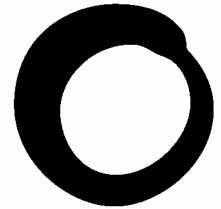


November 2002



**Friends of
the Earth**

Briefing

GATS Primer

Understanding the WTO General Agreement on Trade in Services

Introduction

The World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) will have crucial, day-to-day implications for the world's people and the environment. As well as being important in their own right, the GATS negotiations are also part and parcel of the wider WTO agenda set out at the 2001 Doha Ministerial.

Friends of the Earth is campaigning to ensure that local communities and their natural environment are protected from the adverse impacts of trade and economic globalization GATS represents. This primer is intended to help readers gain a wider understanding of GATS and how it relates to social and environmental concerns. The primer first looks at the issues and obligations that make up GATS, and then looks at the possible implications of GATS on local communities and the environment.

Friends of the Earth inspires solutions to environmental problems, which make life better for people.

Friends of the Earth is:

- the UK's most influential national environmental campaigning organisation
- the most extensive environmental network in the world, with almost one million supporters across five continents and over 60 national organisations worldwide
- a unique network of campaigning local groups, working in over 200 communities throughout England, Wales and Northern Ireland
- dependent on individuals for over 90 per cent of its income.

To join or make a donation call us on 0800 581 051

Friends of the Earth, 26-28 Underwood Street, London N1 7JQ
Tel: 020 7490 1555 Fax: 020 7490 0881 Email: info@foe.co.uk Website: www.foe.co.uk

Friends of the Earth Limited company number 1012357
♻️ Printed on paper made from 100 per cent post-consumer waste

Common GATS questions answered below:

1. What is GATS?
2. Where did GATS come from?
3. What is covered in the GATS 2000 negotiations?
4. What does "services" mean in GATS-speak?
5. What are "Modes"/which economic activities does GATS cover?
6. What obligations do WTO Members take under GATS?
 - a. General obligations
 - b. Specific obligations
7. Are there any exceptions to these GATS obligations?
8. What happens to public services under GATS?
9. What does GATS mean for domestic regulation by WTO members?
10. How does GATS affect local communities and the services they need?
11. What impacts will GATS have on the environment?
12. What does GATS mean for:
 - a. Energy?
 - b. Environment?
 - c. Water?
 - d. Tourism?
 - e. Transport?
13. What does "progressive liberalisation" of services mean in GATS-speak?
14. Are WTO members required to assess impacts GATS prior to negotiations?
15. How many service sectors are covered by GATS 2000 negotiations?
16. Who are the major players in the GATS negotiations?
17. Who else is pushing for GATS?
18. Where can I find more information about GATS?

Answers to Common GATS Questions

1. What is GATS?

GATS is an international trade agreement, or treaty, of the World Trade Organization (WTO). It establishes the trade rules governing cross-border trade in services for WTO member countries that are supposed to make it easier for services and service providers to move from one country to another. Failure of any WTO member to adhere to GATS rules may open them up to dispute settlement proceedings in the WTO, or even a trade war with sanctions.

2. Where did GATS come from?

The GATS framework was negotiated during the 1986-1994 international trade negotiations, the so-called Uruguay Round. Developed countries wanted a set of international trade rules similar to the GATT (General Agreement on Trade and Tariffs, the thing we had before the WTO, which dealt with trade in goods) that would apply to trade in services - especially banking, telecommunications, and financial services. Many developing countries wanted rules to ensure their citizens could take their labour into developed countries to be included. The result was the current GATS, which took effect on 1 January 1995 along with all the other WTO agreements and rules. GATS requires WTO Members to embark on additional negotiations to further liberalise trade in services. The latest round of GATS negotiations was launched in 2000.

The current negotiating work program for the WTO was agreed in Doha, Qatar, in November 2001 and is now known as the "Doha Development Round", as it is supposed to address issues of sustainable development around the world. The whole package was put forward in a single, take-it-or-leave-it form, called the "single undertaking". GATS is part of that undertaking and will therefore not be negotiated in isolation from the rest of the mandated issues.

3. What is covered in the GATS 2000 negotiations?

GATS 2000 negotiations have made more progress than the other mandated WTO negotiations (eg agriculture or trade and the environment). The negotiating guidelines were agreed in March 2001. On 30 June 2002, Members submitted their initial requests of areas they wished other countries to "open up". This was called the "requests phase". Members are now expected to respond to these requests by submitting offers of areas they agree to open up – the "offers phase" – by 31 March 2003. There will then be a phase of negotiating what is left, and the whole process is scheduled to finish by 1 January 2005.

4. What does "services" mean in GATS-speak?

GATS defines "services" as "any service in any sector except services supplied in the exercise of governmental authority" (GATS Art. I:3(b)). In more simple terms services are known as anything you can't drop on your foot. This includes everything from rail transport to sports referees, which is why GATS has such huge potential to affect people's lives.

All services sectors are initially covered except those sectors supplied "neither on a

commercial basis, in competition with one or more service suppliers" (see section 8 below).

5. What are “modes”/which economic activities does GATS cover?

GATS identifies four "modes" (ways a service can be provided) in which specific commitments may be made by a WTO Member country:

Mode of Supply	Name	Definition	Example
Mode 1	cross-border supply	services supplied from the territory of one Member into the territory of another Member	a Mexican electric company provides electricity to a neighbouring town in California
Mode 2	consumption abroad	or cross-border service consumption - services supplied in the territory of one Member to a consumer visiting from another Member	an Argentinean goes to the United States and uses a US bank while there
Mode 3	commercial presence	a supplier from one Member sets up a business, subsidiary or branch in the territory of another Member	Shell invests in an oil refinery in Nigeria by creating Shell Nigeria, a separate subsidiary under Nigerian law, to run the project, or US Citibank uses laws liberalising finance or banking in Singapore by opening a branch office there
Mode 4	movement of natural persons	a "natural person" (a human being) from one Member goes to another Member's territory for a short time (not as an immigrant) to provide services for a business	a US corporation sends a manager its branch office in Qatar to manage it for three years, or an Indian information technology professional is hired to work for a German company for five years

6. What obligations do WTO Members take under GATS?

Obligations that WTO Members take under GATS are in two categories:

a. General obligations

These apply to all services sectors, whether or not a country has made any specific commitments in those sectors. They include:

Obligation name	What it means
Most-favoured-nation (MFN) treatment	applies to all services (with one-time, temporary exemptions), Members must treat regulation of services and services providers from all other Members equally and without discrimination. For example, any regulation that South Africa imposes on foreign services and service providers in their country must be applied equally to all other Members. South Africa cannot give an exemption from the regulation, for example, to favour the United States. A potentially confusing paradoxical term.
Transparency in regulations	Members must publish changes to laws, rules or regulations that would affect its trade in services. Members are also required to identify (or set up) a specific government agency or officer responsible for informing other Members about such changes.
Objective, reasonable, and impartially administered regulations	any regulations that Members impose on service provision and business between service providers (especially those applying to foreign providers) must be: based on objective and transparent criteria; "reasonable" or logical; and applied equally to all with.
Administrative review and appeals procedures	Members must establish or maintain a government mechanism and appeals process (through courts, an administrative agency, or an independent arbitration body) to hear and independently review complaints about impacts of government regulations on services trade.
Disciplines on the operation of monopolies and exclusive suppliers	Members must ensure that government monopolies for supplying services (eg for post or health) do not in effect violate the country's MFN, specific market access or national treatment obligations. For example, if a Member gives its national electric power company the sole right to provide electricity to a particular region and that company finds it cannot adequately meet demand, that national company cannot offer sub-contracts exclusively to energy companies from, for example, the US (this violates MFN). Rather the national company must allow energy companies from all other Members to bid freely for those contracts. Also if the Member has a specific commitment to allow foreign energy companies to operate in areas outside the national company's monopoly area, the national company must not provide its own services in those areas in a way that would prohibit foreign companies from coming in to operate there.

b. Specific obligations

Specific obligations apply only to service sectors in which a country has made commitments. Specific obligations can be applied “horizontally” (across all services sectors or across all modes of supply for a particular service sector); or “vertically” (so they are only applicable to one service sector or to a specific mode of supply).

These include:

Obligation name	What it means
Market access	applies in areas where commitments are made, but may be subject to specific, listed limitations or conditions – for example limitations may be imposed on the number of service suppliers or employees in the sector, the value of transactions, or the use of foreign capital in the sector
National treatment	applies in the areas where commitments are made and ensures that Members do not discriminate between domestic and foreign services or suppliers - benefits given to domestic suppliers must be given to foreign suppliers as well. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of the Member's own service industry. Again, the extension of national treatment in any particular sector may be made subject to conditions and qualifications.

7. Are there any exceptions to these GATS obligations?

In some exceptional instances GATS allows Members to impose laws, rules or regulations that effectively violate their GATS obligations. For example:

Art. XII allows temporary restrictions on trade in services to safeguard balance-of-payments.

Art. XIV allows measures to:

- protect public morals or maintain public order;
- protect human, animal or plant life or health; or
- enforce compliance with laws or regulations not inconsistent with the whole agreement including, among others, measures to prevent fraud.

However, GATS does *not* contain an exception to allow measures to conserve the country's natural resources if those measures violate its GATS obligations. GATT did have such an exception (Art. XX(g)). (see section 11 below)

Art. XIVbis allows measures to protect military or essential security interests.

However any measure imposed under these exceptions must:

- not arbitrarily or unjustifiably discriminate between services from other WTO Members (ie the discrimination must have a reasonable or objective basis);

- not be a disguised restriction on trade in services (ie it is not an import or export restriction in disguise);
- follow the "necessity" test in Art. XIV, which states that governments can impose only those measures that are the "least trade-restrictive" (or least inconsistent with existing GATS obligations).

8. What happens to public services under GATS?

GATS Article I(3)(b) excludes "services supplied in the exercise of governmental authority". These are defined in Art. I(3)(c) as services not supplied "on a commercial basis, in competition with one or more service suppliers". This is what GATS and its supporters call a "public service" – that is something provided 100% by the government with no competition (like social security). Clearly this is a very limited number of services nowadays, and while GATS supporters will claim that "public services" are not covered by GATS, they are fully aware of the limited nature of this assurance and the confusion this can cause.

The problems arise because the wording as to the exact extent of this exclusion is ambiguous. For example, when the private sector provides a service, at commercial rates, that the public can also obtain from a government agency at non-commercial rates (like telecommunications or education), it is unclear if the government is deemed to be in competition with the private sector.

Furthermore, if it is considered to be in competition with the private sector for that service, it is unclear if the government-provided service can then still be considered a "service supplied in the exercise of governmental authority". Art. I(3)(c) implies that the moment a competitive situation exists between governmental and private suppliers, the government-supplied service can no longer be considered to be "supplied in the exercise of governmental authority". This is significant because it means that service can no longer be excluded from the application of GATS disciplines and obligations.

This in turn means that the government must comply with its GATS obligations (such as MFN) in that service sector. This increases the pressure on the government to privatize and/or liberalise such government-supplied services since it can no longer provide preferential treatment (like subsidies) to the government agency supplying the service. If the government wishes to provide subsidies for that service, then it must also provide the same subsidies to all foreign services providers under its MFN and national treatment obligations. It is in this way that tax money can end up being paid to foreign companies who keep it and also operate for profit.

9. What does GATS mean for domestic regulation by WTO members?

GATS recognizes the right of Members to regulate in the public interest in a reasonable, objective and impartial manner that does not constitute unnecessary barriers to trade. These criteria effectively limit the scope and power of governments to trade in services.

GATS does not define "reasonable", "objective", or "impartial" with regard to drafting and implementing domestic regulation. Nor does it define what constitutes an "unnecessary barrier to trade". This means that any domestic regulation, whether proposed or existing, from national down to local government levels, could potentially become the subject of a WTO dispute if other Members feel it "affects trade in services" or is incompatible with other

WTO criteria. The threat of being brought to the WTO dispute settlement process, with the possibility of losing the case and being made to pay compensation or suffer trade sanctions (often called a “trade war”), often creates a “chilling effect” on governments who choose to stay on the safe side and not regulate.

If that wasn’t bad enough, the GATS process is essentially irreversible. Many GATS supporters claim that fears about the binding nature of GATS agreements are overstated and that there is sufficient flexibility for governments to regulate any service as they wish. While it is true that regulation is permitted under GATS, a government must state *at the time of making offers* to open a sector *all* of the regulations it wishes to enforce. Regulations cannot be added later unless WTO members agree and/or a compensation payment system is worked out for all the “damage” new regulations would do to other countries’ businesses. This magnifies the dangers if the preparatory work is rushed or mistakes made. This is a huge burden for the UK and even worse for developing countries.

10. How does GATS affect local communities and the services they need?

Unless carefully regulated, liberalisation of trade in services can adversely affect communities in several ways, including:

- Loss or higher costs of essential public services such as supply of water or sewerage;
- Higher public transportation charges;
- Increased social and environmental impacts as a result of increased mass tourism;
- The use of local environments to provide waste disposal sites; and/or
- Loss of ability to redress adverse social and environmental impacts through regulation.

11. What impacts will GATS have on the environment?

GATS provides an exception (based on Art. XIV(b) of GATT) for environmental and health purposes. In theory the exception ensures that important public policy goals are not reversed by specific or general commitments. However it fails to have any real teeth because it is very narrowly defined. Unlike GATT the exception lacks any provision for measures “relating to the conservation of exhaustible natural resources ... made effective in conjunction with restrictions on domestic production or consumption.”

The difference is notable for two reasons:

- GATS exceptions can only be used when human, plant, or animal life or health is at risk, but not when a non-living natural resource is endangered. For example, measures to address beach or land erosion would not be acceptable.

Such measures must be “necessary”, which was interpreted by GATT in 1990 to mean that the government must be sure that there is no other reasonable regulatory alternative that is less restrictive of trade. It is assumed this interpretation still applies.

- crucially GATS lacks the language “relating to . . . conservation”, which is open to broader and more environmentally sensitive interpretation.

So, the present language leaves environmental protection without a clear exception in GATS. As with the domestic regulation "necessity test", governments are not permitted simply to adopt reasonable laws and regulations. Instead, they must identify all conceivable alternatives and their impact on foreign service providers before choosing the measure that will impair those foreign service providers least. Such a regulatory hurdle is likely to chill future efforts to protect the environment and may in fact lead to environmental protection legislation being overturned by WTO disputes.

12. What does GATS mean for...

a. Energy?

The impacts in this sector are likely to be wide-ranging - it includes areas such as oil exploration and extraction, pipeline construction and use, fuel refining operations, and electrical power generation. The expansion of energy service operations will worsen the already substantial impacts in this sector, and GATS rules will make it increasingly difficult to adopt and enforce environmental and natural resource protections. In addition, energy service expansion involving fossil fuels will contribute to the worsening climate crisis.

GATS commitments will restrict governments' ability to regulate foreign energy corporations operating in their territory. If extraction and extraction-related services are included in a country's commitments, that government would find its ability to regulate numbers of exploration, extraction and/or drilling facilities built and used. GATS disciplines already apply to use of pipelines to move fuel, but only three countries have made specific commitments in this sector. If additional countries make specific commitments in this sector during the current negotiations, the ability of countries to regulate petroleum pipelines, including their length and volume of fuel transported, could be greatly reduced.

Application of GATS in electricity distribution could reduce countries' ability to regulate their electricity systems. For instance, a country could be required to open its market to cross-border electricity produced in a manner that causes environmental damage. Including nuclear energy in particular raises many environmental concerns.

Furthermore, the lack of a clear space for government services in GATS means that it will be extremely difficult, if not impossible, for governments to re-impose regulations in electricity or natural gas distribution if deregulation fails - even if the deregulation was proved to damage the environment.

b. Environmental services?

Despite the fact that environmental services are described by supporters as a potential win-win opportunity for both trade expansion and environmental protection, the likely outcome of expanded commitments in this sector is expanded multinational operations in such environmentally harmful activities as waste incineration. Such commitments may also reduce countries' ability to develop technologies that benefit the environment.

c. Water?

Water supply is being privatized rapidly, with large multinational companies increasingly collecting, extracting and distributing bulk and retail water. Given increasing water scarcity in

both developing and developed countries, the inclusion of water collection in particular raises serious concerns.

Market access commitments could limit governments' rights to restrict and regulate the quantities of water collected from lakes, rivers and groundwater sources by private service operators. The resulting increased pressure on water sources could lead to sustained environmental damage. In addition, the lack of clarity in GATS rules on provision of public services means that local governments may be required to open their water collection and distribution systems to private firms - if some areas in a country have privatized their water services, other areas may be forced to open their services up to private companies as well.

d. Tourism?

Tourism, which includes travel services and passenger transportation, is regarded as the world's largest and fastest growing industry. The sector's effects on the environment are also substantial. Tourism often destroys biodiversity and pristine environments, and can lead to the abuse of natural resources. Around the world resort development already harms coastal areas and forests, triggers serious water shortages and depletes forests. Coral reefs are damaged by sewage, sedimentation, divers, snorklers, and boats.

The adoption of broad market access commitments across the tourism sector could prohibit countries from protecting sensitive areas and regulating their use. Limitations on the number of excursions in a sensitive zone or restricting certification and licensing for eco-tourism could be illegal under GATS. Adopting national treatment commitments could also make it difficult to pursue many eco-tourism policies, such as those that require local community participation in projects.

Finally, since GATS requires that such regulations are established at the time of negotiation of liberalisation, and since it is proving difficult to anticipate all necessary future regulation, GATS is likely to impede protection of natural resources from increased tourism and to exacerbate the ill effects.

e. Transport?

International transport by land, air, and sea is one of the world's largest service sectors. The environmental damage from transport emissions is already substantial. - 95% of all goods are transported by sea, and this contributes as much as one-sixth the global carbon, nitrogen and sulphur emissions from petroleum. Liberalising transport services, particularly in conjunction with increased trade flows in goods, will increase transport operations and resulting damage to the environment from emissions and elsewhere. At the same GATS rules may increasingly constrain environmental protection efforts in the transport sector.

Market access commitments in maritime transport could force unlimited access to ports for ships, with worrying potential for increased environmental damage due to increased coastal pollution and port dredging. National treatment obligations could require countries to allow access to cross-border road transport even when such access allows in vehicles that produce greater emissions than domestic requirements permit.

13. What does "progressive liberalisation" of services mean in GATS-speak?

GATS Art. XIX:1 and 2 mean that WTO Members must continue to undertake negotiations aimed at further liberalising their domestic markets to other Members. The current GATS negotiations are the first in what could be a long series of such "progressive liberalisation" negotiations stretching into the future.

14. Are WTO members required to assess impacts prior to negotiations?

Yes, GATS Art. XIX:3 requires the WTO Council for Trade in Services, prior to establishing the negotiating guidelines for the next round of GATS negotiations, to "carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives" of GATS.

Assessment should be used to identify adverse social, economic and environmental impacts GATS obligations have caused from 1995 to present. The conclusions could then be used as the basis for determining whether further GATS liberalisation would be in a country's interest or not, as well as what regulations they wish to put in place.

However, assessment has become a very contentious issue in the WTO. Some developed countries and the WTO Secretariat insist that various national and WTO studies about GATS already constitute the required assessment. However the majority of other WTO Members insist that this is not adequate and further assessment needs to be done before GATS negotiations begin.

15. How many service sectors are covered by GATS 2000 negotiations?

All services sectors are covered by GATS 2000 negotiations – more than 150 in all. This means that WTO Members may undertake requests, offers and negotiations with other Members about any service sector they choose. The only sectors that may be excluded are those in which the services "are supplied in the exercise of governmental authority." (see sections 8, 9, 10 above)

16. Who are the major players in the GATS negotiations?

For the most part industrialised countries such as the US, the EU (both as whole as and individual countries) and Japan are the most active and are seeking further and faster GATS liberalisation. The EU's leaked draft GATS requests, posted on www.gatswatch.org, gives a clear indication of the extent of services liberalisation sought by the EC.

Developing countries in general have been hesitant about further GATS liberalisation, as the promises they were made in previous liberalisation negotiations have yet to materialise.

17. Who else is pushing for GATS?

Professional lobby organisations representing the services industries in the EU and the US (like the European Services Forum and the US Coalition of Services Industries) are pushing hard for further GATS liberalisation. Such groups have enormous power and remarkable access to high-ranking politicians, making their influence over shaping governments' positions strong and deep. Two organisations exposing the methods and scope of such organisations are the Transnational Institute (*Behind GATS 2000: Corporate Power at Work*

can found at www.tni.org/reports/wto/wto4.pdf) and Corporate Europe Observatory (at <http://www.xs4all.nl/~ceo/>).

18. where can more information about GATS be found?

There are a large number of NGOs currently working on GATS. These include:

- GATSWatch (at www.gatswatch.org) is an excellent source;
- WDM are running a GATS campaign at <http://www.wdm.org.uk/campaign/GATS.htm>;
- People and Planet's GATS site is at <http://www.peopleandplanet.org/tradejustice/>.

The WTO website (at www.wto.org) contains official WTO information about GATS, including agreement texts.

Conclusions – we CAN make a difference

GATS negotiations will be conducted within a tightly compressed timeframe. It is therefore urgent that local communities and civil society get organized and do whatever they can within the timeframe to influence government and EU behaviour. This is crucial because the WTO and many of its Members currently do not have any democratic mechanisms to allow for effective participation from those most likely to be affected by GATS.

Because the GATS agreements will cover areas like financial services, the WTO has called it the “the world's first international investment agreement”. This is good news for us, because the last time a global investment negotiation was attempted (called the Multilateral Agreement on Investment, or MAI), hundreds of organisations and thousands of people all over the world fought together and defeated it. GATS is like the MAI in many ways, including that we *can* make a difference, but we need as many people as possible to help make that happen. There are huge vested interests lobbying hard to for GATS – we need to be just as strong in our call for change.

The key to getting GATS to go where we want it to go is not complicated action, but simple action taken by as many people as possible. We need to demonstrate the breadth of the discontent with the way governments around the world are conducting themselves in these negotiations.

The first step is to encourage those with democratic responsibility for representing us and our views to take up the cause. You can add your voice to the growing chorus from around the world, and MPs and MEPs have an obligation to respond to the concerns of constituents like you. We know from experience that they judge the strength of opinion among their constituents on any given topic by the number of people who speak or write to them about it. Your voice **will** make a difference in this way.

Local communities and concerned organizations should focus their efforts on ensuring that the EU does not “offer” up for GATS liberalisation the services communities rely on for their benefit and environmental protection. Local communities should stress that governments should continue to retain full regulatory control over the provision of essential services, as well as services that will have an impact on their livelihoods and natural resources.

More specifically, people should demand loudly and clearly that:

- The GATS process is halted until comprehensive social and environmental impact assessments has been done;
- Public services and natural resource services should be excluded from GATS;
- Investment policies should be excluded from GATS to ensure that GATS does not become the venue for an investment agreement in the WTO;
- Clear exceptions for public interest and environmental protection policies must be included in GATS; and
- Necessity tests must be excluded from GATS.

For further information and advice for action, visit the FOE EWNI website at:
http://www.foe.co.uk/campaigns/global_trade/case_studies/gats/index.html.