

## Separating WTO FACT from FICTION

By Ellen Gould

The WTO and the transnational services lobby have a problem. Up until the past year, they were able to claim that the negotiations intended to massively expand the WTO services agreement - the General Agreement on Trade in Services - were the least controversial aspect of the WTO agenda. From barely being on the radar screen of even the most well-informed citizens, the GATS has come under increasing scrutiny, resulting in diverse acts of opposition. For example, the City of Red Deer, Alberta recently joined other Canadian municipalities in asking for a complete exemption from the GATS. Two hundred and fifty-four British MPs have called for an independent assessment of the likely impact of the GATS on key services. Hundreds of organizations around the world have signed on to the statement "Stop the GATS Attack".

In light of this growing awareness, trade departments and the WTO have launched an extremely aggressive attack on those who have tried to inform the public about what is happening at the GATS negotiations. Part of this offensive was the WTO's release in March, 2001 of the publication, "GATS - Fact and Fiction."

### Overview

#### Introduction

#### The WTO General Agreement on Trade in Services

#### Separating WTO FACT from FICTION

"Those who have the 'truth' are by definition a small minority. Their desire is not to convince the rest of us of their truth. It isn't a matter of democratic debate with all the compromise that involves. They have the truth. The aim of the ideologue is therefore to manipulate, trick or force the majority into acceptance. People whom you intend to manipulate, trick or force are people for whom you have contempt." *The Unconscious Civilization* by John Ralston Saul, p. 22

Rolf Adlung, the WTO's senior health economist, on why the structure of WTO negotiations on services might be changed to make liberalization harder to avoid:

"The onus would be on the domestic interest groups seeking to avoid liberalization, thus reducing the burden on administrations and users to cajole them into participation. This might prove particularly difficult in areas such as health, education, audiovisual and transport services..."

*GATS 2000 - New Directions in Services Liberalization*, ed. Pierre Sauve, Robert Stern, p. 124

#### The WTO Attack on Democratic Debate

The WTO and the transnational services lobby have a problem. Up until the past year, they were able to claim that the negotiations intended to massively expand the WTO services agreement - the General Agreement on Trade in Services - were the least controversial aspect of the WTO agenda. From barely being on the radar screen of even the most well-informed citizens, the GATS has come under increasing scrutiny, resulting in diverse acts of opposition. For example, the City of Red Deer, Alberta recently joined other Canadian municipalities in asking for a complete exemption from the GATS. Two hundred and fifty-four British MPs have called for an

independent assessment of the likely impact of the GATS on key services. Hundreds of organizations around the world have signed on to the statement "Stop the GATS Attack". In light of this growing awareness, trade departments and the WTO have launched an extremely aggressive attack on those who have tried to inform the public about what is happening at the GATS negotiations. Part of this offensive was the WTO's release in March, 2001 of the publication, "GATS - Fact and Fiction", which is analyzed on the linked pages under the following headings:

1. The GATS threat to public services  
"GATS - Facts and Fiction" makes extraordinary claims about a supposedly ironclad exemption for governmental services in the GATS. Official WTO documents reveal not only has the WTO and its members raised serious questions about the protection offered by this exemption, but WTO representatives have said it should be interpreted narrowly. In addition, European trade cases indicate that every single challenge taken against a similar exemption in the European Treaty has succeeded.
2. The GATS and deregulation.  
"GATS - Fact and Fiction" attempts to deny what an entire GATS committee's work is all about, coming up with new legally binding limitations on government regulation.
3. The attack on the flexibility countries have under the GATS  
"GATS - Fact and Fiction" presents the GATS negotiations as though they put no pressure at all on governments to liberalize their service sector - governments supposedly retain "complete freedom". In fact, signing on to the GATS means countries are obligated to "progressively liberalize" and new negotiating approaches will ratchet up the pressure to make extensive new commitments.
4. Eliminating limits on the GATS  
"GATS - Fact and Fiction" suggests countries are completely free to impose all the limits they want on their GATS commitments, failing to mention that these limits are targeted for elimination in successive rounds of GATS negotiations.
5. Changing the GATS negotiating structure  
"GATS - Fact and Fiction" talks about the flexibility in the GATS. However, this flexibility is now under attack through proposals to adopt a more "efficient" negotiating structure to the "bottom-up" approach.
6. Unsupported claims about GATS benefits  
"GATS - Fact and Fiction" makes extravagant claims about the benefits about liberalization, the GATS, and the WTO generally - going so far as to imply the WTO is responsible for world peace. The WTO's own analyses insist, however, that *nothing can be concluded about the impacts of the GATS from the available trade data.*

### **Shutting the Public Out**

Among the political advantages the WTO attaches to the GATS is its capacity for "overcoming domestic resistance to change."

(WTO GATS training course:

[http://www.wto.org/english/thewto\\_e/whatis\\_e/eol/e/wto06/wto6\\_43.htm](http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto06/wto6_43.htm))

The campaign undertaken by the WTO and trade officials should be seen in the context of criticisms the transnational business lobby has made about inadequate promotion of the new round of negotiations. At an international business conference on the GATS in November, 2000

Dean O'Hare, the chair of the major transnational corporate coalition behind the GATS, complained,

"we can't any longer expect to be able to win our case in private closed meetings with governments. We have to convince wider publics of the benefits of trade."  
O'Hare called on business, government, and WTO representatives present to get out and "counter those who have distorted the issues."

Ironically, it was originally O'Hare's own declarations on what the GATS negotiations would mean that alerted many to the threats posed by these secretive talks. O'Hare's August 5, 1999 submission to Congress on behalf of the services lobby he chairs said that one of the objectives of the GATS negotiations should be to encourage privatization of health care systems, allowing for complete foreign ownership of health facilities. The submission also said that the negotiations could address regulatory "problems" such as "excessive" privacy rules over medical records. While this statement has now been taken off the US Coalition of Service Industries' Web site, it can still be obtained from this US government site:  
<http://waysandmeans.house.gov/trade/106cong/8-5-99/8-5ohar.htm>

In meeting after meeting pulled together to achieve an elite consensus on the GATS negotiations, speakers from the WTO, the World Bank, the OECD, academic institutions, think tanks, trade departments, and transnational business made claims about what could be achieved through the GATS. They talked about how the GATS dealt with policy areas that were never before considered related to trade. They boasted about how sweeping regulatory "reform" could be achieved through new GATS disciplines. They emphasized that the GATS was the world's first multilateral agreement on investment but had the advantage over the MAI (the failed Multilateral Agreement on Investment) that it had not attracted the concern of non-governmental organizations. They said that everything was on the table in the negotiations and in fact special emphasis should be put on sectors where the fewest commitments had been made - which would mean health and education.

But now due to demonstrations of public concern there is an effort to deny what has been said. It is an impossible task, because most of the statements are still easily available to anyone with Internet access. The recent WTO publication, "GATS - Faction and Fiction", and the public statements governments are currently making about the negotiations are totally at odds with what has been stated in business forums and GATS meetings in Geneva. Now, despite all past statements to the contrary, the public is being asked to believe that the GATS negotiations are not about

- entrenching privatization and deregulation.
- achieving many of the same things that would have been done under the MAI had it not been defeated.
- getting a different negotiating structure so that governments are under more pressure to commit key service sectors.

For example, in discussions behind closed doors at the WTO, the degree to which public services are protected by an exemption for governmental authority in the GATS has been repeatedly questioned. The problems with the exemption have not been manufactured by WTO critics but have been raised by the WTO Secretariat and WTO representatives themselves. Yet in the "The GATS: Fact and Fiction", the Secretariat turns around and asks what "serious" person could have doubts about the exemption for governmental services. Only the serious people who have taken the time to read the Secretariat's own reports. Only the serious people who have read the European Commission's WTO paper asking whether this exemption "was sufficiently clear."

And how could anyone come up with the wild idea that the GATS negotiations are about promoting deregulation? Perhaps by reading the minutes of the GATS Working Party on Domestic Regulation, whose task it is to come up with new, legally binding disciplines designed to limit government regulation over services to only what is deemed "necessary."

Rather than genuine debates on the substance of the discussions about whether health care, education, energy, water and other critical services systems should be deregulated and permanently opened up to foreign corporations through the GATS, there is an attempt to build a wall of denial that is just as fiercely anti-democratic as the decision to hold the next WTO ministerial meeting in Qatar. The responses from WTO officials to legitimately raised concerns are completely over the top - eg. Director General Mike Moore declaring in an opinion piece that GATS critics "make me sick". They are the equivalent of a verbal pepper spraying, designed to intimidate rather than inform.

Contrast, for example, the statement made by the head of the WTO services division in a public letter to Canada's National Post newspaper as opposed to the one he made in a private session with business executives in 1997:

David Hartridge, in a letter to the National Post, July 24, 2000: "I have not said that 'this Agreement makes liberalization irreversible'." Source: David Hartridge, in his speech "Opening markets for Banking Worldwide: The WTO General Agreement on Trade in Services", to an international banking seminar held in London, England, January 8, 1997

"The GATS can and will speed up the process of liberalization and reform, and make it irreversible."

Again, contrast what is said by the Secretariat in "GATS: Fact and Fiction", and what was reported in official minutes to a GATS meeting:

"Because no question has been raised by any Member about services supplied in the exercise of governmental authority there has been no need for interpretation of this phrase." GATS: Fact and Fiction

"(T)he European Commission paper [on government procurement] suggested that all services falling within the scope of GATS should be covered. In this connection, the exclusion from the GATS of 'services supplied in the exercise of governmental authority', raised the question of whether the GATS definition of such services was sufficiently clear."

Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp), under WTO document symbol: S/WPGR/M/18

### **Separating WTO Fact from Fiction**

What can be done when the public is treated with such contempt by trade officials? Ordinary citizens can be empowered to make an impact on the GATS negotiations, despite the fact that the agreement is complex, the language arcane, the volume of information daunting, and the considerable resources of the WTO have been enlisted to obstruct their understanding. There are original WTO documents - some made public by the WTO and some made public by other means - that offer an insiders' knowledge of what is really going on at GATS meetings. Using these original materials as their sources, citizens do not have to rely on what WTO defenders or critics say about the agreement - they can learn about what is really at stake for themselves. Then they can insist that politicians respond to the substance of the negotiations and take responsibility for their direction.

"GATS: Fact and Fiction", posted on the home page of the WTO web site, provides a jumping off point for an analysis of what is stake in the GATS negotiations. This WTO publication is of limited use in summarizing the debate, at least partly because it inaccurately cites critics as making statements they never made. But it does give the main "talking points" that trade officials are being trained to use against those who have raised concerns about the negotiations. These main points - the fiction being propagated about the negotiations - are contrasted in the linked pages with facts from original WTO documents. This allows citizens in on what is really happening behind closed doors at the GATS negotiations.

The original WTO documents that the WTO has made public can be obtained by going to the WTO document search site: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) and searching using the document symbol provided.

## **The GATS Threat to Public Services**

### **The Line from the WTO's "GATS: Fact and Fiction"**

"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 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?"

"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."

"Many public services are not provided on a commercial or competitive basis and are not subject to the GATS. The first Article of the Agreement excludes from its coverage all services provided in the exercise of governmental authority, which are defined as those supplied neither on a commercial basis nor in competition with other suppliers. These services are not subject to any GATS disciplines, they 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. Because no question has been raised by any Member about services supplied in the exercise of governmental authority there has been no need for interpretation of this phrase.

***"The issue could only 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 and was therefore outside the scope of the GATS."***

<http://www.wto.org/english/>

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## **The Facts According to WTO Documents**

### **Introduction**

Nowhere is the WTO's public relations campaign on the GATS more offensive to honest public debate than in its handling of the threat the negotiations pose to public services. Concerns about the fate of public services under an expanded GATS have not only been sparked by service industry lobbyists claiming that privatization can be achieved through the GATS. These concerns are also firmly grounded in:

1. The problems with the wording of the governmental exemption clause in the GATS, the failure of the GATS to distinguish between public and private service suppliers, and the fact that the negotiating guidelines say all services are on the table.
2. The questions the WTO Secretariat itself has raised about whether this exemption would provide protection for public services in key areas like environmental, health, and postal services.
3. The questions WTO members have raised about the meaning of the exemption.
4. The agreement among WTO representatives that the exemption should be interpreted "narrowly".
5. The total failure of a similar exemption in the European Treaty to protect any government service, a fact WTO representatives are fully aware of since this was brought up at a WTO meeting.
6. The consequences for governments' ability to subsidize services and maintain government monopolies in key areas if the governmental exemption clause does not hold up under a WTO challenge.
7. The irreversible character of GATS commitments that virtually guarantee once a service has been privatized and subjected to GATS commitments, it can never become part of the public sector again.

All of these reasons to be concerned about privatization through the GATS are compounded by the fact that the new round of negotiations will greatly expand the reach of the agreement.

### **1. The problems with the governmental exemption in the GATS**

The actual text of the Agreement under Article I, Scope and Definition, says:

"For the purposes of this Agreement:...

3(b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

(c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers."

[http://www.wto.org/english/docs\\_e/legal\\_e/26-gats.pdf](http://www.wto.org/english/docs_e/legal_e/26-gats.pdf)

While the "GATS: Fact and Fiction" claims "Many public services are not provided on a commercial or competitive basis", anyone familiar with public sector services is hard-pressed to identify any that could not be interpreted as having private sector competitors. Even elementary schools in most countries have private school competitors, and consequently might not qualify for the exemption. The question of whether public services operate on a commercial basis is also fraught with uncertainty because, as the WTO Secretariat itself points out, "commercial basis" is not defined in the agreement.

In addition, the Agreement makes no distinction between service suppliers in terms whether they are:

"for profit or otherwise, and whether privately-owned or governmentally-owned..." (Article XVIII Definitions, g, j, and l)

And, according to the negotiating guidelines adopted on March 28, 2001, all services without exception are on the table: "There shall be no *a priori* exclusion of any service sector..."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/L/93)

### **2. Questions the WTO Secretariat has raised about the governmental exemption:**

The WTO Secretariat has prepared background notes on specific sectors. In its notes, the Secretariat repeatedly raises questions about the meaning of the governmental exemption in the GATS. All of these questions remain unanswered. WTO negotiators have just chosen to ignore the problem.

Here is a sampling of the issues the Secretariat notes have raised, ones that should shake the confidence of anyone asserting that public services are automatically exempted from GATS commitments:

"[W]ith regard to the core environmental services, sewage and refuse disposal, it does not seem to be completely clear how much falls within the scope of Article I:3 (services supplied in the exercise of governmental authority) and Article XIII (government procurement), and how much is subject to the main GATS disciplines."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/C/W/46)

"The co-existence of private and public hospitals may raise questions, however, concerning their competitive relationship and the applicability of the GATS: in particular, can public hospitals nevertheless be deemed to fall under Article I:3?"

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/C/W/50)

"Postal services of a Member, whatever the status of the postal supplier [public or private], would be services covered by the GATS so long as, and which is usually the case, they are supplied on a commercial basis."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) WTO Document Symbol: S/C/W/39)

### **3. Questions WTO members have raised about the exemption.**

"GATS: Fact and Fiction" claims that "no question has been raised by any Member about services supplied in the exercise of governmental authority."

This claim is proven false by the official WTO record of GATS meetings. In discussions regarding government subsidies, Switzerland said the negotiations on subsidies "highlighted the importance of determining the extent to which some sectors, such as health services, were provided under governmental authority."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) WTO Document Symbol: S/WPGR/M/28)

In discussions regarding government procurement, a European Community paper" suggested that all services falling within the scope of GATS should be covered. In this connection, the exclusion from the GATS of 'services supplied in the exercise of governmental authority', raised the question of whether the GATS definition of such services was sufficiently clear."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) WTO Document Symbol: S/WPGR/M/18)

### **4. Agreement to interpret the governmental exemption "narrowly"**

In contrast to what the WTO is saying about the importance members attach to the governmental exemption, when the exemption has been discussed in Geneva there has been agreement that it should be interpreted "narrowly" so as many aspects of a service as possible could be covered under the GATS.

The agreement that the governmental exemption should be interpreted narrowly is reported right in the minutes of a WTO Council for Trade in Services meeting that dealt with the health sector: "Members drew attention to the variety of policy objectives governing the provision of health and social services, including basic welfare and equity considerations. Such considerations had led to a very substantial degree of government involvement, both as a direct provider of such services and as a regulator. However, this did not mean that the whole sector was outside the remit of the GATS; the exceptions provided in Article I:3 of the Agreement [the exemption for governmental services] needed to be interpreted narrowly."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) WTO Document Symbol: S/C/M/30)

No WTO member representative voiced any objection at this or any subsequent GATS meeting to the notion that the governmental exemption "needed to be interpreted narrowly". So in the event of a dispute challenging a public service, a WTO dispute panel might refer to this statement recorded in the official Services Council minutes as an indication of WTO members' intent.

### **5. Challenges to governmental services under a similar European Treaty provision**

While there have not been any WTO panel rulings yet on a GATS challenge to a public service, there have been cases in international trade law that give an indication of what the results of such a challenge are likely to be. A similar exemption for governmental services in the European Treaty has never once succeeded in protecting a service in any of the cases brought to date.

The notion suggested in "WTO - Fact and Fiction" that European Community representatives will rush to the defence of public services in the context of the GATS negotiations is not born out by the EC's record. In fact, at a meeting to review expansion of the European Community, European trade officials emphatically reassured other WTO members that an exemption for governmental services in the European Treaty similar to one in the GATS in practice had in reality offered no protection at all.

In the minutes from a WTO meeting held in May 1999

"EC officials were asked to explain the extent of trade in services provided for under the new agreements the European Community was signing with countries in eastern Europe. They were asked in particular about a particular clause in the European Treaty - Article 55 - that gives an exemption for services connected to 'the exercise of official authority.'"

The EC responded by saying:

"These provisions [of Article 55] are similar with those of Article 1.3.(b) of GATS which excludes from its scope services 'supplied in the exercise of governmental authority.'...There are no examples in the European Court of Justice jurisprudence where the Court found that an activity would fall under the scope of Article 55."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) WTO Document Symbol: WT/REG50/2/Add.3)

Far from being the champion of public services, the EC has actually taken its own member states to court in a number of cases when these members have tried to exempt services from trade obligations under the European Treaty. For example, the EC challenged Italy's public monopoly on job placement centres. Even though this was a pure public monopoly with no private sector competition, even though it operated on a completely non-profit basis, and even though Italy maintained the monopoly was a matter of public policy, the European Court of Justice agreed in 1997 with the EC and ruled Italy's program was a violation because it was "*liable to affect trade.*"

In another case involving Spain, the EC argued in court that the official authority exemption "should be interpreted restrictively and limited to what is strictly necessary" and that "Member states cannot put a ring fence around an entire sector of activities."

European Court of Justice arguments are frequently referred to in WTO disputes. The eagerness of the EC within the European context to see exemptions for governmental authority strictly limited undermines the notion that the EC can be relied on to be a defender of public services at the WTO.

### **6. The consequences for public services of a WTO challenge could be devastating**

The consequences for public services are potentially devastating if governments go ahead and make unlimited commitments on the false assumption that public services will get ironclad protection from the GATS governmental exemption. "GATS: Fact and Fiction" says that the issue

does not need clarification because it would only come up in the context of a WTO dispute. A letter from David Hartridge, WTO Director, Trade in Services Division dated May 31, 2000 makes the same point: "The status of the public component could only ever become an issue if some measure taken by the government concerned were to be questioned by another WTO Member."

Those concerned about the preservation of public services and familiar with the kinds of far-reaching rulings WTO panels have made are not comforted by these words. What the WTO Secretariat is saying is that the issue of whether the governmental exemption in the GATS does in fact protect public services should be left to WTO panels to decide. If a WTO dispute panel were to decide against a public service, it would be pretty much removed irrevocably from the public sector.

Again, the demonstrated willingness of the European Commission to challenge public services of EC members suggests it will have no problem doing this in the WTO context when GATS commitments are broadened through the current negotiations.

#### The GATS and public subsidies

Sometimes government officials tend to mislead people - as "GATS: Fact and Fiction" does - by implying that the GATS does not yet apply to subsidies because negotiators have not completed their work on Article XV. Article XV gives negotiators a mandate to write new rules about subsidies that distort trade. However, as is clearly stated in the GATS guidelines prepared by the WTO Secretariat, subsidies are already clearly covered by the GATS national treatment obligations.

The work on subsidies under Article XV poses its own particular threat to public services over and above the ones that already exist under national treatment obligations "National Treatment" in the GATS already covers subsidies

If a government makes an unlimited commitment of a sector under national treatment (GATS Article XVII), then it must "accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers."

"Measures" that affect the supply of services include government subsidies. The new WTO GATS guidelines are absolutely absolutely clear on this point:

"Article XVII applies to subsidies in the same way that it applies to all other measures... any subsidy which is a discriminatory measure within the meaning of Article XVII would have to be either scheduled as a limitation on national treatment or brought into conformity with that Article." (Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) WTO Document Symbol: S/L/92)

So if governments make an unlimited commitment of a service under national treatment, they are in violation of the agreement if they "discriminate" by giving grants only to locally based institutions supplying the service. Foreign corporations providing the same service would have to be eligible for the same government subsidies.

The national treatment obligation would not apply to the committed service if it fell under the governmental exemption in the GATS. But then of course governments are running the risk of having a WTO dispute panel rule interpret this exemption "narrowly", as they have been encouraged to do by WTO members.

Governments are unlikely to continue to provide subsidies to foreign, for-profit corporations on the same basis that they are given to local, non-profit institutions. As WTO research staff have said, the requirement to provide a subsidy on a "non-discriminatory" basis to both foreign and local operations is a powerful argument for eliminating the subsidy altogether. Ending government support for public services is just one way that the GATS can foster privatization.

The GATS and government monopolies

What happens if a government goes ahead and makes an unlimited "market access" (GATS Article XVI) commitment of a service on the assumption that the governmental exemption protects public services? Among other things, an unlimited market access commitment of a service sector means governments are not allowed to limit the numbers of service suppliers. They are in violation of this commitment if they do things like "maintain or adopt" monopolies or exclusive service suppliers in the sector. If governments wanted to maintain a public monopoly on a service, then they would have to make sure they listed this as a limitation on their market access commitments for a service.

The WTO Secretariat's GATS guidelines (WTO Document Symbol: S/L/92) gives the following example of the kinds of measures that either must be listed or else eliminated: "government owned monopoly for labour exchange agency services." If governments do not list this as a limitation on their market access commitments, then the government monopoly would be in violation of the GATS.

### **7. The irreversibility of privatization under GATS commitments**

Trade officials will say that they are not promoting privatization through the GATS, just working to see that services once privatized are open to foreign competition. This ignores the critical point that liberalization under the GATS is a one-way street and intended to make privatization irreversible.

Here is how the Secretariat has described the essential permanence of GATS commitments:

"By guaranteeing that investment and trading conditions will not be changed against their interests, a commitment in the GATS provides the security which investors need."

(from the WTO course on the GATS, <http://www.wto.org/english/>)

"(B)indings undertaken in the GATS have the effect of protecting liberalization policies, regardless of their underlying rationale, from slippages and reversals...."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) WTO Document Symbol: S/C/W/94)

Under the GATS, if a government has privatized a sector and made unlimited commitments to have it fully covered by the GATS, then it would have to withdraw these commitments in order to bring the service back into the public sector. "GATS: Fact and Fiction" suggests that this is an easy thing to do. But by examining the actual provisions of the GATS that dictate what governments have to do to withdraw a commitment or create a new public service (see Articles VIII and XXI), it becomes clear why the director of the WTO services division has said liberalization under the GATS is irreversible. To withdraw a commitment, governments have to wait three years and negotiate a substitute commitment to the satisfaction of all other WTO members. In fact, as minutes to GATS meetings show, WTO members do not really know if it is possible to withdraw a GATS commitment if there is opposition

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) WTO Document Symbol: S/CSC/M/11).

Negotiations are supposed to happen to enable governments to have an escape hatch - an emergency safeguard measure (an ESM) - that would allow them to withdraw a commitment on an emergency basis rather than wait three years. But what "GATS: Fact and Fiction" conceals is the fact that the dominant members of the WTO are adamantly opposed to having such a measure included in the GATS. Here's an indication of depth of this opposition expressed at just one meeting:

"The representative of the United States said his delegation was still sceptical about the need for an ESM...The representative of Hong Kong, China noted that he remained to be convinced that an ESM was desirable from a trade liberalization point of view...The representative of Japan recalled that the question of desirability of an ESM still remained to be solved...The representative of Switzerland said that the question of desirability and feasibility of an ESM was

still unresolved for her delegation....The representative of Canada wondered in what circumstances an ESM would be appropriate, given the structure of, and existing commitments under, the GATS."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) WTO Document Symbol: S/WPGR/M/26)

## **Deregulation Under the GATS**

### **The Line According to "GATS: Fact and Fiction"**

"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 negotiations 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](http://www.wto.org)). They provide the best insight currently available as to the like 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 Member Governments are not required 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 Facts According to WTO Documents

### Introduction

Why WTO officials would so vociferously try to deny the fact that the GATS is about the deregulation of services is bizarre. Their 1997 paper on the benefits of the GATS, originally titled "*The Benefits of Deregulation and Liberalization of Services Markets*" (WTO Document Symbol: S/C/M/20), argues that precisely because services "have long been tightly regulated", that the benefits from liberalization in this sector could be particularly high (WTO Document Symbol: S/C/W/26). They say in a subsequent paper that "genuine deregulation and liberalization measures have been negotiated under the GATS"(WTO Document Symbol: S/C/W/24).

The views of WTO staff on the GATS role in deregulation are entirely supported by the European Community and the U.S. The EC guide to the GATS says the agreement reflects WTO members' "basic belief in ...deregulation."

(See: <http://gats-info.eu.int/gats-info/guide.pl-MENU=aaa>)

The US has said "Many WTO Members, from the least-developed to developed, are proceeding to deregulate their services sectors ... The GATS negotiations should recognize and encourage these initiatives." (WTO Document Symbol: S/C/W/119)

"GATS: Fact and Fiction" encourages people to read the original WTO documents to see what is actually being proposed in the area of domestic regulation. This in some cases is a problem because many of the key GATS documents on regulation have been kept secret. In the analysis that follows, leaked copies of key secret documents are available by clicking on the highlighted link.

What original WTO documents (both the secret and the public ones) on services' regulation - actually reveal is the following:

- A specific WTO committee - the Working Party on Domestic Regulation - has been established with the explicit mandate of drafting new clauses in the GATS that would enable WTO members to challenge each others regulations over services.
- GATS negotiators are working to import into the GATS the most controversial provisions of other WTO agreements, exactly the ones that have caused the most public concern about the WTO's negative impact on the right of governments to regulate.
- Professionals have voiced concerns about the negative effects on consumers and the lessening of standards for their professions from new GATS disciplines proposed for all service professionals - doctors, lawyers, nurses, engineers, etc.
- When countries make commitments of a service sector under GATS rules, the regulations of all levels of government within their territory become vulnerable *in highly unpredictable ways to WTO challenges*.

The WTO may resent hearing the inevitable impacts of these GATS initiatives called "deregulation". However it is difficult to know how else to characterize the work going on in GATS committees when the net effect will be to sharply constrain governments' regulatory ability.\*

## **1. The activities of the GATS Working Party on Domestic Regulation**

Government's right to regulate is only recognized in the GATS in its "preamble", the part of international treaties that is not legally binding. And, as WTO staff explain: *"Members' right to regulate did not prevent the inclusion in the GATS of rules allowing for the minimisation of the trade restrictive effects of domestic regulation..."*

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/C/W/96)

In their paper on the benefits of the GATS, WTO staff say: *"There is nothing in the GATS - or in the GATT - that would oblige governments to sacrifice any reasonable level of technical or commercial regulation. The GATS imposes constraints, however, on the use of unnecessarily restrictive or discriminatory requirements in scheduled sectors. Governments may thus be required to complement market-opening measures with a review of domestic regulation."**[emphasis added]*

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/C/W/26)

These constraints on government regulation, in contrast with the non-binding "right to regulate" contained in the preamble, are part of the general obligations imposed on governments by the GATS. WTO staff underline that GATS regulatory disciplines apply across-the-board, without exception, regardless of whether WTO members have made commitments in particular service sectors.

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/C/W/96)

When the GATS was signed in 1994, negotiators had not completed the disciplines on domestic regulation. That is what they are working on now, and a specific group of trade officials - the GATS Working Party on Domestic Regulation - is drafting language to enable WTO members to challenge each others services regulations through the WTO dispute system. Article VI.4 of the GATS currently provides a negotiating mandate to develop disciplines on licensing and standards over services that would require them to "not constitute unnecessary barriers to trade in services." According to WTO staff, *"specificity" is being given to Article VI.4 to make it "operationally useful" in the WTO dispute system. (WTO Document Symbol: S/C/W/96) Making GATS language specific enough to be "operationally useful" means providing WTO members with the legal tools to challenge each others regulations over services.*

It is important to put this GATS work on regulations in context. Services are the most heavily regulated aspect of any society. They include activities like health care and education, but as well less obvious ones like pesticide spraying, construction of logging roads, and toxic waste disposal that have an enormous environmental impact.

More than any other aspect of the WTO, the decisions by its dispute panels against government regulations have sparked public concern. WTO dispute panels have ruled that measures to protect air quality, endangered species, and food safety have all been violations of WTO agreements dealing with goods. It is a reflection of the arrogance of trade officials that in the post-Seattle era they would now be working to make the vast field of services regulations equally vulnerable to challenge at the WTO.

## **2. Imposing new WTO disciplines on government regulation**

On March 19, 2001 the WTO Secretariat circulated suggestions on the models for a "necessity test" that could be imported into the GATS from other WTO agreements.

(WTO Job No. 5929)

A necessity test means that, if challenged, not only do governments have to prove to the satisfaction of trade panelists that their regulations are "necessary." They also have to show there was nothing else they could have done that was "less trade restrictive" to accomplish their objective.

In a secret document circulated to WTO members in February 2000  
(Job No. 1061)

the European Community has given its recommendations on how "inappropriate" regulation over services can be disciplined by the GATS. They followed this up in May, 2001 with a proposal that domestic regulation over all services should be based on a concept of "necessity". This would mean that regulations should be "not more burdensome than necessary to ensure the quality of the service, not be applied in a manner that restrict trade in services more than required in order to achieve the underlying objective."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/WPDR/W/14)

The EC has argued that "strong" rather than "lenient" GATS disciplines over domestic regulation should be imposed. In one meeting, the EC actually objected to a list the WTO Secretariat had prepared to provide governments examples of what regulations they are allowed to exempt from their GATS commitments. The European Community representative stated that: "This might preempt the future Article VI [domestic regulation] disciplines and incline to a *lenient* interpretation of those disciplines."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSC/M/5)

The use of the word "lenient" betrays the attitude of trade officials that limits need to be placed on governments' right to regulate.

Canada has made new disciplines over regulation part of the negotiating position it submitted in March, 2001.

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSS/W/47).

Both the US (WTO Document Symbol: S/WPDR/W/4) and Canada are talking about the need for more GATS "transparency" disciplines, but their proposals go far beyond obligations for government to be fair and open in how it regulates. They are stretching the concept of regulatory transparency to include the right of foreign governments to be heard and to have their views being given due consideration before any new regulations are implemented.

### **3. Concern about impacts on professional standards**

More than just regulations over corporations are at stake in the GATS negotiations. Professional standards and licensing requirements as well can be "unnecessary barriers to trade" under WTO rules. Because of the GATS eccentric definition of the term "trade", services supplied by people working on temporary visas in foreign countries are considered a mode of "trade". In the odd world of the WTO, this "trade" is called "presence of natural persons".

The WTO Secretariat has said bringing in staff from abroad is one of the key ways that costs can be lowered in areas like health care

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/C/W/50).

Foreign corporations wanting to do this are keen to have local professional licensing requirements be kept to a minimum and be harmonized so that any professional can work anywhere in the world.

It is just a red herring for the WTO to say that the organization itself will not be involved in setting standards. In the accountancy sector, it has adopted a legally binding obligation that licensing requirements and procedures are not to be "*more trade-restrictive than necessary to fulfil a legitimate objective.*" If a country's professional licensing requirements were challenged at the WTO, a trade panel would determine if they were more than was "necessary" by comparing them to "internationally recognized standards of relevant international organizations applied by that Member."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/L/64)

Of course countries will be completely "free" not to get their licensing requirements into conformity with their obligations. They could just wait until there is a WTO challenge, undertake the expensive proposition of a legal defence, and *then* bring their regulations into conformity when a panel has ruled against them. They also will be "free" to maintain the offending regulations and suffer the consequences in the form of trade sanctions imposed in perpetuity. These are not serious options, and only in a polemic directed against critics would WTO staff suggest members should consider deliberately maintaining non-conforming measures.

And it is not as though violations go unnoticed. Countries periodically submit themselves to a trade policy review at the WTO, and are grilled by other members about anything that might be seen as interfering with their WTO obligations.

In 1999 WTO members decided to consult professional associations on whether the GATS disciplines already established for accountants should be extended to all professions. No consumer groups were asked what they thought of making licensing requirements "no more burdensome than necessary" in critical areas like the practice of medicine. Fortunately, some professionals did object, "Unlike the accounting sector, which is strictly operated on a commercial basis, medical services need to take into account social conditions, the government welfare policy, and overall public interest."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/WPDR/W/10)

#### **4. The threat to governments' right to regulate from GATS commitments**

As well as having a specific article on Domestic Regulation, the GATS disciplines regulations whenever governments make market access and national treatment commitments.

The WTO Secretariat emphasizes in its course on the GATS that: "the Agreement encompasses not only measures designed to regulate trade in services directly but also any other measures that might be designed to regulate other matters but which incidentally affect the supply of a service."

(See: <http://www.wto.org/english>)

So regulations can be a violation of the GATS even if they regulate goods rather than services. Needless to say, it is very hard to know what regulations might "incidentally" affect the supply of a service. In contrast to what is claimed in "GATS: Fact and Fiction", the GATS creates tremendous uncertainty for governments about what is acceptable under trade rules.

When countries make unlimited commitments of particular services, they explicitly agree to deregulate. Under unlimited market access commitments, governments are not permitted to impose six different kinds of regulatory limitations. This is an absolute prohibition on such regulations, and applies even when they are implemented in a completely even handed way in regards to domestic and foreign firms. Governments simply must get rid of regulatory limits whenever they have made complete market access commitments of a service sector.

Under unlimited national treatment commitments, governments leave themselves open to GATS challenges in highly unpredictable ways. Any regulation that "affects the conditions of competition" in favour of domestic firms could be a violation. For example, in discussing barriers to trade in the construction industry, the European Community cites differences in building regulations as a problem: "Even if the same measures are applied to all suppliers, domestic or foreign, they may be found to be more onerous to foreign suppliers."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSS/W/36)  
Mere difference in regulations is portrayed as a barrier to trade. So much for countries being able to regulate to meet their own "national policy objectives."

*\*Sometimes what trade officials say when they protest that they are not deregulating is to insist that they are "reregulating", imposing new "pro-competitive" regulations as they have done through the GATS in the telecom sector. What they mean is that existing, public interest regulation will have to be replaced with market-oriented regulation. Infrastructure, even if it is in the public sector, will have to be made accessible to foreign competition.*

## **The "Freedom" Governments Have under the GATS**

### **The Line from the WTO's "GATS: Fact and Fiction"**

WTO Members Are Allowed "Complete Freedom" in Making GATS Commitments

"Each WTO Member lists in its national schedule those services for which it wishes to guarantee access to foreign suppliers... There is complete freedom to choose which services to commit."

[http://www.wto.org/english/tratop\\_e/serv\\_e/gats\\_factfiction\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/gats_factfiction_e.htm)

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### **The Facts According to WTO Documents**

#### **Governments Have to "Progressively Liberalize"**

The ability to keep certain sectors free from the most forceful obligations of the GATS is eroded over time by the "Progressive Liberalization" article of the agreement (Article XIX), which says members have to:

"enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization....The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement."

#### **Article XIX of the GATS**

[http://www.wto.org/english/docs\\_e/legal\\_e/26-gats.pdf](http://www.wto.org/english/docs_e/legal_e/26-gats.pdf)

## **Limitations on GATS Commitments Are to Be Eliminated**

### **The Line from the WTO's "GATS: Fact and Fiction"**

#### **Countries Can Place Limitations on Their Scheduled Commitments**

"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)."

<http://www.wto.org/english/>

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## **The Facts According to WTO Documents**

### **Limitations Are Targeted for Elimination**

The GATS obligates governments to "progressively liberalize", and this means not only making commitments in more and more service sectors, but as well eliminating limitations on existing commitments. Here's how the New Zealand representative described the progressive liberalization obligation: "The negotiations on specific commitments should aim, in accordance with Article XIX [Progressive Liberalization], at progressively higher levels of liberalization, through commitments across a fuller range of sectors and through the reduction or elimination of limitations."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSS/M/1)

Limitations serve as a kind of "hit" list for negotiators to target for removal. For example, the US negotiating position submitted in December 2000 in the area of higher education says "Members are invited to inscribe in their schedules 'no limitations' on market access and national treatment." It lists as the kind of obstacle that should be removed "Minimum requirements for local hiring [that] are disproportionately high, causing uneconomic operations".

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSS/W/23)

Another example of how limitations on commitments are explicitly targeted is the European Community's position on financial services. "In order to encourage the long-term commitment of financial companies to their respective host countries, it is essential for them to be able to establish, control and expand commercial operations in third countries. To this end, we would argue that ceilings on foreign ownership should disappear and full foreign ownership rights should be allowed..."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSS/W/39)

So the European Commission is asking Canada, for example, to eliminate the existing limitations on its commitments regarding the foreign ownership of banks. The EC is asking developing countries like Brazil to eliminate the need for foreign banks to get government approval before they establish branches.

Limitations on commitments should be viewed as temporary in the context of an overall GATS obligation to progressively liberalize.

### **The GATS Threat to Public Services**

#### **Efforts to Change the Structure of the GATS**

##### **The GATS Structure Makes It Flexible**

"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."

[http://www.wto.org/english/tratop\\_e/serv\\_e/gats\\_factfiction\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/gats_factfiction_e.htm)

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## **The Facts According to WTO Documents**

## The "Bottom-up" Structure of the GATS Is Under Attack

The flexibility governments have to commit only the services they choose to the full force of the GATS was a hard-won victory for developing nations in the drafting of the original agreement. Without this structure it is unlikely developing nations would ever have signed on, since most of the corporations likely to benefit from the agreement are based in the US or Europe. But US Trade Representative Charlene Barshefsky has called repeatedly in her speeches on the GATS for a "a more *efficient* negotiating structure than the 'request-offer' process of the Uruguay Round." (June 1, 1999 speech "Services in the Trading System" emphasis added)

The guidelines for the negotiations approved in March 2001 indicates the battle has been lost to keep the agreement strictly "bottom-up". The guidelines say only that "the main method of negotiation shall be the request-offer [the 'bottom-up'] approach", leaving open the way for other methods to be adopted.

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/L/92)

European officials have said that these negotiating guidelines leave open the possibility that other negotiating methods could be pursued if members can agree on alternatives.

The GATS is described as a "bottom-up" the existing GATS structure is described is "request-offer", meaning negotiations involved an exchange of "requests" and agreement, in contrast with "top-down" agreements where everything is covered unless countries successfully bargain to get particular sectors exempted. Another way "offers" to liberalize specific sectors.

Trade officials frequently refer to the existing flexible structure of the GATS but fail to mention to the public that this structure is under attack in fundamental ways. Since the GATS came into being in 1995 after the Uruguay Round, the transnational business lobby has been dissatisfied with the pace of liberalization achieved. So the WTO's dominant powers - the US, the European Commission, Canada and Japan - have worked to get negotiations on a basis that would put governments under strong pressure to make more commitments.

Developing nations have had to exercise constant vigilance in even the most technical and obscure GATS subcommittees to fend off US and EC attempts to get the negotiating structure changed. In talks supposedly only dealing with how services are classified, the EC has declared its interest in having the GATS liberalize water supply services. In order to get countries to make commitments for the first time ever in this area, the EC made a proposal that water supply should be considered part of an environmental services "*cluster*" to be negotiated in one package rather than individually.

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSC/W/ 25).

The US for its part argued that all energy-related services should be treated as a cluster  
(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSC/W/ 27)

Both Mexico and Venezuela criticized these attempts by the EU and the US to turn the technical issue of service sector classification into an instrument of negotiation.

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSC/M/14)

In its March 14, 2001 GATS submission, Canada supported the drive to get the negotiating structure changed: "Horizontal, formula, model schedule or cluster negotiating approaches could be considered as appropriate, as long as they are consistent with the GATS architecture, which allows Members to individually decide which commitments to undertake."

(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSS/W/46)

But under these types of negotiating approaches, while members may still *in theory* be able to

choose which commitments they want to make, *in practice* the pressure to make sweeping new commitments would be enormous.

A "horizontal" negotiating approach means making a commitment - such as allowing electronic delivery or complete foreign ownership - and applying it across the board to all services without exception.

A "formula" approach could mean establishing a minimum percentage of services that countries have to liberalize.

A model schedule would create a prototype list of commitments, with countries presumably having to give justification why they would want to deviate from the model.

A "cluster" approach would have countries commit in one package all services that are interrelated.

Any of these negotiating approaches would increase the ability of the dominant WTO powers to twist the arms of governments to make more GATS commitments.

### **Unsupported Claims About the Benefits of the GATS**

According to "GATS: Fact and Fiction", liberalization under the agreement is supposed to increase foreign investment, boost the efficiency of the goods-producing sector, increase competition, create jobs, and transfer technology:

"Services commitments at the WTO help to encourage foreign direct investment (FDI)..."

"Opening domestic markets to foreign services suppliers increases competition, which brings many benefits. It tends to improve efficiency in the short and long term, lowering prices, improving service quality, increasing consumer choice and encouraging productivity gains. It is also often a more effective means of curbing the monopoly power of dominant suppliers than regulation or break-up..."

[http://www.wto.org/english/tratop\\_e/serv\\_e/gats\\_factfiction\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/gats_factfiction_e.htm)

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### **The Facts According to WTO Documents**

It is curious that the WTO staff are willing to risk making these sweeping claims about the beneficial impacts of the GATS in a public relations document like "GATS: Fact and Fiction". In the periodic reports on services trade and investment that they are required to submit to WTO members, they repeatedly state that nothing can be concluded about the impacts of the GATS from the available data.

For example, in the Secretariat's October 2000 review of trade flows in services (click on S/C/W/27/Add.1 to get the restricted document link to attached file E4520E27Add.1)

The Secretariat says:

"(P)roblems continue to seriously hamper the description or, even more ambitiously, the analysis

of trade flows in services...The following presentation is essentially descriptive in nature. It reflects recent trade developments in individual countries, regions or sectors, *but does not allow for any inferences on the causes... However, one conceivable factor has not possibly played a leading role to date: liberalization measures associated with the entry into force of GATS in January 1995.*(emphasis added)

In contrast with the claims made in "GATS: Fact and Fiction", the Secretariat says while "predictability and transparency" have been increased by binding existing liberalization through the GATS, GATS commitments "are unlikely to have impinged noticeably on trade flows".

The most recent report's statement that there is a lack of quantifiable evidence about the benefits of the GATS confirms previous Secretariat reports: "(T)o the knowledge of the Secretariat, there is not a single empirical study analysing on a comprehensive basis - across countries, sectors and modes - the effects on services trade attributable to scheduled commitments."  
(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/C/W/94)

In contrast to claims about increased competition, market penetration by foreign transnationals has often resulted in the elimination of local competition, especially that of small and medium enterprises. This is particularly true in service sectors like retail. The WTO Secretariat's own report on this sector says it is becoming "more concentrated" and vertically integrated, but then downplays the anti-competitive impacts of this trend.  
(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/C/W/37).

There are also case studies available to indicate that liberalization of the telecom sector under GATS commitments has meant loss of access to basic services for the poor. In these cases, consumer choice is not increased but eliminated outright for the most vulnerable in a society. In its report on liberalization of the health sector, the WTO Secretariat openly acknowledges not everyone benefits from liberalization:

"(A)dditional competition does not necessarily entail quality and/or efficiency gains for all population segments and interested groups. For example, private health insurers competing for members may engage in some form of 'cream skimming' leaving the basic public system, often funded through the general budget, with low-income and high-risk members. New private clinics may well be able to attract qualified staff from public hospitals without, however, offering the same range of services to the same population groups." The Secretariat goes on to say, however, that "These examples do not argue against market-based reforms."  
(Search at: [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/C/W/50)

In the Secretariat's view, governments should just keep trying until they get the right regulatory framework to make a market-based health system work. The 45 million Americans who have no health insurance might tend to disagree.