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GATS: Public Services under Pressure to Liberalize The GATS-negotiations in the WTO – A challenge for international civil society

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Foreword

International trade in services has become a central economic factor just as significant as private services in each national economy. Meanwhile this has reached nearly 60% in the industrialized countries; in the developing countries around 50% -- and rising. The General Agreement on Trade in Services, GATS, creates a legal framework for international trade in services valid for all WTO member states. The aim of the treaty, in force since 1995, is the progressive liberalization of all markets for services and calls for regular negotiation rounds.

The GATS negotiations' particular explosiveness lies in the liberalization pressure also placed on basic and public services by the overall liberalization of the service sector. Until now these public services belonged to the core of democratic national state management. If important course settings are agreed in the GATS negotiations on water, healthcare, etc., then an extensive impact on the living conditions of large parts of the population can be expected.

This gives rise to enormous fears and reservations about the GATS among those comprising civil society. The demands made by the industrialized countries on the developing countries show, that these are not unjustified. After WTO member states submitted their liberalization requests during the 2002 GATS round, they were called on to formulate their liberalization proposals on other countries, by 30 March 2003, in order to create a negotiating basis. The European Union, for example, made 94 of its 109 requests on developing countries; 30 of these were addressed to "Least Developed Countries", regardless of the undeveloped or weakly developed character of their national economies. The EU demands opening of areas that they themselves refuse to open, such as drinking water supply, environmental services and healthcare. Their requests on developing countries are aimed precisely at areas in which the countries pursue a policy of stabilization and protection of their own economies (e.g. tourism in India, retailing in Thailand, etc.) Requests are made for liberalization in drinking water supply even where very good structures already exist (e.g. Porto Allegre, Brazil or Santa Cruz, Bolivia).

An informed and critical discussion of the GATS treaty between legislatures, civil society and governments is necessary to assure democratic control of the world trade order. With this policy paper which we commissioned from the organization World Economy, Ecology and Development (WEED), the Heinrich Böll Stiftung wishes to make a contribution to this discussion.

Berlin, August 2003

Ingrid Spiller

1. *Introduction*

The process of liberalizing and privatizing basic and public services has become a focus for conflict in *both* the industrialized and the developing countries. In many places, non-governmental organizations and social movements are fighting against the prevailing trend towards the commercialization of services, a trend which they see as offering no effective solution to existing deficiencies and quality problems. Above all, however, they fear that this development will result in a further move away from the principles of justice and universal access to services, a dispossession of the poor who are often unable to afford vital services such as water, education or health (Social Watch 2003).

In this connection, a relatively new and for many people still unfamiliar subject is the *General Agreement on Trade in Services* (GATS) of the World Trade Organization (WTO). This agreement is seen, above all by the governments and corporations of the powerful WTO member states of the North, as an instrument to push through the process of the liberalization of services and make it irreversible. Although the GATS was adopted as long ago as 1994, it was not until the arrival of the new millennium and the beginning of the new round of GATS negotiations, that it became a focus of concern for critical NGOs and social movements. Thus, active campaigns are now being conducted in various European countries with regard to the GATS and its socio-ecological consequences.

The purpose of this paper is to draw the attention of yet more actors in international civil society to the GATS and make them aware of the main lines and dangers of this agreement. After placing the GATS in the context of the current round of world trade talks (Chapter 2), we proceed to outline the main legal bases of the agreement and the GATS commitments so far given by the WTO member states (Chapter 3). We then go on to consider the central issues in the current round of negotiations within the framework of the GATS, as well as the intensive lobbying of the representatives of transnational service groups (Chapter 4). After a review of the dangers and risks of the GATS, particularly for the developing countries (Chapter 5), we conclude with a presentation of the main actors and demands of the international protest movement against the GATS (Chapter 6). Annexed to the paper is a short final section containing sources of information and addresses for civil society networking.

2. *The GATS as a subject in the new round of WTO talks*

"The GATS is not simply something that exists between governments. It is above all an instrument for the benefit of undertakings" European Commission 1998

In order to understand the significance of the GATS and the present disagreements over its further development, it is first necessary to take a look at the World Trade Organization (WTO). Unlike its predecessor, the General Agreement on Tariffs and Trade (GATT), the WTO is not simply a treaty but an international organization in its own right, constituting the basis for the multilateral world trade system. While the GATT was very successful in liberalizing the trade in goods, the WTO enjoys considerably wider powers. The establishment of the WTO resulted not only in the trade in agricultural commodities being brought under the aegis of worldwide regulation - a momentous step considering its significance for the security of food supplies in many developing countries - but also other domains which had previously been entirely outside the scope of GATT:

- Intellectual property - i.e. patents, copyrights, trade marks, registered designs or geographical names (e.g. Scotch, Champagne, etc) - was protected under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in order to improve its commercial exploitation. In view of the enormous increase in the significance of knowledge and information, not only from an economic point of view but also with regard to the supply of patent protected medicines and the protection of biological diversity, the TRIPS Agreement has far-reaching implications.
- Within the WTO, the General Agreement on Trade in Services (GATS) established for the first time a legal framework for the international trade in services.
- Finally, through the establishment of a dispute settlement procedure backed up by sanctions, the WTO was endowed with a binding international law authority enjoyed by no other international organization apart from the UN Security Council. According to Renato Ruggiero, the WTO's first director general, the dispute settlement procedure was "the central pillar of the multilateral trading system and the WTO's most original contribution to the stability of the world economy". WTO arbitration decisions entitle a successful claimant to demand compensation, respectively to have recourse to retaliatory measures in the form of punitive customs duties.

The philosophy of the WTO is based on the doctrine of free trade. Its main principles are the prohibition of discrimination (national treatment and most-favoured-nation treatment) and the prohibition of quantitative restrictions on trade. Thus, the WTO Agreement is firmly dedicated to the further liberalization of the world economy. While it is true that there are numerous exceptions - particularly those which the rich industrialized countries have granted themselves - there is a constant pressure to keep the exceptions as limited as possible and to lift them finally after a transition period. In

other words, the continuous and systematic progress of the course of liberalization is such an inherent part of the regulatory structure of the WTO that it could almost be described as the "permanent revolution" of the world trade system. A central feature of this dynamic of liberalization is the constant renewal of negotiations between the WTO member states. Such negotiations are currently taking place within the framework of a new round, i.e. a whole range of negotiations on different themes brought together in a single package.

After the sensational collapse of the third WTO ministerial conference held in Seattle (USA) in December 1999, the fourth such conference was held in Doha (Qatar) in November 2001. There, a new and comprehensive round of negotiations was forced through, thanks to the persistence of the European Union (EU), in alliance with the USA and other industrialized countries. Thus, the following list of topics is to be dealt with concomitantly by no later than the beginning of 2005:

- *the new GATS negotiations*: At the time of the conclusion of the GATS Agreement in 1994, it had already been agreed that the negotiations would be resumed with effect from the year 2000. These new GATS negotiations were incorporated into the canon of the new trade round. The object of the negotiations is to remove "barriers" - or regulations deemed to constitute barriers - in the domain of the trade in services. In this way, the industrialized countries such as the EU, which dominate the trade in services, seek to have their highly competitive service companies obtain the most extensive possible access to international markets and investment centres.
- *the agricultural negotiations*: This includes not only the question of the removal of agricultural (export) subsidies in the North in order to obtain better market access for agricultural exporters but also the request for domestic agricultural markets to continue to be protected for reasons of development and food policy ("Development Box") instead of being exposed to free trade. Many civil society organizations also call for agriculture and food issues to be treated entirely outside the framework of the WTO.
- *market access for non-agricultural products*: This is included at the insistence of industry to obtain further reductions in customs duty for manufactured goods and the elimination of so-called "non-tariff trade barriers" (e.g. technological or environmental standards).
- *the WTO rules on so-called anti-dumping measures, as well as subsidies (including fishing subsidies)*;
- *Trade and Environment*: The negotiation of this complex of topics concerns primarily the question of the relations of multilateral environmental agreements (MEAs) to WTO law.
- *the TRIPS Agreement for the protection of intellectual property*: The concerns here are for further clarifications of information on geographical origin and access to medicines, a highly topical subject in the WTO.

- *implementation problems*: A long list of questions concerning problems with the existing WTO Agreement has been included at the insistence of the developing countries and these should really be the object of the WTO round. However, the industrialized countries show little sign of readiness to take these problems seriously.
- *the "Singapore Issues"*: Instead, the industrialized countries - and above all the EU - seek to have the list of negotiating topics extended to the so-called Singapore issues, namely investment, competition, facilitation of trade and public procurement. Whether or not these are to be included in the next world trade round will be decided at the next WTO ministers conference to be held at Cancun (Mexico) in September 2003. Many developing countries and civil society groups are opposed to the inclusion of such topics and the resulting expansion of the power of the WTO. They point out, *inter alia*, that the attempt to obtain an investment agreement would be to resurrect the Multilateral Agreement on Investments (MAI) which was tried in the OECD in 1998 but ended in failure (for further information see *Seattle to Brussels Network*, www.s2bnetwork.org and *Third World Network*, www.twinside.org.sg).

For a critical understanding of the GATS and its dangers, it is important to bear in mind this background to the WTO round and the related power plays and trade offs (e.g. between the negotiations regarding agriculture on the one hand and those regarding services on the other). Within the framework of the WTO round, the developing countries are pushing hard for substantial concessions from the industrialized North. However, if they do win concessions, they will come under enormous pressure to offer the North far-reaching commitments with regard to the liberalization of services. In other words, if you want better access to the European agricultural market, then first of all open up your water supply sector to European groups! Apart from this horse-trading on the basis of very different economic strengths and bargaining power, the developing countries face a big problem with the often undemocratic negotiating processes in the WTO. In its report on power politics in the WTO, the Thailand-based NGO *Focus on the Global South* produced impressive documentation to show how, before and during the WTO conference in Doha, the bringing into being of the world trade round was characterized by procedural ploys and intimidation, not to mention the exclusion of the delegations of many developing countries from the relevant decision-making processes by repeated resort to backroom negotiations behind closed doors (cf. Kwa 2003).

3. *What is the GATS about? Outline of the agreement and the commitments so far entered into by the WTO member states*

The GATS is an extremely complex agreement and, as a result of its comparatively flexible structure, the WTO members had, to some extent, accepted very varied and differentiated commitments at the end of the Uruguay round. So, what are its main provisions?

The structure of the GATS

The GATS distinguishes between *general commitments* that apply equally to all of the service sectors (e.g. the most-favoured-nation principle) and *specific commitments* (market access and national treatment) that are relevant only for those sectors in which the WTO members have carried out specific liberalization measures. Every WTO member has its specific commitments entered in a schedule of its own which is a binding element of the GATS. The country schedules are further subdivided into a horizontal part covering all of the services listed and a sector-specific part. In the country schedules, it was possible to note whether, in the liberalized sectors, there were still restrictions on market access or national treatment. In principle, this flexible liberalization concept allows the WTO members to open up their market only in such areas as they see fit.

The structure of the GATS			
General commitments	Specific commitments		
<ul style="list-style-type: none"> • Most-favoured-nation treatment (GATS Article II) • Transparency (GATS Article III) • Domestic regulation (GATS Article VI) • Government procurement (GATS Article XIII) • Subsidies (GATS Article XV) 	<ul style="list-style-type: none"> • Market access (GATS Article XVI) • National treatment (GATS Article XVII) 		
	<p>- each WTO member individually - Schedule of specific obligations (GATS Article XX)</p>		
		Market access	National treatment
	Horizontal obligations		
	Sectoral obligations (Education, health, tourism etc.)		

The principles: most-favoured-nation treatment, market access and national treatment

The most-favoured-nation treatment principle (Art. II) stipulates that trading advantages must be granted to all WTO member states equally. The WTO members must not accord the services and service suppliers of different countries less favourable treatment.

Unlike the most-favoured-nation principle, which is deemed a general obligation for all service sectors, the principles of market access and national treatment relate only to those sectors where liberalization is stipulated through entry in the country schedules.

The market access rule (Art. XVI) prohibits a whole range of quantitative restrictions on trade. This includes restrictions on the number of employees, the form of the undertaking or the level of participation of foreign interests in the share capital. For example, if a WTO member has in principle liberalized the market for waste disposal in its country schedule but has restricted foreign participation in domestic incineration facilities to less than 50% (e.g. to maintain public sector influence over the undertaking), this would represent a breach of the GATS and could give rise to a claim before the WTO Dispute Settlement Board (DSB).

National treatment (Art. XVII) requires qualitatively equal treatment of domestic and foreign suppliers with the effective aim of establishing the same competition conditions for all undertakings. The national treatment principle makes no distinction between public non-profit undertakings and private companies seeking to maximise their profits. Thus, the principles of market access and national treatment not only affect the relationship between domestic and foreign service suppliers but also aim to bring about formal equal competition conditions for all undertakings in a given country. No account is now taken of their legal form (public, private, charitable), their size or their social and environmental quality.

Classification of services

In drawing up their country schedules of specific commitments, the signatories of the GATS were guided by the classification developed by the GATT secretariat during the Uruguay round (see Table below). This classification provides for 11 main categories of services, subdivided into around 155 subsectors. A twelfth category was reserved for other unlisted services.

Classification of services in the GATS:	
<p>1. BUSINESS AND PROFESSIONAL SERVICES A. Professional services B. Computer and related services C. Research and development D. Real estate services E. Rental/leasing services without operators F. Other business services</p> <p>2. COMMUNICATION SERVICES A. Postal services B. Courier services C. Telecommunication services D. Audiovisual services E. Other</p> <p>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</p> <p>4. DISTRIBUTION SERVICES A. Commission agents' services B. Wholesale trade services C. Retail trade services D. Franchising E. Other</p> <p>5. EDUCATIONAL SERVICES A. Primary education services B. Secondary education services C. Higher education services D. Adult education E. Other education services</p> <p>6. ENVIRONMENTAL SERVICES A. Sewage services B. Refuse disposal services C. Sanitation and similar services D. Other</p>	<p>7. FINANCIAL SERVICES A. All insurance and insurance-related services B. Banking and other financial services C. Other</p> <p>8. HEALTH-RELATED AND SOCIAL SERVICES A. Hospital services B. Other human health services C. Social services D. Other</p> <p>9. TOURISM AND TRAVEL-RELATED SERVICES A. Hotels and restaurants (incl. catering) B. Travel agency and tour operator services C. Tourist guide services D. Other</p> <p>10. RECREATIONAL, CULTURAL AND SPORTING SERVICES A. Entertainment services B. News agency services C. Libraries, archives, museums and other cultural services D. Sporting and other recreational activities E. Other</p> <p>11. TRANSPORT SERVICES A. Maritime transport services 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 I. Other transport services</p> <p>12. OTHER SERVICES NOT INCLUDED ELSEWHERE</p>

In addition, the WTO members were able to draw up their schedules on the basis of four different modes of services:

1. *cross-border supply* (e.g. chargeable downloading of a music video from the website of a foreign supplier; the dispatch or transportation of various goods via post, courier services or forwarding companies; cross-border routing of telephone calls via call centres);
2. *consumption of services abroad* (e.g. study at a foreign university; hotel and restaurant services used by tourists or business travellers; use of medical treatment abroad);
3. *commercial presence abroad* (all forms of direct investment abroad, such as establishing a foreign branch, entering into a joint venture, or taking over the shares of a foreign undertaking);
4. *temporary migration of labour* (e.g. employees of transnational companies sent to various group locations; companies which send personnel abroad at salaries not covered by collective agreements).

What commitments have been entered into so far?

The previous commitments of the WTO member states have consisted essentially of liberalization measures undertaken in individual sectors on an *ad hoc* basis, leaving many gaps and significant restrictions. Basically, the level of GATS commitments entered into by a country is a reflection of its state of development. Whereas individual least-developed countries have agreed to open up their markets in only a single sector, numerous emerging countries have submitted more comprehensive schedules of commitments relating to a larger number of sectors. For example, in the Uruguay round, Tanzania entered into just one commitment in the domain of tourism, whereas, by 1994, India, had already entered into commitments for 33 different service activities in the sectors of business services, communications, building services, financial services, health and social services and tourism. More detailed information on the schedules of commitments of the WTO member states is to be found on the services pages of the WTO website (www.wto.org).

Though most of the industrialized countries have listed all the main services in their GATS schedules. here too, there remain numerous gaps and significant restrictions. While the majority have entered into commitments in the tourism sector, only a small number of countries has agreed to be bound in relation to health and education services. For the EU and its member states, there is a common schedule of commitments. However, many of the 155 sub-sectors in the GATS classification do not appear in the EU schedule and, for that reason, no commitments have been entered into in that regard. In the horizontal part of its schedule (i.e. the part comprising all services listed), the EU has registered an important exception to the effect that, in all EU member states, "services at national or local level deemed to be public functions may be subject to state monopolies or the exclusive rights of private operators". Through this clause, the EU reserves the right to restrict market access in the domain of public functions. In addition, it restricts the claim to state subsidies: "The claim to subsidies of the communities or the member states may be restricted to a legal entity established

within the sovereign territory or a particular geographical sub-area of a member state." However, these two horizontal exceptions, which are significant for the continued existence of numerous public services, are facing a challenge in the current GATS round. Various WTO members are calling for the partial or complete removal of the EU exceptions for public functions and state subsidies - a challenge which is clearly opposed by the European trade unions and civil society organizations.

4. *The current GATS negotiations and lobbying by industry*

What then are the prospects for the course of the GATS negotiations and what influence is exercised on them by those representing the interests of industry?

Secret diplomacy until 2005?

With the agreement on a new round of world trade negotiations reached at the WTO ministers conference in Qatar in November 2001, the negotiations with regard to services have entered a more intensive phase. According to the (non-binding) timetable for the GATS negotiations, market access *requests* were to be communicated by the end of June 2002 and liberalization *offers* were to follow by the end of March 2003. An interim report will be drawn up at the next WTO ministers' conference to be held in Cancun (Mexico) in September 2003. The closing of the GATS negotiations is scheduled to coincide with the end of the new round of world trade talks, the target for which is no later than 1 January 2005.

At the beginning of July 2002, the EU and a whole series of other states bilaterally sent out numerous specific requests for the opening of markets to the individual WTO member states. However, the competent ministries did not make these requests accessible to the interested public but simply produced brief summaries (see, for example, the websites of the US Trade Representative (USTR) or the EU Commission). Nevertheless, the drafts to 29 WTO members leaked in April 2002 give us some idea of the far-reaching and problematic nature of the requests put by the EU and its member states to the developing countries (see www.gatswatch.org/requests-offers.html). According to these drafts, highly sensitive sectors - such as water - were to be opened up for access by transnational service groups. For example, in its requests to Uruguay, Brazil, India and other developing countries, the EU requested the full adherence of the relevant water supply sectors to the GATS free trade rules.

On the basis of the *requests* submitted - and from March 2003 the first *offers* as well - the next stages of the negotiations in Geneva will consist of a large number of bilateral negotiations between pairs of countries. Here, the individual developing countries are all too often placed at a disadvantage, their much smaller delegations frequently finding themselves up against the massed experts and trade diplomats of an industrialized state or the joint forces of the EU. In the end, the individual results of these bilateral GATS talks will be bundled together with the results of the negotiations on the other WTO topic areas (agriculture, etc), will constitute the outcome of the world trade round.

Business lobbies have been inseparable from the GATS since the very beginning

The inclusion of services as an object of trade policy is attributable to the intensive lobbying of transnational groups and the pressure from US-American and European governing circles. In the efforts to bring about liberalization, an international coalition was formed in the GATT Uruguay round in favour of an agreement on services in the world trade system. The members of this coalition were government representatives, particularly from the USA, Europe and Japan, trade experts from scientific and international institutions (e.g. the GATT secretariat, the OECD and UNCTAD) and sections of the services industry. An important role was played by the office of the US Trade Representative, which coordinated the research and lobbying activities of the GATS coalition. Its "organic intellectuals" (to use Grimace's term) drew up the first drafts of the later text of the agreement and developed implementation strategies for the institutionalization and social legitimation of the idea of cross-border trade in services (Gill 2002).

The Coalition of Service Industries (CSI), certainly the most powerful US-American federation in this sector, came into being in 1982. The initiators were drawn primarily from the financial sector. Among its main founders were the insurance giant American International Group (AIG), the bank Citicorp and American Express. The fact is that the GATS bears all the hallmarks of US-American industry, even though a few modifications are attributable to the influence of the Europeans, who were, in any event, fundamentally in favour of the plan. The only resistance to the GATS came from the camp of the developing countries but, in the end, they fell into line with the result of the Uruguay round.

Lobbyists lead the way into the new round

Adopted in 1994, begun in 2000 and scheduled to end in 2005, the new GATS negotiations were repeatedly called for by the services industry, the representatives of which lament the fact that numerous trade barriers still exist, that the commitments entered into so far are inadequate and that they need to be improved.

At the European level, the industry has an influence on the WTO negotiations through effective lobbying with the EU Commission. In addition to the existing European associations, such as UNICE, the European Round Table of Industrialists and the numerous sector-specific trade federations, a new federation was established, the European Services Forum (ESF), the main aim of which is to influence the GATS negotiations. However, the initial impulse came not from the industry itself but from Sir Leon Brittan, the EU Trade Commissioner at the time, He had been highly impressed by the efficient and successful lobbying of the finance industry during and after the Uruguay round and decided to create his own pressure group. The ESF membership includes 47 of Europe's largest groups and 35 European umbrella organizations from a broad spectrum of the services industry. According to some figures, the ESF member companies employ 3.5 million people in over 200 countries.

On the US-American side, it is the Coalition of Service Industries (CSI) which seeks to influence the GATS negotiating strategy while, in Japan, efforts to the same end are exerted by the Japan Services Network.

A conspicuous feature of the new round of negotiations is the high level of correspondence between the interests of the representatives of US-American and European industry. Their core requests include:

- further commitments to liberalization in all service sectors
- complete freedom to establish branches abroad
- the development of domestic regulation principles which promote competition
- unrestricted cross-border mobility for key personnel
- the opening up of the state procurement market to foreign tenderers
- transparency in the granting of subsidies in the service sector.

5. *Dangers and risks of the GATS*

Faced with these demands by the business lobby, many governments in the GATS negotiations seem to be able to think of no better response than to proceed doggedly with the implementation of the positions adopted by the industry. In so doing, they ignore or neglect a whole raft of dangers accompanying the GATS or its possible extensions. Among the main problems are the following:

The GATS as a clone of the MAI (Multilateral Agreement on Investment)

A commercial presence - Mode 3 - is an economically vital element in the trade in services. At the present time, nearly three quarters of direct investment worldwide (USD 1.3 billion in the year 2000) goes into the services industry. Foreign investors would like to get rid of the various obligations imposed on them in the host countries for perfectly sound developmental and structural-political reasons. These include, for example, restrictions on the level of foreign shareholdings, quotas for the appointment of local staff or the use of domestic primary products, pressure to set up joint ventures with local firms and compliance with various labour and environmental protection laws. They also include various conditions in connection with the balance of trade and balance of payments, so as to ensure that the investments do not result in foreign trade imbalances through excessive imports of primary products and excessive foreign currency outgoings or repatriations of profits.

Additional Mode-3 commitments in the GATS would further strengthen the rights of transnational enterprises vis-à-vis the host countries and render inadmissible many investment conditions which are sound in principle. From this point of view, the GATS could be considered a clone of the ill-fated Multilateral Agreement on Investment (MAI), the negotiations for which were conducted through the OECD but ended in failure in 1998.

Access to public services

A glance at the GATS classification is sufficient to show that it covers all of the services which, in many countries of the world, are carried out by public corporations or for the account of the state, or which have just recently been (partially) privatized: posts and telecommunications, radio and television, education and health, refuse removal and sewage services, insurance for medical care and pensions, theatres and museums, libraries and archives, and local and intercity transport. Nevertheless, many misleading statements have been issued by the WTO and the EU, by ministries and politicians, according to which public services, respectively "services supplied in the exercise of government authority" are excepted from the provisions of the GATS. For example, to quote from the WTO brochure entitled "GATS - Facts and Fiction" (WTO 2001):

"Many public services are not supplied on a commercial or competitive basis and are not the object of the GATS. The Agreement excludes from its scope all services supplied in the exercise of government authority. These are defined in Article 1:3(c) as any service which is supplied neither on a commercial basis nor in competition with one or more service providers."

The assertion that many public services are excluded from the GATS because of this government authority clause is a misrepresentation. In virtually all of the service sectors listed above, competition has existed for many years between public, private or partly privatized suppliers. For example, there are both state and private schools; medical treatment is offered in public, private and confessionnal clinics; local passenger transport is effected by municipal or private bus companies; waterworks are no longer the domain of local authorities but are increasingly controlled by commercial undertakings. The list goes on and on. Thus, contrary to the assertion of the WTO, there is hardly any significant area of public service into which the principle of competition has not already made inroads.

Necessity test for state regulation

Unlike the trade in goods, so-called "barriers" to the international trade in services consist not in customs policy but in domestic regulations. Thus, the GATS requires that, as far as possible, such regulations - whether laws, ordinances, norms or standards - should not hinder cross-border trade. This requirement applies not only at national but also at regional and local level. Article VI of the GATS concerning "Domestic Regulation" calls on the competent WTO body (in this case the Council for Trade in Services) to develop disciplines to ensure that national licensing and qualification requirements and technical standards do not "constitute unnecessary barriers to the trade in services".

What is the purpose of these disciplines? In many countries, there are regulations which make the licensing of service suppliers dependent on proof of certain professional qualifications. For example, a craftsman needs to have done an apprenticeship, a doctor to have studied medicine, a teacher or a cook to have completed the relevant

training course. Such requirements represent a barrier to trade for foreign service suppliers if their lack of such qualifications results in them being refused access to the market. Similarly, market access is impeded by variations in norms from one country to another, whether with regard to labelling in the retail trade or to encryption technologies in data transmission. Finally, national licensing procedures can restrict business possibilities. For example, if the opening of branches of foreign banks is made dependent on certain equity requirements, this makes their lending more expensive. Or if only a limited number of licences is available for the representatives of foreign insurance companies, their opportunity to sell policies is reduced.

However, what does it mean for these qualification requirements, technical norms and licensing procedures to be arranged in such a way that they do not constitute "unnecessary barriers to trade in services"? The intention of the GATS to ensure that all these regulations are framed in such a way that they are neutral in respect of trade is feasible only if the WTO members proceed to approximate or harmonise their own regulations. This brings us to the key question: To what extent is such an approximation a practical proposition? A harmonization based on the highest quality standards for services is scarcely feasible on the international level. The fear is, therefore, that any such harmonization will result in *a race to the bottom*, i.e. standards would be going downhill fast.

GATS risks for the developing countries

For the developing countries, the GATS liberalization is associated with a number of special risks. It is open to question, for example, whether state regulations can be meaningful if they are inspired by the GATS motto of not establishing any "unnecessary barriers" to the trade in services. Simply on grounds of free access to essential services such as education, health or water, it may well be necessary for the state to set prices which correspondingly restrict business opportunities.

Finally, the GATS provisions regarding commercial presence can have a critical impact. The strong interest of many countries in presenting themselves as attractive locations for investment weakens their position when it comes to opposing WTO investment rules which are counter-productive in terms of development policy. How far it will be possible for them to defend perfectly sound national conditions for investment against the demands of the WTO and GATS may perhaps become apparent at the next ministerial conference to be held in Mexico. At that time, a decision could well be taken as to whether the WTO should opt for its own investment agreement.

Another uncertainty is the question of how far the request from certain developing countries (such as India) for facilities for migrant workers will produce a positive end result. For example, it is doubtful whether the remittances sent home by migrant workers can offset an ongoing shortage of skilled labour in the domestic market. This shortage is particularly acute in such basic services as health and education and, for that reason, will not be helpful in future efforts to combat poverty.

The acceptance of the GATS commitments can also mean increased exposure to the risks from the financial crises now recurring at ever shorter intervals. The GATS provisions concerning payments traffic and the free movement of capital fundamentally restrict the possibility of imposing controls on capital movements. The GATS seems to be developing into a supplementary mechanism for structural adjustments, usually associated with the credit programmes of the international financing institutions.

Finally, there are particular risks connected with the structural disadvantage at which the developing countries are placed. They do not have sufficient resources to occupy a meaningful place in the GATS negotiations and they are unable to benefit from the arbitration procedure in the same way as the major trading nations. Thus, there is the danger that any future GATS regulations will also serve primarily the interests of the exporting countries of the North. It is open to question whether this development can be modified simply through improved opportunities for participation and greater internal and external transparency of the WTO.

GATS and gender

From a gender point of view, the potential liberalization and privatization effects of the GATS create problems similar to those of the structural adjustment policies of the World Bank and the IMF. Many research papers and case studies on these structural adjustment programmes have shown that women bear the brunt of the effects of privatization and reductions in services. Faced with the disappearance of state services and the inadequacy of the market, it is above all women who have to find ways of providing their families with health care, education, food and water. Critics of the GATS further point to the negative effects that arise when the cost of education increases through privatization and the introduction of fees. Experience shows that, however small the fees, children are taken out of school and it is girls who are the first to go.

Women not only provide their families with many services but they also constitute the bulk of the work force in various service sectors. And, there too, they are the ones most likely to face dismissal in the event of privatization.

It is not yet clear how far affirmative action programme actions designed to overcome gender-based discrimination may have to be closed down because they are deemed to be trade barriers under the new GATS rules on public procurement (for additional information, see Fosse 2001).

GATS as neoliberal "lock in"

The GATS is an international framework not only for cross-border trade in services but also for the way in which such services are supplied. As such, it has an impact on national regulations in both the industrialized and the developing countries. Moreover, the GATS is also the framework for further negotiations designed to bring about "progressive liberalization". There is a heavy price to pay for any deviation from this

course, let alone a reversal. And this is a price which the weaker participants in the market are least able to pay. At the same time, the GATS is embedded in further layers of liberalization - from the local and national to the regional level of the European single market - all of which interact in various ways with each other. The main task of the GATS is to ensure that the liberalizations and privatizations already effected on other levels are established permanently, irrevocably and on a global scale. For this reason, the political scientist Stephen Gill regards the GATS as a typical "lock-in", i.e. a political and legal establishment of neoliberal practices intended to provide the undertaking with legal security for trade and investments throughout the world now and in the future (Gill 2002).

Forward, forward, never turn back: GATS as a one-way street

One of the characteristics of the GATS giving most cause for concern is the fact that once liberalization measures have been introduced, there is virtually no way of going back. If a WTO member wishes to modify or withdraw a commitment under the GATS, it must, if other members so wish, enter into negotiations for compensatory arrangements. If no agreement is reached, a member who is affected may call for WTO arbitration in accordance with Article XXI GATS. For example, if China wished to withdraw the commitment to open its market to insurance brokers, it could offer the EU concessions on environmental services to make up for the effect on its insurance multinationals such as the Allianz or Axa. If, in the unlikely event of Allianz and Co. standing aside for Vivendi and RWE, the big environmental services multinationals, the EU could, under certain circumstances, agree to this arrangement. In such an eventuality, China would have to open up its market for environmental services to all WTO members on the basis of the most-favoured-nation principle. On the other hand, if Allianz and Co. were to offer resistance, the EU could submit a WTO complaint against China. If China lost the case, retaliatory measures could follow.

What does all of this mean for developing countries that wish to withdraw from market openings but have few attractive alternatives to offer foreign investors? As the compensatory measures route would seem to be blocked, they would run a high risk of a WTO complaint.

6. Counterforces of civil society and the political demands of the critics of the GATS

Meanwhile, critics of the GATS - trade unions, NGOs, professional associations, student groups, social movements and, not least, a number of parliamentarians - have started to speak out in various countries around the world. We now turn, therefore, to a few examples of actors critical of the GATS and their demands. For further information, please refer to the addresses and websites indicated at the end of this paper, particularly www.gatswatch.org!

Social movements and NGOs

In many developing countries, protest movements are raising their voices against the neoliberal policies of national governments, international financial institutions and the WTO. And the GATS is increasingly a focus for their criticism. For example, during the period 2-7 January 2003, a seminar organized by Equations (an Indian organization) and Focus on the Global South was held in Hyderabad (India) under the title "Deepen Democracy - Cut the GATS". The seminar permitted not only a discussion between Asian NGOs and trade unions but also an exchange of experiences with European activists. It is to be hoped that such South-South and South-North discussions will take place more frequently in future with a view to developing a joint GATS strategy on the part of civil society (anyone interested in this question should refer to the contact addresses annexed below).

In Europe - e.g. in Germany, Austria and France - the anti-globalization network ATTAC has been taking up the cause of resistance to the GATS negotiations. In a position paper entitled "No sell-off of services" (*Kein Ausverkauf von Dienstleistungen*) ATTAC Germany calls for an immediate cessation of the GATS negotiations (www.gats-kritik.de). ATTAC complains particularly of the fact that the "negotiating proposals are kept secret by the EU Commission and the Federal Governments", thus deliberately obstructing a democratic decision-making process. Rather than being forced to undergo liberalization, every society must be able "to decide freely and at all times how it wishes to organize its public services (education, health and energy and water supplies)". Accordingly, it must be possible to reverse at any time whatever liberalization processes may already have been initiated.

Throughout Europe, ATTAC cooperates with groups from "Seattle to Brussels" network, including the British organization World Development Movement (WDM). Thanks to its activities, position papers and analyses of the GATS, the WDM acts as a major driving force in European civil society critical of the GATS.

Trade unions

The most comprehensive declaration on the GATS to emerge from the trade union side thus far has come from the "Global Union" international network, which belongs in turn to the IBFG (International Federation of Free Trade Unions) and a whole range of international professional associations, including Public Services International (PSI), Education International (EI) and Union Network International (UNI). The Global Unions declaration of June 2002 insisted that public services - above all education, health and mains services - should be excluded from the GATS negotiations. The freedom of domestic regulation should not be undermined and, circumstances permitting, the "necessity test" should be abolished. Even after the member states have entered into GATS commitments, they should retain the right "to extend the role of the public sector in their public service sectors without having to risk a WTO dispute settlement procedure or to offer compensatory measures in other sectors" (Global Unions 2002).

Parliamentarians get involved: the example of the "Globalization of the World Economy" commission of inquiry set up by the German Bundestag

Parliaments in Europe and elsewhere - in other words the more or less democratically elected representatives of the relevant populations - have remained generally unconcerned by or excluded from the discussions on the GATS. Nonetheless, we are now seeing the first signs of active involvement by parliamentarians in these momentous trade talks. In Germany, for example, the commission of inquiry into the globalization of the world economy set up by the Bundestag proceeded to a critical examination of the GATS, had a critical opinion prepared and, in its final report, issued, *inter alia*, the following recommendations: Only after the submission of the impact assessments of the GATS negotiations and the public discussion of their results should a decision be taken to enter into further commitments. Essential public services (including education and culture) should be excluded from the negotiations and all negotiation proposals should be "made known in good time to the interested NGOs, trade unions and associations" (Commission of inquiry 2002).

The specific demands of civil society: "Stop the GATS attack now!"

Meanwhile, appeals and position papers on the GATS from civil society actors have proliferated. By far the greatest number of supporters has been won by "Stop the GATS attack now!", an international appeal which by November 2002 had been signed by 557 organizations from 61 countries (http://www.polarisinstitute.org/polaris_project/public_service/gats/english_sign_on.htm).

The appeal calls for:

- an immediate moratorium on the new GATS negotiations;
- a comprehensive analysis of the consequences of the present GATS system and of the newly planned GATS rules on domestic social, environmental and economic policy;
- the determination of the role and responsibility of governments for the provision of public services to secure the fundamental rights and needs of their citizens in accordance with the Universal Declaration of Human Rights and the UN treaties established on that basis;
- the striking out of Article VI of the GATS and the setting up of working groups on domestic regulation;
- the protection of public services (e.g. health care, education, social security, culture, environment, transport, housing, energy and water);
- specific promotion and financial support for the expansion and strengthening of public services, particularly in the developing countries;
- the development of mechanisms for civil society to play an effective part in international trade and investment policy;

- the securing of the rights and responsibilities of governments with regard to the passing of laws and regulations which serve to protect health and the environment, to combat poverty and to promote social welfare.

Finally, the supporters of the "Stop the GATS attack" call on governments to put an end to the attempts of the IMF, the World Bank and the multilateral development banks to pressurise the developing countries into privatizing public services, particularly in the domains of education, health and water.

7. *Service pages: bibliography and other information sources*

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World Development Movement (WDM)/Seattle to Brussels Network 2001: GATS and Democracy, London/Brussels, www.wdm.org.uk/cambriefs/gatsdemo.pdf

WTO 2000: Guide to the Gats: An Overview of Issues for Further Liberalization of Trade in Services, 704 S., Kluwer Academic Pub, Dordrecht

WTO 2001: WTO, GATS – Facts and Fiction. Geneva, www.wto.org

Official information:

World Trade Organization (WTO) - GATS pages

http://www.wto.org/english/tratop_e/serv_e/serv_e.htm

EU Commission, DG Trade - GATS information and consultation process

http://www.europa.eu.int/comm/trade/services/index_en.htm

Civil society information:

www.gatswatch.org

(excellent source for further links, information on civil society actors, official documents, sectoral information and campaign news!)

Websites relating to the GATS:



ATTAC International & ATTAC Germany's GATS-site

www.attac.org

www.gats-kritik.de

Citizens' Network on Essential Services (CNES)

<http://www.ServicesForAll.org>

World Development Movement:

www.wdm.org.uk/campaign/GATS.htm

„Stop the GATS-Attack“-Call:

www.polarisinstitute.org/polaris_project/public_service/gats/english_sign_on.htm

International Gender & Trade Network On-line Learning Project: GATS

www.genderandtrade.net/EconoLit/Literacy.html

International civil society organizations critical of the GATS:

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Heinrich Böll Foundation

The Heinrich Böll Foundation, affiliated with the Green Party and headquartered in the Hackesche Höfe in the heart of Berlin, is a legally independent political foundation working in the spirit of intellectual openness.

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The Foundation also provides support for art and culture, science and research, and developmental cooperation. Its activities are guided by the fundamental political values of ecology, democracy, solidarity, and non-violence.

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