

ABC of GATS



 **CUTS Centre for International
Trade, Economics & Environment**

Monographs on Globalisation and India –
Myths and Realities, #6

 **कट्स ✕ CUTS**
Twenty Years of
Social Change
1984 to 2003

0416

ABC of GATS

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Preface

This is the sixth monograph in the series titled “Globalisation and India – Myths & Realities” launched by CUTS in September 2001. This series is intended to create awareness among the civil society representatives, business community and government officials (especially at the sub-national level) on economic issues in general and World Trade Organisation (WTO) issues in particular. The purpose of these booklets is to demystify and put forth complex issues in a reader-friendly manner. The earlier ones dealt with the basics of the WTO, agriculture, Trade Related Intellectual Property Rights (TRIPs), Foreign Direct Investment (FDI) *et al.*

This monograph focuses on the General Agreement on Trade in Services (GATS), which came into effect in 1995, with the establishment of the WTO. Ranging from banking, telecommunications, health care, education, architecture to space transport, services are becoming the largest and most dynamic component of both developed and developing country economies. Important in their own right, they also serve as crucial inputs into the production of most goods.

In 2003, they constituted 25 percent of the global trade and the share is expected to grow. According to data published by the WTO, services constitute about 60 percent of global output (in terms of gross domestic product) and 40 percent of FDI.

The aim of the GATS agreement is to gradually remove trade barriers in services and open up services to international competition. This agreement, reached during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), is perhaps the most important single development in the multilateral trading system since the GATT came into effect in 1947.

Trade in services is a complex issue, because a large part of it is ‘intangible’. It is, therefore, not easy to keep a track of and account for the supply of services across borders.

The structure of the GATS agreement is like an onion (the more you open, the deeper you go) and often described as ‘development-friendly’. Each WTO member can choose to commit the sectors it wants to liberalise, and to what extent. However, in reality, developing countries face tremendous commercial and political pressure to liberalise.

And, once there is a commitment, it is difficult to ‘backtrack’. Not only is there a “policy lock-in”, but it is the nature of the commitment, which determines whether further space for policy change will be available or not. Given the negotiating capacity of many poor countries (other than external pressures), it is unlikely that there will be much scope for “downward flexibility” once a commitment is made. This has created apprehensions among many poor countries, as to whether they want to open essential services sectors, such as health, education, and water.

The fear is that the opening of these sectors will lead to domination by private business from the industrialised countries. This may lead to a rise in the price of these products, thus creating problems for the masses. However, governments can provide subsidies to these essential sectors to support them and ensure easy access.

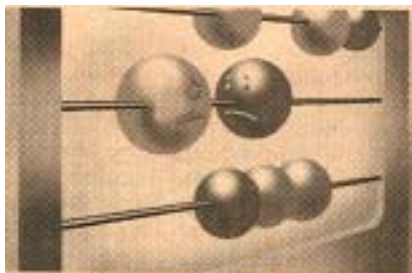
Other than these political economic issues, the GATS rules are not quite complete, and are largely untested. The process of filling the gaps will require further negotiations, and we know from experience that there is a need to alter some of the existing rules, in order to consider the development dimensions of the issues involved.

This monograph is an attempt to educate the reader with the basic issues concerning trade in services, as under GATS. The aim of this monograph is to explain in simple language the structure and implications of the GATS agreement, especially for developing countries.

Jaipur
July 2004

Pradeep S. Mehta
Secretary General

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The Economic Times

What is trade in services?

International trade can be divided into two categories – trade in goods and trade in services. Trade in goods involves movement of “tangible” objects between countries and across borders. We can define International trade in services as supply of “intangible” products like banking, communication, and tourism. Over the past two decades, the service sector has expanded rapidly and has come to play an increasingly important role in trade – at both the national and international levels.

There has been a significant growth in trade in services. Firstly, the development of new technologies (such as internet, satellite communications) whereby information could be passed electronically across borders, and secondly, the gradual liberalisation of previously regulated sectors such as banking, insurance and transport, has led to an increase in the cross-border trade in services.

Trade in services takes place, for instance, when a banking firm from one country supplies its services in the markets of another country by establishing an office/branch in that market, or by electronic means such as Internet. It may also take place if a professional moves from one country to another country, for work.

Services can be personal services or what we call Business to Consumer (B2C) Services (such as fast food chains and beauty parlours) or can be producer services. Producer services refer to Business-to-Business Services (B2B). These services are provided to businesses, such as –accounting and audit services, legal services, management consulting, and market research.

Even though trade in services has been an important part of international trade, it was not institutionalised until 1995, as there were no rules at the multilateral level.

It was only with the conclusion of the Uruguay Round negotiations that a framework was established to liberalise trade and investment in services. This framework, known as the General Agreement on Trade in Services (GATS) is among the World Trade Organisation's (WTO) one of the most important agreements and is the first and only set of rules covering international trade in services at the multilateral level.

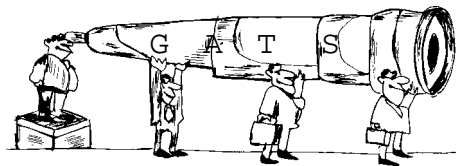
Box 1 provides us with services included under GATS. For structuring the commitments, a classification system has been used, comprising of 12 core services sectors, which have been further divided into 160 sub-sectors.

Box 1: Services Covered under the GATS
BUSINESS AND PROFESSIONAL SERVICES Accountancy Computer services Data processing Legal services Market research Oil and gas services Research and development Security services Translation services Utilities management Internet-related services Design services Architectural services Computer software development
COMMUNICATION, including Postal and Courier services Telecommunications

Contd...

CONSTRUCTION AND RELATED ENGINEERING SERVICES
DISTRIBUTION SERVICES
EDUCATIONAL SERVICES INCLUDING TRAINING
ENVIRONMENTAL SERVICES
FINANCIAL SERVICES Banking Brokerage Insurance HEALTH SERVICES
TOURISM AND TRAVEL RELATED SERVICES INCLUDING Hotel services International conferences
RECREATIONAL, CULTURAL, SPORTING SERVICES INCLUDING Film production Printing and Publishing
TRANSPORT SERVICES Aviation and Airport services Shipping and Port services
OR SERVICES NOT INCLUDED ELSEWHERE INCLUDING Peacekeeping services
Source: “ <i>Business Guide to General Agreement on Trade in services</i> ”, International Trade Centre UNCTAD/WTO, 1999

2



What is the General Agreement on Trade in Services (GATS)?

GATS is the first and only set of multilateral rules and commitments covering principles that affect trade in services. It covers 160 service activities across 12 classified sectors (as mentioned in Box 1), except those supplied as sovereign functions of state authorities i.e. public services such as defence, administration, etc. On the other hand, sectors not covered by GATS include fiscal policy and tax measures, exchange rate management, and most immigration rules applicable to temporary business entry etc.

The focus of GATS is more on the supply aspects of services rather than the services themselves. These services may be international phone calls, architectural designs delivered via Internet, or a study on how to improve waste management.

All WTO member countries are, at same time, members of GATS and to varying degrees have assumed commitments in individual services sectors. Each WTO member is required to have a schedule of specific commitments, which identifies all sectors and sub-sectors that are being offered.

Each member lists in its national schedule services that it wishes to guarantee access and extent thereof, to foreign suppliers. A country can commit its sectors in two ways – horizontal commitments and vertical commitments. Horizontal

commitments mean a particular commitment or limitation that applies to all sectors and sub-sectors committed. Vertical commitments, on the other hand, mean sectoral commitments, under which limitations/commitments indicated apply only to the concerned sector or sub-sector.

Box 2: The Purpose of GATS

GATS was brought into existence –

- Because principles of the General Agreement on Trade and Tariffs (GATT) could not be simply transposed to trade in services. The GATT deals with trade in goods while GATS is concerned with services and the intangible nature of services, making it difficult to control them with tariffs at the international borders.
- To establish a multilateral framework of principles and rules for trade in services with a view to expand such trade under conditions of transparency and progressive liberalisation.
- To promote economic growth of all trading partners and economic development of developing countries.
- To achieve progressively higher levels of liberalisation in trade in services through successive rounds of multilateral negotiations, aimed at promoting interests of all participants on a mutually advantageous basis and securing an overall balance of rights and obligations, while giving due respect to national policy objectives.
- To create a credible and reliable system of international trade rules for services.
- To encourage improvement of service quality, price competitiveness and innovation in service delivery.
- To take into account the serious difficulties of the least developed countries in view of their special economic situation and their development, trade and financial needs.

Source: The Legal Texts: The Result of the Uruguay Round of Multilateral Trade Negotiations, World Trade Organisation, 2002

For instance, if India commits to foreign companies, that only 49 percent of foreign direct investment (FDI) will be allowed in all sectors, then it is an example of horizontal commitment. Now, if India mentions that in the banking sector, only companies that have prior presence in India will be allowed to make this investment, then it is a vertical commitment.

In 2000, a new round of the GATS negotiations was launched with the aim of progressive liberalisation. Under this, negotiations generally proceed on the basis of requests and offers, i.e. countries request each other to consider liberalisation in certain sectors, and respond to offers. This built-in guarantee for retaining control over domestic policy objective is the “bottom-up or positive list approach”.

The members have complete freedom to choose which services or sectors to commit. Positive-list allows each Member to decide what specific market-access commitments it will undertake, and to “schedule” (i.e. lodge) those commitments. If a Member does not list a specific sector to allow a foreign service supplier to establish a commercial presence in that particular service sector, then it is not required to grant them entry into that sector.

For instance, a country making a commitment to allow foreign banks to operate in its territory may limit number of banking licences to be granted or the number of branches a foreign bank may open. However, the measures employed by the government should be administered in a reasonable, objective and impartial manner and should not be trade-distorting in their impact.

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Financial Times

What are the modes of supply of services?

Initially, there was a lack of clarity as to how services can be traded across borders because the supply of services is a little more complicated than that of goods, as here both the supplier and customer have to be at the same place. This is possible if the service moves across the border or the producer moves to the place where he has to provide services. This has led to the so-called “modes of supply”.

BOX 3: Modes of Supply		
Modes of supply	Explanation	Example
Mode 1: Cross-border supply	Across borders from one member country to another. The service supplier and the consumer are in different member territories.	Transfer of information through telecommunication, email, and satellite communication. For instance, a consultant might prepare a report that is transferred through email/ electronically to the client.

Contd...

Mode 2: Consumption abroad	Consumption abroad refers to services trade where the consumer of the service moves to the country that produces or provides that service.	Travel of tourists, training of students or executives abroad. Travel of patients to another country for treatment.
Mode 3: Commercial presence/ investment	Supply of service by a service supplier of one member, through commercial presence in the territory of another member i.e. the establishment of offices, branches and subsidiaries in overseas markets. In other words, Foreign Direct Investment (FDI) in services.	For instance, if a foreign bank opens a branch in India, it is establishing its commercial presence in the Indian market, in order to provide financial services.
Mode 4: Movement of natural persons	Temporary cross border movement of service providers in an individual capacity or as part of an establishment, to provide services overseas. An annex to GATS on this subject clarifies that mode 4 does not apply to measures affecting natural persons seeking employment on a permanent basis, immigration, permanent residency or citizenship.	For instance, the movement of an engineer from his/her native country to another country to seek employment.
<i>Source: The General Agreement on Trade in Services: a Background Note, Friedrich Ebert Stiftung</i>		

Recent estimations by the WTO suggest that Mode 3 (commercial presence) accounts for more than half of world trade in services and mode 1 (cross-border trade) for about a fourth, while Mode 2, consumption abroad contributes less than one-fifth. Mode 4 was found to be nearly insignificant, accounting for just over 1 percent of world services trade.

Under Mode 4, there are two categories of service providers, the self-employed and the employees. The former are individual foreign service suppliers who go overseas on their own to supply services. Employees are foreign natural persons employed by service suppliers to provide services, while the employer can be from home, host or third country. GATS covers only the temporary movement of persons and not citizenship, residence or employment on a permanent basis in a foreign country.

The developing countries have an advantage as far as mode 4 is concerned, because of abundance of skilled and unskilled labour in these countries. This population can move to developed nations, seek employment, and earn a living. On the other hand, the developed countries have an advantage in mode 3 (commercial presence). Through Foreign Direct Investment (FDI, these countries can create a market in other countries and generate revenue.

Measurement of services through these modes is difficult because:

- of poor coverage of the service sector in terms of data, figures etc.;
- of the complex and overlapping nature of many services; and
- existing statistics on service trade do not provide sufficient information on price, quantities, and modes of supply and direction of trade.

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What is the structure of GATS and how do countries commit themselves to trade liberalisation?

The structure of GATS is based on two sets of principles:

The first set applies to all members as soon as they sign the agreement, regardless of existence of commitments made for each sector. This covers the most favoured nation (MFN) and obligation for transparency principles. As far as MFN is concerned, GATS is similar to GATT and follows a negative list approach, wherein a country is bound to apply MFN as soon as it signs the agreement, unless an exemption is sought.

- a) **Most Favoured Nation (MFN) Treatment:** The MFN obligation means that countries are not to discriminate among member countries of the WTO in terms of treatment of foreign services and services suppliers, although a MFN exemption can be taken. MFN comprises of the non-discrimination principle among trading partners and a member must give to all WTO members immediately and unconditionally the most favourable treatment it has accorded to any of its trading partners. For instance, if France allows US and Japan to establish offices in its territory, it cannot arbitrarily refuse India.
- b) **Obligation of Transparency:** In order to promote expansion of trade in a transparent manner, members have to make public their “measures” affecting the service trade. This can be done with prompt publication of measures and notification. Member countries are also to establish an inquiry point and respond to queries, complaints and notify the changes in regulations and laws.

The second set of principles deals with Market Access and National Treatment Principles. The positive list approach is followed here, i.e., unless the concerned country mentions the Market Access and National Treatment Principles in its schedule, it is not bound to commit to members. Therefore, GATS gives the members freedom to choose what sectors they want to open and to what extent.

- a) **National Treatment Rule:** It requires members to treat service suppliers equally, whether foreign or domestic, once the foreign supplier has entered the market. For instance, if a domestic bank is allowed 12 branches in the country, the same will be true for a foreign bank.
- b) **Market Access:** Individual countries' commitments to open markets in certain sectors and how open these markets will be are determined through negotiations. The market access provision requires non-discrimination among services or service suppliers. Nevertheless, members are entitled to enforce some restrictions to market access, as long as those restrictions are listed and are imposed in a non-discriminatory manner.

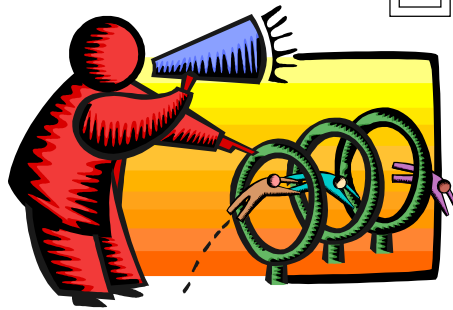
For instance, if the Indian Government allows a foreign consulting firm to operate in its domestic market but limits the number of branches to be opened or the number of licences to be given, it shows both market access commitment and limitation.

Therefore, although the GATS gives autonomy to members to discriminate between national and foreign companies, personnel, etc., and decide which sectors it wants to open, and to what extent, it does not allow them to discriminate between members of the WTO, unless an exemption has been sought.

The GATS' commitment structure is voluntary and flexible in nature. There is no compulsion on member countries to open up a particular sector or sub-sector, if it is sensitive to the security and well being of the country.

Put in simple words-

- countries are free to decide which service sectors they wish to open for negotiations.
- countries can specify the limitations and exceptions they wish to maintain on market access and national treatment in their schedules.
- market access and national treatment commitments are made for each of the four modes of supply.



What is the difference between GATT and GATS?

The General Agreement on Tariff and Trade (GATT) was a provisional agreement with no solid institutional basis before the WTO came into existence. GATT was concerned only with trade in goods. The WTO at present covers trade in services under GATS, trade related aspects of intellectual property under TRIPs and continues dealing with trade in goods through the so-called “GATT 1994” which is an updated version of the old text “GATT 1947”.

Box 4: Difference between GATT and GATS	
GATT	GATS
<ol style="list-style-type: none"> 1. The General Agreement on Tariffs and Trade (GATT) deals with trade in goods. 2. GATT is first and fundamentally, a multilateral trade treaty established in 1947 and again adopted in 1994. 3. The formation of GATT was the first major step towards the initiation of a multilateral trading regime. 4. GATT commits all countries equally to all its provisions: 	<ol style="list-style-type: none"> 1. The General Agreement on Trade in Services (GATS) deals with trade in services. 2. GATS is a trade treaty, which came into existence in 1995, after the completion of the Uruguay Round (UR) of trade negotiations. 3. The formation of GATS was a consequence of the multilateral trade process initiated by the formation of GATT. 4. GATS commits different countries differently to its provisions:

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<ul style="list-style-type: none"> • Under GATT, a country cannot choose its degree or level of commitment, and • Under GATT, the countries have to make no separate general and specific commitments. <ol style="list-style-type: none"> 5. Under GATT, negligible exceptions are recognised to the principle of MFN and National Treatment. 6. GATT is not the only agreement dealing with trade in goods. GATT is to be read with many other agreements of WTO, which entail both procedural and substantive rules for the application of different provisions of GATT. For example, the Anti Dumping Agreement lays down procedural and substantive rules for the application of Article VI of GATT. Article XIX of GATT is to be read with the Agreement on Safeguards. 7. GATT does not mention the principle of Market Access distinctively in the Agreement, since it is assumed that once a country signs GATT it will provide market access. 	<ul style="list-style-type: none"> • Under GATS, a country has discretion to decide on what provisions and how much it is willing to commit; and • GATS maintains a difference between general and specific commitments. General commitments apply equally to all the countries. Specific commitments apply differently to different countries. <ol style="list-style-type: none"> 5. GATS recognises exceptions to the principle of MFN and National Treatment. 6. GATS is an all-exclusive agreement dealing with trade in services. 7. Under GATS, market access is considered a specific principle and is therefore mentioned separately. Countries are allowed to decide whether they want to provide market access and to what extent.
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Does GATS affect the policy space of developing countries?

Yes, there is an apprehension among developing countries that the enforcement of GATS will compel them to open up all their sectors to foreign competition, leading to privatisation and deregulation of services. However, GATS follows a positive list approach wherein the government concerned has the option to decide which sector it will open and to what degree. There is no obligation upon any country to open a sector to foreign competition, if it is not prepared to. In fact, even after opening a sector, the government has the right to be selective about the activities and sub-sectors it commits.

The preamble to GATS states that members have the right “to regulate and introduce new regulations on the supply of services within their territories in order to meet their national policy objectives”. Given this flexible nature, there is sufficient scope for governments to retain their sovereignty. Still, countries, in particular developing countries, have been wary of opening their service sectors.

Developing countries have been apprehensive about opening their sectors because of the uncertainty about the future guidelines pertaining to GATS, as well as the loose and ambiguous structure of the GATS measures. For instance, there is much vagueness about what is covered under “public services”. There are many government services that include a fee and, therefore, (according to a narrow definition of exclusion clause) could be considered on a commercial basis and thus fall within the scope of the GATS.

According to Article 1.3(c) –“any service which is supplied neither on a commercial basis nor in competition with one or more service providers qualifies as public service.” Many public services are not supplied on a

commercial or competitive basis and are not the objects of GATS. The agreement excludes from its scope all services supplied in the exercise of government authority. But, if we were to see these services through a broad interpretation of the exclusion clause, such government services should be deemed non-commercial (not for profit). Hence, the existence of such clauses creates fear about the effects of GATS.



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What are the advantages and disadvantages of liberalising essential sectors (such as education and health) for a developing country, under GATS?

Service liberalisation not only affects economic growth and trade but also has an impact on the provision of essential services, such as health care, education and water.

However, the impact of liberalisation depends on the service sector, the mode of supply, the development level of a country and its internal infrastructure.

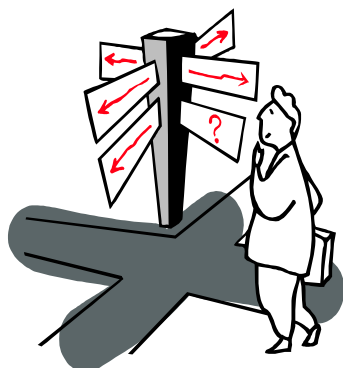
Box 3: Liberalising Education and Health sector		
Mode of supply	Advantage	Disadvantage
Mode 1 (cross border supply)	<ul style="list-style-type: none"> • Provision of health and education service through telephone or Internet leads to greater exchange of information. • Lower costs and rapid access to information. 	<ul style="list-style-type: none"> • Necessary infrastructure is required in the form of telephones and computers, which is not in place in many developing countries. • Financial resources are essential to access the Internet. • Regulatory problems for the government to ensure the quality and content of health and educational services.

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Mode 2 (Consumption abroad)	<ul style="list-style-type: none"> • Expertise in health and educational services is gained • Income earned from Foreign Service users could be used to improve the local health and educational infrastructure. For instance, India is a potential destination for medical tourism and stands to gain a lot from it. 	<ul style="list-style-type: none"> • Education services may focus on students who can pay the foreign fees • Elective health treatment – expensive and private healthcare for the wealthy and under-equipped local hospitals for the poor.
Mode 3 (Commercial presence)	<ul style="list-style-type: none"> • Targeted FDI can upgrade national infrastructure, introduce new technologies and provide employment opportunities. • Reduce burden on government resources, which can be directed to improve public sector facilities. 	<ul style="list-style-type: none"> • Privatisation by foreign suppliers might lead to “two-tiered” service supply – while the people with money will be able to avail facilities provided by the big corporations, the poor will have to depend on the under-financed public sector. • Commercialisation of educational services will make quality education expensive and restrict mass access leading to a demarcation between the people who can afford and those who cannot.
Mode 4 (Movement of natural persons)	<ul style="list-style-type: none"> • Increased mobility allows greater exchange of knowledge and experience that can improve the provision of services. • Better wages and work conditions and home country benefits if the worker sends home remittances and transfer money. 	<ul style="list-style-type: none"> • Loss of return on investment in education and training of practitioners. • Might lead to trafficking if host country does not ensure respect for its labour and/or rights.
<p><i>Source:</i> Rupa Chanda, November 2000, <i>GATS and Its Implications for Developing Countries: Key Issues and Concerns</i>, UN/Discussion paper of the United Nations Department of Economic & Social Affairs (UN/DESA), Discussion Paper No. 25.</p>		

For all essential services like education, health and water, the onus lies with the government. The government, through its policies, can balance the equity-efficiency and private-public system to ensure that these facilities are supplied to the poor at affordable rates. For instance, in the education sector, the existence of a private segment might not lead to a segregation between the rich and the poor, if the government introduces measures to counter it, such as reserving seats for the needy, taxes etc.

Special attention should be paid to FDI, as it is primarily driven by commercial objectives. The promotion of FDI in areas such as health, water and education will not necessarily be the best means of ensuring universal access to basic services. There is always the risk of discrimination, as well as accessibility, and the quality of service provided is also at stake.



What is the status of negotiations regarding trade in services at the WTO?

As per Article XIX.(3) of GATS, the Council for Trade in Services (CTS) “shall establish” negotiating guidelines, and as part of the negotiating guidelines “shall establish” modalities for the treatment of liberalisation undertaken autonomously by members, since previous negotiations, as well as for special treatment of the least developed countries (LDCs).

In 2000, a new round of negotiations was started as per the commitment made by the WTO members in the GATS legal text to progressively liberalise trade. This new round of negotiations follows the request and offer approach as the main method of negotiations.

The Doha Ministerial Declaration mandates that members shall submit initial requests by June 2002 and initial offers by March 2003. The declaration also prescribes that the negotiations will close by January 2005. The submission of Request and Offers is a continuous process, which is likely to continue until 2005 or until the end of the negotiations. Trade in services was included in the Doha Development Agenda (DDA) with a view to promote economic growth of all trading partners, the development of developing and least developed countries.

There have been certain developments in GATS, which promote the fulfilment of DDA. For instance, in March 2003, the special session of the Council for Trade in Services took a key step in fulfilling DDA by adopting modalities for the treatment of liberalisation measures taken unilaterally (autonomous liberalisation) by the WTO members, since the previous multilateral negotiations.

In September 2003, the special session of the Council for Trade in Services adopted modalities for the special treatment of LDC members in the negotiations on trade in services. This decision reinforces the commitments made under the DDA. Special emphasis will be given to the problems faced by LDCs in undertaking specific commitments in view of their economic situation, development and their trade and financial needs. The other WTO members shall exercise restraint in seeking commitments from LDCs. Members shall also take measures in accordance with their individual capacities to increase the participation of LDCs.

However, since the Cancun Ministerial, the GATS negotiations have come to a standstill and no full-blown GATS negotiating session has taken place. As far as emergency safeguards and domestic regulations are concerned, negotiations have continued in the WTO Working Parties on GATS Rules and Domestic Regulations, but not much movement has occurred because of a deadlock between developing countries on one side and EU, Japan and the US on the other.

A series of GATS meetings have been lined up starting March 2004 to push forward agenda in financial services, domestic regulation etc.



What is India's position on GATS?

India, like all other developing countries, is apprehensive about opening its essential services sector (health, education, water) under GATS. It fears that by opening these sectors it will lose its national sovereignty. There is also an underlying apprehension of inequality in distribution of these services among the population. However, despite these apprehensions, India has offered to open some of its sectors, like telecommunications and tourism.

In fact, in certain areas, such as software services, India has emerged as one of the leading exporters. In several other areas, such as construction and engineering, telecommunications, and financial services, there is a growing recognition of India's strength.

Under the GATS schedule, on January 12, 2004, India made an offer, which indicates India's commitment to liberalise its economy in certain modes of supply in sectors such as transport, tourism and professional services. The negotiations are in request and offer phase. India's service liberalisation focuses primarily on Mode 1 (cross-border supply), Mode 2 (consumption abroad) and Mode 4 (movement of natural persons). The offer contains various horizontal limitations on Mode 3 (commercial presence). The offer improves market access and national treatment commitments in the following sectors and sub-sectors: accounting, book-keeping, financial services, tourism, maritime, transport services, construction, and engineering services.

The main Market Access limitation relates to ‘scheduled areas and tribal areas’, which the President of India can authorise under the Indian Constitution. While market access is not against the law here *per se*, it can be denied to protect national interests.

Before making this commitment in 2004, India submitted its “initial request” on maritime services to specific countries in August 2002, and on movement of natural persons in November 2000.

The mode of supply of particular interest to India is Mode 4, i.e. movement of natural persons. The Indian proposal suggests following strategy for improving trade in services through Mode 4:

- Economic needs test (ENT): it is a mechanism controlled by the government, industry or professional associations to decide whether entry of new foreign firms is warranted on economic grounds. Article XVI of GATS, while setting out Market Access rules, proscribes to the use of ENT.
- Social security is not required for temporary movement, as contributors are not eligible for receiving benefits of such contributions.
- Administration of visas may be made more transparent.
- Specific sectoral commitments in line with requirements of developing countries need to be taken.
- Establishment of multinational norms to facilitate Mutual Recognition Agreements (MRAs) among member countries. MRAs are agreements between two or more countries to recognise each other’s standards, qualifications or licensing requirements.

India has also listed some MFN exemptions under GATS Article II and reserves the right to offer treatment that is more favourable to some WTO members in communication, recreation and transport services.

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The social clause issue has remained one of the most heated areas of international debate for a number of years. The study says that the quality of that debate has not met its volume and the real issues underlying the issue have rarely been analysed as a whole. It attempts to string the various debates together. (Rs.100/US\$25) ISBN 81-87222-01-8

4. Eradicating Child Labour While Saving the Child

In the scenario of a growing interest in banning child labour, this research report argues that trade restricting measures have every potential of eliminating the child itself. The report provides logical arguments and a case study for those groups who are against the use of trade bans for the solution of this social malaise. It also makes certain recommendations for the *effective* solution of the problem. (US\$25/Rs.100) ISBN 81-87222-23-9

5. Non-trade Concerns in the WTO Agreement on Agriculture

This research report, written by Dr. Biswajit Dhar and Dr. Sachin Chaturvedi of the Research and Information System for the Non-aligned and Other Developing Countries, New Delhi, provides a detailed analysis of non-trade concerns, covering the various dimensions indicated by the Agreement on Agriculture of the World Trade Organisation. (US\$10/Rs.50) ISBN 81-87222-30-1

6. Liberalisation and Poverty: Is There a Virtuous Circle?

This is the report of a project: “Conditions Necessary for the Liberalisation of Trade and Investment to Reduce Poverty”, which was carried out by the Consumer Unity & Trust Society (CUTS) in association with the Indira Gandhi Institute for Development Research, Mumbai; the Sustainable Development Policy Institute, Islamabad, Pakistan; and the Centre for Policy Dialogue, Dhaka, Bangladesh, with the support of the Department for International Development, Government of the UK.
(US\$25/Rs.100) ISBN 81-87222-29-8

7. Market Access Implications of SPS and TBT: Bangladesh Perspective

As both tariffs and other traditional trade barriers are being progressively lowered, there are growing concerns about the fact that new technical non-tariff barriers are taking their place, such as sanitary and phytosanitary measures (SPS) and technical regulations and standards.

The poor countries have been denied market access on quite a number of occasions when they failed to comply with a developed country’s SPS or TBT requirements, or both. The seriousness of this denial of market access is often not realised unless their impact on exports, income and employment is quantified.

In this paper, the author focuses on the findings of a 1998 case study into the European Commission’s ban of fishery products from Bangladesh into the EU, imposed in July 1997.

This research report intends to increase awareness in the North about the ground-level situation in poor and developing countries. At the same time, it makes some useful suggestions on how the concerns of LDCs can be addressed best within the multilateral framework. The suggestions are equally applicable to the developing countries.
(Rs. 100/US\$10) ISBN 81-87222-69-7

8. TRIPs and Public Health: Ways Forward for South Asia

Trade Related Aspects of Intellectual Property Rights—or TRIPs—has always been one of the most contentious issues in the WTO. Several studies have been conducted on the political economy of TRIPs *vis-à-vis* WTO, the outcomes of which are crucial to the policymakers of the developing economies more than those in the rich countries. Increasing realisation of the poor countries’ suffering at the hands of the patent holders is yet another cause of worry in the developing and poor countries.

This research document tries to reach the answer to one specific question: what genuine choices do policymakers in South Asian developing nations now have, more so after the linkage between the trade regime and pharmaceuticals? Starting with a brief overview of the key features of the

corporate model of pharmaceuticals, the paper provides some insight into the challenges faced by the governments in South Asian countries. The aim is to anchor the present discussion of public health and the impact of TRIPs in the socio-cultural environment of this region.
(Rs.100/US\$25) ISBN 81-87222-83-2

9. Putting our Fears on the Table: Analyses of the Proposals on Investment and Competition Agreements at the WTO

“Let them put their fears on the table and that should guide the negotiations.” The UNCTAD Secretary General, Rubens Ricupero, made this comment just after the Doha ministerial meeting of the WTO held in November 2001.

He was referring to India’s stand at Doha on the ‘Singapore issues’ and arguing that it was pointless in just opposing the ‘new’ issues at the WTO without putting forward constructive arguments.

“Putting our Fears on the Table” is the title of a recently published report of the CUTS Centre for International Trade, Economics & Environment. It provides analyses of the proposals on investment and competition agreements at the WTO, especially in the areas taken up and/ or proposed at Doha for possible future negotiations.

This volume is a product of comprehensive research and dialogue of leading international experts, practitioners and other stakeholders. It will really help developing countries to comprehend and deal with the issues in the WTO context. (Rs.300 for India/US\$25 for OECD Countries/US\$15 for other) ISBN 81-87222-84-0

10. Bridging the Differences: Analyses of Five Issues of the WTO Agenda

This book is a product of the project, EU-India Network on Trade and Development (EINTAD), launched about a year back at Brussels. CUTS and University of Sussex are the lead partners in this project, implemented with financial support from the European Commission (EC). The CUTS-Sussex University study has been jointly edited by Prof. L. Alan Winters of the University of Sussex and Pradeep S. Mehta, Secretary-General of CUTS, India.

The five issues discussed in the book are Investment, Competition Policy, Anti-dumping, Textiles & Clothing, and Movement of Natural Persons. Each of these papers has been co-authored by eminent researchers from Europe and India. (Rs.350/US\$50) ISBN 81-87222-92-1

11. Competitiveness of Service Sectors in South Asia: Role and Implications of GATS

This research report attempts to emphasise on the relevance of GATS for developing economies, particularly in South Asia. It also examines the potential gains from trade liberalisation in services, with a specific focus on hospital services, and raises legitimate concerns about increases in exports affecting adversely the domestic availability of such services. It highlights how the ongoing GATS negotiations can be used to generate a stronger liberalising momentum in the health sector.

(Rs.100/US\$25) ISBN 81-8257-000-X

DISCUSSION PAPERS

1. Existing Inequities in Trade – A Challenge to GATT

A much appreciated paper written by Pradeep S Mehta and presented at the GATT Symposium on Trade, Environment & Sustainable Development, Geneva, 10-11 June, 1994 which highlights the inconsistencies in the contentious debates around trade and environment.

(10pp #9406 Rs 30/US\$5)

2. Ratchetting Market Access

Bipul Chatterjee and Raghav Narsalay analyse the impact of the GATT Agreements on developing countries. The analyses takes stock of what has happened at the WTO until now, and flags issues for comments.

(#9810, Rs.100/US\$25)

3. Domestically Prohibited Goods, Trade in Toxic Waste and Technology Transfer: Issues and Developments

This study by CUTS Centre for International Trade, Economics & Environment attempts to highlight concerns about the industrialised countries exporting domestically prohibited goods (DPGs) and technologies to the developing countries that are not capable of disposing off these substances safely, and protecting their people from health and environmental hazards. *(ISBN 81-87222-40-9)*

MONOGRAPHS

1. Social Clause as an Element of the WTO Process

The central question is whether poor labour standards result in comparative advantage for a country or not. The document analyses the political economy of the debate on trade and labour standards.

(14pp #9804 Rs.15/US\$5)

2. Is Trade Liberalisation Sustainable Over Time?

Economic policy is not an easy area for either the laity or social activist to comprehend. To understand the process of reforms, Dr. Kalyan Raipuria, Adviser, Ministry of Commerce, Government of India, wrote a reader-friendly guide by using question-answer format. (29pp #9805 Rs.15/US\$5)

3. Impact of the Economic Reforms in India on the Poor

The question is whether benefits of the reforms are reaching the poor or not. This study aims to draw attention to this factor by taking into account the inter-state investment pattern, employment and income generation, the social and human development indicators, the state of specific poverty alleviation programmes as well as the impact on the poor in selected occupations where they are concentrated. (15pp #9806 Rs.15/US\$5)

4. Globalisation and India – Myths and Realities

This monograph is an attempt to examine the myths and realities so as to address some common fallacies about globalisation and raise peoples' awareness on the potential benefits globalisation has to offer. (40pp, #0105, Rs.30/US\$5)

5. ABC of the WTO

This monograph is about the World Trade Organisation (WTO) which has become the tool for globalisation. This monograph is an attempt to inform the layperson about the WTO in a simple question-answer format. It is the first in our series of monographs covering WTO-related issues and their implications for India. Its aim is to create an informed society through better public knowledge, and thus enhance transparency and accountability in the system of economic governance. (36pp, #0213, Rs.30/US\$5)

6. ABC of FDI

FDI — a term heard by many but understood by few. In the present times of liberalisation and integration of world economy, the phenomenon of Foreign Direct Investment or FDI is fast becoming a favourite jargon, though without much knowledge about it. That is why CUTS decided to come out with a handy, yet easy-to-afford monograph, dwelling upon the “hows” and “whys” of FDI. This monograph is third in the series of “Globalisation and India – Myths and Realities”, launched by CUTS in September 2001. “How is FDI defined?” “What does it constitute?” “Does it increase jobs, exports and economic growth?” Or, “Does it drive out domestic investment or enhance it?” are only some of the topics addressed to in a layman’s language in this monograph. (48pp, #0306, Rs.30/US\$5)

7. ABC of TRIPs

This booklet intends to explain in a simple language, the Trade-Related Intellectual Property Rights Agreement (TRIPs), which came along with the WTO in 1995. TRIPs deals with patents, copyrights, trademarks, GIs, etc. and continues to be one of the most controversial issues in the international trading system. The agreement makes the protection of IPRs a fundamental part of the WTO. This monograph gives a brief history of the agreement and addresses important issues such as life patenting, traditional knowledge and transfer of technology among others.

(38pp Rs. 50/\$10, #0407) ISBN 81-8257-026-3

8. WTO Agreement on Agriculture: Frequently Asked Questions

As a befitting reply to the overwhelming response to our earlier three monographs, we decided to come out with a monograph on *WTO Agreement on Agriculture* in a simple question and answer format. This is the fourth one in our series of monographs on *Globalisation and India – Myths and Realities*, started in September 2001.

This monograph of CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE) is meant to inform people on the basics of the WTO Agreement on Agriculture and its likely impact on India. (48pp, #0314, Rs.50/US\$10)

9. Globalisation, Economic Liberalisation and the Indian Informal Sector – A Roadmap for Advocacy

India had embarked upon the path of economic liberalisation in the early nineties in a major way. The process of economic liberalisation and the pursuit of market-driven economic policies are having a significant impact on the economic landscape of the country. The striking characteristic of this process has been a constant shift in the role of the state in economic activities. The role of the state is undergoing a paradigm shift from being a producer to a regulator and facilitator. A constant removal of restrictions on economic activities and fostering private participation is becoming the order of the day.

Keeping these issues in mind, CUTS, with the support of Oxfam GB in India, had undertaken a project on globalisation and the Indian informal sector. The selected sectors were non-timber forest products, handloom and handicraft. The rationale was based on the premise that globalisation and economic liberalisation can result in potential gains, even for the poor, but there is the need for safety measures as well. This is mainly because unhindered globalisation can lead to lopsided growth, where some sectors may prosper, leaving the vulnerable ones lagging behind.

(48pp, #0401) ISBN 81-8257-017-4

GUIDES

1. Unpacking the GATT

This book provides an easy guide to the main aspects of the Uruguay Round agreements in a way that is understandable for non-trade experts, and also contains enough detail to make it a working document for academics and activists. (*US\$5, Rs.60*)

2. Consumer Agenda and the WTO—An Indian Viewpoint

Analyses of strategic and WTO-related issues under two broad heads: international agenda and domestic agenda. (*#9907*)

NEWSLETTER

Economiquity

A quarterly newsletter of the CUTS Centre for International Trade, Economics & Environment for private circulation among interested persons/networks. Contributions are welcome: *Rs.50/\$15 p.a.*

BRIEFING PAPERS

Our Briefing Papers inform the layperson and raise issues for further debate. These have been written by several persons, with comments from others. Re-publication, circulation etc. are encouraged for wider education. Contributions towards postage (Rs.5/\$5) are welcome.

1995

1. GATT, Patent Laws and Implications for India
2. Social Clause in the GATT - A Boon or Bane for India
3. Trade & Environment: the Inequitable Connection
4. Anti-dumping Measures under GATT and Indian Law
5. No Patents on Life Forms!

1996

1. The Freezing Effect - Lack of Coherence in the New World Trade Order
2. WTO: Beyond Singapore - The Need for Equity and Coherence

1997

1. The Uruguay Round, and Going Beyond Singapore
2. Non-tariff Barriers or Disguised Protectionism
3. Anti-dumping Under the GATT - The Need for Vigilance by Exporters
4. Subsidies & Countervailing Measures

5. Textiles & Clothing - Who Gains, Who Loses and Why?
6. Trade in Agriculture—Quest for Equality
7. Trade in Services—Cul de Sac or the Road Ahead!
8. TRIPs and Pharmaceuticals: Implications for India
9. Movement of Natural Persons Under GATS: Problems and Prospects

1998

1. TRIPs, Biotechnology and Global Competition
2. Tariff Escalation—A Tax on Sustainability
3. Trade Liberalisation, Market Access and Non-tariff Barriers
4. Trade, Labour, Global Competition and the Social Clause
5. Trade Liberalisation and Food Security

1999

1. The Linkages: Will it Escalate?
2. Dispute Settlement at WTO—From Politics to Legality?
3. TRIPs and Biodiversity
4. Overdue Reforms in European Agriculture—Implications for Southern Consumers
5. The Non-trade Concerns in the WTO Agreement on Agriculture
6. Negotiating History of the Uruguay Round
7. Professional Services under the GATS—Implication for the Accountancy Sector in India

2000

1. Implementation of the WTO Agreements: Coping with the Problems
2. Trade and Environment: Seattle and Beyond
3. Seattle and the Smaller Countries

2001

1. Human Rights and International Trade: Right Cause with Wrong Intentions
2. Framework for Fair Trade and Poverty Eradication
3. Implementation of the Uruguay Round Agreements: Need for a Frontloaded Agenda
4. Proactive Agenda for Trade and Poverty Reduction
5. *WTO Transparency and Accountability: The Need for Reforms*

2002

1. *Amicus Curiae* Brief: Should the WTO Remain Friendless?
2. Market Access: The Major Roadblocks

3. Foreign Direct Investment in India and South Africa: A Comparison of Performance and Policy
4. Regulating Corporate Behaviour
5. Negotiating the TRIPs Agreement: India's Experience and Some Domestic Policy Issues
6. Regulatory Reforms in the Converging Communications Sector
7. Market Access Implications of SPS and TBT: A Bangladesh Perspective
8. Multilateral Environmental Agreements, Trade and Development: Issues and Policy Options Concerning Compliance and Enforcement
9. Multilateral or Bilateral Investment Negotiations: Where can Developing Countries make Themselves Heard?

2003

1. How Mining Companies Influence the Environment
2. Labour Standards: Voluntary Self-regulation vs. Mandatory Legislative Schemes
3. Child Labour in South Asia: Are Trade Sanctions the Answer?
4. Competition Policy in South Asian Countries
5. India Must Stop Being Purely Defensive in WTO
6. IPRs, Access to Seed and Related Issues
7. TRIPs and Public Health: Ways Forward for South Asia

2004

1. Farm Agenda at the WTO: The 'Key' to Moving the Doha Round.
2. "TRIPs-Plus": Enhancing Right Holders' Protection, Eroding TRIPs' Flexibilities

For more details, visit our website at www.cuts-international.org.

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