



GATS dates crucial between now and 1 May 2005

The agreement reached at the WTO General Council meeting in late July 2004 set new deadlines for the GATS process. It has been agreed that all countries which have had requests made of them by other member states to make more commitments in specific services must revise and improve their offers before 1 May 2005. This means particular pressure mainly on those developing countries that had not already made offers to do so and for all countries to improve the 'quality' of their offers. It is important to note three things:

1. The May 1 deadline is for offers only. After May 1 (although this is already happening) detailed negotiations to refine those offers in the light of any reciprocity from the demandeurs (those making the requests) will occur through until the next WTO Ministerial Conference in Hong Kong on 13-18 December 2005.
2. There will be at least two sets of what are known as 'Services weeks' at the WTO. These are weeks (often lasting for more than one week) in which GATS negotiators from the capitals come to Geneva for a complex round of bilateral negotiations: that is, country A that has been asked by country B to open up a particular service sits down with country B to discuss potential responses. One such set of negotiations is scheduled for the last week of November and the first week of December in 2004. A second series of three weeks will occur from 7-25 February 2005. This second series may be very important: it is unusual to have three weeks like that and it is expected that this will be when real pressure goes on for countries to start making the detail of their tentative offer more clear before going off into the May-December round of final negotiations.
3. It is important for EI affiliates to remember that the services of relevance to education unions that are being discussed go more widely than what are technically called 'education services'. Education services are relatively narrow but

many other services that are central to education may also be on the table but not labelled as 'education'. For example, library services, re-search services, education resources services, all of the support services in educational institutions, services such as cleaning, building maintenance, catering, ground staff, etc. – all of these may be targets of multinational companies trying to get a foothold in the education system. In a kind of pincer operation, these companies are trying to take over as much of the system as is possible so that, even if they have not yet asked for access to professional educational services in this round, they will be in a position to go to your government over the next few years, or in bilateral negotiations for regional trade agreements, and say: You have given us the rest of your system; now give us your teachers.

Remember that this whole process occurs in secret. We – unions and NGOs – may have been able to find out quite a bit of detail about requests being made and offers being considered but, in the vast majority of cases, this has been the result of leaks or campaign pressure. Governments are not required to make their requests public; many governments that have had requests made of them do not want to make them public out of courtesy to the demandeur; and many countries have not been willing to disclose how they might respond to requests.

It is extremely important, therefore, for all EI affiliates to try to find out what requests their government has made of other member states or requests that have been made of their own country and to try to find out how their government intends to respond. If these requests are sent to Elie.Jouen@ei-ie.org it will be possible for EI to help affiliates at both ends of the chain to campaign to have requests withdrawn or rejected. This must happen as soon as is possible but certainly well before 1 May 2005.

GATS-Free Zones

Susan George from ATTAC France has circulated a request to GATS activists to join a campaign based on local governments aimed at making as much of the European Union as is possible as GATS-Free Zone and to get the European Commission mandate for the GATS negotiations with-drawn. There is no need for this to be restricted to the EU. The idea is as follows.

Thanks to a long-term effort of education through publications, conferences and public meetings all over the country and to the work of the 200-some local ATTAC committees in France making direct contact with local, departmental and regional councillors; the ATTAC campaign for GATS Free Zones, a moratorium on the negotiations and a changed mandate for the European Commission gained considerable momentum. As Susan George noted: *When first launched, we called it "100 collectivities against GATS and for a moratorium" and having rapidly reached that number; renamed it "500 collectivities."... Now [October 2004] we count about 560, including 10 regions, 24 departments and hundreds of large and small cities, with more coming in*

every week. The total number of citizens covered - even if all of them are not necessarily aware of the fact - is about 39 million.

ATTAC convened an 'Estates General' meeting on November 13-14 (a concept from the days of the Revolution). Susan reports: Over the weekend, we came to several decisions, most important among them to continue working together.... We all recognise the need to use all possible avenues to inform citizens. Towns will put up "GATS-Free Zone" signs on the entry roads and explain the GATS in their municipal bulletins. "Twinned" communities will ask their sister cities and regions outside France to join the movement. A letter stating our demands was approved and will be delivered to President Chirac and Prime Minister Raffarin.

Austria and Belgium already have similar campaigns that are well advanced; Italy and Spain have had some encouraging results. There is no need to restrict this idea to France or the EU. Can EI affiliates get similar initiatives off the ground elsewhere?

Definitions of 'Government Services'

It will not be news to many GATS experts that the degree to which 'services supplied in the exercise of government authority' (what many call 'public services, including education) are protected or not covered by the GATS has been a matter of dispute from the beginning. Article I 3 (b) and (c) purport to exclude such services from GATS rules, so long as they are supplied neither *on a commercial basis nor in competition with another service provider*. GATS activists have always argued that the complete absence of any definition of what these two terms mean results in great uncertainty for the large number of such services (and fees-charging education services or public education services in countries which also have private providers are very common).

This ambiguity of public services under the GATS arose in the Financial Services Committee meetings recently. Delegates were discussing GATS: *the case of Insurance Services* (OECD document TD/TC/WP(2003)17/FINAL). The OECD/UNCTAD paper states:

"The [Financial] Annex clarifies, for financial services, the scope of services supplied in the exercise of government authority, which are excluded from the

application of the GATS... By this definition, insurance and insurance related activities forming part of a statutory system of social security or public retirement plans and other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government fall outside of the scope of the GATS. It is noted that if a WTO Member allows these activities to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, these activities will fall under the GATS."

Brazil's representative faulted the paper for its assumption that increased commitments in the insurance sector were a necessary outcome of this round of GATS negotiations. But he also raised questions regarding reference in the paper to exclusion of certain financial services - pensions and social security - from the GATS:

Concerning the status of public services, he explained that the activities described in paragraphs 1(b)(ii) and (iii) of the Annex on Financial Services were outside the scope of the GATS provided they were not conducted *in competition with a public entity or a financial service supplier*. However, Brazil was

not sure about the meaning of the terms competition with a public entity or a financial service supplier. He was specifically concerned about their application to social security and pension systems. He indicated that Brazil would welcome a discussion of this topic in order to avoid surprises in the future with regard to the coverage of commitments.

Brazil's delegate had also raised this issue at the previous Financial Services meeting in March 2004:

The representative of Brazil also considered that the document was interesting. He made four comments, not only related to the document, but also to show other Members where Brazil stood in these negotiations on financial services and what Brazil's concerns were. First, at the end of paragraph 19 (page 9 of the document), the following statement could be read: 'It is noted that if a WTO Member allows these activities to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, these activities will fall under the GATS.' *The point Brazil wanted to highlight was that there was a grey area in the GATS regarding public services and specifically about what constituted competition between government service suppliers and private service suppliers.*

That was a grey area in which his delegation was seeking clarification. The issue was certainly important not only for insurance but also for other sectors. Some of the initial offers and even the specific commitments submitted by acceding countries contained carve-outs with regard to specific sub-sectors or public utilities. For example, some offers or schedules clearly indicated that commitments on education services did not apply to public-funded education. He reiterated that this was an area in which further clarification was necessary. (Italics and bold text added)

There has been no substantive discussion of Brazil's comments, or about the need to clarify this GATS grey area. Hong Kong, China suggested that ambiguity might be even greater because the Financial Services Annex has different wording than the agreement in relation to public services. (Committee on Trade in Financial Services - Report of the Meeting Held on 23 March 2004 - Note by the Secretariat 21/04/2004)

(ICTSD's Bridges monthly, vol.8, no.8, September 2004 - <http://www.ictsd.org/monthly/index.htm>)

GATS-plus and GATS-minus in US Free Trade Agreements

Luis Abugattas Majluf is Senior Expert in the trade division of the UN Conference on Trade and Development (UNCTAD). The following are extracts (mainly those with education implications) from a note that was written under his own responsibility. All comments in square brackets have been added by EI. The full article is adapted from a longer version that appeared in the March-April 2004 issue of Puentes, co-published by ICTSD and CINPE in San José, Costa Rica – available from www.ictsd.org

Services disciplines under the proliferating regional and bilateral treaties between the US and Latin American countries exceed GATS requirements in certain areas but go less far in others, resulting in a considerably less development-friendly regime than the one offered under the WTO. In principle, regional and bilateral agreements should go beyond the obligations contained in the GATS, and address those areas where multilateral experience has revealed the need for improvement or clarification. However, analysis of the services provisions in the bilateral agreements – modelled after the North American Free Trade Agreement (NAFTA) – shows

that these conditions have not necessarily been fulfilled.

Modes of Supply

The definition of trade in services involves four 'modes of supply'. With regard to cross border trade (Mode 1), the US has incorporated in its bilateral agreements a chapter on electronic commerce, which does not exist in the GATS. The chapter recognises that the supply of a service through electronic means falls within the framework of obligations contained in the chapter on cross-border trade in services and the chapter on financial services. The main obligations are a commitment not to levy tariffs on 'electronic products', and to extend non-discriminatory and national treatment to the exports of such products from the parties involved. This amounts to the incorporation of additional specific obligations in this mode of supply that go beyond the requirements of the GATS. [This has implications for educational material and software bought via the Internet.]

Similarly, the bilateral agreements' definition of 'consumption abroad' (Mode 2) presents a subtle but important difference from the one contained the GATS Article I. Mode 2 is defined as the supply of a service "in the territory of one Party by persons of this Party to persons of the other Party". Mode 2 under the GATS contains no specifications for the provider of services to persons of another party; this language limits the scope of the agreement to transactions between a consumer in one party and a provider of the party in whose territory the service is offered. The implications of this formulation should be carefully evaluated. [This relates to students from one country receiving their education in another.]

As to the 'temporary movement of natural persons' (Mode 4), the GATS covers all kinds of movement and all categories of providers with no reference to their level of qualification. Under Mode 4, WTO Members commit to temporarily admitting into their territory citizens of other Member countries – and, under certain circumstances, permanent residents in other Member countries – to provide services to both natural persons and legal entities in the receiving country. The GATS neither defines the meaning of 'temporality' nor imposes any conditions as to how the 'movement' must take place. Latin American countries [and many other developing countries] have prioritised this mode of services supply in their requests in the WTO's services negotiations, [including for teachers].

The US agreements with Chile and Singapore made some progress in this area, as the US gave Chile a quota of 1,400 professional entries and granted access to 5,400 service providers from Singapore. In addition, both agreements contain a chapter on the temporary movement of businesspersons, and 'professionals'. However, when analysing the

implementing legislation for the Chile and Singapore FTAs, the US Congress clearly indicated that it would not accept similar concessions in future agreements.

Exclusions and Exceptions

The exclusion of subsidies and other forms of support from the reach of the bilateral agreements constitutes a clear step back from the GATS. Subsidies are covered by the GATS, which stipulates that all subsidies and other measures of support granted to domestic service providers must be extended to suppliers in other WTO Member countries unless the country granting the support explicitly specifies otherwise in its national schedule [a major concern for public education under the GATS].

[The item above on *Definitions of government services* makes the point about the lack of clarity about the purported GATS 'exception' regarding the liberalisation of trade in services "supplied in the exercise of governmental authority".] Different interpretations exist on the meaning of "supplied on a commercial basis". The WTO secretariat admits that "it is not entirely clear what the term 'commercial basis' means". The notion of "not supplied ... in competition with one or more service suppliers" is also under scrutiny (even health or education services in most countries are provided both by the government and the private sector). The conditions for a service to qualify for a GATS exclusion are thus not clear, and the bilateral agreements have not offered more clarity in this area. They replicate the GATS provisions, thus transferring the existing problems of interpretation to the bilateral arena.

Higher quality offers – but not from the North?

In comments urging a concerted effort to conclude the Doha Round on time, US Trade Representative Robert Zoellick also called for 'leadership' not just from the United States and the European Union but also from mid-level developing countries like Brazil, India and China who should come to the fore. At the same time, he noted, the needs of the poorest developing countries also will have to be taken into account.

If the WTO services negotiations are to succeed, the US Congress will have to accept the need to al-low

the free movement of workers across borders. But after such language was included in the FTAs with Chile and Singapore, Congress made it clear to the Administration it would not accept similar language in future trade agreements. So, the South must make higher quality offers to the North but on the one issue that the South is pushing for there will no such quality.

Education out of GATS!

On the GATSWatch site - <http://www.gatswatch.org/> - there is a link to the Education out of GATS petition. It is supposed to be for education organisations and individuals to sign. Several unions have done so. You might care to read the sign-on and see whether your organisation can add its name.

TRADEDUCATION has been jointly prepared by the EI Campaign and Education & Employment Units, composed of Elie Jouen, Frederique Boni, Monique Foulhoux and Mike Waghorne . For more information, please contact the EI Secretariat in Brussels, Tel.: + 32 2 224 0611 Fax:+32 2 224 0606 E-mail: <mailto:elie.jouen@ei-ie.org>, Internet : www.ei-ie.org