

GATS – FACT AND FICTION

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“We are firmly of the belief that the existence of the GATT, and now the World Trade Organization, as a rules-based system provides the foundation on which our deliberations can build in order to improve ... As we enter the new millennium, let us forge a partnership for development through trade and investment.

Nelson Mandela

*Summit to mark the 50th Anniversary of the GATT/WTO
multilateral trading system, Geneva, May 1998*

Introduction

The General Agreement on Trade in Services (GATS) is among the World Trade Organization's most important agreements. The accord, which came into force in January 1995, is the first and only set of multilateral rules covering international trade in services. It has been negotiated by the Governments themselves, and it sets the framework within which firms and individuals can operate. The GATS has two parts: the framework agreement containing the general rules and disciplines; and the national “schedules” which list individual countries’ specific commitments on access to their domestic markets by foreign suppliers.

Each WTO Member lists in its national schedule those services for which it wishes to guarantee access to foreign suppliers. All commitments apply on a non-discriminatory basis to all other Members. There is complete freedom to choose which services to commit. In addition to the services committed, the

schedules limit the degree to which foreign services providers can operate in the market. For example, a country making a commitment to allow foreign banks to operate in its territory may limit the number of banking licenses to be granted (a market access limitation). It might also fix a limit on the number of branches a foreign bank may open (a national treatment limitation).

Coverage and “modes of supply”

The GATS covers all internationally-traded services with two exceptions: services provided to the public in the exercise of governmental authority, and, in the air transport sector, traffic rights and all services directly related to the exercise of traffic rights. The GATS also defines four ways in which a service can be traded, known as “modes of supply”: (i) services supplied from one country to another (e.g. international telephone calls), officially known as “cross-border supply”; (ii) consumers from one country making use of a service in another country (e.g. tourism), officially known as “consumption abroad”; (iii) a company from one country setting up subsidiaries or

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branches to provide services in another country (e.g. a bank from one country setting up operations in another country), officially known as “commercial presence”; and (iv) individuals travelling from their own country to supply services in another (e.g. an actress or construction worker), officially known as “movement of natural persons”.

Trade liberalization, and even economic growth, are not ends in themselves. The ultimate aim of Government is to promote human welfare in the broadest sense, and trade policy is only one of many instruments Governments use in pursuing **this goal**. But trade policy is nevertheless very important, both in promoting growth and in preventing conflict. The building of the multilateral trading system over the past 50 years has been one of the most remarkable achievements of international cooperation in history. The system is certainly imperfect—that is one of the reasons why periodic negotiations are necessary—but the world would be a far poorer and more dangerous place without it.

In January 2000, WTO Member Governments started a new round of negotiations to promote the progressive liberalization of trade in services. The GATS agreement specifically states that the negotiations “shall take place with a view to promoting the interests of all participants on a mutually advantageous basis” and “with due respect for national policy objectives and the level of development of individual Members”. The pace and extent of these negotiations are set by the WTO’s over 140 Member Governments themselves according to their different national policy priorities.

Recently, however, the negotiations and the GATS itself have become the subject of ill-informed and hostile criticism. Scare stories are invented and unquestioningly repeated, however implausible. It is claimed for example that the right to maintain public services and the power to enforce health and safety standards are

under threat, though both are explicitly safeguarded under the GATS. How have serious people come to believe what is, on the face of it, out of the question? Why should any Government, let alone over 140 Governments, agree to allow themselves to be forced, or force each other, to surrender or compromise powers which are important to them, and to all of us?

Decision-making in open societies presupposes informed public discussion. It must be based on fact rather than fiction. The purpose of this booklet is to contribute to this discussion and to a greater public understanding of the GATS by correcting statements made in some recent publications which we believe are misleading the public and undermining support for international economic cooperation.* It must not be assumed that because we have disputed some allegations we accept that others are well-founded: these are merely examples.



***Debate must be based on
fact, not fiction***

* Since this booklet was published on the Internet in February 2001, a number of comments have been made by interested parties for which we are grateful and which have helped us to clarify certain parts of the text. The WTO Secretariat hopes that this publication will contribute to an on-going constructive dialogue with interested parties and stakeholders.

Why is the liberalization of services important?

It is impossible for any country to prosper today under the burden of an inefficient and expensive services infrastructure. Producers and exporters of textiles, tomatoes or any other product will not be competitive without access to efficient **banking, insurance, accountancy, telecoms and transport systems**. In markets where supply is inadequate, imports of essential services can be as vital as imports of basic commodities. The benefits of services liberalization extend far beyond the service industries themselves; they are felt through their effects on all other economic activities.

The production and distribution of services, like any other economic activity, is ultimately destined to satisfy individual demand and social needs. The latter element—social needs—is particularly relevant in sectors like health or education which in many, if not all, countries are viewed as a core governmental responsibility. They are subject to close regulation, supervision and control. Although social policy concepts—including equity and universal access—do not necessarily imply that Governments also act as producers, public facilities have traditionally been, and continue to be, the main suppliers of services such as health and education in most countries.

In 1999, the value of cross-border trade in services amounted to US\$1350 billion, or about 20% of total cross-border trade. This understates the true size of international trade in services, much of which takes place through establishment in the export market, and is not recorded in balance-of-payments statistics. For the past two decades trade in services has grown faster than merchandise trade. Developing countries have a keen interest in many services areas including **tourism, health and construction**. According to the World Travel and Tourism Council, tourism is the world's largest employer accounting for one in ten workers worldwide. According to IMF data for 1999, tourism exports, estimated at US\$443 billion, were 33% of global services exports and 6.5% of total exports.

The liberalization of trade in goods, which has been promoted through negotiations in the GATT over the past 50 years, has been one of the greatest contributors to economic growth and the relief of poverty in mankind's history.

Following the catastrophic experience of the first half of the 20th century, Governments deliberately turned away from the policies of economic nationalism and protectionism which had helped to produce disaster, and towards economic cooperation based on international law. Growth in this period was not uniformly shared, but there is no doubt that those countries which chose deeper involvement in the multilateral trading system through liberalization benefited greatly from doing so.



Tourism employs one worker in ten worldwide.

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There was no parallel movement of multilateral liberalization of services trade until the negotiation of the GATS and its entry into force in 1995. Since the services sector is the largest and fastest-growing sector of the world economy, providing more than 60% of global output and in many countries an even larger share of employment, the lack of a legal framework for international services trade was anomalous and dangerous—anomalous because the potential benefits of services liberalization are at least as great as in the goods sector, and dangerous because there was no legal basis on which to resolve conflicting national interests.

Six benefits of services liberalization

1. **Economic performance** An efficient services infrastructure is a precondition for economic success. Services such as telecommunications, banking, insurance and transport supply strategically important inputs for all sectors, goods and services. Without the spur of competition they are unlikely to excel in this role – to the detriment of overall economic efficiency and growth. An increasing number of Governments thus rely on an open and transparent environment for the provision of services.
2. **Development** Access to world-class services helps exporters and producers in developing countries to capitalize on their competitive strength, whatever the goods and services they are selling. A number of developing countries have also been able, building on foreign investment and expertise, to advance in international services markets – from tourism and construction to software development and health care. Services liberalization has thus become a key element of many development strategies.
3. **Consumer savings** There is strong evidence in many services, not least telecoms, that liberalization leads to lower prices, better quality and wider choice for consumers. Such benefits, in turn, work their way through the economic system and help to improve supply conditions for many other products. Thus, even if some prices rise during liberalization, for example the cost of local calls, this tends to be outweighed by price reductions and quality gains elsewhere. Moreover, governments remain perfectly able under the GATS, even in a fully liberalized environment, to apply universal-service obligations and similar measures on social policy grounds.
4. **Faster innovation** Countries with liberalized services markets have seen greater product and process innovation. The explosive growth of the Internet in the US is in marked contrast to its slower take-off in many Continental European countries which have been more hesitant to embrace telecom reform. Similar contrasts can be drawn in financial services and information technology.
5. **Greater transparency and predictability** A country's commitments in its WTO services schedule amount to a legally binding guarantee that foreign firms will be allowed to supply their services under stable conditions. This gives everyone with a stake in the sector—producers, investors, workers and users—a clear idea of the rules of the game. They are able to plan for the future with greater certainty, which encourages long-term investment.
6. **Technology transfer** Services commitments at the WTO help to encourage foreign direct investment (FDI). Such FDI typically brings with it new skills and technologies that spill over into the wider economy in various ways. Domestic employees learn the new skills (and spread them when they leave the firm). Domestic firms adopt the new techniques. And firms in other sectors that use services-sector inputs such as telecoms and finance benefit too.

The GATS and investment

The fact that under GATS WTO Members can make commitments allowing foreign suppliers to establish in their markets has led to criticism from some anti-WTO activists who opposed the negotiations for a Multilateral Agreement on Investment in the Paris-based Organisation for Economic Co-operation and Development. The GATS has been said to be an attempt to resurrect the MAI. Scott Sinclair of the Canadian Centre for Policy Alternatives has said that "The GATS investment restrictions demolish industrial policy whether primarily aimed at goods or services, closing off the path to development taken by most advanced countries to other countries."

What these activists have failed to say is that it can be used by Governments, if they so decide, to attract foreign investment into sectors where it is needed. The GATS guarantees the conditions which provide policy stability for potential investors. But there is no obligation to make commitments under the GATS. Presumably Mr. Sinclair is stating that the GATS prevents Governments from applying restrictions to foreign service providers operating in the market. This is fundamentally untrue. If commitments are made, they can be subject to the six types of limitations specified in the agreement, which include, besides quantitative limits, restrictions on the share of foreign capital and on the type of legal entity permitted. In addition, any type of national treatment limitation—conditions applying only to foreign suppliers—can be scheduled. The GATS bears no resemblance to the MAI—not surprisingly, since the OECD has 30 member Governments and the GATS over 140, three quarters of which are developing countries or economies in transition. Moreover, the GATS allows Governments to impose on foreign service providers any conditions they wish, including those pertaining to local employment or technology transfer.

Structure of the GATS

The GATS is the **first** and **only** set of multilateral rules and commitments covering Government measures which affect trade in services. It has two parts—the **framework agreement** containing the rules, and the national **schedules of commitments** in which each Member specifies the degree of access it is prepared to guarantee for foreign service suppliers.

The GATS covers **all services** with two exceptions—i.e. services provided in the exercise of governmental authority and, in the air transport sector, **air traffic rights** and all services directly related to the exercise of traffic rights. Notwithstanding this very broad scope, the Agreement and the negotiations taking place under it are one of the least controversial areas of current work in the WTO. This is because of its remarkable flexibility, which allows Governments, to a very great extent, to determine the level of obligations they will assume. There are four main elements of flexibility:

- Member Governments choose those service sectors or subsectors on which they will make commitments guaranteeing the right of foreign suppliers to provide the service. Each Member must have a schedule of

Most-favoured-nation (MFN) treatment

MFN—the non-discrimination principle—means treating one's trading partners equally. It guarantees equal opportunities for suppliers from all WTO Members. However, it does not require any degree of market openness. The MFN principle applies to non-scheduled as well as to scheduled services. At the entry into force of the GATS Members were able to take exemptions, in principle limited to 10 years' duration, allowing them to grant differential treatment to certain trading partners. Newly acceding countries have the same right.

commitments, but there is no minimum requirement as to its coverage—some cover only a small part of one sector;

- For those services that are committed, Governments may set limitations specifying the level of market access and the degree of national treatment they are prepared to guarantee;
- Governments were able to limit commitments to one or more of the four recognized "modes of supply" through which services are traded. They may also withdraw and renegotiate commitments;
- In order to provide more favourable treatment to certain trading partners, Governments may take exemptions, in principle limited to 10 years' duration, from the MFN principle, which is otherwise applicable to all services, whether scheduled or not.

The Agreement contains a number of general obligations applicable to all services, the most important of which is the MFN rule. But apart from these each Member defines its own obligations through the commitments undertaken in its schedule. Because it is a basic principle of the Agreement that developing countries are expected to liberalize fewer sectors and types of transactions, in line with their development situation, the commitments of developing countries are in general less extensive than those of more industrialized countries. It was this flexibility in the scheduling of commitments which put an end to the north-south controversy over services which marked the early years of the Uruguay Round.

Misunderstandings and scare stories

Market access and national treatment commitments

A report published by the World Development Movement in November 2000 included the statement that "the aim of this Agreement (the GATS) is to remove any restrictions and internal governmental regulations in the area of services delivery that are considered 'barriers to trade'". It went on to pose and answer a series of rhetorical questions, as follows: "Should governments be able to demand that foreign building contractors use locally-trained architects? Should governments be able to oblige tour companies to use local caterers? Should governments have the right to demand that foreign companies transfer technical expertise to local industries? According to the GATS national treatment rule the answer is no."

This is quite wrong. According to the GATS national treatment rule (Article XVII) the answer is that the imposition of any of these conditions when making a commitment would be perfectly legitimate. An unqualified national treatment commitment is an undertaking that foreign suppliers will be treated in the same way as nationals, but there are in fact no restrictions on the number or types of conditions which may be attached to national treatment commitments. A requirement that foreign banks wishing to establish in the country should set up branches in every village, for example, would also be perfectly legitimate. National treatment limitations are simply conditions which discriminate against foreign suppliers in favour of nationals. If the service is not scheduled the national treatment principle does not apply anyway. Article XIX specifically provides that developing countries may attach to their market opening commitments conditions designed to increase their participation in services trade—for example on the transfer of technology.

The WDM report went on: "Should a government be allowed—for social or conservation reasons—to limit the number of golf courses being developed in an area? Under the GATS market access rules the answer is no The market access rules could effectively stop governments from limiting the number of hotels in scenic or historic areas to protect the value of a tourist site. They could prevent local jurisdictions saying no to the expansion of waste dumps."

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None of this is true. Market-access commitments do not affect the right to regulate services and they do not oblige Governments to permit the entry of unlimited numbers of services suppliers. They can include limitations on the number of suppliers, the total value of transactions, the number of services operations, the number of persons to be employed, the types of legal entity permitted and the share of foreign capital. The entry "none" in a schedule is an undertaking that limitations of these kinds will not be imposed. But even in such cases, where no limitation has been scheduled, it is absurd to suggest that a Government or local authority would have to set aside planning rules because a foreign company wanted to open a hotel, set up a golf course or expand a waste dump. These are questions of domestic regulation, not market access, and foreign suppliers operating on the basis of a market-access commitment are subject to exactly the same domestic regulations as national suppliers; they have no right to exemption from planning or zoning rules, or any other kind of regulation.

The new round of services negotiations will force WTO Member countries to open all their services sectors to foreign competition



This is quite untrue. There is no obligation on any WTO Member to allow foreign supply of any particular service—nor even to guarantee domestic competition, since it is possible to maintain a monopoly supplier, whether public or private, of any service.

Governments are free to choose those services on which they will make commitments guaranteeing access to foreign suppliers. Each Member must have a national schedule of commitments, but there is no rule as to how extensive it should be. Some least-developed Members have made commitments only on tourism, for example, and in general there is great variation in the coverage of schedules, reflecting national policy objectives and levels of economic development. There is agreement among all Governments that in the new round of negotiations the freedom to decide whether to liberalize any given service and the principle of progressive liberalization will be maintained.

The GATS and public funding

It has been suggested by some NGOs with a special interest in the area of public services – for example, by Education International and Public Services International in a joint publication of June 1999 – that the implementation of the GATS might result in the abolition of public funding for national institutions, on the ground that it undermines free trade. Such concerns are unfounded. There has never been any proposal, or even debate, in the WTO services context concerning the abolition of public funding: WTO Members could certainly never agree to that. (In their subsequent publication, dated September 2000, PSI made no reference to this issue. We very much appreciate the cooperation with PSI which made it possible to clarify this point.)

In so far as subsidies are concerned, at present the GATS contains no specific rules. However, a country providing a subsidy to national but not to foreign suppliers of a service committed in its schedule must have entered a national treatment limitation to that effect.

The GATS has no implications for the funding or subsidy of services provided in the exercise of governmental authority. Negotiations are under way on subsidies "with a view to developing the necessary multilateral disciplines" to avoid distortive effects on trade. Whatever disciplines are developed will not apply to governmental services, because these are simply outside the scope of the GATS.

The WTO is not after your water

In an information sheet titled "Don't let the WTO get hold of our water" the "Alliance for Democracy" expresses much concern about the implications of the GATS negotiations for water distribution services. It says that progressive liberalization under the GATS "means moving towards privatization of all services, including public services. It also means deregulation of services at the local, State and national levels and subjecting them to the WTO's global rules for the benefit of transnational corporations."

The GATS does not require the privatization or deregulation of any service. In respect of water distribution and all other public services, the following policy options, all perfectly legitimate, are open to all WTO Members:

- (i) To maintain the service as a monopoly, public or private;
- (ii) To open the service to competing suppliers, but to restrict access to national companies;
- (iii) To open the service to national and foreign suppliers, but to make no GATS commitments on it;
- (iv) To make GATS commitments covering the right of foreign companies to supply the service, in addition to national suppliers.

The number of Members which have so far made GATS commitments on water distribution is **zero**. If such commitments were made they would not affect the right of Governments to set levels of quality, safety, price or any other policy objectives as they see fit, and the same regulations would apply to foreign suppliers as to nationals. A foreign supplier which failed to respect the terms of its contract or any other regulation would be subject to the same sanctions under national law as a national company, including termination of the contract. If termination of a contract were involved, the existence of a GATS market-

access commitment would be irrelevant. A GATS commitment provides no shelter from national law to an offending supplier. It is of course inconceivable that any Government would agree to surrender the right to regulate water supplies, and WTO Members have not done so.



The GATS does not require the privatization or deregulation of any service.

The services negotiations mean that all public services will have to be open to foreign competition



Many public services are not provided on a commercial or competitive basis and are not subject to the GATS. The Agreement excludes from its coverage all services provided in the exercise of governmental authority, which are defined in Article I:3(c) as those supplied neither on a commercial basis nor in competition with other suppliers. Since they do not fall under the Agreement, these services are not covered by the negotiations and commitments on market access and national treatment do not apply to them. This is a principle to which all Member Governments attach great importance and which none has sought to reopen. So far, Members have not expressed the need to adopt an authoritative interpretation of the criteria in Article I:3(c). They could obviously do so whenever they deem it desirable or appropriate. Also, the issue could arise if a specific measure, which had been challenged in dispute settlement, were to be defended on the ground that it applied only to services supplied in the exercise of governmental authority. There is no requirement to notify such services.

Those services which are provided on a commercial or competitive basis are covered by the GATS, but there is nothing in the Agreement which requires that they should be privatized or liberalized. Governments are free to decide whether or not to make commitments on them, as on all other services. If they make no commitments the implications of GATS coverage are minimal: monopoly suppliers, whether public or private, can be maintained, established or reestablished, for example; limitations of any other kind can be imposed on foreign supply. If they do make commitments they can exclude from them any activity where foreign competition is unwanted and can schedule limitations on the level of market access and national treatment committed.

In virtually all countries the public provision of services like education and health coexists with private-sector provision, and Governments recognize that to ensure the universal availability and the quality of these essential services is among their primary responsibilities. Governments which make commitments to allow foreign suppliers to provide education or health services in their markets are not undertaking to privatize public healthcare or education systems. Nor are they compromising standards: they can enforce the same standards for the protection of the public on foreign suppliers as on nationals, and can indeed impose additional requirements on foreigners if they so choose.

As of February 2001, less than 50 WTO Members have made commitments on education or health, no doubt reflecting the fact that in many countries these are regarded as essentially functions of the State. In its proposal for negotiations on higher education services, dated 18 December 2000 and publicly available, the United States recognizes that "education to a large extent is a government function, but that most countries permit private education to co-exist with public education. The proposal, therefore, envisions that private education and training will continue to supplement, not displace public education systems."

Liberalization under GATS means deregulation of services



The right to regulate is one of the fundamental premises of the GATS. The objective of the GATS is to liberalize services trade, not to deregulate services, many of which are closely regulated for very good reasons. The GATS specifically recognizes "the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives".

Much of the concern expressed about the implications of the GATS for regulation derives from the fact that Article VI of the GATS provides for disciplines on qualification requirements and procedures, technical standards and licensing requirements with a view to ensuring that they "do not constitute unnecessary barriers to trade in services".

Disciplines of this kind have been drawn up for the accountancy sector, and can be read on the WTO website (www.wto.org). They provide the best insight currently available as to the likely outcome of further work in this area. **They do not set standards for the accountancy sector nor do they provide for the review of national standards.** Their main purpose is to increase transparency, meaning access to information about regulations, standards and procedures for licensing or obtaining qualifications. The objective is to ensure that applicants are treated with fairness and are given a chance to compete on an equal footing. It has been agreed that the accountancy disciplines—which will come into force at the end of the current round of negotiations—will only apply to countries which make commitments on accountancy services.

The accountancy disciplines say nothing about the level of professional qualifications or standards for accountants except that they should not be more trade-restrictive than is necessary to achieve the legitimate objective they seek. This means that if two or more measures exist which can achieve the **same** objective, one should choose the measure with the least restrictive impact on trade. It does not mean that Governments would have to compromise the level of quality or consumer protection they are seeking to achieve through the regulation in question. WTO Member Governments and dispute settlement panels have consistently held that it is for Governments to choose the level of protection they want to achieve (for instance when regulating for the protection of public health or the environment) and that this prerogative is not open to challenge.

It is often alleged that the WTO will start to "review" standards and "outlaw" those considered to restrict trade more than necessary. It has been suggested that the results of this work will include, for example, "reviewing the qualifications we require of doctors, engineers and other professionals to ensure they're not too high", and even that the WTO itself will set standards. Professional qualifications will not be reviewed in the WTO. The GATS does not involve setting standards in any context and does not require **Member Governments to submit any legislation or regulation for review by their trading partners.** The only circumstances in which a country could be asked to demonstrate that a given measure is not more trade-restrictive than necessary would be in the event of a dispute with another Member. Only then could the necessity or the trade restrictiveness of a measure become an issue.

The GATS and domestic regulation

The Lancet on 9 December 2000, published an article entitled "Rewriting the regulations: how the World Trade Organization could accelerate privatization in health-care systems". In addition to many other inaccuracies, the article says that:

"Article VI:4 of the GATS is being strengthened with the aim of requiring Member States to show that they are employing least trade-restrictive policies. The legal tests under consideration would outlaw the use of non-market mechanisms such as cross-subsidization, universal risk pooling, solidarity, and public accountability in the design, funding and delivery of public services as being anti-competitive and restrictive to trade."

This is a false account of the work on domestic regulation, seriously misleading in three respects. First, Member Governments will not have to submit regulations to the WTO for approval. Nor will they have to show that they are employing least-trade-restrictive practices, unless asked to justify a specific regulation in the event of a dispute with another Government. Second, none of the measures said to be at risk of being "outlawed" has ever been considered or even mentioned in the Article VI:4 negotiations. This is not surprising since the negotiations under Article VI:4 are confined to qualification requirements and procedures, technical standards and licensing requirements. The "legal tests" applicable to these are that they should be based on objective and transparent criteria, should be not more burdensome than necessary to ensure the quality of the service and, in the case of licensing procedures, that they should not in themselves be a restriction on the supply of the service. None of this applies to the measures cited, and there are no disciplines in the GATS on subsidies beyond that mentioned on page 9 above. Third, services supplied in the exercise of governmental authority are in any case outside the scope of the Agreement, and no disciplines which might be developed on domestic regulations would apply to them. Following is the text of Article VI:4 which contains the mandate for the work on domestic regulation.

Article VI:4

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

The WTO and Internet privacy

Following a speech on the need for protection of on-line consumers, made in Washington on 9 January 2001, Mr. Ralph Nader was quoted as saying that "particularly in the area of internet privacy protections, the WTO is forcing governments to forego sovereign privacy protections deemed to be overly restrictive to international trade".

This is difficult to understand. No decision or action on the protection of Internet privacy has ever been taken in the WTO. Far from "forcing governments to forego sovereign privacy protections" (which it would have no power to do in any case), the WTO has had nothing whatever to do with Internet privacy. Moreover, a safeguard for individual privacy is built into the framework of the GATS itself. One of the

General Exceptions in Article XIV of the GATS, overriding all other provisions, covers measures Governments might find it necessary to take for "the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts".

Once made, GATS commitments are irreversible



Governments are always free to liberalize unilaterally without making commitments in the GATS. However, GATS commitments have real value in providing secure and predictable conditions of access to markets, which benefits traders, investors, and, ultimately, all of us as consumers. This is why so many Governments have chosen to make binding commitments in the GATS framework, where they are intended to be legally secure.

Nevertheless, GATS commitments, like tariff bindings, are not irreversible. There are four ways in which a country can modify, suspend or even withdraw a commitment if it finds that to be necessary.

- Any commitment may be withdrawn or modified after it has been in force for three years. On request, "compensation" may need to be negotiated with Members whose trade is affected. This does not mean monetary compensation, as some have alleged, but merely the replacement of the commitment withdrawn by another of equivalent value. This process is similar to the renegotiation of tariff bindings under the GATT, which has been in use for 50 years.
- Secondly, in case of need the General Exceptions in Article XIV of the GATS can be invoked, where it is necessary to act to protect major public interests, including safety, human, plant or animal life or health, national security or public morals. These exceptions override all other provisions in the Agreement, entitling a Government to violate or withdraw its own commitments if necessary.
- Thirdly, under the WTO Agreement Governments may seek a temporary waiver from any obligation.
- It is also possible for a Government to suspend commitments in the event of serious balance-of-payments difficulties.

In addition, negotiations are now in progress under the GATS on the question of developing an Emergency Safeguard Measure, whose purpose would be to permit the suspension of a commitment in case of damage or the threat of damage to a domestic industry.

Right to regulate

In a Canadian National Post column under the heading "Trading Away the Public Interest" on 26 June 2000, Mr. Murray Dobbin claimed that negotiations under the GATS "may abolish regulation" designed to protect health standards and other public interests. Commenting on a recent tragedy involving polluted water supplies, he argued that although it might be hoped that the subsequent investigation would lead to the reestablishment of high standards for health protection and public service, the expansion of the GATS "could make returning to saner times all but impossible". "At stake are issues as diverse as how strict our standards are for hospitals ... and the treatment and testing of drinking water."

Leaving aside the facts that neither Canada nor any other Government has made commitments on water distribution, that foreign suppliers in Canada would have to meet the same standards as Canadian companies, that the right to regulate and to introduce new regulations is explicitly guaranteed in the GATS, and that the GATS has no power to abolish regulation, it is not true that any GATS provision would make difficult the "reestablishment of high standards for health protection". The protection of health is explicitly recognized in the GATS as a policy concern of overriding importance. Article XIV contains a General Exception saying that "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures necessary to protect human, animal or plant life or health." The same applies to safety. This means that the need to act to protect health or safety would entitle a Government to violate any other provision in the GATS, including its own market-access commitments.

GATS negotiations are secretive and anti-democratic



It is frequently stated by WTO critics that the organization is undemocratic, and that negotiations take place in secret.

It is true that the GATS 2000 negotiations, like other negotiations in the WTO, are taking place between Governments and that meetings are not open to the press, the public or industry. But **Governments are the representatives of their countries' interests as a whole**, and have a legitimacy that the self-appointed spokespersons of special interests can never have.



Proposals are posted on the WTO website.

Moreover, great efforts are made to publicize what takes place in negotiations. Every negotiating session is followed by a briefing to inform journalists, and through them the whole

world. Representatives of non-governmental organizations receive regular briefings as well, from the WTO secretariat. Most importantly, the records of meetings, the texts of all decisions and the proposals made by Governments are available to the public. They are posted on the WTO website, which contains over 11,000 pages of information and receives roughly 250,000 visits every month.

There is a vast body of public information, constantly expanding, about the work of the WTO and the Secretariat is always ready to respond to enquiries. A telephone call would have sufficed to correct the misunderstandings which underlie most of the scare stories described in this booklet.

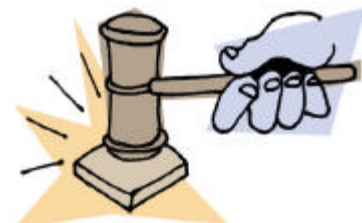
Is dispute settlement a threat to democracy?

In a book for the Canadian Centre for Policy Alternatives titled "GATS: How the New WTO's Services Negotiations Threaten Democracy", it is argued that the GATS provisions on domestic regulation pose one of the Agreement's most "dangerous threats to democratic decision-making". The book claims that "governments would be compelled to demonstrate, first, that non-discriminatory regulations were necessary to achieve a WTO-sanctioned legitimate objective and secondly, that no less commercially-restrictive alternative measure was possible". As we have said above, the only circumstances in which any Member would be required to justify a domestic regulation would be in dispute settlement—when a specific measure had been challenged by another Government.

All of the concerns expressed about "deregulation" of services resulting from the GATS or about threats to health and safety standards boil down to the possibility that a measure thought to be discriminatory or unnecessarily restrictive can be challenged in dispute settlement. In the first six years of the existence of the GATS (as of February 2001) there have been no dispute settlement cases based primarily on services, though three cases dealing essentially with trade in goods under the GATT have had significant GATS elements. There has been no challenge to any measure of domestic regulation under the GATS. Nevertheless, cases may arise in the future. But can this really be represented as an assault on democracy?

All Governments are sovereign. Within their own jurisdictions they can reserve the right to act in any way they wish—even to the extent of banning foreign trade altogether, though in such a case, of course, it would make no sense to participate in the WTO. Like all WTO Agreements, the GATS is an agreement to abide by a set of multilaterally agreed rules and therefore entails some surrender of sovereignty. So do all other international agreements. The surrender is voluntary, conditional and temporary: no country is obliged to become or remain a Member of the WTO. But nearly all Governments in the world—over 140 WTO Members and 30 countries negotiating accession—agree that it is worthwhile to accept some negotiated limitations on the otherwise sovereign right to intervene in trade, including the possibility that one of their own measures may be subject to challenge by a trading partner. Should a Government not be able to challenge a measure which it believes to be illegal and damaging to its country's interests? In dispute settlement each of the Governments concerned is representing the interests of its people as it sees them. It is not evident that either case has more democratic legitimacy than the other. If the complaining country loses, is that too a defeat for democracy? To represent the possibility of losing a hypothetical dispute settlement case as an attack on democracy is to deny the legitimacy of international trade agreements and the principle of international cooperation—because participation in any legal system entails accepting that others' rights may sometimes prevail.

Anarchy in international trade relations would imply a far greater loss of sovereignty, above all for the small and weak. Recognizing this, Governments have accepted the obligation to justify and if necessary change disputed trade measures as a price well worth paying, if the alternative is the law of the most powerful. In this they are surely right.



Fact File

The WTO

Location: Geneva, Switzerland

Established: 1 January 1995

Created by: Uruguay Round negotiations (1986–94)

Membership: 148 countries (since 13 October 2004)

Budget: 169 million Swiss francs for 2005

Secretariat staff: 630

Head: Pascal Lamy (director-general)

Functions:

- ◆ Administering WTO trade agreements
- ◆ Forum for trade negotiations
- ◆ Handling trade disputes
- ◆ Monitoring national trade policies
- ◆ Technical assistance and training for developing countries
- ◆ Cooperation with other international organizations

1. Further information

The WTO in Brief, 10 Benefits of the WTO Trading System and *10 Common Misunderstandings about the WTO*.
Companion leaflets in this series.

Understanding the WTO. In booklet and interactive electronic versions, obtainable from WTO publications, downloadable from the WTO website <http://www.wto.org>

Focus magazine. The WTO's monthly newsletter.

The WTO website: <http://www.wto.org>.

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