



AT WHOSE SERVICE?

The General Agreement on Trade in Services (GATS) and its consequences for sustainable development

**International Conference
Bonn, 21 to 22 May 2001**

The conference is being co-funded as part of the environmental research plan of the **Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU)** on behalf of the **Federal Environmental Agency in Berlin** and the **Ministry for the Environment and Nature Conservation, Agriculture and Consumer Protection of North-Rhine Westphalia / CDG**.

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in the TEXTE series are available subject to advance
payment of **10 Euro** by bank transfer, crossed cheque
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Publisher: Federal Environmental Agency (Umweltbundesamt)
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Berlin, January 2002

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Introduction

GATS is a largely unknown acronym – it stands for an international agreement on trade in services. This agreement – the General Agreement on Trade in Services (GATS) – is a result of the 1994 Uruguay Round, which created the World Trade Organisation (WTO). Like the more widely known GATT (General Agreement on Trade and Tariffs), which regulates the trade in goods, it aims to improve conditions for trade and investment via multilaterally agreed rules, stabilise trade relations via political commitments on the basis of the most-favoured nation principle and achieve progressively higher levels of liberalisation via subsequent rounds of negotiations.

The GATS covers in principle all types of services, including in sectors relating to the environment, culture, natural resources, healthcare, education, social security and tourism. Only those services which are supplied “in the exercise of governmental authority” and neither on a commercial basis nor in competition with commercial providers are exempt from the GATS’s regulatory scope. Unlike the GATT – where barriers to trade arise primarily from conventional customs policy measures – GATS intervenes into domestic regulations in a far-reaching way. In particular its horizontal provisions, i.e. provisions applicable to all service sectors, frequently affect central and sensitive areas of national regulatory sovereignty, covering laws, ordinances, guidelines and standards at national, regional and local levels.

In view of the large number of service sectors affected by GATS and the extensive opportunities for intervention, there is a need for an intensive public debate on a potential further liberalisation of the trade in services – as is already being negotiated in the context of the ‘built-in agenda’. New sectors such as water, energy and transport, in which publicly-owned companies and government regulations have played an important role to date, are to be included under the Agreement. This will have far-reaching consequences for the environment, the supply of public goods such as education and healthcare, and the development prospects of southern hemisphere countries. Despite this, the GATS negotiations are rarely noticed outside a limited group of experts.

Against this backdrop, an international conference entitled, “At whose service – The General Agreement on Trade in Services (GATS) and its consequences for sustainable development” was initiated within the framework of the Environmental Research Plan project, “Integration of environmental and sustainability criteria into the new WTO negotiations”. The conference was prepared and staged by the Working Group on Trade of the Forum Environment & Development; the Forum Environment & Development was also the contractor in the aforementioned project. The conference aimed to promote exchanges at technical and policy levels on GATS’s implications for sustainable development. Different aspects of GATS were dealt with in presentations, and discussed at length with the around 80 conference participants from Germany and abroad. This included environmental and development policy issues of the liberalisation of trade in services as well as cultural policy issues and the debate on the relation of GATS and democracy. A summary of the GATS conference of the Forum

Environment & Development as well as the speakers' contributions are published in the following.

Liberalisation, regulation and democracy – The international trade in services within the framework of the GATS

Summary of the GATS Conference

Tobias Reichert and Martina Schaub
Forum Environment & Development

Report on the international conference: “At whose service? - The General Agreement on Trade in Services (GATS) and its consequences for sustainable development” on 21 and 22 May 2001 in Bonn.

Since the breakdown of the WTO ministerial conference in Seattle towards the end of 1999, the environmental and development policy problems of the World Trade Organisation (WTO) have been the subject of debate amongst a broader public. Despite this growing attention, the liberalisation negotiations within the framework of the General Agreement on Trade in Services (GATS) are continuing largely ignored.

Within the framework of its environmental research plan, the Federal Environment Agency, with funds provided by the Federal Environment Ministry, is supporting a project by the Forum Environment & Development – which is a joint initiative of Deutscher Naturschutzring (DNR) and Verband Entwicklungspolitik Deutscher Nichtregierungsorganisationen (VENRO) – to integrate environmental and sustainability aspects into the WTO. In this connection, the Forum Environment & Development staged an international conference entitled, “At whose service – The General Agreement on Trade in Services (GATS) and its consequences for sustainable development” from 21 – 22 May 2001, for which additional financial contributions were made available by the Environment Ministry of North-Rhine Westphalia/CDG.

The conference aimed to examine the potential consequences of the GATS, which entered into force in 1995 and is therefore comparatively recent, on the environment, development policy and the supply of public services. The experiences and analyses of non-governmental organisations (NGOs) in both industrialised and developing countries were discussed at length with representatives of the Federal Government, the European Commission and industry. Across the board, the pivotal problem was whether and to what extent the provisions of the GATS limited the opportunities of governments and parliaments to regulate the activities of (international) service providers.

The introductory speech given by Peter Wahl (World Economy, Ecology and Development WEED) highlighted the new quality of the GATS agreement compared with conventional trade agreements, particularly the GATT:

- Services cover a very broad spectrum of economic activities which, according to the conventional definition, are distinguished by the simultaneity of consumption and production, their transience and inability to be stored, as well as their intangibility and non-transportability. They range from hairdressing and repairs, cleaning and

maintenance work, through to retail, transport, tourism, banking transactions and insurance. However, the term “services” also includes sectors which, at least in Europe, were or still are provided by public-sector suppliers, such as telecommunications, postal services, healthcare and education. 65 % of the world’s gross national product is generated by services.

- Unlike goods, services cannot be traded simply by loading them onto a ship in one country, then unloading and selling them in another. For this reason, the GATS distinguishes between four different modes of supply, depending on how transboundary services are provided.
 1. Cross-border supply: The service provider and the user are in two different countries, and remain so. Examples include consultancy or planning services via post, telephone or the Internet.
 2. Consumption abroad: The service consumer travels to the service provider’s country. One typical example is tourism, but healthcare services (operations, health spa visits) and educational services (university degree, course) can also be utilised abroad.
 3. Commercial presence: The service is provided in the consumer’s country. To this end, the service supplier establishes a branch office or subsidiary company in another country. This is particularly essential in the case of services which are reliant upon infrastructure, such as energy and water supply, but is also generally true of financial services. Provisions governing this area also make GATS an agreement on foreign direct investments.
 4. Presence of natural persons: Persons temporarily enter the territory of the user in order to supply a service. Examples include foreign management consultancies or construction gangs. As such, this aspect also related to migration issues.
- In the case of services, “barriers to trade” do not generally take the form of customs duties or volume restrictions, as is the case with the trade in goods. Instead, national regulations and provisions inhibit the free traffic of services, partly intentionally, and partly indirectly. Examples of direct restrictions cited by GATS include limitations on the number of service suppliers, the volume of the services supplied and the proportion of foreign shareholdings in companies. The authorisation/licensing of service suppliers may act as an indirect barrier to trade, particularly when it is linked to conditions involving qualifications or technical standards.

The exceedingly complex structure of GATS reflects the multi-faceted nature of the services sector and the close links between “barriers to trade” and government regulation. Generally speaking, the same principles apply as with GATT:

- Most-favoured nation principle for all WTO members
- Non-discrimination between domestic and foreign suppliers (national treatment)
- Improvement of market access

Unlike the trade in goods regulated by GATT, these principles do not apply automatically to all services sectors, but only to those for which a WTO Member has made specific commitments. Additionally, different commitments may be given for each of the four modes of supply in each sector – for example, complete freedom in cross-border supply, and no commitments relating to the presence of natural persons. Moreover, a country may limit its commitments for certain sectors by specifying certain measures it wishes to retain, such as licensing or limiting the number of suppliers. These restrictions must be specified when the market is opened. As a general rule, only the most favoured nation principle should be applied in all sectors. This “bottom up” approach is often cited as proof of GATS’ flexibility.

The GATS negotiations have been ongoing within the WTO since February 2000, as part of the so-called “built-in agenda”, and consequently were not affected by the breakdown of the ministerial conference in Seattle. In the first year, the initial emphasis was on the general GATS provisions and the formulation of negotiation guidelines. March of this year saw the launch of a second phase, which examines in greater detail the numerous sector-based negotiating proposals and possible new liberalisation commitments by the individual countries. This is based on the positive list approach (bottom up), whereby the individual countries concede market access and equal treatment with national companies only for those sectors explicitly included in their country lists.

The negotiation guidelines specifically refer to the needs of smaller companies, and also highlight the particular flexibility for developing countries. The services council is to explicitly ensure the implementation of Article IV, which calls for the greater involvement of developing countries. Above all, the negotiations should be conducted on a sector-by-sector basis. However, so-called clusters, i.e. a combination of several sectors, are another possibility. The starting point would be the commitments made to date, rather than actual opening of the market in practice. As a general principle, negotiations should cover all sectors, including basic public services such as healthcare, education or water.

Ahead of each new negotiating round, the GATS stipulates an analysis of the trade in services and the impacts of liberalisation. This has not yet been done, and the guidelines adopted suggest that it will only be carried out on an ancillary basis.

A large number of submissions have now been received on individual sectors, including the financial services, trade, distribution, tourism and the environment.

Elisabeth Türk of the Centre for International Environmental Law (CIEL) in Geneva and Peter Fuchs of the WEED presented the results of a study on the ecological impacts of GATS, prepared on behalf of the Forum Environment & Development. They pointed out that in most cases, services are not “intangible” and that therefore, nor are they ecologically neutral. On the contrary – many service sectors are closely linked to the generation of goods and the use of natural resources. This is clearly true in the case of tourism, which depends on the existence of intact natural landscapes; trade, which is linked to the transportation, consumption and disposal of the traded goods; and energy and water services, which have direct impacts. At present, it is impossible to predict what effect the further liberalisation of

these sectors will have on the environment, and further intensive research is needed. The current or planned “impact assessments” of the EU, the USA and other industrialised nations are only the beginning. From an ecological point of view, far-reaching liberalisation commitments would seem to be inappropriate as long findings of those assessments are not available.

This is particularly relevant because certain provisions of the agreement are not clearly formulated and their interpretation has yet to be clarified by arbitration rulings. Certain measures not admissible under GATS may actually be necessary for the purposes of effective environmental policy. For example, it is expedient to limit the number of tourists or mines in ecologically sensitive regions, even though this would violate the ban on quantitative restrictions. Similarly, the option of awarding exclusive utilisation rights to indigenous population groups in such regions or resources would violate the principle of national treatment. It is unclear whether a distinction would be made between suppliers of services according to whether they employ environmentally friendly or environmentally harmful methods, or whether this would violate the principle of equal treatment. The provisions of Article VI of GATS, which address domestic regulations, are particularly problematic. Article VI requires, *inter alia*, that such regulations must not be more burdensome (on trade) than is strictly necessary in order to ensure the quality of the service. The more stringent “necessity testing” proposed by the EU may throw environmental policy measures into doubt, just as the comprehensive transparency demands made by the USA may lead to a high administrative input amongst national trade and environmental authorities, as well as amongst the WTO.

From this analysis, Tuerk and Fuchs derive a number of concrete demands: In addition to the need for comprehensive impact assessments prior to any further steps towards liberalisation, both in relation to previous commitments and the demands and offers in the ongoing negotiations, these primarily include:

- The assertion that the WTO and GATS do not provide an adequate framework for an international investment regime. For this reason, no further commitments should be made in mode 3, “commercial presence”, and the existing commitments should be reviewed. International negotiations relating to investment policy should be held within the framework of the UN, where environmental and development issues can be better accommodated. The forthcoming World Summit on Sustainable Development in Johannesburg offers a good opportunity for launching such a process.
- Similarly, public services such as energy and water supply, public transport, healthcare services and education should be excluded from the scope of GATS.
- The proposals by the EU and USA for more stringent provisions on “domestic regulations” should be rejected.
- Article XIV of GATS, which prescribes general exemptions, which are more narrowly defined than those in Article XX of GATT, should be extended to include another exemption clause for environmental protection and the conservation of natural resources.

- Calls to retain exemptions from the most favoured nation principle for the purposes of environmental protection are aimed at the same objective. It must be possible to apply the provisions of multilateral environmental agreements (such as the Kyoto Protocol), even if this leads to discrimination between members of GATS.
- GATS members should safeguard environmental protection measures, not only on a sector-specific basis, but also trans-sectoral, horizontal restrictions on market access and national treatment. The ban on both formal and “*de facto* discriminatory” measures prescribed in GATS Article XVII should be revised, because its application is unclear and because it could also restrict the opportunities for environmental policy action.
- The rights of governments to promote ecologically expedient services through public tendering and subsidies must not be restricted by GATS.

Christine Elwell of the Canadian Sierra Club supported Tuerk’s and Fuchs’ critical stance on liberalisation measures without adequate environmental back-up. By way of an example, she outlined her own experiences of the privatisation and liberalisation of the drinking water supply in Canada, which she claims had negative ecological impacts. Privatised water suppliers, she alleged, were less stringent in their testing of water quality than publicly owned companies. In some regions, this has led to an increase in waterborne diseases, and even some fatalities in Walkerton, Ontario, a community surrounded by intensive dairy farming.

Following the opening of the drinking water market within the North American Free Trade Area NAFTA and its far-reaching provisions on the freedom of establishment for investors and investor protection, water from the Canadian province of British Columbia is now exported to California by a private US company, Sun Belt. Once the Province’s government had revoked its licence for water protection reasons, Sun Belt filed suit under the investor protection provisions of NAFTA. The case has yet to be decided.

In the debate, Mr Barth of the European Commission’s Directorate-General on Trade responded by citing the Single European Market as a positive example, where, he claimed, liberalisation of the trade in services had not led to a deterioration in environmental quality. Perceptions of the environmental experts present deviated significantly from this – the sharp increase in HGV traffic and the pressure to remove regulatory measures in Austria and Switzerland are just some of the most prominent examples cited. Mr Leier of the Federal Ministry of Economics claimed that the Canadian example was not a valid argument against liberalisation, saying that GATS did not prevent countries from setting and implementing stringent, binding conditions on water quality and monitoring. In this case, he argued, it was the responsible supervisory authorities who had failed.

K.T. Suresh of the Indian non-governmental organisation Equations recalled that the services sector had been included in the Uruguay round in the face of fierce opposition from many developing countries, primarily India and Brazil. In practice, he argued, the bottom-up approach of GATS, which has been described as particularly flexible and “developing country-friendly”, because it allows every country to decide on its own individual sectors for

commitments, is devalued by the fundamental imbalances existing within the WTO: Political pressure from industrialised countries to open certain sectors is often so severe that developing countries are unable to resist it, he contended. Moreover, the negotiations in Geneva are only attended by national governments, whereas many of the natural resources affected by liberalisation within the framework of the GATS are in fact protected or administered by local or regional bodies. At the same time, these bodies often have no idea what is being negotiated in GATS by their central governments and what effects this could have on them. In this way, he argued, international regulations such as GATS undermine democratic structures at a national level. Particularly in the case of tourism, it may be important to restrict the number of suppliers in a given region in order to preserve the natural beauty of the landscape, which is after all a prerequisite of tourism. If a country commits itself to opening the market completely, this option of limiting the number of suppliers will be explicitly waived. Similarly, complete liberalisation precludes measures aimed at ensuring that local communities are able to benefit from tourism, such as provisions whereby a specific proportion of staff must be recruited from the local community. Without such conditions, tourism may have a negative impact on the regional and national economy, e.g. by importing foods and other goods for use in hotels and employing foreign workers. Often, the local population may find itself competing with the hotels and their high purchasing power for scarce resources such as water. Tourism suppliers from developing countries are prevented from acquiring larger market shares by the monopolist practices of multinational travel and hotel groups. For example, they have no access to global, computer-assisted reservation systems or international marketing campaigns.

Despite these problems, tourism is the sector of GATS with the most commitments. During current negotiations, a group of developing countries from Central America proposed drafting an annex to the section on tourism aimed at the joint liberalisation of all sectors associated with tourism. The proposal also considers tourism from a development perspective, addresses the problems of the anti-competitive practices of large corporations, and calls for an investigation into the effects of liberalisation to date. The aim is to integrate the concept of sustainability into international tourism. Suresh criticised this approach by saying that it is based entirely within the framework of current GATS regulations. He felt that a fundamental review was needed in order to ensure genuine benefits for the population in the southern hemisphere. In particular, he argued, the proposal fails to address the problem of the participation of local and regional authorities in decision-making processes. A genuine “bottom up” approach should ensure that decisions are made at the grass roots level, rather than by bureaucratic international institutions. As long as GATS failed to take account of this requirement, additional commitments, including those on tourism, would do more harm than good. Rather than forming clusters of sectors to be liberalised, he proposed creating clusters of critical groups, in order to protect the interests of the local people against unlimited liberalisation.

By contrast, Jolita Butkeviciene of UNCTAD stressed that GATS is by far the most flexible agreement in the WTO to accommodate the interests of developing countries. It is not perfect, she admitted, but it is the best thing the developing countries have been able to

achieve. The approach of integrating sustainability is new in the WTO context, she continued, and should be supported. Although to begin with, these were only declarations of intent, they could certainly be developed into more concrete measures, and should therefore be welcomed as an initial step. In the current negotiations, the activities and influence of developing countries have grown considerably, as indicated by the recently adopted negotiation guidelines, which contain numerous references to the needs of developing countries and which explicitly stress the right of governments to introduce new regulations for the trade in services.

In the debate, Mr Barth again stressed that GATS could not be held responsible for the domestic policy problems of national governments. If the central Indian government fails to adequately address the rights of regional bodies, this is a problem which must be solved at the level of domestic policy, he said, rather than through an international treaty such as GATS. Mr Leier of the Federal Ministry of Economics appealed for criticism to be directed at the offices with political responsibility. To applause, Suresh responded that he didn't care who was responsible, as long as the problems of the local population are solved.

Fritz Pleitgen, Director of Westdeutscher Rundfunk (WDR) and Chairman of the working group of public broadcasting organisations in Germany (ARD), spoke of the importance of the GATS for the audio-visual sector and cultural diversity. Particularly in the EU, television broadcasting is seen as more than just a commercial service, and is instead appreciated for its central role in society. Audio-visual media help to shape public opinion, mediate knowledge, and entertain. Consequently, they cannot be reduced to their financial value. European countries acknowledge this fact via numerous regulation, particularly through public broadcasting, as well as quotas on the broadcasting of European-produced television programmes and various subsidy programmes for European cinematic productions. Despite this, the European market for audio-visual media remains one of the most open markets in the world. US firms have market shares of between 60 and 90 % depending on the segment. Particularly in the area of infrastructure, i.e. cinema chains and cable networks, their market power continues to grow. Against this market power, funding programmes and subsidies merely provide a modest counter-weight and ensure a minimum degree of pluralism. In order to preserve this, the EU has so far shied away from making any specific commitments on audio-visual services within the context of GATS. However, in the ongoing negotiations, the USA is pushing hard for a complete opening of the European market. Application of the GATS regulations would undermine the national and European subsidy programmes, since under the principle of national treatment, these subsidies would also have to be made available to American companies. Also, under certain circumstances, they could pose a threat to the funding of public broadcasting companies from licence fees, which could likewise be viewed as impermissible subsidies.

Another risk is posed by the efforts of many WTO members to minimise the restrictions on "e-commerce". The USA argues that audio-visual services such as the distribution of films or television programmes are part of e-commerce, and should therefore be included under GATT, which prescribes far wider-reaching market access. The EU, on the other hand, feels

it is irrelevant whether a service is provided online or offline, and therefore wishes audio-visual services distributed via the Internet to be regulated by GATS.

The EU is by no means the only WTO member which values pluralism and cultural diversity more highly than free competition in the media sector. Most countries have yet to make any specific commitments regarding the audio-visual sector. The USA and Japan are the most significant exceptions. Pleitgen explicitly supports Canada's demand to include cultural identity and diversity in the WTO negotiations and the European Council's resolution to maintain the option for European states to safeguard their cultural diversity through cultural and media policy. UNESCO and the European Council are addressing the concept of "cultural sustainability", which is aimed primarily at preserving culturally diverse services, products and practices for future generations. This principle must be recognised in the WTO.

In the debate, Pleitgen refuted the assertion of BDI representative Manske that public broadcasting was "funded by taxes", and stressed that even private broadcasting is far from free to consumers. Instead, the costs of advertising must be recouped through correspondingly higher product prices. By contrast, licensing fees are far more transparent. The protection of European film and television production is in no way directed against US productions, but is instead designed to ensure an additional choice.

On Tuesday morning, Clare Joy presented the British World Development Movement's (WDM) theories on the correlations between GATS and democracy. Her paper focussed on three areas:

1. The role of companies
2. The supply of basic services, such as health and education
3. The opportunities for public authorities to intervene in the services market in a regulatory manner

WTO employees feel that it would not have been possible to conclude the GATS agreement in its current form without the influence of multinational service companies. This influence is continuing throughout the current negotiations. The European Union describes GATS as an instrument designed primarily to serve the interests of industry. Companies and their lobby organisations have much better access to the ministries and the negotiating EU officials than other social groups. At a political level, there are extensive staff exchanges between industry and politics, not just in the USA. For example, the last EU Trade Commissioner, Leon Brittan, is now working as a lobbyist for British banks and insurance companies. Particularly with regard to the trade in services, this disproportionate influence of industry should be viewed critically, since it has a far greater effect on national regulatory mechanisms than negotiations to open the markets via tariff reductions.

The opening of the markets for basic services such as education, healthcare services, water supply, postal services and public transport may pose a threat to the nationwide provision of such services. For example, it may not be profitable to offer such services in rural regions or to population groups with a limited purchasing power. For this reason, private companies will

often be unwilling to provide such services in these areas, and may even withdraw from them altogether, such as in the case of water supply in Zimbabwe, where the British company Biwater withdrew from a major water distribution project because it was unable to obtain prices which guaranteed a sufficient return on investment. The privatisation of basic services, particularly where this is prescribed by international obligations such as GATS, denies citizens the opportunity to exert political influence on the quality of these services. Purchasing power and demand are the only instruments which count, and these are not available to poor sections of the population in developing countries. On the other hand, demand may come from abroad, with the result that basic services such as education and healthcare services are no longer tailored to the needs of the local population, but to foreign business students or patients looking for cheap treatment facilities.

WDM feels that direct investments should be regulated in such a way that they provide the greatest possible benefit for the population and economic development. The arguments put forward by supporters of GATS, that member countries have the option of exercising exemptions, is highly problematic: The exemptions must be notified at the same time as making specific commitments for a given sector. Thereafter, extensions are virtually impossible. This demands great foresight on the part of governments, who are required to notify measures which may not be needed for another five or ten years. Additionally, all exemption rulings may face potential pressure from further liberalisation negotiations.

In a democracy, citizens jointly debate and decide public matters such as the supply of basic services. These decisions may not always be correct, and may need to be revised. An international agreement which merely protects the rights of multinational companies in an almost irreversible manner, contravenes the concept of democracy.

The Conference ended with a podium debate on the requirements governing permanent regulation of the international trade in services. During this debate, the differing stances and approaches of the discussion participants and the politically explosive nature of the GATS itself were once again apparent. In particular, the agreement's far-reaching intervention into domestic regulations prompted a heated debate. Mr Barth pointed out that GATS is the most complex trade agreement ever adopted. The Federal Environment Ministry (represented by Dr. Ulf Jäckel), also supports or insists upon assessment approaches, particularly because in principle, not enough is yet known about liberalisation and its impacts. In principle, there are two areas of action: 1. Legally binding provisions within the framework of the WTO and 2. Supporting measures at national level, codes of conduct or similar obligations (such as the OECD guidelines for multinational enterprises). Regional and bilateral trade agreements, which generally include the services sector, were also a subject for debate. Although the number and significance of such agreements is continuously increasing, only limited attention has so far been directed at this area by the conference participants. However, it is known that these agreements do not envisage any assessments. The regional agreements are seen by many of those present as an important area which must be taken into account in the future debate surrounding the liberalisation of the trade in services.

As the outcome of the conference, the controversy between civil groups and representatives of government and industry was evident. As a service provider, industry is demanding to be accepted as a stakeholder by politicians and to have its interests represented. Representatives at a political level seem inclined to follow this logic. On the other hand, civil society, as an affected party, also wishes to become involved as the true stakeholder, particularly at a political level.

All participants felt that the conference and surrounding dialogue pointed to the way ahead for the public debate surrounding the GAT. During these two days, the delegates discussed at length the possible impacts of GATS on the environment, development policy and the supply of public services, as well as the interlinking of international environmental and economic policy.

The GATS – Background, interests and status of negotiations in Geneva

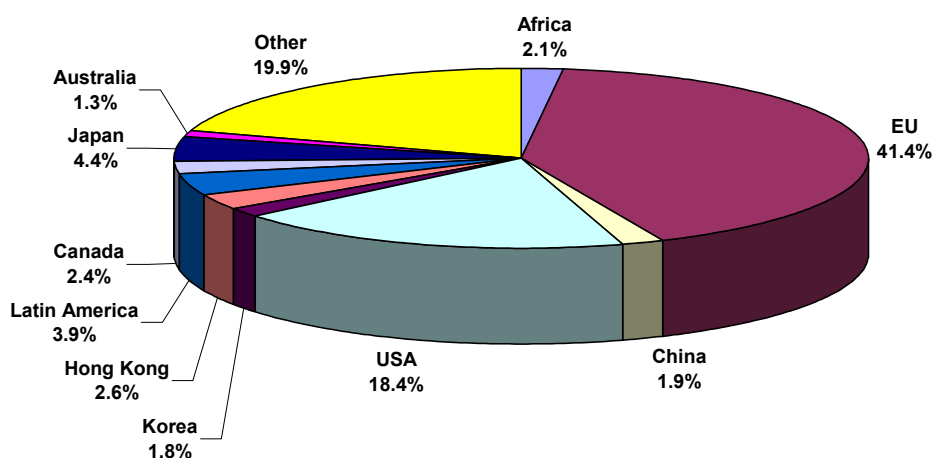
Peter Wahl

Weltwirtschaft, Ökologie & Entwicklung e.V. (WEED)

The inclusion of services in the WTO regime is one aspect which sets the World Trade Organisation apart from GATT. The decision to include services under the WTO regulations did not occur by chance. The services sector boasts the highest growth rates and now accounts for 60 % of global GDP. Admittedly, this average figure conceals some major differences. For example, amongst low-income countries, services accounted for just 38% of GDP, whilst amongst medium-income countries the figure was 56% and OECD countries 65%.¹ The asymmetries are even more pronounced between north and south, where services are considered as a proportion of exports. The EU (42.25 % including intra EU trade) and the USA (18.8 %) together account for 60 % of worldwide exports of services, compared with 3.99 % in Latin America and 2.12 % in Africa. On the other hand, services only account for 20 % of global trade to date (corresponding to a volume of \$ 1.35 trillion) – in other words, a liberalisation campaign aims to release the dormant potential of the services sector in a manner which reflects its macro-economic significance. In this respect, the figures clearly show that it is primarily the industrialised countries which can benefit the most from a liberalisation of services. Their level of interest in the negotiations is correspondingly high.

Export shares of services 1999

(Source: WTO 2000)



WEED PeWa

¹ World Trade Organization (2001), Market Access, Unfinished Business, Post Uruguay Round Inventory and Issues, Geneva

Admittedly, the significance of services goes far beyond quantitative aspects alone. In particular, it includes key areas of the economy, such as the knowledge-based high-tech industries of the future, e.g. IT services, software/hardware installation, databases, data processing, research and development, communication, audio-visual services (including television, film, press agencies), financial services, tourism, transport, air and space travel, education, environment and health (see attached list).

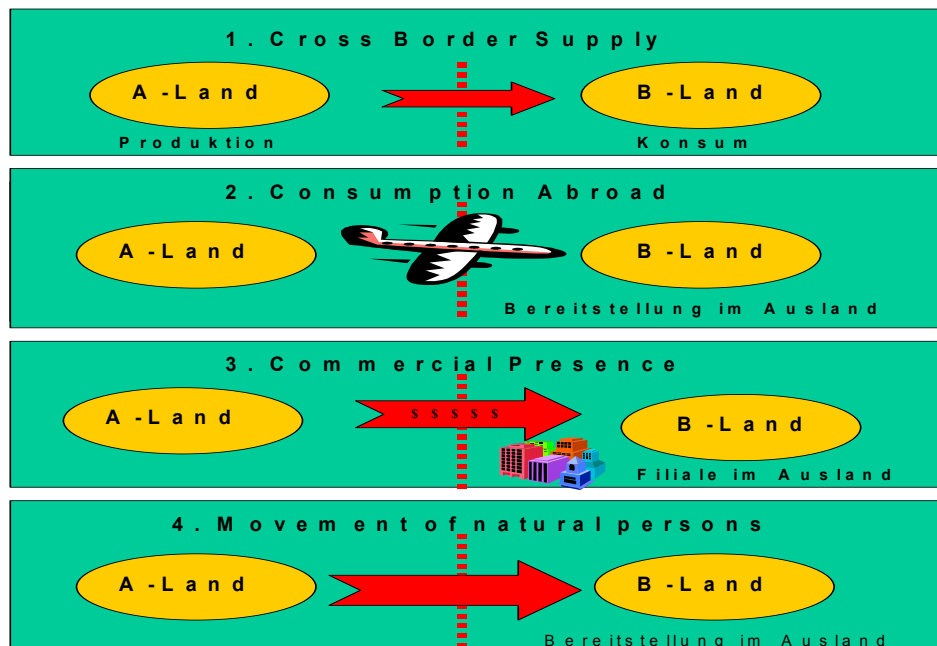
Services which perform a key cross-sectional function in the economy by providing a basis for other sectors are particularly significant, as are basic services such as education, social services and health. For example, the telecommunications sector forms the basis for the Internet, which in turn provides the basis for the development of electronic trade (see below). The same applies to other infrastructure services and financial services. Basic services such as education and health, as well as certain sectors of audio-visual services such as radio and television, have an enormous socio-political significance above and beyond their pure economic function. For developing countries, this additionally applies to certain infrastructure services, such as water supply.

In order to make this broad spectrum of branches and sectors more manageable for the purposes of international agreements, services are further sub-divided into cross-sectional categories, the decisive criterion being the mode of supply. According to this, there are four types of services:²

1. *Cross-border supply*: A typical example is the film produced in Hollywood, then screened in European cinemas.
2. *Consumption abroad*: The commonest form of this mode of supply is tourism. A holiday in Majorca is marketed and sold in Frankfurt, whereas the service itself is actually performed in Majorca. The same applies to healthcare services (dental treatment in the Czech Republic, a health spa visit in Karlsbad) etc.
3. *Commercial presence*: This refers to service providers which have branch offices abroad. For example, this might include a branch office of a German bank or telecommunications provider abroad. This mode of supply is often linked to investments, i.e. the productive sector. Example: Tourist development of a region requires a corresponding infrastructure (airport, roads, hotels, leisure facilities etc.)
4. *Movement of natural persons*: Under this mode, staff have rights of residency at the place where services are supplied or commercial presence abroad, i.e. the boss of the bank branch or telecommunications engineer working abroad, either on a short-term or long-term basis. This topic is particularly explosive, since industrialised countries want to ensure that their specialist staff are able to work locally, yet offer fierce resistance when it comes to granting market access to service providers from developing countries (for example in construction and civil engineering) because they feel that this contradicts their migration policy.

² In the jargon of the WTO, these are known as "modes of supply".

D i e 4 M o d i d e r B e r e i t s t e l l u n g v o n D i e n s t l e i s t u n g e n



W E E D P e W a

For a political evaluation of the GATS negotiations, the following two differences between the trade in goods and services are of fundamental significance:

- Due to the nature of many services (proximity to people, socio-political significance etc.) the trade in services is subject to much more domestic regulation. Laws, ordinances, administrative guidelines and standards regulate the national services markets. All government levels, from the local authority to central government, are involved.
- In Europe and in many developing countries – unlike in the USA – the basic services tend to be either government-owned or publicly owned (such as the large broadcasting companies ARD, ZDF, BBC etc.).

This is a principal reason why the liberalisation of services has so far lagged well behind that of the goods markets. At the same time, this demonstrates the strategic importance of the WTO negotiations on the liberalisation of services. They imply a socio-political scope and a depth of intervention into government control which is not comparable with that of the goods markets. The problem is not so much that domestic suppliers are felt to be in need of protection from foreign competitors for economic reasons. That would merely be protectionism, although that is not necessarily a bad thing *per se*, as postulated by the neo-liberal dogma. The environment, health and culture, for example, are most definitely worth protecting. Ultimately, GATS is not concerned with trade barriers between the national markets, but with the quality of service. As a result, the quality of life in society as a whole is at stake here. In the long term, there is a risk of private competitors – regardless of their nationality – luring high-earning consumers away from the government and public-sector

service-providers, and forcing a reduction in the density of control amongst private service-providers. If health, social systems, education, information, culture etc. are classified as commodities, however, this is an entirely different matter, qualitatively speaking, than abolishing customs duties and non-tariff barriers to trade for goods which are already commodities. Back in 1998, Renato Ruggiero identified this new quality of GATS, when he said that the Agreement extended to areas “which had never previously been seen as trade policy”.³ This contrasts with the basic attitude of WTO critics who in Seattle coined the phrase, “The world is not a commodity”.

Just scare-mongering?

In response, representatives of the Federal Government, the EU⁴ and the WTO officially argue that there are no plans to privatise the education and health systems, and that fears to this effect are „essentially unfounded“⁵. They refer to the WTO’s formal negotiating rules, which state that a country only needs to liberalise those areas for which it submits corresponding offers. Every offer to liberalise, therefore, is voluntary. Those services which are under government control would in any case be outside of the WTO services agreement.

In fact, Article I, paragraphs 3b and c of GATS states that services which are supplied “in the exercise of governmental authority” and “neither on a commercial basis nor in competition with one or more service-suppliers” are exempt from the Agreement.⁶ However, as the Federal Republic of Germany also has purely commercial providers – albeit only a few so far – which coexist alongside the public-sector and non-profit-making educational and healthcare systems, the exemption ruling no longer applies. Faced with an explicit question by the CDU/CSU in the *Bundestag* (Lower House of Parliament) as to whether the negotiations also comprised public services such as education, health and water, the reply was, “According to the negotiating mandate supported by the Federal Government, as a general principle the service negotiations apply to all service sectors and modes of supply covered by the scope of application of GATS, without prejudice to the outcome of negotiations”.⁷ Hence, the critics of GATS were right to draw attention to the risks of negotiations for public sector services.

Despite claims that the outcome of the negotiations is not prejudiced, liberalisation would appear to be inevitable in these areas, based on the logic of GATS and the momentum of negotiations. After all, the aim of GATS is to push ahead with the liberalisation of services. Article XIX envisages that Members should commence subsequent rounds of negotiations no

³ Ruggiero, R., “Towards GATS 2000-A European Strategy”, address to the Conference on Trade in services, organised by the European Commission, 2 June 1998, Brussels

⁴ Trade policy is one area of policy-making which has since been largely transferred to the jurisdiction of the European Commission. The national governments are only indirectly involved in external trade policy representation and hence in the WTO negotiations. The only exceptions are a few sensitive areas where trade agreements must also be ratified by the Member States, as well as by the Council of Ministers. Cultural and audiovisual services, education, social affairs and health are included in this so-called mixed jurisdiction.

⁵ According to the Federal Government in response to a CDU/CSU question (German Bundestag, response by the Federal Government to a written question by Members of Parliament Erich G. Fritz, Renate Blank, Wolfgang Börnsen (Bönstrup), other members of parliament and the CDU/CSU parliamentary group; document 14/6480, 17 July 2001, page 3)

⁶ GATS General Agreement on Trade in Services dated 15 April 1994, Federal Law Gazette <BGBl.> 1994 II, 1643

⁷ Response by the Federal Government ... see above, page 4

later than five years after the WTO agreement's entry into force and regularly thereafter, in order to gradually raise the level of liberalisation. The negotiations are aimed at reducing or eliminating the adverse impacts of measures on the trade in services, in order to attain effective market access.⁸ The WTO Secretariat describes this article as a "guarantee that the current GATS package is merely the first fruit of a continuing endeavour".⁹

Moreover, for tactical reasons the EU will be forced to grant market access to foreign suppliers, since the maxim of "do ut des"¹⁰ applies to trade policy also. Even if the EU were not interested in liberalising its basic services of its own accord – and we have no reason to assume that this is so – it would be forced to make compromises, otherwise it could not expect to gain market access in other countries itself, being by far the largest exporter of services. In the words of EU trade commissioner Pascal Lamy, "If we want to improve our own 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 a big deal."¹¹

Complementary to this, the USA, which has natural competitive advantages in this respect thanks to its predominantly privately organised educational and health system, has explicitly formulated its interest in an inclusion of the public service sectors. For example, the President of the US Coalition of Service Industries, R. Vastine, demanded that "The new negotiations must secure commitments to national treatment, market access, and cross border services in as many sectors as possible."¹² Vastine's organisation believes "that we are able to make great progress in the negotiations, in order to give the US economy the opportunity of expanding into foreign health markets ... Historically, many healthcare services in other countries have tended to be the responsibility of the public sector. Public ownership of the healthcare ... system has made it difficult for healthcare suppliers in the US private sector to operate abroad."¹³

The healthcare sector in particular is an enormous growth market in industrialised countries, due to the growing numbers of older people. Annual turnover in the healthcare markets of OECD countries is estimated at more than \$ 3 trillion.

There is a similar situation in the education sector. The investment group Lehman Brothers has described it as the "final frontier" of public services still to be conquered.¹⁴ For this reason, the USA will be exerting strong pressure on this sector.

The same applies to audio-visual services. Hollywood films, television programmes, video clips, pop music etc. constitute the second-largest item of US exports. During the dispute

⁸ GATS General Agreement ... see above.

⁹ WTO Secretariat, Recent Developments in Services Trade, 9 February 1999, S/C/W/94; page 21

¹⁰ Latin: I give that you may give. .

¹¹ Lamy, Pascal (2000), Speech to the US Council for International Business, New York, 8 June 2000, http://europa.eu.int/comm/trade/speeches_articles/spla23_en.htm

¹² Vastine, J. R., Statement before the Interagency Trade Policy Staff Committee, 19 May 1999, website: www.uscsi.org

¹³ www.uscsi.org

¹⁴ Quoted from: Sexton, Sarah (2001), Trading Health Care Away, Trading Health Care Away?: GATS, Public Services And Privatisation, Sturminster Newton; <http://cornerhouse.icaap.org>

over the failed Multilateral Agreement on Investment (MAI), this was one of the most contentious issues. France, Canada and several other countries were reluctant to leave their cultures exposed to the economic bulldozers of the Hollywood blockbusters, and invoked the “exception culturelle”.

ARD, the Deutscher Kulturrat¹⁵ and the German film industry have also voiced their opposition to a further liberalisation of the audio-visual markets. For example, ARD Chairman Fritz Pleitgen cites “cultural sustainability” in his arguments against the further liberalisation of the audiovisual markets”. “The purely economic focus of this policy casts doubt on the legitimacy and significance of other political models and objectives in the public interest, particularly social and cultural coherence.”¹⁶

Pressure towards deregulation

The perception of NGOs, trade unions and other critics that GATS has a tendency to dismantle regulations which are important for basic welfare services of socio-political significance beyond the actual opening of markets is emphatically rejected by the official protagonists. Here too, they refer to the relevant paragraphs of GATS which state that it is within the sovereign powers of each individual country to regulate services. At the same time, this is a tactically motivated claim, since:

1. Such safeguards are also found in other WTO agreements, without having necessarily fulfilled their function. For example, in the negotiations on the TRIPS agreement, the parties debated the possibility of avoiding patents for pharmaceutical products and marketing cheap generic products if a country were faced with a medical emergency, such as an epidemic. A clause to this effect was eventually included in the TRIPS Agreement. This did not stop US pharmaceutical companies from filing suit against South Africa and Brazil with reference to TRIPS, because these countries were allowing the use of cheap generic products in the fight against AIDS, thus circumventing the patents of the expensive US suppliers. It was only thanks to a massive international political campaign that the action was eventually withdrawn in April 2001, because the companies concerned feared further damage to their image. Along with numerous NGOs, the German Minister for Development Aid also joined the protests, whilst the Ministry of Economics, in charge of trade policy, held its tongue. If the matter had been heard in the WTO dispute settlement process, the outcome would by no means have been certain. In other words, in the event of conflict, the safeguards are only as effective as the political forces in society permit.
2. Parallel to the GATS negotiations, the WTO deployed a working party (Working Party for Domestic Regulation) which carries out so-called necessity tests on government regulatory measures so that an international consultancy process with interested parties can begin even at the draft stage of planned legislation. The agenda includes everything which the supporters of free trade might interpret as a barrier to trade,

¹⁵ Umbrella organisation of cultural interest groups

¹⁶ Pleitgen, Fritz (1999), Sustainable Development in the Cultural Domain, from the International Information Society Forum, page 2

from shop opening hours, construction regulations and planning permission through to environmental provisions, employment protection and health provisions, as well as employment policy measures. This is not to say that no nonsensical or superfluous provisions are allowed to exist. However, even if the Working Party is unable to prepare any binding regulations, it can act as a general political/psychological pressure factor. Standards which are upheld by national regulations become suspect. This will create a momentum whereby standards are initially given a “disputed” status. If a fact has been defined as a problem via this route, a solution will subsequently be required. According to “good democratic tradition”, the conflict will ultimately end in a compromise, leading eventually to a lowering of the standard in question. In order to withstand this momentum, a government will need a powerful resolve and political tenacity, and may face counter-pressure from society.

3. The greatest pressure for deregulation, however, will come from the normative power of facts. The unavoidable opening of markets to foreign private suppliers will ensure the removal of standards, particularly where the highly competitive companies of the healthcare and education sector in the USA are involved. Admittedly, standards will not decline for everyone. Those consumers who are able to afford expensive private suppliers will continue to have access to a high-quality supply, whereas those who are dependent upon public suppliers will be forced to accept a drop in quality. Examples from other countries, such as the United Kingdom, where the Thatcher era left as its legacy a completely clapped-out healthcare system, prove that this is the case. This process will also comprise several phases. In the first phase, the high-income, healthy clientele approaches the private suppliers, who use attractive offers and extensive marketing to secure the market’s “quality customers”. In a second phase, the economic power of the public suppliers diminishes along with their market share, which in turn impairs the quality of their supply. In the third phase, it is either argued that the poor quality of the public suppliers can only be improved by privatising them, or alternatively, the public suppliers remain in place to provide a somewhat truncated supply for the financially weaker groups of society. The profitable areas are privatised, and the losses are socialised, thus cementing the social polarisation of society.

In the USA, who according to WHO figures are the world’s leaders in healthcare expenditure, with expenditure in excess of \$ one trillion (= 13.7 % of gross domestic product), 44 million people, or just under 17 % of the total population, do not have health insurance. Millions more are under-insured.

Admittedly, it would be wrong to focus solely on the interests of the USA, however important they might be. In areas where it is competitive, the EU too is doing its utmost to penetrate other markets. For example, Brussels hopes to persuade WTO members to open up their water supply systems to competition. This is linked to the strong competitive position of European companies such as Vivendi, Suez-Lyonnaise and Bouygues. Particularly for populations in developing countries, access to clean drinking water is a basic need.

E-commerce – revolutionising the trade in services

The GATS negotiations are being held against a backdrop of dramatic technological revolutions which have affected the entire trade sector: the development of electronic trade based on the Internet (e-commerce). This has lent additional explosiveness to the GATS negotiations.

When trading material goods, transaction costs – from advertising and ordering, through to payment, invoicing and account reminders – can be dramatically reduced via the Internet. The speed of individual transactions and hence the transaction as a whole is also significantly accelerated, leading to a boost in productivity.

Whereas most material goods can, of course, still only be physically traded, digitisable products offer brand new forms of supply. For products involving text (including software), sound and images and combinations of these (multimedia), in the past a material medium was needed in the form of paper, books, newspapers, CDs, video cassettes etc. Thanks to digitisation, the supply of such goods via electronic distribution channels, i.e. cables or in a wireless format via the Internet, has now become possible. The economic framework conditions for the book trade and the audiovisual markets will change significantly as a result.

The revolutions taking place in the trade in services, particularly those based on words, pictures and sound, will be even more extensive. This not only includes weather forecasts, agency reports and calendars of events, which can already be downloaded directly from the Internet onto any PC. Online banking and other financial services, broad sectors of science and research, documentation, information and entertainment, together with forms of advisory and brokering services, as well as education and numerous aspects of health, will also be affected. For example, it will be possible to study online at Harvard – for a price – without ever setting foot on American soil. TV on demand will allow viewers to compile their own individual television programmes, with dramatic consequences for public broadcasting. Meanwhile, the multiple choice technique allows patients to obtain a remote medical diagnosis and prescription from foreign suppliers via the Internet (although this is banned for the time being in Germany). The patient simply enters their credit card number, and the product can be delivered.

An analysis of e-commerce investments indicates that future markets are expected to be very large indeed. For example, Dresdener Bank is planning investments of DM 3.5 billion for the expansion of its Internet business in 2001 and 2002. In view of these new prospects, the industrialised countries attribute great significance to the inclusion of e-commerce in a new WTO round.

For most developing countries, on the other hand, this topic is of secondary importance. Although certain quarters may have given the impression that the Internet will allow

developing countries to catch up with the industrialised countries,¹⁷ this naive techno-optimism overlooks the existing technical conditions and the way they are embedded within the existing economic framework conditions. In developing countries, the conditions for a rapid development of electronic trade only exist to a limited extent. This not only refers to expensive hardware and software with their short product life cycles, but also the telecommunications infrastructure and qualification of the necessary staff.¹⁸ Whereas there were 255 PCs per 1,000 inhabitants in OECD countries in 1998, in Jordan the figure is 9, in Togo 7, in Algeria 4 and in Uganda 1.¹⁹ Similar relations apply to the Internet providers and telephone connections. Investment programmes for technological innovations, such as broadband technology to facilitate high-speed data transfer, are so expensive that only a few newly industrialised countries, at best, will be in a position to finance them in the foreseeable future.²⁰

In economic terms, moreover, this optimistic view overlooks the fact that companies from industrialised countries will be able to market their services in southern hemisphere markets via the Internet and gain corresponding competitive advantages there by virtue of their economic power. They will also be able to tap into profitable markets amongst the middle classes of the emerging markets. But what about the poor? In Latin America and sub-Saharan Africa, more than half the population lives in poverty.²¹ Placing trust in electronic markets in these areas completely ignores this reality. We can only hope that the divide between north and south does not widen still further with the onset of e-commerce. As such, the WTO negotiations could help to further exacerbate North/South asymmetries.

In 1998, for the first time the WTO drafted a resolution on e-commerce, in the form of a moratorium on the levying of customs duties on electronic trade. Following the breakdown of talks in Seattle, the moratorium was not extended. *De facto*, however, WTO members are abiding by it. In the new round, it is hoped that this provision will become permanent. The WTO has also been commissioned to develop a work programme, begun in September 1999, which comprises GATT, GATS and the TRIPS agreement. Again, due to the breakdown of talks in Seattle, it has not been adopted to date.

Apart from a number of disputed individual issues relating to data security, encryption and technical standards etc., there are also several deep-seated controversies. For example, the EU and the USA cannot agree whether digital products, formerly only available via material media (book, CD, video, film etc.), should now be classified as services. The ultimate decision will have far-reaching consequences. If they are classified as goods, they will fall under GATT, which envisages more extensive liberalisation than GATS. For this reason, the USA argues that its audiovisual products (as mentioned above, the second-largest item amongst US exports) should be classified as material goods and should therefore fall under the scope of GATT. The EU, meanwhile, believes that the content which is transferred via

¹⁷ For example, a resolution by the UN Economic Commission for Africa (ECA) "Building Africa's Information Highway" in 1996, states that "Africa has great potential to bypass several development stages".

¹⁸ In this connection, the deliberate brain drain policy to recruit less highly qualified experts to industrialized countries – the so-called "Green Card" scheme in Germany – will further exacerbate the situation.

¹⁹ UNDP (2000), Human Development Report 2000, page 198 ff.

²⁰ For a detailed account, cf. Wegmann, Heiko/Müller, Uli (2001), GATS und E-Commerce, Die Dienstleistungsverhandlungen in der WTO, edited by WEED and Forum Umwelt & Entwicklung, Bonn

²¹ World Bank (2000), World Development Report 2000/2001, Attacking Poverty, Washington

these media has always been a service, and will remain so even after the material medium has been abolished.

Acceptance crisis for neo-liberal globalisation

Even in Seattle, it became clear that neo-liberal globalisation faces an acceptance crisis. The escalating protests at intergovernmental conferences felt to symbolise globalisation are just the tip of the iceberg. Added to this are the growing Transatlantic contradictions and the increased self-awareness of developing countries. After two decades of experience with the current wave of globalisation, the southern hemisphere countries are no longer prepared to accept the simplistic doctrine of free trade, whereby liberalisation equals growth and wealth. All the relevant statistics indicate that for most developing countries, the liberalisation of world trade has failed to produce the desired results. A study of 20 countries by the World Bank concluded that, "The transformation to a more open foreign trade regime has depressed the income of the 40 poorest percent of the population ... Consequently, the costs of the adjustment process are being borne by the poor, irrespective of how long the process lasts."²² The GATS negotiations in their current form, as dictated by the industrialised countries, will do nothing to change this asymmetrical distribution. On the contrary – the north/south divide will widen.

The current form of globalisation is depicted as a quasi-natural process to which there is no alternative, and which can no less be stemmed than one can control the weather. It is true to say that the increase in and new forms of communication, together with the cultural and economic integration process, are irreversible, and undoubtedly offer substantial opportunities for development in all parts of the world. However it is ideological, to claim that the economic policy which dominates this process, and on which the GATS negotiations as a model, has no alternative. As long as the neo-liberal paradigm governs the WTO and the globalisation process overall, globalisation will become a kind of global Manchester school of capitalism. Just as the historical Manchester school was tamed and civilised in social disputes at national government level, so too must globalisation be civilised. In this respect, the debate surrounding the future of services will play a key role.

²² Milanovic Milanovic, Branko (1999): *True World Income Distribution*, 1988 and 1993: First Calculations, Based on Household Surveys Alone, World Bank Policy Research Working Paper No 2244, November 1999, Washington, D.C.

Annex:

Classification of services in GATS

1. BUSINESS SERVICES

- A. Professional services (e.g. vets, doctors, attorneys, auditors, accountants, architects, engineers)
- B. Computer and related services (e.g. software/hardware installation, databases, data processing)
- C. Research and development services
- D. Real estate services (e.g. estate agents, maintenance services)
- E. Renting/leasing services without operators (e.g. relating to ships, transport equipment, machinery)
- F. Other business services (e.g. advertising, management/staff consulting services, repair services, printing)

2. COMMUNICATION SERVICES

- A. Postal services
- B. Courier services
- C. Telecommunications services (e.g. telephone, e-mail, data transfer, telex)
- D. Audiovisual services (e.g. film/video/music production, radio, television)
- E. Other

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

- A. General construction work for buildings
- B. General construction work for civil engineering
- C. Installation and assembly work
- D. Building completion and finishing work
- E. Other

4. DISTRIBUTION SERVICES

- A. (Commission-based) agents' services
- B. Wholesale trade services
- C. Retailing services
- D. Franchising
- E. Other

5. EDUCATIONAL SERVICES

- A. Primary education services
- B. Secondary education services
- C. Higher education services
- D. Adult education
- E. Other educational institutions

6. ENVIRONMENTAL SERVICES

- A. Sewage services
- B. (Bulky) refuse disposal services
- C. Sanitation / hygiene and similar services
- D. Other

7. FINANCIAL SERVICES

- A. All insurance and insurance-related services (e.g. life, accident and health insurance, reinsurance, insurance broking and agency services)
- B. Banking and other financial services excluding insurance (e.g. deposits/loans, trading, derivatives, investment banking, fund/asset management, data processing and financial services consultancy)
- C. Other

8. HEALTH AND SOCIAL SERVICES (other than those listed under 1. A.)

- A. Hospital services
- B. Other human health services
- C. Social services
- D. Other

9. TOURISM AND TRAVEL RELATED SERVICES

- A. Hotels and restaurants (including catering)
- B. Travel agencies and tour operator services
- C. Tourist guide services
- D. Other

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)

- A. Entertainment services (including theatre, live bands and circus services)
- B. News agency services
- C. Libraries, archives, museums and other cultural services
- D. Sporting and other recreational services
- E. Other

11. TRANSPORT SERVICES

- A. Maritime transport services (e.g. freight, passenger transportation, maintenance and repair, supporting services for maritime transport)
- B. Internal waterways transport
- C. Air transport services
- D. Space transport
- E. Rail transport services
- F. Road transport services
- G. Pipeline transport
- H. Services auxiliary to all modes of transport (e.g. storage and warehousing, cargo-handling, freight transport agency services)
- I. Other transport services

12. OTHER SERVICES NOT INCLUDED ELSEWHERE

Environmental aspects of the General Agreement on Trade in Services (GATS) and other GATS negotiations

Elisabeth Tuerk (CIEL)

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The General Agreement on Trade in Services (GATS) currently being renegotiated within the framework of the World Trade Organisation (WTO) demands urgent environmental attention: It represents a regulatory system for trade and investment policy with potentially far-reaching implications for domestic socio-economic control. For this reason, based on an evaluation of the literature and an initial eco-legal analysis of central GATS regulations and new proposals for negotiation, the following text endeavours to:

- Highlight the initial **recognisable environmental implications** and problems of GATS
 - Elucidate a range of outstanding questions and **research requirements**
 - Formulate initial ecologically oriented **policy recommendations**.
1. **Services** are a **key factor** in relation to the transnational production chains which characterise the **global economy**. They provide geographical and social links, and serve to integrate and coordinate the global production process.
 2. There is a widely held impression that services are 'clean' with little or few environmental impacts, but this image is often inaccurate. Service industries have a number of environmental impacts. However, there is still substantial **need for research** vis-à-vis the **ecological consequences of the 'service society' and e-commerce**.
 3. As an agreement designed to liberalise the trade in services, GATS must be considered with respect to
 - its real **environmental impacts ('factual linkages')**, and
 - its **regulatory impacts ('regulatory linkages')** i.e. the impacts on national and international scope for environmental regulation.
 4. GATS is not just a trade policy agreement in its conventional sense, but also a multilateral **investment agreement**, since the commercial presence (direct investment) of service companies is classified as "mode 3" of the trade in services. From an environmental point of view, however, the core principles of GATS (most favoured nation, national treatment) is not a suitable framework for an international investment regime.
 5. The urgently needed work on environmental consequences or **sustainability impact assessments** required by GATS have only just begun in a few WTO member states (USA, EU, Canada), in international organisations (OECD) and amongst NGOs (WWF).

Further detailed sectoral assessments should be carried out before negotiations can continue.

6. GATS is characterised by its **extremely broad scope**, both in terms of the affected regulatory measures and the large number of services sectors covered. From an environmental point of view, the current discussions on classification issues should be viewed ambivalently: On the one hand, new detailed **classifications** allow environmental players to clearly identify those sectors which require protection or which should only be opened subject to certain conditions; on the other, there is a risk that the classification decisions may be used to increase the liberalisation pressure on (sub-) sectors not previously included in the negotiations.
7. With regard to **market access negotiations**, **Article XVI** of GATS contains a list of quantitative and other restrictions which are considered impermissible barriers to trade. However, such measures may be very important from an environmental point of view as a means of protecting sensitive regions or finite resources. Furthermore, market access restrictions towards transnational groups may help to ensure adequate access to domestic resources by local communities.
8. The principle of **national treatment (Article XVII)** aspired to by GATS is a core element of the multilateral trade system, but from an environmental perspective, it harbours a number of questions and potential problems. For example, the question of distinguishing between “**like services/service providers**” vis-à-vis the varying environmental quality of services has not been clarified (e.g. distinguishing between environmentally compatible and environmentally harmful energy services). A ban on “**de facto**” **discrimination** may also significantly restrict the scope for environmental policy.
9. Against this background, ahead of sectoral negotiation proposals and country-specific requests and offers relating to market access and national treatment, it is necessary to identify and incorporate the respective **sector-specific environmental implications**. Sensitive sectors include tourism, trade services, transport, energy and environmental services.
10. One of the most sensitive areas of further GATS negotiations, from an environmental point of view, is the subject of “**domestic regulation**” (**Article VI GATS**). In this respect, the EU has proposed the introduction of a **necessity test**. In future, accepting this proposal could result in environmental regulations being undermined in the WTO arbitration procedure, due to their supposedly “trade-restricting” impacts. A US proposal on increased “**transparency**” obligations could also place international pressure on political regulatory processes and hinder environmental policy.
11. Given the potential environmental significance of subsidies (including the area of research subsidies) it is important that the GATS negotiations on subsidies (**Article XV GATS**) do not serve to restrict the opportunities of WTO members to grant environmental subsidies.
12. **Public procurement** of services also has a potentially important environmental function in relation to a) the environmental quality of services and b) the production

processes of services and service-providers. As such, continued GATS negotiations on this topic and the negotiations within the framework of the plurilateral WTO agreement on public procurement policy also have environmental implications which need to be clarified.

13. Like Article XX in GATT, the GATS contains a general **exemption clause in Article XIV**. In terms of **environmental policy**, however, this is more narrowly defined, in that unlike Article XX (g) of GATT, GATS does not contain any exemptions for “measures to preserve exhaustible natural resources” or a comparably broad environmental exemption provision. Only GATS Article XIV (b) allows WTO members to take non-conforming measures where such action is “necessary to protect human, animal or plant life or health”. To date, the EU has only considered extending the scope for environmental action within the context of GATS Article XIV as part of the Committee for Trade and the Environment, although not in the GATS negotiations.

Policy recommendations

The following policy recommendations refer, firstly, to the ongoing GATS negotiations and the positions submitted by WTO members, and secondly, to the new environmental policy elements of the GATS discussions which we feel are necessary, and changes to the GATS agreement which have not been put forward by any WTO member to date:

- **Sustainability impact assessments instead of ‘ecologically blind’ progress in the services trade policy**

In view of the environmental implications of the services trade policy outlined above, detailed and participatory sustainability impact assessment should be carried out in order to a) estimate the socio-ecological consequences of GATS to date and future trade policy measures and b) obtain starting points for a sustainability-oriented design of future trade and investment agreements. Regarding the various sectoral negotiation proposals, there is still an extensive need for research and discussion. Therefore, the ecological consequences of the proposals on transport, wholesale, retail and construction services and e-commerce should be examined more closely.

Environmental services should only be further liberalised subject to the availability of more differentiated impact assessments. Questionable “environmental” services such as waste combustion services should be explicitly omitted, and we need to prevent current ‘end of the pipe’ services from gaining a market advantage over integrated environmental services.

It is particularly important to recognise the question of **access to water as a human right** within the context of the GATS negotiations and therefore to avoid liberalising the water sector in favour of transnational corporate interests.

In the field of **energy services**, calls by countries including the USA to liberalise environmentally sensitive, ‘energy-related’ services (e.g. oil drilling ‘services’) should be rejected, and differentiation is needed between energy services capable to meet future

ecological needs and those which are not. In the area of **tourism**, further analyses are initially needed on the socio-ecological consequences of further GATS commitments and on ways of encouraging approaches to tourism compatible with future ecological needs.

- **The EU's GATS requests and offers should be reviewed from an environmental point of view and publicly debated**

The GATS negotiation proposals already submitted by the EU, particularly the (in some cases non-public) 'requests' and future 'offers' should be publicised (WWW etc.) and publicly debated. Environmental policy players in Germany and the EU should urgently demand a differentiated sustainability review of the EU's GATS negotiation proposals (proposals, requests *and* potential offers) and a public debate with all civil society players, parliamentarians and regulatory authorities at all levels (local, regional, national, international). This should follow the example of Canadian information policy and achieve even more effective opening of the trade policy process which is severely lacking in transparency at present.

- **No further policy specifications on investment (mode 3) in GATS – initiation of negotiations on a binding 'sustainable international investment regime' within the framework of the UN.**

GATS does not meet the requirements for an environmentally and development-oriented international investment regime. Consequently, it is not an appropriate framework for further specifications on investment policy. In this respect,

- a) The definition of mode 3 as "trade in services" should be revised, and previous commitments revisited
- b) Further mode 3 obligations within the framework of GATS should be rejected and
- c) Instead of this, investment policy negotiations within the framework of the UN should be encouraged (e.g. at the forthcoming WSSD in Johannesburg 2002)
- d) If further investment policy negotiations within the framework of GATS prove unavoidable, from an environmental point of view, only mode 3 obligations (and corresponding offensive demands on the part of the EU) should be supported, where sustainability impact assessments have indicated a substantial environmental gain.
- e) Within the context of capacity building measures amongst developing countries, investigations and decisions regarding necessary delimitations of mode 3 commitments for reasons of environmental protection, technology transfer and/or local/national development promotion should be explicitly supported.

- **Preservation of local, regional, national and international environmental policy control options within the framework of the "domestic regulation" negotiations**

From an environmental policy point of view, there is no evidence of a need for more stringent GATS disciplines for 'domestic regulation' measures; instead, there is a risk of

new restrictions on environmental policy control options.

For this reason,

- a) As a general principle, the introduction of new domestic regulation disciplines within the framework of GATS should be avoided for environmental and democratic reasons
- b) The demands of the EU (and possibly other WTO members) for necessity testing should be rejected
- c) New, internationally oriented 'transparency' obligations (US proposal) should be avoided
- d) In the case of an unpreventable agreement on new domestic regulation disciplines, measures should be taken to ensure that protection of the environment and human rights are anchored as legitimate policy objectives
- e) New regulations should only refer to specific concessions and should not apply to disciplines covering all services.

▪ **Introduce other environmental exemption rulings in GATS Article XIV**

In its current form, GATS Article XIV is an even weaker exemption article than Article XX of GATT. The new GATS negotiations should therefore be used in order to introduce a new clause into Article XIV of GATS which exempts measures aimed at protecting the environment and meeting obligations resulting from multilateral environmental agreements (such as the Kyoto Protocol) from the conditions of GATS.

▪ **Facilitate exemptions from the most favoured nation principle for environmental reasons**

Exemptions from the most favoured nation principle (Article II of GATS) must be permissible where necessary for environmental reasons. For example, the most favoured nation principle must not be allowed to hamper the implementation of multilateral environmental agreements (such as the flexible mechanisms of the Kyoto Protocol). Within the framework of ongoing GATS negotiations, therefore, as a general principle we should not urge for the abolition of all exemptions from Article II of GATS. Instead, new exemptions should explicitly be called for and notified if required for environmental reasons. If renegotiation of the Annex to Article II proves impossible, a general and unlimited waiver should be guaranteed for these types of exemptions.

▪ **Horizontal exemptions from specific concessions**

Qualitative and quantitative restrictions which are required for environmental reasons should not only apply to specific sectors, but should also be notified as trans-sectoral exemptions ("horizontal commitments") from market access concessions and from the principle of national treatment, similar to the EU's horizontal exemption in favour of "public utilities". This is the only way of achieving ecologically essential quantity limits or particular requirements governing the conduct of foreign investors in individual sectors, despite specific concessions.

Special attention should also be devoted to those environmental measures which may be viewed as '*de facto*' discrimination. As a general principle, application of the principle of national treatment (GATS Article XVII) should be rejected in such cases. However, until a consensus can be reached on these cases, measures which may under certain circumstances be viewed as '*de facto*' discrimination must also be notified.

- **Area exemption relating to 'public services'**

The provision of public services (energy, water, transport, communication, healthcare services) is of particular significance to environmental policy. In order to facilitate the greatest possible autonomy in the design of these services, public services should be excluded altogether from the scope of GATS. As the exemption formulated in Article 1:3 of GATS ("services supplied in the exercise of governmental authority") is too closely linked to the non-commercial, non-competitive supply of such services, this exemption provision should be extended by a separate agreement or a decision by WTO members.

- **Ensure an environmentally-oriented system of public procurement**

From an environmental point of view, there is no need for more stringent disciplines on the public procurement policy within the framework of GATS. The ongoing negotiations regarding the public procurement of services should therefore be conducted with extreme caution in order to obtain maximum scope for environmentally-oriented public procurement. Market access negotiations should be suspended in this area; ahead of further negotiations, the requirements for an environmentally-oriented procurement policy should be identified by means of sustainability impact assessments, and the possible impacts of further GATS regulations should be examined.

- **Continue to facilitate an environmentally-oriented subsidy policy**

From an environmental point of view, there is no need to extend the GATS disciplines to include subsidies within the framework of the ongoing negotiations. Instead, the valid regime should be structured in such a way that subsidies awarded for environmental protection reasons are not subject to any restrictions.

Last edited: 17 May 2001

Liberalising Tourism under the GATS - pitfalls for Developing Countries

K.T. Suresh (EQUATIONS)

Reading reports of the Uruguay Round of Multilateral negotiations is not a very pleasant experience for most Indians. India's stand on the issue of services varies from the sublime to one of total capitulation. Today all that is left for the negotiators is to pick up the crumbs offered [read safeguards in the agreement] and after six years of the GATS even these are yet to materialise.

As early as 1985, India's then Commerce Secretary Prem Kumar rang the warning bells. When the idea of introducing trade in Services into the GATT was doing the rounds in Trade missions, Kumar voiced his prescient apprehensions in the New York Times [October 2, 1985]. "Liberalisation of trade in Services may not result in comparative advantage and the protection of infant industries in LDC's. Besides it may impinge on National sovereignty and economic ambitions". Reflecting this position India, along with nine other countries [the G-10], took a joint leadership role with Brazil on the question of services. To cut a long traumatic story short most of the developing countries retreated from their principled positions due to a variety of reasons and the new agendas were pushed in. The birth of the WTO was contemporaneous with the birth of the AOA, GATS, TRIMS, and TRIPS. All problematic in their own ways but the GATS, as we all know, has the ability to impact our lives most profoundly.

By citing the "positive list" approach by which countries are free to commit desired sectors the WTO claims that the GATS follows a bottom-up approach. On the contrary developing countries are increasingly under pressure to commit more of their services sectors, including basic ones, to foreign competition. Even the "freedom to commit" factor withstanding the GATS cannot be called a bottom-up treaty. There are fundamental flaws in the GATS rule making process. By prescribing International rules and standards for the trade in services it negates democratic decision-making. A genuine bottom-up treaty should reflect the interests of the state and local governments. In most countries local governments don't have a clue about what their governments have committed to. And these commitments are likely to have a tremendous impact on their everyday lives and the very nature of independent decision-making in local governments. In fact some of the GATS commitments of certain countries, by overriding local decision-making, are in violation of their constitutions. In India the Agreement on Agriculture (AOA) was signed without consultation with the state governments. The Indian Constitution stipulates that Agriculture falls under state government jurisdiction. Keeping the local governments and the people ignorant about commitments in the WTO is against the constitutional right to information.

Multilateral trade in Services is expected to increase efficiency and reduce cost. It is also expected to increase the coverage of these services to a wider population in the world. If this were true nobody would have a problem with the agreement. But there are enough cases from across the globe to prove that privatisation of services need not necessarily lead to increased efficiency and decreased costs. Water privatisation in Bolivia and Puerto Rico has shown the heavy price that people have had to pay, some with their lives, to reverse the process. Energy privatization has been an unmitigated disaster for the Indian state of Maharashtra. Under the Power Purchase Agreement (PPA) India's most prosperous state is obliged to pay the corrupt Enron Corporation thousands of crores (hundreds of thousands of rupees) for power it cannot afford to purchase. California continues to reel from its flirtation with energy privatization. These and many more prove that there are some services that cannot be subject to the "selective efficiency" of the free market.

The problems with the GATS start from a seemingly simple assumption that economists in the GATT had. The GATT regime, which oversaw nearly five decades of Multilateral Trade, was based on the hallowed maxim of Free trade theorists – "non-discrimination"- in International Trade. This was translated into the principles of the Most Favoured Nation and National treatment. Added to these are the conditionalities of elimination of Quantitative restrictions and reduction of subsidies.

We may never know if the early GATT economists and negotiators genuinely believed that this replication of GATT principles was possible for trade in services. Or did they intentionally ignore certain inherent complexities of the Trade in services? For whatever reasons. With the US devotedly following the "revolving door" approach for negotiations it is not difficult to guess an important reason for this myopia.

Tourism in the GATS

Under the GATS classification of 11 service sectors, Tourism comes under the 9th category of "Tourism and travel related services". This is further divided into

- Hotels and restaurants (including catering)
- Travel agencies and tour operators' services;
- Tourist guide services; and,
- Other [unspecified]

International Tourism, more than almost any other branch of industry, is both an expression of and instrument of globalisation. In fact some of the countries in the WTO had already reached a level of liberalisation higher than what they had committed to in the GATS. Turkey, The Dominican Republic and Hawaii had substantial foreign participation in their tourism sectors even before the advent of the GATS. The crucial change is that under the GATS these commitments come under a legal framework, which has huge implications for domestic regulations. In the GATS, Tourism is the sector with the highest number of commitments. At

last count **120 of the WTO's 140 members** had committed to opening up at least one of their tourism sub-sectors

The belief that a liberalized Tourism trade has a vast potential for income and employment generation in developing countries needs to be re examined. The GATS clauses accentuate the critical issues that developing countries face in International Tourism. The question of anti- competitive trade practices by the dominant providers of tourism services in the north, the issue of leakages and strengthening the capacity of smaller domestic players have been ignored in the agreement. Through the GATS we believe that anti competitive practices and leakages will increase, obliterating smaller domestic providers and the informal sector in the process.

The overlap of Tourism with a host of other service sectors has led to an absence of consensus on the different components of the industry. Tourism clearly overlaps with others service sectors such as transport, finance, health, telecommunications, construction and environmental services. This makes an overall assessment of the impact of liberalisation in tourism especially difficult. But this interlinkage gives us an idea about the impacts of a GATS regulated Tourism Trade when basic services like water and energy get privatised.

Impact on National laws and sovereignty

Though the GATS successfully masquerades as a trade agreement it goes far beyond what is commonly understood as “trade”, and prescribes universal rules for extensive areas of domestic economic activity. By committing members of the WTO to “achieve a progressively higher level of liberalisation in their service sectors”¹ it goes beyond the traditional GATT jurisdiction of regulating transborder trade transactions and paves the way for a massive intrusion into what maybe called the sovereign economic space of countries.

Article 1[3] of the legal text of the GATS which talks of the scope of the GATS agreement mentions that in “ fulfilling its obligation and commitments, each member shall take such reasonable measures as maybe available to it to ensure their observance by regional and local governments and authorities and non governmental bodies within its territory”. This clearly implies that the GATS agreement has precedence if it comes into conflict with national, regional and local priorities. It clearly applies to all levels of government, central, regional or local governments and authorities.

Our concerns regarding this are fundamental. Most of the state and local governments have been totally excluded from a meaningful discussion or debate on the implications of what the Indian government has already committed to within the GATS. Under the federal structure of the constitution the state and the local [the three tier Panchayathi Raj system] governments have been provided with substantial powers in governance. The provision of essential

¹ Article XIX of the GATS agreement

services and a say in the formulation of certain laws have always been an integral part of the concept of local self-governance.

The GATS commitments of India will directly affect the very fabric of our constitution. And this applies across the board to all democratic governments. **Article VI** of the agreement is one indicative example of the chaos that will ensue. Covering domestic regulation it stipulates that domestic regulations, licensing requirements and technical standards must not constitute an unnecessary barrier to trade in services. Local decision-making enshrined in democratic constitutions all over the world is now transplanted to the bureaucratic WTO and its undemocratic Dispute settlement panels in Geneva! The GATS dispute panel, not democratic governments, will decide what is the law. Regional and local governments can of course still continue to shape laws- as long as they are compatible with the needs of multinationals, not the poorest of their citizens. So much for a bottom up treaty! And the interesting part is that most of the local governments in India **still** do not know that a good deal of what they consider as sovereignty has been comprehensively undermined.

The environment is one of the basic resources of the tourism industry, as most forms of tourism are largely based on natural assets, such as beaches, the sea, mountains, forests, rivers or wildlife. Thus, environmental degradation can threaten the viability of the industry. Domestic governments under increasing pressure from critical groups may introduce protective measures in ecologically fragile areas. Pressures could be from Multinational Environmental Agreements² and critical groupings within the country. Such measures could include limitations on the extent of Tourism activities in the area like a limit on the number of tourist excursions, limitations on the number of resorts, or even certain concessions given to particular firms if they commit to employing local people and contribute to conservation activities in the area. These kinds of limitations, even if they are applied so as not to discriminate between local and foreign firms could be ruled as violating market access commitments **[Article XVI]** of the particular countries under the GATS. The market access commitments clearly state that if you have made unlimited commitments you cannot limit the number of service providers. The only option is to hope that the MNC's have the good sense to realise that this will be unpopular with environmentalists and back off unilaterally. Laws can't throw them out. Conservation also implies that local people participate, but imposing requirements on foreign firms to train and hire local people could fall foul of the national treatment rules **[Article XVII]** of the GATS.

The impact of the GATS has even pervaded fora where developing countries and Non-governmental organisations previously had some meaningful participation. **The UN declaration of 2002 as the International year of Eco Tourism** is disturbing. Though there is a lack of consensus on the term "Eco Tourism" some of its fundamental tenets imply that local people in tourism areas should have the freedom to decide the level of tourism they want and meaningfully participate in its provision. This as previously mentioned is not compatible with a countries market access and National treatment schedules if it has committed to opening up this sector. The fundamental problem with Eco tourism today is the

² There are several areas where potential conflicts do exist between MEA's and the provisions of the GATS.

emergence of Multinational hotel chains that have hijacked its basic tenets and converted its acceptability to further intrude into fragile areas and marginalize the people of the south. The United Nations sanction of the IYE is a big blow for the concept of a fair tourism trade, maybe unintentionally.

Impact in Tourism Sub-sectors

In Tourism this is likely to have a tremendous impact in a host of sectors. With the harmonisation of laws, domestic governments will lose the freedom to use instruments of selective promotion [like subsidies, tax relief and preferential treatment] of smaller domestic investors. To cite an example, under the GATS the present practice of issuing restaurant licenses in the Indian state of Goa only to locals will clearly be a violation of India's GATS commitments. Similarly only tourist taxis whose owners from within the village are permitted to park their taxis in front of the hotel in the village. An unfair trade practice under the GATS but it ensures that locals benefit from Tourism.

The complex interrelated nature of tourism ensures that it will impact the provision of other essential services in Tourism areas. In 1995, water privatisation in Puerto Rico meant poor communities went without water while US military bases and tourist resorts enjoyed an unlimited supply. Golf courses, amusement parks, airports and the abundant use of water in dry residential areas, the lists of possibilities under the GATS are endless. Want to preserve the endemic forests of the Western Ghats in India- one of the bio diversity hot spots in the world? If these trees stand in the way of an "eco-friendly" Holiday Inn resort, forget it. Building Golf courses and swimming pools in desert areas, ignoring the basic needs of local populations will soon be a cakewalk for multinational chains. Challenging any of this will be a violation of what the government has committed to in the GATS.

The role of the state now changes to guaranteeing that there is an unlimited supply essential services for the wasteful consumption patterns of International Hotel chains. Also any benefit granted to small marginal providers of Tourism services gets automatically harmonised with the Multinational hotel that provides the same service.

Employment generation and income generation are supposedly inherent to a liberalised tourism trade. But for whom? The GATS schedules have negated any means through which local people can benefit from the Tourism that generates tremendous wealth from their areas. The GATS, in fact legitimizes their exclusion from any meaningful participation in Tourism.

Trade in tourism is characterised by huge imbalances in the share of business and distribution channels between tourist sending and receiving countries, with the bulk of the economic and political power held by developed countries. Much research has gone into the multiplier effect of tourism in an economy. Lesser talked about but crucial to us is the question of leakages. Leakages are inherent in any industry that has a substantial level of

foreign participation but when it exceeds specific levels it can virtually negate the positive financial effect of international tourism. Leakages can take the form of repatriated profits to the country of origin of the hotel chain, repayment of foreign loans, imports of equipment, materials and consumer goods to cater to the needs of the international tourist.

Anti competitive practices of the dominant players, sharpened over the years, further accentuate the “leakages” effect. They include the use of Monopolistic³ power over suppliers from the south.

Cutting edge CRS [Computer reservation systems] and GDS [Global distribution systems], integral to marketing destinations, are often used as barriers to market entry. Countries of the South tend to be poorly represented in these and their CRS systems tend to be totally outdated. Methods also include what is known as “deracking” [removing brochures from shelves] to negotiate larger commissions from hotels and travel operators in the south.

An important step to reduce this would include various strategies to build capacities of local players. It is proven that high –income tourism, because it involves the provision of expensive imported material, has a higher incidence of leakages. A locally based Tourism strategy though not conducive to huge returns like mass tourism can actually derive more benefits. The environmental impacts of this kind of tourism will also be minimal.

A complete negation of these crucial factors only goes to prove the point that the GATS is essentially a treaty that is driven by the strong lobbying power of Transnational Corporations. 80% of the mass tourism market is dominated by TNC’s. The much anticipated growth stimulus and positive effects on foreign exchange balances will be slight because any regulatory law that tries to keep a certain level of profits within the host country or favour local players will not stand the scrutiny of the Dispute settlement mechanism of the WTO. A recent USTR paper on Hotels and Tourism posted on its website mentions, among a host of other factors the “**Economic Needs Test**”, on suppliers of hotel and lodging services, as an obstacle to liberalisation in the tourism sector. Ironically it is the same Economic Needs Test that the US, the EU and other developed countries use as a protectionist measure to prevent labour [the 4th mode of supply of services] from developing countries from having the same mobility as capital!

Local populations in tourism areas, on whom the impact of a GATS regulated tourism will be the greatest are totally ignored in the decision making process. The WTO regime addresses only Multinationals and governments and at one level it even negates laws passed by democratic governments. From Thailand to Belize Eco Tourism has opened the doors to more forest destruction. Indigenous people have been forced out of their traditional lands in some cases. International Tourism impacts women and children adversely. Some areas of International Tourism in the south have an alarmingly high incidence of sexual exploitation of children. Deskilling of traditional occupations, inflated economies and the diversion of basic

³ Vertical integration among tour operators and travel agencies is now the norm in Europe. Adding to this Travel operators in the south are either merging on unequal terms with their counterparts in the north to be viable or are being bought out. E.g. The Kuoni takeover of India’s largest tour operator Sita.

resources to the Tourism industry are some among the numerous adverse impacts of Tourism. The GATS needs to reflect these complexities and stop seeing Tourism as a tradeable commodity that can be incorporated without any caveats into the multilateral trading system. Instead it has totally ignored Human rights violations in Tourism by failing to meaningfully involve the people most affected by Tourism into its often-quoted “bottom up” negotiating approach.

Developments in the ongoing GATS negotiations.

The ongoing negotiations mandated under Article XIX have shown disturbing trends. There have been serious objections to the “request offer” approach that the GATS has followed for the past six years. Most developed countries feel that this is the main reason why the GATS has seen so little progress. Countries have objected to various clauses like the exemption given to the MFN clause and presence of trade distorting subsidies.

Following widespread criticism by NGO’s from across the globe the WTO came out with an elaborate media campaign to prove that essential services supplied by the government are excluded from the GATS. On the contrary essential services like Education, supply of water and energy continue to figure in its classification list. Concurrent to the GATS, the structural adjustment programmes of the World Bank and the IMF keep the pressure on developing countries to privatise their essential services.

By virtue of having the largest number of commitments Tourism has been an active sector in the ongoing negotiations. Two recent developments have been the proposal for an annex on Tourism and the symposium on Tourism services held in February 2001. In 1999 the Dominican Republic, El Salvador and Honduras developed a proposal for an annex in the GATS to specifically deal with tourism related services. This proposal was subsequently reiterated in December 2000 with Nicaragua and Panama joining the three original proponents. The annex, the result of the WTO-OMT’s dissatisfaction at the treatment given to Tourism in the GATS, proposes to further negotiations on tourism by “**clustering**” tourism related activities. Tourism related activities are a classification from the UN central product classification [CPC], which is a comprehensive list of services that are connected to tourism. This was formulated jointly by the WTO-OMT and a host of other organisations to measure the exact economic impact of tourism.

Countries like the US and the EU groupings have welcomed the annex proposal for reasons that are clear. On the contrary developing countries have been quite unsure about their stand on the annex. This uncertainty stems from the few positive developments in the annex and the fact that the proposal has been initiated from a grouping of developing countries.

The proposal views tourism as a development issue and aims to introduce the concept of sustainability into the tourism trade. The annex takes note of the disturbing fact that there has been no monitoring of the impacts of progressive liberalisation on developing countries.

Mode 4 of the GATS, which deals with the presence of natural persons, has been virtually ignored. The annex also mentions that inspite of the presence of safeguards in the agreement *[found in Articles IV, XII and XIX]* the anti competitive behaviour of foreign tourism providers still continues. The proposed transfer of technology is yet to materialise. The annex is rightly concerned about the increased incidence of vertical and horizontal integration of Tourism providers in developed countries, which is likely to see a huge drop in the market independence of local players. The annex proposal also believes that the access to and use of information systems like the GDS and CRS according to transparent, reasonable and objective criteria. By clubbing inter related services like transportation and travel distribution services in a single cluster a harmonised liberalisation, which will be advantageous to developing countries, is expected.

Our problems with the annex proposal are quite basic. After identifying certain problems in tourism in the GATS the annex doesn't ask for the fundamental changes that are essential to ensure that it benefits people in the south. In fact a Tourism annex without addressing fundamental flaws in the agreement will impact developing countries more adversely than before.

A short background to the "cluster" approach might be helpful here. The US and the EU groupings have, for quite some time, been actively pushing for a clustering approach because they believed that the present approach took too much time and was one of the main reasons as to why nothing much has happened in the GATS. The idea involves putting a comprehensive list of related sub sectors commercially interlinked, and then dealing with this cluster in a single framework of negotiations. This approach will enable the GATS negotiations to move into a fast track mode, thereby negating the ability of developing countries to undertake no or minimal liberalisation in specified service sectors. This implies that all the sub sectors in the cluster get liberalised at one go. In effect this negates the flexibility that the developing countries have had so far which has been the main reason why the GATS is yet to impact us in a huge way.

The annex proposal deals with three kinds of sectors related to the tourism trade

- a] tourism characteristic services,**
- b] Tourism connected services, and**
- c] Tourism non-specific services.**

Tourism characteristic services are classified as "those that, in most countries, would cease to exist in meaningful quantity or whose supply would be significantly reduced, in the absence of Tourism". The annex is then quite expansive in its definition and goes onto include intercity rail services, Road transportation services and Water transportation services. Nature reserve services and Wildlife preservation services find mention as tourism characteristic services. In India it is the duty of the government to conserve forests and allowing private participation in this critical area could have huge repercussions on its ability to protect these fragile areas. Private participation will shift the focus from conservation to

profit because unlike the government private players will find management of these parks viable only if they have adequate returns.

The annex takes notice of the adequate measures to be adopted in the protection of consumer rights. Clearly reflecting a tourism industry bias the annex is silent about the duties of consumers/ tourists in a Tourist destination. It is also silent about the rights of the host communities. The members encourage all in the Tourism cluster to comply with internationally recognised environmental and quality standards. This brings us back to the classical case of the west trying to impose their high environmental standards on countries that are at disparate stages of development. International standards automatically mean high prices in Tourism areas. This will lead to inflated economies in tourist areas. This could also call into question certain practices of local communities in the area. Homogenisation of standards in tourism destinations could also lead to exclusion of small marginal players who will not have the wherewithal to compete with the high standards of the TNC's.

There are certain sectors in the Tourism non-specific services, which are a cause for concern. Among these include a whole range of medical services, electricity transmission and distribution services and a variety of environmental services. The implications of including some of these services, particularly basic services are clear.

By linking different services sector as seemingly homogenous clusters, WTO negotiations will be accelerated and higher levels of liberalisation might be achieved more rapidly. Developing countries will not have the flexibility of assessing the economic, social and environmental commitments once the cluster approach is adopted.

The annex does not address issues in the GATS like its negation of local democratic decision-making. In fact inspite of having the tag of a "developing country" proposal it virtually ignores all of the fundamental problems, earlier identified, with a GATS facilitated International tourism trade. The symposium on tourism services hosted by the WTO in February 22-23,2001 has generated a lot of support for the annex. Most developed countries have clearly come out in favour of the annex proposal. Since the developing countries are yet to clarify their positions the annex could soon be a reality. A critical issue like tourism on the fast track mode will be the final nail in the coffin for an equitable tourism in the south.

The present system, where decisions taken at bureaucratic forums in the international level profoundly impact people at the local level, needs to be challenged. The changes that we want in the GATS are fundamental.

Starting from the very basis on which the WTO decides policy. The GATS should not be allowed to over-ride issues of national sovereignty by negating democratic decision-making. Basic Services should be taken out of its classification list. Foreign Services providers should be sensitive to local laws and the move to harmonise laws across countries at disparate stages of development should be dropped. Discriminatory national laws to protect marginal

players should be allowed and foreign providers should be obliged to local hiring, local purchasing and technology transfer.

All demands against the basic tenets of the multilateral system but if the WTO truly wants trade to benefit the south⁴ these demands are inviolable.

An important lesson we can learn from the WTO is that the fight against the GATS cannot be sectoral. The cluster approach needs to be combated by a cluster of critical groups! Activists engaged in fighting issues related to Water, Energy, Health, and Education, and Tourism need to consolidate in broad alliances from across the world to stop the attack on our democratic systems and fundamental rights.

⁴ The agreement establishing the World Trade Organisation begins with this lofty goal !

The Parties to this agreement,

- *Recognizing* that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development .

- *Recognizing* further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the need of their economic development

GATS, culture and media

Fritz Pleitgen

Director of Westdeutscher Rundfunk, Germany

- Check against delivery -

What has WDR, the public broadcasting company of the Federal Republic of Germany, got to do with the world trade system, currently being negotiated at the highest political and diplomatic level in Geneva?

Over the past ten years, the audio-visual sector and the policy of the European Community in this field has acquired major significance. Originally, the broadcasting of television programmes was viewed solely as a service in the sense of the freedom of traffic. The focus has now shifted away from the economic viewpoint, in recognition of the central role played by audio-visual media, particularly public broadcasting, in society. This recognition, particularly with a view to the emerging information society, has been expressed by various European institutions in numerous documents.

The outstanding importance of European Community law for national media systems is no longer in doubt.

The starting point was the 1989 Television Directive, which created the freedom of services via the unhindered cross-border traffic of television programmes, designed to help translate the Single European Market into reality. The system of joint programme exchanges within the EBU, the umbrella organisation of European public broadcasting companies, is subject to anti-cartel provisions and requires a corresponding authorisation from the EC Commission. National film subsidies and the funding of public broadcasting via licensing fees are regularly examined by the EC commission.

However, not everything which comes out of the Community is bad news. In a number of rulings, the legislative has recognised that national regulations designed to protect a pluralistic broadcasting system or a cultural policy for ensuring the freedom of opinion of various social, cultural, intellectual and religious forces in the audio-visual sector may constitute legitimate restrictions to the freedom of services in the general public interest. The Television Directive, which is obligated primarily to the Single European Market, rather than the public interest, empowers Member States to prepare so-called national protection lists of outstanding events in order to ensure that exclusive pay-TV transmission does not block access by the broader public. Quota rules ensure that the broadcasting companies show European productions as well as films made in Hollywood. As well as the intention of strengthening Europe as an industrial location, various subsidy programmes such as MEDIA PLUS (the best-known example) are also aimed at this objective. Also worth mentioning in

this context is the well-known Amsterdam Protocol, in which the Member States explicitly recognise for the first time the particular role of public broadcasting as a way of meeting the democratic, social and cultural needs of every society and of preserving media pluralism. This Protocol, together with a range of preceding and subsequent resolutions, for example by the European Parliament and the Council of Ministers, recognises the system of public broadcasting as a principal cornerstone of European media systems.

Given the varied historical structures and the continued jurisdiction of the Member States, there are some major differences between the various national broadcasting systems. However, they all have one thing in common, namely the recognition of a dual broadcasting system and the need for sector-specific regulations which also facilitate non-market-dependent funding, including the targeted financial support of domestic productions.

As such, it is appropriate to speak of a European broadcasting model.

However, Europe does not suddenly end at its outer borders. Its Member States are also members of the World Trade Organisation, whereby the EC Commission has the negotiating mandate, after consultation with the Member States (the so-called Article 133 committee). This states that decisions relating to cultural affairs still require unanimity, even after Nice.

Within the context of the last round of negotiations, the so-called Uruguay Round, for the first time the WTO members resolved an agreement regulating the trade in services – GATS.

As a general principle, audio-visual services, just like financial or transport services, fall under the scope of GATS. At the time, attempts by the Community, particularly France, to exempt the audio-visual sector from the scope of application because of its cultural significance failed. Like a number of other states, however, it insisted on exemptions from the most favoured nation principle. Moreover, EC Member States, again like most other WTO members apart from the USA and Japan, refrained from making specific commitments vis-à-vis the basic principles of national treatment and market access.

The status quo can be described by saying that European measures in the audio-visual sector are largely exempt from the GATS regulations.

However, this carving out approach is now in doubt. Whereas in the past, the film industry was prime the subject for cultural battles, today it is primarily television, Internet and e-commerce services.

Disregarding the collapse of the Seattle talks, the negotiations to liberalise the trade in services began in early 2000. This involves, *inter alia*, reviewing existing exemptions from the most favoured nation clause. In other words, the basic principle of not treating the services of other members less favourably than comparable services from any other member is to be applied more widely. Moreover, the parties are to negotiate whether and to what extent European nations are prepared to open their audio-visual markets further and ensure so-

called national treatment. In other words, members are required to ensure that the services of any other member are not treated less favourably than their own 'like' services.

The leading protagonist in the liberalisation demands is, not surprisingly, the USA. The audio-visual industry is the second-largest contributor to the US balance of trade, after the aerospace industry. Analyses of decisions made by the supervisory body FCC indicate that American's power base has shifted away from a military/industrial giant in favour of a new supremacy as the world's entertainment and information super-power.

The USA, which for its part limits the opportunities for foreign ownership of American broadcasting companies, disqualifies Europe's audio-visual provisions as protectionism.

This overlooks the fact that Europe is already one of the world's most open markets. The Americans see Europe primarily as a distribution market which should contribute to the refinancing of its production costs. US companies control between 60 and 90 % of the European market, compared with a European share of the US market of well below 10 %. In the audio-visual sector, the European trade deficit towards the USA is approximately US \$ 7 billion per annum. The developments which have long since been established in the cinema sector, for example, which control not only the content but also the infrastructure (e.g. American multi-screen cinemas) and have driven out local operators almost entirely, have found a recent and alarming parallel in the form of cable: Through Callahan and, in particular, LibertyMedia, US cable network operators are penetrating the market which will dominate the German cable networks. What is more, thanks to their vertical interlinks, e.g. with the Murdoch-owned New Corporation, they may also have a major influence over the content relayed via cable.

Counteractive action, such as the attempt in North-Rhine Westphalia to support German films and films from independent producers, as well as independent cinema infrastructures other than the US majors, or to prevent the dominance of American cable and media giants with the argument of anti-competitive practices, should not be seen as market protectionism.

Rather, it is a question of protecting justified concerns in the public interest, as well as normative recognition of the fact that audio-visual content is not a product like any other. It cannot be treated in the same way as tourism services, bananas or any other goods which are subject to the provisions of the agreement on trade in goods. Of course, audio-visual products have a high economic value and are treated accordingly. Above and beyond this, however, they also influence the formulation of individual and public demands and opinion-shaping processes, mediate knowledge, educate, advise and entertain. They are an expression of local, regional and national identity, and help to preserve and promote cultural inheritance and contribute towards cultural and linguistic diversity.

For good reason, the European broadcasting regulations therefore contain provisions which make allowance for the peculiarities of this sector, and specifically public broadcasting. However, any future liberalisation concessions by Europe in this area, aimed for example at

maintaining the protection of its agricultural Markets (another topic under debate), could have very serious impacts on Europe's media and cultural landscape:

Firstly, various national and European subsidy programmes would lose out. If the Europeans were to enter into specific commitments in this area, by giving Hollywood producers access to the very funds designed to enable European producers to provide an – albeit modest – counterweight to US dominance.

Similarly, the quota regulations existing in favour of European producers would also be valued as discrimination.

The funding of public broadcasting from licensing fees could be seen as an impermissible subsidy and could therefore be withdrawn from public broadcasting. At present, no refined subsidy regime exists for the services sector, but this topic is on the agenda. There have been attempts, e.g. by Argentina and Hong Kong, to refuse to recognise public funding of audio-visual products as a national justified interest.

A number of sector-specific provisions, e.g. on youth protection or on restricting advertising times, could likewise be judged as impermissible restriction of market access.

Public broadcasting could also be affected by a regulatory system on public purchasing. To date, admittedly, this has not been very differentiated. However, a working party mandated specifically for this purpose is endeavouring to formulate so-called disciplines. The worst case scenario would be for the public broadcasting contract to be tendered on the open market.

The current debate on whether broadcasting services should be classified as telecommunications services in future, rather than as part of the audio-visual sector, as is currently the case in GATS, is also dangerous. The far-reaching liberalisation obligations which apply to this sector could pose a threat to frequency allocations and must-carry provisions in favour of broadcasting services.

Another contentious issue is the GATS clause which sets out requirements for domestic regulations. This states that members who have entered into specific commitments must ensure that all measures which could affect the trade in services must be regulated or applied “reasonably, objectively and without prejudice”. Accordingly, certain provisions must not “unnecessarily hinder”, must be based on “objective, transparent criteria” and must not “be more burdensome than necessary”. It will not be possible to object, *per se*, to these principles. However, there are now plans afoot to apply these provisions horizontally, irrespective of whether or not a member has committed itself to the principles of national treatment and market access. If this happens, it would effectively reduce the national regulatory autonomy which members are hoping to preserve via “carving out”, particularly in the audio-visual sector. Also conceivable is a scenario whereby, as a result of the expansion of the provision in conjunction with the so-called transparency regulation currently under

debate, it would become necessary to notify a flood of national and/or European provisions to the WTO.

The extent of the possible consequences of liberalisation cannot be outlined in detail here. A study prepared in the United Kingdom indicates that the above scenario is far from unrealistic. The study examined a whole package of regulations and measures, from the subsidising of film and television productions by the national lottery, to the funding of the BBC from licensing fees and regulations governing ownership of television companies, through to the fiscal treatment of British films. The impacts of corresponding GATS obligations, according to the study, would necessitate substantial changes here, leading to economic consequences.

Hence, risks not only exist as a result of possible liberalisation concessions in the “conventional” audio-visual sector. E-commerce is more of a lever for evading sector-specific regulations. Depending on the definition of this term, audio-visual services may be classified under electronic trade. If the USA and Japan have their way, they will be included under the agreement on trade in goods, which already envisages far wider-reaching liberalisation obligations than GATS. However, the Europeans do not share this concept of virtual goods, and believe that electronic trade should fall under the scope of GATS. Moreover, they argue that it is irrelevant whether a service is supplied online or off-line for application of GATS.

In the wake of the general euphoria over e-commerce, and the desire to promote it at all costs, it is difficult to voice reservations without being dubbed an anti-technology dinosaur. Even at European level, it is becoming increasingly difficult to convince the decision-makers that certain provisions, such as the licensing requirement or youth protection, should not become obsolete simply because the content is transmitted via the Internet. By contrast, discussions are underway, not only in Washington, but also in Geneva, to combine e-commerce-related services into so-called clusters for the purposes of negotiation.

We are by no means alone in these reservations. As well as a number of European countries, along with some Asian countries, Canada has called for the observance of audiovisual and cultural requirements at international level. In its negotiation proposals submitted in March this year, Canada unequivocally stated that members must retain the freedom to uphold or introduce national regulations in the pursuit of cultural concerns. Canada was primarily responsible for the following passage being included in the preamble to the text which was planned to be adopted in Seattle, and is still valid as a reference. I quote:

“In a rapidly changing world, we owe it to all our citizens that the system should allow them to pursue their opportunities and realize their aspirations, including those pertaining to cultural identity and diversity, and to adapt to the challenges of globalization and the impact of new technologies. We recognize that indigenous communities should benefit from the multilateral trading system in order to further their economic development.”

The Council of the European Union had already given the Commission the following mandate, recently reinforced by the European Parliament:

“During the forthcoming WTO negotiations the Union will ensure, as in the Uruguay Round, that the Community and its Member States maintain the possibility to preserve and develop their capacity to define and implement their cultural and audiovisual policies for the purpose of preserving their cultural diversity.”

The principle of cultural diversity is inseparable from the concept of cultural sustainability. Generally speaking, sustainability refers to a development which meets the requirements of the present without compromising the abilities of future generations to meet their needs. Economic sustainability, and increasingly ecological and social sustainability too, has long been on the agenda of the Community, and recently also on that of the WTO. I feel that the cultural dimension must be taken into account as a matter of urgency. UNESCO and the Council of Europe have already addressed the basic principles of cultural diversity and sustainability. There are considerations to recognise and protect the production, exchange and use of cultural products, including audiovisual media, e.g. in the form of an international charter. In this respect, the European Council adopted a declaration on cultural diversity on 7 December 2000, stating that cultural diversity is expressed in the coexistence and exchange of different cultural practices and in the performance and use of various cultural services and products. On cultural sustainability, the statement continues:

“Sustainable development as defined in relation to cultural diversity, assumes that technological and other developments, which occur to meet the needs of the present, will not compromise the ability of future generations to meet their needs with respect to the production, provision and exchange of culturally diverse services, products and practices.”

The European Council feels that cultural and audiovisual policies which encourage and respect cultural diversity are essentially complementary to trade policy. The European Council calls upon its members, particularly in “other international forums” where they may be required to make commitments which could impair the mechanisms designed to preserve and promote cultural diversity, to bear in mind the need for such mechanisms. One such option would be to link the GATS regulations with a corresponding international cultural agreement, for example by means of an appropriate cross-referencing system. Nevertheless, one slight problem remains: The USA is not a member of UNESCO, at least for the time being; nor is it likely to become a member of the Council of Europe ... Consequently, we must continue working to ensure that the original regulatory system of the World Trade Organisation meets the justified demands of the audiovisual sector, and indeed the cultural sector as a whole.

If one considers the development of both the European Community, which has moved away from its original definition of economic community and now sees itself as a European union of citizens, and the World Trade Organisation, which began with customs agreements and is now at least familiar with the principle of ecological precaution and social requirements, there is at least some hope that these organisations will gradually become more receptive to the concept of cultural sustainability.

Thank you for listening.

GATS and Democracy

Clare Joy,
World Development Movement, UK

It's now over a year since GATS negotiations were launched in Geneva in February 2000. Away from Geneva, but watching the process in detail, an incredible international movement is growing, offering a critical perspective on the GATS agenda. Those advancing this critical perspective, like most of us gathered here today, have spent very important hours in the last year acquainting ourselves with the intricacies of the legal/textual debates on the definition and scope of the agreement, and tracking the 'insider accounts' of Geneva trade negotiations. However, the agenda for this conference offers us a unique opportunity to stand back from this important work and examine the agreement through political lenses, such as the environment, international social justice and democracy. This is after all what most of us gathered here do best, so I thank the *Forum Umwelt und Entwicklung* for providing this opportunity.

When asked to speak about democracy and GATS, I initially welcomed the opportunity to focus-down on something specific in an agreement where the coverage is so broad. However, I now realise that the issue of democracy and GATS also raises a huge array of concerns (many of which have already been touched-on in yesterday's discussions). So in an attempt to narrow this down, I will focus on the following three areas. The first area relates to the *process* surrounding negotiations and the second and third relate to the actual *content* of the agreement

1. Role of **corporations**.
2. Threat of GATS for **basic service** delivery and subsequent implications for democracy.
3. Impact that GATS will have on governments' **right to regulate**.

1. ROLE OF SERVICE CORPORATIONS

In any GATS presentation, the role played by large service companies must be mentioned. Understanding the influence that companies have had, and continue to have, on the GATS process is crucial to understanding the actual contents and aim of the agreement as a whole. There are at least three parts to this:

a) Pushing for an international agreement on services

It is widely acknowledged (even by WTO staff and economic advisors to the European Commission) that without the pressure from service multinationals, the GATS would not exist. From the early eighties, large US financial companies such as

American Express and Citicorp (and later key City of London financial companies) were actively lobbying their governments to put trade in services on the international trade negotiating agenda.

b) Influencing current negotiations

However, their influence in the process extends beyond bringing the GATS into being. Companies continue to influence the agenda of present negotiations and set negotiating priorities. The list of US Coalition of Service Industry members helps explain the priorities set at GATS meetings since the agreement was signed in 1994. For example, the decision on Basic Telecommunications commitments (adopted by the WTO Services Council in 1996) corresponds to the interests of US telecommunications companies such as AOL, AT&T and MCI (all CSI members). In addition, the decision on commitments in Financial Services (adopted by the WTO Services Council in December 1997) reflects the interests of CSI members such as American Express, Chubb, Visa, Chase Manhattan and New York Life. During negotiations on financial services it was acknowledged that 'insurance' liberalization within the GATS framework, only became a 'priority' because the US acted on behalf of AIG (American International Group), a 'world leader in insurance and financial services' and anxious to break into the Chinese market.

These companies have unprecedented access to both Ministers and negotiating civil servants. The EC has acknowledged on its GATS information website, 'an active service industry involvement in the negotiations is crucial to target the EU's negotiating objectives towards priorities for business. The GATS is not just something that exists between governments. It is first and foremost an instrument for the benefit of business.'

Finally on continuing influence, the revolving door between government negotiators and the chairs' of company lobby groups ensures that information flows between government and business. For example, Amsterdam-based CEO (Corporate European Observatory) have written extensively on the role played to this effect by Ex-Commissioner Leon Brittan, now lobbying the European Commission on behalf of the UK Financial Services Industry.

c) Corporate lobbying: Not new, but central to GATS

Corporate lobbying for WTO agreements, and then ensuring that its rules are implemented, is not a new phenomena. Those acquainted with the TRIPs agreement will be familiar with this process. However, it is always worth highlighting the critical role that service corporations are playing in the GATS process, and the extent to which this is being actively encouraged by the EC and US, who regard the GATS as an agreement to further unlock the export potential of their service industry.

Yet democracy and GATS is about more than access to documents and exposing the huge role that corporations play in setting the negotiating agenda. There is something

very fundamental about democracy and the actual contents of the agreement. It is widely acknowledged that by setting international trading rules in services, GATS takes trade law into a whole new sphere and much closer to the heart of a country's domestic economy and its relationship with its citizens. It is GATS coverage of services, and the nature of service delivery itself, that throws up real issues for democratic debate. It is this dimension of the relationship between GATS and democracy that I would like to focus on for parts two and three.

However, before launching into this there are two points I would like to make clear from the start. This is aimed at proponents of the GATS and relates to their consistent misunderstanding of the case that critics such as WDM put forward.

First, some of the service liberalization examples I will use to illustrate arguments have not arisen because of GATS. Service liberalization is being pursued in different ways by other international institutions (such as the World Bank and the IMF) and governments independently of GATS. Concern about the GATS exists in the context of the wider debate about problems and benefits associated with service liberalization. Any analysis of the agreement, especially its proposed impacts, must engage in this wider debate. This is their relevance.

Second, concerns about the GATS agenda relate not only to the agreement as it exists today, but to current negotiations aimed at expanding its scope and reach.

2. BASIC SERVICES

It is clear that GATS covers basic services. This includes services such as education, health, water delivery, postal services and transport. This means that these services are already covered by the agreement's general obligations (unless horizontal exemptions have been filed), and can be subject to the agreement's specific commitments should a government chose to list them in its schedule.

Why is the fact that GATS encourages market opening in basic service sectors a problem for democracy?

a) Ensuring universal delivery

Services are called basic services because access to quality delivery is considered essential, often a 'basic right'. Access should therefore be based on need and not on ability to pay. Experience has shown that once opened up to competition, sections of the community not considered profitable do not receive this service. There is an underlying truth when discussing market delivery that should be recognized when dealing with essential basic services – the market cannot meet the needs of the poorest people, especially those with no purchasing power.

Through policy mechanisms, it is hoped governments can achieve quality, universal delivery of basic services (the theory goes that if they don't achieve this, we vote

them out). An example of one such mechanism is the policy of cross-subsidisation (taxation is another example). Using this mechanism, in the water sector for example, wealthy urban consumers subsidise delivery into poorer rural regions, or in the postal sector, business post subsidises rural domestic delivery. As services are broken down through the process of liberalization, governments lose their ability to cross-subsidise and therefore lose a policy mechanism for achieving universal service delivery.

Advocates of the GATS argue that even once liberalized, governments can demand that companies make universal access a key tenant of their delivery contract. However in reality, companies will not partake in such a contract as it compromises maximum profit. In December 1999 UK water company Biwater pulled out of a major water supply project in Zimbabwe, because the project could not deliver the rate of return now demanded by private investors. The company manager said: "Investors need to be convinced that they will get reasonable returns. The issues we consider include, who the end users are and whether they are able to afford the water tariffs. From a social point of view, these kinds of projects are viable but unfortunately from a private sector point of view they are not" (Zimbabwe Independent, 10/12/99).

A critical issue for developing countries is the extension of basic services, such as water, to the entire population. A more interesting case comes from Argentina. In 1995, the Government began to open up urban water delivery to the international market. In one case, the concession contract required the company to extend water connections to shantytown dwellers, regardless of their ability to pay. But the company insisted that someone had to pay, or it would stop operating the service altogether. The Government tried to foist responsibility onto local councils, who ultimately refused, as they had not received the financing. Following this, in an unprecedented move, the company decided to exact a surcharge from wealthier customers – a so-called 'solidarity tax'. This very rare example of a private company adopting a progressive taxation policy was thwarted as the affected consumers obtained a court ruling that the surcharge was illegal. In effect, a key public policy issue, of concern to Argentine citizens on the way basic services are delivered, was reduced to a civil dispute between consumer groups and a multinational.

b) Erodes basic government-citizen social compact

By gradually eroding government's ability to intervene in the basic services sectors, GATS removes a key state function and leads to a withered government, with a citizenry wondering why they elected a government in the first place. This has inevitable impacts on the basic social compact that exists in societies, where citizens agree to abide by the rules of government on the basis that they receive certain things, such as basic services, in return. In countries with fragile democracies, service liberalization threatens this democracy. Citizens in these countries react when they realize their government's inability to ensure universal access to basic services. In September 2000, WDM produced a report (States of Unrest) which began to map incidents of civil unrest in countries across the South. In nine out of ten cases,

demonstrations took place because under IMF policies, governments had been forced to open-up basic services to the market with disastrous consequences for general access to these services.

More people, especially the urban poor, are demanding access to services through the ballot box. The state, and especially local governments, face the tricky task of balancing the claims of the poor with the demands of multinationals and global institutions such as the World Bank and the IMF. These claims and demands may often be in conflict. With GATS entering this arena, the ability of governments to respond to citizens' claims is further compromised with obvious implications for democracy.

Inevitably, as citizens we are left asking, why elect governments?

c) No longer basic rights, but export commodities

GATS alters the way basic services are perceived. They are no longer seen as basic rights, but considered to be export commodities. In the UK, when the Government was challenged by lecturers about the increased marketisation of higher education, they were told that reforms are essential as higher education is a key UK export. The UK has a quality education system, and a comparative advantage, because students want to learn in the English language. Meanwhile, unions have been challenging these changes as they reduce universities capacity to deliver 'unprofitable' courses. Management and computer courses bring the cash in, the social sciences do not. Academic freedom is obviously compromised and lecturers are forced to work under conditions that offer greater flexibility and are less reliable.

In the area of health, countries such as India operate certain hospitals designed to attract wealthy overseas consumers rather than meet the needs of their population.

In both of these cases, government economic priorities are reoriented and skewed to meet the demand of a potential export market rather than the needs of citizens. The democratic implications of this are obvious.

A big part of the debate on democracy and GATS relates to the agreement's contents. GATS covers basic services and it cements policies which challenge universal delivery of vital services, removes democratic accountability, undermining the basis upon which citizens demand access to basic services and shifts government priorities from meeting basic citizen's needs towards meeting the demands of potential export markets.

The third and final part expands on the above and recognises that GATS is a huge agreement, encouraging WTO-members to apply GATS rules to all services and not just basic services. The agreement also covers services such as construction, tourism and retail.

3. GOVERNMENTS AND THE 'RIGHT TO REGULATE'

GATS does set rules on investment. In GATS-speak, under mode 3 'commercial presence', the agreement sets rules on what governments can and cannot do when a company sets up shop inside its borders in the services sector. Once a government makes a 'mode 3 – commercial presence' specific commitment, its ability to regulate investment in the committed sector is seriously undermined.

a) It's not 'anti-trade' to oppose this dimension of GATS

Critics of the GATS are regularly accused by the agreement's proponents of being anti-trade, anti-progress and anti-investment. WDM, along with most GATS campaigners, is none of these. We believe that in order to get the most out of investment, governments must maintain the ability to selectively regulate and set rules on companies setting up shop in their country. It is through these rules that governments can pursue social and economic objectives linked to this investment. This might include rules obliging technology transfer, limiting the number of companies operating in some areas, requiring joint ventures with local partners or imposing community taxation.

b) GATS does undermine the right to regulate in this way

Proponents of the agreement constantly argue that GATS does not undermine the 'right to regulate' investment in this way. We are told that when countries make commitments for any service and in any mode, they can list limitations that preserve the right to impose policies like those mentioned above.

Relying on the 'limitation' mechanism is deeply problematic as this is a one-off right that members can exercise ONLY at the point of making a commitment. This demands not only enormous capacity, but that negotiators see into the future and know the kind of policies they would implement in 5, 10 even 15 years from now.

This has already proved problematic for South Africa, whose telecommunications legislation has been taken to task by the US Government. South Africa has been trying to enforce regulations on foreign capital for value added network licenses which are ultimately part of its broader black ownership policy. The US Government is arguing that the South African Government did not schedule such a limitation on market access in its GATS telecommunications commitments.

Proponents also fail to acknowledge that such limitations are not safe. They become targets for removal in future rounds of negotiations.

Current discussions in the Working Party Group on Domestic Regulations will further impede government's ability to regulate their services economy in order to meet social and environmental objectives.

c) GATS deals with issues at the national policy level – services are also regulated locally

Service regulation also takes place at the local/regional level. However, GATS is negotiated through national governments, by trade officials with very little awareness of the kind of restrictions regional governments impose on foreign investment. This has already proved to be an issue in India where one state found its ability limited when imposing restrictions on foreign investment in the tourism sector. This followed the national government's post-Uruguay Round GATS commitments.

Many solutions to the problems associated with universal service delivery are located in local realities. Pursuing more innovative structures of delivery (For example, Durban Waters in South Africa) demands knowledge and direct contact with the local communities involved. In such situations local governments may be in a better position to take this forward. Local governments are possibly in a better position to assess how to get the best out of investment and impose the right balance of regulations. Setting policies at this level is a departure from the failed 'one-size fits all' approach that has dominated service liberalisation over the last decade. Local councils are often considered to be more radical and progressive in this field, in part due to their local nature and more direct accountability to service users and those affected by investment. GATS is a further blow to local accountability and democracy.

One of the most frustrating elements of the current GATS debate is the refusal by proponents of the agreement to admit in public there is a conflict between free markets and government regulation aimed at restricting the market. This is in part a refusal to recognise the importance of restrictions in the services sector as useful social and environmental tools. Regulations can be good development tools. This is combined with the fact that most trade negotiators have little clue about the social use of regulations in the services sector. The GATS is being negotiated by our governments' trade teams, not health, education, development or environmental departments.

All of the evidence about problems associated with service liberalisation is compounded by GATS, as the agreement is effectively irreversible. There is a get-out clause, but implementing this is practically impossible for the majority of WTO members.

CONCLUSION

Services are things that as citizens we fight for. And justice in this delivery is integral to the way our societies function. Whether we're demanding better water delivery, or challenging a proposed supermarket site in the local area, we're also demanding that our concerns regarding things so fundamental to the way our societies' function, are listened to and acted upon. This is democracy.

Our governments do not always do the right thing. However, the GATS campaign is about fighting to maintain the right to change their policies.

We are well aware that current basic service delivery policies and structures are certainly not without problems. But a full-range of policy options should be explored before cementing in international trade law the liberalisation model. Current problems do not automatically justify rules that elevate the rights of multinationals above all else. A range of alternatives must be explored and citizens in the countries concerned should have the opportunity to discuss and debate the relative merits of each. GATS locks into place a debatable economic paradigm, when the evidence is mounting that these policies do not work for the majority of the world's people.

I would like to conclude this presentation on a debate note and I am sure much will follow in the next 30 minutes. Democracy is about real debate. Perhaps most insidious of all is the way that current proponents of the agreement are trying to shut out real debate. In March 2000, the WTO Secretariat, published 'GATS - Facts and Fiction' in response to the international campaign. This document pushes, with real fervour, an agreement whose policies are still to be assessed. Critics are raising warning bells based on real experiences of service liberalisation in countries around the world. This should be the starting point for real debate on this issue and it is time for this real debate to commence.

Podium debate:

Sustainability requirements when regulating the international trade in services

I.) Contribution of Dietrich Barth (EU Commission, DG Trade)

The European Community is the world's largest exporter and importer of services. Given the high significance of services for our economy, particularly for the many jobs which depend on it – two-thirds of European jobs are in the services sector – it is crucial to support the development of the European services industry and the global trade in services. For this reason, we have a significant interest in the further liberalisation of trade. Because access to the European market is already largely liberalised, it is a question of equalising the imbalance in the level of liberalisation between Europe and many other countries.

Negotiations within the context of the General Agreement on Trade in Services (GATS) began in January 2000. The Council of Ministers of the European Communities, i.e. all Member States of the EU, gave the European Commission a mandate to conduct these negotiations aimed at the further liberalisation of trade. The European Parliament confirmed the mandate.

GATS and the international commitments negotiated therein do not pose a threat to democracy. Like all international agreements, they were and still are negotiated by sovereign states within the framework of their respective constitutional systems, and ratified by the national parliaments. For example, GATS has been ratified by the European Parliament and the parliaments of all EC Member States.

GATS is extremely flexible and enables the Member States of the WTO to largely determine their own obligations in the negotiations. In particular, the agreement does not obligate any member country to deregulate or to privatise public service companies. It allows the Member States to pursue national political objectives and to retain and develop their own service regulations. However, if a country chooses to make certain liberalisation commitments in the negotiations, it must abide by them, like any other international commitment. However, in the negotiations the EC will take care to ensure that it preserves its autonomy in key policy-making areas, for example in the public services such as health, education or the audiovisual services.

Incidentally, GATS should not be held responsible for a range of unrelated problems, such as the much-voiced accusations of environmental damage, water pollution or complaints about national decision-making processes in individual countries which are undemocratic or lacking in transparency.

The European Community is pressing for a comprehensive round of world trade negotiations which is not confined to the conventional issues of mutual market access in the trade in goods and services. The EC believes that comprehensive talks are needed in order to develop the necessary political momentum to resolve the fundamental problems of globalisation. This comprises the need for sustainable development, combating poverty, the integration of less developed countries, the development of domestic economic capacities, and a balanced treatment of the correlations between trade and other policy-making areas such as environmental policy, biological diversity, fair competitive conditions, and improved transparency and public support of the WTO process. Within the framework of these objectives, the European Commission has initiated comprehensive studies into the effects of trade liberalisation on sustainable development.

Another key negotiating objective of the EC is to support the development process in developing countries. Many of these countries, like countries currently in the process of economic transition, have introduced significant autonomous liberalisation measures which were not negotiated within the framework of GATS, and are actively involved in the GATS 2000 negotiations.

II.) Contribution of Pascal Kerneis, Managing Director of the European Services Forum

A. About ESF

The European Services Forum is a network of high level representatives from the European Services Sector committed to promoting the interests of European services and the liberalisation of services markets throughout the world through GATS 2000 Negotiations. It comprises 50 major European service companies and more than 30 European service sector federations covering service sectors like financial services, tourism, telecommunications, air and maritime transport, business and professional services, distribution, postal and express delivery, IT services, energy services and the audio-visual industry (see list of members and position papers in the web-site: www.esf.be).

B. Services in the world trade

Services account for 60%, or \$ 210 billion of annual flows of foreign direct investment. The service sector represents about 70% of European GDP. The European Union is the world's largest exporter of commercial services, accounting for 26% of total global services' transactions and for more than 40% in term of balance of payment. The EU is also the world largest importer of commercial services. Trade services liberalisation is therefore extremely important to the European economy.

1) The Weight of Trade in Services in the national economies

Service industries have an important role in the development of investment and employment across the world. Official statistics show that, in the great majority of countries in the world, both developed and developing, the service sector of the economy is the most important sector. In the developed economies of the world the service sector is considerably larger than both the manufacturing sector and the agricultural sector. In the developing countries of the world the service sector is still the largest sector in the economy but the difference are not so pronounced. In India, for instance, 45% of GDP is the service sector compared to 25% for agriculture and 30% for the manufacturing sector. In Turkey 57% of the economy is represented by services compared to 15% for agriculture. In Kenya services represent 56% of GDP and agriculture 29%.

Of course, cross border service sector trade is only 20% of world trade but efficiency in the domestic economy is greatly improved and the prospects for employment are greatly improved by investment in the service sector, including foreign direct investment. An efficient banking industry, better and cheaper telecommunications and consistent power generation and distribution are essential components for inward direct investment which – we believe – must be encouraged through the liberalisation process.

2) Concrete examples of the benefits of services liberalisation

Capacity building has been one of the features of cross border direct investment in developing countries. Investment by Spanish Telefonica in the telecommunications industry in Argentina and Brazil is an example of constructive investment that has considerably expanded the telecommunications market for consumers and brought better choice (+30% of fixed lines; +100% of mobile phone in areas covered) and better prices. Investment in the retail sector by Royal Ahold the Dutch retailer in Thailand and in Malaysia has created 5,000 new jobs in Thailand and 2,000 new jobs in Malaysia and at the same time increased customer choice. Direct investment by British and Spanish banks in Mexico has strengthened the financial system and benefited the country in the last financial crisis. India has recently approved foreign investment in the insurance business which will ultimately lower prices and increase choice and enable people to insure who are currently uninsured. Still in India, Enron, the US Power Company is just completing the building of a 2000 KW Power Plant, which will bring much needed reliable electricity power to the country (1.5 Bio US\$ investment). Of course, environment issues are very important, particularly in the power sector and must be given high prominence.

3) Barriers to trade

These investments would not happen if barriers to trade and investment remain. Many different services sectors are affected by issues like the ability to move key business personnel; the ability to establish and control a local operation; regulation which is used to deter competition rather than to strengthen local industries; or public procurement regulation designed to deter foreign competition. All these issues are barriers to trade and investment.

Trade will also be held back if E-commerce is made subject to controls rather than being treated as a new delivery channel for goods and services. The WTO should not set up a separate negotiating group for E-commerce.

4) Trade liberalisation in an appropriate regulatory framework

The liberalisation process through the World Trade Organisation will bring benefits such as these examples. It does however have to be matched by good regulation that encourages good practice and competition. Developing countries must manage the liberalisation process at a speed that suits their social and cultural backgrounds whilst at the same time committing themselves to the process. It is much better to have a planned process over a number of years than to rush into liberalisation without proper planning and protection for local industry. Change brought about by the liberalisation process must be managed. If however the change is managed sensibly and is accompanied by regulation that is clear and precise and applied in a non discriminatory manner the resulting inward investment through the liberalisation process will bring great benefits.

Requirements for a Sustainable Regime for Regulating International Trade in Services: the title of this podium discussion leads me to share my views on what GATS is about.

C. What GATS is about

GATS is about establishing a stable legal framework for international services trade (i). GATS is about creating a win-win situation for all WTO players (ii). GATS is about contributing to sustainable development (iii). And finally, GATS is indeed about creating a Sustainable Regime for regulating international trade in services.

(i) GATS is about establishing a stable legal framework for international services trade.

GATS is about freedom of WTO members to take commitments or not. That is a major message which should be repeated here. If so much governments accepted to take commitment in more than 34 areas during the last Uruguay round, it is because they felt that their country and their economy would take benefit of this liberalisation. And it has been the case indeed.

One should again and again repeat that under GATS, it is only the government of each WTO member country that decides on which services it wants to make a commitment and can attach to them whatever conditions it chooses. All WTO members which have, either in their official schedule of commitments during the last services negotiations or by autonomous internal decision, decided to liberalise some of their services sectors will recognise that they have taken profit of it.

It is not the other governments or multinational companies who are taking these commitments. The countries decide by themselves. Sure, they are submitted to some pressure. But please stop to consider that trade negotiators do not know what they commit to. Trade negotiators in Geneva, including from developing countries, know and understand exactly what they commit to or not. And if they don't, they simply do not sign. Those one merit more technical assistance, and we are supporting these actions.

As you know, the GATS structure is using the so-called "bottom-up" approach. This means that the countries have to make the positive approach to take a commitment to open such or such services sector, or part of a services sector, or a specific services product, and for each of these commitments, each country has to expressly specify that it commits itself to give or not a) MFN treatment, b) national treatment.

GATS is about Most Favoured Nation process, i.e. giving the opportunity to all countries to get the same access to services market in the same conditions for all services suppliers, disregarding the political or economical importance of the country. When a country gives something to one country, it gives it to all signatories. In other words, there is no specific treatment depending on the "nationality" of the foreign company. It is only by taking bigger

profit of this multilateral system that the developing countries can get greater market opportunities. By taking part to these multilateral negotiations on trade services liberalisation in the framework of one single round, all developing countries take profit of the commitments from all the other countries. To obtain the same results via bilateral or regional agreements will be impossible for many of them and very difficult for most of WTO members.

GATS is about National Treatment, i.e. where countries take commitments to a specific services sector, it can agree not to discriminate between national services suppliers and foreign service suppliers.

It is by taking such commitments that companies know in advance, in a transparent way, where are their possibilities to operate and on under which conditions. Given that these commitments are part of an International agreement signed by the countries, the implementation of the commitments is a legal obligation of the countries. If they fail to do so – in a negotiated timeframe of phasing in, if felt necessary -, the other WTO members are entitled to seek implementation and in a last recourse, ask to the WTO Dispute Settlement Body to run a panel to set up the conflict.

GATS is therefore about establishing a stable legal framework for international services trade. Foreign companies need such a framework. They need predictability and security. They want to be sure that they will be treated in the same ways that the domestic companies. In the absence of such a framework, they are less interested to invest in a foreign country.

(ii) GATS is about creating a win-win situation for all players. GATS is about contributing to sustainable development.

Of course, developed countries want to get better access in all markets, including in the developing countries' markets. Of course, European services industry strongly supports their authorities to improve their business capacity, to remove services trade barriers which impede them to set up and develop their business activity and compete in a fair level playing field with the local companies. Companies are not philanthropic and can legitimately expect such a move from their governments in the framework of an "Agreement on Trade in Services".

But, on the other hand, Developing countries can get expertise and know how from foreign services suppliers for the benefit of the development of their own economy.

That is the reason why one can certainly say that GATS is about contributing to sustainable development. When a foreign service supplier decides to set up in a country, it is never for a short period of time. In many times, the company opens long term relationship in the framework of a joint-venture, or indeed becomes a local company as a subsidiary of the headquarters, and is therefore submitted to local regulation. Branches are also submitted to local obligations for the licences requirements, qualification requirements, etc. This implies a long-term strategy from the company. Then the company will make some Foreign Direct

Investment for its setting up. It will employ local workforces; it will enlarge the choices of the local consumers for the various day to day life services, like bank loans, life insurances, phone calls, transport services, distribution services, tourism services, etc. The competition will initiate better quality and lower prices for consumers.

Foreign Direct Investment from services companies will contribute to set up the necessary infrastructure for the E-commerce, for the new economy, where Developing Countries have a lot to win. But to give the opportunity to a small or medium company in the countryside of Senegal, you need first to have electricity to plug the computer, telecommunication cable or wireless network, access to IT and computer related services. Good transport, or express delivery services, or distribution services are also necessary, etc. One should not miss the chance given by the current GATS negotiations to enhance the infrastructure services.

(iii) GATS is about setting up more coordinated and sustainable regulatory regime for international trade in services

GATS is not about services deregulation. The affirmation that liberalisation of services trade automatically means deregulation is not true. The signatories of the GATS have explicitly stated in the agreement the right to regulate, and the right to introduce new regulation in order to meet national policy objectives. This is a core principle of the GATS. As regards to the company's feelings towards deregulation, it has always been clear that they claim for strong, clear, transparent and fair domestic regulation. It is now well recognised that the lack of strong and fair regulation largely contributed to increase the financial services crisis in South East Asia in 1997/98. Presence of self well-regulated foreign companies – following on a volunteer basis the stricter rules of their home country – contributed to handle the crisis. Companies call for reasonable and non-discriminatory regulation.

You may know that there is a WTO Working Party on Domestic Regulation. This is a subsidiary body of the WTO Council for Trade in Services (CTS). This WP is now working of the drafting of disciplines on domestic regulation. They are discussing whether it is desirable to adopt a binding WTO agreement where countries would accept to some cross-cutting disciplines (i.e. applying horizontally to all services sector) when their national legislators will decide to make a new domestic law, or reviewing a national administrative procedure related to market access.

This is not an easy subject, but we believe that it is a crucial exercise to give a real progress to services trade liberalisation, as much as getting wider market access commitments. In fact the later sometimes does not make any sense, if there is no certainty that the national regulators will effectively modify the national legislation to correspond to the multilateral commitment. The trade-restrictive effects of the domestic regulation can arise from a variety of technical standards, prudential regulations, licensing and qualification requirements on professional, financial and numerous other services.

More concretely, the purpose of these negotiations is to try to achieve a WTO Agreement where WTO members would, in the framework of these disciplines, commit:

- 1 to respect some rules on transparency of the domestic legislation,
- 2 to respect the principle of non-discrimination, i.e. every time that a government or a regulatory authority will adopt a new regulation or revised an existing legislation, it will commit not to raise new trade barrier vis-à-vis the foreign service suppliers,
- 3 and to commit to make a sort of necessity test assessing that each new or reviewed regulation is not more burdensome than necessary to trade, to achieve the objective seek by the legislator. We can discuss more on this issue later, but I would like to precise however that WTO members, in the recently adopted disciplines on accountancy sector, have already accepted this necessity test.

Developing countries have much to gain from strengthened multilateral disciplines on domestic regulations. The development of such disciplines can play a significant role in promoting and consolidating domestic regulatory reforms, which are often needed to really attract foreign investment.

Although not rejecting a sectoral approach at a later stage, ESF believes that horizontal approach is to be preferred to a purely sectoral approach for at least 3 reasons:

- 1 it economises on negotiating effort,
- 2 it leads to the creation of disciplines for all services sectors rather than only the politically important ones,
- 3 and it reduces the likelihood of negotiations being captured by sectoral interest groups.

On the other hand, although we recognise that horizontal disciplines cannot address in the same way the question of competition, we believe that such a question needs to be address in some sectors like it has been done in the telecommunications negotiations in 1996, where WTO members adopted a so called "Reference paper". The competition principles were developed in order to ensure that monopolistic suppliers would not undermine market access commitments. Indeed natural monopoly or oligopoly may create trade problems because existing suppliers (historical public monopolies) can impede access to markets in the absence of appropriate regulation.

These principles should be generalised to a variety of other network services, including transport (terminal and infrastructure), environmental services (sewage) and energy services (distribution networks), by ensuring that any major supplier of essential facilities provides access to all suppliers, national and foreign, at cost-based rates.

D. What GATS is not about

GATS is not about undermining public services (i). GATS is not about privatising health and education services (ii). GATS is not about abolishing cultural diversity (iii).

(i) The charge that GATS will undermine public services in the WTO members is false. Article I. 3. b) clearly states that services supplied in the exercise of governmental authority are excluded from the Agreement and there has never been the slightest sign that any government wants to reopen that. The original proposal to make it clear that governmental services were not covered came from the EU and it was not controversial. We agree that the definition can be subject to interpretation and we call the EU authorities to open the debate in the WTO for a better explanation of the meaning of this paragraph. One should however not let anti-GATS movements using such imprecise definition to pretend that GATS is a threat to “public” governmental services and to employment in them.

(ii) We also have to be clear that public sector services, in health and education for example, can and almost invariably do coexist in the same jurisdiction with private suppliers without being in competition with them and therefore without losing the status of governmental services. Police services don't “compete” with the private security firms working alongside them. It is doubtful if there is a single WTO Member where public and private services do not coexist in this way, and where the public sector would not be seen as governmental services excluded from GATS coverage. Governments can – and probably will – take commitments to allow bigger market access to private security firms. For health and education, it is the same logic. It has never been in the GATS spirit to challenge public health or education services. It is however often the case that private services in these areas exist. Some countries might find beneficial for their citizens to open such market to foreign services suppliers. Indeed, there is a great demand from the developing countries to have access to modern training facilities or medical advises, for instance through the Internet. Such demand could be satisfied by the GATS own interested countries commitments.

(iii) It is neither true that GATS puts under immediate threat the cultural diversity. One should underline that under the GATS agreement, countries undertake to open only to what they want. Knowing that the quasi-totality of the WTO signatories have decided in Marrakech not to liberalise their audio-visual system, and knowing that the European Union clearly specified in the mandate for the negotiations the importance of defending the capacity to define and implement cultural and audiovisual policies for the purpose of preserving cultural diversity, it is more than doubtful that the situation in this area will change in the near future.

Understanding the political risk that such an issue might put at stake a whole trade services deal, ESF welcomes initiatives aimed at finding generally accepted, stable solutions regarding the compatibility with GATS of measures sustaining and promoting cultural diversity in relevant sectors.

Conclusion

ESF is convinced of the positive impact of the multilateral services negotiations, although it can only recognise that possible undesired side effects can always arise. However, the latter - which should be taken care of in the right way - should not hide the major positive effect of the GATS negotiations. They are not sufficient reasons to be used by not rightly informed NGOs to threaten a very useful tool to spread out sustainable development. In a world that wants to promote democracy, one should not ignore any more that the vast majority of the countries' world and of the mankind have chosen the WTO as a tool to promote economic growth. Multiple evidences of the positive benefits that trade services liberalisation brought and can potentially bring to the world can be found, either by figures, or in articles from government, academic, international institutions and private experts. They are available for instance on the web site of the World bank, the WTO, the OECD and of the European Union. ESF invites any civil society counterparts to produce clear and good faith evidences of negative effect of services liberalisation as to feed the public debate on the GATS negotiations.

III.) Contribution of Dr. Ulf. D. Jaeckel, Federal Environment Ministry Germany

“Consideration of environmental aspects in GATS”

1) Significance of GATS

Services already generate around 60 % of global GNP, and the trend continues to rise. For this reason, the WTO's GATS agreement is highly significant, both for the international economy and for the objectives of sustainable development. Given the large number of services sectors affected by GATS and the extensive opportunities for intervention into national areas of control, GATS can be seen as one of the most significant WTO agreements in terms of sustainable development and environmental protection. In particular, those sectors which are open to negotiation, such as water, energy, environmental services, tourism, public procurement and transport, in which publicly-owned companies and government regulations play an important role, deserve particular environmental scrutiny. There may be far-reaching consequences for national environmental situations and policies, the supply of public goods, and the development prospects of southern hemisphere countries.

Further liberalisation of services within the context of GATS may also have significant impacts on national government jurisdiction. In extreme cases, this could mean that environmental regulations are resolved within the context of the WTO arbitration procedure, in the light of their supposedly trade-restricting impacts.

2) Aims of future negotiations

The particular relevance of GATS for sustainability and the environment makes it essential for sustainability and environmental aspects to be taken into account in the forthcoming negotiations, in the interests of greater coherence between trade and environmental policy and compatibility with global sustainability objectives. Even at the 4th WTO ministerial conference in Doha, therefore, the need to consider sustainable development and environmental protection in the GATS negotiations should be expressed e.g. by means of an appropriate reference in the communiqué.

Future GATS negotiations should likewise incorporate environmental aspects in the aforementioned environmentally relevant sectors. Consideration should also be guaranteed via institutional means, e.g. via the involvement of the WTO Committee on Trade and Environment (CTE).

Furthermore, no further restrictions should be imposed on the scope for national and EU environmental policy. Article VI of GATS should not be altered in such a way as to further exacerbate the potential conflict between GATS and environmental policy. Further

restrictions of national regulations via corresponding amendments to Article VI of GATS should therefore be avoided.

Moreover, it would seem necessary to adapt the exemption regulations of Article XIV of GATS in line with those of Article XX of GATT. On the one hand, this will make it possible to bridge the gap between the two WTO regulatory systems. On the other, measures designed to protect resources, such as those considered by Article XXg of GATT in contrast to Article XIV of GATS, must justify exemptions from GATS provisions. One such proposal has already been submitted to the CTE by the EU Commission in autumn 2000.

Furthermore, political scope should also be created for exemptions, particularly in the area of basic (public) supplies e.g. of energy, water, waste disposal, post and telecommunications etc. If private suppliers are licensed, these basic supplies must not only be available to all citizens, but must also remain affordable for all citizens.

One key problem of the GATS negotiations is the lack of knowledge and transparency vis-à-vis its impacts on sustainability and the environment. It would therefore seem expedient for corresponding impact assessments, following on from Article XIX.3 of GATS, to be conducted parallel to the negotiations and taken into account. Some WTO member states, particularly those from southern hemisphere countries, are already calling for this.

3) Summary

The conference discussions have shown that assessments of the opportunities and risks of a further liberalisation of the trade in services may vary significantly, and a broader knowledge of its impacts on sustainable development is needed. In particular, the consequences have been inadequately assessed, and more work must be done on this aspect in future. At the same time, the Member States of the WTO must retain the option, both *de facto* and *de jure*, of determining a progressive environmental policy geared towards sustainability criteria.

IV.) Contribution of Eva Dessewffy (Bundesarbeiterkammer Österreich)

My contributions to the discussion essentially contained the following key points:

- The treatment of public services within GATS
- Decision-making scope for individual governments in the case of national liberalisation within the framework of GATS

Public services, particularly social insurance systems, are exempt from the scope of application of GATS.

- According to GATS Article 1, paragraph 3, letter b: Services which are supplied in the exercise of governmental authority are generally excluded from the definition of services.
- Moreover, “governmental authority” is defined more precisely in the Annex on financial services, paragraph 1, letter b (ii): “Activities within the framework of a statutory social insurance system or a government pension insurance”.

A country's social insurance system is a socio-political instrument. In Austria, social insurance represents a minimum level of insurance protection for the bulk of the population. This is only made possible by having a social insurance system which is defined as compulsory, because otherwise, its funding cannot be guaranteed.

As a representative of the Federal Chamber of Labour <AK>, during the course of this symposium I have come to realise that we Austrians take for granted our participation in internal decision-making processes, thanks to the partnership between trade unions and employers. This ensures that employee representatives, the Austrian trade union association and industry representatives are involved in the regular coordination of Austria's position ahead of any decisions made in Brussels. As the Federal Chamber of Labour, we and the specific ministries are kept regularly informed by reports and invited to voice our opinions and contribute our expertise, as well as protect the interests of Austrian workers. It is a path of dialogue and compromise which has resulted in social peace in Austria.

I am well aware of our privileged position in comparison with other organisations.

However, work is also in progress to ensure the greater involvement of NGOs in Austria. One problem is that this is not done regularly and therefore, consultation does not occur at a technical level, which would be essential for a proper assessment of the dimensions of GATS.

Annex:

Agenda of the Conference

Monday 21 May 2001

- 11.00 am Coffee
- 11.30 am **Welcoming address**
Tobias Reichert (Working Party on Trade, Forum Environment & Development)
Dr. Ulf Jaeckel (Federal Ministry for the Environment, Nature Conservation and Nuclear Safety)
- 11.45 am **Introduction:**
The GATS – Background, interests and status of negotiations in Geneva
Peter Wahl (WEED, Forum Environment & Development) link
- 12.45 pm Lunch
- 2.00 pm **Environmental policy aspects:**
Presentation of the study “Potential environmental impacts of the further liberalisation of the trade in services in the on-going GATS negotiations”
Elisabeth Tuerk (CIEL)
Peter Fuchs (Forum Environment & Development)
Commentary
Christine Elwell (Sierra Club of Canada)
- 3.45 pm Coffee break
- 3.15 pm **Development policy aspects:**
The impacts of GATS on the tourism sector
K.T. Suresh (Equations)
Commentary
Jolita Butkeviciene (UNCTAD)
- 6.00 pm Dinner
- 7.30 pm **Cultural policy aspects:**
GATS, culture and media
Fritz Pleitgen (WDR)
- 8.30 pm **Live music:** Son de Colonia

Tuesday 22 May 2001

- 8.00 am Breakfast
- 9.15 am **GATS and democracy**
Clare Joy (World Development Movement)
- 10.00 am Coffee
- 10.30 am **Podium debate:**
Sustainability requirements when regulating the international trade in services
Dietrich Barth (EU Commission, DG Trade)
Pascal Kerneis (European Services Forum)
Dr. Ulf Jaeckel (Federal Environment Ministry Germany)
Eva Dessewffy (Arbeiterkammer Österreich)
K.T. Suresh (Equations)
Clare Joy (World Development Movement)
Moderator: Michael Windfuhr (Forum Environment & Development)
- 1.00 pm Lunch

Simultaneous translation of the conference will be provided (German/English).

Speakers

Dietrich Barth

EU Commission, Brussels, DG Trade, National Expert

Jolita Butkeviciene

United Nations Conference on Trade and Development (UNCTAD), Geneva, Division on International Trade in Goods, Services and Commodities, Economic Affairs Officer

Eva Dessewffy

Bundesarbeiterkammer Österreich, Vienna, Head of the Foreign Trade section

Peter Fuchs

Weltwirtschaft, Ökologie & Entwicklung e.V. (WEED), Bonn, project leader for international trade and investment policy, member of Working Group on Trade of the Forum Environment & Development

Dr. Ulf Jaeckel

Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), Germany, Senior Government Advisor in Environment and Economy division

Clare Joy

World Development Movement (WDM), UK, Campaign Leader for GATS

Pascal Kerneis

European Services Forum (esf), Brussels, Managing Director

Fritz Pleitgen

Director of Westdeutscher Rundfunk (WDR), Cologne, Chairman of ARD

Tobias Reichert

Working Group on Trade of the Forum Environment & Development, project referent Trade, Environment and Sustainable Development

K.T. Suresh

EQUATIONS, India, Coordinator

Elisabeth Tuerk

Centre for International Environmental Law (CIEL), Attorney

Peter Wahl

Weltwirtschaft, Ökologie & Entwicklung e.V. (WEED), Bonn, member of the Executive Committee, member of the Working Party on Trade of the Forum Environment & Development

Michael Windfuhr

Working Party on Trade of the Forum Environment & Development, Bonn, Coordinator and CEO of GERMANWATCH e.V.