

Public services at risk: GATS and the privatisation agenda

CITIZENS' NETWORK ON ESSENTIAL SERVICES

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The problem in a nutshell ¹

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Confusing jargon and cheerful reassurances of WTO leaders obscure the real objective of GATS: expanding the rights and protections of corporate investors. Alarming, the GATS negotiations are proceeding under a veil of secrecy, thereby limiting public debate. Also lacking are even-handed analyses of the impact of liberalisation in different sectors which could inform such a debate. Worse still, once a decision to open up a sector is made, it is virtually irreversible, no matter how damaging the resulting economic or social impact may be. This undemocratic process and the potential for adverse social impacts make citizen action imperative.

General description of GATS

GATS is one of most far-reaching agreements of the World Trade Organization. Its purpose is to progressively liberalise «trade in services» among WTO members. Trade in services is defined very broadly to include direct foreign investment in services. Among other things, liberalisation entails eliminating any government measure that could favour a domestic provider over a foreign one, such as preferential public subsidies. Significantly, it also includes ending public monopolies, as well as deregulation whenever a regulation is considered too burdensome for foreign investors and service providers.

Implications for government services

WTO leaders have dismissed and even ridiculed claims that GATS will lead to the privatisation of government services. They support their assertion by pointing to a provision stating that GATS does not apply to services «supplied in the exercise of governmental authority,» as well as GATS language which protects governments' right to regulate. But such language provides cold comfort to those concerned about the potential for limiting government

regulation and policy. Northern industrial lobbies make no secret of their intention to pursue urban infrastructure markets throughout the developing world. However, it is the Agreement's fine print that tells the real story.

According to the GATS, a service is «supplied in the exercise of governmental authority» only when it is «supplied neither on a commercial basis, nor in competition with one or more service suppliers.» Crucially, both of these key terms are undefined, and will be determined only by WTO dispute settlement panels, which have historically tended to side against government regulators. Similarly, the GATS recognises the «right to regulate» only to the extent that regulations are not inconsistent with GATS, a judgement that again will be made not by governments but by appointed WTO dispute panellists. Thus any assurances that GATS protects government services must be greeted with scepticism, if not disbelief.

Scope and duration

GATS covers virtually any action, rule or regulation that has a direct or indirect effect on trade in services. As the WTO acknowledges, GATS defines trade in service so broadly that it becomes «directly relevant to many areas of regulation which *traditionally have not been touched upon* by multilateral trade rules.» The all-inclusive nature of GATS threatens to seriously constrain the ability of national governments to undertake actions or policies to advance social, developmental or environmental priorities. Moreover, any commitment to liberalise services that a government makes in response to a request by another country will apply to all WTO members, under the Most Favoured Nation rule.

Even more troubling than the scope of GATS is its virtual *irreversibility*. Although it is true that in principle a country may undo its GATS commitment in a given service sector, in practice it can only do so by compensating affected trading partners or facing retaliation in the form of trade sanctions. The WTO states that «because unbinding is difficult, [government] commitments [to a sector] are virtually guaranteed conditions.» As Sinclair has observed, GATS is driven by «an insidious bias» that skews national policy processes: «*Wherever there is domestic bipartisan consensus, it is conceivable that country-specific exceptions [for services] will endure. But wherever there are serious ideological divisions on contentious issues, country specific limitations that protect [certain domestic services] are likely to endure on until a single government committed to a market-oriented approach eliminates them, binding all future governments. In this way, GATS interferes with the normal ebb and flow of policy-making in a democratic society.*»

¹ This paper draws on the pioneering work of several policy advocacy organisations, particularly *Facing the Facts*, by Scott Sinclair and Jim Grieshaber-Otto of the Canadian Centre for Policy Alternatives.

Interests pushing GATS

The expansion of GATS into new service sectors—including infrastructure services traditionally provided exclusively by governments—is high on the agenda in the current round of WTO negotiations. G-7 governments see trade in services—sectors in which they are highly competitive—as a way to reduce growing trade deficits. More importantly, opening up new markets in services responds to powerful domestic constituencies. Because the service sector is often over half of a country's economic output, it represents the «final frontier» for northern transnational firms, especially those that have limited growth potential in mature North American and European markets.

These companies are using their political influence to lobby their governments to help pry open service sectors within developing and developed countries alike. The main organizations representing these firms include the European Service Network, and the U.S. Coalition of Service Industries, a 67-member lobby organisation whose top 12 members had combined revenues of about USD 700 billion in 2000.² In promoting GATS, the US Trade Representative has emphasized that «the United States is a competitive exporter in each» sector being negotiated.

Negotiating process

GATS negotiations are conducted in secret. Governments in WTO negotiations have routinely made deals without input or even awareness of elected parliamentarians, to say nothing of citizens. In April the EU sent confidential requests for opening a wide array of service sectors to 29 developing countries. Only because the documents were leaked to the press was the public informed of the critical details of the negotiations.

The Doha Declaration sets out specific deadlines for the Services negotiations.

- *30 June 2002:* Initial requests to open service sectors. Requests can be made in any service sector, and can be submitted at any time during the negotiations through the end of 2004.
- *31 March 2003:* Deadline for WTO members to make their *initial* offers to expand the reach of the GATS by indicating the additional specific commitments they are prepared to make.
- *September 2003:* GATS negotiations in Mexico.
- *1 January 2005:* Conclusion of the current round of WTO/GATS negotiations, including those to expand the GATS. Initial requests and offers will continue until this date.

In theory, any WTO member may make a request to any other member. In practice most of the requests that are not between northern countries will be from north to south, due to the fact that northern countries are far more competitive in most services. Developing countries with little negotiating experience are finding themselves pressed to make decisions with long-term consequences, typically without the benefit of a policy impact analysis, and often under extreme deadline pressure. In other words, if a government (or future government) realises after GATS negotiations are finalised that it should have insisted on an exception for a particular sector—for instance, if liberalisation results in uneven access or poor quality—it will simply be too late to act.

The need for citizen action

The potential for GATS to reach into new sectors is growing steadily, making public awareness a matter of urgency. GATS «creep» occurs in two stages. First, governments propose that GATS apply to new services. At this stage, citizen action is crucial for limiting the sectoral scope of the Agreement. In the water sector, for example, drinking water does not currently fall under the GATS. Mobilization is therefore essential to ensure that the EU proposal to apply GATS to drinking water is rejected in international negotiations. (Sewage and sanitation services are already included as environmental services.) Second, after a sector is made subject to GATS rules, each government is urged to make specific commitments to opening that sector. Citizen action must respond to and prevent the expansion of GATS at both stages.³ ■

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www.challengeglobalization.org

² See www.corpwatch.org

³ EDITOR'S NOTE: More information about the GATS is available from the Corporate Europe Observatory and Transnational Institute jointly publish GATS Watch (www.gatswatch.org), a bulletin which provides timely updates of GATS-related news. Their website also includes a list of useful publications on GATS. *Facing the Facts* and other GATS-related studies are available at the Canadian Centre for Policy Alternatives web site (www.policyalternatives.ca).