

International Conference

**AT WHOSE SERVICES?**

**The consequences of the provisions of the General Agreement  
on Trade in Services for Sustainable Development**

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**Podium: Requirements for a Sustainable Regime for Regulating International Trade in Services**

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**A. ABOUT ESF:**

The European Services Forum is a network of high-level representatives from the European Services Sector committed to promoting the interests of European services and the liberalisation of services markets throughout the world through the GATS 2000 Negotiations. It comprises 50 major European service companies and more than 30 European service sector federations covering service sectors like financial services, tourism, telecommunications, air and maritime transport, business and professional services, distribution, postal and express delivery, IT services, energy services and the audio-visual industry (see list of members and position papers in the web-site: [www.esf.be](http://www.esf.be)).

## SERVICES IN THE WORLD TRADE

Services account for 60%, or \$ 210 billion of annual flow of foreign direct investment. The service sector represents about 70% of European GDP. The European Union is the world's largest exporter of commercial services, accounting for 26% of total global services' transactions and for more than 40% in terms of balance of payment. The EU is also the world largest importer of commercial services. Trade services liberalisation is therefore extremely important to the European economy.

### 1) The Weight of Trade in Services in the national economies

Service industries have an important role in the development of investment and employment across the world. Official statistics show that, in the great majority of countries, both developed and developing, the service sector of the economy is the most important sector. In the developed economies of the world the service sector is considerably larger than both the manufacturing sector and the agricultural sector. In the developing countries the service sector is still the largest sector in the economy but the differences are not so pronounced. In **India**, for instance, **45% of GDP** is the service sector compared to **25%** for **agriculture** and **30%** for the **manufacturing** sector. In **Turkey** **57%** of the economy is represented by **services** compared to **15%** for agriculture. In **Kenya** **services** represent **56% of GDP** and **agriculture** **29%**.

Of course, cross border service sector trade is only 20% of world trade but efficiency in the domestic economy is greatly improved and the prospects for employment are greatly improved by investment in the service sector, including foreign direct investment. An efficient banking industry, better and cheaper telecommunications and consistent power generation and distribution are essential components for inward direct investment which – we believe - must be encouraged through the liberalisation process.

### 2) Concrete examples of the benefits of services liberalisation

Capacity building has been one of the features of cross border direct investment in developing countries. Investment by Spanish Telefonica in the **telecommunications** industry in **Argentina** and **Brazil** is an example of constructive investment that has considerably expanded the telecommunications market for **consumers** and brought **better choice** (+30% of fixed lines; +100% of mobile phone in areas covered) and **better prices**. Investment in the **retail sector** by Royal Ahold the Dutch retailer in **Thailand** and in **Malaysia** has created **5,000 new jobs** in Thailand and **2,000 new jobs** in Malaysia and at the same time increased customer choice. Direct investment by British and Spanish **banks** in **Mexico** has strengthened the financial system and benefited the country in the last financial crisis. **India** has recently approved foreign investment in the **insurance business** that will ultimately lower prices and increase choice and enable people to insure who are currently uninsured. Still in **India**, Enron, the US power company is completing the building of a **2000 KW Power Plant** (a US\$ 1.5 Bio investment), which will bring much needed, reliable **electricity** power to the country. Of course, environmental issues are very important, particularly in the power sector and must be given high prominence.

### 3) Barriers to trade

Further investments like these investments cannot happen if barriers to trade and investment remain. Many different services sectors are affected by issues like the ability to move key business personnel, the ability to establish and control a local operation, regulation which is used to deter competition rather than to strengthen local industries, or public procurement regulation designed to deter foreign competition. All these issues are barriers to trade and investment.

Trade will also be held back if E-commerce is made subject to controls rather than being treated as a new delivery channel for goods and services. We believe the WTO should not set up a separate negotiating group for E-commerce.

### 4) Trade liberalisation in an appropriate regulatory framework

The liberalisation process through the World Trade Organisation will bring benefits like the examples above. It does however have to be matched by good regulation that encourages good

practice and competition. Developing countries must manage the liberalisation process at a speed that suits their social and cultural backgrounds whilst at the same time committing themselves to the process. It is much better to have a planned process over a number of years than to rush into liberalisation without proper planning and protection for local industry. Change brought about by the liberalisation process must be managed. If however the change is managed sensibly and is accompanied by regulation that is clear and precise and applied in a non discriminatory manner the resulting inward investment through the liberalisation process will bring great benefits.

Requirements for a Sustainable Regime for Regulating International Trade in Services, the title of this podium discussion, leads me to share my views on what GATS is about.

### **What GATS is about**

GATS is about establishing a stable legal framework for international services trade (i). GATS is about creating a win-win situation for all WTO players (ii). GATS is about contributing to sustainable development (iii). And finally, GATS is indeed about creating a Sustainable Regime for regulating international trade in services.

#### **(i) GATS is about establishing a stable legal framework for international services trade.**

GATS is about freedom of the WTO members to make commitments or not. That is a major message which should be repeated here. When numerous governments accepted to make a commitment in more than 34 areas during the last Uruguay round, it is because they felt that their country and their economy would be able to take advantage of this liberalisation. And this indeed has been the case.

One should again and again repeat that under GATS, it is only the governments of each WTO member country that decides on which services they want to make a commitment and can attach to them whatever conditions they chose. All WTO members which have, either in their official schedule of commitments during the last services negotiations or by autonomous internal decision, decided to liberalise some of their services sectors will recognise that they have benefited from it.

It is not the other governments or multinational companies who are making these commitments. The countries decided autonomously. Sure, they are submitted to some pressure. But please stop thinking that trade negotiators do not know what they commit to. Trade negotiators in Geneva, including from developing countries, know and understand exactly what they commit to or not. And if they don't, they simply do not sign. Those one merit more technical assistance, and we are supporting these actions.

As you know, the GATS structure is using the so-called "bottom-up" approach. This means that the countries have to take the positive approach to make a commitment to open a services sector, or part of a services sector, or a specific services product, and for each of these commitments, each country has to expressly specify that it commits itself to give or not a) MFN treatment, b) national treatment.

**GATS is about Most Favoured Nation process**, i.e. giving the opportunity to all countries to get the same access to services market in the same conditions for all services suppliers, disregarding the political or economical importance of the country. When a country gives something to one country, it gives it to all signatories. In other words, there is no specific treatment depending on the "nationality" of the foreign company. It is only by taking advantage of this multilateral system that the developing countries can get greater market opportunities. By taking part in these multilateral negotiations on trade services liberalisation in the framework of one single round, all developing countries can take advantage of the commitments from all the other countries. To obtain the same results via bilateral or regional agreements would be practically impossible for many of them and very difficult for most of WTO members.

**GATS is about National Treatment**, i.e. where countries make commitments to a specific services sector, it can agree not to discriminate between national services suppliers and foreign service suppliers.

It is by making such commitments that companies know in advance, in a transparent way, where their possibilities to operate are and on under which conditions. Given that these commitments are part of an International agreement signed by the countries, the implementation of the commitments is a legal obligation for the countries. If they fail to do so – in a negotiated timeframe of phasing in, if felt necessary - the other WTO members are entitled to seek implementation and in a last recourse, ask to the WTO Dispute Settlement Body to run a panel to settle the conflict.

GATS is therefore about establishing a stable legal framework for international services trade. Foreign companies need such a framework. They need predictability and security. They want to be sure that they will be treated in the same way as the domestic companies. In the absence of such a framework, they are less enthusiastic about investing in a foreign country.

**(ii) GATS is about creating a win-win situation for all players. GATS is about contributing to sustainable development.**

Of course, developed countries want to get better access to all markets, including the developing countries' markets. Of course, European services industry strongly supports their authorities to improve their business capacity, to remove services trade barriers which impede them to set up and develop their business activity and compete in a fair level playing field with the local companies. Companies are not philanthropic and can legitimately expect such a move from their governments in the framework of an "Agreement on Trade in Services".

But, on the other hand, Developing countries can gain expertise and know how from foreign services suppliers for the benefit of the development of their own economy.

That is the reason why one can certainly say that GATS is about contributing to sustainable development. When a foreign service supplier decides to set up in a country, it is never for a short period of time. In many cases, the company commences a long term relationship in the framework of a joint-venture, or indeed becomes a local company as a subsidiary of the headquarters, and is therefore submitted to local regulation. Branches are also submitted to local obligations for licence requirements, qualification requirements, etc. This involves a long-term strategy from the company. Then the company will make some Foreign Direct Investment for its setting up. It will employ local workforces, it will enlarge the choices of the local consumers for the various day to day life services, like bank loans, life insurances, phone calls, transport services, distribution services, tourism services, etc. The competition will initiate better quality and lower prices for consumers.

Foreign Direct Investment from services companies will contribute to set up the necessary infrastructure for E-commerce, for the new economy; areas where Developing Countries have a lot to win. But to give the opportunity to a small or medium company in the countryside of , for example, Senegal, you first need to have electricity to plug in the computer, telecommunication cable or wireless network, access to IT and computer related services. Good transport, or express delivery services, or distribution services etc are also necessary. One should not miss the chance given by the current GATS negotiations to enhance the basic infrastructure services.

**iii) GATS is about setting up more coordinated and sustainable regulatory regime for international trade in services**

**GATS is not about services deregulation.** The affirmation that liberalisation of services trade automatically means deregulation is not true. The signatories of the GATS have explicitly stated in the agreement the right to regulate and the right to introduce new regulation in order to meet national policy objectives. This is a core principle of the GATS. As regards to the companies feelings towards deregulation, it has always been clear that they claim for strong, clear, transparent and fair domestic regulation. It is now well recognised that the lack of strong and fair regulation largely contributed to the financial services crisis in South East Asia in 1997/98. Presence of well self-regulated foreign companies – following on a volunteer basis the stricter rules of their home country – contributed to handling the crisis. Companies call for reasonable and non-discriminatory regulation.

You may know that there is a WTO Working Party on Domestic Regulation. This is a subsidiary body of the WTO Council for Trade in Services (CTS). This WP is now working on the drafting of disciplines on domestic regulation. They are discussing whether it is desirable to adopt a binding WTO agreement where countries would accept some cross-cutting disciplines (i.e. applying horizontally to all services sector) when their national legislators will decide to make a new domestic law, or reviewing a national administrative procedure related to market access.

This is not an easy subject, but we believe that it is a crucial exercise in order to enable real progress in services trade liberalisation, as much as getting wider market access commitments. In fact the later sometimes does not make any sense, if there is no certainty that the national regulators will effectively modify the national legislation to correspond to the multilateral commitment. The trade-restrictive effects of the domestic regulation can arise from a variety of technical standards, prudential regulations, licensing and qualification requirements on professional, financial and numerous other services.

More concretely, the purpose of these negotiations is to try to achieve a WTO Agreement where WTO members would, in the framework of these disciplines, commit to:

- 1 respecting some rules on transparency of the domestic legislation,
- 2 respecting the principle of non-discrimination, i.e. every time that a government or a regulatory authority will adopt a new regulation or revised an existing legislation, it will commit not to raise new trade barrier vis-à-vis the foreign service suppliers, and
- 3 to commit to make a type of necessity test assessing that each new or reviewed regulation is not more burdensome than necessary to trade, to achieve the objective sought by the legislator. We can discuss more on this issue later, but I would like to confirm however that WTO members, in the recently adopted disciplines on accountancy sector, have already accepted this necessity test.

ESF is closely following these negotiations and will soon publish a discussion paper on this issue.

Developing countries have much to gain from strengthened multilateral disciplines on domestic regulations. The development of such disciplines can play a significant role in promoting and consolidating domestic regulatory reforms, which are often needed to really attract foreign investment.

Although not rejecting a sectoral approach at a later stage, ESF believes that a horizontal approach is to be preferred to a purely sectoral approach for at least 3 reasons:

- 1 it economises on negotiating effort,
- 2 it leads to the creation of disciplines for all services sectors rather than only the politically important ones, and
- 3 it reduces the likelihood of negotiations being captured by sectoral interest groups.

On the other hand, although we recognise that horizontal disciplines cannot address in the same way the question of competition, we believe that such a question needs to be addressed in some sectors like it has been done in the telecommunications negotiations in 1996, where WTO members adopted a so called "Reference paper". The competition principles were developed in order to ensure that monopolistic suppliers would not undermine market access commitments. Indeed, natural monopoly or oligopoly may create trade problems because existing suppliers (historical public monopolies) can impede access to markets in the absence of appropriate regulation.

These principles should be generalised to a variety of other network services, including transport (terminal and infrastructure), environmental services (sewage) and energy services (distribution networks), by ensuring that any major supplier of essential facilities provides access to all suppliers, national and foreign, at cost-based rates.

#### **D. What GATS is not about**

GATS is not about undermining public services (i). GATS is not about privatising health and education services (ii). GATS is not about abolishing cultural diversity (iii).

(i) The charge that GATS will undermine public services in the WTO members is false. Article I. 3. b) clearly states that services supplied in the exercise of governmental authority are excluded from the Agreement and there has never been the slightest sign that any government wants to reopen that. The original proposal to make it clear that governmental services were not covered came from the EU and it was not controversial. We agree that the definition can be subject to interpretation and we call the EU authorities to open the debate in the WTO for a better explanation of the meaning of this paragraph. One should, however, not let anti-GATS movements using such an imprecise definition to pretend that GATS is a threat to “public” governmental services and to employment in them.

(ii) We also have to be clear that public sector services, in health and education for example, can, and almost invariably do, coexist in the same jurisdiction with private suppliers without being in competition with them and therefore without losing the status of governmental services. Police services don't “compete” with the private security firms working alongside them. It is doubtful if there is a single WTO Member where public and private services do not coexist in this way, and where the public sector would not be seen as governmental services excluded from GATS coverage. Governments can – and probably will – make commitments to allow bigger market access to private security firms. For health and education, it is the same logic. It has never been in the GATS spirit to challenge public health or education services. It is, however, often the case that private services in these areas exist. Some countries might find it beneficial for their citizens to open such markets to foreign services suppliers. Indeed, there is a great demand from the developing countries to have access to modern training facilities or medical advice, for instance through the Internet. Such demand could be satisfied by the GATS own interested countries commitments.

(iii) Nor is it true that GATS puts under immediate threat cultural diversity. One should underline that under the GATS agreement, countries undertake to open up only what they want to. Knowing that the quasi-totality of the WTO signatories have decided in Marrakech not to liberalise their audio-visual system, and knowing that the European Union clearly specified in the mandate for the negotiations the importance of defending the capacity to define and implement cultural and audiovisual policies for the purpose of preserving cultural diversity, it is very doubtful that the situation in this area will change in the near future.

Understanding the political risk that such an issue might put at stake a whole trade services deal, ESF welcomes initiatives aimed at finding generally accepted, stable solutions regarding the compatibility with GATS of measures sustaining and promoting cultural diversity in relevant sectors.

### **Conclusion**

ESF is convinced of the positive impact of the multilateral services negotiations, although it can only recognise that possible undesired side effects can always arise. However, the latter - which should be taken care of in the right way - should not detract from the major positive effect of the GATS negotiations. They are not sufficient reasons to be used by incorrectly informed NGOs to threaten a very useful tool to spread sustainable development. In a world that wants to promote democracy, one should no longer ignore that the vast majority of countries have chosen the WTO as a tool to promote economic growth. Much evidence of the positive benefits that trade services liberalisation brought and can potentially bring to the world can be found, either by figures, or in articles from government, academic, international institutions and private experts. They are available for instance on the web site of the World bank, the WTO, the OECD and of the European Union. ESF invites any civil society counterparts to produce clear and good faith evidence of negative effect of services liberalisation so as to feed the public debate on the GATS negotiations.

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