

THE GENERAL AGREEMENT ON TRADE IN SERVICES

Democracy, Public Services and Government Regulation



A briefing by Jean Lambert, London's Green MEP



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The latest international trade agreement, the GATS (General Agreement on Trade in Services), goes far beyond any existing trade agreements in its scope. For the first time, services – 160 sectors including health, waste disposal, financial services, education, water distribution, and tourism – will be subject to a myriad of complex rules aiming to reduce barriers to foreign investment and foreign ‘commercial presence’ in other countries.

GATS ... “is designed to facilitate international business by constraining democratic governance”^{1a}

Scott Sinclair, Canadian Centre for Policy Alternatives

Under GATS, even essential public services such as education are seen as lucrative commodities to be traded on the international market. GATS could mean that public services are run solely for the benefit of private companies and shareholders rather than in the public interest. It could also mean that local authorities and governments are afraid to put in place important regulations to benefit local people for fear of legal challenge under GATS.

This agreement has the potential to drastically undermine the decision-making powers of national, regional and local governments. It will have particularly catastrophic consequences for developing countries, but will also strike closer to home than other trade agreements have done.

GATS is so complex that few people appear to fully understand what effects it could have, and many governments would rather go along with the comfortable assertions of big business interests than find out. Concern about this is increasing, and 262 UK MPs last year signed an early day motion calling on the government to ensure independent assessment of the implications of GATS for public services.

“Reading the EU’s 1,000-page epic negotiating text is like entering the deeper fantasy world of corporate executives.”^{2a}

Kevin Watkins, The Guardian

The UK government is one of the main proponents of GATS. It has worked in close cooperation with a particularly influential services industry lobby, yet there has been little or no consultation with local governments, civil society or even the national Parliament. In addition to this, although the European Commission is negotiating on behalf of all EU countries, the European Parliament has no say in the process either.

Flying in the face of notions of participatory democracy, governments are letting the WTO rush through this process behind closed doors and brush off attempts at open discussion of what GATS could mean. This leaflet attempts to explain some of the issues and calls for a full assessment and public discussion of GATS.

WHAT IS GATS?

The GATS is a World Trade Organisation (WTO) agreement, and came into force in 1995 when the WTO was formed out of the old GATT (General Agreement on Trade and Tariffs). Since then, members have been committed to achieving “a progressively higher level of liberalisation” in their service sectors. Negotiations are currently underway, and the agreement is due for completion in 2005. However, many of its rules are already binding on signatory countries.

“In reality, the GATS is more of a governance agreement than a trade agreement”^{3a}

Canadian Centre for Policy Alternatives

“Services” is an extremely broad term which is not actually defined by the agreement, though 160 service sectors are listed. A service is anything which is not a tangible commodity, including heart surgery, water purification, road construction, sewage treatment and radio and TV broadcasting. Both luxuries, such as tourism or entertainment, and essential services, such as electricity or water distribution, are covered by GATS.

Up to now, many of these sectors have been in public hands, or a mixture of public and private ownership, and are heavily regulated by local and national authorities in order to guarantee quality services which benefit local people and fulfil certain social and environmental criteria.

Often, foreign companies are barred from providing these services, or domestic regulation dissuades them from entering into these sectors. The aim of GATS is to allow foreign companies to invest in these kinds of services on an equal basis with national companies, and its four ‘modes of supply’ for foreign investment include, significantly, ‘commercial presence’. It is partly this provision which naturally leads GATS to take an interest in internal policy issues, and also to remove domestic regulation which could interfere with ‘fair’ investment conditions. As well as laws, such as high taxes on earnings being taken out of the country, other important regulations could also become illegal under GATS – for example, regulations protecting the environment or guaranteeing local employment with minimum requirements for hiring local people. It is also likely to bring about the privatisation of many services which are currently partially or wholly state-provided.

HOW DOES GATS WORK?

The GATS is made up of a mixture of basic obligations and specific commitments. The basic obligations are rules which automatically cover all services. Other rules do not automatically apply to all service sectors, but only to those which governments have decided to ‘commit’ to these rules.

The latter rules are far more extensive. Governments commit specific service sectors to these through a series of negotia-

tions, which began in February 2000. Governments submit lists stating which services sectors they will commit, along with any limitations on these commitments (they have to place their limitations at this point, not later on). Countries also submit requests to other countries asking them to commit certain sectors to the GATS, or remove any particular conditions or restrictions which they have listed for certain sectors. Countries had to have submitted their requests by 30 June 2002, and responses with offers must be in by 31 March 2003. Pressure during this negotiation process is intense.

The European Commission has been mandated to negotiate on behalf of the EU as a whole by EU member states. The UK government is, as a result, not directly involved in the negotiations, although they have a lot of influence within the EC negotiating team and on the world stage in general as a major political and economic power. The democratically elected European Parliament has no official role in the GATS negotiating process and is not allowed even observer status to the EC’s Article 133 Committee (the body which is mandated to negotiate on GATS) which meets secretly. It also has only ‘consultation’ status in trade negotiations, which means that its view does not have to be taken into account.

Committing Services

Most of the 140+ WTO member countries have so far only fully committed a small number of their services to the specific commitment rules. Commitments have been made particularly in tourism, hotels and restaurants, computer-related services and value-added communications. Members are more reluctant to schedule education, postal services, basic telecommunications and recreational and cultural services, where very few commitments have been made.

EC documents leaked in April 2002 revealed the extent of their requests to developing countries. The EC has asked for the removal of restrictions in a range of sectors including postal services, environmental services, and telecommunications. As Kevin Watkins put it in an article in *The Guardian*, these countries “have been presented with a list of demands that will make even hardened privatisers in the World Bank wince.”^{4a}

Opening these sectors will benefit EU service industries while undermining development efforts. However, developing countries have very little bargaining power in the WTO to resist these requests. (See section on developing countries).

WHAT KINDS OF RULES DOES GATS INCLUDE?

The most important rules are explained below.

Most Favoured Nation Rule

This is a basic obligation, so is automatically binding on all

sectors. This rule says that the best treatment given to any foreign provider must be given to all like providers. For example, if a single foreign provider of higher education gains degree-granting authority, then all foreign providers of higher education must have the same opportunities to seek degree-granting authority.

The result of this in practice is that it is far more difficult to reverse commercialization where it has occurred, as governments would face opposition not just from one provider but from many. Canada and the European Commission, to their surprise, have already been successfully challenged at the WTO under this GATS article. Canada was forced to repeal one of its most popular industrial policies which was ruled by the WTO to contravene its obligations under the agreement.¹

National treatment

The national treatment rule applies only in those sectors and modes of supply in which a government has made specific commitments. It says that foreign providers must be treated identically to national ones. As well as less problematic taxation policies, for example, other kinds of policies which could be affected by this are schemes to give research or development subsidies to locals or nationals, or assistance to

Some of the implications

In general:

– it will be very hard to reverse privatisation and liberalisation, as GATS has a 'lock-in' effect.

Of specific commitments, applying to service sectors which governments have committed:

– policies to encourage local business may not be allowed. Other policies which could treat foreign companies differently will be forbidden as well, even if this is an unintended effect

– limits on the number and type of suppliers could be prohibited, even if they aim to protect the environment or ensure non-profit delivery of services. Governments have to have made a 'country-specific exception' for each such limit they wish to impose. While GATS' General Exceptions (Article XIV) claims to allow measures designed to protect plant or animal life, this is in fact subject to very strict conditions and so allows far less freedom than the wording of the article implies.

– monopolies and exclusive service suppliers will be allowed to exist only in extremely limited circumstances

– if a regulation designed to ensure the quality of service provision might somehow constitute a barrier to trade and is not seen as the 'least restrictive measure' necessary to achieve the required goal, which must also be deemed reasonable, it will not be allowed. These decisions will be made by the WTO dispute panel.

encourage local business run by directors from a local community.

Judging by past experience where these articles have been interpreted very strictly by WTO dispute panels, it is likely that even policies which have the unintended effect of altering the conditions of competition could be affected. For example, government subsidies to non-profit childcare providers could be ruled to be discriminatory against foreign firms, where most for-profit providers are foreign and most non-profit providers are local.

Monopolies and exclusive service suppliers

In many countries monopolies are still relied on to provide basic services such as postal services or electricity generation, as are exclusive suppliers in areas such as higher education, health care and social services. These will be covered by a mixture of basic obligation and specific commitment rules, and it is not clear exactly what effect these will have on domestic arrangements. But WTO claims that "it is possible to maintain a monopoly supplier, whether public or private, of any service", are not strictly true.²

"... Opening service markets to foreign providers is self-evidently inconsistent with retaining public sector monopolies."^{5a}

International Financial Services, London

Market access

This rule prohibits limits to the number of service suppliers. This is a specific commitment, so it only applies to sectors which have been committed. Where a sector has been committed, countries can also impose certain conditions by listing them as country-specific exceptions. For example, a country which has committed its tourism industry can impose a limit on the number of hotels or reserve the right to limit the number of operators at their discretion. However, conditions must be specified at the time the commitment is made and are very difficult to alter later on.

Critics have pointed to the market access rule as one of the most problematic. It could endanger limits imposed to protect the environment or conserve resources, and, as it also prohibits limits on the *type* of service provider, it could endanger regulations which ensure the non-profit delivery of services such as child-care or water distribution. Restrictions, such as those imposed on the number of whale-watching operators applied for conservation reasons in Canada, could violate commitments in tourism. While the rules sound flexible, in practice countries have far less leeway to control their sectors (see below).

The fact that this rule is framed in general, absolute terms gives particular cause for concern. Although the WTO has stressed that the article will not hinder governments in

regulating, experience suggests that it is advisable to be wary of such claims – the Investment Chapter of the North American Free Trade Agreement (NAFTA), for example, has been used by foreign investors to argue that planning measures, permits and product bans are illegal, despite previous statements from the authorities that this would not happen.

Domestic regulations

The exact scope of this article (also a specific commitment) will become clearer following negotiations, but its basic thrust is that any national, regional or local regulations on the quality of services provision will have to be vetted for their possible unnecessary impact on international trade in services. Countries must ensure that “measures relating to qualification requirements and procedures, technical standards and licensing procedures do not constitute unnecessary barriers to trade in services”³, as well as anything relating to them such as public subsidies made conditional on services meeting high technical standards. If such a rule is found to be “more burdensome than necessary to ensure the quality of service”⁴, it may have to be dropped or altered. Furthermore,

The WTO Dispute Settlement Body

Disputes arising between countries over GATS which cannot be settled between them are arbitrated by the WTO's Dispute Settlement Body, which enforces the rules laid down in WTO agreements such as GATS. If one or more countries believes that another country has broken a WTO rule, the Dispute Settlement Panel will first try and help the countries concerned to come to an agreement themselves; if this doesn't work, then a panel of three experts chosen by the Panel will come to a decision about who is right and who is wrong based on their interpretation of the rules. The Panel also has the power to authorise retaliation when a country does not comply with a ruling.

Given that the Dispute Settlement Panel is part of the WTO, decisions are unsurprisingly biased in favour of less regulation and more free trade. Furthermore, once a ruling is made it is practically impossible to reject it as only the unanimous agreement of all member countries can lead to the rejection of a decision. The large majority of rulings so far under GATS have gone in favour of de-regulation.

as it is the WTO itself which is the ultimate judge of what is ‘unnecessary’ or ‘too burdensome’, the impartiality of such decisions is seriously called into question.

This article constitutes, according to one critic, “an extraordinary intrusion into democratic policy-making on a broad range of important regulatory matters that are only obliquely related to trade”⁵ as any laws or requirements which may affect trade in services, however tenuously, could be brought into question. “The proposed restrictions are a recipe for regula-

tory chill”⁶ – in other words, local authorities and others could avoid putting in place proper regulation in the public interest for fear that they will face legal challenge in the WTO under GATS. (See section on Freedom to Regulate).

IS PUBLIC POLICY-MAKING AT RISK?

Debate on GATS has focussed on two main issues - firstly, what the status of public services such as health and education will be under GATS; the second issue is whether GATS will restrict governments’ power to regulate.

The WTO and OECD have both published responses⁷ to criticism of GATS by organisations like the World Development Movement, which attempt to expose critics’ assertions as ill-informed and unfounded. The UK government’s response to criticism vaunts the ‘bottom-up approach’ and ‘consensus-based nature’ of GATS, in which “Members individually choose in which sectors to make binding commitments, and in which not to”.

However, the following pages will demonstrate how this ‘bottom-up approach’ is in practice more of a ‘top-down’ approach, and how the ‘consensus-based’ nature of the WTO negotiation process has serious limits to it in reality.

Public services

“GATS explicitly excludes services supplied by governments” according to WTO Director-General Michael Moore. But in practical terms this is untrue, as the GATS definition of ‘public services’ is extremely narrow – this exclusion (in Article I.3) only applies to those governmental services which are

The UK Government and public services

In the UK and many other advanced market economies, liberalisation of the public sector is already advanced.

In the UK's case the GATS will have a 'lock-in' effect which would make any backtracking on privatisation and liberalisation effectively impossible. Due to the gradual privatisation of public services in the UK over the last 20 years GATS obligations could apply extremely broadly to our public services.

provided neither on a commercial nor a competitive basis. Therefore, if there is already any commercial activity in the sector, which is the case in most UK public services, then the sector could be exempt from this exclusion. Private Finance Initiatives in the NHS, for example, could bring large parts of the NHS under GATS.

Furthermore, where private companies already provide services alongside state ones (in education, for example), this could also open the sector to foreign competition under GATS. The same could apply if a sector has a mixture of public and

private funding, or if the government contracts out part of its public services.

The World Development Movement has called on the WTO to clarify the status of public services under GATS.

European Trade Commissioner Pascal Lamy has admitted that the EU will have to give up some of its sectors in return for desired benefits for its own services companies. "If we want to improve our access to foreign markets then we can't keep our protected sectors out of the sunlight. We have to be open to negotiating them all if we are going to have the material for the big deal".⁸

Freedom to regulate

A UK local authorities' report voices fears that "...the current negotiations at the WTO may have far-reaching consequences for local authorities in terms of their powers and freedoms, particularly in respect of procurement, regulatory activities and land-use planning ('zoning')."⁹

A report by European health organisations has expressed concern that GATS will outlaw systematic regulatory mechanisms to protect health and safety such as taxation, banning of access, advertising or use to protect health and safety. They fear that the 'least trade restrictive' option will be ruled by the WTO to be labelling, which is far less effective.^{6a}

Meanwhile, the WTO's Council for Trade in Services has discussed restrictions on large-scale retail outlets, shop opening hours, zoning and planning laws, controls on land use, building regulations, building permits, registration of contractors and professionals, worker health and safety regulations, environmental regulations, local employment policies, and so on.

An example of the way in which freedom to regulate could be affected comes from Canada, which was challenged under similar provisions in the North American Free Trade Agreement (NAFTA). NAFTA rulings have identified that obligations to pursue the 'least trade restrictive' policies come before health, safety and environmental considerations. It was found that a temporary ban of PCB exports due to environmental concerns, though the goals were reasonable, was NAFTA-illegal because the ban was not the least trade restrictive manner possible of achieving these goals.^{7a} More recently, tobacco giant Philip Morris has argued that a proposed ban of the descriptors 'light' and 'mild' on cigarette packets was not the least restrictive way to achieve the desired end of protecting the health of Canadians.

The WTO claims that governments' freedom to regulate is enshrined in GATS. However, what they omit to point out is that this is only mentioned in the preamble to the treaty, which is not legally binding. Neither is it mentioned that regulatory freedom is only permissible in so far as it is compatible with GATS and must not be 'more burdensome than necessary' on trade in services – i.e. the 'least trade restrictive'. This definition of 'necessary', furthermore, would be decided by a WTO dispute panel, inherently biased in favour of free trade rather than regulation.

An additional factor distorting the discussion on this issue is that the WTO and its critics have divergent ideas regarding what kind of regulation is being talked about – regulation of the market to maximise the benefits from economic development, for example by protecting local business, or regulation to achieve certain social or environmental goals.

WHAT THEY ALSO FAIL TO MENTION

Lack of flexibility

One of the most important factors which is at best glossed over in WTO and OECD papers defending GATS, is the lack of flexibility inherent in the agreement. In order to create stable investment conditions for foreign investors, the GATS agreement aims to reduce governments' flexibility, making it very hard for governments to change their policies.

Why is government regulation important?

One of the roles of democratically-elected governments is to make sure that all their citizens have a reasonable quality of life, with access to education, sanitation, health care and other services. They fulfil this role by implementing a whole range of regulations aiming to ensure access for all and that the benefits of economic development are shared out.

As the interests of business do not always coincide with the broader interests of society, governments have to intervene to regulate the market to achieve goals other than profit.

In GATS, this conflict of interests has to be taken into account far more than is currently the case. It must be recognised that the private sector goal of making profit is often at odds with the aim of public services, and sufficient government freedom must be maintained accordingly.

When committing a sector, countries are free to impose an unlimited number of conditions on foreign investment – for example, that foreign banks wishing to establish in the country should set up branches in every village, or that foreign building contractors should use locally-training architects. However, these conditions had to be imposed at the time of commitment – if a particular condition was not listed, it is very difficult to include it at a later date (changes cannot be made until at least three years have passed since the original

commitment was made, and compensation has to be negotiated with entities – countries or companies – which would lose out financially as a result. This is a huge deterrence). Therefore, if a country agrees to commit tourism services but forgets to specify a limit on the number of hotels then this is commensurate to signing a blank cheque.

Given the complexity of the agreement and avowed lack of comprehension of GATS even among key negotiators, it is unsurprising that many countries have missed their chance to impose important restrictions.

This rigidity is a big hindrance to the normal flux of policy-making, where policies can be formulated and reformulated in the light of experience and changing conditions. India's former ambassador to GATT stated that "the developing countries have lost the flexibility of modifying their policy in the light of future experience ... even if it is assumed that they benefit by importing services".¹⁰

Pressure in negotiations

The practical reality of negotiations in the WTO is that countries come under intense pressure during rounds of negotiations which is extremely difficult to resist. Developing countries in particular are at a massive disadvantage against the strong negotiating powers of the EU, US, Japan and other developed countries. (See 'Developing Countries' section.)

Big business interests first – shouldn't we be asked too?

The European Commission has itself admitted that "GATS is first and foremost an instrument for the benefit of business".¹¹ "For the EC," they have said, "the principal aim of the services negotiations is to improve market access for European services exporters"¹².

In a Communication to other WTO members on Higher Education, Adult Education and Training¹³ the United States urges other countries to commit these sectors for liberalisation. The paper lists some of the 'obstacles' to international investment in educational services, which other countries will be under heavy pressure to do away with. The 'obstacles' include: "Measures requiring the use of a local partner" and "Minimum requirements for local hiring are disproportionately high, causing uneconomic operations".

This is an unsurprising outcome of the way the GATS agreement has been formulated, in close consultation with services industries. In Europe, the European Services Forum has had daily access to the EC Article 133 Committee (negotiating on GATS) while civil society has basically had no consultation at all. A former WTO official stated that "Without the enormous pressure generated by the American financial services sector, particularly companies like American Express and Citicorp, there would have been no services

agreement."¹³ In the UK, minutes of the International Financial Services London (IFSL) LOTIS (Liberalisation of Trade in Services) Committee have revealed the extent of cooperation between the services industry lobby and the UK government¹⁴ to formulate a text which will benefit UK business.

A European health consortium has summed up fears over the effects of this in the context of their sector, warning that "during the negotiation process on GATS... too much emphasis will be put on increasing the export potential of private providers without adequate consideration of the gradual impact of private sector interests on the nature and structures of health systems as a whole."¹⁵ Overall, the GATS makes only the obligatory cursory references to social, environmental and other interests and fails to disguise the fact that it is the profits of the services industry which really matter to the negotiators.

It is unacceptable that these negotiations, which will have such a direct impact on the powers of governments at all levels, have been conducted without the consultation of local governments, of the European Parliament or even of national parliaments. Stakeholders in service delivery are also not necessarily consulted.

Lack of assessment

In fact, proponents of GATS are so keen to push the process forward that they are not even interested in finding out exactly what impacts GATS will have on diverse interests in society. Former US Trade Representative Jeffrey Lang admitted the "overwhelming uncertainty about the meaning of the provisions of GATS ... So little is known about their origin and intention that it may be years before we discover the impact of these provisions."

But, he said, "I do not advocate pausing in the movement forward to accomplish some kind of ecclesiastical exercise of figuring out what these provisions mean. That can only aid and abet those who want to frustrate progress."¹⁶

Mary Robinson, UN High Commissioner on Human Rights, has called for a full assessment of GATS before it goes ahead. She is worried that it will violate the human rights obligations of WTO member countries under international law.

Developing countries in particular have expressed concern about the absence of any adequate assessment of what GATS could mean for their countries (See section on 'Developing countries'). Others, including the Green Party, 262 UK MPs, and Mary Robinson have asked for impact assessments of GATS before negotiations proceed further.

GATS AND DEVELOPING COUNTRIES

Developing countries are set to be the great losers under GATS. Proponents of GATS claim that liberalisation and economic growth help reduce poverty and inequality in developing countries. They have failed, not for the first time, to engage in the ongoing debate about whether this is in fact the case, and ignore substantial evidence showing that the benefits of economic growth do not, in fact 'filter down' to the poorest in society. Many developing countries have themselves expressed fears to the WTO, and called for a detailed assessment of the proposals.¹⁷ These countries have pointed to:

– **the huge difference in export capacity** between developed and developing countries in the supply of services. Developing countries are unable to compete in many sectors which are already dominated by multinational corporations. The EU alone has 26% of world trade in services, while WTO data indicates that the US vastly dominates the export market for services. The overwhelming proportion of the benefits will go to countries with strong services industries like the EU and US.

– **the weak negotiating power** of the developing countries in WTO negotiations. Current negotiations "are likely to be highly stacked against developing countries. It is ... primarily the export interests of the developed countries that are aggressively driving through current GATS talks ... Developing countries, through GATS ... will be under tremendous pressures to open up".¹⁸

– **There have been very negative experiences of privatisation in developing countries.** Although privatisation is not forced by GATS, service sector liberalisation will naturally lead to privatisation in developing countries due to the inability of government and domestic companies to compete. Experience of privatisation in developing countries shows that private companies have failed to deliver to the poorest and neediest, while filtering benefits to the richest sections of society. Save the Children has called for a 'health check' on GATS, arguing that trade liberalisation has had "devastating effects on children's nutrition and basic health ... Instead of adding extra capacity, the increased involvement of the private sector threatens to undermine public services by drawing away key personnel and 'cream skimming' the most profitable consumers".¹⁹

One of the reasons why the poor often lose out under privatisation is that in the public sector, rather than being determined by the market, prices for services are often kept artificially low for certain categories of users. This is made possible through the cross-subsidisation of services within public monopolies, or through government financial support. Not only will privatisation make this impossible, inherent in the private sectors is a desire to make profit, not to benefit society (even if companies are satisfied when this also occurs).

Privatisation – Bad or Good?

In June 2002, the BBC reported violent demonstrations against privatisation in Peru, sparked by a decision to privatise two state electricity companies to Belgian company Tractebel. In Colombia, trade unions have protested against water privatisation in the light of price increases and huge surges in unemployment and poverty rates following privatisation in other sectors. In July 2002, UNISON members in Birmingham protested against privatisation in the NHS, expressing fears over plans to build a new PFI hospital at Selly Oak.

In the context of GATS, discussion of privatisation is crucial. While privatisation is not forced by the agreement, it is a natural outcome of service sector liberalisation and GATS will effectively 'lock-in' privatisation of services.

In economic theory, privatisation increases competition, reduces prices for consumers, reduces the burden for the taxpayer by introducing private investment, and increases flexibility. However, wide experience of privatisation in the UK and in many other countries has shown that the reality is not so rosy – reduced job security and working conditions, little or no accountability, corruption, higher prices for consumers, no reduced burden for taxpayers, and so on.

Studies of the Private Finance Initiative (PFI) in the NHS show that not only does PFI not bring extra capital investment, costs for NHS Trusts are actually higher than before. Money is therefore being transferred from clinical budgets, leading to the familiar stories of lengthening waiting lists, reduced quality of care, staff shortages, and so on, while taxpayers do not gain.^{9a}

Privatisation has had more critical consequences in other countries where it has gone much further than in the UK, and even in the richest countries it contributes to rising inequalities between rich and poor. In the US, which has the longest history of privatisation, it has endangered the health of the 44 million Americans who have no private medical insurance.^{10a} Experience shows that health sector privatisation can result in two-tiered service supply: a corporate segment which creams off the healthy and wealthy and an under-financed public sector focussing on the poor and sick. In Chile, privatisation of the health system has led to a situation where "the majority of Chileans, lower middle class and lower income, wind up subsidising the higher-income majority".^{11a} Furthermore, better trained medical practitioners and educators are often drawn towards the private sector by higher pay rates and better infrastructures.

– **Developing countries have relatively weak regulatory power.** GATS supporters have stressed that the power of governments to regulate will not be affected. One document, for example, referring to quoted cases of public utilities being taken over by foreign companies who retain a monopoly and then put up prices to consumers, says “If this happens, it happens irrespective of the existence of GATS: it is the consequence not of GATS nor of privatisation but of ineffective regulation”²⁰. However, developing countries in fact are often not in a position to implement effective regulation due to less developed institutional capacity, as well as the strong bargaining power over a domestic government of foreign companies holding a monopolistic position. In one case, a developed country government even threatened to withhold aid if one of its companies was not granted a concession from a particular regulation. This relatively weak regulatory power is not taken into account in GATS negotiations.

GATS AND THE EUROPEAN PARLIAMENT

The European Parliament has no official role in the GATS negotiations, and is excluded from the EC’s Article 133 Committee. However, the Parliament has commented on GATS in resolutions: for example, in the run-up to the WTO meeting in Doha in November 2001, it adopted amendments aiming to safeguard public services under GATS. There will be a European Parliament hearing on GATS towards the end of November 2002 and the Green Group in the European Parliament has joined the NGO core for an evaluation of GATS.

The EU and Services of General Interest

Within the EU, it is not only GATS which poses a threat to public services – the European Commission’s own aggressive privatisation agenda is perhaps even more of a problem (not least because the European Commission is one of the most powerful negotiators on GATS). The EU has an inherent pro-liberalisation bias: for example, the Treaties themselves state that public services provision should be subordinated to the principle of liberalisation. The EU is currently engaged in liberalising the energy and postal sectors, and has a whole array of internal market and competition rules which increasingly govern services of general interest (the EU term which covers public services).

However, much of what is going on at the EU level is not so far being taken into account by anti-GATS campaigns aiming to save public services – perhaps because of the daunting complexity of EU decision-making. However, this angle is crucial to understanding the issue and effectively campaigning on it. As far as public services within Europe are concerned it is as important, if not more so, to concentrate on the European Commission’s own privatisation agenda as this is inextricably linked to GATS.

Jean Lambert MEP will be preparing further briefings looking in more detail at the effects GATS could have on local authorities in Europe, as well as specific sectors such as higher education. She will be building up links with European and national **trade unions** on issues related to GATS, as the unions share many of the Greens’ concerns.

Caroline Lucas MEP has done a lot of work on the development and trade angles of GATS. Her publication prior to the WTO meeting in Seattle in 1999 entitled *Watchful in Seattle* highlighted some of the key concerns related to the WTO and privatisation of public services, and she continues to work on this issue in her parliamentary Committees and in the UK.

THE ANTI-GATS MOVEMENT IN THE UK

- As of the beginning of September 2002, motions on GATS have been passed in 17 councils around the country including Brighton, Oxford City and Flintshire, and 28 other regions are working on the issue.
- The Local Government Association (LGA/LGIB) has been working on GATS and has brought it up with the government, expressing the concerns of local councils that local government has not been consulted on GATS despite possible far-reaching implications for local decision-making.
- The British government is not officially required to consult Parliament on this issue. The Early Day Motion signed last year by 262 MPs is a clear indication, however, that opposition to the government’s stance on GATS could be substantial within Parliament if they do not listen to sceptical voices.
- Furthermore, a majority of MSPs in the Scottish Parliament this year signed a motion expressing concern over the implications of GATS for health service provision and the trade union UNISON passed a composite motion on GATS at its National Delegate Conference in 2001, as part of its campaign against privatisation and deregulation of public services.
- The World Development Movement (WDM) has been one of the main forces behind the anti-GATS movement in the UK.
- A UK GATS Network has been set up which includes members from the Green Party, World Development Movement, Save the Children Fund, ATTAC and Public Services International, as well as a number of academics.

THE GREENS AND GATS

The Green Party has been an important player in the anti-GATS movement in the UK. Green Party councillors have been closely involved in the adoption by a number of local councils of motions expressing concern about GATS, and many more Green Party activists are working on the issue in other parts of the country. For the Greens, one of the key problems with

GATS is that it takes control over political and legal decision-making away from the local level. GATS goes against principles of democracy, according to which citizens must be able to participate as directly as possible in decision-making.

In June 2002, the Green Party submitted four requests in a letter to Patricia Hewitt, Secretary of State for Trade and Industry:

- 1 Full transparency on the requests of the EU and the UK government on the request lists and the handling of the GATS negotiations;
- 2 An end to the close cooperation between the DTI, the European Commission and the services industry in preparing the EU's GATS negotiating strategy;
- 3 A moratorium on the GATS negotiations to enable a full assessment of impacts of services liberalisation and an open debate over the role of public services and the desirability of further liberalisation of public services;
- 4 An amendment to the GATS so that governments' right to regulate is enshrined in the GATS, by being placed in the body of the GATS text where it is legally binding rather than in the Preamble where it is not.

THE ARGUMENT IS NOT LOST – TAKE ACTION NOW!

Parts of GATS have already been implemented – indeed, countries have already been challenged under GATS – but there is as yet no final GATS agreement as re-negotiation is not yet complete on all aspects. The growing numbers of organisations and individuals at all levels, including within government itself, who are expressing concerns about GATS give a lot of cause for hope that the end result to GATS negotiations is by no means pre-determined or inevitable. Change is possible.

The most important thing at present is that as many people as possible are made aware of what could happen if current proposals for specific commitments under GATS are adopted, and make their concerns heard. If you want to take action, you could:

- find out what your MP thinks and whether your local council has passed any motions on GATS;
- make contacts with other groups, for example through the World Development Movement;
- write letters to your MP and to EU Trade Commissioner Pascal Lamy asking for a full assessment of the potential impact of GATS as well as proper parliamentary and public scrutiny and debate (see demands made in the letter to Patricia Hewitt, above);
- organise meetings on GATS to make people aware of the problems.

Useful Links

GatsWatch www.gatswatch.org

World Development Movement www.wdm.org.uk

Canadian Centre for Policy Alternatives
www.policyalternatives.ca

Cornerhouse www.thecornerhouse.org.uk

Local Government International Bureau
www.lgib.gov.uk

GATS and Libraries www.libr.org/GATS/

Caroline Lucas MEP's website
www.carolinelucasmep.org

World Trade Organisation www.wto.org

European Commission www.gats-info.eu.int/

UK Government
www.dti.gov.uk/worldtrade/service.htm

European Services Forum www.esf.be

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Main Text Endnotes

- 1 Canada Autos and EC Bananas Cases
- 2 For a more detailed discussion of the articles covering monopolies and exclusive service supplier arrangements, see Sinclair & Grieshaber-Otto, ***Facing the Facts: A guide to the GATS debate*** for the Canadian Centre on Policy Alternatives, pp 58–63
- 3 GATS wording, Article VI.4
- 4 Subparagraph b of Article VI.4
- 5 Sinclair & Grieshaber-Otto, ***Facing the Facts: A guide to the GATS debate*** for the Canadian Centre on Policy Alternatives, p 63
- 6 Sinclair & Grieshaber-Otto, ***Facing the Facts: A guide to the GATS debate*** for the Canadian Centre on Policy Alternatives, p69
- 7 ***GATS – Fact and Fiction***, available at www.wto.org/english/tratop_e/serv_e/gats_factfiction_e.htm, by the WTO; and ***Open Services Markets Matter*** by the Trade Policy Committee of the Organization for Economic Cooperation and Development (OECD), TD/TC/WP(2001)24/PART1/REVI
- 8 Pascal Lamy, European Commissioner for Trade, New WTO Round Speech to the US Council for International Business, New York 8/6/00
- 9 LGA European and International Affairs Executive Report, ***WTO General Agreement on Trade in Services (GATS) – Decisions and Actions Required***
- 10 Bhagirath Lal Das, India’s former ambassador to GATT, quoted in The CornerHouse Briefing 23: Trade and Health Care. ***Trading Health Care Away?*** Available at www.gatswatch.org/docs/CornerHouse23.pdf
- 11 European Commission 2000, Opening World Markets for Services, Towards GATS 2000, p 17
- 12 EC website, www.europe.eu.int/comm/trade/services/gats_sum.htm as of 1999 (?)
- 13 David Hartridge, former Director of the Services Division at the WTO in his speech “What the General Agreement on Trade in Services can do” at the conference ***Opening Markets for Banking Worldwide: the WTO General Agreement on Trade in Services***, London 8/1/97
- 14 See the Gatswatch website for more details on this, at www.gatswatch.org/LOTIS/LOTIS.html#note02
- 15 WTO Implication for Health Policy, Health Counts A European Health Consortium. April 2000
- 16 US Trade Representative Jeffrey Lang, a key actor in the negotiations, in Lang, Jeffrey and Charles D. Lake II, ***The First Five Years of the WTO: General Agreement on Trade in Services***, Law & Policy in International Business, Spring 2000, Vol. 31
- 17 eg ***Communication from Cuba, Senegal, Tanzania, Uganda, Zimbabwe and Zambia – Assessment of Trade in Services***, 6 December 2001, WTO reference S/CSS/W/132. Accessible through European Services Forum website, www.esf.be/f_e_negotiations.htm accessed 30 July 2002
- 18 Op cit, par. 4
- 19 Save the Children UK Press Release, 5 November 2001, www.savethechildren.org.uk/pressrels/051101.html accessed July 2002
- 20 International Financial Services London (IFSL), ***The case for liberalising international trade in services***, www.ifsl.org.uk/tradepolicy/viewpoint.cfm, accessed 30 July 2002

Text Box Endnotes

- 1a Scott Sinclair: ***How the World Trade Organization’s new ‘Services’ negotiations threaten democracy***, Canadiana Centre for Policy Alternatives, Ottawa, September 2000, pp24, 68
- 2a Kevin Watkins, ***Money talks***, The Guardian newspaper, April 24 2002
- 3a Canadian Centre for Policy Alternatives document
- 4a Kevin Watkins, ***Money talks***, The Guardian newspaper, April 24 2002
- 5a International Financial Services London www.ifsl.org.uk/tradepolicy/documents/ViewPoint_s0805.pdf
- 6a World Trade Organisation: ***Implications for Health Policy***, by Mike Rowson for Health Counts. Contact mikerowson@medact.org
- 7a Harmonization Alert, March/April 2002, www.harmonizationalert.org
- 8a WTO Communication from the United States: ***Higher (Tertiary) Education, Adult Education, and Training***, 18 December 2000, for the Council for Trade in Services Special Session. WTO Reference S/CSS/W/23
- 9a Pollock, Shaoul & Vickers, ***Private Finance and ‘value for money’ in NHS Hospitals: a policy in search of a rationale?*** British Medical Journal, Vol 324, 18 May 2002, www.bmj.com
- 10a See www.FairEconomy.org/privatisation – an analysis by a US NGO of the effects of privatisation on local communities.
- 11a The Cornerhouse, Briefing 23: Trade and Health Care, July 200. www.thecornerhouse.org.uk

Jean Lambert MEP

Office of the Green MEPs

**Suite 58, The Hop Exchange,
24 Southwark Street, London SE1 1TY**

Tel: 020 7407 6269

Fax: 020 7234 0183

Email: jeanlambert@greenmeps.org.uk

Website: www.jeanlambertmep.org.uk

This briefing has been prepared in September 2002 by Kathleen Spencer Chapman for Jean Lambert MEP.