



FLEXIBILITY, BUT FOR WHOM?

DEMANDS RAISED BY DEVELOPMENT CIRCLES AND LABOR UNIONS ON THE GATS NEGOTIATIONS IN THE WTO

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In the course of the past two years the General Agreement on Trade in Services (GATS) has become a central issue in the debate over the future of the international trade system. The GATS is seen by the World Trade Organization (WTO), industry representatives, and many WTO member states as a particularly 'flexible' and 'development-friendly' agreement; on the other hand, the GATS has come in for harsh criticism from labor unions, development circles, and globalization skeptics. Information on the GATS and the numerous concerns voiced by development circles and labor unions were the subject of a seminar held by the Friedrich Ebert Foundation and the WTO from 24-26 April 2003 in Geneva. The present paper sums up some of the central aspects of the seminar and outlines the state of the discussion a few months prior to the Fifth WTO Ministerial Conference in Cancun/Mexico.

The present state of the GATS talks

At the Fourth WTO Ministerial Conference in Doha/Qatar in November 2001, the GATS negotiations, which got underway in 2000, were integrated in the agenda of the ongoing, wide-

ranging World Trade Round. This trade round, adroitly referred to in official circles as "the Doha Development Agenda" or the "Development Round," aims ostensibly to improve the integration of developing countries in world trade. In fact, however, no substantial concessions have yet been made to the developing countries, and none of the deadlines set for agreement on important development-related issues – e.g. TRIPS and health, the concerns of developing countries regarding implementation, or the question of agricultural trade – have been met. Only the GATS talks can be said to have made relatively good headway: aside from a number of working groups on horizontal GATS issues, the GATS negotiations have dealt mainly with the so-called request-offer process, in which WTO members negotiate bilaterally on requests and offers on liberalization in services. By the end of June 2002 WTO members states with offensive interests in the GATS talks had submitted their first request papers to other WTO members. The EU, for instance, has submitted requests to 109 other WTO members and received in return 35 requests from other countries (27 of them developing countries). By the end of March 2003 WTO

members had worked out their first offers. Internal resistance to certain EU offers regarding an opening of its markets led to delays, and the EU offers were submitted only on April 29, 2003, and have since been published.¹

Submission of the requests and offers – still withheld from public scrutiny in most countries – has now been followed by a phase of intensive bilateral negotiations, although this phase is bound to be influenced by the further course of the ongoing WTO round. The WTO Ministerial Conference in Cancun (September 2003) will be taking stock of the negotiations conducted thus far, and the aim continues to be to conclude the overall World Trade Round by the end of 2004.

Arguments of the GATS advocates: the strategic importance of the trade in services and the agreement's flexibility

WTO presentations and publications stress the central importance of the trade in services for every country's economic development and competitiveness. Precisely in developing countries – argues Pascal Kerneis, a representative of the European Services Forum – direct investments of foreign service suppliers could be a source of badly needed infrastructures, e.g. in the sectors telecommunications, financial services, logistics/transportation, and energy and water supply. By creating an investment-friendly legal framework, the GATS could, it is further argued, contribute to promoting growth and prosperity. The agreement, it is claimed, is not an instrument to privatize or deregulate service sectors, indeed its stated aim is to liberalize currently protected and often inefficient service markets. Precisely in view of declines in the development assistance provided by the industrialized countries, it is further argued, the GATS could contribute to boosting urgently needed foreign direct investment (FDI), opening up new consumption and job perspectives in countries with underdeveloped consumer-goods and labor markets.

¹ The EU's offers can be viewed on the website of the EU Commissions DG Trade: http://trade-info.cec.eu.int/europa/index_en.php; many other GATS documents relating to the request-offer process are at present treated as official secrets, though some of them have been made public on the websites of NGOs and industry associations listed below under References.

Concerns voiced regarding possible GATS-related restrictions on scopes of national political action are countered by pointing to what is termed the agreement's flexibility. GATS proponents contend that in formulating their specific schedules of commitments WTO member states have a completely free hand to decide which sectors to liberalize and which to exempt. Furthermore, it is claimed, GATS signatories would retain a great number of possibilities to include in their specific schedules exceptions and limitations on market access and arrangements covering national treatment.

Central concerns and criticisms raised by labor unions and NGOs on the GATS

GATS critics do not dispute the central economic significance of services; but they place more emphasis on the social and human rights relevance of numerous service sectors (e.g. public and basic services like water supply or education). They further express doubts as to the supportive role supposedly played by the GATS in mobilizing urgently needed financial resources, noting that transnational corporations are simply not interested in providing services for poor and needy people. The GATS, they claim, is above all an instrument geared to enhancing the flexibility of transnational corporations (TNCs) and restricting, de facto, the scopes of action open to nation-states.

Moreover, in the actual WTO negotiation process many developing countries will benefit very little from the purely formal "flexibility" they have in formulating their schedules of commitment, for, thanks to their larger negotiating capacities and their decidedly greater political-economic bargaining power, the industrialized countries are in a position to push through market-liberalization measures and exact concessions from the developing countries which the latter would otherwise not accept in the light of their own priorities and in view of the competitiveness of their own companies.

One particularly problematic aspect of the GATS in the eyes of its critics is the agreement's irreversibility, under which liberalization commitments, once made, are "incorporated" in the agreement, after which there are very few possibilities to rescind them. GAT Article XXI,

relevant for this case, provides for a revocation of effective market-liberalization measures only on the basis of time-consuming negotiations and costly compensation payments to all other "affected" WTO members states.

Representatives of international labor organizations – like James Howard (ICFTU), Mike Waghorne (Public Services International), or Philip Bowyer (Union Network International) – also point to possible restrictions that the GATS may entail for the provision of public services as well as for regulations conceived with a view to social, development-related, ecological, or cultural policy goals. The position paper prepared by the Global Unions Group² on the WTO Ministerial Conference in Cancun lists the demands raised by the international labor-union movement on the GATS (Global Unions Groups 2003). These demands largely coincide with those raised by other civil-society actors in the GATS debate;³ they may be summed up as follows:

- Public services (above all education, health, and basic supply services) and socially valuable services should be exempted from all future GATS negotiations.
- There is a need, prior to the conclusion of the current round, for a comprehensive assessment of the trade in services (on a both a general and sectoral basis).
- In order to safeguard the regulatory options of national governments, Article VI.4 of the GATS should be revoked or revised; social and ecological concerns should have precedence over the principles of "free trade"; and they should not be subject to any "necessity test" by the WTO's Dispute Settlement Body.
- The latitudes of governments in formulating qualification rules, technical standards, and qualification requirements should not be restricted any further by the GATS working

group on national regulation; the GATS proviso that these arrangements should not be "more burdensome than necessary" for trade should be rescinded.

- In contrast to the provision set out in GATS Article XXI, formally submitted GATS commitments must be made easier to revise.
- Article I.3(b) of the GATS, which is concerned with services provided in the "exercise of governmental authority," should be more clearly formulated in order to provide WTO member states more unambiguous latitudes for dealing with public services and services deemed to be in the general public interest.
- As far as the GATS "Mode 3" on "commercial presence" (i.e. on investments) is concerned, the GATS negotiations should take into account the concerns expressed in many quarters over unrestrained investment liberalization and at the same time focus more on corporate obligations as well.
- As regards Mode 4 (i.e. the temporary "presence of natural persons of a Member in the territory of any other Member"), steps must be taken to ensure that the ILO's core labor standards, national labor laws and collective wage agreements, and protection of migrant workers from all forms of discrimination are safeguarded; there should furthermore be safeguards ruling out any possible evasion of social-insurance requirements and other insurance systems.
- It is essential that the cultural diversity and identity of WTO members not be put at risk by the GATS negotiations (e.g. on audiovisual media).
- It must be ensured that the GATS negotiations do not expose retailers and other smaller companies to ruinous competition with big corporations.
- In sectors like postal services and telecommunications measures should be taken to ensure that the provision of general services at uniform and affordable prices is not endangered.
- The policy of secrecy presently subscribed to by WTO member states in the GATS negotiations should be abrogated (e.g. by publishing all requests and offers).

² The Global Unions Group is an association made up of the IBFG and other international labor-union federations. For more information, see : www-global-unions.org.

³ Many of the campaigns critical of the GATS are also expressly calling for a moratorium or a freeze on the GATS talks. For further information on GATS campaigns in Europe, see www.gatswatch.org.

In the course of the debate thus far, the WTO and other advocates of the GATS have for the most part rejected these demands as unfounded or unreasonable, although there have been some concessions on individual issues. In the meantime, for instance, not only actors critical of the GATS are calling for more transparency and public involvement in the GATS process. Indeed, even as regards the often-deplored lack of clarity of the exceptions for government-provided services under GATS Article I.3, the WTO has now recognized that a uniform and clarifying interpretation by the WTO member states could prove helpful here.

Investment-related implications of the GATS – Is another investment agreement already in the making at the WTO?

Mode 3 (i.e. the commercial presence [investments] of service suppliers abroad), with its particularly important economic implications, is now playing an increasingly important role in the ongoing GATS discussions. In the present GATS round the EU, for instance, is pressing numerous developing countries for further liberalization commitments under Mode 3 with a view to facilitating market access for European companies. NGOs regard this approach as counterproductive in terms of development, arguing that the EU's requests in the sectors retail trade, construction and transportation, tourism, financial services, or water supply threaten to deprive governments in the South of some of their important 'tools' of investment regulation (WDM 2003). Moreover, the GATS sets out no social, ecological, or human rights obligations for the corporations involved.

The service corporations united in the European Services Forum (ESF) have nothing but praise for the present GATS provisions covering investment policy. But for the ongoing trade round they have set themselves the goal of achieving further-reaching WTO arrangements on international investment policy – in particular as regards investment protection, an issue not yet covered by the GATS. For the scheduled Cancun conference, the ESF is therefore working for a new round of binding negotiations on an investment agreement in the WTO.⁴ On this issue the GATS debate is, in other

words, linked to the conflict over the so-called Singapore, or New, Issues (investment, competition, public procurement, trade facilitation) in the WTO. The last WTO ministerial Conference in Doha/Qatar was unable to reach agreement on launching negotiations on this issue; and now a trend-setting decision on this issue is on the agenda of the upcoming WTO Ministerial Conference in Cancun. There is reason to expect that above all the EU will exert enormous pressure on the developing countries, the majority of which have thus far shown themselves inclined to reject any such negotiations. Together with other GATS concessions on the part of the South, agreement to embark on binding negotiations on the 'New Issues' are likely to be declared to be the price that the developing countries are expected to pay – and will have to pay – to gain any further concessions from the EU on the issue of agricultural trade.

The difficult "Mode 4" discussion on the provision of services by natural persons

Aside from the GATS Mode 3 (commercial presence of companies), Mode 4 (temporary migration of natural persons) is fraught with explosive political and economic implications. In the ongoing GATS round representatives of developing countries like India or Pakistan and service suppliers from industrialized and developing countries are calling for a further opening of the labor markets of the North for a temporary movement there of service providers. What they are proposing is, among other things, a so-called GATS visa that would, in the future, make it easier for natural persons from abroad to enter other countries to carry out service jobs there (e.g. to work on software or constructions projects, to provide maintenance and repair services).

But the labor unions of the industrialized countries fear that new Mode 4 concessions would exert enormous pressure on hard-won social standards in the North. They are warning of a 'race to the bottom' on wage levels and social services and are unwilling to abandon the working conditions applicable in cross-border service projects to the simple logic of free-trade competition. Instead, labor unions insist on

- at least continuing application of internationally accepted labor standards and specific

⁴ See ESF 2002.

national wage levels and working conditions and

- effective protection of temporary migrant workers against all forms of discrimination.

In view of the positions outlined above, the Mode 4 debate presents an extremely complex and mixed picture. The developing countries see here one – if not indeed their only – important comparative advantage in the GATS negotiations; the labor unions, on the other hand, rightly point to the risk that existing labor and social standards might be undercut to make way for aggravated exploitive practices on the part of employers (one need think here only of the experiences recently made in the European construction industry). As far as this issue is concerned, the avenue leading to solutions acceptable in terms of both development and labor-union interests is certainly bound to be a long one. In any case, representatives of labor unions and developing countries present at the Geneva seminar agreed to continue to exchange views on the issue.

Outlook: there is a need for continuing labor-union activities in connection with the GATS

In summing up the results reached thus far in the GATS discussion, we can note that the concerns expressed in the Global Unions statement on the issue complexes of national regulations, public services/basic services, Mode 4, non-revisability, and the lack of transparency of the GATS process have not been invalidated by WTO representatives and other GATS proponents. Labor unions and civil-society actors would therefore be well advised to keep up their critical work on the GATS. Looking ahead to other activities, participants in the Geneva seminar stressed that

- many labor unions, above all in developing countries, still have an enormous need for further training and capacity-building as regards GATS and WTO issues;
- instead of waiting for developments and changes to happen in Geneva, labor unions and other civil-society actors should now seek to actively intervene in the national trade-related decision-making processes in their own countries;

- labor unions should forge on with work based on the very good experiences (e.g. PSI) they have made in GATS-related cooperation with NGOs like the World Development Movement, CIEL, or the "Our World Is Not For Sale" coalition, where they will find some highly competent allies and many useful materials;
- and for further analyses and political interventions it is important to place the GATS in the wider context of IMF/World Bank policies and not to lose sight of the service-relevant elements of bilateral and regional agreements (such as the new partnership agreement between the ACP states and the EU (the revised Cotonou Agreement; FTAA).

The present text reflects the personal opinion of a participant in the Geneva seminar, it raises no claim to be a complete account of the transactions and does not necessarily present the views of the Friedrich-Ebert-Stiftung.

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