



The GATS negotiations: "state of play" *by Scott Sinclair*

Summary

The WTO's built-in services negotiations are proceeding expeditiously, although not as quickly as their strongest supporters such as the United States had hoped. Preparatory work on critical "technical" issues such as classification and revised scheduling guidelines is continuing. The GATS Secretariat has drafted a composite text of formal negotiating guidelines, which is currently circulating. The guidelines are to be finalized and adopted at the special session of the Council for Trade in Services from March 26-28, 2001. This key March "stock-taking" session is widely expected to launch the full market access phase of negotiations. Already, both the US and the EU have tabled initial, market access negotiating proposals at the talks in Geneva.

While GATS negotiations are poised to shift into higher gear, their outcome is closely, perhaps inextricably, linked to the fate of discussions on the overall negotiating agenda of the WTO. Despite support from the US corporate services lobby for pushing ahead independently, there are significant differences among governments about whether the services negotiations can be concluded ahead of, or in isolation from, a broader round. There are also signs that WTO officials, corporate lobby groups and some governments are becoming deeply concerned about growing NGO and public scrutiny of the GATS. They have begun to vigorously attack NGO critics of the GATS to thwart their campaign momentum.

Discussion

Although WTO work of high priority to developing countries, the so-called "implementation agenda," is grinding, the "built-in" services negotiations are proceeding expeditiously. The Quad, particularly the European Commission and the US, are very active in the so-called technical work on classification, scheduling guidelines and a range of critical "rule-making" issues. Moreover, the two major trading powers have already submitted *initial* negotiating proposals defining sectoral market access objectives. (The US and EC proposals are posted on the WTO web site; the URLs are appended to this note.)

There still remains a greater degree of intergovernmental consensus on the GATS agenda than on virtually any other major WTO negotiating agenda item. To the extent that there are fault lines on the substantive issues, these are, as with so many other WTO issues, north-south.

Developing countries

The large majority of developing country governments appear sceptical towards an agenda driven by northern governments and corporations. Yet there are diverse views among southern governments. A handful of southern governments participate in the Friends of the GATS, an informal grouping of the GATS strongest supporters. Some, such as Hong Kong, have decided they have an intrinsic interest in liberalizing services, others such as Argentina probably attach greater importance to the potential linkages in the

GATS talks to their own primary objectives in agriculture. A group of south Asian countries, most notably India, have been defensive on most GATS issues, but put a high offensive priority on labour mobility objectives under GATS mode 4. Certain other developing countries, such as South Africa, that view themselves as targets for inward migration, are wary of initiatives to expand mode 4 commitments.

Overall, while the views of southern governments are far from monolithic, the great majority are cautious regarding the north's ambitious GATS agenda. But even those governments that have expressed concerns about GATS expansion, are far less passionate than with regard to other divisive north-south issues such as intellectual property rights or implementation issues. Among southern governments, as one well-placed Geneva observer put it, "there is neither passionate opposition, nor enthusiastic support" for the GATS.

The major trading powers

Substantively, the EC, Japan and the US are all strongly committed to broadening and deepening the GATS. The EC and the US, in particular, have been cooperating closely to ensure that the negotiations advance as quickly as possible. As noted, both have tabled initial market access proposals and are pressing other delegations to follow suit. There are, however, differences between the EU and the US concerning the relationship of services negotiations to a broader round. So far, these manifest themselves mainly as disagreement on time-frames to conclude the negotiations.

The EC has explicitly linked the conclusion of the GATS to its ambitions for a broader round. European Commissioner Pascal Lamy stated in Brussels at the European Services Forum conference (see www.esf.be) on the GATS that "(w)ithout a Round there is no calendar, and the pressure to keep up the pace of work is missing. I am indeed clear in my

own mind that it will be virtually impossible to conclude the services negotiations in isolation, and [they] will need to be integrated within a broader negotiation." Japan also appears to be resisting a formal deadline to conclude GATS negotiations until questions regarding a broader round are resolved. The chairman of Mitsubishi, who also chairs the private-sector Japan Services Network, expressed the official Japanese view that "it is premature to refer to a final deadline for Services Negotiations at this stage."

The US maintains that the next round should be primarily a "market access" round, achieved by adding industrial goods access, procurement and a few other issues to the built-in agenda items of agriculture and services. Lamy disparagingly referred to this as a "fast-food round." The EU and Japan continue to press for broader negotiations that explicitly include new rule-making in areas such as investment, competition policy and trade remedy laws. These east-west differences and the continuing north-south divisions over implementation issues must be narrowed before a new round can get off the ground.

GATS timelines

The next major milestone in the GATS negotiations is the March stock-taking session. The GATS secretariat circulated draft negotiating guidelines in January; these guidelines will likely be finalized and agreed at the March meeting. There are relatively few divisive issues among governments. One exception is the US proposal that the starting point of negotiations should be the current, *de facto*, sector-by-sector market openness in each country, not existing GATS schedules. This proposal is being strongly resisted by developing countries, led by India. The draft guidelines state that the "starting point for the negotiation of specific commitments shall be the current schedules of specific commitments."

Developing countries are also anxious to preserve the existing architecture of the GATS

and are resisting some of the innovative horizontal approaches promoted by the EC and the US (e.g. clusters). The Indian ambassador devoted much of his speech in Brussels to articulating “developing country concerns about US the proposal for negotiating guidelines and procedures,” stating that “we cannot accept any comprehensive approach.” He singled out the cluster approach for criticism, arguing that it “has the implication of changing the architecture of the Services Agreement.”

The existing architecture of the GATS, however, already includes a mix of top-down and bottom-up approaches. The draft negotiating guidelines affirm that the request-offer approach will be “supplemented as necessary by other appropriate negotiating modalities, applied on a horizontal or sectoral basis.” The draft guidelines also state that “there shall be no *a priori* exclusion of any service sector or mode of supply” from the talks.

While the US proposal called for GATS talks to conclude by the end of 2002, the draft guidelines do not include a specific end date, deferring this matter to the Council for Trade in Services who are “to develop a time schedule for the conduct of the negotiations.”

In a vaguely worded, but ominous provision, the draft guidelines state that “it is understood that, for the duration of the negotiations members will not take action affecting access to their markets with the intention of improving their negotiating position.” Given the extraordinarily broad scope of the GATS negotiations, this “standstill clause” could cast a long shadow, deterring domestic regulatory initiatives undertaken during the course of the negotiations. New regulatory initiatives could become negotiating matters at the WTO, even if they deal with matters not yet covered by the GATS.

There are some key external events this year that will critically influence the GATS negotiations. In what will be a major test of Congressional support for the new US admin-

istration’s trade policy, President Bush has indicated that he will seek early authorization of fast-track negotiating authority. In another important development, the European Intergovernmental Conference in Nice recently gave the European Commission a form of “fast-track” negotiating authority for services. The EC now has exclusive competence to negotiate internationally in most service sectors — with the significant exceptions of audiovisual, health, educational and social services. The results of any negotiation are now to be approved through qualified majority voting of ministers. Formerly, competence over international services negotiations was shared between the European Commission and the member states, with the results requiring unanimous approval of the member states. Shared competence and unanimous approval will continue to apply to the audiovisual, health, educational and social service sectors.

The critical decision point for the WTO agenda as a whole will be the fourth WTO ministerial conference which is scheduled for November 9-13, 2001 in Qatar. As this date approaches, more negotiating effort will necessarily be focused on the overall agenda, temporarily putting the built-in negotiations in a holding pattern. If agreement is reached on an overall agenda, however, the built-in services and agriculture negotiations will be the centrepiece. Services negotiations, in particular, could forge ahead rapidly.

While WTO Director-General Moore continues to publicly advocate the launch of a broader round at the next ministerial, key member governments are, publicly at least, lowering expectations. Top Canadian trade officials, for example, are stating that they do not see any prospects for a new WTO round to be launched this year. If agreement on a broader round cannot be reached by the Qatar meeting, a likely fall-back scenario is that negotiators will work toward a launch at a special Ministerial meeting to be held before Moore’s term ends at the end of 2002. (Ministerial meetings must be held at least every two

years, but may be held more often.)

If agreement on a global WTO agenda is not reached soon, then pressure to conclude the built-in negotiations independently will intensify. The EC and Japan may then be forced to reconsider their current position linking conclusion of the GATS to a broader round.

Corporate lobby groups

North American, European and Japanese service corporations continue to pressure governments to accelerate the GATS negotiations and many corporate lobby groups have developed sophisticated sector-specific market access and policy reform objectives that they want to achieve through an expanded GATS (see the ESF web site www.esf.be for presentations from sectoral workshops on financial, e-commerce, professional mobility, distribution sector, postal and express, and energy services.)

Significant themes emerging from the corporate views expressed at the ESF conference included: 1) concern that developing country dissatisfaction could frustrate progress in the GATS negotiations, 2) complaints that services negotiations are being held back by linkage to less important and less commercially significant sectors and issues such as agriculture or implementation and 3) concern that the GATS may become the target of a critical, MAI-style campaign.

Several business speakers signalled flexibility toward developing countries, admitting (whatever this means) that "social and cultural sensitivities" must be taken into account. Some also implied that commercial opportunities in developed country services sectors are the main prize. ESF chair Andrew Buxton, for example, stressed that the Quad countries "have a duty to lead the way in liberalizing their own service sectors."

Corporate leaders from both sides of the Atlantic grumbled about "bureaucratic linkage" of the services agenda to the agriculture

negotiations. Dean O'Hare of the US Coalition of Services Industries complained that "governments persist in subordinating services liberalization to the interests of sectors that often represent very small shares of their current economies." Both European and Japanese corporate leaders expressed support for their governments' view that the services negotiations can best succeed in the context of a broader round. By contrast, Dean O'Hare stated that "We believe that the services negotiations can succeed in and of themselves, without being wrapped into a broad new round."

The counterattack against GATS critics

Corporate leaders and WTO officials are clearly concerned about the capability of NGO campaigning to disrupt the GATS negotiations. Dean O'Hare, argued that "We have to do more to counter those who have distorted the issues and threaten to roll back the benefits of freer trade." Without any trace of irony, O'Hare declared that "we can't any longer expect to be able to win our case in private closed meetings with governments. We have to convince wider publics of the benefits of trade."

David Hartridge, the director of the WTO Trade in Services Division, devoted his entire keynote address to the ESF conference to highlighting the threat posed by NGO critics and to appealing to the corporate community to counter them. Answering the call, David Woods, a former Director of Communications for the WTO, now in the private sector, subsequently launched a furious attack on GATS critics ("Lies, damn lies and what the GATS really says" at <http://www.tradeagenda.com>).

There is little pretense of dialogue with civil society, GATS' critics' concerns are emphatically dismissed as "simply false," "scare stories" or "lies." This harsh and overpowering rhetoric is apparently intended to intimidate, not merely the critics, but decision-mak-

ers or segments of public opinion that might sympathize with their concerns. Woods specifically denounced “the limp-wristed acquiescence of ministers who cannot risk being seen publicly to challenge the demagogues of ‘civil society’.” This early and vigorous counterattack indicates that the character of the public and media debate on the GATS is going to be quite different than on the MAI, where civil society concerns were largely ignored and unchallenged until very late in the day.

US negotiating proposals:

http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm

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