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Sectoral and cross-cutting briefings for meetings in Geneva between a number of civil society organisations and member state delegations to the World Trade Organization

The following is a set of contributions from some of the members of the NGO group that met with Member State delegations on June 2005.

1. Mode 4

Concerning the services negotiations, it seems that developing countries expect benefits particularly to come from movement of natural persons, or mode IV, including the movement of medium and low-skilled workers.

There is some concern however, that developing country negotiators only regard the possible benefits, without considering negative effects on the workers concerned or other social impacts. Temporary migration such as that

contemplated under Mode IV does not enable the rights of mode IV workers to be defended effectively and leaves the men and women workers concerned extremely vulnerable to exploitation. The competences and structure of the WTO do not enable it to regulate migratory movements, including those on a temporary basis such as under Mode IV, in a manner that protects migrant workers' rights.

It would therefore be far more desirable to create some form of orderly arrangements for permanent migration, including full measures to guarantee migrant workers equal rights, encourage their full integration (including through acquired rights to permanent residence and citizenship), prevent exploitation by employers and protect them against all forms of discrimination.

If any governments do nonetheless make Mode IV offers that would include the temporary movement of workers, then these must ensure observance of core labour standards, national labour law in the country where the service is delivered, and existing collective agreements in the host country by all parties, with regard to all workers concerned. They must also ensure protection of the workers concerned against all forms of discrimination and exploitation as well as guarantees of the remittance of their contributions to social security and insurance schemes. In the absence of such conditions, GATS negotiations and commitments under Mode IV should not go forward.

Some further specific comments – such as ‘brain drain’ concerns – are mentioned below in particular sector/service comments.

2. Gender and Trade

Services, particularly issues on essential services, environmental services, tourism, and education, are important concerns for all of the regions of the International Gender and Trade Network (IGTN). Women workers in the services sector are adversely affected when the services sector is privatized. Women are mainly responsible for providing health care, education, water (especially in developing countries), and other public goods essential for the development and well-being of their families and communities. As is often the case when these goods are privatized or deregulated, they become less accessible and more costly for the poorer sections of society, often women. The IGTN position concerning GATS is to:

Renegotiate the GATS with an emphasis on the protection of essential services, recognition of the strategic importance of key service industries to development and greater clarity in the content of the agreement.

Situate the GATS within a human rights framework, including the right to development.

Declare a moratorium on GATS negotiations until a development, social and gender impact assessment is completed.

3. Domestic Regulations

Background

GATS Article VI.4 specifies that Members shall develop any “necessary disciplines” to ensure that “measures relating to qualification requirements and procedures, technical standards and licensing procedures do not constitute unnecessary barriers to trade in services”. Such disciplines shall aim to ensure that regulatory measures are “not more burdensome than necessary to ensure the quality of the service”.

These negotiations are currently well advanced in the GATS Working Party on Domestic Regulation (WPDR). Negotiators appear to be working towards a draft of the proposed disciplines by the end of July 2005, with outstanding issues referred to 6th Ministerial Meeting in Hong Kong for decision.

Among the outstanding issues are whether the disciplines should apply horizontally to all services sectors or vertically within just those sectors where government have made commitments and whether the list of legitimate objectives should be open-ended (defined by governments themselves) or exhaustive.

There appears to be an emerging consensus among negotiators that the disciplines should include applying a “necessity test” to non-discriminatory regulations affecting trade in services. A few governments still maintain that the proposed disciplines need not go beyond transparency, although some employ a broad definition of “transparency” (including, for example, a requirement to give prior notice of new regulations and an opportunity to comment to foreign governments and service providers.)

The proposed “disciplines” explicitly target non-discriminatory domestic regulations, those that treat local and foreign services and service providers the

same. So, even if a regulatory measure were consistent with the non-discrimination rules of the GATS (Articles II and XVII) and the GATS market access prohibitions (Article XVI), it could still be challenged under the proposed domestic regulation restrictions.

The scope of these proposed restrictions - - measures relating to qualification requirements and procedures, technical standards and licensing procedures -- is very broad. Many types of governmental measures and regulatory authority could be affected. Licensing requirements, for example could include not only professional licensing, but also broadcast licenses, university accreditation, facilities licensing for clinics, hospitals and laboratories, waste disposal permits, municipal zoning approvals, and many other matters. Technical standards refer, according to the GATS secretariat, not only to regulations affecting the "technical characteristics of the service itself," but also to "the rules according to which the service must be performed". This nearly all-inclusive category would cover standards related to water quality, pipeline safety, sustainable forest management, toxic waste disposal and many other vital service activities.

Key messages

The proposed disciplines interfere with governments' right to regulate and will weaken governments' ability to protect the public. Negotiators and WTO officials claim that the GATS, and the proposed disciplines, recognize the right to regulate and to introduce new regulations. But this is misleading, because the "right to regulate" can be exercised only in accordance with the GATS obligations, including the proposed disciplines on domestic regulation. Even if governments remain free to determine the ends of regulatory action, the means will be subject to GATS challenge and WTO oversight.

Proposals to apply some form of "necessity test" to this wide range of non-discriminatory domestic regulations are particularly troubling. The "necessity" test

is an extremely difficult test to meet, and, in GATT and WTO dispute settlement, it has repeatedly failed to provide an adequate defence for challenged regulations. The WTO Secretariat describes the two aspects of a potential GATS necessity test as: "the first aspect is the general requirement that regulations not be more trade restrictive than necessary; the second aspect is to examine whether an individual measure is actually necessary to achieve the specified legitimate objective." The very prospect of having to clear the hurdle of a GATS necessity test will have a chilling effect, discouraging the enactment of new regulations.

This exercise is an unwarranted and unnecessary intrusion of trade law into important domestic public safety laws. Overseeing non-discriminatory domestic regulations (those which do not discriminate in standards and qualifications based on nationality) affecting trade in services is not an appropriate role for the WTO. The WTO has an institutional mandate to enhance trade, putting commercial interests ahead of regulatory measures to protect public health and safety. Furthermore, regulations must be drafted within the political realities and context of each country; it is inappropriate for domestic political compromises to be second-guessed by WTO panels, far-removed from local political realities and constraints.

Problems with existing GATS provisions should be fixed before new restrictions are contemplated. As the gambling case has demonstrated, GATS rules already interfere with domestic regulatory authority. GATS market access rules, as interpreted by the Appellate Body, interfere with non-discriminatory regulations that prohibit undesirable activities in covered services sectors. These existing problems need to be addressed, rather than developing new GATS restrictions that would interfere with important public protection regulations.

The domestic regulation negotiations should not proceed further without a full, public review of the regulatory framework (at all levels of government), in each WTO member country. There is considerable concern about these negotiations, particularly among state and local governments. Twenty-nine States Attorneys General have recently written to the USTR warning that “any new GATS provisions that would confer on WTO panels the right to judge whether regulations made by elected representatives, within their constitutional mandates, are ‘necessary’ or ‘proportionate’ would unacceptably encroach upon our states’ regulatory authority”. Similar concerns have been expressed by hundreds of local governments in Australia, Canada, France, New Zealand and the UK on the impact of GATS commitments on their local regulatory and legislative powers. Such a review would demonstrate that the regulatory framework provides essential protections that should not be subject to WTO trade law interference. This is particularly true in developing countries, where regulatory frameworks need to be flexible allowing new regulations to be developed in response to development needs.

4. GATS and Water

The first issue with GATS is that it is binding on all levels of government and is effectively non-reversible. The second is that it will allow corporations, though friendly governments, to use dispute resolution procedures to challenge government decisions that are deemed ‘trade restrictive’. In a nutshell, GATS will provide a very tight framework that will tie government hands for generations to come. In the water sector, these will likely be debilitating.

Market Dynamics Don’t Work in Water

The water sector has characteristics that make it particularly unsuited to inclusion in GATS. Water services do not typically obey market dynamics – these services are offered most often as a natural monopoly; there is no substitute for water, hence the ‘customer’ can’t choose another product;

the ‘customer’ must have regular access to water, otherwise they may die; water services require taking into account many issues that are not responsive to market pressures or profit maximisation.

The EU has made no secret of the fact that it sees GATS as "first and foremost an instrument for the benefit of business, and not only for business in general, but for individual service companies wishing to export services or to invest and operate abroad." One of the main objectives of the EU in the new round of negotiations is to achieve real and meaningful market access for European service providers for their exports of environmental services.

Governments Will Lose the Ability to Regulate with Security

One fundamental effect of the GATS rules will be to severely limit a government’s abilities to regulate with the security of not having such democratic decisions challenged by people not electing or elected in the country concerned. Regulations are seen as ‘non-tariff barriers’ to trade, which is what GATS is seeking to eliminate. Water distribution services (read drinking water) fall under the definition of Environmental Services, and are currently subject to EU requests.

Other Sectors Relating to Water

(waste-water works).

There has been massive opposition from across the world to the EU’s GATS water requests. Several EU member states have criticised the requests, making charges of EU hypocrisy at a time when (quite rightly) the EU is not offering its own water distribution services for liberalisation under GATS. Even parts of the private sector water industry itself have spoken out against the inclusion of water in the GATS negotiations, and developing countries such as South Africa have called for water to be taken out of GATS altogether.

In view of the potential damage which GATS liberalisation commitments could cause to vulnerable communities worldwide, we call on the EU - and in

particular its G8 members: France, Germany, Italy and the UK - to withdraw its water requests of other WTO members immediately. We also call on the EU to withdraw its proposal to reclassify the GATS category of environmental services, by which it intends to bring "water for human use" into the current GATS negotiations.

5. Health Services and GATS

Risks

The risks involved in including health services in requests/offers in the GATS negotiations include:

- Diversion of financial and human resources (internal brain drain) from the public sector to private sector, leading to an impoverishment of the national health system;
- A decrease in access for the poor: availability will be affected (especially in rural areas); affordability will change, with a direct impact on the poor;
- Quality may diminish as profit rather than servicing needs dominates;
- Accountability starts to be unclear once government's role in funding and monitoring the health services gets diluted or more complex;
- Inequities in access to and standards of health services will increase. The development of a two-tiered health system becomes almost certain.

It is very likely that trade/economic concerns will prevail over health service concerns, whereas it should be the other way around.

Specifically for mode 2: Crowding out of the local population and diversion of resources to service foreign nationals (health tourism) has been a universal pattern in recent experience. The use of public money for investment in special services for tourists, to be provided by public hospitals in special private wards is common.

Specifically for mode 4: There is a risk of external brain drain, with an outflow of desperately needed health personnel with related loss of investment in education, training, etc.

While it is true that Mode 4 movement is supposed to be temporary, this means that a permanent pool of valuable people is lost to the national health services of the sending/home countries which further undermines its functioning!. Some of these people will, in fact, return home, resulting in a brain gain, but evidence shows that many of these people – often the most qualified - use the sojourn abroad to arrange contacts and invitations that result in their permanent return to the host country.

The health sector is exceptional when it comes to human resources shortages: the sector is losing staff more rapidly because of additional burdens such as HIV-AIDS and the many Global Health Partnerships (public-private) attracting staff primarily from the public sector. And of course health is special simply because people will die if local health services cannot be guaranteed due to lack of human resources for health.

There has been widespread abuse of non-Mode 4 temporary movement in the construction industry in Germany, where workers from Central and Eastern Europe are being employed by companies based in their own countries, often on false bases. This has led to undercutting of the national labour market. There is no guarantee that this will not happen under Mode 4.

Concern about Mode 4 also represents an opportunity for North-South cooperation and provides the basis for solidarity.

Process issues

GATS negotiations focus on a request offer made by a lone country to another. Developing countries do not want to open up in areas of public services such as education, health and water. Requests are made in private. A country does not have to make its requests in public and can be

even less open with its response. There has been little openness about the process with the people of most countries.

Ancillary services

There is not an *apparent* impact on public health, in so far as clinical and professional services are concerned; however commitments relating to insurance, ancillary services and IT services are expected to have a significant impact on health services. The impact of such commitments on the integrity of the health services needs to be monitored because governments might not realise that they have been negotiating health insurance as part of financial services.

Regulatory concerns

Far from being only a drain on resources or taking the attention away from prevention and other forms of care, liberalisation of health care may lead to a diminishing role of the State as a regulator and steward. The State should retain the final responsibility for guaranteeing people's right to health. The development and protection of national health policies by governments should remain possible but this could be put at risk if inflexible domestic regulation disciplines are adopted.

The influence of the private sector – often a foreign private sector - on the national priorities for health should be carefully watched and not increased.

Requirements

Ministries of Health should have a focal point for trade-in-health-related services. They should demand full involvement in the preparations of any GATS commitments and be part of any negotiating delegation. Contacts should be established with all other ministries involved in health-related activities and there should be full involvement of civil society and other relevant stakeholders.

In any case, governments considering opening up the health sector under GATS, should before making any specific commitment under GATS, ensure they have thoroughly assessed (ex-ante) the

implications of opening health systems to foreign services and the potential costs and benefits of making legally binding commitments.

With GATS being part of the in-build agenda of the WTO, several CSO's have called on WTO members (already before Cancún) to adhere to their commitments to analyse ex-ante the impact of GATS on health. – They argue that article XIX.3 of the GATS agreement requiring WTO countries to make an assessment of the impact of trade in services before entering further negotiations, has been ignored.

What follows are some examples collected by Wemos:

The effects of privatisation in health care are now becoming clear. [We accept that GATS does not require/compel privatisation – it simply locks it in forever.] Field studies, such as that which Wemos conducts with its partners in Kenya, demonstrate that health care privatisation leads to a decrease in access to basic health care, especially for the poor and vulnerable.

In Kenya many health care insurance companies are now under private foreign ownership. This liberalisation of services has led to 'cream-skimming', selecting the healthiest patients while refusing to cover the chronically ill, those who are HIV-positive or have AIDS. Those remaining must be covered by the public health sector. This in turn becomes more expensive so many Kenyans remain uninsured with no access to the health system.

Meanwhile private hospitals established in countries such as Thailand and South Africa are shifting to more lucrative care, mostly for the wealthy urban population or foreigners, such as dental care or cosmetic surgery. This is more likely to generate profits but usually these are not then re-invested in the national health system. Foreign patients may also limit the access to care for domestic patients because their care will consume public funds needed for the domestic population. For example countries such as Nigeria have seen

expensively trained health staff being poached from the public sector.

There are examples from Kenya too that private hospitals discharge patients who cannot afford further treatment, make them work in the kitchens or gardens to pay off their bills, or even chain them to their beds until bills are met.

All these developments threaten a proper delivery of basic primary preventative care such as immunization, oral re-hydration and malaria treatment. The public sector has less money for them, while the private sector is not interested in them. The quality, especially of rural services, suffers as several health facilities are cut back, reducing access to care and exacerbating health inequalities between different population groups within a country.

The presence of high tech private hospitals, sucking in the most experienced staff and affluent patients, may threaten the very integrity of the whole health system. Far from promising greater choice to the population, the WHO's World Health Report 2000 argued, privatisation leaves an impoverished public sector unable to benefit from cross-subsidisation and risk pooling on which sustainable health systems are based.

Another trend negatively affecting access to health care is that valuable staff are leaving for private sector hospitals abroad such as in the US, Australia and the UK. The Philippines, South Africa and Nigeria have experienced a loss of valuable health staff. In 2001 alone 2,114 South Africa health care staff left to work in the UK.

This in turn reduces the proportion of health-care workers to inhabitants in developing countries further limiting access to care. For example, the WHO believes that there should be a minimum of one doctor to every 5,000 people. But in countries as Malawi, Mozambique and Tanzania the figure is 1 to 30,000.

WTO-delegates are urged to:

- To guarantee equal access to health care for all men, women

and children, especially during discussions on the implementation of trade agreements and in launching and supporting genuine partnerships with the private sector;

- To contribute to strengthening of integrated health care systems;
- To always put health before commercial interests;
- To stress the importance of investing in health staff;
- To support governments of developing countries to fulfil their duty to appropriately regulate trade in health services. Governments need to adequately regulate the public and private sector in order to protect people's basic rights;
- To guarantee that independent impact assessment studies are being conducted before further international trade negotiations take place.

6. GATS and global governance in education

At its heart, the GATS is an agreement that commits member countries to a broad liberalization agenda, not just through the elimination of barriers to trade and investment, but also by encouraging and locking-in domestic liberalization in the form of privatization, contracting out of public services, and deregulation.

This poses a number of risks for public education systems around the world. Because of the practically irreversible nature of the agreements reached under this agreement, it is very important indeed to examine these effects. Before getting down to the matter in hand, we need to establish some matters quite clearly. Firstly, we should bear in mind that progress in the GATS talks for the education sector will simply serve to worsen some trends that are already evident. Therefore, we must distinguish between the effects caused exclusively by the GATS from those whereby the agreement will act as an aggravating factor. Also we need to add that some of

the agreement's effects apply to virtually every country in the world, whereas others will worsen the education system in the poorest countries. For this reason, under the last points we have examined in greater depth the issue of inequality between north and south.

At an extreme, some common education-related measures adopted by governments that would be put at risk by both the general and specific obligations of the GATS include:

- Restrictions on the presence of foreign and for-profit institutions;
- Regulations that require foreign education providers to partner with local institutions;
- Tax rules that are seen to discriminate against foreign educational institutions;
- Conditions relating to nationality (such as requirements in hiring procedures that preference be given to citizens or landed immigrants);
- Restrictions of public subsidies and research grants to domestic institutions only.

The main concerns about the impact of GATS on education include the following:

Commercialization and privatization: Trade liberalization through the GATS will promote the expansion of private and for-profit provision of education services. If a country were to fully commit its education sector, Most Favoured Nation (MFN) rules would require any regulatory or funding advantage gained by a single foreign commercial provider to be extended unconditionally to all. Market access rules would prohibit any government measures that discriminate between non-profit and for-profit education providers.

Undermining the right to regulate education services: While the preamble to GATS states the agreement *recognizes the right of Members to regulate*, this does not fully protect the ability of governments to

enact rules and regulations to meet their domestic needs. Governments are free to regulate only if their regulations are consistent with GATS rules. In addition, new disciplines on domestic regulation could further restrict the ability of regulators to maintain and adopt measures. As a result, if commitments in the education sector are taken, virtually every regulatory measure governing education could be exposed to potential challenge.

Education and the State: For some decades, the state has been the main provider, source of funding and regulator of education systems. As a result of the GATS agreement, public bodies may lose competency in the control and planning of their education systems, especially if we bear in mind that GATS involves submitting national education systems to the rules of the market and free trade. This has a regressive effect on national sovereignty and public control of key sectors.

Liberalization of the education market: The GATS agreement furthers the liberalization of the education sector and the introduction of greater competition. GATS is an instrument with a clear vocation for opening up and protecting markets, allowing particular educational enterprises to achieve their objectives in terms of territorial expansion. Consequently, this will favour the growth of the private education sector. Of the educational sub-sectors included under GATS, the one that is most susceptible to becoming subject to trade is that of higher education, and the modality with greatest potential is that of "cross-border trade", which, in the field of education, means distance learning.

Introduction of market mechanisms into educational systems: Liberalization puts institutions of public education into competition with bodies from the private sector, so that, if they do not perform efficiently, they can be excluded from the market. Therefore, universities and other public institutions may, due to their interacting with an increasing number of private institutions (both national and

foreign), become involved in the dynamics of competition to a greater extent than is the case at present.

Inequality: The extension of the private sector encouraged by the GATS agreement undermines educational equality in terms of access, since the cost of private services can usually only be afforded by wealthier students. This trend may become worse given the current "fiscal crisis" of the state, since some governments may find the expansion of private sector education at some levels to be a necessary precondition for reducing public spending without its having any quantitative effect on supply.

Quality: In education, increase in supply is not directly related to better quality. GATS does not cover matters relating to educational standards, and thus may encourage a greater number of low prestige educational providers, or what some call "diploma factories". This trend undermines students' right to high quality education.

Content: Providers of higher education for profit direct the education they offer towards apprenticeships in the labour market, to the detriment of humanistic aspects of higher education. In this way, it becomes possible to put limits on the concept of knowledge as the 'raw material' of the current system of production. This trend may be associated with greater restrictions on academic freedom and autonomy in the production of knowledge.

Workers' rights: Another consequence of liberalization is a reduction in the power of trade unions to protect their members' employment, conditions and rights, and also higher levels of deregulation and flexibilisation of teaching staff.

Cultural homogenisation: The less companies providing educational services change their study programmes and the less they adapt these to the different situations of their students internationally, the higher will be their profits. English is the predominant language used in distance education programmes because of the

national origin of the main providers and because this reduces costs of the production process in transnational education programmes.

Countries in the southern hemisphere: There are three factors which lead us to believe that the effects of GATS may be worse in poorer countries: a) there are greater limitations on the education budget in these countries; b) it would discourage the capacity-building of local public education institutions and exacerbate an unequal balance of trade between North and South; c) the public sector education system does not usually offer complete coverage, so a new private sector has greater opportunity to fill in the gaps left by the State and to use this as a market-opening strategy from which they can then dismantle the rest of the public system.

Unequal balance of trade: The flow of investment and trade in educational services will clearly not favour countries in the south. The EU-US-Australia-New Zealand axis will profit the most from the export of services and setting up educational subsidiaries abroad. In the southern hemisphere, service sector companies (whether public or private) will not only have no access to markets in the North, but also may be displaced or absorbed by international competition in their own country. To cite just one example, in Mexico, shortly after the NAFTA (North American Free Trade Agreement) was approved in 1994, direct foreign investment by Canadian and U.S. education companies increased dramatically. In that country between 1994 and 2003, 113 foreign companies invested about 40 million dollars. The U.S. consortium *Sylvan Learning Systems* bought up Universidad del Valle, one of the main private universities in Mexico. Furthermore, the number of institutions of higher education of questionable quality increased considerably in Mexico: in 1990 there were 706 and by 2002 there were 2,153.

Developing countries and the brain drain: For developing countries, the liberalization of trade in education services would have

a serious impact. It is already accelerating the "brain drain" to the North. Mode 4 trade in services (natural persons) encourages qualified professionals to travel to different parts of the world to work. Therefore, if the negotiations on the trade of services continue, the brain drain could get worse. It would mean countries in the Southern hemisphere losing cultural capital and high-level human resources. Also, the liberalization of Mode 4 trade brings with it serious contradictions, since the rich countries probably intend to open their doors only to the better qualified personnel from the southern hemisphere, while maintaining their restrictions and discriminatory rules against workers with few qualifications.

For these reasons, WTO members should be strongly encouraged to adopt a precautionary approach and make no commitments on education or education-related services.

7. Concerns Regarding Liberalisation of Financial Services

Liberalizing financial markets through GATS: what is being sought?

Recent development includes:

- Developed countries are demanding that developing countries commit to liberalization and get rid of regulations in the finance sector.
- They are directly influenced by the Financial Leaders Group (some forty CEOs from leading banks and insurance companies).
- At the last General Council Services meeting in February the Financial Leaders Group issued a statement calling on WTO members to seek commitments for substantial liberalization in the area of financial services and they hosted a ½ day seminar at the WTO entitled "The Benefits for Developing Countries of Liberalizing Financial Services Markets".

They all argue that the entry of foreign firms into the markets of developing

countries will enhance competition and bring needed additional know-how and technology into the sectors. This would lead to a deepening of the financial sector in developing countries.

Developed countries are also pushing for the elimination of all controls on capital flows. In doing so, they completely ignore the importance of such controls for developing countries. And since the Asian crisis, it is known that rapid capital inflow often causes speculative bubbles on the stock market and often lead to an asset-price boom. The rapid growth of asset prices increases inequality. Free flow of capital enables local elites in developing countries to bring their assets abroad, often evading taxation, taking this money from social budgets. Under a regime of deregulated capital flows, countries are easily affected by financial crises in others countries.

The EU and other Western countries have prioritised financial services as the sector in which they want many countries to open up their market under the GATS. While this serves the aggressive expansion strategy ("consolidation") of the Western financial industry, they argue that liberalisation of financial services leads to much needed efficiency, better choice and service in developing countries.

Not so efficient for the local economy

However, the experience of liberalizing banks, insurance companies, health insurance, mutual funds, investment banks and pension management indicates many negative consequences.

Foreign financial firms especially target rich clients and rich regions in a country, and can attract the best managers away from local banks. As consequence, local financial institutions are left with the less well off clients and less trained personnel, which might lead to risky strategies rather than more efficiency. More importantly, foreign banks often fail to lend to local industries, small businesses or poor people, which stifles economic growth, as is currently the case in Mexico where around 85% of the financial sector is in the

hands of foreign banks. As soon as developing country markets are opened, foreign firms have in many countries rapidly taken over a large part of the domestic financial industry.

GATS undermines necessary prudential measures

Making commitments under GATS increases the risk of financial instability. Western GATS negotiators ignore the experience of previous financial crisis that liberalisation needs to be gradual and well sequenced, underpinned by costly capacity building of financial authorities in developing countries. Foreign financial firms are likely to increase cross-border money transfers e.g. through lending in foreign currency, as is the case in China. While GATS is not supposed to liberalise capital flows, GATS articles and commitments in financial services in practice do. This can lead to foreign exchange instability and unexpected financial risks.

The financial prudential measures that are permitted under the GATS leave many developing countries' regulations open to challenges by WTO disputes, or bullying to have developing countries remove regulations during the secret bilateral GATS negotiations.

Developing countries have to carefully assess whether to open up their financial sector under the GATS because Western negotiators have not made any assessment of the financial, social and economic risks involved.

8. Concerns Regarding Liberalisation of Distribution Services

Distribution services include wholesale trading and retailing such as by supermarkets and hypermarkets. Opening up markets for foreign distribution companies is claimed to lead to more efficiency, new technology and know how, and cheaper products.

The question is whether these claimed positive effects outweigh the negative effects of liberalisation as experienced in different countries. Moreover, commitments under GATS restrain

government's freedom of policy making to deal with the problems.

Opening up the market to foreign supermarkets, hypermarkets, discounters and other retailers has led in different countries to:

- A sharp reduction in the traditional retail shops that provide an income for many poor people,
- Bypassing of traditional wholesalers and middlemen, and preference for supply through imports or very large producers,
- Rapid concentration of the supermarket retailing sector in the hands of a few (foreign) supermarkets, even in different developing countries, which undermines bargaining power of producers and provides opportunities to set too high prices.

Supermarkets in the West increasingly have the power ("buying power") to squeeze the prices of their national or foreign suppliers of fresh and processed products while making a lot of profit. At the same time, they demand adherence to more and more strict standards. These practices are being transferred when they start operating in developing countries, undermining the development of local small and medium sized industries and farms.

When making GATS commitments, governments have to refrain from limiting the number of foreign distribution service providers (Art. XVI), providing support to their national retailers only (Art. XVII), and imposing measures about establishment, licensing and standards that might hinder foreign distributors' operations (Art. VI). The current negotiations even want to restrict the economic needs test.

Research on the concentration of supermarket sector in the world shows that Western supermarkets, such as Wal-Mart or Carrefour, are in the top-10 providers in

Asia, Latin America, Africa and Central and Eastern Europe. It is these same companies that will benefit from new GATS commitments while those from developing countries might have less capacity to grow and expand.

9. Liberalizing Tourism Markets through GATS

Developed countries force developing countries to liberalize their tourism markets. The rigid WTO principles of market liberalization and national treatment for all investors are not suitable for promoting sustainable tourism: on the contrary, they endanger it.

In its report on *Tourism and Poverty Alleviation*, the World Tourism Organization specifically mentions the importance of laws, taxes, and investment frameworks for the benefit of the local population, as well as regulations on the environment.

Further commitments for liberalisation under the GATS will pose a threat to the increasingly numerous initiatives for responsible tourism that benefits the local population, addresses women's needs and helps protect their livelihoods.

Increasing global competition in the travel and tourism industry will also increase concentration in the tourism sector, to the disadvantage of many small hotels, restaurants and small tourism companies that will not be able to withstand the competition.

A number of countries will have to offer more and more investment incentives to investors, including tax holidays, as well as infrastructure to be put in place which the poor population can only dream of and which represents a burden on the national budget.

10. Agriculture Services and GATS

There are 4 major reasons why the GATS is an issue for people concerned about agriculture and food – including the workers in these sectors:

By encouraging and enforcing profit-driven commercialization and privatization of water supply and distribution, the GATS threatens the viability of agriculture – the largest single use of fresh water – and has a direct impact on the job security and working and living conditions of agricultural workers and the livelihoods of millions of small family farmers and peasants around the world.

The privatization and commercialization of environmental services under the GATS, including waste management, treatment and disposal by private corporations, further diminishes the responsibility and capacity of national governments to protect the environment and the occupational safety and health of workers, including workers engaged in agriculture and food processing. It is also crucial to recognize that the opening of services to foreign companies includes agricultural extension services provided by governments to rural communities.

The GATS is used to consolidate and prevent the reversal of corporate concentration in the food retail sector, effectively reinforcing corporate control along the food chain from "the farm gate to the dinner plate."

Through its provisions for the right of foreign corporations to establish a 'commercial presence' in all WTO member-states and related protection of the rights of foreign investors, the GATS realizes key elements of a multilateral agreement on investment in the WTO. It is in effect a MAI by other means.

According to the UN *World Water Development Report*, an estimated 70% of all fresh water consumed is used for agriculture, while 22% is for industrial use and 8% for domestic use. That means that 70% of all water withdrawals from rivers, lakes and aquifers is destined for use in irrigating crops. For developing countries, where agriculture is predominant, this reaches as high as 82% of all fresh water usage.

The link between water and food production is critical when we consider the growing crisis in water scarcity. Water scarcity translates into food shortages – undermining food security and afflicting more than a billion people dependent on agriculture for their livelihoods, including 450 million agricultural workers.

The crisis will worsen as the water needs of agriculture increase. The FAO estimates that to meet future food production needs agricultural water withdrawals will increase by some 14% over the next 30 years. One of the results is that farmers in developing countries face increased competition for scarce fresh water resources.

The FAO has also drawn attention to the interconnections between water, crop irrigation and health. For example, mismanagement of irrigation is linked to the spread of water-borne diseases. This reinforces the need to ensure water quality and safety as part of the health and safety of agricultural workers and their communities.

These and other long-term effects of the GATS expansion are indicative of the systematic violation of rights involved. As the UN Commissioner on Human Rights observed in a report on trade and investment:

According to the Committee on Economic, Social and Cultural Rights, the obligation to respect the right to water includes refraining from arbitrary or unjustified disconnection or exclusion from water services and from increasing the price in water to the extent that it is unaffordable.

The unsustainable management of water resources promoted under the GATS threatens the viability of sustainable agriculture. In this sense, the GATS undermines the capacity of national and local governments to manage resources such as water to meet the needs of sustainable agricultural production, especially food production. This in turn undermines the prospects for decent work in agriculture, since sustainable

employment in agriculture is a critical dimension of decent work.

By enforcing the "liberalization of all services" and removing barriers to foreign corporations' entry into the services sector, the GATS effectively opens up public services like water distribution to control by water giants such as Suez, Vivendi, Aqua Mundo and Thames Water. In fact, the European Commission worked closely with these companies when drafting its the GATS requests to 109 WTO members demanding the liberalization of their service sectors. This includes requests to 72 countries to open up "water collection, purification and distribution" to foreign corporations.

State ownership and/or management of water utilities and related water services are primary targets under the GATS since they are treated as barriers to foreign competition. Information leaked in early 2003 shows that the EU identified public water corporations in countries such as Brazil, Bolivia, Botswana, Bangladesh, Tunisia and Honduras as barriers that must be removed to allow foreign competition - a process requiring privatization of public water utilities and guarantees securing the right of foreign corporations to enter and dominate these markets. The pursuit of these the GATS requests - especially aggressive moves to force open public water services to foreign ownership - was a critical item on the EU's Cancun agenda, and remains a priority in the post-Cancun maneuvering. Whatever deadlocks plague other aspects of the WTO trade negotiations, the EU - acting in the interests of the corporate water giants - is determined to force through its the GATS attack on water.

Defenders of the GATS often argue that it does not impose water privatization, but is only limited to the distribution and use of water and does not concern ownership. National governments can remain the owners of water resources. However, the legal and political reality of GATS is that this ownership 'does not, in and of itself, protect a State's right to use and continuously regulate water resources.'

Water use may be granted for decades to corporations that exercise full control over the pricing and distribution of water, and the government - instead of regulating this to ensure public access to water, environmental protection, etc - in fact faces the threat of having to pay financial compensation to foreign water companies for infringing their rights. This means that all future policy decisions on re-regulating the water sector are subject to an assessment of financial liability.

There are many ways in which the expansion of corporate control of water under the GATS will affect agriculture in general and agricultural workers in particular. This includes:

Rising Water Costs: Increased corporate control of water leads inevitably to increased water charges and related costs, thereby increasing the cost of water inputs into agricultural production. As past experience demonstrates, employers are likely to offset rising production costs by reducing labour costs - either by reducing workforce numbers or cutting workers' wages. At the same time, workers will face rising water costs in their own communities as corporate water suppliers introduce cost-recovery fees. This will increase the living costs of workers and their families.

Intensifying Competition: Corporate control over water distribution will intensify competition over water use, with a high risk of water being redirected towards industry and away from agriculture due to the greater capacity of industrial firms to pay higher charges for water and to privately subsidize water supply infrastructure. This will have the effect of reducing agricultural production, which threatens to reduce employment in agriculture. At the same time, the rural communities where agricultural workers live will also be forced to compete with both industry and agriculture for access to water.

Water Use: Declining water availability or rising water costs will force major shifts in agricultural production. This is especially so in countries and regions affected by

water scarcity, drought or desertification. Shifts away from crops requiring significant water inputs to crops requiring less water will lead to changes in farming practices and employment, and may undermine local food production. Higher income cash crops using less water (e.g. cotton) may replace essential staple foods (e.g. rice), therefore undermining local food security. As such the viability of certain crops is under threat.

Water Harvesting: As experiences in countries such as Bolivia have shown, water harvesting by foreign corporations extends to rainwater collection. This has a serious impact on rain-fed crops as well as preventing groundwater recharge through rainwater. The loss of groundwater recharge in turn affects agricultural production. Even rainwater collection for drinking water in communities is threatened by corporate claims on water rights and the introduction of water charges.

Water and Health: Corporate control of water and rising costs affects agricultural workers' access to clean water, both at work and at home. On farms and plantations clear water will be rationed or restricted in use. This may limit the drinking water available to workers, which may have severe health effects. In rural communities the loss of access to affordable, clean water has a direct impact on community health, especially if rising costs force people to use unclean water for drinking or the preparation of food.

Pesticides and Water: On-farm water restrictions and/or rising water costs may also mean that agricultural workers are denied use of water necessary to clean themselves after exposure to or use of agro-chemicals. Every year 40,000 people die from pesticides and 3 to 4 million are poisoned. The health and environmental harm caused by agro-chemicals extends to rural communities where agricultural workers live. Access to clean water both on farms and in rural communities is necessary - but not sufficient - to reduce the effects of exposure to pesticides.

Corporate Cleanup? The disposal of obsolete pesticide stocks (a major source of soil and water contamination in rural areas) may be treated under the GATS as a commercial environmental service. The entry of foreign corporations into this 'market' distorts the priorities and methods of pesticide stockpile disposal, as well as discriminating against poorer communities. Corporate contamination cannot be resolved through and corporate cleanup.

These points illustrate the link between the ongoing water crisis and the rights and livelihood of agricultural workers. The GATS can only deepen this crisis by undermining the capacity of national and local governments to manage public resources, including water. The GATS therefore generates new barriers to achieving sustainable agriculture of which decent work is an integral element.

11. GATS and postal services

Background

The multinational courier industry has succeeded in making postal and "express delivery" services a central focus of the GATS negotiations. The industry has three key aims:

Greatly increasing GATS commitments covering postal and "express delivery services."

Creating a new, expanded classification for "express delivery services" that includes many services currently classified as postal services.

Applying GATS "pro-competitive" rules, first developed in 1997 for the telecommunications sector, to postal and courier services.

In February 2005, The US, EC, Hong Kong, Japan, New Zealand and Switzerland presented a proposal (TN/S/W/30) that advances the industry's main demands.

Key messages

We urge governments not to make GATS requests or offers in postal or courier

services. Making commitments in courier services, or "express delivery services," would threaten national postal administrations, by exposing them to GATS claims that they are "cross-subsidizing" and/or "abusing their monopoly position."

We urge governments to maintain the current CPC classification system for courier and postal services. If accepted, the proposals to reclassify postal and courier services would undermine public postal and courier services. The proposed reclassification includes many services routinely delivered by national postal administrations. The proposed reclassification would increase legal uncertainty, particularly for those governments that have already made GATS commitments covering courier services.

We urge governments to reject applying "pro-competitive" rules to postal and courier services. Such rules would:

Grant multinational courier companies a legal right to access national post offices' facilities and networks, at favourable rates, but without the responsibility or financial costs of fulfilling their public service obligations.

Prevent cross-subsidization — which can be a valuable means of ensuring more equitable supply of essential services.

Undermine universality of postal services by imposing new restrictions on Universal Service Obligations, including a WTO-enforced "necessity" test to ensure USOs were "no more burdensome than necessary".

Increase pressure on public post offices to withdraw from courier and other services where they compete with foreign multinationals.

Trade: Still a 'great deal of disappointment' in GATS offers
Raja Kanaga

There is still a great deal of disappointment being expressed by members with respect to the quality of

initial and revised offers that have been tabled so far in the services negotiations.

This assessment was provided by Mr Hamid Mamdouh, Director of the Services Division of the WTO, after the conclusion of a week-long meeting of the Special Session of the Council for Trade in Services, where the negotiations on market access in services is taking place. Mamdouh added that members have also felt that even the improvements in the revised offers tabled by some members have been modest. In an assessment of the state of play in the services negotiations so far, Mamdouh said that there was both good news and bad news.

The good news has been that the number of offers have improved in that "we are in better shape than we were, which could be a sign of improved activity." So far 23 revised offers have been submitted since 19 May. A good number of initial offers has also been received during that period. If one looked at the numbers alone, leaving aside the quality of the offers, during the first two years, from the end of March 2003 to the end of March 2005, there were 52 initial offers. During the two months of May and June 2005, in total there were 40 offers submitted by members.

"That gives an indication of the pace that is picking up," Mamdouh said.

However, the bad news has been that based on the quality of the initial and revised offers submitted, the general feeling of members during the review of progress in the services negotiations at the Special Session last week has been that there is still a great deal of disappointment. Mamdouh noted that the tone for the review of progress in the services negotiations was set by a note by the Chairman of the Special Session, Ambassador Alejandro Jara of Chile distributed to members last week. The Chairman's note to members on the review of progress in the services negotiations said that the services negotiations, now in their sixth year, have not been progressing in a satisfactory manner. The Chair said

that 2005 is a crucial year for these negotiations, noting two important benchmarks - May for the submission of revised offers, and December for the Sixth WTO Ministerial Conference in Hong Kong.

The Chair noted that the views expressed by members have related in a general manner to the shortcomings in offers submitted, the lack of sufficient progress in bilateral as well as the rule-making negotiations. The Chair said that at the present meeting of the Special Session, members should express their views in a much more detailed and specific manner than they usually do. He encouraged them to provide, in sectors and modes of supply of interest to them, a detailed account of how they evaluate the offers submitted by other members and the criteria on the basis of which they have arrived at their individual assessment.

The Chair also invited members to identify in equally detailed terms what they would have liked to have seen in other Members' offers, as well as identify what they consider to be the main barriers or regulatory issues that they wish to see addressed in these areas of interest to them. This should give a clear idea as to where each member wishes to be at the end of this round.

The Chair said that such views expressed by members would provide the main inputs for his report to the TNC, which he hoped will not only describe the state of play, but would also indicate the desired destination together with some suggestions on how to arrive at it on time. During the discussions at the Special Session meeting on Friday afternoon, the US outlined five elements of a work plan that it suggested the Chair to prepare.

The five elements are:

* formulation of the level of ambition for the negotiations through approaches consistent with the Services Negotiating Guidelines and Procedures and the July 2004 package;

* development of an outline of a "potential package" to be negotiated on domestic regulation in accordance with GATS Article VI:4 negotiations;

* a statement of progress in the discussion on services rules pursuant to the mandates set out in accordance with Articles X, XII and XV;

* an outline of elements that could address requirements of GATS Article IV and ensure implementation of the LDC modalities; and

* assuming agreement on modalities in agriculture and NAMA, a suggested schedule for proceeding with services negotiations with an equivalent level of specificity keeping in view the different structure of the GATS.

At the end of the meeting on Friday, the Chair said that he would consult with members on this and other issues. Mamdouh said that during the discussions last week, a number of members expressed interest in securing commitments in energy services, construction and engineering services, financial services, telecommunications, education services, and in Mode 4 and Mode 1 with respect to the supply of services.

In financial services, for example, there was clear indication that foreign equity limitations, removal of restrictions on legal form of entities to be established under Mode 3 and discriminatory licensing conditions were among the issues that need to be addressed. Most of the interest in the financial services sector was expressed by the developed countries, Mamdouh said. Several references to Mode 4 (movement of natural persons) were made by the developing countries, he added, where they stressed the need for more commitments in relation to contractual service suppliers and to independent professionals. In this respect, the developing countries referred to specific sectors such as computer-related services and professional services such as legal and accountancy, as well as to administrative

procedures such as the obtaining of work permits.

The technical side of the services negotiations were also highlighted by several countries, such as issues relating to the schedules of commitments, classification and rules. The developing countries stressed the importance of dealing with the issue of scheduling of commitments, Mamdouh said. He pointed to the recent rulings in the gambling and telecoms dispute, which has raised some questions with respect to scheduling, such as in ensuring the legal certainty and predictability of commitments.

On the issue of rules, some countries had expressed disappointment on the lack of progress in negotiations on emergency safeguard measures over the past ten years. Mamdouh also said that there were some "veiled references" during the Special Session meeting to the fact that the request-offer process in services negotiations was not producing the results that were aspired to, and that bilateral negotiations are tedious and take a long time. Some members proposed exploring alternative approaches, an idea which Mamdouh referred to as "benchmarking" (see SUNS #5834).

However, there has been no concrete proposal submitted to the Special Session on the "benchmarking" approach, he added. Mamdouh also said that the "benchmarking" approach is surrounded by many difficulties, both technical and political in nature. In trying to set targets under the "benchmarking" approach, members would have to precede the services negotiations with a negotiation process on the benchmarks itself. Mamdouh said that theoretically speaking it might be useful to say that if members set multilaterally agreed targets, they might respond to them and this can help achieve negotiating efficiencies. But this depends on what kind of "benchmarking" that members are going to have, whether this would produce the required substance, and how long it would take for members to agree to the benchmarks.

He noted that some developing countries were resistant to the benchmarking idea arguing that the structure of the GATS and the established guidelines need to be adhered to. Principles such as flexibilities for developing countries and the right of each member to choose what sectors to commit to and what sectors they choose not to, are equally important for developing and developed countries.

Other issues of importance that were raised, he said, were attention being paid to sectors and modes of supply of interest to developing countries and the positive listing nature of the schedules of commitments.

Services negotiations: common sense instead of a common baseline :

Submission by Brazil

1. Ideas about a "common baseline" in services (a new name for "benchmarks") have been circulated lately. These ideas are based on false premises and dangerously detract from the GATS structure. They would create a "round for free" in services for the developed countries, while forcing the way for more concessions by the developing ones. Such approach is not a good way forward in the services negotiations, and this is why.

2. The notion that the request/offer system is not enough to push forward the services negotiations is based on the assessment that revised offers are too poor. Actually, from the 20 revised offers presented so far, 17 come from developed countries, and these are very poor indeed, whereas the developing countries' revised offers show a much more constructive approach. The problem thus rests in the bad quality of developed countries' revised offers, and nowhere else. These offers show an unwillingness to address the existing mandate, that is, to give priority to sectors and modes of supply of interest to developing countries', as stated in Annex C of the "July Package".

3. The problem can only be solved through better offers by developed countries. Developing countries have clearly indicated their expectations, both bilaterally and collectively. These expectations can be reiterated in further requests. Developed countries can also, of course, make new requests on the basis of revised offers, mainly to one another (since they seem to find their respective offers so poor), but also to developing countries (most of whose revised offers, by the way, are still not on the table). To claim that the request/offer approach is exhausted or insufficient is biased and masks the fact that developed countries do not give signs to be disposed to make their contribution to the Doha services negotiations.

4. It is against all good logic to generalize the problem of bad developed countries' offers, and to make all other members responsible for an overall improvement of the level of commitments. But this is exactly the idea behind a "common baseline".

5. The main element of a "common baseline" would be the obligation to take commitments in sectors chosen from a certain priority list. Whatever "flexibility" is allowed in this model, it would be far less than the flexibility already existing under GATS, which does not oblige countries to take commitments in any sector, or list of sectors, or sectors chosen from a list. The phantom of mandatory commitments, which haunted the beginning of GATS negotiations in the Uruguay round under the inspiration of developed countries, would come back to life.

6. The idea that sectors already committed in the Uruguay round could be counted again to fulfill each country's new commitments under the "priority list" is untenable. Since developed countries generally made more commitments in the Uruguay round, it would allow them to count again those same sectors as their "contribution" to the Doha round. Developed countries would thus have a round for free in services, whereas all the

burden to take new, meaningful commitments would rest on the shoulders of developing countries. This approach would subvert Articles IV and XIX of GATS, where flexibility is established in favor of developing countries, not against them.

7. The "common baseline" would pre-determine not only the sectors, but also the contents of market access commitments in each mode of supply. Elimination of local presence and domestic capital requirements is preached. This would amount to a rewriting of Articles XVI and XVII of GATS, which form the basis for specific commitments, and which provide the possibility for members to maintain any requirements inscribed in their schedules. The "common baseline" approach would move GATS close to other models of services negotiations, such as NAFTA, where local presence and domestic capital requirements are banned, where development needs are not recognized, and where flexibility is very limited due to a negative list system of commitments.

8. The "common baseline" also foresees some specific treatment for Mode 4: in some sectors, Mode 4 barriers would be removed. This approach ignores the fact that practically all Mode 4 regulations are horizontal, not sectoral, and if horizontal limitations remain, sectoral movements are meaningless.

9. To give transparency to Economic Needs Tests, as the proponents of a "common baseline" offer to do, is no more than the obligation that Members already have under GATS Articles III and XVI. It can certainly not be considered a "concession".

10. The ideas for a "common baseline" already vented would create a division between developing countries and least developed countries, which does not exist in the GATS. Developing countries as a whole face specific situations in the services negotiations, and GATS addresses this fact. The sort of special flexibility which the "common baseline" foresees for

LDCs is something that they already have - together with all other developing countries - under the GATS. Thus, the "common baseline" would erode the flexibility which GATS reserves for developing countries, without creating any new flexibility in favor of LDCs.

11. For such reasons, it is clear that the "common baseline" is fundamentally flawed. No adjustments or coefficients in that model could make it compatible with GATS and with the main principles on which the Doha round is based. It is intended as an instrument to force developing countries to make commitments much beyond those of developed countries.

12. Not a common baseline, but a common sense approach is needed. Problems must be correctly identified before they are addressed. Today's problems in the services negotiations are not to be found through an aggregate study, either quantitative or qualitative, of tabled offers as a whole, but in the analysis of individual offers, and the fact they do not fulfill specific mandates. The solution is the improvement of those deficient offers, and not some sort of diluted, collective approach, which in practice would mean the improvement of all other offers but those which are deficient.

European Union Non paper: common baseline for the services negotiations possible elements

The following sets out possible elements for common baseline for the services negotiations that together with plurilateral approaches aimed at achieving critical mass in key sectors would complement the "request-offer approach".

Cross sectoral elements

Commitment to make offers in a minimum number of sectors/subsectors from an agreed list of priority sectors/subsectors. Particular attention shall be given to sectors of interest to developing countries. Commitments offered should be commercially meaningful and reflect no

less than existing level of market opening (status quo).

If a sector from the list is already committed to the extent required by point 1 above this sector would be counted towards the total.

Flexibility should be provided to all Members in the sense that each Member would choose the sectors it commits from the agreed list with the option of not committing a limited number (e.g. commit X out of Y and thus opt out of Z).

Additional flexibility should be provided to take account of the level of development of individual Members and in particular LDCs. The flexibility for developing countries could for example take the form of committing them to offer fewer sectors/subsectors and to allow for longer implementation periods. LDCs should be encouraged to schedule commitments in even fewer sectors from the agreed list.

Economic needs tests should be clearly inscribed and indicate whether they are discriminatory or not and the main criteria on which the test is based.

Modal elements

Mode 1: Commitments in X% of sectors/subsectors offered from the agreed list and in those sectors/subsectors removal of all commercial presence requirements.

Mode 2: Commitments in and removal of limitations in Y% of sectors/subsectors committed from the above list.

Mode 3: Commitments in Z% of sectors/subsectors committed from the agreed list and in those sectors/subsectors removal of NT limitations in sectors committed as to types of legal entities, ability to buy or rent land and buildings for direct commercial use, nationality requirements for board members and senior management. In addition, removal of foreign ownership restrictions or where maintained foreign ownership should be allowed up to at least 51% and

should not be combined with licensing quotas.

Mode 4: Commitments for Business Visitors (BV) and Intra-corporate transferees (ICTs) in all committed sectors from the above list. Commitments for Contractual Service Suppliers (CSS) and Independent Professionals (IPs) in at least $\Sigma\%$ of committed sectors from the above list.

Editorial- Services Negotiations:

9 July 2005

Chandrakant Patel

The recently concluded meetings of the Special Session of the GATS Council (Geneva, 27 June - 1 July) suggests the emergence of Services, Agriculture and NAMA, as among the key deal making/breaking issues at the Ministerial meeting in Hong Kong later this year. The reasons for this are clear: all three areas, from the standpoint of the demandeurs, warrant new and deeper market access commitments by the South. The cross-linkages and scope for trade offs between them will be fully exploited by the OECD countries in December, with progress in Agriculture (or any other area) being made contingent upon satisfactory market access concessions in others. The renewed drive by the developed countries to place the Services negotiations on a higher footing than has been the case heretofore in the Doha Round may well be designed to camouflage the absence of progress in Agriculture and to a meaningful reform of the subsidy regimes in Europe, United States and Japan.

The fact remains that improved market access commitments in services will be the central-piece of demands of the developed countries over the balance of the Doha Round. Due to their strong growth prospects in the foreseeable future, several countries of Eastern Europe, Asia (most notably China, Indonesia, India and Malaysia) and Latin America and Africa (notably Egypt, South Africa and Nigeria) are identified as providing the greatest

opportunities for the developed countries multinational corporations. These opportunities cover sectors as diverse as transport and telecommunications, financial and insurance services and environment, health and education services. Unlike many of the smaller countries in Asia, Africa and Latin America who have been forced to open up their fledgling services markets under IMF-World Bank borrowing conditions, none of the larger developing countries have similar obligations. Besides, none of them (barring a few such as Mexico and South Africa) have been required to make concessions in the context of regional or bilateral arrangements. The larger developing countries, with the greatest market access potential, are also viewed as having made unsatisfactory offers in the current Services negotiations.

Although developed countries, for tactical and strategic reasons, will establish linkages and trade-offs between the three sectors mentioned above, developing countries cannot lose sight of the fact that the three sectors are fundamentally different. Trade in goods, a quintessentially border issue, does not pose the same degree of negotiating complexity as the various services sectors: the latter embraces a vast range of non-trade and non-border considerations involving sensitive political, cultural and social issues. Then again, services are a new issue in international trade law (post-GATT and Uruguay Round) and countries are still learning to deal with its complexity, including developing special rules to deal with its non-border features, in a multilateral negotiating forum. Not the least of such difficulty is the absence of any agreed definition of services. Since there is no comparability between the GATS definition of services (revolving around the four modes of their delivery) and national income account definition of services, revolving around value addition, few would venture to make cross-country comparisons of the role of services on the basis of GATS definition or come to any conclusion about the development value of GATS related market access commitments.

Of much concern to developing countries are the new proposals advanced by developed countries to “speed up” the Services negotiations, perceived by them as being in a state of crisis. The so-called ‘crisis’ is attributed by the developed countries and the WTO secretariat to derive from the unsatisfactory quality of developing countries offers tabled so far. They are claimed to be below OECD countries expectations and below, according to them, the level of commitments to “progressively liberalize services sectors” in the Uruguay Round. Accordingly, under the pretext of speeding up the negotiations, EU has proposed what it calls ‘alternative and complimentary ‘methods of negotiations (and which it seeks have endorsed by the July meeting). The broad approach advocated by EU (and earlier by the US and others) involves targeting a minimum number of priority clusters of sectors/sub-sectors for liberalization.

As the paper by Brazil makes clear, the new approaches would drive GATS towards a NAFTA type of services model in which development dimension would be largely absent. If adopted, the new approach would represent a major shift in the architecture and negotiating model of GATTs. The cluster approach (also known as ‘benchmarking’, ‘horizontal modalities’, and ‘formula approach’) would drastically alter the structure of GATS: in particular, it would result in a shift from the present positive list and bilateral offer and request approach that provides some flexibility to developing countries to a negative list and a plurilateral and/or multilateral approach. On their part, many developing countries have expressed disappointment at the quality and scope of offers by developed countries in general and concerning Mode 4 in particular. They have also expressed serious concerns about a number of important issues that remain undressed. These include treatment of domestic regulation, rules relating to treatment of subsidies and safeguards and treatment of government procurement and the entry

into a negotiating mode for the consideration of these issues.

If the conclusions of the foregoing analysis are correct, namely that the developed countries will target services liberalisation as the central objective of the Doha Round (and ensure at the same time that the present agriculture regime remains effectively intact) then, both African

Governments and the civil society will have to rethink current strategies and respond accordingly, including demanding a standstill and rollback on earlier commitments and rejecting any EPAS related negotiations without a satisfactory outcome of the Doha Round.

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