



# Issue Paper

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## GATS, Infrastructure & Regulation

### GATS Mode 4

Within the General Agreement on Trade in Services (GATS) negotiations, developing countries have been focusing their efforts on Mode 4: supply of cross-border services through the movement of natural persons (MNPs). Currently, flows of workers are held up not just by market access restrictions but also by onerous visa and entry permit procedures.

Visa requirements are technically carved out of the GATS, but only 'provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment'. Developing country representatives have, therefore, tabled proposals in the Trade in Services Council on how to assess the effects of visa and entry procedures on market access. Rich country negotiators, have been reluctant to make offers and the US has refused to expand on its original Mode 4 position.

### Gains from Horizontal Issues

These issues include disciplines on domestic regulation, credit for autonomous liberalisation, disciplines for services subsidies and government procurement. Better regulation of both domestic and foreign providers in the utilities sector, for example, could generate huge benefits for consumers.

The prospect that the World Trade Organisation (WTO) could interfere in national decision-making processes, and even overturn decisions through dispute settlement, makes negotiators hesitant to table offers of this kind. Using infrastructure services as an input, introducing more transparency and consultation into regulatory processes at the national level offers broad potential benefits, even more so if countries take the step of integrating these procedures into all their policy decisions, not just those related to trade.

Ideally, reform should be targeted at those sectors which are likely to bring about the most significant gains for the country, including infrastructure. In the past, protection of public and private monopolies in utilities has led to considerable inefficiency. The ordinary consumer has paid the price for this in lower quality of service and restricted network coverage.

Regulatory transparency and consultation are not static – they are part of the dynamic process of policy-making. If affected groups are able to have their say in shaping future regulations, this should lead to better drafted rules.

The risk of better organised groups with more resources, like big businesses, having a stronger influence on policy

than consumers or small businesses, could be covered by providing extra support for consumer groups to participate in the consultation and review process.

### Transparency in Domestic Regulation

There are two main options to address domestic regulatory transparency within the context of the WTO: disciplines at the multilateral and at the national level. At the multilateral level, they may take the same form as existing requirements agreed under the General Agreement on Tariffs & Trade (GATT) for countries to publish laws and administrative rules before they are enforced. The Sanitary and Phytosanitary (SPS) Agreement takes a step further, specifically mentioning a 'reasonable interval' between the announcement and enforcement of a new measure. The same kinds of notification procedures could be integrated into sector-wide trade in services agreements.

*Progress in the GATS negotiations during the Doha Round has been disappointing. Members have fallen well behind the deadlines to submit their requests and offers for sector or horizontal commitments and the offers that are on the table are very cautious. By the May 2005 deadline, more than 40 initial offers were outstanding, not including the Least Developed Countries (LDCs). Under GATS, the request-offer system is the predominant negotiating modality but the lack of significant progress during the Doha Round has led some countries, including the US, to propose alternative ways forward.*

In addition to requirements to clearly publish regulations, countries would have to set up 'inquiry points' to which interested parties would be able to address questions about a particular regulatory measure. Such requirements, however, would probably be too burdensome for many LDCs to meet, and their negotiators would do better to commit to processes that domestic businesses and consumers can benefit from too.

On the services side, the Disciplines for the Accountancy Sector, which apply only to those countries that made commitments in this sector in the Uruguay Round, set timeframes for notification of decisions when applicants apply for a service licence. Again, these kinds of multilateral-level disciplines could usefully be extended to other services, but on a sector-by-sector basis.

It is the national level reforms that have the potential to generate most benefits. Many countries have already introduced mechanisms for prior public consultation on administrative measures – these could be made more

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transparent and non-discriminatory. While broader public consultation could enhance the democratic process, countries are rightly reluctant to include external parties like foreign service providers in the process of drafting national legislation. The primary responsibility of governments is to their own citizens.

Infrastructure services are severely lacking in many low-income countries which are vital inputs in virtually every production process and improving the quality of these services will improve a country's prospects for future growth. In recent years, macroeconomic shocks and currency fluctuations have heightened investors' perceptions of developing country risk and made them more reluctant to take on major investment projects in emerging markets.

### The Case of Water

Water services, for example, used to be one of the most controversial issues on the GATS agenda. Opening up the water sector under GATS raised the spectre of privatisation to large multinationals that would hike prices and cut off poor households, which could not afford to pay. The French and British water companies were seen as aggressive players pushing for liberalisation of developing country markets. But changes in the global water industry have put the issue in the background.

Since last few years, the international water companies have shrunk back. They are no longer *demandeurs* for GATS commitments in the sector and the three largest companies – Veolia, Suez and Thames Water – have all announced their intention to focus on 'core' low-risk markets in Europe and North America. Just in 2005, Suez withdrew from two major contracts in Latin America.

Current estimates point to infrastructure financing needs of about 7 percent of gross domestic product (GDP) for all developing countries and up to 9 percent of low-income countries' GDP. But with severe budget constraints preventing LDC governments from financing, encouraging the private sector to return may be necessary if countries are to meet their development goals. A first step in this direction is to reduce risks for private companies by improving regulatory stability and transparency. By making a commitment under GATS to this effect, countries can signal a long-term commitment to reform to potential investors worldwide.

### Telecoms Regulations a Potential Model

Any future involvement of foreign companies in such a sensitive sector should be well regulated at the national level. Here, the existing agreement on telecommunications services under the GATS provides a potential model.

In the Uruguay Round, Members agreed the Annex on Telecommunications and the accompanying Reference Paper on pro-competitive regulation. This contains basic elements of a regulatory regime drawing on best practices from world, allowing developing countries to learn from the mistakes of countries that have a longer history of liberalisation.

The main aim of the Annex is that market access commitments should not be frustrated by restrictions on access to the basic telecoms network. Also, the Annex clearly recognises the right of each member to safeguard public service goals and to impose universal service and other obligations in order to achieve these goals.

### Balancing Economic and Social Needs

Developing countries are rightly concerned about committing to specific disciplines on domestic regulation when many of their own regulatory systems are at such an early stage of development. As infrastructure markets develop and new technologies are introduced, new regulatory needs will become apparent, and governments will want to respond to these. It is this expectation – that regulatory structures and rules are going to change in the future.

But a GATS commitment would not imply that the Member could not introduce new laws or regulations to ensure that public policy goals are met. In particular, commitments to transparency and fairness in decision-making could be applied, irrespective of the rule content.

The sector-by-sector approach implied in the telecoms agreement may provide a good model of how to move forward for the other infrastructure sectors. However, negotiations on energy and water services are still at a preliminary stage.

While sector-specific disciplines could constitute a promising way forward to balance social and economic needs in the complex infrastructure sectors, any concrete agreement is still a long way off.

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