

The General Agreement on Trade in Services



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Summary

ActionAid believes that the provision of services is of critical importance both for poverty reduction and for economic development. Ensuring affordable access to basic services like education, health, water and sanitation is key in poverty reduction strategies. And adequate power supplies, telecommunications networks and reliable banking systems are necessary to underpin development. Thus, liberalisation of the service sector can have significant implications for the ability of governments to manage their national development strategy.

The General Agreement on Trade in Services (GATS) has a particularly broad remit. It covers not just cross border trade in services but also corporations setting up operations in other countries in order to provide services locally - that is foreign direct investment or in GATS language, 'commercial presence'. Of particular concern to ActionAid are the less well known areas of international trade which the GATS covers, such as all arable and livestock farming and fishing on a commercial basis, and retail and wholesale services, covering food products, agricultural raw materials and agro-chemicals.

This takes the World Trade Organisation (WTO) much further into domestic policy making than most other Agreements and curtails a government's ability to control multinationals' activities within their borders.

Services are big business. Currently, the provision of services (excluding public services) represents over 60% of GDP in industrialised countries and 50% of that in developing countries.¹ Throughout the world, governments have been deregulating and privatising both the funding and the provision of public

services, sometimes on their own initiative, sometimes as a condition of IMF structural adjustment programmes and sometimes on World Bank advice. The General Agreement on Trade in Services hastens this process but, more importantly, it also locks it in place by preventing policy changes in the future.

GATS restricts governments' ability to manage foreign investment for the benefit of their citizens. If not, there is a real danger that highly developed, subsidised service providers from industrialised countries will crowd out service providers in developing countries in domestic and foreign markets, both now and in the future. More specifically, given the high degree of concentration and market dominance by a very limited number of companies of the seed, agro-chemical, agro-processing and food retailing sectors, ActionAid believes developing countries should resist all liberalisation in these areas, however remote adverse impacts may seem at present.

¹ Public Services International (1999), The WTO and the General Agreement on Trade in Services: What is at Stake for Public Health? PSI, Ferney-Voltaire, France, 1999, www.world-psi.org, email: psi@worldpsi.org

The General Agreement on Trade in Services: an introduction

Adopted by the WTO in 1994, GATS establishes a multilateral framework for services liberalisation. However, since the Agreement came into force, there have been growing concerns about its potentially negative impact on development and the lives of poor communities. As bilateral and multilateral donors condition access to aid and loans on liberalisation of health, education, water and electricity sectors, the GATS stands to severely constrain and undermine the extent to which developing countries will be able to regulate these service markets as they are liberalised. Countries should be able to use appropriate regulation of these sectors towards their individual national development goals.

GATS differs from other WTO agreements in a number of ways. Alongside a set of generally applicable disciplines, it includes specific rules that only apply once a country has decided to nominate a service sector to be included under the GATS remit (the so-called bottom up approach).

As with other WTO agreements, the general rules include the Most Favoured Nation (MFN) principle - whereby all trading partners must be treated equally. National treatment and market access are 'opt-in' so called 'specific commitments' that come into force only once a government has chosen to them to a particular service sectors. Each government has a 'country schedule' in which it specifies how the GATS rules will apply to each of its service sectors. It can choose not to include a whole service sector if it wishes.

The GATS National Treatment principle (Article XVII), where applied, ensures that foreign companies are treated at least as well as domestic firms. For example, policies in Goa to reserve restaurant concessions for local people could be challenged under this article. It also appears to extend beyond conventional notions of non-discrimination between domestic and foreign companies. It could apply to any measure from any level of government -

national, provincial, state, regional, municipal or local - that alters the conditions of competition in any way that might disadvantage a foreign service or supplier. Few government measures are beyond GATS scrutiny. The Council for Trade in Services has discussed restrictions on large-scale retail outlets, shop opening hours, zoning and planning laws, controls on land use, local content and employment policies and environmental protection policies. In this way, National Treatment threatens governments' ability to ensure that local people, especially the poorest benefit from economic activity.

GATS Market Access rules (Article XVI) restrict the ability of governments to limit the number of both domestic and foreign firms supplying services, in effect promoting the right of firms to operate where they like. They also restrict a government's ability to require joint ventures between foreign and domestic firms. One example of the problems this could cause is where tourism is destroying the environment. Campaigners in India fear this rule could prevent any restriction on the number of hotels being built in the ecologically fragile area of the Western Ghats.

The myth of GATS 'flexibility'

In response to criticism that GATS restricts a government's ability to regulate in favour of the poor, its defenders have maintained that the agreement is sufficiently flexible to protect the needs of developing countries. They cite the 'bottom up' approach where governments choose whether and how to commit each service sector to GATS rules.

When a government commits a service sector to GATS rules it can protect the use of regulations in particular areas by specifying limitations on its commitments. Governments can also list general restrictions that apply to all service sectors. India has such a limitation stating, "in joint ventures involving public sector enterprises, degree of technology transfer is the determining factor in choosing the foreign partner."² In theory, the 'architecture' of the Agreement benefits developing countries, but in practice the realities are rather different.

² Quoted in World Development Movement, (2003) Whose Development Agenda?

Expecting all governments to have the required knowledge to list all potentially GATS incompatible regulations is unrealistic, particularly for the poorest countries with their over-stretched administrative and negotiating staff, and to expect governments to anticipate which regulations future governments might want to use is utopian. Yet the penalties for taking back a commitment are so punitive that David Hartridge, former Director of the WTO's Trade in Services Division, himself acknowledged that GATS commitments are 'irreversible'.³

The task of developing countries is made even harder by the lack of clarity that characterises some of the articles of the Agreement. As former WTO Director General Ruggiero said in 1998, "I suspect that neither governments nor industries have yet appreciated the full scope of these guarantees or the full value of existing commitments."⁴ Working groups are currently trying to clarify the rules and domestic regulation obligations of GATS, yet without these clarifications, a full understanding of the implications of the Agreement is impossible.

Notwithstanding the problems identified above, the most obvious difficulty with the 'flexibility' claim is that a country's ability to choose is directly related to its bargaining power. The bilateral and secretive request-offer approach enables the powerful countries to put huge pressure on developing countries to remove any limitations that they have made and to commit additional service sectors to GATS rules. UNCTAD concludes, "Of particular concern to developing countries is the lack of transparency of the ongoing request/offers process within the GATS, which hinders their capacity to evaluate the requests submitted to them by developed country trading partners, and the formulation of their own requests and offers, which is a particularly complex task."⁵

Box 1

Mode 4: the mobility of labour

GATS lists four ways in which services can be supplied: cross border supply, movement of consumers, foreign commercial presence and movement of persons.

Several developing countries have made requests for increased mobility of labour in the current GATS negotiations. This 'mode 4' liberalisation would expand the opportunities for individuals to move to foreign countries to supply services on a temporary basis. Academic studies have suggested that developing countries could receive significant gains from mode 4 liberalisation under GATS.⁶ Countries such as India, Mexico and the Philippines already receive substantial sums in foreign exchange remittances from their citizens working overseas.

The bulk of these potential gains to the poorest countries would come as a result of greater mobility of semi-skilled and unskilled workers. Trade ministers of the 49 least developed countries, meeting in Dhaka in June 2003, identified mode 4 liberalisation for semi-skilled and unskilled workers as one of their top priorities for the Cancún Ministerial Conference. However, discussions of mode 4 liberalisation at the WTO have been strictly confined to increasing the mobility of intra-corporate transferees and highly skilled contract service suppliers. Any suggestion that this could be expanded to include greater access for less skilled workers has been emphatically rejected.

³ WTO Secretariat, "Recent Developments in Services Trade", 9 February 1999, S/C/W/94

⁴ Renato Ruggiero (former WTO Director General) "Towards GATS 2000 - a European Strategy" Address to the Conference on Trade in Services, organized by the European Commission, Brussels, 2 June 1998

⁵ UNCTAD (2002) Trade in Services and Development Implications: Note by the UNCTAD Secretariat. Document TD/B/COM.1/55 UNCTAD, Geneva

⁶ Winters, L.A. (2002) The Economic Implications of Liberalising Mode 4 Trade. Paper presented to joint WTO-World Bank Symposium on 'The Movement of Natural Persons (Mode 4) under the GATS', Geneva, 11-12 April 2002

Current negotiations

Ongoing GATS negotiations include a particularly intensive 'request-offer' process. The leaked EU 'requests' make illuminating reading. Despite claims to the contrary, it is clear that the EU hopes to remove many of the means by which developing countries try to ensure that foreign investment benefits local people. Some of the limitations governments made on their GATS commitments through the 'bottom up' approach are being specifically targeted. Examples from a long list include:

- Barbados – requiring foreign investors purchasing or selling land or shares to pay a specific tax
- Indonesia – requiring foreign investors to form joint ventures
- Mexico – restricting foreign ownership of coastlines
- Taiwan – restricting foreign companies purchasing land in agriculture

One of the most disturbing revelations is that the EU is attempting to get countries to liberalise water delivery services, even in countries where water is currently delivered by the government. In Botswana, for example, the state water provider (Botswana Water Utilities Corporation) is seen as relatively efficient. Given the problems experienced by other developing countries when private multinational water companies have taken over water supplies, it is difficult to see how the EU can defend its request to open this sector to foreign competition as being in the interests of the people of Botswana.⁷

GATS and water: a threat to people's rights

Water is one of the 160 service sectors included under GATS, even though no WTO member country has yet made GATS liberalisation commitments

covering water distribution. The EU is seeking to change this situation in the current GATS negotiations, and is asking for 72 other WTO members – including developing and least developed countries – to commit their water sectors to binding liberalisation under GATS.

Opening up water distribution to foreign multinational corporations has proved highly damaging to poor families in many developing countries, as these companies typically raise water tariffs many times over the levels previously charged. Evidence from countries such as Colombia, the Philippines, Guinea, Argentina, Indonesia, Bolivia and Chile shows that the take-over of water systems by foreign private sector water companies (almost all of which are European) has resulted in water prices being raised well beyond the reach of poor families.⁸

The impact of such price rises cannot be overstated. As poor families find themselves unable to meet the higher tariffs, they are forced to resort to self-provision from untreated sources such as rivers or wells, exposing their children to the water-borne diseases which are already responsible for over two million child deaths each year.

Often it is children – and especially girls – who face the additional cost of collecting water from more distant sources, resulting in possible withdrawal from school. Poor families must also ration other essential expenditure on items such as food or health care in order to meet increased water charges so that the 'substitution effects' of price rises in water are felt across the entire household economy.

There is now a major international movement which opposes the EU's attempts to secure GATS liberalisation commitments in water from other WTO member countries, and there have been strong calls on the EU to drop its water liberalisation requests. Yet the EU maintains that GATS is first and foremost an opportunity to increase the services exports of its European companies and continues to press for extensive liberalisation commitments from other countries at the WTO.

⁷ World Development Movement, (2003) Whose Development Agenda?, WDM, London

⁸ Hilary, J. (2003) GATS and Water: The Threat of Services Negotiations at the WTO. Save the Children UK, London

Box 2

Services incidental to agriculture include the following activities conducted on “a fee or contract basis [and] mostly performed on the farm”:⁹

- Activities establishing a crop, promoting its growth or protecting it from disease and insects.
- Transplantation of rice in rice fields.
- Harvesting and activities related to harvesting such as preparation of the crop for primary markets, by cleaning, trimming, grading, drying, decorticating, retting, cooling or bulk packaging.
- Activities to promote propagation, growth and output of animals, and to obtain animal products.
- Activities such as artificial insemination, herd testing, droving, poultry caponising, coop cleaning, dung gathering, etc. Also, sheep-dipping and shearing, egg-cleaning and grading, animal skinning and related activities.
- Activities of farm labour contractors.
- Operation of irrigation systems for agricultural purposes.
- Providing agricultural machinery with drivers and crew.
- Cotton ginning.

- Animal boarding, care and breeding.
- Activities carried on for special farm operators such as reptile farms or frog farms but excluding fish farms.¹⁰

Services incidental to fishing include the following:¹¹

- Fishing on a commercial basis in ocean, coastal or inland waters.
- Taking of marine or freshwater crustaceans and molluscs.
- Fish farming, breeding, rearing, cultivation of oysters for pearls or food.
- Gathering of marine materials such as natural pearls, sponges, coral and algae.
- Processing of fish, crustaceans and molluscs aboard the fishing boats.
- Operation of fish hatcheries producing oyster spat, mussel and other molluscs seeds, lobsterlings, shrimp post-larvae and other crustaceans seeds and fish fry and fingerlings.
- Growing of laver and other edible seaweeds.
- Service activities related to marine and freshwater fisheries and to operators of fish hatcheries or fish farms.¹²

⁹ The ProvCPC does not contain an explanation for this sub-sector but instead states that it is equivalent to, United Nations Statistics Division, Classification Profile: ISIC Rev.3 (0140).

¹⁰ During the Uruguay Round, 33 countries made commitments in this sub-sector: Central African Republic, Dominican Republic, Singapore, Thailand, Korea RP, Malaysia, Panama, south Africa, Burundi, Congo RP, Nicaragua, Sierra Leone, Gambia, Lesotho, Mexico, Pakistan, Turkey, Canada, Czech. Republic, Iceland, Poland, Slovak Republic, New Zealand, Hungary, Liechtenstein, Norway, Bulgaria, European Union, Australia, USA, Hong Kong, Kuwait, Switzerland

¹¹ The ProvCPC does not contain an explanation for this sub-sector but instead states that it is equivalent to, United Nations Statistics Division, Classification Profile: ISIC Rev.3 (0500)

¹² During the Uruguay Round, 23 countries made commitments in this sub-sector: Central African Republic, Dominican Republic, Singapore, Thailand, Colombia, Korea RP, Malaysia, Panama, south Africa, Burundi, Congo RP, Nicaragua, Sierra Leone, Hungary, Liechtenstein, Norway, Bulgaria, European Union, Australia, USA, Hong Kong, Kuwait, Switzerland

GATS and food rights

Given its work with poor rural communities in more than thirty-five countries worldwide, the potential impact of GATS on food rights and food security is of particular interest to ActionAid.

Agriculture and fishing

The GATS covers the international trade in “services incidental to agriculture” and “services incidental to fishing” as two sub-sectors tucked away in its sectoral classification list¹³ under the “Other Business Services” sector.

Such services cover all arable and livestock farming and fishing on a commercial basis (see Box 2). Liberalisation in these sectors will affect the way in which agricultural or fishery products are produced. The rapid industrialisation of these processes is already having a devastating effect on small-scale producers. Further liberalisation through GATS is likely to exacerbate the problem. Full market access commitments in these areas would prevent governments from stipulating joint ventures. National Treatment commitments could prevent governments from supporting local operators.

Retail services and wholesale services

Retail and wholesale services are covered under the GATS ‘Distribution Sector’ classification. These two sub-sectors are extensive in their coverage and include the wholesale or retail of the extensive range of products identified in Box 3.¹⁴

The rise of global retailers who control food supply chains has weakened the link between farm prices and food prices and caused a progressive decline in farmgate returns. Farmers in the EU and US are already feeling negative impacts but as retailers expand their operations in developing countries, similar impacts are likely. The establishment of

Box 3

Food and farming related products includes the following:

- Food products – fruit, vegetables, dairy products, eggs, meat, fish and seafood, bread and flour products, sugar confectionery, tobacco, tea, coffee, rice, edible oils, noodles, fats and spices
- Agricultural raw materials - grain, oilseeds, fruits, seeds, animal feed, flowers, plants, tobacco and live animals
- Industrial chemicals – organic and inorganic fertilisers, pesticides, herbicides and synthetic resins
- Machinery – agricultural, horticultural or forestry machinery, including tractors, trailers

foreign retailers also has a detrimental effect on local retailers, putting small shops out of business. In Thailand, retail liberalisation had proved so controversial that, in response to public concern, the government had started to develop new regulations to curb the expansion of foreign owned supermarkets like Tesco. The EU has requested that Thailand commit its retail sector to GATS, presumably in an attempt to prevent the government’s reversal on liberalisation. In response, the Thai government has already begun to water down its proposed regulations. This move demonstrates all too clearly the political pressure that developing countries are under in WTO negotiations. “Any enactment of rules of law that are not universally accepted in the international community would affect our future negotiation power over free-trade agreements” explained the Deputy Commerce Minister Wattana Muangsuk.¹⁵

¹³ WTO (1991) Service Sectoral Classification List, 10 July 1991 (WTO Document Code: MTN.GNS/W/120). This list was drawn up in 1991 and was based on the then uncompleted UN Central Product Classification (CPC) list. The WTO’s list is therefore based on the Provisional CPC (ProvCPC), which dates back to 1989

¹⁴ The list provided in Box 2 is a selected summary. For a comprehensive list please see the UN ProvCPC listings

¹⁵ World Development Movement, (2003) Whose Development Agenda?

Conclusion

As former Indian trade negotiator Lal Das has noted, “developing countries have given concessions without ... getting concessions in return. The outcome has naturally been severely unbalanced.”¹⁶

The GATS is supposed to be a development-friendly Agreement because it should bring much needed foreign investment to developing country service sectors. However, UNCTAD concludes: “There is no empirical evidence to link any significant increase in FDI flows to developing countries with the conclusion of GATS.”¹⁷ Moreover, especially in the service sector, the quality of investment is more important than the quantity if it is to aid development and benefit poor communities. GATS restricts governments’ ability to ensure that foreign investment will benefit local people, while the potential costs are all too apparent. It is difficult to see what benefits GATS brings to developing countries, which, in any case, are free to liberalise service sectors independently of GATS.

The real winners will be multinational companies. With disarming candour the European Commission has admitted, “The GATS is not just something that exists between governments. It is first and foremost an instrument for the benefit of business”. And more recently that, “The EU agenda is to seek better access for European services exporters in foreign markets.”

¹⁶ ibid

¹⁷ UNCTAD (2000) – A positive agenda for Developing Countries; UNCTAD New York and Geneva

ActionAid's recommendations

- ActionAid calls on WTO member countries to suspend the current request-offer process of the GATS negotiations. In particular, ActionAid opposes the setting of new timelines for the GATS request-offer process at the Cancún Ministerial, particularly since negotiations on horizontal disciplines such as domestic regulation, subsidies and government procurement have not yet been completed.
- ActionAid calls for all WTO member countries to carry out comprehensive national assessments on a sectoral and general basis before moving any further in the GATS process and to revise any offers already submitted in the light of such assessments. These assessments must consider the impact of previous services liberalisation undertaken autonomously, including under pressure from the World Bank and IMF, as well as the prospective impacts of any liberalisation commitments that may be made under GATS disciplines in the future. The assessments should involve the broadest range of participants possible including civil society, and should examine in particular the impacts of services liberalisation on women, children and other sectors of society.
- ActionAid believes that the GATS text should be revised so as to remove all provisions which pose a threat to development and poor people. Most immediately, the WTO's Working Party on Domestic Regulation should abandon its current attempts to develop disciplines that will restrict domestic regulations to being 'not more burdensome than necessary' in trade terms.

ActionAid and Azione Aiuto are members of the ActionAid Alliance, a network of non-governmental development organisations working together to promote structural changes to eradicate injustice and poverty in the world. ActionAid Alliance members are ActionAid (UK), ActionAid Hellas (Greece), ActionAid Ireland (Ireland), Aide et Action (France), Ayuda en Accion (Spain) and Azione Aiuto (Italy). ActionAid Alliance's members have the regular and active support of more than 600,000 EU citizens, and its programmes reach over 9 million people in more than 40 countries in Africa, Asia, Latin America and the Caribbean.

The Food Rights Campaign is an ActionAid initiative that works with women and men to secure their right to food at local, national, regional and international levels. The campaign works in sixteen countries across Asia, Africa, Latin America and Europe.

ActionAid is a unique partnership of people who are fighting for a better world – a world without poverty.

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