



GATS and Women

Marceline White, Women's EDGE

Although the World Trade Organization (WTO) ministerial failed to produce a new round of trade expansion, prior commitments made by countries in the Uruguay Round (which launched the WTO in 1994) meant that negotiations would continue in 2000 to liberalize both agricultural trade and trade in services. The WTO General Agreement on Trade in Services (GATS) could have enormous implications for domestic laws, for developing countries, and for sustainable development, particularly for women living in poverty in developing countries. Renato Ruggiero, former WTO director-general, said it best, stating that "the right of establishment and the obligation to treat foreign service suppliers fairly and objectively in all relevant areas of domestic regulation extend the reach of the agreement into areas never before recognized as trade policy." Ruggiero continued, adding, "I suspect that neither governments nor industries have yet appreciated the full scope of these guarantees or of the full value of existing commitments."

GATS is the first multilateral, legally enforceable agreement covering trade and investment in services. It was adopted in 1994 and applies to all WTO members. The GATS agreement contains built-in obligations to continuously expand and deepen coverage of services through regular negotiating rounds that extend the rules and increase country-specific commitments. This built-in commitment to further liberalization means that, as currently constructed, GATS is a one-way road to greater commercialization of services.

Services are often defined as anything that you can't drop on your foot. They include things like health care, education, tourism, and energy. Under GATS, the distribution of a good also counts as a service, because the distribution is a service. Consequently, supplying water to a community is a service, even though water is a good. In many countries, the state has traditionally provided (either directly or through nonprofit agencies) services such as education and health care for its citizens to ensure that these services remain affordable and accessible.

Under GATS, the definition of service is ambiguous. According to GATS Article 1.3(b), only government services that are "supplied neither on a commercial basis nor in competition with one or more service suppliers" may be excluded from GATS coverage. Since most government services involve both competition and com-

mercial provision, they wouldn't be excluded. In a recent briefing session, the U.S. trade representative (USTR) legal counsel for GATS agreed that on a plain reading, public services such as health care, education, energy, and the provisioning of water would all be included in the GATS purview. However, this interpretation is not universally shared. In the UK, for example, the Department of Trade and Industry has stated that public services are exempt from the above definition. As these vastly different interpretations demonstrate, negotiators are moving forward without a clear understanding of what is covered under GATS.

Specifically, the scope of GATS includes all measures affecting trade in services. A "measure" can refer to virtually any government law, regulation, policy, procedure, or administrative action that may inadvertently or indirectly affect the supply of a service. The definition and range of services is so broad that local content requirements, the hiring of local workers, the hiring of minority or women workers, and community reinvestment programs could all be challenged under GATS as barriers to trade. Some policy specialists have even suggested that government incentives (for example a tax break if you hire local workers) that apply to local and foreign providers could be challenged on the grounds that they discriminate against similar services provided via the Internet.

All GATS members agree to Most Favored Nation (MFN) treatment and transparency. MFN means that governments must provide equal treatment to all foreign service suppliers. Currently, transparency commitments simply require governments to publish their liberalization schedules for various industries and sectors, but the U.S. is pressing for countries to identify domestic regulations that may be trade restricting.

National treatment rules and market access provisions only apply to sectors that governments have written into their schedules of commitments. National treatment means that a government must provide foreign service suppliers equal treatment with domestic service suppliers. Market access obligations prohibit numerical limits on services or service suppliers, even if a regulation applies to both national and foreign suppliers (i.e., is nondiscriminatory). An example of a market access violation would be a limitation on the number of tourism operators in a conservation area.

Domestic regulations are a veritable Pandora's box within GATS. Government regulations cannot restrict trade any more than is necessary to ensure the quality of service being provided. Many domestic regulations could be challenged as being unnecessarily trade-restrictive, and the decisions would be rendered by WTO trade panels. Regulations that are not covered by MFN,

Key Points

- Since last December, members of the World Trade Organization have continued negotiations to expand the General Agreement on Trade in Services (GATS).
- GATS aims to dramatically expand the ability of multinational corporations to provide services on a for-profit basis and creates a new regulatory framework for trade in services.
- GATS is likely to have a disproportionately negative impact on women, particularly women in developing countries.

national treatment, or market access rules could still be challenged under the domestic regulations rules. GATS could effectively cede local, state, and federal decision-making authority to WTO trade panels. This is particularly troubling, since public officials are more accountable to their constituents and tend to craft policies that attempt to balance public welfare with private sector interests. To date, the WTO trade panels have demonstrated no such balance.

The GATS negotiations are structured in a complicated way. General obligations, such as MFN status, apply to all services. Specific commitments, such as national

treatment and market access, only apply to service sectors that countries agree to list on a schedule. During negotiations, countries request commitments from other countries and offer their own commitments.

In December 2000, member countries completed their proposals for the rules and approaches that should guide the next round of negotiations, which may begin as early as March 2001. The U.S. has been aggressively advocating that this "request and offer" phase of negotiations conclude by 2003. The U.S. suggestion has been rejected by developing countries as well as by the European Union (EU).

Problems with Current U.S. Policy

In December 2000, trade negotiators crafted the U.S. negotiating proposal for GATS. USTR Ambassador Charlene Barshefsky called it "the most ambitious set of service liberalization proposals ever developed."

It makes sense that the U.S. proposal is so ambitious. In the U.S., services are big business. In 1999, U.S. service exports totaled \$255 billion. GATS negotiators believe U.S. companies have an advantage in providing services and hope to create new opportunities for these companies through GATS. The agreement will assist multinational corporations in gaining entry to developing country markets both by reducing the various regulations that a company must comply with in order to do business in a country and by enabling commercial companies to compete with public sector and nonprofit service providers. The U.S. has been aggressively pursuing deeper commitments, additional sectors, and more discussion on what domestic policies might be "trade restricting." Conversely, developing countries have been proceeding with caution.

For many developing countries, the process of negotiating commitments and rules regarding GATS is fraught with difficulties. Many developing countries have just begun to support and expand their fledgling service sectors. Yet the process of scheduling commitments requires that developing country negotiators become soothsayers: predicting what sectors their country may become competitive in and where they may benefit from the entry of foreign service providers. Moreover, because few developing countries have strong service sectors, they are at a disadvantage in negotiations, because there are few areas where they have a comparative advantage. In effect, GATS has opened up developing country sectors to U.S. corporations without providing any commensurate benefits for developing countries. In fact, developing country efforts to increase labor mobility within GATS have prompted strong resistance from the United States. In its current form, GATS eases the ability of capital to flow across borders while retaining strong curbs on the ability of workers to access jobs in other WTO member countries.

The national treatment and market access rules of GATS, as well as the domestic regulations that could be scrutinized as trade restricting, place developing countries in a legal straitjacket: the rules lock countries into commitments that may not reflect their future needs. They also lock countries into a commitment toward increased liberalization, whether or not future democra-

tically elected governments agree with this economic model.

It is important that negotiators make commitments wisely, because the stakes are high. Under GATS, any commitment, once taken, is virtually unalterable. Specific commitments may not be modified for three years, and, should a country decide to change its commitments, the country would have to financially compensate other members who were harmed by the change. Thus it would be difficult even for the U.S. to afford to change its commitments, and it would be virtually impossible for developing countries to do so.

Yet, as countries continue to negotiate GATS, it may become too costly not to alter commitments and rules. GATS will have a profound impact on development issues, particularly for poor women in the developing world. Education, health care, and water are being transformed by GATS (and the logic of globalization) from "rights" into "commodities."

Trade negotiators argue that privatizing the public sector and forcing public providers to compete with for-profit firms will lead to more efficient service delivery, a greater variety of service providers, and ultimately, higher quality services. History suggests otherwise. Chile has privatized and opened its economy more than many WTO members. When primary health care service was transferred either to municipalities or to the private sector, the quality of hospitals, beds, and preventative health programs declined. This led to more emergency consultations, longer waiting lists for hospitals, and a higher incidence of infectious diseases.

Similarly, as part of its Uruguay Round commitments, Chile agreed to national treatment of its education sector and the withdrawal of the state from public education. According to the Chilean Alliance for Responsible Trade, public universities have been forced to enter into a dynamic of competing for students with lower aptitudes and scrambling for reduced public financing. Profound inequalities have developed in Chilean primary and secondary schools in terms of access, quality, and resources allocated by the state.

Key Problems

- U.S. negotiators are promoting a corporate-driven agenda that neglects the asymmetries between countries.
 - GATS rules threaten to undermine national sovereignty and sustainable development goals.
 - Liberalizing services has particularly pernicious and differentiated impacts on women in the developing world.
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For women, the Chilean example is particularly salient. Services are an important sector for women, both as workers and consumers, and services offer a growing source of employment for women in developing countries. GATS may increase the need for women service workers in data processing, tourism, and banking. Yet, these occupations seem to become increasingly casualized as they are exported. Educated, computer-literate women constitute the majority of workers who process data in India, Jamaica, and Mexico. But employers are creating export processing zones (EPZ) for data processing, which tend to be associated with poorer working conditions and wages.

The public service sector has been associated with more highly skilled and waged jobs for women. These public sectors include areas such as health care, education, and social services. Women have often worked as nurses, doctors, administrators, teachers, and social workers. However, GATS (as well as World Bank and IMF plans) calls for privatizing the public service sector and allowing foreign firms to compete as service providers. Women workers have been the first shed under privatization plans. In 1991, after Nicaragua agreed to an IMF privatization plan, it shed government workers, particularly in the health and education fields. More than 70% of those laid off were women. Worldwide, new jobs in the health care and education sector tend to command lower wages and increasingly casual, temporary, or contractual labor with few benefits.

Regarding consumers, the privatization of the health sector has often led to declining health outcomes for women. The 1995 UN Human Development report states that in Zimbabwe, after user fees were imposed, maternal mortality increased. Pregnant women would

not see doctors, because they could not afford to pay the fees. Moreover, including health care in GATS may lead to reduced access to health care for the rural poor and underserved populations. For-profit firms are less likely to serve rural areas where poverty is often higher, and, if forced to compete with for-profit firms, public health services may decline as well. For-profit firms may engage in "cream skimming," accepting patients that are relatively healthy, leaving those who have serious health problems (and can't afford to pay for the best care) to public health centers, thereby increasing the burden on their staff, equipment, and facilities. Since women constitute the majority of the poor in developing countries, they would be most affected by this declining standard of health.

Water privatization may also be included in the GATS negotiations and be opened to for-profit firms. Obtaining water is often part of women's daily household work in low-income countries, where women and girls spend an estimated 40 billion hours every year hauling water from distant and frequently polluted sources. If water is privatized and the price of water is exorbitantly high for poor families, women may resort to either rationing allocations for their families or substituting unsanitary water when necessary. Unclean water is a leading cause of child mortality and illness in developing countries.

For Tanya Paredes, water privatization in Bolivia forced a personal choice between food and water. Paredes, a mother of five, saw her water bill rise from \$5 to \$20 a month. That \$15 increase had previously been the means to feed her family for a week and a half. To pay her water bill, she had to reduce the amount spent on food and clothing for her family.

Toward a New Foreign Policy

The expansive framework of GATS encroaches on traditional social welfare issues and development goals. As

Indian economist Amartya Sen notes, "the ability to participate in the market economy is radically influenced by social arrangements for education, health care, microcredit, land reform, and other public policies." Trade agreements and trade negotiators must recognize that social development and social welfare are inextricably linked to economic development.

To better integrate the concerns of developing countries, particularly those of women, the USTR should reform its consultative process. Currently, the

USTR has an interagency process to convene staff from different government agencies to develop U.S. trade negotiating positions. However, in a recent General Accounting Office report, USTR officials conceded that "they do not always have the breadth of perspectives or information needed to advance U.S. positions."

To rectify this oversight, the USTR should appoint a gender and development specialist to the Advisory Committee of Trade Policy & Negotiations (ACTPN) and to the Industry Sector Advisory Committee (ISAC) on services. In addition, the USTR should establish a new Trade, Gender, Development Policy Advisory Committee (TGDPAC) to provide policy advice on issues involving gender, development, and trade. The TGDPAC should advise the USTR on all current and future trade negotiations as they pertain to gender and development issues.

The USTR must also initiate the analytical work to better understand the nexus between gender, development, and trade issues. A recently approved government document, *Women in the Global Economy: Framework for U.S. Government Participation in International Fora*, calls for "the widespread collection and use of sex-disaggregated labor market statistics and gender-impact analysis by all policymaking and policy impacting agencies." The USTR should implement this framework by initiating a gender and development social impact review of the current GATS regime and of the proposed changes and additions to GATS before proceeding with negotiations.

Most importantly, the USTR should implement a prodevelopment agenda within GATS to ensure that

Key Recommendations

- The USTR should reform its consultative process to incorporate gender and development concerns into its trade policymaking.
 - Rules governing international labor mobility should be liberalized.
 - The USTR should support a prodevelopment agenda for GATS that would include encouraging safeguards for developing countries and exemptions for health care, public education, water provisioning, and other public welfare needs.
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developing countries truly benefit from the negotiations, and it should work to reformulate GATS as a policy to achieve sustainable development goals. To accomplish these goals, the USTR should modify several of its GATS negotiating positions.

1. The USTR should support the establishment of safeguard measures. Developing countries have sought to establish rules for safeguards or emergency actions to provide temporary protection from other members' products that may injure domestic producers. Safeguards are an attempt by developing countries to protect some domestic service suppliers who may otherwise have difficulty competing with multinational corporations. Currently, the U.S. negotiators see no need for safeguards. U.S. negotiators should recognize the differential needs of developing countries and support actions that enable them to participate effectively and strengthen their domestic service industries.
2. The USTR should support the request of developing countries to reexamine the issue of labor mobility. For most developing countries to benefit from GATS negotiations, new rules that liberalize the movement of persons must be part of the negotiations.

3. The USTR should renegotiate GATS, changing the definition and scope of the agreement to support the legitimate role of subsidies and domestic regulations within the U.S. and developing countries to provide an ironclad safeguard for basic public services that would otherwise be threatened. Domestic regulations are a concrete expression of local or national values and reflect an attempt to balance economic needs with other values. Unlike goods, the provision of services includes a role for the government through subsidies or regulations to ensure that citizens have access to water, electricity, energy, education, and health care. Price increases from free services to even minimal costs would effectively close these services to millions of poor people, mostly women and their children. Concretely this means the USTR should strive to remove from GATS purview components like Article IV and the Working Party on Domestic Regulation.

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World Wide Web

USTR

<http://www.ustr.gov/>

World Trade Organization

<http://www.wto.org/>

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