

GREAT EXPECTATIONS

THE FUTURE OF TRADE IN SERVICES

2000.2

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Education International (EI) and Public Services International (PSI) have agreed to publish jointly in areas of common concern and we have identified a number of areas where future publications could be developed. PSI is the international federation of public sector trade unions, EI the international federation of workers in education.

This is one in the series Policy, practice, programme. The papers in this series are meant to serve several purposes: to help trade unionists understand some of the issues; to enable trade union educators to run short sessions on education and public sector issues with their members; to provide material for union leaders writing speeches or informational material for wider audiences; and for distribution to a range of interested people. Further copies can be obtained from:

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Executive Summary

By publishing this paper, Public Services International (PSI) and Education International (EI) aim to:

- promote an understanding of issues surrounding trade in services for public sector and education unions, especially those in developing countries; and
- outline a possible campaign aimed at the next round of negotiations on trade in services.

The paper argues that the web of agreements made to promote the growth of international trade jeopardises the central role of government in determining policies for the good of individual countries, in ways sometimes unforeseen and unintended. The agreements include the GATS as well as related agreements such as GATT, TRIPS and the CBD.

It analyses the theory of trade in classical economic terms. It outlines trade's development from the mercantilism of the 18th century, the free-for-all of the 19th, the protectionism of the early 20th and the return of free trade under rules-based agreements after World War II, through the GATT and the WTO and now after Seattle.

The failure of the 1999 Seattle Ministerial Conference of the WTO is but a hiccup in the development of the web of trade-related agreements.

The paper takes the General Agreement on Trade in Services (GATS) as its centrepiece. It discusses the principles of GATS and how it works. It further outlines other agreements (such as TRIPS and SPS) that impact on trade issues and which are related to GATS.

As far as possible throughout, the paper uses examples from the health and education services sector to illustrate concerns.

From this, general issues are identified – the unforeseen effects of trade agreements, the domination of trade over other agreements, how telecommunications change the nature of services, skill drains, the practice of “cream skimming” and the unrelenting development of trade through GATS. Issues of particular relevance to public sector unions in developing countries are highlighted.

The paper concludes with an outline of a possible union campaign in relation to the imminent new GATS round of negotiations and seeks feedback from PSI and EI.

Window of Opportunity

Trade liberalisation in services was set to take big strides at the end of the last century. But, for the World Trade Organisation (WTO) and its new Director-General, the 1999 Seattle Ministerial Conference was a failure. No new agreements were reached. Even agreements on how to proceed were not finalised. But this is not the time for public sector and education unions and their allies to become complacent. The issues surrounding liberalising trade in services remain. Trade liberalisation continues. It is only the timing of the big steps that is now delayed.

The delays are an opportunity for unions to reconsider strategies to secure the interests of members and to promote open debate about the social, political and environmental impacts of trade liberalisation on nations.

The issues that are part of liberalisation of trade in services are complicated. They encompass new technology. They include the very nature of democracy in the future. They involve the environment. They relate to health quality. They affect the nature of public services. They could affect the provision of education. And they are clouded by much of the technical regulation in WTO documents. But ultimately they are rooted in economics. Trade liberalisation in services is part of the globalisation process. It is happening and will continue because there is money in it.

The Theory

In its most basic form, classical economic theory says that there are benefits for nations that trade with each other. Those benefits arise from specialisation in the production of different goods and services. If, for example, a nation has a surplus of grain due to favourable factors of production and another nation specialises in making cloth, then it is advantageous to both nations to trade in these commodities. The first country will get extra revenue from the grain sold. The second country will get extra money from the cloth sold. Consumers in both countries will be able to buy the other nation's goods cheaper than if they were produced at home.

The theory uses the concept of *comparative advantage*. This simply means that some countries are better suited to the production of particular commodities due to the availability of raw materials, climate, labour skills and capital. A development of this idea is that by making or delivering more complex goods or services countries can generate efficiencies and advances through clusters of intense domestic competition, skills and knowledge.

Barriers to this advantageous free trade between nations include tariffs and government regulations. Tariffs are taxes imposed on imported commodities to make them more expensive. They may be applied in order to reduce imports, to protect local industry, or to raise revenue. They may also be applied to imports from some nations differently than from others. Government regulations may be applied so as to make it more difficult to import particular commodities. This is why classical economic theory promotes tariff reduction.

The same economic theory of competitive advantage applies to services just as it does to goods. However, due to the nature of services, the main factors of advantage are more centred on skills and technology, rather than on geography, raw materials and climate. The implications of this are that trade in services may be more to the advantage of developed nations than of those less developed.

The Story so far...

MERCANTILISM, PROTECTIONISM AND FREE TRADE

The eighteenth century saw the beginnings of the first truly global economy. At that time exploration and colonisation had produced the basis of the world we know today. Trade was based on the notion of mercantilism – the theory that nations could maximise their wealth through government control of trading¹ and especially through colonial relationships. The problems of this approach became apparent when former colonies, for example, those which later became the United States, demonstrated their distaste through revolution. By contrast, the nineteenth century was a period of relatively free trade, dominated by the then world's

largest economy, the United Kingdom. In the twentieth century, and especially between the two world wars, protectionism and high tariffs began to replace this free trade. The Depression in the 1930's led to a focus on protecting industries to encourage employment. The wars underlined the need to protect local industries and maintain national self-sufficiency. However, the idea of free trade re-emerged after World War II, as the US became both the world's largest economy and its strongest political power.

THE GATT

The 1947 meeting of the United Nations produced a charter for an International Trade Organisation (ITO). The charter proposed developing ways to reduce tariffs and promote non-discrimination in trading. However the charter was never finally ratified by the required number of countries. Instead, in 1948 the General Agreement on Tariffs and Trade (GATT) was established. The term GATT refers to both the actual agreement and as well as the organisation set up to implement it. The GATT organisation undertook most of the functions envisaged for the ITO. Under the GATT, and with more free trading blocs in Europe, Asia and the Americas, world trade grew dramatically. The end of the Cold War in the late 1980's gave more momentum to growth through free trade and neo-classical economics.

The GATT and its successor since 1995, the WTO, at first concentrated on trade in goods. The main reason for this is that goods are simple. They are something you can see and touch. For trade to occur, goods must be physically transported across national borders. Another reason is that until very recently trade in services has been at far lower levels than the traditional trade in goods. The GATT agreement, then, was primarily concerned with trade in goods. It is founded on the principle called *Most Favoured Nation (MFN)*. This means that all members of the WTO must treat the imports from a member country at least as favourably as they treat those from any other member country.

THE RISE OF SERVICES

During the twentieth century there was a marked shift in both the value and labour content of industries in

developed economies. Such economies were focussed first on primary industries – agriculture, forestry, fishing and mining. Secondary industry involving factories and manufacturing began to peak in terms of employment around the mid-century. Since then, tertiary industries involving services such as finance, education, media, recreation and health have increasingly dominated both the value of production as well as the place of work. Over 60% of the value of production (Gross Domestic Product or GDP) now comes from non-government service industries in developed countries. The trend is similar for less-developed economies where nearly 50% of GDP comes from non-government services.

At the same time, multi-national companies have increased in size and influence. Such companies deal increasingly in services as well as goods across national boundaries. They often take advantage of new technologies to do so.

As a result, international trade in services has much greater potential for growth than international trade in goods. According to the WTO Secretariat, the value of trade in merchandise (goods) in 1999 was US\$5,460 billion. Trade in services was US\$1,340 billion, or about a quarter the value of trade in goods. However it is important to remember that because of the special nature of trade in services, much of the value of such trade is not now measured. For example, services sold by foreign firms operating within another country are not routinely measured by most countries. Trade in services, therefore, is already approaching the significance of trade in goods.

The WTO website (www.wto.org) gives more detail on growth of trade in services.

GATS

GATS is the General Agreement on Trade in Services. It was created in April 1994, whereas the WTO came into formal existence in January 1995. It is the first multilateral agreement on trade in services as a whole. Essentially it aims to liberalise trade in services. It is now part of the fabric of the WTO in a similar way to the GATT agreement on goods. The GATS basic document including annexes is about 50 pages long – about half the length of the GATT agreement on which it is based. However specific commitments and ex-

emptions made by individual countries are only listed by WTO file number at the back of the document. These cover many more pages. Current PSI and EI publications list commitments and exemptions in these sectors as at 1999. These publications are *The WTO and the GATS: What is at stake for public health?* and *The WTO and the Millennium Round: What is at stake for public education?*

One curious feature of the GATS agreement is that it does not actually define what is meant by “services”. It defines other key terms, such as “sector”, “measures”, “supply” and “person”, but “services” is not defined at all. It certainly *classifies* services in its schedules according to the United Nations system. This classification is composed of 12 sectors such as “health-related and social services” and “other services not included elsewhere”. These are further sub-divided into 160 different categories. In economic terms, services are normally commodities that are intangible such as the services of a doctor, an orchestra, an educator or a waiter. They are often consumed at the same time as they are produced. Some are associated with tangible products such as a computer print-out or a facsimile (fax). But it is the associated service which is the commodity of value: the fax machine is a good – you can see it and touch it, it has a certain function and you have to pay for it but the service is the sending and receiving of faxes over the electronic communications system. The effect of not defining services in the GATS is that the list of possible services is virtually endless. It also allows for the incorporation of services yet unimagined.

The GATS agreement was completed under considerable time pressure. Many of its provisions remain untested. Many of its provisions still need to be developed through following trade rounds. Much of it was based on the 1948 GATT agreement on trade in goods. In particular, the Most Favoured Nation (MFN) principle is embodied in Article II of the GATS. The principle of *transparency* is also carried over from the GATT: Article III requires members to publish “*all relevant measures*” on laws and regulations that affect trade in services. They must also establish enquiry points to provide specific information on regulations on the request of other member countries. This means that

trading firms should be able to find out the regulations they face in setting up trade in the country concerned. GATS Article VIII says that a monopoly service supplier shall not abuse its position nor affect the MFN commitments. Article XII permits temporary restrictions on trade in services in situations of economic crisis which seriously threaten the balance of payments. There are also several exceptions to free trade where security, fraud, privacy and effective taxation are concerned.

GATS AND GOVERNMENT SERVICES

For public sector and education unions, however, the two most significant exemptions relate to government services. These are:

- The government's purchase of a service for its own use. This is also known as government procurement or government purchasing. Under Article XIII of GATS, the MFN and related principles do not apply in this area. However, the Agreement also says that these exemptions were subject to negotiations due to start before 1997. In other words, government purchases of services are expected to open up to foreign service suppliers.
- The direct supply of services by government. There is no provision here that such services are subject to any future negotiation. However, to maintain blanket exemption, the services must be "*supplied in the exercise of governmental authority*" and "*supplied neither on a commercial basis, nor in competition with one or more service suppliers*". Services such as central banking and some social security services are the sorts of services referred to here. Services at risk of being caught in the GATS net are therefore those already or potentially open to commercialisation or privatisation.

The WTO Secretariat believes that governments can use these two provisions as broadly as they wish. But this general belief has not been tested through the GATS disputes procedures. Public services are therefore at best in an uncertain position.

MIKE MOORE AND SEATTLE

The term of the Director-General of the WTO is 6 years. During 1999 the position was vacant for more than 4 months. This was due to widely publicised international wrangling over who the new appointee should be. Finally it was agreed that Mike Moore, a former Prime Minister of New Zealand, should take the post for 3 years and his opponent from Thailand for the following 3 years.

The top negotiating body of the WTO, the Ministerial Conference, was already scheduled to take place in Seattle (USA) within a few months of Moore's appointment. At the same time, resentment expressed through many non-government organisations (NGOs) and developing countries had been building about the effects of trade liberalisation.

NGOs were also able to build on the information and networking available through the Internet as well as from more traditional sources. Lobbying and demonstrations by NGOs at Seattle focussed attention on the negative effects of trade liberalisation and forced the WTO onto the defensive.

The result for the WTO was a disaster, at least in the short term. No new agreements were reached, nor substantially commenced. The NGOs generated a lot of publicity and comment about trade liberalisation and globalisation in general.

However in the longer term the WTO may well benefit. The WTO Secretariat is already showing signs of opening up lines of communication with interested organisations, especially NGOs - including international trade union bodies such as PSI and EI. Its publications and information are becoming more useful. Many documents have been made more accessible. Many commentators have argued that the world needs more trade liberalisation, not less.

The WTO seems resolved to go forward despite the Seattle setback. The main direction of this will be developing and expanding the outline GATS agreement.

The World Trade Organisation

PURPOSE

The stated purpose of the WTO is to ensure that international trade flows as *smoothly, freely and predictably as possible*². In so doing the WTO hopes to *improve the welfare of the peoples of its member countries*³. However, like any organisation, ultimately what the WTO does stems from its purpose. Its purpose does not include social justice nor equity concerns. Therefore it is up to organisations such as trade unions to ensure that such links are made.

MEMBERSHIP AND STRUCTURE

As at mid-2000, the WTO has 136 members, most of which are national governments, but customs territories are also included. Its members account for over 90% of world trade. Over 30 applications for membership are still pending. China is the one major trading nation still outside the WTO structure as at the time of writing, but its entry is imminent. Membership contributions support the WTO Secretariat and meetings of councils and committees. The largest contributor is the US which pays about 16% of the budget.

Its top decision making body is the Ministerial Conference, which meets every two years. It mainly consists of the ministers responsible for trade matters from the member countries. The General Council meets several times between Conferences to review progress and policies. It also acts as a dispute settling body. This council consists mainly of heads of national trade delegations and Geneva-based ambassadors. Three particular councils report to the General Council: the Council for Trade in Goods, the Council for Trade in Services and the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS). Various committees and working parties also report directly or indirectly to the General Council.

The WTO Secretariat is the bureaucracy of the WTO. It is located in Geneva, Switzerland, employs over 500 staff and has a budget of about US\$75 million per year⁴. Its head is the WTO Director-General. The

Trade in Services Division is one of 22 functional divisions of the WTO Secretariat.

LINKS

The WTO has links with scores of agencies and organisations, many of which have observer status at relevant WTO forums. The World Health Organisation (WHO), for example, is represented at meetings concerning measures on disease control. The Food and Agricultural Organisation (FAO) has input in relation to agricultural and food contamination measures. This does not mean that these bodies necessarily have much influence on the WTO. The WTO is at the centre of international organisations. It is ultimately concerned with generating money and it has the means to enforce its decisions.

LEADERSHIP

There is evidence of a significant lack of leadership on trade liberalisation issues from the very body it should be expected of – the WTO Secretariat. A group representing private sector and academic interests in promoting trade liberalisation recently stated that the WTO has *failed to generate any momentum, to gain credibility, to obtain support, to provide even a shadow of inspiration and intellectual input*. They made it clear they were talking of the Secretariat when they added: *Geneva is at a navel-gazing standstill*⁵. Unofficially, many WTO Secretariat staff seem to hold the view that they simply exist in order to loyally carry out the wishes of the membership. They are at pains to make a distinction between the WTO Secretariat and the WTO as an organisation of members. This is unusual for such a potentially influential international body. In the past, leadership has effectively been left to the major industrialised nations – especially the US, Canada and major nations of the European Union (EU). The influence of the new Director-General is, however, yet to be seen.

TEETH

Lack of leadership or not, a major part of the effectiveness of the WTO rests in it being one of the few international bodies that has teeth. Those teeth are the disputes procedures. Trade disputes between members must be resolved within the context of the GATT

and GATS agreements. They can be arbitrated by the WTO. But, ultimately, significant financial penalties can be enforced against members found to have breached the rules. Because the GATS is a relatively new and brief document, drafted under time and political pressures, the outcomes of disputes about services are potentially significant in defining future trade rules. To date there have been few disputes about services. In the future the number of disputes may increase in line with the value of trade in services itself.

How GATS operates

KEY CONCEPT

The key concept is that of *commitment*. Countries make commitments to open up particular parts of their economies to trade under GATS. For example, commitments may be made to open health insurance, dental surgeries or one facet of education to foreign firms. The commitments may allow total foreign access, or may only provide limited access - whichever must be clearly specified.

KEY PRINCIPLES

As mentioned above, some of the key principles of the GATS are extended from the original GATT agreement on goods. Some are unique to GATS due to the nature of services themselves. In brief, the key principles are:

- **Market access** – this is the negotiated commitments made by each member in specified sectors. Commitments may be subject to up to 6 types of limitations: (1) number of service suppliers, (2) value of transactions, (3) quantity of outputs, (4) number of employees in a sector, (5) type of legal form of suppliers, (6) amount of foreign capital.
- **Most Favoured Nation (MFN)** - each member must treat the import of services from all other members no less favourably than for *any other member*. That is, if services are imported under favourable conditions from one other member country, all other member countries have the right to the same deal.
- **National treatment** – each member must treat foreign service suppliers no less favourably than *its*

own service suppliers. That is, a country is not allowed to discriminate between local and foreign suppliers. The critical point here, however, is that it applies only where commitments have been made.

- **Transparency** – members must make all regulations affecting trade in services known and accessible and administrative decisions open to appeal.
- **Progressive liberalisation** – members shall enter into rounds of negotiations aimed at achieving progressively higher levels of trade liberalisation.
- **Temporary exemption** - countries may notify specific temporary exemptions to MFN and national treatment principles on such grounds as pre-existing arrangements or short-term economic crises.
- **Ratchet effect** - once a commitment is made, it is very difficult to withdraw it. It requires due notice after 3 years of being in place. It requires negotiations with affected members. It may go to arbitration and it is subject to compensation. Ultimately it may be subject to retaliation within the rules, by countries affected.

(For more detail on these see **Appendix 1**).

FOUR FORMS OF TRADE

Under GATS there are 4 forms of trade in services. The last 3 of these are conceptually different from the traditional concept of cross-border trade in goods. This is due to the special nature of many services that require the simultaneous presence of both supplier and consumer. The four forms (or “*modes*” in WTO jargon) are:

- **Mode 1: Cross border supply**. This is the supply of services from the territory of one member country to the territory of another member country. It corresponds most readily with normal trade in goods. Examples include banking, data processing, architectural services and medical consultations transmitted via telecommunications or mail. Currently there is a lot of telemedical servicing from the USA to Arab Gulf states, tediagnostic servicing from China to several Asian countries and from Mexico to Central American countries. Virtual universities are providing university courses across national borders. The potential for growth

here lies in the development of Internet and telecommunications access.

- **Mode 2: Consumption abroad.** This refers to situations whereby consumers of a service, or their property, move into another member's territory to get the service. Examples include tourism, ship and aircraft maintenance. Students travel to study in foreign countries and patients travel from one country to another to get treatment. The treatment may be of higher quality, cheaper, faster or simply not obtainable in the patient's country. This also includes the practice of people seeking exotic therapies in poorer countries. Developing countries may have price advantages in surgical procedures. India and Cuba are both cited by the WTO as having significant price advantages in this area. This is big business. In 1996, the USA⁶ provided \$872 million worth of medical servicing to foreigners in the USA. US citizens abroad consumed \$550 million worth of services in converse circumstances.
- **Mode 3: Commercial presence.** This is the setting up of a branch of a foreign service supplier in another member country. Examples include hotel chains, insurance companies and foreign banks. Health service examples include the US Sun Health System clinics in Europe and the Singapore Parkway hospitals and dental surgeries throughout South-East Asia. US companies⁷ exported \$469 million worth of health services in this way in 1995. Foreign companies in the US, however, sold \$1,800 million in health services to the US in the same year. In education, particularly in the higher education sector, universities are exporting their services by establishing university campuses in foreign countries. Degrees or diplomas are then granted from the country of origin of the university.
- **Mode 4: Individual presence.** In WTO jargon this is called "*presence of natural persons*". It means services provided in a home country by foreign people who are nationals of another member country. This includes, for example, the services of teachers, accountants, nurses or doctors. The temporary employment of health professionals is particularly common in the Arab Gulf states. The GATS agreement is quite specific about how

this relates only to *temporary* entry by people. It does not at all cover the permanent migration of people. However in reality there is usually a much better chance of permanent migration for people who are already working in another country, than for those who attempt to enter from outside. Accordingly this form of trade in services indirectly favours the migration of skilled professionals to countries where money and conditions are better.

TRADE BLOCS

The GATS agreement recognises that members may take steps beyond their GATS commitments to further liberalise trade with regional partners. These forms of multi-lateral regional trade agreements are allowed under GATS, providing that they do not set up more barriers outside the bloc and that they genuinely liberalise within it. Apart from this, the only exceptions to the MFN principle are temporary exemptions notified by countries at the time of signing the agreement. Further, these temporary exemptions apply only to more favourable treatment to be extended to particular countries. Treatment less favourable than commitments made is prohibited.

EXTENSION ROUNDS

In line with the GATS principle of progressive liberalisation, negotiations have continued in several areas with varying degrees of success. These include basic telecommunications, financial services, shipping and movement of natural persons. Other areas currently earmarked include government procurement and subsidies. The second *full round* of negotiations for all services was that scheduled to begin at the Seattle Ministerial Conference at the end of 1999. Negotiations did technically start in April 2000. At the time of writing it seems that substantive negotiations may yet begin in late 2000 or 2001. Time is short.

COMMITMENTS AND UNDER-COMMITMENTS

A commitment is a formal agreement under GATS to liberalise trade in particular service sectors, by mode of supply. It may be with or without limitations. All of the rules of the GATS apply only to the actual commitments made by member countries. In principle, if a

country does not wish to liberalise trade in line with GATS rules in any sector or in any mode it does not have to do so. However, the signing of GATS does commit a country to future steps of liberalisation. Partly for this reason, many countries have *under-committed* in many areas. This means that they have agreed to open trade in ways which are often no more than the degree of open trade already in place. In this sense, it seems that the first round of GATS was more relevant to agreement on the rules than for increasing trade itself. However the agreement to further steps is there. And even where commitments are modest, greater transparency of regulation results. In line with this, foreign investment in services is made easier.

Two examples of different services illustrate the commitments situation. Trading in tourism services was already liberal before GATS. Accordingly most members (123) have made commitments in the area of hotels and restaurants⁸. More than half have no limitations in mode 2 (consumption abroad). In health services, countries have been more conservative because trade has been less open in this sector. Nevertheless commitments are substantial. 49 members have made commitments for medical and dental services and 39 for hospital services⁹. These are mostly without limitations in mode 2. Overall in the health and social services sector, a majority of members (88) has made commitments. This includes the 12 EU countries counted as one member, i.e. nearly 100 countries are committed in health and social services.

In education, commitments can be made under five sub-sectors - primary, secondary, higher, adult and other education services. 21 countries have committed to open the primary sector, 23 the secondary sector, 21 higher education, 20 adult education and 12 other education services¹⁰. Limitations to the commitments made in education include nationality requirements, restrictions on the number of foreign teachers employed, conditions concerning the use of resources, the existence of public monopolies, subsidies to national establishments, immigration regulations, the recognition of qualifications and resource availability.

Additional commitments do not have to wait until the next round of negotiations. Governments can make additional GATS commitments at any time.

HORSE TRADING

As it now stands, GATS works by old-fashioned horse trading which crosses all aspects of trade. It includes agriculture, intellectual property rights, health and environment protection measures, workers' rights and so on. Many governments don't want to give away something in services unless they can get benefits in other areas. In other words, members don't want to negotiate GATS on its own.

For this reason, the beginning and completion of the new full GATS round is delayed. Until there is broad agreement on changes and concessions across all aspects of trade, GATS will not take the next step. People within the WTO Secretariat have predicted that final deals may not be done until 2004.

However most governments have already begun developing positions for the next round. The EU, for example, has started its list of requests and offers¹¹. It has involved business, trade unions and NGOs in the process.

Former government-controlled services, especially in health and education, are possible areas for horse trading both within and outside of GATS.

Related Agreements

INTELLECTUAL PROPERTY RIGHTS (TRIPS)

Increasingly the value of both goods and services is in the creative and intellectual content they contain. A computer is only a few dollars worth of metal and plastic. Yet it is configured in such a way that its value is several thousand dollars. An anti-viral pill may contain less than a cent's worth of materials. Yet they are so combined - after maybe months of costly research and development - that the value of the pill is multiplied thousands of times. A surgeon essentially wields a sharp knife against human flesh. Yet the knowledge and skill needed to wield it to effect embodies years of study and training and is consequently extremely valuable.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement is administered by the WTO, but is separate from the GATS and the GATT. It links the WTO with the world body responsible for

intellectual property rights, the World Intellectual Property Organisation (WIPO). TRIPS covers such things as patents, trademarks and copyright. Members of the WTO are thus committed to respecting the intellectual property rights of goods and services imported from other members. Recently a lot of energy has been put into the rights of geographic labelling of wines and spirits. For example, only sparkling wine made in Champagne in France may now be called “*champagne*”.

A more significant aspect of intellectual property rights is, however, the rights involved in patents for life-saving drugs. The South African case involving anti-viral AIDS drugs illustrates the situation. Companies in South Africa are prohibited through TRIPS from manufacturing or importing such drugs at low cost because to do so would violate the patent rights of their creators. Meanwhile, such drugs as AZT continue to be available at high cost in developed countries where few people are infected but they are only available at the same cost in South Africa, where millions are infected and few can afford them. Companies which hold the patent rights are US multi-nationals. Despite the fact that much of the money to develop them came from the government, despite calls from the UN and from the US President, despite the fact that Africa is only 1.3% of the pharmaceutical market¹², the companies are refusing to lower costs¹³. In fact when both South Africa and Thailand recently announced that they would grant compulsory licences¹⁴ to make anti-AIDS drugs at low cost, the US threatened them with trade sanctions¹⁵. TRIPS allows people to die.

The first TRIPS-related dispute after Seattle may be a test case for the WTO. The US took the first step on 6 June 2000 towards setting up a dispute panel, alleging that Argentina breaches TRIPS through a failure to protect patent rights and test data in relation to pharmaceuticals and agricultural chemicals¹⁶. The issue won't go away.

CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

The CBD is an international UN agreement that came into force in 1993. It has been ratified by 175 countries¹⁷. It is not administered by the WTO, but does relate to TRIPS. The CBD Secretariat has regular

observer status at the TRIPS council at the WTO.

Under the CBD, countries are committed to the sustainable use of biological diversity and in particular to encourage the knowledge and practices of indigenous people in this. Indigenous communities must also approve of and share in the benefits of using this knowledge. In other words, governments and drug companies may not unfairly exploit the knowledge of indigenous people about the properties of plants, for example. Under the CBD, intellectual property rights first rest with indigenous communities. There is clearly a potential conflict here with TRIPS where pharmaceutical companies may patent medicines based on the knowledge of indigenous people and exploit this through trade. It seems from WTO documents that this has not yet been resolved¹⁸.

PESTS, DISEASE AND CONTAMINATION (SPS)

The Agreement on the Application of Sanitary and Phyto-Sanitary Measures (SPS) is an elaboration of part of the 1994 GATT agreement. As such it is administered by the WTO Secretariat. It is aimed at ensuring that national controls on pests, diseases and contamination do not unnecessarily affect international trade. All measures that affect human, animal and plant life are covered.

In the Agreement, it is stated that “members should, when determining the appropriate level of ... protection, take into account the objective of minimising negative trade effects”¹⁹. Measures (such as inspection and sampling) should be harmonised with international standards. Measures should be based on scientific evidence and on accepted standards of risk assessment. Measures may not be “disguised restrictions”²⁰ on trade nor “more trade restrictive than required” to achieve appropriate protection²¹.

The British mad cow disease scare is the most obvious recent controversy here. But in general, the Agreement puts pressure on government inspection and health control services not to do their job too well. If their actions are superior to international standards, or the claimed risk is greater than that internationally agreed, the country faces the prospect of a costly dispute and retaliation. Conversely, if their inspection and health services are less effective, countries may

avoid the risks of trade disputes in this area. As far as the SPS is concerned, countries have to be very careful before implementing controls aimed at protecting people and their food supplies.

The Big Issues

UNFORESEEN CONSEQUENCES

The overriding issue is that the web of international agreements centering on GATS commits national governments to a vast array of measures and policies that may have unforeseen consequences. It is doubtful that South Africa and Thailand could foresee that their involvement in TRIPS could result in millions of their citizens dying in order to maintain the profit of pharmaceutical companies.

LACK OF PUBLIC SCRUTINY

Such agreements have powerful consequences on the lives and well-being of a country's people. Yet due to the highly technical nature of negotiations and the attitude of the WTO itself, much of the dealing is effectively done in secret and lacks public scrutiny. Governments may consequently table new laws and regulations in fulfilling their GATS and other commitments. However, genuine public debates about how much and which sectors to open up to trade are rare. Debates about the environmental, social and health effects of trade globalisation are even fewer.

GOVERNMENT SERVICES ARE VULNERABLE

Whilst GATS specifically excludes the coverage of services "*in the exercise of governmental authority*"²², it remains unclear and untested as to what this actually means. The WTO Secretariat does not give legal interpretations. It says this can only happen following the outcomes of disputes hearings. It does, however, give advice or explanations. Recently PSI asked several questions by letter of the WTO Secretariat on this issue. The essence of the answers is that the term "*in the exercise of governmental authority*" means "*not in commercial operation*", whether or not there are other service suppliers in the same sector. This means that it is still not clear under GATS

whether certain government services are commercial operations or not. It leaves the whole question of the protection of public services very uncertain.

What is clear is that governments must first sign on to open a sector or sub-sector of a service before GATS has any implication for that sector.

When one considers the scope of privatisation and commercialisation possible—including prison systems (in parts of Australia and US), hospitals, health care and health insurance (in the US and many South American countries), tertiary education and aspects of social welfare – any reassurance about the safety of public services under GATS is lacking. Furthermore, for a government service to be exempt, the WTO Secretariat implies it must meet two conditions: it must not be itself a commercial operation and it must not compete with commercial operations. Even where a government owns a service provider that operates in competition with the private sector, GATS can apply. According to the WTO Secretariat, this is the provision of a commercial service, not "*in the exercise of governmental authority*"²³. The uncertainty mentioned above is highlighted here.

In health services, for example, rising costs associated with ageing populations, more expensive treatments, over-servicing and the rise of widespread epidemics have coincided with falling taxation revenues. Pressures to commercialise more and more of health services have meant more private hospitals, private insurance and private medicine. GATS applies to health services. GATS applies to any commercialised service.

TRADE DOMINATES ALL OTHER ISSUES

The very nature of agreements such as the SPS means that trade priorities could ultimately be held to override considerations of disease and contamination, if a government challenges another member state's food safety standards as "unnecessary" or not scientifically justified. While the SPS makes reference to international standards in assessing health risks, "*At present, the WTO does not recognise the WHO decision process in making risk assessments and statements on trade based on public health*"²⁴. TRIPS puts profit above health, as has been demonstrated in the pharmaceuticals case. GATS itself covers an open-

ended set of services. Dispute decisions have binding force and financial penalties. As a result, the pressures for profit more easily predominate over other concerns.

Even if the WTO did recognise WHO processes, the WHO already has its integrity threatened. It has entered into “*co-operative arrangements*” with industry, especially in research and development. A factor behind this has been the general lack of funding for UN agencies over the past decade. In 1998 the WHO Executive Board proposed a resolution promoting public health over private interests. Industry lobbying ensured that the resolution was rejected by the World Health Assembly. Multi-national companies such as Nestlé already send more representatives to WHO forums than do most governments. The Swiss multi-national Pfizer (of Viagra fame) has more staff in its marketing department than there are staff employed by the whole of the WHO²⁵.

TELECOMMUNICATIONS CHANGE THE NATURE OF TRADE IN SERVICES

Advances in world telecommunications have already made a big impact on trade in services. In particular, the cross-border mode is facilitated by this development. It can change the whole nature of services. Information intensive services in education, finance, travel, data processing and professional areas are well-suited to use the Internet, e-mail and mobile systems.

Many US firms now routinely send their overnight data processing requirements to India and the Caribbean, where wages are lower and English is widely spoken. In health there are routine tele-medical services involving several national centres. As tele-medicine becomes more widespread it will change the nature of health servicing. For example, the face-to-face doctor-patient consultation is eliminated. The doctor is not subject to the same national laws and rights as the patient. Access for those without telecommunications facilities or without private health insurance is inequitable. Further, many support jobs such as cleaning, catering, clerical and administration are unnecessary if physical presence is no longer part of the arrangement.

SKIMMING THE CREAM

Encroaching privatisation linked with GATS and foreign involvement in services brings with it the *cream skimming* phenomenon. This is the targeting of particular parts of markets in order to maximise profits. It is to the detriment of universal access. It puts further cost burdens on the public system that must increasingly provide for those who cannot afford private insurance.

A particularly bad example is in health insurance involving US-based multi-national firms operating in South America. The “insurance companies take the cream off the top... by selecting the best risks... predominantly young and healthy members... they do not operate in the countryside where health services have always been sparse...”²⁶.

SKILL DRAIN

There is already a lot of international mobility in professional areas of high skill. The mobility is inevitably towards countries offering better pay and conditions. The problem for developing countries is the drain on their most needed skills. As demonstrated above, GATS makes mobility for these workers much easier. It may talk about temporary movement, but it facilitates permanent migration as well.

In health services, the mobility of nurses is such that over 50% of nursing positions in Jamaica are vacant as a result of migration to North America. Filipino nurses also move in large numbers to the US. India trains large numbers of doctors, many of whom migrate elsewhere. This trend can only be exacerbated through GATS. It is largely controlled by the commitments of developed countries that want to attract the extra pool of skilled workers. The commitments made by developing nations cannot seriously affect this trend in any direct way.

Increasing shortages of teachers in some countries have resulted in recruitment campaigns being started across borders. Teacher supply and demand fluctuates and without good planning and good conditions of work to attract new graduates into the profession, we are likely to see increased “stealing” of teachers from other countries whose skills in certain areas are in high demand, e.g. maths and science teachers.

The implications for developing countries are particularly severe. Many developing countries are just

beginning to recover from drastic cuts to education as a result of poorly devised and implemented structural adjustment programmes. It will be very difficult to develop national education systems as long as well-qualified graduates are enticed to leave their country and private companies or external providers of education services become the only alternative for those who can afford to pay.

REDUCTION OF WORKING CONDITIONS

One of the reasons some countries and firms welcome the use of foreign labour is that it serves as a brake on local wages and conditions. This is the other side of the skill-drain coin. Local firms will almost always try to fill skill shortages from countries with cheaper labour: the agricultural and construction industries are examples of where this exists. GATS can exacerbate this trend in certain sectors. It undermines negotiations on wages and conditions. The threat of the employer moving elsewhere is a powerful disincentive to unions and workers pushing for more. Of course, this can happen whether or not GATS is in place. In fact, in the last twenty years we saw this trend occur frequently in developing countries - no rules were in place to stop it. GATS simply encourages the process.

THE REACH OF GATS EXPANDS

Future negotiations under GATS will continue in 3 main ways:

- To extend the number and extent of commitments made;
- To remove existing limitations on current commitments; and
- To bind commitments so that they cannot be reversed.

However the reach of GATS continues to expand in any case, if rulings that have come out of disputes panels on the GATT are any guide. Often these rulings have further undermined laws and treaties. Specifically, the rulings confirm that:

- Any government measure could be struck down by the WTO, no matter its aim. Environment regulations, consumer protection, labour laws and all others can be caught in the net, if the measure is deemed to hamper trade unjustifiably under the agreements.

- Measures can be struck down irrespective of whether the violation of GATS has occurred. GATT panels have struck down measures because they were deemed *capable* of violating GATT.
- The mode of supply is irrelevant in making comparisons of “like” services. Cross-border supply is the same as commercial presence for comparison purposes. This broadens the possible threat of disputes over a country’s commitments and shows the need for governments to be extremely cautious in the commitments they make. Except where clear restrictions have been made, many government policies intended to promote local industry could therefore be challenged.
- Exemptions and limitations will be applied as narrowly as possible. This implies that governments must be extremely careful with the wording of their country’s limitations and commitments. What a government thinks is “*supplied in the exercise of government authority*” at present may not be at a later date, if future negotiations under GATS create new interpretations of “the exercise of government authority”, as people use GATS more and more.

Labour Standards

Labour standards are a particularly important case of where trade interests can override all other concerns. But how the issue has been dealt with is quite different from debate on other matters.

Those who oppose the linking of labour standards with trade liberalisation frequently, blatantly and repeatedly misrepresent and lie about what the trade union proposal actually is.

We need to be very clear about what is meant and what is not meant by labour standards. Labour standards do not mean minimum wage levels. Labour standards do not mean social insurance schemes, specific safety equipment, nor any particular working conditions that a country must have.

By labour standards, unions mean the most basic rights guaranteed to workers as human beings. They are the so-called core international labour standards

which were overwhelmingly endorsed by governments, employers and workers as part of the International Labour Office (ILO) Declaration On Fundamental Principles And Rights At Work, 1998. The endorsements came from the same governments that are members of the WTO. The core standards are:

- Freedom of association;
- The right to bargain collectively;
- The right to work free from discrimination;
- The prohibition of forced work (anti-slavery); and
- The prohibition of child labour.

Yet at the WTO there is virulent opposition to the inclusion of labour standards in trade agreements such as the GATT. The opponent's main argument appears to be that this is a protectionist measure aimed at making goods and services from developing countries more expensive. However the real concern of unions is that by excluding labour standards, the WTO will continue to undermine the most basic of agreements made at the ILO. The stench of hypocrisy by governments that vote one way at the ILO, but another way at the WTO, is foul.

More detailed information on trade and labour standards is available from PSI and EI.

GATS Campaign

Unions need to determine if they are going to have a campaign around GATS. The new round will happen. Changes are happening all the time. If unions decide to organise a campaign, then these points should be considered:

INFORMATION

Information should be the basis of a union campaign on WTO issues and the new GATS round. The sorts of information unions need are:

- What the GATS and other texts actually say;
- How GATS will affect union members and the community;
- What the timing of GATS-related meetings is;
- What your government's commitments and limitations already are;
- What your government's position on future liberalisation is, in areas of concern to your union;

- What other national unions and your national centre are doing on trade liberalisation in general;
- What other NGOs operating in your country are thinking and what are they aware of;
- What multi-national firms are now operating in, or knocking at the door of, your country, in relation to services of concern to your union.

A list of relevant websites and publications which may help is in **Appendix 2**.

OBJECTIVES

A campaign strategy must have clear objectives. It is as important to agree on the objective as it is to develop the means of achieving it. For example, the broad objective for a health union could be to prevent any further privatisation of health services. Or it could be to ensure that limitations in opening up services specifically include core labour standards and the right to unionise workers. It might be to enforce voluntary redundancy agreements in privatised take-overs of hospitals. It could be to achieve minimum wage levels or minimum service levels throughout the industry. It could be to effectively prevent foreign ownership. The implications of the specific objective will determine the nature of the campaign

In education, the objective might be to ensure that the government does not open up education services if they have not already done so, or to insist on the involvement of education ministries and education unions in examining commitments being considered by trade ministries before any commitment is made.

REACH

Should the campaign be national, regional or global? If you have access to the Internet then these are now genuine choices. The answer your union chooses will depend on its assessment of where the best impact on the government and multi-nationals will be made. Governments sometimes respond better to international pressure than they do to local actions. Multi-nationals always respond to threats to their profits.

It may be feasible to develop a campaign that uses elements of two or three of these. Organisations in other countries and those with global influence may help to supplement actions taken nationally by your union and its allies.

NETWORKING

A critical element of any campaign is active networking. This means identifying and seeking out organisations with common interests. If unions and other organisations work together on such issues, the chances of success of the campaign are multiplied. Conservative governments and profit-hungry multi-national firms can easily dismiss one voice as self-interest. But they cannot dismiss a groundswell of voices from different interest groups. At the same time, ensure that the information used is absolutely accurate. There is a great deal of myth and speculation on what may or may not be possible under GATS. Networking can involve:

- Information sharing;
- Division of labour so that organisations take different but integrated responsibilities in developing the campaign;
- Action-oriented meetings to check developments and progress the organisation of tasks;
- Joint lobbying and delegations;
- Joint publicity campaigns;
- Mobilisation of rank and file members in demonstrations and industrial action.

LEARNING FROM PAST EXPERIENCES IN PLANNING FOR FUTURE ACTION

This is improving on the past by learning from successes and analysing failures. Your union or other organisations may have been involved in similar campaigns before. Make sure the experiences of that involvement are considered before finalising a campaign strategy. Some circumstances will have changed and these need to be analysed too. But there is often useful information to be learned from past campaigns on what works and what may be wasted effort.

PUBLICITY

The publicity part of campaigning is critical. It is usually extremely difficult to access the mass media even where the media is free. But if you can get your message across in this way its impact is immeasurably greater.

In general, the media are only interested in *news*. This means that it must have universal interest, it must be significant and ideally it should be illustrated with a

personal or local interest angle. Media people are rarely interested in a union's position on an issue. However, they are interested in the conflict angle of strikes and demonstrations. Often their understanding of the issues involved is very limited. So unions should try to cultivate media people informally, to provide background briefings in advance of campaign events and be accessible to the media. Unions should make media work easier by writing crisp media releases that don't have to be re-worked. Journalists might be asked to give unions short workshops or advice on how to use the media as part of the campaign strategy.

THE GOVERNMENT

You must talk to the government - the more directly, the better. It is the government that will ultimately make the commitment, set the limitation, sign the GATS extension or implement ILO standards. It is also the only way to make sure that your position and the government's are understood.

If you have to talk through a national trade union centre, then it is better than not at all. But be clear about the questions you want answered, the kind of answers you want and the outcomes you want agreed. These details may be provided in advance of the meeting so the government can get relevant technical advice. Results of discussions can then be confirmed, compared between unions and publicised.

PSI AND EI'S ROLE

PSI and EI are already committed to help affiliates in such campaigns. For example, they have undertaken to²⁷:

- Track and oppose the privatisation of health care and education;
- Track US companies that are providing health services in other countries;
- Share information on education institutions promoting cross-border services;
- Tell target nations about the effect of these companies on the health or education system.

As well as making representations to international bodies such as the WTO, the UN, the World Bank and the IMF, the PSI can help with media work and publicity.

PSI is now extending its data bases on multi-national

companies to include their likely future targets and more areas of public sector interest.

Affiliates that do decide to undertake campaigns on the WTO-GATS issue should tell PSI before 18 October 2000. This is especially important if the proposal includes regional or global activities.

Conclusion

The relationships of government and multi-national companies with the WTO and through GATS are at the centre of globalisation today. The direction it takes in the future is now up to us. Seattle has shown that trade unions and NGOs can have a significant influence, despite the array of forces promoting free-for-all globalisation at any cost. The strategies of unions in the countries concerned in understanding and campaigning for clear objectives will be critical in ensuring the right outcomes.

References

- 1 E.g. the Dutch and British East India Companies.
- 2 WTO Website.
- 3 Ibid.
- 4 WTO Annual Report for 1999.
- 5 Evian Group, de Pury and Lehmann, reported in International Herald Tribune 14/6/00.
- 6 According to the WTO, only figures for the USA are available.
- 7 Ibid.
- 8 WTO Secretariat discussion paper *The Developmental Impact of Trade Liberalisation under GATS* 11/5/99.
- 9 Ibid.
- 10 This includes the European Union which submitted one list of commitments for its member states, with the exception of Sweden and Finland which did not make any commitment in this area and Austria which submitted its own list.
- 11 Requests are made when a country wants another country to open up its services; offers are made when a country is offering to liberalise its own services - both of these, of course, being done for the purposes of negotiating benefits for the first country.
- 12 International Confederation of Free Trade Unions (ICFTU), Brussels, 8/6/00.
- 13 In June 00, however, some companies cut prices for Africa by about 20% - still out of reach for most people.
- 14 Compulsory licences are technically allowed under TRIPS.
- 15 ICFTU, Brussels, 8/6/00.
- 16 Greenpeace, Germany.
- 17 WTO paper IP/C/W/175 11/5/00.
- 18 Ibid.
- 19 Sanitary and Phyto-Sanitary Agreement, Article 5 para 4.
- 20 Ibid para 5.
- 21 Ibid para 6.
- 22 GATS article I, s.3(b).
- 23 WTO Trade in Services Division, letter to PSI 17.4.00, file MW/MW/880.01, p.2, end para 3.
- 24 WTO/WHO information paper to the SPS committee, G/SPS/GEN/179, 31.5.00 para 44.
- 25 Financial Times, 1997.
- 26 Prof. W. Hsiao, Director of Harvard School of Public Health, reported in New York Times 17/6/99.
- 27 Based on the 1997 PSI World Congress resolution no. 18.

Appendix 1: The GATS: objectives, coverage and disciplines

Everything you wanted to know about the General Agreement on Trade in Services, but were afraid to ask ...

1. What is the main purpose of the GATS?

The creation of the GATS, one of the major results of the Uruguay Round, was inspired by essentially the same objectives as the GATT: improving trade and investment conditions through multilaterally agreed disciplines; stabilizing trade relations through policy bindings on an MFN basis; and achieving progressive liberalization through subsequent rounds of negotiations.

While services had long been considered to offer less potential for trade expansion than goods, given myriad technical, institutional and regulatory barriers, this view has been confounded by the introduction of new technologies facilitating the supply of services (e.g. satellite communication, etc.), the opening in many countries of long-entrenched monopolies (e.g. voice telephony) and gradual liberalization of hitherto restricted sectors like banking and insurance. These developments, combined with changes in consumer preferences, helped to boost international services flows. In turn, the economic stakes involved imply that there is a similar risk of frictions and distortions in services trade – and, thus, a similar need for multilateral disciplines – as in the area of goods.

2. What positive interests do Members have in undertaking liberalization commitments under the GATS?

Comparable to the GATT, there are various economic and political advantages associated with liberalization commitments under the GATS.

Overcoming domestic resistance to change: In trade negotiations, countries are normally confronted with liberalization requests in their weaker sectors while, at the same time, seeking to improve export conditions for their strongholds. The prospective gains in the latter areas – underpinned by internationally guaranteed access conditions – tend to facilitate more ambitious reforms, in terms of adjustment and growth, than would be attainable on a national basis alone.

Improving conditions for sectoral growth: International bindings help to enhance a country's locational attractiveness for traders and investors

as these are protected from sudden policy changes. Such bindings are particularly important if used to lock in a currently liberal regime or map out a future liberalization path.

Promoting overall economic efficiency: Many services sectors, including transport, telecommunications and financial services, cater not only for direct consumer demand, but provide efficiency-enhancing inputs across a range of user industries. In turn, this underscores the importance of maintaining a competitive environment, through market access and national treatment obligations, for such sectors.

3. Which countries participate?

All WTO Members, over 130 economies at present, are at the same time Members of the GATS and have assumed specific commitments in individual services sectors.

4. What services are covered?

The GATS applies in principle to all services, except those supplied in the exercise of governmental authority.

5. ... and what areas are excluded?

Article I (3) of the GATS defines "services supplied in the exercise of governmental authority" to cover any service not provided on a commercial basis or in competition with other suppliers. This includes the activities of central banks and other monetary authorities, statutory social security and public retirement plans and public entities using government financial resources.

Moreover, the Annex on Air Transport Services exempts from coverage measures affecting air traffic rights or directly related services; and the Annex on Movement of Natural Persons specifies that the GATS does not apply to measures either affecting natural persons seeking access to the employment market of a Member or regarding citizenship, residence or employment on a permanent basis.

6. Is it true that the GATS not only applies to cross-border services flows, but also to supply of services through establishment and natural persons?

Yes. The GATS distinguishes between four modes of supplying services: cross-border trade, consump-

tion abroad, commercial presence and presence of natural persons.

Cross-border supply is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);

Consumption abroad refers to situations where a service consumer or his/her property moves into another Member's territory to obtain a service (e.g. tourism, ship repair or aircraft maintenance);

Commercial presence implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. insurance companies or hotel chains); and

Presence of natural persons consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers).

7. Why was it necessary to introduce, apart from the traditional concept of cross-border trade, three additional modes of supply?

The supply of many services is possible only through the simultaneous physical presence of both producer and consumer. There are thus many instances in which, in order to be meaningful, liberalization commitments must extend to cross-border movements of the consumer or his property, the establishment of a commercial presence within a market, or the temporary movement of the service provider himself.

8. Do GATS commitments affect a Member's ability to pursue national policy objectives and priorities?

No. The GATS expressly recognizes the right of Members to regulate the supply of services in pursuit of their own policy objectives and does not seek to influence these objectives. Rather, the GATS establishes a framework of rules and disciplines to ensure that Members regulate their services sector in a manner which avoids that any ensuing trade restrictions and distortions are more burdensome than necessary.

9. What are the basic obligations under the GATS?

Obligations contained in the GATS may be catego-

rized into two groups: General obligations which apply directly and automatically to all Members, regardless of the existence of sectoral commitments; and specific commitments whose scope is limited to the sectors and activities where a Member has decided to assume market access and national treatment obligations. The relevant terms and concepts are similar, but not necessarily identical, to those used under GATT.

(a) General obligations

MFN Treatment: Under Article II, Members are held to extend immediately and unconditionally to services or services suppliers of all other Members "treatment no less favourable than that accorded to like services and services suppliers of any other country". Derogations are possible in the form of so-called Article II-Exemptions. Members were allowed to list such exemptions before the Agreement entered into force. New exemptions can be granted only to new Members at the time of accession or, to current Members, by way of a waiver under Article IX:3 of the WTO Agreement. All exemptions are subject to review; they should in principle not last longer than 10 years.

Transparency: GATS Members are required, *inter alia*, to publish all measures of general application and establish national enquiry points mandated to respond to other Member's information requests. Other unconditional obligations include the establishment of administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers.

(b) Specific commitments

Market Access: The granting of market access is a negotiated commitment undertaken by individual Members in specified sectors. It may be made subject to one or more of six types of limitations enumerated in Article XVI(2). For example, limitations may be imposed on the number of services suppliers, service operations or employees in a sector, the value of transactions, the legal form of the service supplier, or the participation of foreign capital.

National Treatment: In any sector included in its Schedule of Specific Commitments, a Member is obliged to grant foreign services and service suppliers treatment no less favourable than that extended to its own like services and service suppliers. In this context, the key requirement is to

abstain from measures which are liable to modify, in law or in fact, the conditions of competition in favour of a Member's own service industry. Members are entitled to make the extension of national treatment in any particular sector subject to conditions and qualifications.

Consequently, the GATS does not impose the obligation to assume market access or national treatment commitments in a particular sector. In scheduling commitments, Members are free to tailor the extent of the commitments they take so as to avoid or modify obligations that they consider too demanding at present. However, Article XIX stipulates a common obligation of WTO Members to enter into successive rounds of trade negotiations with a view to achieving a progressively higher level of liberalization (see below).

The scheduling of specific commitments triggers further (conditional) obligations concerning, *inter alia*, the objective administration of domestic regulations and the avoidance of restrictions on international payments and transfers.

10. In the event of violations of the GATS, may private suppliers or consumers directly invoke WTO dispute settlement procedures?

No. All WTO Agreements, including the GATS, are intergovernmental in nature. It is thus for the individual Members to raise a case in the WTO and seek redress to any infringements perceived to affect their services sector. Several Members have established internal procedures with a view to facilitating consultations with private parties in such instances.

11. What information is contained in services "schedules"?

Each WTO Member is required to have a Schedule of Specific Commitments. It is a document which identifies the services sectors, subsectors or activities subject to Market Access and National Treatment obligations and any limitations attached to them. The necessary indications must be entered with respect to each of the four different modes of services supply.

Most schedules consist of both sectoral and horizontal sections. The "Horizontal Section" contains limitations that apply across all sectors included in the schedule. They often refer to a particular mode of supply, notably commercial presence and the

presence of natural persons. The "Sector Specific Section" contains limitations that apply only to the particular sector, subsector or activity to which they refer.

12. When did Members' specific commitments enter into force?

Each Member is required to indicate in its Schedule of Specific Commitments the date of entry into force. In the absence of an indication, the commitments took effect at the same date as the GATS did for the Member concerned. Commitments resulting from extended negotiations (see below) apply from the date at which the relevant Protocol enters into force for a Member.

13. Is there a possibility of scheduling "reciprocity conditions"?

No. Any market access or national treatment obligations inscribed in schedules must be granted unconditionally to all Members, without discrimination. Reciprocity provisions in areas **not** covered by specific commitments would need to be listed as Article II-Exemptions as they contravene the basic MFN requirement.

14. Is there an obligation to schedule references to potentially restrictive measures (licensing requirements, etc.) which do neither fall under Article VII (Market Access) nor have discriminatory effects within the meaning of Article XVII (National Treatment)?

No. Such measures are subject to the disciplines of Article VI on Domestic Regulation. Members thus need to ensure, *inter alia*, that they are administered in a reasonable, objective and impartial way and do not constitute unnecessary barriers to trade. Non-conforming measures must be amended accordingly, scheduling would not provide legal cover.

15. Can specific commitments be withdrawn or modified at any time?

Pursuant to Article XXI, specific commitments may be modified not earlier than three years after their entry into force. However, countries which may be affected by such modifications may request the modifying Member to negotiate compensatory adjustments. Any such adjustments are to be granted on an MFN basis.

16. Can commitments be introduced or improved outside the context of multilateral negotiations?

Yes, any Member may extend or upgrade its existing commitments at any time.

17. Are there any specific exemptions in the GATS to cater for important national policy interests?

Governments are free in principle to pursue any national policy objectives provided the relevant measures are compatible with the GATS (see (8) above). In addition, the GATS allows Members in specified circumstances to take or maintain measures in contravention of their obligations. This applies in particular to:

- measures in reaction to serious balance of payments and external financial difficulties;
- measures necessary to protect public morals or human, animal or plant life or health; and
- measures necessary to secure compliance with laws or regulations not inconsistent with the Agreement including, among others, measures necessary to prevent deceptive or fraudulent practices.

The Annex on Financial Services entitles Members, regardless of other provisions of the GATS, to take measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.

18. Is there a risk that exemptions are used to circumvent existing disciplines?

Any exemption clause carries a risk of abuse. However, to limit such risks, the relevant Articles define minimum requirements that must be met. For example, restrictions taken in response to balance of payments problems must be non-discriminatory and consistent with IMF provisions; avoid unnecessary damage to other countries' commercial, economic and financial interests; not be more stringent as required by the circumstances; be temporary and be phased out progressively as the situation improves. Conflicts about interpretation of these provisions may be referred to WTO dispute settlement.

19. Are there special provisions for developing countries?

Yes. Developing country interests have inspired both the general structure of the Agreement as well as individual Articles. In particular, the objective of facilitating the increasing participation of developing countries in services trade has been enshrined in the Preamble to the Agreement and underlies the provisions of Article IV. This Article requires Members, *inter alia*, to negotiate specific commitments relating to the strengthening of developing countries' domestic services capacity; the improvement of developing countries' access to distribution channels and information networks and the liberalization of market access in areas of export interest to these countries.

While the notion of progressive liberalization is one of the basic tenets of the GATS, Article XIX provides that liberalization takes place with due respect for national policy objectives and Members' development levels, both overall and in individual sectors. Developing countries are thus given flexibility for opening fewer sectors, liberalizing fewer types of transactions and progressively extending market access in line with their development situation. Other provisions ensure that developing countries have more flexibility in pursuing economic integration policies, maintaining restrictions on balance of payments grounds and determining access to and use of their telecommunications transport networks and services. In addition, developing countries are entitled to receive technical assistance from the WTO Secretariat.

20. What is the so-called "built-in agenda" of the GATS?

The GATS, including its Annexes and Related Instruments, sets out a work programme which is normally referred to as the "built-in" agenda. The programme reflects both the fact that not all services-related negotiations could be concluded within the time frame of the Uruguay Round and that Members have already committed themselves, in Article XIX, to successive rounds aimed at achieving a progressively higher level of liberalization. For each round, negotiating guidelines and procedures are to be established and the Council for Trade in Services is mandated to carry out an assessment of services trade. In addition, various GATS Articles provide for issue-specific

negotiations intended to define rules and disciplines for domestic regulation (Article VI), emergency safeguards (Article X), government procurement (Article XIII) and subsidies (Article XV). These negotiations are currently under way. At the sectoral level, negotiations on basic telecommunications were successfully concluded in February 1997 and negotiations in the area of financial services in mid-December 1997. In these negotiations, Members achieved significantly improved commitments with a broader level of participation. In addition, Article XXI mandates the Council for Trade in Services to establish procedures for the modification of Schedules; this has recently been achieved.

21. Are the results of the extended sectoral negotiations in telecommunications and financial services legally different from other sector-specific commitments?

No. The results of sectoral negotiations are new specific commitments and/or MFN exemptions related to the sector concerned. Thus, they are neither legally different from other sector-specific commitments, nor constitute agreements different from the GATS. The new commitments and MFN exemptions have been incorporated into the existing Schedules and Exemption Lists of the Members concerned via separate Protocols to the GATS.

CONTACT US :

World Trade Organization, rue de Lausanne 154,
CH-1211 Geneva 21, Switzerland

Appendix 2: List of useful contacts and publications

CONTACTS AND ADDRESSES

WTO website
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DOCUMENTS

GATS: the General Agreement on Trade in Services and Related Instruments.
This also gives the file reference for each country that has made commitments (e.g. Canada GATS/SC/16) which you can use in the website. Available from the WTO.

Recent developments in services trade – overview and assessment
This is a 1999 paper. It is 37 pages of data and information available from the WTO website or from the WTO.

An Introduction to the GATS
This is a 1999 paper. It is particularly useful because it tells you how to read the schedules. Available from the WTO.

Provisional Central Product Classification
This is a 296 page document available from the UN, or probably from your national trade ministry or statistics office. It lists and classifies all services covered by GATS. Its reference number is UN Statistical Papers, series M, no.77 (ST/ESA/STAT/M/77).

Services Sectoral Classification List
This is a WTO list which relates the UN Central Product Classification above to GATS commitments made by countries. Its reference number is MTN.GNS/W/120.

Appendix 3: Glossary

COMMERCIALISED

Organised for profit.

COMMITMENT

A commitment is a pledge by a country to open particular services sectors to trade. A commitment may be fully open or with restrictions.

MARKET ACCESS

Full market access means that foreign service suppliers are not prevented in any way from competing in a particular sector. Restrictions can only be made by specific exemptions in country schedules.

MEASURES

These are all laws, regulations and practices that derive from national, regional or local government and that may affect trade.

MOST FAVOURED NATION

This GATS and GATT principle requires a country to give equal treatment to all other member countries so that there is no discrimination between the treatment of imports between one country and another.

NATIONAL TREATMENT

This principle means that there should be no discrimination that favours domestic service providers over foreign service providers.

TRANSPARENCY

GATS requires each member to make public all measures that affect trade in services.

RESTRICTIONS ON DOMESTIC REGULATION

Members have agreed to provide domestic appeal tribunals so that foreign service suppliers can directly appeal government regulations affecting trade. Regulations for licensing, qualification procedures and technical standards should not “*constitute unnecessary barriers to trade in services*”.



The PSI Policy, Practice and Programme series:

1993/1	PSI Water Programme
1993/2	PSI Energy Programme
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1993/4	PSI Policy and Strategy on the Role of the Public Sector
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1996/3	Report on the PSI Survey on Equal Opportunities
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2000/2	Great Expectations: The Future of Trade in Services

The PSI Policy, Practice and Programme series includes publications falling into a number of categories: some are fully debated policy papers which have been formally approved by a PSI World Congress; others are more in the nature of discussion papers which have been approved by the PSI Executive Board for release to stimulate debate and feedback so that PSI can further develop its policy in a particular area; others are the production of a PSI specialist committee, such as one on the environment, containing a mix of discussion items and practical suggestions for how trade unions could incorporate work on that particular

subject into their daily practice. Not surprisingly, there is no hard line to distinguish the content of these papers since they are all aimed one way or another at helping trade unions to strengthen their organisational and campaign work on the basis of democratically agreed principles which can be incorporated into a trade union's long term programme of work.

PSI welcomes any feedback on these papers and would be very grateful for any documents which readers care to send to PSI in the event that any revision of the material is undertaken.

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Public Services International

PSI is one of the oldest international trade union organisations in the world. It was founded in 1907 to develop bonds of solidarity between workers in public utilities in Europe, but over its history has expanded to cover almost all areas of public services throughout the world. PSI's membership currently stands at over 20 million.

PSI's aims however remain much the same:

- To promote co-operation amongst the affiliated organisations with the objective of coordinating their activities directed at establishing social justice, and to promote reciprocal assistance in the pursuit of their aims and objectives.
- To represent and defend the interests of employees in the public service before international authorities.
- To ensure the right of those employed in the public service to form and join professional or trade union organisations for the defence of their rights and interests.
- To uphold the right of organisations representing public employees to participate in the determination of conditions of employment by means of free negotiations.
- To campaign for the implementation of ILO Conventions, Recommendations and Resolutions which have a bearing on the well-being of public employees.

HOW DOES PSI WORK?

The highest authority is the Congress, which is composed of delegates from PSI's affiliated organisations and meets every five years. Between Congresses, PSI is governed by an Executive Board elected from PSI's 25 geographical constituencies. Congress also elects a President - who presides over Executive Board meetings - and a General Secretary - who is responsible for the management of PSI's day to day business.

Regional structures have been created to ensure that

the special needs and problems of particular areas are properly dealt with. Within each Congress period, a special Conference is held in each of PSI's four regions - Africa and Arab countries, Asia and the Pacific, Europe and the Interamericas - in which all affiliated organisations from the region are entitled to take part.

WHAT DOES PSI DO?

In carrying out the fundamental aims of the organisation, PSI organises an extensive programme of education and training for public service trade unionists at all levels. The objective is to help public service unions all over the world to develop into effective, independent organisations, so as to enable their members to play a full role in decisions that affect their work and life.

In addition to education, PSI engages itself in disseminating information on public service and trade union issues and organises a large number of meetings on vocational and technical subjects, including health and social services, workers in public administration, privatisation, trade union rights, globalisation, pensions, public utilities, multinational corporations, international financial and trading institutions, etc. Particular attention is given to women and young people in the public service.

Despite all the efforts of the free trade union movement over many years, there are still many countries where basic trade union rights and freedoms are not allowed or are being abused. PSI is consistently campaigning for the respect of human dignity, and the right to belong to a trade union.