

A GATS Primer

Introduction

Its effects are still being felt in the world of high finance and international trade. The shut-down of the November, 1999, Millennium Round meeting of the World Trade Organization in Seattle, Washington, was a disaster. The most ambitious trade negotiations in the history of the world had ended in utter failure. Or had it?

Just months after all the smoke and pepper spray had lifted and the many thousands of protesters, government officials and reporters had gone home, a whole new round of talks, this time under the auspices of the General Agreement in Services (GATS), was quietly launched in Geneva. Its mandate? To pry open the vast myriad of services now provided by governments of every level to the stark discipline of the WTO and to bring the "cold shower" of international competition to everything that governments do.

WTO officials insist that they have the mandate for these talks; they proudly note that services was the only area of discussion in Seattle without internal dissent. Away from the public eye, and with little media scrutiny, our governments are now energetically engaging in the most far-reaching international trade talks ever undertaken. Unless the citizens of the world wake up - as we did with the infamous Multilateral Agreement on Investment (MAI) - we will lose what's left of our fundamental rights as defined in the United Nation's Universal Declaration of Human Rights.

What is the GATS?

The General Agreement on Trade in Services is one of the more than twenty trade agreements administered and enforced by the WTO. The GATS was established in 1994, at the conclusion of the "Uruguay Round" of the GATT - the General Agreement on Tariffs and Trade - and was one of the trade agreements adopted for inclusion when the WTO was formed in 1995. Negotiations were to begin five years later with the view of "progressively rising the level of liberalization." These talks got underway as scheduled in February, 2000, chaired by Canada's Ambassador to the WTO (and former International Trade Minister) Sergio Marchi. The common goal of Europe, the U.S. and Canada is to reach a general agreement by December, 2002.

The mandate of the GATS is the liberalization of trade in services and the gradual phasing out of government "barriers" to international competition in the services sector. It is what is called a "multilateral framework agreement," which means that its broad commission was defined at its inception and then, through permanent negotiations, new sectors and rules are to be added.

Essentially, the GATS is mandated to restrict government actions in regards to services through a set of legally binding constraints backed up by WTO-enforced trade sanctions. Its most fundamental purpose is to constrain all levels of government in their delivery of

services and to facilitate access to government contracts by transnational corporations in a multitude of areas, including public health and education.

In anticipation of these talks, Charlene Barshefsky, the U.S. Trade Representative, asked the powerful U.S. lobby group, the Coalition of Service Industries, what it would want included in a comprehensive GATS agreement. The European Commission did the same with its industry coalition, the European Services Forum. Between them, these groups have identified the following priority areas for trade liberalization: health care; hospital care; home care; dental care; child care; elder care; education - primary, secondary and post-secondary; museums; libraries; law; social assistance; architecture; energy; water services; environmental protection services; real estate; insurance; tourism; postal services; transportation; publishing; broadcasting and many others.

The U.S. has made its position clear. "The mandate of the negotiations is ambitious: to remove restrictions on trade in services and provide effective market access, subject to specified limitations. Our challenge is to accomplish significant removal of these restrictions across all services sectors, addressing measures currently subject to GATS disciplines and potentially measures not currently subject to GATS disciplines." In non-trade jargon, this means that the 137 members of the WTO have agreed to open up all of their service sectors to free trade laws and the same WTO enforcement powers that have struck down health, food safety and environmental laws in dozens of countries.

History of the WTO

To understand how our governments could be negotiating away our most basic rights when almost no one knows about it and no one voted for it, it is necessary to go back to the origins of the world trade system. In 1947, a new trade body - the International Trade Organization - was created with a very different mandate than the WTO. The ITO was to promote orderly global trade under the jurisdiction of the UN and within its social mandate, including full employment and all of the human and social rights guaranteed by the UN's Universal Declaration of Human Rights and its accompanying Covenants. The new ITO even had the right to regulate transnational capital to ensure it served these social ends.

But the ITO was killed by the U.S., intent on building a different global trade and investment regime based on fewer, not more, regulations. Instead, the U.S. created the GATT and removed it from the jurisdiction of the UN. Since the formation of the GATT in 1947, there have been eight "rounds" of negotiations. The first six rounds concentrated exclusively on tariff (border taxes) reductions and the growing power of the GATT went largely unnoticed by civil society.

But the seventh "Tokyo Round" (1973-1979) coincided with the emergence of the so-called "Washington Consensus" - a global economic model based on the principles of privatization, free trade and deregulation - and the rise of giant transnational corporations who, because they were now global operations, had escaped nation-state regulations and wanted international deregulation as well. These included giant service corporations eager to get their hands on government monopolies, particularly in the social services sectors.

For the first time, the GATT began to deal in "non-tariff barriers" which are rules, policies and practices of governments, other than tariffs, such as environmental laws and publicly-funded social programs, that can impact on trade. The Uruguay Round of negotiations (1986-1994) expanded the scope of subjects dramatically, naming services for the first time, and covering many areas not normally associated with trade. Suddenly, it became clear to many NGOs, social justice advocates and environmentalists that, while they had been busy with their own governments and the UN, much of the power in their areas had shifted to global trade regimes.

From the outset, the WTO was crafted like no other international agency. The architects of the final agenda for the Uruguay Round wanted to put in place a body of rules governing the global economy and needed to be equipped with powers and tools of a global government. Unlike the GATT, which was effectively a business contract between nations, the WTO was given "legal personality." It has international status equivalent to the United Nations but with the addition of having enormous enforcement powers.

Unlike any other global institution, the WTO has the legislative and judicial power to challenge the laws, practices and policies of individual countries and strike them down if they are seen to be too trade restrictive. The WTO contains no minimum standards to protect labour, human rights, social or environmental standards; every single time (but one) the WTO has been used to challenge a domestic health, food safety, fair trade or environmental law, the WTO has won. Over the past six years, the operations of the WTO show that it has become the most powerful, secretive, and anti-democratic body on earth, rapidly assuming the mantle of a global government and actively seeking to broaden its powers and reach.

The Service Transnationals

Services is the fastest growing sector in international trade, and of all services, health, education and water are shaping up to be the most potentially lucrative of all. Global expenditures on water services now exceed \$1 trillion every year; on education, they exceed \$2 trillion; and on health care, expenditures exceed \$3.5 trillion. These and other services have been targeted by predatory and powerful entrepreneurial transnational corporations who are aiming at nothing less than the complete dismantling of public services by subjecting them to the rules of international competition and the discipline of the WTO.

In the U.S., health care has become a huge business, and giant health care corporations are registered on the New York Stock Exchange. Rick Scott, the president of Columbia, the world's largest for-profit hospital corporation, says that health care is a business, no different than the airline or ball-bearing industry, and he has vowed to destroy every public hospital in North America as they are not "good corporate citizens." Investment houses like Merrill Lynch predict that public education will be globally privatized over the next decade the way public health has been, and say there is an untold amount of profit to be made when this happens. The European Union recently announced that every public school in Europe must be twinned with a corporation by the end of the decade. The conquest of foreign markets has now become a key common strategy among higher education institutions around the world.

Already, many parts of the world have dismantled their public infrastructures under International Monetary Fund -imposed structural adjustment programs. In order to be eligible for debt relief, dozens of developing countries were forced to abandon public social programs over the last twenty years, allowing for-profit foreign corporations to come in and sell their health and education "products" to "consumers" who can afford them and leaving many millions without basic social services. Latin American countries are experiencing an invasion of U.S. health care corporations and Asian countries allow branch plants of foreign-based university and health care chains. Recently, the World Bank is forcing the same countries to privatize their water services and are openly working with the water giants like Vivendi and Suez Lyonnaise des Eaux, to establish their "rights" inside the Third World.

Now, through the GATS negotiations, these corporations want to force the dwindling number of countries that still maintain public service monopolies to abandon them. They want binding, global and irreversible rules guaranteeing them access to compete for government service contracts everywhere in the world. And they are succeeding. Already, over 40 countries, including all of Europe, have listed education with the GATS, opening up their public education sectors to foreign based corporate competition, and almost 100 countries have done the same in health care. As the new talks progress, it will be very hard for any country to swim against the tide - if indeed, there are any still trying.

What's in the GATS?

The existing GATS agreement is already deeply troubling. It is, for example, unsettling comprehensive. It covers all service sectors and modes of supply as well as most government measures, including laws, practices, regulations and guidelines - written and unwritten. No government measure that affects trade in services, whatever its aim, even for environmental or consumer protection, universal coverage or to enforce labour standards, is beyond the scope of the GATS.

Essentially, the agreement prohibits discrimination against a foreign supplier in all covered areas notwithstanding the conditions under which services are provided and regardless of the human rights or environmental record of the provider. Parties have also agreed that some rules apply "horizontally" or across the board, whether or not the area has already been listed with the GATS. One "horizontal" rule is "Most Favoured Nation," which says that, once the corporations from one country are operating in your market, you must allow the corporations from all countries in as well. This rule applies to all services, even ones still protected in some countries, like health and education. Similarly, under the horizontal rule, all regulations in any given sector, including social services, must be "Least Trade Restrictive" and all member WTO countries must be prepared to include market mechanisms wherever possible, even in social programs.

At present, public services provided by government are technically applicable for exemptions. Hence, some countries have claimed exemptions for their publicly-funded social security programs. But under GATS article 1.3C, for a service to be considered to be

under government authority, is must be provided "entirely free." That means that the sector in question must be completely financed by government and have no commercial purpose. All government services supplied on a commercial basis - even if it is not-for-profit - are subject to GATS rules, as are government services publicly supplied but in competition with commercial suppliers. Since hardly any service sector in the world is entirely commercial free, this exemption is increasingly meaningless.

What's Proposed for the GATS

In his new book called *GATS, How the WTO's New "Services" Negotiations Threaten Democracy*, Canadian researcher Scott Sinclair identifies the three priorities in the current round. First, GATS officials will attempt to expand access to domestic markets. Governments will be under great pressure to list more of their services and exempt fewer. The most potent weapon will be the push to have "National Treatment" applied horizontally. National Treatment is a fundamental tenet of free trade; it forbids governments from favouring their domestic sectors over foreign-based companies. Right now, National Treatment applies to certain services in the GATS; the goal, however, is to apply it across the board to all services, including social programs.

As well, the powerful northern countries will be pressing for more binding Market Access provisions, pressing developing countries for guaranteed, irreversible access to their markets and eliminating many more policy options, thereby diminishing democratic government authority.

Second, GATS officials are seeking to place severe restraints on domestic regulations, thereby limiting governments' ability to enact environmental, health and other standards that hinder free trade. Article VI:4 calls for the development of any "necessary disciplines" to ensure that "measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade." This provision would also apply horizontally. Governments would be compelled to demonstrate that regulations, standards and laws were "necessary" to achieve a WTO-sanctioned objective, and that no less commercially restrictive alternative was available.

Third, the new talks are aimed at developing new GATS rules and restrictions, intended to further restrict the use of government subsidies, such as those used in public works, municipal services and social programs. A particularly threatening development is the demand for an expansion of the "Commercial Presence" rules. Commercial Presence allows an "investor" of one GATS country to establish a presence in any other GATS country and compete not only for business against domestic suppliers but for public funds against domestic publicly funded institutions and services.

Together, these proposals will hugely expand the authority of the WTO in the day-to-day business of governments and to interfere in the exercise of governmental authority. As Sinclair notes: "It would mean transferring the delicate responsibility for balancing the public interest with commercial considerations from elected government representatives to appointed tribunals or WTO panels."

How The GATS Will Affect You

Every single aspect of public life will be affected by the GATS. Already, as a result of economic globalization, every country in the world is undergoing a fundamental transformation. Wealth is gushing to the top as a growing economic chasm separates those who are benefitting from the system from an entrenched and expanding underclass. To ensure what American education writer Jonathan Kozol calls "survival of the children of the fittest," a tiered system of education and social security is becoming the norm all over the world as we collectively abandon an earlier dream of universal rights. Increasingly, we are creating top schools and health care systems for the elite of the world and a tiered system - or no system at all - for those who don't count.

The GATS serves this vision of society and its denial of the universal social rights set down in the UN Universal Declaration of Human Rights. Under the proposed GATS regime, foreign for-profit health and education corporations will have the right to establish themselves in any WTO country; they will have the right to compete for public dollars with public institutions like hospitals and schools; standards for health and education professionals will be subject to WTO rules and review to ensure they are not an impediment to trade; degree granting authority will be given to foreign-based education corporations; foreign-based telemedicine services will become legal; and countries won't be able to stop the trans-border competition of low-cost health and education professionals.

Already, the WTO Services Division has hired a private company called The Global Alliance for Transnational Education to document world-wide policies that "discriminate against foreign education providers." The results of this "study" will be used to pressure those countries that still retain a public education sector to relinquish them to the global market.

Not only will countries no longer be able to afford to publicly fund social security and education (which governments could fund their own public services as well as any foreign-based corporation that claims equal rights to that money?), private service corporations will be able to change service activities now considered fundamental rights, such as education and culture, into market mechanisms and sources of profit. The WTO now refers to the "Education Market" and is systematically subjecting education, training and research to market laws. Similarly, domestic policies to protect the cultural diversity of communities, minorities and countries, are considered "obstacles to trade" by the WTO and slated for extinction.

The GATS also includes authority over "environmental services" and natural resource protection. Our parks, wildlife, river systems, and old growth forests could all become contested areas as global transnational "environmental service" corporations demand the competitive model for their "management." For-profit childcare chains would invade every country as would horrific prison chains like Wackenhut, with its reputation for violence and abuse against both prisoners and staff.

Virtually unlimited access to foreign suppliers would have to be given to municipal contracts in construction, sewage, garbage disposal, sanitation, tourism and water services. The courageous fight-back by the people of Cochabamba, Bolivia, against a World Bank-imposed water privatization scheme, in which engineering giant Bechtel was forced to leave the country, would have been impossible under an expanded GATS.

Simply put, the "commons" - or what's left of it - would be under full assault. What used to be areas of common heritage, like seeds and genes, air and water, culture and heritage, and health care and education, would now be slated to be commodified, privatized and sold to the highest bidder on the open market. Countries like Canada and France, who now have (and cherish) national, universal health care and education systems would lose them. Countries like Great Britain and Chile, who once had universal social programs, or the U.S. who has never had public health care, would have a public alternative model closed to them in the future, as would countries like India and South Africa, struggling now to ensure such rights to their people.

What We Can Do

What is clearly urgently needed is an international movement of the kind that came together to fight the MAI and went on to shut down the streets of Seattle. (For list of groups and individuals already fighting GATS, see attached list.) We need research on every aspect of the GATS in every country and we need to share it. We need to form common fronts in every country which would include all the major sectors involved - educators, health care workers and advocates, public sector unions, environmentalists, farmers, writers and artists, women, seniors, First Nations People, and others. We need for those sectors with international components to form solidarity alliances with their counterparts in other countries.

We need GATS-Free Zones, of the kind we had in the MAI campaign on universities and high school campuses, churches and in local community centres. We need to go to our local municipal governments and pass local resolutions against the GATS. We need to write letters to our governments and editorials to local newspapers and alternative media publications. Simply put, we must make the GATS a household word, and not a nice one at that.

We have three basic demands. First, we must call for a full moratorium on these GATS negotiations and on the draconian provisions of the current agreement, such as the assault on domestic regulation. It is entirely unacceptable that our governments are meeting behind closed doors once again to carve up our rights for the benefit of their corporate friends. This must stop immediately, while we take stock of the situation and take this issue to the public. Essentially, we are demanding that "the commons" be carved out of free trade agreements altogether.

Second, we need ironclad guarantees from our governments that no future GATS negotiations would prevent governments from providing good public services to their

citizens, including social programs, health care, education, cultural programs, environmental and natural resource protection and municipal services. Further, we need a GATS that would seek to strengthen these domestic programs through international law and encourage their development around the world.

Finally, we must build toward true civil society engagement in the rules governing international trade and finance. It is time our governments understood that we are a movement whose time has come and who will not go away. While we know that our governments are not going to listen to us because we have good arguments, but because we have political muscle, we must seek to create a global democracy in which governments would serve their citizens and honour their commitments on human rights and ecological stewardship. We will not sit silently by and allow these rights to be traded away.

We said no to the MAI. We said no to the Millennium Round of the WTO. We say no to the GATS. And we will be heard.

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