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Institute for Agriculture and Trade Policy

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Five danger signs

The GATS assault on sovereignty and democracy

As negotiations on the Doha Agenda at the World Trade Organization (WTO) head into the final stretch, it is essential that all countries, especially developing countries, take a closer look at the key danger signs on the horizon in the General Agreement on Trade in Services (GATS) negotiations before making any commitments.

With the establishment of the WTO at the end of the Uruguay Round, the GATS was put into operation in 1995. The major economic powers were the driving forces behind the GATS, particularly the U.S. and the EU where transnational corporations specializing in service exports were based. Their objective was and is to obtain better access to other countries services markets as well as a legal framework that would secure their investments and acquired property rights. Another long-term objective for the private companies pushing the GATS is to privatize public services. Education, health, pension systems and water are among the services that are still mostly public, particularly in developed countries; all are services in which private companies have an interest.

During the Uruguay Round negotiations, developing countries believed that the Agreement on Agriculture would solve some of the worst problems in agricultural trade, in particular dumping, and secure them better access to developed countries markets. In effect, this was meant to be the trade-off for liberalizing their services under the GATS.

Soon after the Uruguay Round ended, however, developing countries realized that none of the promises made to them by the developed countries were going to be realized. As it turned out, many concessions made under the Uruguay Round, such as the establishment of an agreement to liberalize trade in services, had been given for nothing. Furthermore, developed countries' governments used the GATS to commit their unilateral liberalization of a number of services to an international legal framework, which gave services corporations the assurance that such policies would be hard to reverse.

A new round of negotiations in services liberalization began in 2000, although WTO members agreed during the Uruguay Round that any further liberalization in services under the GATS framework had to be preceded by an assessment of potential effects. Yet, no such evaluation has been undertaken. Many experiences of services liberalization and consequently privatization in

developing countries—mostly undertaken as a consequence of IMF and World Bank conditions on financing—failed to show the promised results. Nonetheless, developed countries continue to promote services liberalization as a positive avenue. With the agreement of WTO members to launch a completely new round of global trade negotiations in Doha (2001), the GATS negotiations were integrated into what is now called the Doha Agenda.

Until 2005, services negotiations within the overall negotiations did not receive much attention. During the Cancún Ministerial Meeting in September 2003, services negotiations were largely unnoticed; it was the agriculture negotiations and the heated debate over Singapore Issues (especially competition and investment) that dominated debate. Since then, however, negotiations have moved increasingly away from a “development round” focus to a clear market access agenda, and services negotiations have taken prominence in what remains of the Doha Agenda.

Recently, the demands for concessions in the liberalization of services have become a trade-off for concessions to eliminate agricultural subsidies and tariffs. A number of developed countries, including the U.S. and the EC, have made it clear that they are not prepared to eliminate or reduce elements of their support to agriculture (whether export subsidies, domestic support or tariffs) unless developing countries are ready to make substantial market access commitments in services (and nonagricultural market access). Besides raising the question of whether such a trade-off is worth it, this bargain also begs the question: do countries understand the full implications of what services liberalization under the GATS implies?

Since the Cancún Ministerial an understanding has emerged among a number of analysts that although most developing countries do not have a well-developed services sector, the sector plays a vital role in the national economy. Commitments made under the GATS could well have negative effects for their development. The simple trade-off approach promoted by many developing countries dismisses the linkages between services and agricultural and industrial production. For instance, trading off services for agriculture might inadvertently cripple agricultural potential, or leave some of the most profitable areas of agricultural production, processing and distribution to foreign firms, with limited potential for local capital formation and circulation.

So far, most of the public education and campaign activity on the GATS has been focused on the defense of public services. Little attention has been given to other sectors, such as finance and energy, environmental services, telecommunications, or transport and logistics services, which are often of prime interest to transnational corporations based in developed countries that are expanding their global operations. The full implications of liberalizing these services, in addition to the analysis of public services, need to be properly assessed if all countries, especially developing countries, are going to make the right decisions about the GATS negotiations.

Services negotiations since Hong Kong

Since the Hong Kong Ministerial Conference in December 2005, a new phase of negotiations has started. Plurilateral negotiations have been added to the existing use of bilateral negotiations for GATS. These negotiations take place among groups of countries, rather than between two parties. By the end of February 2006, some 20 plurilateral requests had been tabled, mostly by so-called “Friends groups” towards mostly emerging developing countries. Friends groups are defined as a group of WTO members who have an interest in services liberalization, both within their own countries and in the countries targeted with a request. Countries asking for liberalization are called *demandeurs*. Among these countries are all the OECD countries, including Mexico, and a few developing countries, such as Chile, and in some GATS areas, India.

Countries targeted are the larger emerging developing countries. They have relatively few requests for liberalization but face far-reaching collective requests from the first group of *demandeurs*. This category includes countries such as Brazil, Argentina, Colombia or Venezuela in Latin America; South Africa, Nigeria, Kenya, Egypt and Morocco in Africa; and Thailand, Indonesia, Malaysia, Philippines, and China in Asia. India is closer to this group of receiving requests in some sectors under negotiation.

While developed countries initially were eager about this new plurilateral approach, reality has proven that this mode of negotiation does not necessarily lead them to far reaching services liberalization commitments. Already the second cluster of services negotiations in 2006 included some bilateral negotiations as well. The third services negotiation cluster (now scheduled for the second week of July) is expected to include both bilateral and plurilateral negotiations.

The time has come for developing countries and concerned civil society organizations to take a fresh and critical look at what could happen to services sectors, to national sovereignty, policy space and democracy under the GATS. The following is a hit list of five dangers associated with the GATS regime and the current round of negotiations on services.

Danger #1

Locking-in autonomously liberalized service sectors

Most developed countries acknowledge that far-reaching services liberalization will not be achieved in the Doha Agenda, not least because few of them are offering anything meaningful to developing countries in the negotiations on agriculture. Under these circumstances, developed countries have indicated they would like developing countries to at least commit to what they call “autonomous liberalization” of services under the GATS. Autonomous liberalization means that on a national level a country has already liberalized a particular services sector, which allows foreign investors in. But developed countries are asking that countries that have implemented “autonomous liberalization” to also make that same commitment under the GATS—an internationally binding agreement that makes investing companies more comfortable. During the 1980s and 1990s, many developing countries were forced to liberalize what had been public service sectors such as water, energy, transport, telecommunications, education and health to secure loans from the World Bank and IMF. Also other important sectors such as financial services have undergone liberalization processes.

The World Bank and related institutions cited econometric models to justify these policy conditionalities, arguing that liberalizing services is beneficial. But peoples’ experiences on the ground often tell a different story. In too many cases, these liberalization processes have led to price increases without corresponding improvements in service quality. Access to essential services has worsened, especially for people living in poverty. The mainstream econometric models do not even include employment effects arising from liberalization; they only measure consumer benefits, measured as access to cheaper services. And in practice, even these benefits have too often failed to materialize, or have been confined to only a small group of the population.

Therefore, “locking-in” the autonomous liberalization of services and market access for foreign-based service corporations through the GATS will neither enhance development goals and priorities in developing countries nor truly address the needs and concerns of citizens. It will only constitute the giving away of needed policy space for getting hardly anything in return.

Danger #2

GATS: An investment regime to protect investors’ rights

The GATS is essentially an investment regime. Mode 3—allowing commercial presence of foreign companies, coupled with the rest of the GATS rules proposed in domestic regulation, constitutes a full scale investment treaty. It is designed, first and foremost, to protect investor rights and to pry open markets in the service sectors of other countries for foreign-based service corporations. The GATS is a multilateral investment treaty (another MAI multilateral agreement on investment)

This is why big business lobby machines like the U.S. Coalition of Service Industries and the European Forum on Services, which represent the major for-profit corporations in key service sectors,

are pushing hard behind the scenes for developing countries to make commitments now. During each of the services cluster sessions, large delegations of services industry representatives show up in Geneva to advocate the benefits of liberalizing various service sectors of developing country economies. More recently, this kind of corporate lobbying pressure has focused on national capitals.

Lobbyists for services corporations try to convince developing country officials that investment will come only if they commit certain service sectors of their economies under the GATS regime. However empirical evidence shows that there is no linkage between committing services sector under the GATS and investments coming in. Without the protections sought by the GATS negotiators for their commercial service firms, these corporations have aggressively bought up formerly publicly owned and managed services companies in sectors such as telecommunications, energy (gas and electricity), water delivery, transport, and waste management in developing countries. But what GATS adds to the investments already made by transnational services companies is the protection of an internationally binding agreement.

In the case of Brazil, much of the investment in the services sector during the 1990s happened without any commitment made under the GATS. On the other hand Jamaica, who had committed several its service sector in the Uruguay Round, is still waiting for new foreign investment. When talking to government officials of developed countries, they too clearly express this dilemma and emphasize that committing one's service sectors does not guarantee that there will be increased foreign investment. All of this substantiates the fact that the main aim of services liberalization is to secure investors rights.

Experience has shown, that liberalizing services without the proper regulatory institutions in place can be disastrous. Most developing countries are still in the process of building up such institutions. Until those are in place and working, developing countries should refrain from commitments under the GATS. Most analysts attribute the relatively successful case of telecommunications liberalization in Brazil to the strong regulatory framework within which the liberalization was carried out.

There are many cases where negative experiences with private provision of essential services have led to popular resistance and in some cases companies being forced out. Yet, with the GATS, not only do service transnational companies hope to get a more conducive environment to acquire local service companies, but also to make this process "effectively" irreversible. Once a services sector is committed, any withdrawal of a commitment has to be compensated either by committing another service sector or paying the potential loss of export potentials.

At the fifth ministerial in Cancún, developing countries united behind a campaign to reject the proposals of the EC and other developed countries to insert an investment treaty in the WTO. The so-called Singapore issues, which included calls for investment treaty negotiations, were dropped from the Doha agenda. Why, then, are WTO members considering what is for all intents and purposes an investment treaty in the form of GATS?

Danger #3

Restricted policy space and reduced regulatory powers

One of the cornerstones of democratic societies is the ability of elected governments to make public policy decisions and laws in relation to services (and other areas) affecting their own populations. The right to regulate and maintain policy flexibility is essential for each sovereign country and even more for developing countries so they can advance their development priorities.

Although the preamble to the GATS (Article I.3) acknowledges the right of governments to make policies and regulate services in the public interest, the architecture of the GATS actually seeks to restrict the policy making space of governments. Just as liberalizing trade in goods requires getting rid of tariffs, so liberalizing trade in services means eliminating regulations. The name of the game is to get rid of "burdensome" regulations, such as investment rules, qualifications and licensing requirements and procedures. These rules and regulations are mostly put into place by local, regional or national governments to promote and protect service needs and priorities, which include quality, coverage, price and other objectives such as employment and environmental questions.

The GATS provisions on domestic regulation challenge the right of elected governments at any level (local, state, federal) to set and enforce these standards. These provisions provide tools that allow one WTO member to challenge another WTO member's laws and regulations. So once a services sector is committed under the GATS, the GATS rules are bound to affect the policy making space of governments. Such experiences are familiar under regional trade agreements, such as the North American Free Trade Agreement (NAFTA) which locked in this kind of investor rights.

Article VI.4 is a mandate to negotiate new GATS provisions that could broadly undermine the right to regulate. Despite a "right to regulate" in the preamble to the agreement, regulations can already be found to be GATS violations as was proven in the *US-Gambling* case. Proposed new GATS restrictions would allow successful challenges to regulations merely because they were considered "unnecessarily" burdensome to business.

With the existing rules in place, WTO Members have the right to challenge unwanted laws, policies and programs through the dispute settlement process. If a dispute settlement panel of the WTO rules that a particular country is in violation of WTO rules, the sanctions imposed can be so serious that countries change their measures.

In the ongoing negotiations on domestic regulation, some developed countries strongly advocate the establishment of a so-called "necessity test."

Under the proposed necessity test (aggressively promoted by Switzerland, New Zealand, Hong Kong China, Australia and Mexico among others), governments would have to prove that a certain public policy or piece of domestic legislation is not

“trade distorting” or “more burdensome than necessary.” Although consensus has not been reached on the proposed necessity test and there are counter proposals by developing countries to make Article VI.4 more development friendly and to exclude a necessity test, the danger that governments’ regulatory powers will be undermined remains clear and present.

If a “necessity test” were included in the GATS, parliaments and municipal councils might find the regulations they authorize overturned by WTO dispute settlement panels. Indeed, some Article VI.4 proposals before the WTO go so far as to require that member states submit proposed legislative and regulatory measures to other WTO member states for comments before they are voted on by national parliaments. The U.S. advocates the inclusion in GATS rules of “prior comment” on future rules and regulations of a WTO member. This implies WTO members would have the right to comment on another member’s proposed legislation as it might affect their companies’ ability to export, before the WTO member’s own democratic institutions decide on proposed law.

What’s more, the WTO has binding enforcement mechanisms. If a dispute settlement panel of the WTO rules that a particular country’s laws, policies or programs are in violation of the GATS rules, those laws, policies or programs can be struck down. Once a judgment has been brought against a particular member’s laws or regulations, that member is ordered to either change its legislation to comply with the GATS or to eliminate the provision altogether. If the country fails to comply, then other WTO members can punish the member in question with economic sanctions.

As a consequence, the GATS rules and WTO enforcement mechanisms could put severe constraints on the policy making space of governments. This includes all levels of government: federal, state or provincial, and municipal governments. Even though it is national governments that participate in the WTO, all levels of governments within member states are obligated to comply with the WTO rules and disciplines.

Danger #4 **Overstating gains for developing countries**

To get more developing countries to make substantial commitments in services during the Doha negotiations, developed countries have offered some carrots. One of those carrots is Mode 4 of the GATS, which has to do with short-term visas to allow foreign workers to live and work in a WTO member state (referred to at the WTO as the movement of natural persons). Some developing countries have been pressing developed countries to relax their immigration laws to permit skilled workers from developing countries to work in developed countries in certain service industries.

For some developing countries, this is an attractive opportunity. Sending skilled workers overseas to work in the service industries of developed countries can result in important revenues for their economies. Wages are often significantly higher in developed countries, generating large sums in remittances that are sent back home to families. This money is spent in the local economy and contributes vital capital for development.

There are, however, some real downsides to using Mode 4 as a bargaining chip in the GATS negotiations. Governments like that of the U.S., for example, have no mandate or political authority to make substantial offers in Mode 4. After all, immigration issues are very sensitive politically and are fiercely debated in Congress. There is already an intense and emotional debate in the U.S. Congress about how to address the still growing numbers of legal and illegal migrant workers from Mexico and Central America. The USTR is in no position to make promises that Congress will relax restrictions even for short-term visas for foreign workers.

More importantly, “exporting” skilled labor has significant costs for development. Even if real gains were made for the interested developing countries under Mode 4, the migration of skilled service workers carries the cost of a brain drain. Developing countries are thereby carrying the cost of training skilled workers and then losing them (and their taxes) to developing countries. Remittances offer some financial return, but they do not replace the lost skills. This is particularly the case for services areas in which skilled and trained people are needed back home, such as health, education etc. The process undermines the ability of developing countries to build strong service sectors for their own people’s basic needs. These costs have not yet been adequately assessed.

Danger #5 **Agricultural Trade-Offs**

Conventional wisdom has it that there could be a trade-off between the concessions that industrialised countries make in agriculture and the concessions that developing countries make in services (and nonagricultural market access). What tends to be overlooked is that there are strong linkages between the two sectors.

Various services sectors are directly linked to food production, including distribution (e.g., supermarkets), finance (e.g., banks and the issue of provision of agricultural credit) or infrastructure (water, energy, transportation). All of these services, it should be noted, are at the top of the list of collective requests by developed country *demandeurs*, who want these sectors opened up to transnational service providers. Liberalizing these services sectors (or committing them in case they are already liberalized) under the GATS without clearly understanding the potential impacts on the agricultural sector could have major negative impacts on food security and agriculture, especially in developing countries.

As the agri-business food chain complex expands to cover the globe, there are increasing demands for transnational service suppliers to be in place in strategic sectors. Agri-business is certainly one of the business sectors today that have a major interest in service negotiations at the WTO. Some agri-business corporations have substantial operations in both agriculture and services (e.g., Cargill is not only engaged in soybean trade but also transportation operations to bring Brazilian soybeans to its beef processing factories around the world).

As a result, it is quite possible that control over both agriculture and certain key services in developing countries could end up in the hands of the same corporations through the GATS and agriculture trade negotiations.

Which way forward?

Given the empty promises of the GATS regime in relation to development priorities and strategies and given the many negative impacts to date for both for services provision and the right to regulate, developing countries should:

Use the existing flexibilities of the GATS agreement by making no commitments in this round—even not in those areas in which they have undertaken unilateral (also called autonomous) liberalization. The effective loss of policy space is too large, especially when no progress is being made towards an agricultural agreement that really embraces development needs and ensures a substantial reduction—and the ultimate elimination of—dumping.

- Undertake a comprehensive assessment of the employment, social, environmental, cultural and other developmental impacts of the liberalization of services in their economies (regardless of whether services liberalization happened due to agreements with the World Bank or IMF, or under multilateral or regional/bilateral trade agreements).
- Conduct in-depth studies to better understand the linkages between the services sector and the agricultural and industrial sectors to identify the potential dangers of trading off one sector for another.
- Support proposals in the area of domestic regulations negotiations that aim at securing policy space for developing countries for the future. This would include strong opposition to the introduction and use of a "necessity test," or anything resembling such a mechanism.
- Craft domestic strategies for the development of services sectors that ensure that human rights and basic human needs are met as the first priority.

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