

General Agreement on Trade in Services

GATS

Most media, elected officials and civil servants, let along the general public, are unaware of GATS, or of its implications.

GATS targets elected governments... Local, State and National. It seeks to privatise all public services, everywhere. But several countries are demanding that a wide-ranging assessment of the impact of a free market in services be carried out. Non-government organisations (NGOs) and trade unions, such as the Australian Nurses' Federation, are demanding that services in the public interest be clearly exempt from GATS.

In Australia, Medicare, Public Hospitals, Parks and Wildlife Services, the ABC, public education, financial regulation, Telecommunications, the Transport industry... including roads, and Council procurement systems are at risk.

All taxpayer support will be called a "subsidy" to be equally available to all commercial and public suppliers.

All treaties are signed in Australia without debate in parliament or the media. This is called fast tracking. We have already signed 80 of 160 service area codes, including dentistry and health insurance, but much worse is to come in November 2002. This will also include Medicare, environment and shipping regulation.

Origins

The 1986-94 Uruguay Round of GATT, the widest-ranging multilateral trade agreement ever negotiated, covered for the first time not only services but also agriculture, investments and intellectual property rights, such as patents, trademarks and copyright.

The 28 agreements, which now come under the WTO, fall into six broad categories:

- (i) Multilateral Agreement on Trade in Goods
- (ii) General Agreement on Trade in Services (GATS)
- (iii) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)
- (iv) Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)
- (v) Trade Policy Review Mechanism (TPRM)
- (vi) Plurilateral Trade Agreements

The WTO administers and implements these various agreements, acts as a forum for multilateral trade negotiations, resolves trade disputes, oversees national trade policies and cooperates with other international institutions involved in global economic policy-making.

The WTO's legislative and judicial power to challenge the laws, policies and programmes of countries that do not conform to all its agreements, particularly if they are regarded as too "trade restrictive", sets the WTO apart from other international agreements.

GATS Main Obligations

Trade in services used to be considered ancillary to manufacturing and trade in goods. In the mid-1980s, however, many Western governments, faced with worldwide recession, inflation and unemployment, decided that removing obstacles to international trade in services, particularly national regulations, could increase the momentum to export services.

The US thus pushed for the provisions of the agreements governing trade in goods to be transposed into the area of services as a whole (although financial services were of prime interest), a move which "could easily have sunk the Uruguay Round and crippled the GATT", according to current WTO Director-General Mike Moore. Many countries reluctantly agreed to GATS only if they could choose which of their services were covered by the Agreement. The US took care, however, to include clauses mandating further liberalisation in future.

Two GATS obligations apply directly and automatically to all WTO members for all services: most-favoured-nation treatment and transparency.

- Most-favoured-nation (MFN) treatment (Article II) does not mean one country is preferred over another - it means the opposite. Favour one... favour all. Treat all countries the same.

If a WTO member country grants favourable treatment to another country, even a non-WTO member, regarding the import of a service, it must grant all other WTO signatories the same treatment. If a country allows any foreign competition in a service sector, it must allow service providers from all WTO member countries to compete to supply that service.

A country could list any exemptions to this MFN principle by 1995, but exemptions were to be reviewed after five years and could not last more than 10 years anyway.

The WTO interprets this MFN obligation as prohibiting not only de jure discrimination (discrimination specifically set out in regulations) but also de facto discrimination (discrimination resulting from regulations or measures not formally discriminatory).

- Transparency (Article III) requires governments to publish all relevant laws and regulations governing all service sectors. By 1997, governments had set up enquiry points for foreign companies and governments to obtain this information.

Once a government has committed itself under GATS to opening a service sector to foreign competition, it must not keep money from being transferred out of the country to pay for the relevant services (Article XI), except when the country is experiencing serious balance-of-payment difficulties (Article XII). Such exceptions must be temporary and justified by an International Monetary Fund assessment of the country's financial situation.

GATS, thus provides almost guaranteed conditions for foreign exporters and importers of services and investors in any sector which a country has listed in its Schedule.

Following the GATS "built-in agenda" mandating successive rounds of negotiations, talks opened on 25 February 2000 in Geneva, home to WTO headquarters. The United States would like these negotiations to be completed as soon as possible, and suggested the end of the year 2002 as a deadline. Other countries, however, want the negotiations to be open-ended, or integrated within a broader and comprehensive revision of all the WTO agreements.

Despite the requirement for "transparency" in GATS, the renegotiations are taking place between government representatives behind closed doors (but in close consultation with international corporate lobbyists). The WTO or individual countries make few of the results of discussions publicly available. It is next to impossible for citizens' organisations to find out the current state of negotiations while access to many background documents is restricted.

Thus even negotiations on apparently technical issues such as reclassification of services are evading public accountability and public and parliamentary debate.

A Working Party on Domestic Regulation - one of the three sub-groups of the Council for Trade in Services (the body within the WTO that oversees GATS) - has been drawn up to discuss "reform" of domestic regulation. This involves drafting a "necessity test" - a legal formula that could be used "to assess the level of trade-restrictiveness of a measure".

If proposals for this test were adopted, a government challenged by another through the WTO would first have to show that a disputed regulation met a "legitimate objective" - and the WTO would determine what counted as "legitimate".

Then, to clarify "burdensome" and "restrictive" as applied to the means of achieving that objective, the Working Party has considered importing into Article VI.4 the definition of "least burdensome" from a GATS Annex on Telecommunications: "pro-competitive".

The European Union has gone further and identified "anti-competitive practices", including cross subsidising by monopoly providers of network infrastructure and services. It argues that this practice restricts competing suppliers from being able to provide services in a market. Instead, it maintains that charges for each part of a service should be at: "cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided".

Governments that currently use non-market mechanisms, such as risk pooling, social insurance funds, block contracts and cross subsidising, to deliver public services to as much of their population as possible could find such practices challenged as anti-competitive.

The European Union has also suggested that a measure should not be considered trade-restrictive if it is "proportionate" to the objective pursued. But what might be considered proportionate, reasonable or rational would be a matter of judgement, reflecting the values of those with decision-making power.

Worse, Article VI.4 could be interpreted as applying to all services, not just to those, which a country has offered to liberalise. The other clauses in Article VI clearly apply only to those services listed in a country's schedule of commitments. The WTO Secretariat believes the different phrasing of Article VI.4 is "intentional".

If these proposals were adopted, all domestic regulations would have to be "pro-competitive", even if no foreign firm was involved. A WTO disputes panel could require countries to unbundle a public monopoly such as health care and substitute competing service providers or competing health care insurers. Health systems researchers Allyson Pollock and David Price point out that these proposals "would transform the WTO from a body combating protectionism to a global agent of privatisation".

"The WTO's strategy is shifting from persuasion to the development of new global regulations which will over-ride national sovereignty in domestic policy and impose unprecedented market reform obligations on all the processes of service delivery and throughout all service sectors".

In essence, the aim of GATS is to regulate governments, not corporations. Compared to markets in goods, those in services and access to them are more constrained by government interventions. The power of a GATS article on domestic regulation clause is that many governments may censor themselves by not instituting legislation or public policy objectives which could be interpreted as being against WTO rules. There has been no challenge to any domestic regulation under GATS as yet, but as the WTO Secretariat itself acknowledges, "cases may arise in the future".

GATS sets in place a legal framework which governments could use in future to challenge other countries' domestic regulations. The WTO stresses that governments can still regulate under GATS!

Discussions about domestic regulation however, raise the question... how?

FOR FURTHER INFORMATION ON GATS

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