (2006: 27) defines “a research design as a plan or blue print of how a researcher intends to conduct a study”. This involves plans for data collection, data gathering instruments, and how data would be processed and analysed to give meaning to research findings. In the view of the foregoing, Ghauri et al (2005: 32) pointed out that “a research design should be effective in producing the required information within the constraints put on the researcher such as time, budget and skills”. In essence, the research design guides the researcher on the data to collect, how to collect, process and analyse it in order to answer the research question.

The study adapted the approach of analysing the effects of the GATS in the various service industries that were liberalised in Kenya. In this study a combination of both qualitative and quantitative methods were employed. Quantitative data from, researcher administered questionnaires was complemented by qualitative data from interviews with key informants, as well as documentary study. The approach of looking at the liberalised services industries performance will afforded the researcher an opportunity to make an empirical investigation

through the gathering of comprehensive, systematic and in-depth information about each liberalised service.

### **1.6.2 Sampling**

Cochran (2003: 67) defines sampling “as the selection of the specific research participants from the entire population and is conducted in different ways according to the type of study”. Time, cost and inconvenience forbid contacting every individual, thus justifying the gathering of information about only part of the group in order to draw conclusions about the whole. Sampling decisions are required about not only which people to interview or which events to observe, but also about settings and processes. The sampling plan used in the research was non-probability (purposive sampling) class. Babbie (2009: 47) notes, “a representative sample is crucial to quantitative research and must reflect the population accurately so that inferences can be drawn”. A chosen sample must reflect the attributes and attitudes of the entire population under study when accurate conclusions relating to the whole population are being sought or are wanted.

According to Williamson et al (1997: 111), “purposive sampling refers to a judgmental form of sampling in which the researcher purposely selects certain groups or individuals for their relevance to the issue being studied”. The study utilised this technique to select eminent academics in the field of trade liberalisation and Kenyan Embassy officials. The respondents are more or less directly linked to the area of study and the information they have on Kenya proved to be very essential for the research.

According to Bailey (2001: 56), “purposive sampling method is less complicated, less expensive and may be done on a “spur-of-the-moment” basis to take advantage of the available and perhaps unanticipated respondents without the statistical complexity of probability sampling”. It is against these merits of convenience, cost-effectiveness that led the researcher to sample Kenyan Embassy officials since the embassy is located in the Harare Province, which means it, was easily accessible at a less cost.

### **1.6.3 Sample Frame**

The population for this research consisted of officials from the Kenyan Embassy and eminent academics in the field of international trade. The respondents were chosen based on their knowledge of the Kenyan economy.

#### **1.6.4 Data Gathering Techniques**

Dooley (2003: 56) wrote, “data collection is the process of gathering relevant data about the subject”. According to Martins et al (2009: 35) “the data collection process may vary from relatively simple observation at a specific location to an extensive survey of large corporations across the world”. The study used face-to-face interviews, questionnaires and documentary research methods in the acquisition of the required data and to give way for triangulation of data. Bryman (2001: 509) defines triangulation as “the use of more than one method or source of data in the study of a social phenomenon so that findings may be crosschecked”. These methods of data collection include interview, case studies or questionnaires.

##### **1.6.4.1 Survey Method**

According to McNeill (1999: 20), a questionnaire is “a list of questions used to measure attitudes, opinions and behaviour of respondents”. In the same notion, Slocum et al (1995: 45) define them as “forms containing a set of questions addressed to a statistically significant number of subjects as a way of gathering information for a survey”. As such, questionnaires were used to solicit for responses from Kenyan Embassy officials. Both open and closed ended questions were used for collecting data in this study. The major advantage of questionnaires is that they can be used to gather data and if properly standardised data can be easily quantified and analysed. Questionnaires were preferred in the study as they provide a rapid and relatively inexpensive means of discovering the salient details that the embassy officials had about the GATS

Dooley (2003: 71) asserts, “questionnaires are easy to administer and they enable the respondents the opportunity to take their time and think over their responses and there is no pressure to react to questions right away as is often the case in an interview”. However, due diligence has to be observed in designing questionnaires as variations in wording can produce different responses. The response rate of self-administered questionnaires is considerably lower than that of interviews.

#### 1.6.4.2 Interviews

As a complimentary stride to the questionnaires, in-depth interviews were conducted with the key respondents. Slocum et al (1995:25) notes “in-depth interviews are face-to-face discussions between the interviewer and the interviewee for the purpose of gathering detailed information on particular social phenomena”. They key informants are those individuals assumed to be well versed in the subject of the GATS in Kenya. Williamson et al (1997: 133) ascertain that “interviews attempt to collect information in a systematic manner, which allows for the description and explanation of the beliefs, values, and beliefs of people”. In-depth interviews were used in this research as the interviewer drew immediate feedbacks as they clarification on complex issues were sought between the interviewer and the interviewee.

The researcher used personal interviews at the Kenyan Embassy. Personal interviews are were questionnaires are completed through a face-to-face contact with the respondent. The main advantage n with personal interviews is that there is a high response rate and there is room for probing into some responses. Data collection is immediate and there is capture of non-verbal responses under personal interviews.

According to Williamson et al (1977: 143) “when using interviews respondents are encouraged to relate their experiences by describing whatever events, that seem significant to them, as well as to provide their own definitions of their situations by revealing their opinions and attitudes as they see fit”. In addition, the interviewing situation increases the response rate because many people who are unable for example, to fill out a questionnaire by themselves can and will respond to the same questions when the interviewer asks them.

Interviews are however, beset with the problem of facilitating appointments with respondents such as senior officials at the Kenyan Embassy who often have busy schedules. In this study, the key respondents were Kenyan Embassy officials trade experts from the University of Zimbabwe (UZ) and staff at the ministry of international trade and commerce who provided informed analyses on the effects of the GATS. Interviews enabled the researcher to probe further into issues and seek clarification on matters that seem intricately intertwined.

#### 1.6.4.3 Documentary Research

The study also relied on secondary information in the form of documentary research to gather information about the effects of the GATS in Kenya. Oppenheim (2007: 2) defines documentary research “as entailing the systematic analysis of written records thus enabling the researcher to familiarize with existing works and current discourse on the GATS as well as setting a benchmark for viable recommendations on how the GATS framework can be effectively utilised in revenue collection”. Documents such as newspaper articles, academic and professional journals and Revenue Reports were extensively reviewed as this facilitated familiarization with the already going works and on-going debates in the discourse of the GATS. Documents provide a permanent record of facts, which can be referred to constantly for reference purposes. The findings of the content analysis are meant to provide a benchmark for sound recommendations. However, some documentary evidence may be overtaken by events such that it may misrepresent facts as they appear on the ground.

The researcher also made use of electronic media, in the form of internet sites (that is e-library where journals, books, articles, magazines and other corpus of material online in soft copy format were consulted). This helped to suffice the problem of old and out-dated books some of which might be tattered, mutilated and vandalized thus making it possible to explore issues relating to how regional and global expensive and information has to be carefully selected as junk data can be posted thereof.

### **1.6.5 Data Analysis Procedure**

Blanceh et al (2006: 58) notes, “the main objective of data analysis is to transform data into meaningful form in order to respond to original research questions”. Clavert (1991: 185) argues, “it is quite difficult to discuss the different stages of qualitative data analysis because they are more fluid and less clearly delineated, than is usual in quantitative work”. In this study, data was analysed both qualitatively and quantitatively. Quantitative approaches are concerned with hard facts and theory testing. Neuman (2003: 98) posits, “in quantitative analysis, observations are put into numerical form and manipulated in some ways based on their arithmetic properties. In this vein, researchers assemble, classify, tabulate, and summarise data so that some meaning is arrived at”. During data analysis, research findings undergo a process of skimming whereby the researcher will remain with information that is relevant for the research in question.

Data that was collected through interviews and documentary sources was subjected to qualitative data analysis techniques in this study. According to Neuman (2003: 103) “in qualitative data analysis, data is presented in the form of words, pictures, descriptions or narratives and anecdotes”. The quantitative techniques were complemented by qualitative narration, which helped to interpret quantified data. This research involved analysing, discussing and examining data obtained through questionnaires, interviews documentary analysis. Trend analysis was carried out in addition to generic benchmarking in which the GATS in Kenya were compared to the GATS experiences elsewhere.

### 1.7 **Delimitations**

To allow rigorous intellectual analysis the researcher will only vividly analyse the benefits and problems of the GATS in Kenya. The period to be analysed will be from 1994 to the present. The World Trade Organization (WTO) was however established and in 1995, Kenya ratified the GATS commitments.

### 1.8 **Limitations**

For the purpose of this research, limitations are an impediment that prevents the researcher from achieving objectives of the study.

The following are some of the limitation likely to be in the field when carrying out the research on the effects of the GATS in Kenya.

Unwillingness by personnel at the Kenyan Embassy to be interviewed and from the interviews that were conducted the information that was provided was not sufficient the researcher had to use other alternative sources of information.

Most libraries may did not have current textbooks covering the research.

Inadequate financial resources to enable access to the internet and transport.

## **CHAPTER 2**

### **THEORETICAL FRAMEWORK AND LITERATURE REVIEW**

#### **2.0 Introduction**

The purpose of this chapter is to review literature on the effects of the GATS on Kenya. The researcher used the theory of liberalism and comparative advantage as a basis of analysing the effects of the GATS on Kenya.

## 2.1 The theory of Liberalism

According to Chang (2002: 39) “in international economic relations liberalism involves the establishment of a global free trade area”. Chang (2002: 39) went on to write that, “critics sometimes refer to liberalism as the Washington Consensus, which implies that this system works mostly in the favour of the United States (US) at the expense of smaller countries. Supranational institutions such as the World Trade Organization (WTO) shape liberalism through their norms and principles that encourage free trade amongst their states members. The WTO creates and implements free trade agreements, while the World Bank (WB) issues structural adjustment loans to Third World governments that include conditions ranging from opening up their markets to Western businesses to privatizing public utilities”. According Chang (2002: 39) “among the firmest underlying assumptions of free market thinking or liberalism is that as regulations are removed, global trade becomes more efficient and peoples’ needs are better met, allegedly resulting in less poverty and consequently, stability and peace. Critics point to rampant abuses of labourers and citizens in the Third World by multinational corporations, as well as the negative effects on public health caused by privatizing public utilities”. The GATS are a brainchild of liberal principles since they seek to reduce government interference and barriers of global trade in services.

Jackson (2002: 181) postulates that “economic liberals reject mercantilist notions of the centrality of the state as a central actor in economic affairs; rather, they suggest it is the individual and consumer who is in fact the central actor. In the market place, they suggest economic exchange is a positive sum game, individuals and companies reap greater rewards than they input into production due to increased efficiency”. Liberals suggest this starting point is useful for understanding market economics. Consequently, economic liberals reject the mercantilist notions that one state’s economic gain necessarily must be at the expense of another. The global economy is perceived as a as a sphere of cooperation amongst states and individuals

and the mutual benefit of all and thus, the international economy should be based on this free trade model.

Lipson (2001: 23) states that “although classical liberal theorists argue against any form of state interference, promoting instead a *laissez faire* economic system, neo-liberals accept some state interference in the form of policy measures to manage the workings of the economy and this can maximise the efficiency of the state”. The liberal view seems now to be shifting back towards an entirely *laissez faire* liberalist model with the belief that unfettered economic globalisation will be prosperous for the whole world. According to Lipson (2001: 23), “Keynesian ideas of a market ‘wisely managed’ by the state lent a positive perspective of the state as an actor who could give direction and provide political management of the market. Keynesian economics advocates for a mixed economy which is predominantly private sector, but with a role of for government intervention during recessions”. This means that Keynesian economist advocated for an economic system underlined by state as well as private management and control of an economy.

According to Lipson (2001: 25) “liberalism as an idea became famous in 1776 when a Scottish economist, Adam Smith published his book “*The wealth of nations*”. “*The wealth of nations*” was a book that proposed minimum regulations from the government and very few interventions from the government to help promote entrepreneurship. Smith proposed no tariffs, no barriers, no controls, and free trade as the best way for a country to develop economically. The word neo implies a new kind of liberalism, which is different from liberalism in the past. Neo-liberalism is an economic concept that has been popular for the last 25 years. It proposes free markets and virtually rules of markets to dictate development of economies. It abolishes government control and interventions to encourage entrepreneurship. It also proposes no price controls, total freedom of movement for capital, goods and services. Neo-liberalism is of the view that unregulated markets are the best way to proceed to increase economic growth, as it will benefit everyone ultimately”. Neo-liberalism thus, encourages privatization and deregulation to give wings to international trade and commerce.

According to Buffie (2001: 56) “there is considerable empirical evidence, from developed and developing countries, that liberalisation contributes to both banking and currency crises in the

short and medium terms. This is because liberalisation increases risk-taking, which may become excessive in an environment of inadequate supervision and regulation”. Buffie (2001: 56) postulates that, “large capital inflows, such as those that might result from lifting of external restrictions, tend to be followed by sudden outflows leading to exchange rate volatility. Instead, financial liberalisation could contribute to macroeconomic instability, with a boom–bust cycle detected for developing countries”. This leads to inequality (at least initially) because such cycles affect the poorer and less educated segments of the population more. The World Bank (2006: 56) also noted that, “although an open and liberalised financial system promotes access, innovation and growth, if privatisation and liberalization are done rapidly before the regulatory capacity is strengthened, they could lead to highly concentrated benefits, such as what happened in Chile in the 1970s, Mexico in the 1980s and the Russian Federation in the 1990s”. The World Bank (2006: 57) added, “rapid or premature liberalisation in a context of low political accountability can increase financial fragility, and the risk of opportunistic default. It can also lead to reform backlash because of unfair distribution of the costs and benefits of such liberalisation.” From the above analysis, it shows that liberalisation can lead to a widened economic disparity between the poor and the rich if government intervention in economic affairs is reduced.

### **2.2.1 The Concept of Comparative Advantage**

Liberalism enables countries to benefit from the concept of comparative advantage. According to Melitz (2003: 56), “the concept of comparative advantage in economics states that a country should specialize in producing and exporting only those goods and services which it can produce more efficiently (at lower opportunity cost) than other goods and services (which it should import). Comparative advantage results from different endowments of the factors of production (capital, land, labor) entrepreneurial skill, power resources, technology. It therefore follows that free trade is beneficial to all countries, because each can gain if it specializes according to its comparative advantage.” This means that under the concept of comparative advantage nations or states benefit by concentrating on producing whatever products or services they produce massively at a lower cost in relation to their trading partners.

According to [www.digplanet.com](http://www.digplanet.com), “comparative advantage was first described by David Ricardo who explained it in his 1817 book, *On the Principles of Political Economy and Taxation* in an

example involving England and Portugal. In Portugal, it is possible to produce both wine and cloth with less labour than it would take to produce the same quantities in England. However, the relative costs of producing those two goods are different in the two countries. In England, it is very hard to produce wine, and only moderately difficult to produce cloth. In Portugal, both are easy to produce. Therefore, while it is cheaper to produce cloth in Portugal than England, it is cheaper still for Portugal to produce excess wine, and trade that for English cloth. Conversely, England benefits from this trade because its cost for producing cloth has not changed but it can now get wine at a lower price, closer to the cost of cloth". The conclusion that can be drawn from the above example is that each country can gain by producing only those goods it can produce at a lower costs in comparison and trade those goods for the other goods in other countries.

In another example of the applications of the concept of comparative advantage, [www.digplanet.com](http://www.digplanet.com) states that "if using machinery, a worker in one country can produce both shoes and shirts at six per hour and a worker in a country with less machinery can produce less products in an hour. This means that each country can gain from trade because their internal trade-offs between shoes and shirts are different." According to [www.digplanet.com](http://www.digplanet.com), "the less-efficient country has a comparative advantage in shirts, so it finds it more efficient to produce shirts and trade them to the more-efficient country for shoes. Without trade, its opportunity cost per shoe was two shirts; by trading, its cost per shoe can reduce to as low as one shirt depending on how much trade occurs (since the more efficient country has a 1:1 trade-off). The more-efficient country has a comparative advantage in shoes, so it can gain in efficiency by moving some workers from shirt-production to shoe-production and trading some shoes for shirts. Without trade, its cost to make a shirt was one shoe; by trading, its cost per shirt can go as low as 1/2 shoe depending on how much trade occurs".

According to [www.digplanet.com](http://www.digplanet.com), "comparative advantage and the corollary that nations should specialise, is criticised on pragmatic grounds within the import substitution industrialisation theory of development economics, on empirical grounds from the fact that terms of trade between primary producers and manufactured goods deteriorate over time and on theoretical

grounds of infant industry and Keynesian economics”. [www.digplanet.com](http://www.digplanet.com) states that, “in older economic terms, comparative advantage has been opposed by mercantilism and economic nationalisation”. According to [www.digplanet.com](http://www.digplanet.com) mercantilism and economic nationalisation, concepts argue instead that while a country may initially be comparatively disadvantaged in a given industry (such as Japanese cars in the 1950s), countries should shelter and invest in industries until they become globally competitive. Further, they argue that comparative advantage, as stated, is a static concept because it does not account for the possibility of advantage changing through investment or economic development and thus does not provide guidance for long-term economic development”. Comparative advantage as an economic principle is being criticised because of dangers associated with a specialised economy. For a country like Zambia to specialise on the extraction of copper alone is counterproductive since in the event of a fall in the global prices of copper the effects will be devastating on the economy of that country.

The concept of comparative advantage has been criticised from various facets. According to [www.digplanet.com](http://www.digplanet.com) “the principle comparative advantage, may have helped developed countries maintain a relatively advanced technology and industry compared to developing countries”. In an example [www.digplanet.com](http://www.digplanet.com) stated that, “according to the comparative advantage principle, developing countries with a comparative advantage in agriculture should continue to specialise in agriculture and import high-technology widgets from developed countries with a comparative advantage in high technology. In the long run, developing countries would lag behind developed countries and polarisation of wealth would set in”. The above criticism attempts to explain the application of the concept of comparative advantage as one of the reasons why developing countries continue to be the main importers of technology from developed countries. A country like Zimbabwe with a lot of mineral resources but due to technological requirements that are needed to extract the minerals the country is forced to invite foreign investors or mining firms with the technological capacity to conduct mining activities. Developing countries have the comparative advantage of having the natural resources whereas most developed countries have the comparative advantage of having the technology required to extract the natural resources in developing countries.

www.digplanet.com asserts that “premature free trade has been one of the fundamental obstacles to the alleviation of poverty in the developing world. Recently, Asian countries such as South Korea, Japan and China have utilised protectionist economic policies in their economic development”. The principle of comparative advantage to be applicable barriers to trade must be eliminated between states involved. This implies that the government of a state will not have the power to effect price control policies and other measures to protect and defend infant industries from foreign competition.

The GATS are a brainchild of liberalism whose main aim is the establishment of a world economy defined by a free trade system of economic relations, which emphasises that governments should not interfere or intervene in economic issues. Under a liberal system rules governing trade amongst states are created by multilateral institutions such as the WTO, WB and IMF. A liberal system thus eliminates government authority to control even those industrial or service sectors that are deemed critical for the well-being of a nation. Liberalism as a theory goes against a government policy of subsidising critical services such as health and education. Liberalism aims at reducing government spending on social services. Survival in liberal economy is premised on the survival of the fittest phenomenon were infant industries are susceptible to extinction because government capacity to protect them will have been dissolved by its commitments to multilateral trade agreements such as the GATS.

### **2.3 Literature Review**

According to Hilary (2003: 33), “the General Agreement on Trade in Services (GATS) is a comprehensive legal framework of rules and disciplines covering 161 services and activities across 12 classified sectors”. These sectors include activities as wide ranging as telecommunications, financial, maritime, energy, business, education, environmental, and distribution services. Article 1 of the GATS defines the scope of the agreement and defines the nature of services trade, the GATS applies to measures taken by members at the central, regional, and local government levels as well as by non-governmental bodies to whom power have been delegated by governments or authorities. However, within the auspices of the GATS developing countries have encountered a great number of problems in its implementation and also undermining the sovereignty and autonomous rights of these countries in policy making.

El-Fayuomi (2007:6) wrote that, “the creation of the GATS was one of the landmark achievements of the Uruguay Rounds of negotiations of 1986-1995 and whose results entered into force in January 1995”. According to Madeley (1999: 143) “the GATS was inspired by essentially the same objectives as its counterpart in merchandise trade, the General Agreement on Tariffs and Trade (GATT)”. According to [www.aic.lv](http://www.aic.lv), “the objective were premised on creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination), stimulating economic activity through guaranteed policy bindings and promoting trade and development through progressive liberalisation”. Principally, the main reason that led to the creation of the GATS was the creation of a negotiating forum that that would target the is the elimination of all forms of barriers and impediments to international trade in services.

According Baldwin, (2011: 64), “services currently account for over seventy percent of global production and employment. Many services, which have long been considered genuine domestic activities, have increasingly become internationally mobile. This trend is likely to continue, owing to the introduction of new transmission technologies (electronic banking and tele-health services), the opening up in many countries of long-entrenched monopolies (voice telephony and postal services), and regulatory reforms in tightly regulated sectors such as transport. Combined with changing consumer preferences, such technical and regulatory innovations led to an increase in the size of the services market, thus exposing the need for a framework to regulate trade in services. This led to the establishment of the GATS and has had a positive effect in the expansion and development of the global service industrial sector, since its main purpose is primarily to reduce any barriers to service trade.

According to Grusky (2001: 65), “world exports of services are substantial at an estimated US\$1.4 trillion in 2000, or about one-quarter of global merchandise exports. While GATS covers for all services, there exist two exceptions in terms of Article 1(3) of the GATS, which define the scope of the agreement as follows:

(a) “services” includes any service in any sector except services supplied in the exercise of governmental authority;

(b) “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers”.

SAPRIN (2007: 45) states that “there are several criticisms that have been leveled at the GATS, mostly by non-governmental organisations, consumer and public interest groups”. These concerns are highly interrelated and mostly center around issues of national autonomy and sovereignty, the likely adverse effects of liberalising services, and the tradeoff between commercial interests and efficiency type considerations on one hand and social, developmental, and equity goals on the other. Some of the main criticisms are highlighted below. These are by no means exhaustive but are illustrative of the key issues and concerns raised about the GATS.

According to SAPRIN (2007: 45) “the adoption of the GATS by Kenya led to the creation of a favorable policy environment for foreign investors as evidenced by the strong foreign presence in the sector. About 80 per cent of all tourists who visited Kenya in 1997–2006 were attributable to foreign tour operators. Significant shares of the major hotels at the coast and in Nairobi, national parks and reserves have some foreign investment, although less than 20 per cent of them are entirely foreign owned. However, Kenya has also witnessed some negative implications from committing tourist guide services to foreign tour operators. This commitment meant that foreign tour guides, some of whom have little or no knowledge of the country, could come in and seek work permits to offer this service.” This led to not only to deterioration in tour guide service provision, but also allows competition from foreigners for a service Kenyans have the capacity to supply. The local tour guide providers were sidelined in the sector by the heavy presence of well-funded foreign service providers.

According to the [www.cuts-citee.org](http://www.cuts-citee.org) “under the GATS framework, Kenya in 1998 made commitments in all four areas of telecommunication services Fixed telephony, Mobile telephony, Value added services, Internet and Audio-visual services”.

The specific services committed include telecommunications services except video and audio broadcast, voice telephony services, facsimile services, packet swift data transmission services, telegraph services, e-mail and electronic data interchange. According to the Economic Survey (2008: 4), “Kenya’s commitments in telecommunications under GATS brought considerable

benefits to the economy by way of improved service availability, accessibility, affordability and efficiency. the benefits included:

- ❖ Telephone connectivity (both fixed and mobile but excluding Internet telephony services) increased from 10.4 lines/1,000 people in 1999 to 84.4 lines/1,000 in 2004.
- ❖ Internet connectivity increased from 19.87/1,000 people in 2000 to 46.61/1,000 in 2004.
- ❖ Connection fees for the whole range of services have fallen as competition has increased. For example, Kencell (Celtel) connection fees decreased from Kshs 1490 in 2000 to Kshs 990 in 2005. Tariffs for Internet connectivity have also fallen considerably.
- ❖ The cost of most services has also dropped. With competition from mobile service Providers, for example, TKL reduced its local long distance prices from Kshs 20 in 2000 to Kshs 12 in 2005. TKL charges for international calls have also dropped from \$2.50/minute in 2000 to \$0.90/minute in 2005 for calls into Europe, North America and non-Common Market for East and Southern Africa (COMESA) countries.
- ❖ Efficiency of service delivery on timeliness, cost-effectiveness and application of
- ❖ Technology also improved considerably following liberalization.
- ❖ Other benefits the telecommunications reforms have brought include the creation of new economic activities, generation of employment and income, and contribution to government revenue. One of the mobile telephone operators, Safaricom, for example, has paid over Kshs 30 billion since it started operations, and has become one of the country's leading taxpayers".

According to Hilary (2003:53) "GATS is often cited as one of the most development friendly agreements within the auspices of the WTO". The architecture of GATS, as argued by Hilary (2003: 53), "allows developing countries more flexibility than many other WTO agreements, indeed, developing countries made it clear during the original negotiation of GATS that they would only accept an agreement based on a 'positive list' approach, whereby each country can determine which sectors it is ready to commit to liberalization, and under which conditions. In addition, the needs of developing countries are specifically identified as priorities in Articles IV and XIX of GATS". Yet the reality of the GATS negotiation process undermines the development-friendly architecture of the GATS agreement. The 'progressive liberalisation' of

trade in services, which GATS requires, is achieved through successive rounds of market access negotiations, in which WTO member countries engage in secret discussions with each other in order to open up new service sectors to competition from foreign service providers.

According to Hilary (2003:54) “while developing countries formally retain the right to choose which services they will offer up to GATS, they come under intense pressure in these negotiations to meet the demands of more powerful WTO members. The fact that the negotiations are held on a bilateral basis, and in secret, sets the weakest countries against the strongest on a wholly unequal footing. The negotiation process thus turns the principles of the GATS that are meant to benefit the members of the WTO against developing countries, and exposes them to unfriendly trading systems that the WTO was initially supposed to avoid. No one disputes that power politics play a major role in the WTO”. Hilary (2003: 55) wrote that “the former WTO Director, General Mike Moore himself acknowledged that, despite formal equality between WTO members, “there is also no denying that some members are more equal than others when it comes to influence. As well as enjoying far greater negotiating capacity, in terms of both material and human resources, richer countries have in the past exerted extra pressure on poorer WTO members by raising the prospect of loss of aid or trade preferences if they do not drop their opposition to rich countries’ positions”. The above arguments illustrate the fact that although the GATS was initiated in an attempt to create policies or principles that were to benefit all of its signatories, only the economically and politically developed states are benefiting at the expense of developing nations.

According to Hilary (2003: 55), “there are provisions within the GATS that have a negative impact on national efforts to maximise the developmental benefits of foreign investment.” Many countries welcome foreign investment in individual service sectors and employ a range of measures to ensure that this investment contributes to economic development and other policy objectives. According to Hilary (2003:55) “such measures include requirements that foreign investors establish a joint venture with a domestic partner; equity ceilings on foreign capital participation; conditions of minimum capital investment; performance requirements in areas such as technology transfer, public service provision, employment or training of local staff. Yet these standard methods of managing foreign investment in services to the maximum benefit of the host

country are threatened when a sector is bound under GATS. Article XVI of GATS prohibits WTO members from using requirements on type of legal entity (such as joint ventures) or limitations on foreign capital participation, unless such measures have already been specified in that country's national schedule of GATS commitments. Article XVII prohibits WTO members from employing any measures, which favour domestic over Foreign Service providers, either explicitly (*de jure*) or in practice (*de facto*), unless those measures have already been specified in the country's national schedule. Even when countries have specified these requirements in advance, their very presence in national GATS schedules sets them up as targets for removal in the services negotiations at the WTO. This is well demonstrated by the requests submitted by the European Union (EU) to 109 other WTO members in the development round of negotiations, which were leaked and published online in February 2003. These documents requested the removal of joint venture requirements and limitations on foreign equity participation in countries such as Indonesia, Pakistan, Thailand, China, Cuba, the Philippines, Egypt and India, as well as a host of performance requirements on investors in these and other countries. All these countries must now expend precious negotiating capital in trying to protect their own pro-development policies from elimination". The moment a country adopts some of the GATS recommendations it loses some form of sovereignty to determine the structure or manner in which the service sector of the economy shall or will take. GATS recommendations reduce state authority to areas that are not found within the GATS.

Hilary (2003:55) "the need to protect those pro-development policies in the present, however, is made more urgent by the fact that GATS makes it effectively impossible to reintroduce them again in the future, should it be considered prudent or necessary to do so. The 'progressive liberalisation' programme of GATS allows only for the removal of access conditions and performance requirements on foreign investors, not the restoration of old ones or the introduction of new, while the disciplines on modification of national schedules (Article XXI) require countries to provide acceptable compensation to any WTO member whose benefits "may be affected" by the proposed modification before it can be introduced". This means that for those countries such as Kenya, which would have made commitments under the GATS, do not have the power to follow a path towards their countries development if it contradicts with the GATS principle.

## **2.4 Conclusion**

Kenya and the rest of the developing countries under the realm of the GATS have encountered a number of problems that revolve around the fundamental issues of state sovereignty and autonomy in decision making on issues that have something to do with service provision. The GATS has widely criticized for empowering Multinational National Corporations (MNCs), a development that has led to countries failing to protect local service providers from hostile and stiff foreign competition. Thus, from the above analysis, it can be concluded that GATS is a creation that enables the realisation or fulfillment of the interest of developed states in the context of global service provision.

The existing literature on the effects of the GATS on Kenya has not been able to elaborate on the social, political and cultural effects of the GATS on Kenya. The researcher conducted interviews on officials from the Kenyan Embassy and on prominent personalities in the area of international trade in Harare, Zimbabwe and was enlightened about the real situation in Kenya on issues relating to its service industry. The impact of service liberalisation under the GATS on Kenya has not been confined only to the economic sphere but has been spread to all angles or facets of survival in Kenya. The researcher also contributed on the recommendations that Kenya must adopt in order to contain the effects of the GATS.

## **CHAPTER 3**

### **OVERVIEW OF THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) AND SERVICE TRADE IN KENYA**

#### **3.0 Introduction**

Dongier (2010: 37) states that “the GATS are the first multilateral trade agreement governing cross-border trade in services. The objectives of the GATS include expansion of services trade, progressive liberalisation, transparency of rules and regulations governing trade in services and increasing participation of developing countries”. According to [www.aic.lv](http://www.aic.lv), “under the GATS, progressive liberalisation refers to the intention that with each round of trade negotiations further liberalisation of trade in service is realised”. In 1994, Kenya ratified to the GATS obligations of liberalising its service industries. The opening up of the service market by Kenya under the GATS brought with it both negative and positive consequences to the country’s development.

### **3.1 Example of services covered under the General Agreement on Trade in Services (GATS)**

- ❖ Business Services
- ❖ Communication
- ❖ Construction
- ❖ Distribution
- ❖ Education
- ❖ Environmental Services
- ❖ Health Related Services
- ❖ Financial Services
- ❖ Tourism
- ❖ Recreation, Culture, Sports
- ❖ Transport

### **3.2 The Origins and Principles of the GATS**

According to [www.aic.lv](http://www.aic.lv) “the GATS is a multilateral service in trade agreement under the WTO that was negotiated in the Uruguay Round of 1986 to 1994 and came into effect in 1995. It was essentially inspired by the same objectives as the General Agreement on Tariffs and Trade (GATT), which is its counterpart in merchandise trade”. The GATT was primarily created to regulate global trade in tangible goods while the GATS specialised in services, which are intangible. The GATT and the GATS are driven by the same objectives, but their difference lies

on their focus. The objectives of the GATS were primarily inspired by the need to reduce or eliminate government made regulations in trade amongst nations. According to Sichei (2009: 13) “the GATS objectives include the following;

- ❖ Creating a credible and reliable system of international trade rules;
- ❖ Ensuring fair and equitable treatment of all participants (principle of non-discrimination);
- ❖ Stimulating economic activity through guaranteed policy bindings; and
- ❖ Promoting trade and development through progressive trade liberalisation”.

According to [www.aic.ly](http://www.aic.ly), “through negotiating rounds, countries choose the sectors and modes of services trade they wish to include in their schedules as well as the limitations to market access and national treatment they wish to maintain. It is only by reference to the individual country schedules that one can know not only the service sector(s) that will be committed, but also the extent of commitment a country is prepared to make. There is no minimum requirement as to its coverage, so that WTO members are free to leave entire sectors out of their GATS commitments, or they may choose to grant market access only in specific sectors, subject to the limitations they wish to maintain. Moreover, governments may limit commitments to one or more of the four recognized modes of supply. Commitments may also be withdrawn or renegotiated”. This means that the ultimate decision or responsibility to liberalise a service sector in a particular country or nation belongs to its government. Nations have the discretion to liberalise or not liberalise certain service sectors under the GATS. The Kenyan government was the signatory to the GATS when its financial industry was liberalised in 1999.

According to Bhagwati (1998: 55) “the GATS divide the delivery of services across borders into four modes of supply: consumption abroad, cross-border delivery, commercial presence and movement of natural persons. Consumption abroad is trade in which the consumer travels abroad to the country where a service supplier is located, as students travel abroad to live and study in another country for a number of months or years”. In this mode, the service consumer will move to another country to obtain a service. Sinclair (2000: 45) posits that “historically, this has been the most common form of international education and the Organization for Economic Cooperation and Development (OECD) estimates that in 1998, 1.31 million foreign tertiary

students were studying in OECD countries”. An example of this mode is Gambian citizens who go to Senegal to seek specialist health services.

According to Snope (1996: 34) “cross border supply is defined to cover services flows from one country into the territory of another country”. Drysdale (1997: 45) defines cross-border delivery as “trade in which the provider and recipient of a service remain in their own countries, such as transnational distance education”. Teachers and students are able to remain in their own countries and communicate through post, fax, and the Internet. Because the educational institution is operating from outside the student’s country, it is difficult for governments to regulate this form of education, and most places there are no restrictions on this form of international education. Governments can only really regulate this form of education through postal or communications regulations, which uncommon. An example of this mode is banking and money transfer institutions such as Western Union operating in Zimbabwe.

Another mode of service supply is commercial presence. Drysdale (1997: 45) defines commercial presence as “trade in which a foreign provider delivers services in the consumers’ country”. An example is in education where a University from another country provides education to another country’s citizens. According to Drysdale (1997: 46) “commercial presence implies that a service supplier of one country establishes a territorial presence, including through ownership or lease of premises in another country to provide a service”. An example of commercial presence mode of service supply is domestic subsidiaries of foreign insurance companies such as Old Mutual in Zimbabwe and flight services organisation called DHL in Zimbabwe.

According to Drysdale (1997: 46) the movement of natural persons refers to “people traveling across national borders to deliver services, such as lecturers traveling abroad to teach students enrolled in a transnational program. These usually take the form of immigration restrictions, which often stipulate the types of foreign workers that are allowed to be brought in by a foreign corporation to provide a service, and the maximum duration of their stay.” Governments are usually motivated by a desire to see their own citizens employed in preference to foreign nationals, whereas multinational organizations value the ability to move their workforce between branches in different countries. In higher education, transnational providers move lecturers and

senior administrative staff between campuses in various countries. Regulations governing the movement of natural persons usually do not differ between sectors of the economy, so employees of educational institutions are often treated in a similar manner to employees in any other service organization by governments that have committed to GATS. An example of this mode is expatriate teachers who came to Zimbabwe soon after the attainment of independence in 1980 and Cuban doctors who also came to Zimbabwe to provide health services.

According to [www.aic.lv](http://www.aic.lv) “the agreement contains a number of general obligations for all services, the most important of which is the Most Favoured Nation (MFN) rule. Apart from these obligations, each member state defines its own obligations through the commitments undertaken in its schedule. Market access and national treatment obligations for instance apply only to the sectors in which a country chooses to make commitments”. An example is that if a country chooses to liberalise the tourism service sector without liberalising the banking sector it means that the country will not apply the GATS obligations of market access and national treatment for its banking sector.

### **3.3 Unconditional Obligations within the General Agreement on Trade in Services (GATS)**

According to Dihel (2009: 33) “unconditional obligations are those that demand total or utmost compliance in the conduct of trade. Such obligations include transparency obligation and the most favoured nation treatment”. These obligations require that once a country adopts them it will dance according to the guidelines which fall under the obligations without any deviations.

#### **3.3.1 Most Favoured Nation (MFN) treatment**

According to [www.aic.lv](http://www.aic.lv) “MFN means treating one’s trading partners equally. members of GATS are supposed to treat each other equally in a non-discriminatory manner. Under GATS, if a country allows foreign competition in a given sector, equal opportunities in that sector should be given to service providers from all other WTO members. This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO and it applies moreover to mutual exclusion treatment”. [www.aic.lv](http://www.aic.lv) gave an “an example that if one country chooses to exclude another country from providing a certain service, all WTO

members should be excluded”. The MFN applies to aims to prohibit bilateral special treatments, whilst promoting multilateral special trade treatment to all the WTO member states. According to Findlay (1998;76) “under article ii of the GATS, members of the WTO are held to extend immediately and unconditionally to services suppliers of all other members treatment no less equal or favourable than that accorded to similar services suppliers of any other country. This in principle, is a prohibition of preferential arrangements among groups of nations or states in individual sectors or of reciprocity provisions, which confine access, benefits to trading partners granting similar treatment”. For example, if a foreign health services provider operates in Kenya under any of the modes of services supply, Kenyan authority is supposed to treat on equal terms and conditions this foreign service provider as any other country’s service provider that has entered Kenya.

### **3.3.2 Transparency**

According to Sinclair (2000: 45) “under the transparency obligation members of the GATS are required to publish all new laws relating to the services sector and to establish national enquiry points that will give all information, about laws and regulations relating to trade. This information may be requested by any other WTO member regarding measures which affect the general application of the GATS agreement”. According to [www.aic.lv](http://www.aic.lv), “inquiry points help foreign companies and governments to obtain information about regulations in any service sector. Moreover governments have to notify the WTO of any changes in regulations that apply to the services that come under specific commitments.” The transparency principle under the GATS simply requires nations to communicate any shifts in their trading policies with their trading partners’, in order to avoid any trade related disturbances amongst states.

### **3.4 Conditional Obligations of the General Agreement on Trade in Services (GATS)**

According to [www.aic.lv](http://www.aic.lv), “conditional obligations apply only to commitments that are listed in national schedules and whose degree and extent is determined by country. Conditional obligations attached to national schedules include market access and national treatment obligations”. The conditional obligations leave room for autonomy or for the application of a country’s trade regulations in certain scenarios in service trade.

### 3.4.1 Market Access

According to Sanger (2001: 47) “market access obligation stipulates that all members of the GATS must be given equal opportunity and chance to enter into any country’s service market, as long as that country is a member of the GATS”. According to Snope (1996: 34) “simply put, market access is the legal right of service provider to supply his or her service through any of the four modes of supply as agreed in the schedule of the country’s commitments (which might contain limitations) and not to be hindered by specific government measures, such as limitations on the number of service suppliers”. According to [www.aic.lv](http://www.aic.lv), “the lists of market access commitments (along with any limitations and exemptions from national treatment) are negotiated as multilateral packages, although bilateral bargaining sessions are needed to develop the packages. The commitments therefore contain the negotiated and guaranteed conditions for conducting international trade in services. If a recorded condition is to be changed for the worse, then the government has to give at least three months’ notice and it has to negotiate compensation with affected countries. But, the commitments can be improved at any time”. Under the market access principle, every nation under the GATS must give equitable access to its service market between foreign and domestic investors. An example is that when Kenya liberalised its tourism industry under the GATS it gave an equal access to all the other members of the WTO to come and invest in its tourism sector.

### 3.4.2 National Treatment

According to [www.aic.lv](http://www.aic.lv), “the national treatment obligation means treating one’s own nationals and foreigners equally. In services, this means that once a foreign company has been allowed to supply a service in one’s country there should be no discrimination between the foreign and local companies. Under GATS, a country only has to apply this principle when it has made a specific commitment to provide foreigners access to its services market. It does not have to apply national treatment in sectors where it has made no commitment. Even in the commitments, GATS does allow some limits on national treatment”. An example is that Kenya made a specific commitment to liberalise various service sectors it to treats equally the foreign service providers

as its very own service providers. If a foreign provider wishes to provide educational programs, they should not be discriminated against in approvals processes such as financial viability tests, quality assurance requirements, or recognition of qualifications. Government cannot discriminate in favour of locally owned or locally based providers. According to Dihel (2009: 33) “by making these commitments under the GATS, the government will not be able to limit the number of educational providers, the number of students they may enroll, the legal form of new entrants (cooperative organisation, for-profit company, statutory organization) or limit foreign ownership of providers”. This erodes the ability of the state to control the growth of the private sector, which is a particular concern in poorer countries in which the public sector educational institutions are unable to meet demand, but private sector growth may fuel inequalities.

### **3.5 Services Trade and Domestic Regulation in Kenya under the General Agreement on Trade on Services (GATS)**

According to [www.cuts-citee.org](http://www.cuts-citee.org), “services have been the most important sector in Kenya’s post-independence economy in terms of employment creation, contribution to gross domestic product (GDP), foreign exchange earnings, foreign direct investment (FDI), productivity growth, regional development, competitiveness and poverty alleviation. The sector’s contribution to GDP increased from 44 percent in 1960 to 60 percent in 2006 while its contribution to employment grew from 49.6 percent in 1970 to 68 percent in 2006”. These statistics help in illustrating the significance of the service sector to the Kenyan economy.

According to [www.cuts-citee.org](http://www.cuts-citee.org), “as a member of World Trade Organisation (WTO), Kenya has largely met its obligation, as specific commitments were made in telecommunications, financial services, tourism and travel-related services and transport services. Further liberalisation in a number of sectors has already taken place beyond what was committed in the previous round of GATS negotiations. In spite of these reforms, the government is still grappling with enforcement problems in a number of sectors that emanate from corporate governance issues within the regulatory agencies. The Kenya Vision 2030 is the new development blueprint covering the period from 2008 to 2030 wherein it recognises the pivotal role of services especially information communication technology (ICT), financial services, education, health, water, environmental services, construction, and research”. The extent of liberalisation that

Kenya is making under the GATS proves that the country is benefiting from adopting its obligations.

### **3.6 Service industry contribution to International Trade under the General Agreement on Trade on Services (GATS) in Kenya**

According to [www.cuts-citee.org](http://www.cuts-citee.org), “Kenya’s trade policy objectives include: moving towards a more open trade regime; strengthening and increasing overseas market access for Kenyan services and further integration into the world economy. These policy objectives have been pursued through unilateral liberalisation and regional and bilateral trade negotiations, in particular within the African region, as well as through its participation in the multilateral trading system at the WTO”. [www.cuts-citee.org](http://www.cuts-citee.org), states that “at the WTO, Kenya aims to ensure that the multilateral trade in services creates market access for services export, which enhances supply capacity and preserves the policy space necessary to address development challenges such as poverty reduction, sustainable economic growth and development; more equitable income distribution; unemployment reduction and full integration into the world economy”. By opening up its service market, Kenya attracted a huge number of foreign investors with more capital. These investors played a pivotal role in reducing unemployment and in contributing to infrastructural development.

According to [www.cuts-citee.org](http://www.cuts-citee.org), “under the GATS, Kenya scheduled three specific ‘horizontal’ commitments regarding commercial presence and movement of natural persons pertaining to all sectors included in its schedule. First, commercial presence entails that foreign service providers incorporate or establish the business locally. Second, Mode 4 is unbound except for measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment. Finally, the employment of foreign natural persons for the implementation of foreign investment shall be agreed by the government of Kenya”. The third horizontal commitment leaves the Kenyan government with the mandate of either accepting or rejecting a foreign service supplier.

[www.cuts-citee.org](http://www.cuts-citee.org), states that “Kenya is a net exporter of services mainly in tourism and has potential to export other services, such as financial, transportation and communication services. Kenya has one of the most developed banking systems in the region and its geographical location

endows it with the potential to provide maritime services to its land-locked neighbours. However, services trade negotiations by Kenya, as with other African countries, are hindered by a lack of capacity to analyse negotiating interests”. The Kenyan authorities fail to consider the long term side effects of liberalising their service market. The sovereign right of the Kenyan government to safeguard and assist infant industries is restricted under the GATS.

### **3.7 Information Communications Technology (ICT) under the General Agreement on Trade on Services (GATS) in Kenya**

According to [www.cuts-citee.org](http://www.cuts-citee.org), “ICT is an important sector in Kenya since it contributes to employment and income creation. It is one of the fastest growing sectors in Kenya though it still faces challenges in harnessing economic growth and reducing poverty, which include lack of comprehensive policy and regulatory frameworks, inadequate infrastructure, insufficient skilled human resources and inadequate access to ICT services especially in the rural areas where most Kenyan live”. CUTS International (2008:2) wrote that “as a WTO member, Kenya made commitments in all five areas of telecommunication services. It also inscribed the disciplines in the reference paper and in the Global Mobile Personal Communications by Satellite Memorandum of Understanding (GMPCS-MoU) into her schedule”. This means that in line with the GATS agreement Kenya liberalised its ICT sector.

According to [www.cuts-citee.org](http://www.cuts-citee.org), “the current communications regulatory regime in Kenya is far much more liberal than the commitments made in 1999. For instance, in terms of Mode 3 foreign firms that want to establish business in Kenya can own up to a maximum of 70 percent equity shareholding in telecommunications sector”. [www.cuts-citee.org](http://www.cuts-citee.org), wrote that “the existing regulations administered by the Communications Commission of Kenya (CCK) largely comply with the core principles of the reference paper, namely: CCK’s independence from telecommunications suppliers and government; the need for CCK to provide safeguards to prevent anti-competitive practices especially by Telkom Kenya and Postal Corporation; the existence of procedures for interconnection negotiations; and dispute settlement, universal access, procedures for allocation and use of scarce resources”. Kenya intensively liberalised its ICT sector to an extent of giving more power to foreigners than local entrepreneurs in the sector.

### **3.8 Financial Services**

According to [www.cuts-citee.org](http://www.cuts-citee.org), “the financial sector in Kenya comprises banking and other financial services and all insurance and insurance-related services”.

### 3.8.1 Banking Services

According to [www.cuts-citee.org](http://www.cuts-citee.org), “the banking sector is regulated and supervised by the Central Bank of Kenya (CBK). Organisations such as the Kenya Bankers Association and the Kenya Institute of Bankers play a critical role in regulating the banking industry in Kenya”. [www.cuts-citee.org](http://www.cuts-citee.org), states that “the European Union (EU) was of the view that Kenya has committed this sector only partially as the trading of negotiable instruments and other financial assets, underwriting of securities, money broking, pension fund management, settlement and clearing services, while provision and transfer of financial information are not covered in the schedule. However, Kenya has emphasised the need to develop a strong and transparent regulatory regime before undertaking further liberalisation of the banking industry within the GATS framework”. Within the banking sector the Kenyan government has realised the significance developing a regulatory system which ensures that Kenya remains with some form of power to determine the fate of its banking system.

### 3.9 Tourism and Travel Related Services

According to [www.cuts-citee.org](http://www.cuts-citee.org), “ before its ratification of the GATS in 1995 Kenya’s tourism sector has generally been open. This was reflected in the presence of non-discriminatory policies such as free repatriation of profits, ease in issuance of visitors and work permits. However liberalisation under the GATS resulted in the emergence of a tourism sector that is heavily dominated by foreign investors”. According to [www.cuts-citee.org](http://www.cuts-citee.org), “Kenya made commitments in all sectors of tourism (hotels and restaurants, travel agencies and tour operator’s services and tourist guides services)”. This means that tourism is one of the sectors of Kenyan economy that were fully liberalised in line with the GATS recommendations.

### 3.10 Conclusion

When Kenya ratified the GATS, it liberalised its services market in line with the GATS recommendations. The country liberalised its tourism, ICT, banking and educational sectors of its economy.

Developing countries under the realm of the GATS have encountered a number of problems that revolve around the fundamental issues of state sovereignty and autonomy in decision making on issues that have something to do with service provision. The GATS has widely criticized for empowering Multinational National Corporations (MNCs), a development that has led to countries failing to protect local service providers from hostile and stiff foreign competition. Thus, from the above analysis, it can be concluded that GATS is a creation that enables the realisation or fulfillment of the interests of developed states in the context of global service provision.

## **CHAPTER FOUR**

### **THE EFFECTS OF THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) ON KENYA**

#### **4.0 Introduction**

The GATS has brought with it challenges as well as benefits on Kenya as a nation. Kenya is amongst the 125 out of the WTO's 148 member countries that made various service commitments under the GATS, which include tourism and financial liberalisation commitments. The effects of the GATS on Kenya range from economic, social environmental and political factors.

#### **4.1 Effects of adapting the GATS recommendations on Kenya**

According to Dick (2011: 23) “since the adoption of the GATS resolutions the services sector in 1994 Kenya has experienced a significant growth and contributes tremendously to the GDP, thus making it the most important sector in terms of revenue earnings to the government. In 2001, the service sector’s contribution to the country’s gross domestic product and wage employment was higher than that of either agriculture or manufacturing. Dick (2011: 23) notes that the sector’s contribution to the GDP in 1997, for instance, was 44% relative to agriculture’s 38% and industry’s 18%. The sector’s contribution, moreover, has steadily grown over time. Thus, for instance, its share in GDP had risen to 52% in 2004 and to 59% by 2011. In 2012, the service sector currently contributes 63 per cent of Kenya’s GDP, with a corresponding 68 per cent of employment creation. Agriculture and industry are at 24 and 17 per cent respectively”. This illustrates that the adoption of the GATS by Kenya in 1994 rejuvenised the performance of the country’s service sector.

According to Odhiambo (2005:13) “the adoption of the GATS by Kenya in 1994 the service sector became a major source of employment in the country in 1997 the sector accounted for 55% of total wage employment; which increased to 61% in 2004”. With regard to exports, the sector accounted, on average, for over 50% of foreign exchange inflows and about 33% of the outflows per year in the country’s current account for most of the period between 2004 and 2011. Trade liberalization did well for the services sector as with a more open economy, and deregulation of foreign exchange controls services sector was able to attract more Foreign Direct Investments (FDI) than any other sectors including the Banking and Insurance”. The *Guardian* (7 January 2012) reported that in 2012, “the service sector currently contributes 63 per cent of Kenya’s GDP, with a corresponding 68 per cent of employment creation. Agriculture and industry are at 24 and 17 per cent respectively”. The liberalisation of the service market in Kenya witnessed an increasing number of foreign investors who took advantage of the liberal policies of Kenya and invested in that country.

#### **4.1.1 Effects of liberalising the financial sector under the General Agreement on Trade in Services (GATS)**

Nyangito (2000:23) elaborates that, “Kenya specifically made commitments under the GATS on financial services in 1999. The commitments were made in banking and insurance sub sectors of

the Kenyan economy. The financial sector in Kenya has a lot of private sector participation both local and foreign. In the banking sector, the Government, however, still owns shares in National Bank and Kenya Commercial Bank. The Banking Act, Central Bank Act, the Insurance Regulatory Authority and the Capital markets Authority regulate the financial sector”. This means in Kenya the banking sector has not fully liberalised as the government still exercises some form of control through the National Bank and a number of regulations.

According to [www.wto.org](http://www.wto.org), “in Kenya, liberalisation for foreign banks under the GATS increased their presence from 5% before 1980 (when policies were restrictive) to 76% in 2002”. [www.wto.org](http://www.wto.org), also wrote that “in Sub-Saharan experience of increased foreign participation in the domestic banking sector to date has shown such benefits as improved quality, pricing and supply of financial services and in risk management, accounting and transparency as well as increased competition”. According to Bruno (1999:34) “the World Bank (WB), revealed that the entry of foreign banks results in the spread of better lending techniques, so that small borrowers gain new access to financing and to a greater diversity of financial products and allocation of capital, which stimulates the economy”. This means that the availability of both locally owned and foreign financial institutions increases the prospects of credit facilities. This is because in such an economy competition amongst banks is very high because of their numerous numbers, so these banks will offer loans at reduced rates in order to increase their competitive edge in the market.

The arguments put forward by [www.wto.org](http://www.wto.org), “in favour of adopting the GATS, recommendations on liberalising the banking sector in Kenya include the following:

- ❖ reduction in overhead expenses and profit-taking by domestic banks due to increased competition by foreign banks;
- ❖ increased efficiency and diversity of financial services;
- ❖ Spill-over effects of foreign bank entry, such as the introduction of new financial services and of modern and more efficient banking techniques and the improvement of domestic bank management;

- ❖ improvement in bank regulation and supervision due to the entry of new financial service providers and new financial services;
- ❖ less interference by governments in the financial sector, to cover up bad practices;
- ❖ training by foreign banks, resulting in more experienced personnel in the financial sector of a country;
- ❖ the presence of foreign banks stimulates domestic investment in the host countries;
- ❖ foreign banks may attract (other) foreign direct investments and enhance a country's access to international capital;
- ❖ well capitalised foreign banks may be able and willing to keep lending to domestic firms during adverse economic conditions, while domestic banks would probably reduce the credit supply;
- ❖ foreign bank entry leads to better lending terms (lower interest rates, lower fees, longer maturities) for all but larger firms”.

However in as much as Kenya has benefited from liberalising its banking service industry it also has encountered a number of drawbacks. According to Stamp (2003:34) “foreign banks or financial institutions use their financial power, huge capital bases and their international status to focus or to gain access to the most lucrative transactions (“cherry-picking”) in Kenya. The bank’s target those individuals or institutions that are already rich. Stringent conditions are put in place by the foreign banks on those who would want to do business with them”. The conditions will only be attractive to big and rich organisations. For instance if a company requires loan from one of these foreign banks the nature of collateral assurance the bank imposes as a pre-requisite for a transaction to be initiated are very stringent especially for small to medium enterprises in Kenya. This was the case in Zimbabwe when small-resettled farmers failed to access loans from some of the foreign banks because they did not possess title deeds for the farms that they were occupying. The Zimbabwean government had to intervene and provide inputs for its resettled farmers.

According to [www.wto.org](http://www.wto.org), “complete liberalising the banking sector under the GATS recommendations can lead to domination of a country’s banking sector by foreign banking institutions. Foreign banking and financial institutions can out-compete locally owned banks in smaller countries because they can recover their high set-up costs from profitable operations in other countries around the world”. This is because in countries like Zimbabwe foreign banks such the Standard Chartered bank managed to survive the economic instability the country faced from the year 2000 to about 2008. [www.wto.org](http://www.wto.org) also wrote that “dominance by foreign banks makes these countries vulnerable to strategies of financial conglomerates, which leave the country when profits decline and make it more difficult for the authorities to monitor the financial system”. This was illustrated in Kenya when foreign banks formed a cartel that fixed high interest rates, which resulted in high costs for the consumers and the economy. Moreover, the question as to how profits are to be reinvested in the country remains unanswered, as GATS Article XI forbids a restriction on the transfer of profits. During the decade of economic instability in Zimbabwe, banks such as Time Bank and Intermarket were forced to close whilst foreign banks such as Barclays and Standard Chartered bank survived the crisis due to their international status.

According to [www.wto.org](http://www.wto.org), “during the previous GATS negotiations, Kenya agreed to liberalize its financial services without fully realising that it was also subjecting the health insurance sector to the GATS rules. Article XVI of the GATS prohibits governments from taking six specific kinds of measures to place limitations on companies, such as restricting the number of service suppliers”. [www.wto.org](http://www.wto.org) also wrote that, “during the 1999 GATS negotiations, the Kenyan government could have reserved the right to impose a universal service requirement for foreign insurers only, but did not do so”. [www.wto.org](http://www.wto.org) added that “according to the GATS principle of non-discrimination and national treatment (Article XVII), if the Kenyan government wants foreign companies to insure the poor and vulnerable (HIV-positive or terminal), it must also set the same requirement for Kenya-based insurers”. This means that under the GATS both domestic and foreign service suppliers must or are entitle to receive equal regulatory and fiscal treatment in that particular country.

According to [www.wto.org](http://www.wto.org), “cherry picking and market segmentation is undermining poverty eradication as foreign financial firms are hardly interested to expand their services to the poor. As was researched in Kenya, the situation is similar for foreign health insurance companies. These companies tailor their services to the wealthy city-dwellers who are already able to pay their hospital bills. They charge high premiums, unaffordable to poor patients. They refuse to accept patients who suffer from illnesses such as HIV/AIDS. This is in sharp contrast to the government’s public health insurance system, which is obligated to accept all patients”. This shows that poverty eradication in Kenya will be an uphill task for the Kenyan government because of the absence of partners such as banks.

Omiti (2005: 29) postulates that, “a two-tiered system with higher quality being accorded to foreign patients alongside rich domestic patients is one distinct offspring of the liberalisation of healthcare under the GATS”. In Kenya, the “commercial presence” of foreign health providers attracts a substantial number of patients from the East African region especially from countries that are not politically stable hence, pushing poor Kenyans who cannot afford to pay for these services to the periphery. When the business is good and foreigners jam specific hospitals, then the local patients get a raw deal. Incidents abound where patients have been transferred to public hospitals from private hospitals before completing treatment where ability to settle bills is in doubt. According to an official from the Kenyan Embassy in Harare, Zimbabwe, “the fate of such poor patients is sealed when wealthier patients probably from warring neighbouring countries are ready to occupy such hospital beds instead. It is prudent from a business point of view for the hospitals to allocate space to those who are able to pay no matter their nationality”. The presence of foreign patients in Kenyan hospitals increases the demand for health services. An increase in demand resultantly leads to an increase in price. An increased price for health services means that the poor will no longer afford such services.

The arguments put forward by [www.wto.org](http://www.wto.org) “against adopting the GATS recommendations on liberalising the banking sector in Kenya are as follows:

- ❖ domestic banks are not able to cope with increased competition, and may stop operating, which can cause disruptions and political concerns about increased foreign control of the financial market;

- ❖ trying to cope with increased competition from the foreign banks and implementing new techniques may raise costs for local banks in the short term, which they would then finance by raising their profit margins, in turn leading to price increases for consumers;
- ❖ foreign banks get higher interest margins;
- ❖ foreign banks entry into the market of loans to corporations does not decrease the margins and profits in the personal loan market;
- ❖ foreign banks will not provide additional credit during an economic downturn in a host country;
- ❖ foreign banks will leave the country when the profitability is too low, which can undermine stability in financial services;
- ❖ changes in economic conditions in the foreign bank's home country may have a negative effect on bank activity in the local market;
- ❖ foreign banks only provide credit to large and often foreign-owned (multinational) firms, and tend to lend less to small firms and poor consumers;
- ❖ domestic supervisory and monetary authorities often fear that their influence on banks' behaviour may diminish as the authorities of the home country do supervision of foreign banks".

According to Otieno (2002:56)“ foreign service providers who have the capacity to reward attractive salaries to their employees have got an advantage of attractive the best human resources as compared to local service providers. In Kenya, domestic banks are losing their executives and key personnel to foreign banks with attractive pay structures. These developments have resulted in the deficiency of experienced and an intellectually advanced personnel for domestic banks and further undermines the swift development and improvement of these local banks”. Information obtained from the Kenyan Embassy also disclosed that “the brain drain problem has also been affecting the liberalised health sector in Kenya whereby medical personnel are moving out of the country to seek greener pastures in other countries. Private foreign hospitals in Kenya have not helped in solving the problem of brain drain, despite the fact

that they remunerate their staff slightly better than public health institutions. Many of the private hospitals are accused of not remunerating local staff on equal terms with foreign staff, yet working in the same environment and having equivalent qualifications. The health professionals have gone to other countries to look for better job prospects. In Botswana, it is estimated that currently they are more than 300 Kenyan health professionals”. There is a definite need to look into the welfare of the medical professionals and remunerate them appropriately. This will retain them to offer the needed service to the community.

According to Ronge (2005:37)“the negotiations on financial service completely failed to address issues of increased access and quality of financial services for consumers, especially poorer ones and the necessary contribution by the financial sector to socially and environmentally sustainable development”. Ronge (2005:37) argues that “foreign financial services (banks and health insurance) tend to focus on the rich, which has a negative distributional effect, not only in Kenya but also internationally, when profits made after providing services to rich clients in developing countries are repatriated back to their home countries in the developed world”. Therefore, negotiations in GATS especially relating to financial services should be worked out for international cooperation that makes financial services at the service of the poor and sustainable development.

#### **4.1.2 Effects of liberalising the Tourism sector under the General Agreement on Trade in Services (GATS) on Kenya**

Akama (2002:44) write that “as shown in Kenya’s GATS schedule of specific commitments of 15 April 1994 the country committed itself to all the tourism and travel-related services: hotels and restaurants (including catering services), travel agencies and tours operators and tourist guide services. There are hardly any significant barriers, regardless of mode of supply, to foreign supply of tourism services in the country. The only limitations are with respect to Mode 4 on movement of natural persons (all tourism services) and Mode 1 (hotels, restaurants and catering services). Being desirous of attracting more investment in tourism, Kenya does not have restrictions on any of the following: equity holdings, form of doing business, and limitation on purchase and size limitations for establishments. It also does not have unspecified economic needs tests. In fact, the Government offers some investment incentives such as import duty waiver on hotel construction equipment, profit repatriation and tax holidays. The extent of

liberalization of the sector is evident from the fact that, within the GATS 2000 negotiations, only the United States (US) requested Kenya to make further commitments in the sector”. The above analysis shows that Kenya completely liberalised its tourism industry.

According to Dick (2011: 65) “Kenya has a comparative advantage in the tourist sector that has been built through the private sector with a lot of tourist facilities. Following liberalisation of the foreign exchange controls under the GATS in 1994, the sector picked up quite well and has been a major source of employment and government revenue. Thus in the year ending 2004, tourist earnings increased by 51.9 percent. This was also accompanied with increased employment in the tourist sector, which has helped boost the economy as well as provide much needed income”. This shows that the commitments on tourism that Kenya made under the GATS positively contributed to the viability of the sector.

Kamau (2004:33) postulates that, “the many years of favorable policy environment for foreign investors in Kenya are evidenced by the strong foreign presence in the sector. About 80 per cent of all tourists who visited Kenya in 1999–2007 were attributable to foreign tour operators; a significant share of the major hotels at the coast and in Nairobi, national parks and reserves have some foreign investment, although less than 20 per cent of them are entirely foreign owned”. The deregulation or the removal of restrictions on the tourism industry by the Kenyan government in line with its GATS commitments attracted a lot of foreign investors.

According to Ikiara (2003:54), “tourism is part of a global complex network of economic, social, racial, legal and cultural relations’ with impacts on indigenous rights. A key foundation of the liberalisation under the auspices of the GATS was overall privatisation and in the case of tourism, the privatization of tourist attractions. Privatization of such attractions in Kenya resulted in the alienation from land and the subsequent displacement of groups of people from desired sites within these countries”. These issues of population displacement as a result of tourism was also witnessed in Botswana where the indigenous bushman populations were displaced from a part of the Kalahari Desert for tourism purposes. The situation was just unfair on the part of the bushman populations because the area they were occupying in the Kalahari Desert had an oasis and that oasis is the one that attracted investors who displaced them.

“The liberalisation of tourism in Kenya under the GATS witnessed an unsustainable growth in the tourism industry of Kenya,” as revealed by UNCTAD (2004: 73). According to UNCTAD (2004: 74) “the Masai Mara National Reserve lies in Narok district of Kenya, South-Western Kenya bordering Serengeti National Park, on the Tanzania border and covering 1510 square kilometers. The park was declared a World Heritage Site in 1989 and the original objective was to protect and preserve the region’s wildlife. The Maasai Mara Park receives not only the largest number of visitors in Kenya but also in East Africa of around 200,000 a year. The number of permanent hotels or lodges increased from one in 1965 to 25 in 1997 and the number of vehicles from two to 355 in the same period. Damage to the region’s wildlife and their habitat has been a combination of increased human presence and pressure and the increased infrastructure activities in the region to support tourism. Resorts, roads, camping facilities on the one hand, and poor sewage and garbage disposal practices on the other have a combined disastrous effect on the biodiversity. Interference with the breeding grounds of the zebra and the wildebeest has disrupted migration patterns that used to follow an annual cycle between the Maasai Mara and Serengeti Game Reserves. Encroachments from agriculture, poaching and competition among wildlife together resulted in a 81% and 50% decline in wildebeest and zebra populations respectively between 1995 and 2008 in Maasai Mara. Animal behaviour in the region has been affected to such a large extent that the beasts are now turning to attack the livestock of farmers and ranchers in the neighboring villages. The harmonious co-existence that once characterised the region has been replaced by fear and enmity between man and animal”. This means that in as much as the growth of the tourism sector in Kenya has brought with it an array of advantages it also has resulted in negative results affecting the environment and society in Kenya.

According to UNCTAD (2004: 74) “the promotion of nature-based tourism in East African countries led to the creation of several protected areas, exclusively meant to promote the wildlife interests of the tourists. Little attention has been paid to the fact that these protected areas were once the cultivation and grazing lands of thousands of Maasai and other indigenous people whose livelihoods have been sacrificed to sustain the country’s tourism industry. Six out of Kenya’s many national parks covering 13,000 square kilometres of what once used to be Maasai land”. Nyandemo (2007:73) wrote that “a Maasai leader, Edward ole Mbarnoti said,

“land is not just a resource but also a symbol of economic and cultural identity of the Maasai people”. Mbarnoti went on to say that, the Maasai people who have preserved this priceless heritage or tourist sites in their land. Thus according to Mbarnoti the Massai must not be pushed off their land for the financial convenience of commercial hunters and hotel-keepers. Mbarnoti also said that the Massai must not be forced to live only by the rules and regulations of zoologists”.

Nyandemo (2007:73) postulates, “the link between biodiversity and tourism is historic and particularly strong in Kenya”. According to Nyandemo (2007:73) “Kenya has 386 protected areas out of which there are 22 National parks, 5 National Marine Parks, 203 Forest Reserves, 5 Biosphere Preserves and 1 Game Reserve. Although the number of protected areas is large, tourism activities have tended to concentrate on few parks only, causing high congestion. Six out of the country’s 57 parks accommodated 70% of all park visitors in 2004 while the top 15 accommodated 96.1% of all visitors. Furthermore, a 1973-74 study of Kenya’s Amboseli National Park indicated that 80% of all vehicular movement occurred in 4% of the 390 square kilometer park. Such concentrated tourism activity and vehicular movement has had a deep impact on the region’s biodiversity by causing loss in forest-cover, degradation of grasslands and drastic changes in wildlife behavior patterns”. This shows that the liberalisation of tourist markets under the GATS has negatively affected Kenya as a nation through congestion.

According to McCormick (2001:34) “the liberalisation of the tourist market under the GATS in Kenya also created other problems emanating from activities associated with the tourism sector in the national parks which include scavenging by animals near garbage dumps created by the tourists that could place the lives of the tourist in danger tourists. The other problem resulting from the high tourist concentration include landscape degradation from extensive off-road driving, overuse of resources and spread of viruses and bacteria brought by tourists in remote areas”. An increasing large number of tourists arriving in Kenya is now exceeding the carrying capacity of Kenya’s tourists resorts thus leading to an array of negative consequences.

According to Doreen (2001:65) “the nature of environmental impacts of the GATS prevalent in Kenya’s protected areas begs the need for an immediate halt to unregulated tourism in

Kenya. However, the nature of commitments undertaken in the GATS for tourism may not permit such regulation.” Doreen (2001:65) postulates that “Kenya has more or less completely liberalised its tourism market by undertaking commitments under all three sub-sectors with no limitations being placed on Market Access or National Treatment under Modes 2 and 3; thereby committing not to limit the number of hotels and restaurants, travel agents and tour operators that operate in all parts of the country, including its protected areas. The consequences of this on its already congested parks and coasts would deepen the problem, worsened by poor domestic regulation in the country. Therefore in this case it would not be an overstatement to say that the country’s commitments under the GATS will jeopardise conservation attempts and are therefore a grave cause for concern”. The commitments Kenya made in the GATS under the tourism sector did not consider the side effects that would result from their implementation.

Nyandemo (2007:73) discloses that “this increasing human-wildlife conflict is a growing dilemma in Kenya and will have to be sorted out judiciously so that the sustainability of human and animal life is ensured. Ensuring basic land rights to local communities was made complicated and difficult with the opening-up of the tourism market through the GATS”. According to Nyandemo (2007:73) “access to land is directly affected by Mode 3 commitments under the GATS, which permit foreign investors to set up a commercial enterprise in the territory of another country. By placing no limitations on this market access right of foreign enterprises, governments might not be able to ensure basic access rights of its own people to the land. For instance, if the Kenyan government chooses to prohibit the setting up of a foreign tourism enterprise in any region of the country as it might displace the local populace, such a decision is liable to be challenged at the WTO for violating GATS commitments that do not limit market access.” According to Bruno (1999:37) “Tanzania has done better by permitting only four-star and higher category of hotels to invest commercially in its territory and making acquisition of land by foreign investors subject to approval. nevertheless, this might be currently insufficient, keeping in mind the EU’s specific request to Tanzania to extensively commit in other sub-sectors under Modes 2 and 3”. This proves that before ratifying some of these sovereign threatening international agreements governments of less economically developed countries must weigh their pros and cons.

The liberalisation of the tourism market under the GATS is now further exacerbating the water situation in Kenya. According to Madulu (2011: 87) “the current water situation is worrisome and the status seems to be worst in Kenya. The average Kenyan receives 647 cubic metres of water every year, much below that of neighbouring Tanzania where the average person receives 3000 cubic metres and the average Ugandan 2000 cubic metres of water per year”. Madulu (2011; 87) writes “Kenya’s statistic is also below the international standard of 1000 cubic metres of water per year; the UNDP’s (United Nations Development Programme) Human Development Index states that only 47% of the country’s population has access to drinking water that is deemed fit or safe for human consumption”. According to Madulu (2011; 87) “the tourism industry has intensified the water crisis in the Kenya in two important ways. Firstly, tourism establishments that are located near sources of fresh water like Lake Nakuru and due to poor sewage disposal mechanisms are responsible for polluting the water. Secondly, the tourism industry consumes reckless amounts of water by providing tourists with 24-hour water facility and swimming pools when the rest of the country is parched. It is estimated that the average tourist in Kenya consumes four times more water daily than a local person”. This means increased tourist activities as a result of liberalisation are leading to pressure and strain on resources.

According to Ronge (2005:34)“within the GATS, countries can take initiatives to conserve precious resources like water or energy only by explicitly limiting the number of service providers permitted to operate in a country experiencing resource shortages. Kenya’s GATS commitments under tourism do not do this and requests to undertake extensive commitments under Environmental Services are an invitation to the corporate lobbies of Europe to monopolise regional water resources”. This explains why, while examining the impacts of the GATS, the scope of analysis must be widened to consider commitments made under other service sectors (like environmental services). This means that government must not make commitment without taking note of the plight or likely consequences of their commitments on their citizens.

According to the UNDP (2002:32) “the once-held perception that tourism is an environmentally friendly and is a smokeless industry is fast fading. Among the adverse

impacts that tourism can have on the Kenyan environment, the Convention on Biological Diversity makes definite mention of deterioration in water quality, generation and disposal of sewage and waste water, chemical wastes, solid wastes, greenhouse gases and noise”. According to Kareithi (2007:67), “in Kenya, pollution within protected areas due to the poor waste management mechanisms of hotels and resorts has resulted in considerable loss to the environment. For example, none of the hotels located within national parks have proper mechanisms to dispose generator oil. In another instance, raw sewage directed into Lake Nakuru, from the Nakuru National Park has resulted in the death of flamingos due to substantial damage to the water quality”.

According to Akama (2002:45) “the coastal belts of Kenya where beach tourism flourishes, provides a strong illustration of the high levels of water pollution that is directly attributable to the tourism industry. In Kenya, the coastal towns of Malindi, Watamu and Diani located in the district of Mombasa are the most popular coastal destinations”. Akama (2002:45) wrote that “Mombasa district, which houses all three Kenyan towns, has 7600 beds from all the beach hotels located there. Dumping of wastes directly into the ocean by hotels has resulted in the disappearance of active corals even in a place like Diani, which is regulated”. Liberalisation of the tourism sector is having these negative consequences on the environment because these resorts centres are exceeding their carrying capacity thus leading to pollution.

According to Nyangito (2011:45) “water pollution statistics attributable directly to the hotel industry in Kenya indicate the following degree of effluent disposal.

- ❖ Biological Oxygen Demands. 100 tonnes a year
- ❖ Suspended Solids . 85.4 tonnes a year
- ❖ Nitrogen . 17.5 tonnes per year
- ❖ Phosphorous . 21.1 tonnes per year”.

Dick (2011:34) wrote that, “an important feature of Kenya’s tourism is its heavy reliance on international tourism as opposed to domestic tourism. Indeed, the tourism infrastructure and service is generally aligned to the European market and is not sufficiently attractive to domestic tourists who find even the food “foreign.” Dick (2011:34) gives an example, that the proportion

of guest nights occupied by domestic tourists dropped from 20.2 per cent in 2004 to about 13.6 per cent in 2009". This illustrates the negative consequences of the adoption of the GATS recommendations on tourism in Kenya whereby the resorts centres are modeled to suit the needs of foreigners at the expense of the domestic people.

According to Nyandemo (2007:73) of great concern, though, is the implication of committing tourist guide services under the GATS guidelines. It means that foreign tour guides, some of whom have little or no knowledge of the country, can come in and seek work permits to offer this service". This has led to not only a deterioration in tour guide service provision, but also to allowing competition from foreigners for a service Kenyans have the capacity to supply.

According to Ronge (2005:38), Kenya has not fully benefited from liberalising its tourism market under the GATS because of leakage of funds out of Kenya that would have been obtained from the industry. Through its relatively high multiplier effect, tourism has stimulated the development of other economic sectors in the Kenya. Thus, agriculture, transport, manufacturing, building and construction, and curio industry, among others, have been stimulated by tourism growth. Testimony to this is the relatively reasonable level of leakage of tourism revenue from the country. Tourism earnings leak out through imports of goods and services consumed by tourists, salaries for expatriate employees, repatriation of profits, and transport services offered by foreign suppliers". Thus, liberalisation tends to promote the foreign service providers at the expense of local service providers. Repatriation of profits by foreign service providers acts against the principle of giving back to the society as a social responsibility move.

Another considerable effect of the GATS on Kenya is the market domination by large integrated suppliers. According to Odhiambo (2005:43), "world tourism is characterised by increasing anti-competitive and predatory behaviour from dominant, integrated suppliers in the originating tourist markets. These dominant players, with superior supply capacity, are found in all segments of tourism including transport, tours, travel agency and hotels. Thus, more than 60 per cent of tour packages are sold by integrated suppliers in Europe, which are able to bypass local tour operators and to exact enormous discount rates on accommodation and other tourism services.

Other ways in which competition is affected include discriminatory use of information networks, predatory pricing, allocation of scarce resources and ancillary services to air transport, exclusivity clauses in favour of the dominant suppliers and refusal to deal, and tied sales, among many others. These anti-competitive practices constitute a considerable obstacle for Kenyan tourism. Big tour operators or travel agents, as in Germany, for example, use their might to squeeze margins from Kenyan hotels”. Currently, GATS does not deal with the problem of anti-competitive practices in tourism, yet developing countries such as Kenya require safeguards to protect their domestic industries against these large integrated suppliers.

The adoption of certain GATS recommendations can lead to the violation of certain human right. According to Ronge (2005:38) “although it might be a complex affair to pinpoint the specific verses in GATS text that are in conflict with economic, social and cultural human rights, it is appropriate to highlight some parts of this text that may lead to, or encourage contravention of human rights. Slight mistakes that a country like Kenya makes while scheduling its specific commitments to liberalise services can be very costly if they affect the enjoyment of human rights or when the citizens demand that they be rectified. **Article XXI** of GATS is punitive to say the least. Once a country has committed a specific service in its schedule, it is designed to stay that very permanently. Measures to amend any kind of past mistakes through compensation to the affected parties “shall be made on a most favored nation basis” meaning, compensate one compensate all. The very thought to “modify or withdraw” a commitment is strangled in its nascent form through such GATS clauses. The latter also stipulate that the process to make modifications can only start three years after the commitment entered into force”. Low-income countries such as Kenya cannot take measures to amend commitments, even when the populace demands so or need it to have their economic, social and cultural human rights be respected.

## 4.2 CONCLUSIONS

The consequence of liberalising trade in services under the GATS has been two sided for Kenya. The liberalisation of the financial sector in Kenya led to the increase in foreign investors in its banking sector, but the position of the poor failed to improve. Liberalisation of the tourism sector led to the upgrading of the industry’s output and contribution to the country’s GDP, but the

increase in tourism activities also has led to the displacement of local populations and environmental degradation.

The process of reversing commitments already made within GATS is time-consuming, costly and difficult. It would require renegotiations that could take at least 90 days and commitment of other services as compensation for the reversal. This high cost of making a mistake has made the Government and the private sector hesitant to make new commitments without thorough analysis of the likely implications. Therefore, countries must negotiate cautiously to ensure that domestic regulations to safeguard the environment that have been put in place have not been invalidated by their commitments under the GATS.

## **CHAPTER 5**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 Introduction**

The purpose of this chapter is to present summary of findings from the research study. The research topic reads the effects of the General Agreement on Trade in Services (GATS) on Kenya.

#### **5.2 Conclusions**

The research study concludes that the effects of the GATS on Kenya have been two folded. The adaptation of the GATS led to a significant growth in the service sector of Kenya. However, the growth in the service of Kenya as a result of adopting the GATS recommendations did not only bring with it benefits but it also brought negative consequences.

According to the Central Bureau of Statistics of Kenya (2012:16) “in 1960, services contributed only 44% of Kenya’s GDP, while in 2012 services are estimated to be contributing about 60% of its GDP. In regard to employment, its share was about 49.6% in 1997 while in 2012 services contribution is estimated to be about 68%. The services sector has always had an overall surplus in the current account of the country’s balance of payments. The most important sectors for export in Kenya over the years have been tourism, transport, travel, communication, insurance, royalties and licenses and fees, other business.” These statistics from the Central Bureau of Statistics of Kenya proves a point that Kenyan economy benefited from liberalising the services industry in conjunction with the GATS resolutions. Further liberalisation is likely to increase efficiency, economies of scale and technology transfer from developed to developing countries,

as well as increasing the degree of integration into world markets and improving consumer choice and standards.

However, in the face of all these benefits, Kenya like other developing countries has also been negatively affected by liberalising the country's service sector in compliance with the GATS. After the adaptation of the GATS domestic service providers in Kenya have not been able to cope with increased foreign competition and some have even stopped operating. This has resulted in disruptions on service provision and political tensions in Kenya. Adoption of the GATS resolutions opened doors for more foreign investors to invest in the service industry of Kenya, thereby weakening underfunded indigenous service providers who would have lacked the capacity to withstand foreign competition, which will also be unveiling first class, expensive and efficient technical capacity.

Chanda (2008: 12) wrote that there are several criticisms that have been leveled at the GATS in Kenya, mostly by non-governmental organizations and consumer and public interest groups. These concerns are highly interrelated and mostly center around issues of national autonomy and sovereignty, the likely adverse effects of liberalising services, and the tradeoff between commercial interests and efficiency type considerations on one hand and social, developmental, and equity goals on the other. The government is agreeing not to limit the number of providers, the number of students they may enroll the legal form of new entrants (cooperative organization, for-profit company, statutory organization) or limit foreign ownership of providers. This erodes the ability of the state to control the growth of the private sector, which is a particular concern in poorer countries in which the public sector educational institutions are unable to meet demand, but private sector growth may fuel inequalities. When governments commit to GATS' national treatment provisions, they agree to treat foreign providers no worse than the way they treat domestic providers. If a foreign provider wishes to provide educational programs, they should not be discriminated against in approvals processes, financial viability tests, quality assurance requirements, or recognition of qualifications. Government cannot discriminate in favor of locally owned or locally based providers. This exposes infant industries to premature extinction. A relatively small number of companies, in developing countries, are large enough to take advantage of the opportunities offered for worldwide expansion. In Kenya, further liberalisation would accentuate the existing trend towards larger distribution outlets, particularly those owned

by foreign companies. Not only would this have consequences in the closure of many smaller shops, with employment and environmental consequences, it would require the abolition of a number of measures specific to Kenya, which are designed to protect the position of poorer people, disadvantaged minorities and the environment.

The analysis in this study shows that for developing countries in general, further liberalisation is likely to have economic and social impacts as follows. These may be either positive or negative, according to context:

- ❖ Altered balance between the shares of larger and smaller establishments in both the wholesale and retail sectors, with an increase in the numbers of larger outlets and a consequent change in the balance of ownership and of proportions of employment;
- ❖ Significant effects on employment (loss of jobs in older and smaller outlets, fewer but better-paid jobs in newer large shops and better working conditions);
- ❖ The higher quality and employment standards of larger incoming distributors will tend to raise standards in distribution generally;
- ❖ Reduced outlets for indigenous products and traditional methods;
- ❖ In response to perceived impacts, governments may be stimulated to look for GATS-compatible ways of screening inward investments.

In developing countries, further liberalisation will have more discernible and potentially adverse, environmental effects, though these are likely to be indirect. There could be:

- ❖ increased pressure on land use from new construction in certain (chiefly urban) areas;
- ❖ increase in pollution resulting from more intensive transport activity caused by larger-scale distribution outlets and from activities such as the breaking of bulk into smaller lots and the disposal of packaging and of toxic materials used in equipment;
- ❖ more intensive agricultural production methods involving increased use of fertilizers and biocides.

The research reinforces the sentiments that were expressed by the African Union (AU) Commissioner for Trade and Industry, Elizabeth Tankeu. Tankeu insinuated, “it is a matter of great concern that in spite of the commitment made in Doha, Qatar by the international community to place development at the centre of the Rounds of WTO negotiations, important issue of interest to developing countries, especially those in Africa, have so far not been properly and adequately addressed.” African countries still have a long way to go in as far as realising full benefits from their commitments under the GATS are concerned

### **5.3 Recommendations**

In order to address this increased risk of instability, an appropriate regulatory and supervisory framework for banking, insurance and securities is required. Developing countries often lack the capacity and resources for such necessary safeguards. Therefore there should be much more open public and political discussions in Kenya linking the degree of liberalisation requested under the GATS and the degree of regulation and supervision already in place to deal with new financial service providers and their services. No commitments should be made in this area during GATS negotiations involving two countries, up until there is full assurance by both sides that the necessary protective measures are created.

Moreover, since trade liberalisation, export promotion, currency devaluation and removal of trade barriers bring about rapid export and economic growth as a result of the fact that free trade promotes competition, improves resources allocation and economics of scale, in areas where developed countries have a comparative advantage and that the government of Kenya should try improving on their trade liberalisation.

While developing countries need to consider carefully the nature, scope and impacts of further commitments which they may enter into in the GATS negotiations, they must accept that the process of globalisation and concentration, in distribution will continue, as in other economic sectors. It is therefore at least equally important to ensure that national regulatory structures are put in place, which safeguards national social and environmental priorities on a transparent and equitable basis, without undermining the economic benefits of inward investment and more advanced developments in distribution.

The Republic of Kenya must take note of the GATS, which states that the process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.” The government of Kenya must ensure that this principle must be upheld so that any further negotiations should maintain the right to decide the pace of liberalisation in each particular sector that will further the countries sustainable development agenda. Liberalisation in services must not proceed at the expense of human and environmental health and welfare.

Kenya’s participation in the WTO provides a number of lessons for other players. These are:

The need for an effective co-ordination and consultation mechanism. This is because benefits accruing to countries from the multilateral trading systems depend on, among other things, the extent to which trade policy issues are co-ordinated at the national level and the subsequent capacity to negotiate in Geneva. Kenya’s experience shows that co-ordination of WTO matters has been weak and that this could have undermined the country’s position. Co-ordination at international level requires adequate legal and resource backing, something that has been missing in the Kenyan case. Lack of financial and human capacity seriously impedes Kenya’s capacity to participate effectively in trade negotiations. The survey revealed that a lack of skills at the National Committee on WTO (NCWTO) of Kenya and sub-committee levels seriously affects deliberations on WTO issues.

The factor that constrains most Kenyan service providers from exporting is a widespread lack of knowledge about exporting opportunities, markets, and processes and a lack of awareness about how to acquire such knowledge. What Kenyan service providers consider to be crucial is for the government to facilitate access to foreign markets. Such facilitation would lead to an increase in employment, upgrades in the technology used, and improvements in the quality of services delivered to meet high international standards.

There is also the need for analytical capacity. The Kenyan experience indicates a lack of analytical capacity in government, the private sector and civil society. Although some of the key institutions are staffed with personnel to carry out impact assessments, their capacity is largely

inadequate. In the case of Kenya, there is a need to strengthen the analytical skills of civil society organizations that are involved in trade matters and government ministries. Training in policy analysis is a necessary condition for effective policy-making by enabling policy-makers to understand the full implications of various trade proposals and agreements.

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