



stop the gats!

wto's general agreement on trade and services will undermine social and environmental sustainability

a friends of the earth international position paper, august 2003

summary

Friends of the Earth International opposes the continuation of the WTO's General Agreement on Trade in Services (GATS) negotiations. GATS has the potential to create adverse environmental and social impacts in a wide range of sectors including *energy extraction and production, transport, water, travel and tourism, construction, power generation, and waste disposal and sewage*. The WTO must conduct a fully public, comprehensive and meaningful assessment of the past and future impacts of services liberalisation to ensure the GATS does not undermine social and environmental sustainability.

Governments must take the following steps towards review, repair and reform, which are fully outlined at the end of this paper:

- cease the ongoing GATS negotiations;
- as called for by developing countries, immediately undertake a comprehensive assessment of the impacts of liberalisation, and ensure that these are conducted with full public participation;
- reject new investment disciplines in the GATS ("Mode 3");
- exclude all services related to natural resource extraction or nuclear energy;

- exclude all publicly provided and essential services from GATS disciplines;
- include environmental exceptions for measures relating to the conservation of exhaustible natural resources and explicitly reject any "least trade restrictive" test;
- remove Article VI provisions, including any "necessity" provision, and reject proposals that would require local and state governments to notify the WTO of any regulatory changes;
- exclude environmentally harmful activities from the definition of environmental services and permit distinctions between different types of energy technologies; and
- ensure that developing countries in particular have the right to protect their environment and social needs, including through special safeguards.

gats – setting the scene

Created as part of the formation of the World Trade Organisation (WTO) in 1994, the General Agreement on Trade in Services (GATS) is part of a broad grouping of international agreements and institutions that increasingly interfere with domestic policy initiatives. These agreements - including various agreements on investment and intellectual property rights - provide substantial rights to

transnational corporations at the expense of sustainable environmental and social policies. The GATS does so in the critical arena referred to as services. Services, estimated at 61% of global GDP, are key factors in today's transnational production chains that shape the global economy.

Under the terms of the GATS, member countries are obliged to continue further liberalisation of services with new negotiations that began in 2000. At the 2001 Doha Ministerial of the WTO, governments agreed to a timeline for these GATS negotiations, with negotiating requests to other countries due by June 30, 2002, and initial negotiating offers due by March 31, 2003. The scheduled deadline for conclusion of the talks is January 1, 2005.

The European Union and the United States, pressed by their corporate lobby groups, particularly the U.S. Coalition of Services Industries and the European Services Forum, have pressed for extensive services liberalization, especially by developing countries. Leaked copies of the EU's 109 requests show that the bulk of the requests were submitted to developing countries. By June 2003, however, only 26 governments had presented any kind of offer, primarily due to the reluctance of developing countries to further commit their services sectors to GATS. Meanwhile, a number of developing countries have pressed for the WTO to conduct an assessment of the impact of services liberalisation as is mandated in GATS Article XIX. Yet no thorough and meaningful assessment has been conducted by the WTO to date, leaving the potential impacts of the negotiations unaddressed.

gats and the environment

The GATS is notable for the wide range of industries and the types of service operations covered under the agreement, many of which are not usually defined as services. Its broad

definition potentially includes sectors that touch nearly every aspect of the natural world and the environment, including *energy extraction and production, electricity, transport, water, travel and tourism, construction, power generation, and waste disposal and sewage*. The activities of transnational service corporations that represent more than two-thirds of global trade in services – including oil companies, electricity producers, waste disposal businesses, private water companies and hotel chains – have major environmental impacts around the world.

The current negotiations to expand the reach of the GATS will thus have substantial implications for the environment and social conditions around the world, extending and deepening the impacts of the agreement. While the GATS does permit countries to choose in which sectors they will accept some of the agreement's obligations, *the explicit purpose of the current GATS talks is to increase the number of industries that are covered by GATS rules and to deepen the commitments in sectors that are already covered*.

The negotiations could thus place some environmentally and socially critical sectors – including water supplies and the entire chain of energy and fossil fuel production – explicitly under GATS rules for the first time. Much of this extension of the GATS to new arenas will take place through a process of classification in a technical committee that faces limited scrutiny. Simultaneously, the most influential countries will also push for more countries to take on further obligations in sensitive sectors that are already covered by the GATS, such as transport, tourism and so-called “environmental services”. Given the substantial environmental impact of these various sectors, the expansion of service operations due to GATS liberalisation could lead to increased ecological harm that would be

compounded by the constraints the agreement places on environmental regulation.

government's right to regulate – threatened by gats

GATS is one of a new generation of international commercial agreements that reach deeply into domestic policies that had never previously come within the purview of the trade regime. GATS has the power to place serious constraints on the right of governments and citizens to control transnational service corporations operating in their countries. The agreement covers services provided in every mode possible, including cross-border services such as transport, services provided to someone in another country, services provided by the temporary movement of workers, and, most importantly, services provided through the establishment of a commercial presence in a country – otherwise known as foreign direct investment.

The GATS is thus the world's first multilateral investment agreement, as the WTO itself has acknowledged. The impact of such an agreement is potentially enormous since the agreement can apply to any law or regulation that affects service operations, even when the law or measure is only indirectly related to the service sector at issue (as stated in the WTO decision in the EU-Banana's case). In sectors that are covered by the agreement, the GATS can restrict or remove a country's ability to maintain regulatory measures to protect the environment and the public interest, including quantitative restrictions on services operations (such as to limit the size or number of oil pipelines or tourist resorts).

The agreement could also constrain a government's right to retain preferences for local service suppliers or control the market access rights

enjoyed by transnational corporations, even when there are significant environmental and social consequences or a country's own suppliers are no longer able to compete. In addition, the GATS can prohibit governments from adopting laws that place another country's similar service operators at a competitive disadvantage, even if the law is a non-discriminatory effort to protect the environment or other public interests.

Critically, from a sustainability point of view, the current negotiations could also apply the agreement's specific restrictions on "domestic regulation" across all service sectors, rather than just ones in which countries have made specific liberalisation commitments. Under a key GATS standard, regulations must "not be more burdensome than necessary to ensure the quality of the service." If that standard is applied through the current WTO negotiations, a country could have to prove to a WTO panel that its environmental and social protection rules are the least burdensome ones available. In other words, a country would not be able to simply adopt a reasonable regulatory approach, but would instead have to thoroughly analyse all alternatives and then adopt the approach that will affect the economic interests of foreign service operators the least.

The GATS process is a one-way street toward increased limitations on environmentally and socially responsible policies. Once countries adopt increased commitments in particular sectors, it is virtually impossible to reverse course. Countries can list limitations on their commitments, but once they have done so, they can only increase those limitations or reverse a commitment altogether after waiting three years and then providing compensation by liberalising another sector. For developing countries in particular, such rules will tie a government's

hands in dealing with transnational investors.

gats – lack of effective environmental exceptions

The GATS lacks clear and strong exceptions for environmental regulatory efforts, including even the exception present in the GATT permitting the protection of exhaustible natural resources. The only exception in the GATS related to the environment has been interpreted very narrowly by WTO dispute resolution panels. In addition, the GATS fails to include any explicit human rights or social sustainability exceptions. Thus, even in sectors where expanded operations may increase environmental or social damage, a country can be constrained in its right to limit harmful activities.

Moreover, if a government undertakes new environmental policies or strengthens existing environmental policies involving a sector liberalised under GATS, it could be required to provide compensation to WTO member countries whose service operators are affected. Such obligations to compensate could easily create a 'chilling effect' on progressive policy development by governments, inhibiting efforts to improve environmental protection.

gats - transnational services corporations and developing countries

The substantial expansion of trade rules undertaken in the GATS was driven by major transnational service corporations from developed countries. Financial service giants such as American Express and Citicorp led the push, but the agreement's framework eventually included a much broader set of transnational industries, including those in the transport and tourism

sectors. Many of these industries have now been joined by transnational fossil fuel and water corporations that are seeking to expand the agreement to a number of new sectors in the current round of negotiations called GATS 2000. The overall liberalisation agenda is being pushed forward by coalitions of major transnational corporations, especially the US Coalition of Service Industries, the European Services Forum, and the Japan Services Network.

As almost all major firms in GATS sectors are based in developed countries, the benefits of the agreement are generally balanced unfairly in favour of those countries and their corporations and against the interests of developing nations. While investment in many sectors could be beneficial to developing countries, under these circumstances they may find themselves swamped by major corporations entering their markets, making it increasingly difficult to maintain or develop domestically-based industries in relevant sectors. Furthermore, while transnational investment can be beneficial to developing countries, the GATS rules place severe constraints on the ability of developing countries to direct the manner in which transnational investors operate, for example in terms of 'local content' stipulations.

gats and public services

The GATS also places increasing pressure on the provision of essential public services, reinforcing the wide-scale privatisation required by IMF and World Bank structural adjustment programmes. In essence, the GATS continues the push by transnational corporations to commodify even those services - such as water, electricity, and health care - that should be accessible to all without regard to income or ability to pay. The GATS exception for services supplied "in the exercise of governmental authority" is

so vaguely and ambiguously worded that compliance with the agreement's rules will be required whenever there is any competition between the public service supplier and private suppliers. Since so many services are supplied in both public and private modes, *the GATS rules could apply universally to virtually all public service sectors*. In developing countries in particular, GATS liberalisation could force the unlimited opening of markets in essential services to transnational corporate operations. In addition, countries will have great difficulty in reversing any decisions to privatise once they have opened their markets to private foreign operators, as has often been required under the terms of structural adjustment programmes. In general, GATS threatens to remove governments' ability to choose between public and private sector service suppliers.

gats – sectoral examples: energy, water, tourism, environmental services

The impact of the GATS 2000 negotiations could be especially serious in a number of particular sectors in which countries have made proposals or have significant agendas. Friends of the Earth highlights these sectors to illustrate the potential impact of GATS negotiations on the environment and sustainability and the need for a complete revision of the GATS framework.

energy services

A new sector covering energy services has been proposed for inclusion in the GATS by the United States and European Union, including the full range of energy and fossil fuel operations - *exploration, development, extraction, production, generation, transportation, transmission, distribution, marketing, consumption,*

management, and efficiency of energy, energy products, and fuels. The environmental and social impacts of the sector are wide-ranging and well-known: the local environmental impacts of oil exploration and extraction and pipeline construction and transport, including deforestation and toxic contamination; other local environmental impacts from fuel refining operations and electrical power generation; major contributions to climate change; and frequent impacts on indigenous community and human rights.

The expansion of energy service operations will worsen these impacts, and GATS rules will make it increasingly difficult to adopt and enforce environmental and natural resource protections. GATS disciplines in the energy sector, for example, could restrict governments' ability to place new quantitative environmental restrictions on fossil fuel exploration and drilling, extraction facility construction, and petroleum pipeline construction and operation. For instance, governments' ability to introduce new progressive regulations on the following would be inhibited: limits on the number of oil rigs constructed in a certain area; limits on the length, size or throughput of a pipeline; limits on the number of oil refineries or their operations; and limits on the operations of power plants.

Furthermore, even in a situation where an electricity deregulation or privatisation scheme was proven to be harmful for environmental or social reasons, it would be extremely difficult - if not impossible - for a government to move away from that scheme. The negotiations on domestic regulation disciplines could also require governments to ensure that their regulations for energy extraction and production are "no more burdensome than necessary" according to WTO panels.

This requirement would force governments to demonstrate that they have adopted a policy that is the least restrictive one available as far as transnational energy operators are concerned. Further, the application of the GATS in electricity distribution could require countries to open markets to crossborder electricity supply and distribution services, even if it involves electricity produced in a manner that causes environmental damage. Finally, the GATS will reinforce increased privatisation of essential electricity services and make it more difficult to ensure that access will be equitable. Efforts to ensure equitable and widespread access to electricity, including sustainably produced electricity, could thus be significantly undermined by GATS restrictions.

water services

Another major new area to be subject to GATS disciplines - collection and distribution of water for human use - has been proposed for inclusion in the "environmental services" sector by the European Union. While the EU has itself not included basic water services in its own offer, it continues to request that other countries commit this sector under the GATS. Water supply is rapidly becoming a privatised sector, with large transnational companies increasingly collecting, extracting and distributing bulk and retail water. Estimates place the world-wide water and wastewater industry at between US\$300 and \$800 billion annually. Including water services in the GATS would expand the access of these water supply corporations by bringing *water collection, purification and distribution* under GATS disciplines.

By requiring open market access for transnational water corporations, GATS rules would reinforce the increasing privatisation of water provision throughout the world. Such commodification of a basic human

need could endanger the health and well-being of millions dependent on accessible and equitably distributed water supplies, as has occurred in a number of countries already. Moreover, GATS rules could make it extremely difficult for governments to reverse decisions to privatise the water sector.

An example of the severe crises that could emerge as a result of such developments was seen in recent years in Cochabamba, Bolivia, where a World Bank structural adjustment programme required the privatisation of the water supply, leading to a takeover of distribution by the US transnational Bechtel. When water rates tripled for many poor residents, citizen resistance eventually led to the reversal of the privatisation plan, but only after police had killed protesters. If GATS rules had been in place, Bolivia could have been severely constrained in its ability to reverse the privatisation policy.

Moreover, given increasing water scarcity in many countries, both in developing and developed countries, the inclusion of water collection in particular raises troubling environmental concerns. Market access commitments, which prohibit quantitative restrictions, could limit governments' rights to place restrictions on the quantities of water collected from lakes, rivers and groundwater sources. As a result, increased pressure on water sources could lead to sustained environmental damage as aquifers and other water sources are drained.

tourism

Tourism, when defined broadly to include travel services and passenger transportation, is regarded as the world's largest and fastest growing industry, as well as being the world's largest service sector. In 1999, it accounted for over 10% of world GNP,

totaling US\$440 billion. The sector's effects on the environment are also substantial. Tourism often has destructive effects on biodiversity and pristine environments, and can result in the misuse of natural resources such as coastal areas, freshwater, forests, and coral reefs. In a number of geographic areas, hotel and resort development has harmed coastal areas and forests; tourism development has resulted in serious water shortages; forests have been depleted, and coral reefs have been damaged by sewage, sedimentation, divers, snorklers, and boats.

The expansion of tourism services without increased attention to sustainable development and environmental protection will exacerbate these trends. The adoption of broad market access commitments across many tourism related sectors could prohibit countries from adopting environmental measures in sensitive areas. For instance, limitations on the number of tourist excursions or the number of boats allowed in a sensitive zone could be found GATS illegal if the government had not listed such regulation at the time of making its commitment in that sector. Adopting national treatment commitments could also make it difficult to pursue policies that mandate local community participation in environmentally sound tourism projects. Further, recent proposals have emphasised establishment and operation of hotels and other tourist lodging places: such commitments could make it difficult to limit the size or the number of tourism construction sites in environmentally sensitive areas.

"environmental services"

Environmental services have been described as a potential win-win opportunity for both trade expansion and environmental protection. The US, for instance, argues that removing or

lowering barriers to the cross-border provision of environmental services will result in cheaper but better quality environmental services. As it is currently defined in the GATS, however, the environmental services sector is essentially a misnomer that describes sizeable industries involved in waste disposal and treatment. The current classifications under the rubric of environmental services are sewage services, refuse disposal services, sanitation and other services, and other environmental services.

According to WTO data, the dominant activities in this sector were solid waste management, estimated to be a US\$102 billion global market, and water treatment services, estimated to be a US\$65 billion market. The core services in this sector are thus so-called "end-of-pipe" disposal services, not environmental services that provide prevention or remediation of environmental damage. Major country negotiating proposals concerning environmental services urge countries to expand and liberalise their specific commitments to the provision of "end-of-pipe" core environmental services (i.e. those currently classified as "environmental services" in the WTO services classification list). However, both the U.S. and the EU also suggest that services involving the prevention and remediation of pollution might be included in new environmental services negotiations.

Nevertheless, the dominant services in this sector remain end-of-pipe operations. The likely outcome of expanded commitments is thus most likely to lead to expansion of transnational operations in such environmentally harmful activities as waste incineration. Moreover, the GATS rules covering waste disposal services could be used to challenge recycling or other environmental policies as excessively burdensome to trade in these services. In other words, the result of further GATS

negotiations in this sector is likely to be anti-environmental.

friends of the earth international recommendations on gats

GATS will threaten the environment unless significant changes are made to the existing agreement and proposed negotiating positions, to ensure that environmental protection and sustainability are not undermined in the ways described in this paper. Therefore, the current GATS negotiations should be discontinued, an assessment undertaken, and the following fully achieved:

- conduct a comprehensive and meaningful assessment that will examine both the actual environmental and social impacts thus far and the potential future impacts of the GATS, including impacts on local communities and developing countries in all sectors;
- ensure full public participation at all levels of governance in the assessment and use the assessment as the basis for correcting the social and environmental failures of the GATS;
- reexamine any commitments already made under the provisions of the GATS that are in fact transnational investment disciplines (Mode 3 - "commercial presence") and explicitly reject any further such commitments;
- clearly exclude from any GATS disciplines any services related to the extraction or collection of energy fuels, minerals and ore, water, timber, and other natural resources, and any services related to nuclear energy;
- clearly exclude all publicly provided and essential services from any GATS disciplines, explicitly allowing governments to maintain the right to choose between public and private service provision;
- provide clear, strong and across-the-board exceptions ensuring that no reasonable environmental laws and regulations will be undermined or challenged by GATS rules, including an environmental exception for measures relating to the conservation of exhaustible natural resources and an explicit rejection of any "least trade restrictive" test;
- remove Article VI provisions, including any "necessity" provision, that restrict the right of governments to adopt laws and regulations protecting the public interest and the environment, and reject any new rules requiring local and state governments to provide notice to the WTO of proposed public interest regulations;
- clearly define environmental services to exclude any environmentally harmful activities; permit distinctions between different types of energy technologies and sources based on environmental impacts; and
- ensure that developing countries in particular have the right to protect their environment and social needs, including through special safeguards.

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