

ANALYSIS OF BELGIAN TRADE UNIONS OF THE COMMISSION'S CONSULTATION DOCUMENT CONCERNING THE WTO/GATS NEGOTIATIONS

Preliminary remark

In an effort to provide some transparency to the ongoing preparations for the GATS negotiations, the Commission has posted a consultative document on its website requesting reactions from civil society. The ETUC decided to contribute to this and informed its member organisations. This document provides a first and preliminary input from Belgian trade unions for the ETUC work. In the beginning of January 2003, this document will be finalised further.

In this paper, we develop a complete approach. We do not only respond to the Commission's precise questions on the opening up of specific service sectors (which is done in the last part of the paper). We also provide comments on the general framework of GATS and the broader issues on GATS—disciplines that are neglected in the Commission's consultative document.

A break with secretive negotiations in 'green rooms'?

Background: Trade treaties are not neutral

One of the salient features of the present process of globalisation is that it involves an increase in the power and clout of transnational corporations. Traditionally, this shift in the balance of powers has come about through competition of governments around the world for mobile and footloose capital. Since the constitution of the WTO and free trade treaties such as NAFTA, corporations and their lobby groups have however opened up a second way to minimise governmental regulation and to increase corporate protection. Some aspects of the WTO and NAFTA can indeed be seen as a deliberate effort to create a legal order at the international level in which the principle of free trade rules over societal objectives such as health, safety regulation or labour protection and which can be used by corporations in their own narrow interest (cfr WTO panels in which trade experts receive the power to weigh trade rules against broad regulations or the NAFTA investment dispute settlement which allows corporations to sue governments that damage investment profitability by, for example, introducing new environmental protection).

Corporate lobbies have managed to push through these structures, exactly because of the secrecy and highly specialised character of these negotiations. At the time of negotiations, and indeed at the time of the actual WTO or NAFTA agreement, few parties (if any) in society realised the far reaching nature of some of the treaty articles. It should therefore come as no surprise that some years later, the MAI proposal of OECD (in which a similar investment protection device was hidden) met fierce resistance from civil society. Many fear that the present GATS negotiations may set the stage for another corporate deregulatory attack. As with WTO, NAFTA and MAI negotiations, GATS discussions are not open to the public and can only be understood by trade technicians. Technical articles can hide decisions of utmost importance. Because of the fact that GATS covers a very broad range of services, including services of essential and general interest, stakes are even higher now.

Commission's consultation does not eliminate this general atmosphere of distrust against a hidden corporate agenda

Against this background, the Commission's intention to increase transparency and to call upon broad consultation is welcome. However, the way in which this consultation is organised does not eliminate concerns on the GATS negotiations' process, even on the contrary. In particular, we regret:

- The timing of the consultation. Reactions have to be provided before the 10th of January. The Commission will however table a first proposal on a European offer on the 15th of January. Our concern is whether this strict timing allows for a meaningful influence of the consultations on the actual decision process.
- The cryptic and incomplete nature of the Commission's document. The document does not only have a high technical nature, thereby preventing it from triggering discussions on political choices. Moreover does cross reference with other public documents (such as the British governmental consultation initiative, see www.dti.gov.uk) reveal that the Commission's document omits essential information. For example, the UK document highlights the fact that the EU, in present GATS obligations, has restricted service trade by claiming the right to organise monopolies in utilities sectors. This document also mentions the fact that several WTO members have asked for the elimination of this restriction. This important issue is completely absent in the EU's text.
- Only one side of the negotiating coin is presented. As a WTO member, the EU has also requested market liberalisation and opening from other countries. Information on this is crucial because it highlights the possible dynamics of the negotiations. If, inspired by the market expansion drift of European service corporations, the EU has presented itself as a major interested party by tabling about 120 requests to countries world-wide (including utility liberalisation in many developing countries), this logically implies that the EU would also need to 'offer' substantial market openings of its own economy. In turn, this sheds light on the firmness of declarations such as excluding European education and health from the GATS negotiations. Other WTO members will raise questions and put pressure on European health and educational sectors, thus drawing these sectors de facto in the negotiating game.

Summarising, instead of providing reassurance on the open and democratic nature of ongoing GATS negotiations, the Commission's document actually confirms popular fears over the GATS negotiations as a hidden agenda. The Commission's document is indeed too technical and incomplete. We therefore urge the Commission to provide accessible and complete information on the GATS negotiations.

Competition and privatisation: a theoretical distinction

The foreword by commissioner Pascal Lamy strongly states that GATS is about the opening up of services to trade, not about deregulation (or privatisation). In this view, as long as competition is allowed, public firms may remain in the hands of the government. However, this comment completely misses the point. In a number of service sectors (which the

Commission's document rightly describes as regulated for very good reasons such as ensuring equal access and social cohesion), unleashing the forces of profit driven competition will result in a market failure known as 'adverse selection'. Profit driven corporations will 'cherry pick' these clients that represent the highest return and the lowest costs or risks, thereby leaving the loss generating segments of the market for the public enterprises. With free trade in services as for example health, education and utilities, public enterprises face a difficult choice of either continuing to provide universal service at high cost or alternatively copying the private sector behaviour and delivering services to some parts of the population only at a substantial higher rate (in the latter case, the argument will quickly appear that the 'raison d'être' for a public corporation no longer exists).

In theory, the government may correct this market failure, either by providing subsidies to the governmental enterprise or by imposing universal service obligations on private firms. The first approach implies that government's expenditure has to expand even further. In this day and age of global tax competition, fears of credibility status on international financial markets and the European Stability pact, this solution is not evident at all.

The second approach implies a strong regulating capacity by the government. But exactly the GATS agreement poses a threat to the government's regulatory function. On the one hand, governmental regulations on universal services are seen by other countries as a 'market restriction' and become a systematic object of requests for deregulation. This is clear in the present round (see below, last part) and these kind of requests will undoubtedly be repeated in future GATS negotiations rounds. Moreover, GATS negotiations not only concern specific sectors but also the construction of GATS rules and disciplines which apply to all service sectors, including these where a government did put up restrictions or obligations (see next part). If agreed upon, these general rules may well hinder governments from regulating and correcting the 'adverse selection' market failure (for example in the field of subsidies for a universal service guarantee).

The hidden agenda of GATS and the black spot in the Commission's consultation document

In parallel with the negotiations on sectoral openings, GATS also operates negotiations on new general rules and disciplines. At present these general rules are indeed limited (rules such as transparency and most favoured nation). There are however proposals on the negotiating table that would have far reaching consequences on the ability of governments to apply market corrective policies. These proposals include:

- Rules concerning subsidies and governmental procurement.
- General introduction of necessity tests for regulation 'that distorts trade the least', whereby targeted countries have to prove themselves that there is no alternative regulation that is less burdensome.
- General interdiction on economic needs tests.
- National Treatment rule which would automatically introduce foreign competition in a sector where there is some form of private domestic initiative and which would force governments to grant subsidies to all players, whether it concerns public, non profit or private/profit initiatives.

We regret that the Commission's consultation document is completely silent on this. Indeed, negotiations on sectoral openings and on strengthened general disciplines have to be analysed together in order to be able to assess the full implications of GATS.

In order to correct this we request an urgent and renewed consultation round on these general rules negotiations in conjunction with the discussions on sectoral openings.

Awaiting such a global approach, we ask the Commission's services to take note of the following trade union concerns and proposals (see also the Global Unions/ETUC/WCL statement in annex. UNI note: the statement is not reproduced here.):

- GATS texts should explicitly recognise the primacy of social protection, environmental protection, protection of labour and public health over the principle of free trade.
- As a consequence, GATS legal texts should not generalise these necessity tests. Clauses whereby countries themselves have to prove that actual regulation is the 'least burdensome' for trade should be fundamentally revised or even removed.
- In order to prevent abuse of rules on subsidies, procurement and the 'national treatment' rule, WTO panels and its dispute settlement machinery should have no authority in all cases where the government is concerned.
- Temporary safeguard measures should become possible and the principle of 'lock-in' should not apply when the service market liberalisation has led to severe adverse socio-economic effects.

Comments on requests for specific sector liberalisation

Postal services: full commitments, prevention of cross subsidisation of express delivery services

- Likely impact: Postal services are already scheduled to confront competition inside the EU in the coming years. This European market opening will already put universal post service under pressure and will require additional governmental subsidies in order to guarantee the universal service. Introducing additional competition from WTO members is likely to intensify this situation.
- Reason for disagreement with the request: One major difference between European led and WTO led liberalisation is that a political decision on the European level may add corrective measures. With WTO rules (lock-in principle), taking backward steps on liberalisation commitments is in practice impossible. It would therefore seem wise to evaluate the effects of internal European liberalisation before committing to the WTO discipline.

Telecommunications: independence of the regulator, measures against anti-competitive practices and competitive neutrality of universal service

The EU text is not clear but one could understand that some WTO requests consider the above-mentioned measures as a market restriction that should be eliminated. In that case, this would be a clear example of the GATS undermining the regulatory powers of governments.

Construction services: see comments under mode 4

Distribution services: opening hours

The EU 's consultation document does not mention requests for eliminating existing regulation on opening hours, but at least the UK did receive such a request (see web site www.dti.gov.uk). Not only would a complete elimination of rules on opening hours imply increased worker's flexibility. Also, with about the same volume of purchases spread over longer opening hours, this would reduce efficiency in this sector.

Education: opening up of public higher education and full commitments on national treatment; opening up of 'other education'

- Likely impact: Under full national treatment, governments must make subsidies equally available to foreign providers. This implies an increased competition for the same amount of funds that are to be distributed over more institutions.
- Reasons for disagreement with request: Introduction of a bipolar higher educational system, partly financed by state subsidies (elite education for the rich, lower quality public education). Unhealthy collusion between educational institutions and private business (sponsoring, marketing) will threaten the building of critical capacities, academic freedom and unbiased research.
- Note that the classification of 'other education' is unclear. One can not commit to something one doesn't know what one is exactly committing to.

Environment and water services: complete commitments on environmental services; opening up of water collection, purification and distribution services and full commitments on national treatment

The EU has proposed a revision of the current WTO classification of environmental services, thereby including water collection, purification and distribution services. This could imply that all countries that have taken commitments on environmental services as a whole, now suddenly will have to extend these commitments to water services. In countries that have privatised water distribution under the pressure of an IMF structural adjustment program clearly show that privatisation of water services jeopardises universal distribution and access. Remote areas where distribution of water carries a high cost or parts of the cities with poor people will be cut off from access to water. European policy makers seem to prefer to 'export' the commercial interests of some private European service suppliers instead over the promotion of our own 'European social model'.

Health: removal of all establishment restrictions on hospital and social services

There will be an overcapacity if the establishment restrictions and health planning such as number of beds, pharmacies or heavy medical equipment per inhabitant to be removed. Because the health sector is an atypical sector where 'demand' tends to follow 'supply', costs for the (public) health insurance will rise. Savings on other and necessary health services

(such as prevention for example) may result in order to finance oversupply of hospital beds and medical equipment.

Rail: opening up of rail transport and full commitments on national treatment
See comments under postal services

Comments on requests on horizontal commitments

Mobility of persons (Mode 4): Removal of labour market tests, commitments on lower skill levels, extension of stay and sectoral coverage of contractual services providers throughout the EU:

- Impact: Major increase in temporary migration from third countries. With commitments on lower skill levels, also an increase from low wage countries.
- Reasons for disagreement with the request :

⇒ Pressure coming from international trade in goods (in combination with technological progress) now already weighs heavily on low skilled workers. Despite the fact that domestic personal services, construction and transport offer these workers some employment opportunities, unemployment in these categories remains high. Introducing additional competition from low wage labourers from third countries will aggravate this situation and will lead to higher unemployment and inequality.

⇒ Moreover, wages and working conditions in countries with no legal or general minimum wage will undergo downward pressure from competing with foreign service suppliers. In turn, and because of reasons of indirect competitiveness, this might spill over into other countries where general minimum wages do exist. This would lead to falling wages for low skilled workers and rising inequality.

⇒ The loosening of restrictions will also increase the supply of more qualified workers. Whereas there might be shortages in some regions/countries, the fact remains that the best solution is to retrain lower skilled workers. By offering firms an easy way out of the potential labour market bottleneck problem, incentives for firms to invest in the life long learning of their work force are eliminated.

⇒ Inside the EU, there exists a substantial disparity between countries/regions. Policy instruments to tackle this disparity have been eliminated over the last years (devaluation is no longer possible within the EMU and governments have a tied fiscal policy because of the Stability and Growth Pact). Introducing general coverage of contractual service providers implies that the level of market restrictions is determined by the country with the lowest labour market problems, thereby aggravating the unemployment situation in high unemployment countries.

Monopolies in utilities sectors

International competition in European utility sectors is at present constrained by the fact that European member states have the possibility of installing public monopolies or granting exclusive rights to private operators. Some WTO members ask the elimination of this general restriction.

Likely impact : Unbundling and segmentation of services. Only those regions or parts of the population that present the lowest cost/benefit ratio will still be serviced. Increase in inequality. If governments want to correct for this, they cannot use 'cross- subsidisation' any more and will have to rely on the instrument of subsidies (if these subsidies in turn are not challenged under a generalisation of 'national treatment' principles). In turn ,this will in pose a macro – economic problem in respecting the deficits under the Stability Pact.

Annex 1: Letter to Mr. Gabaglio

A 16/02

Bruxelles, le 11 décembre 2002.

A l'attention de E. Gabaglio

Secrétaire général CES
Bld. Roi Albert II n° 5
1210 Bruxelles

Monsieur le Secrétaire général,
Cher Emilio,

Les actuelles négociations sur l'AGCS entreront bientôt dans une phase décisive puisque début janvier, la Commission européenne proposera un projet d'offre pour les services à libéraliser aux Etats membres et que ces derniers doivent faire connaître leur réaction pour la mi-février.

Nous estimons que la menace que font peser les négociations AGCS sur le modèle social européen doit être prise très au sérieux et qu'en tant que syndicat, nous devons certainement exiger notre place dans le débat avant d'être confrontés aux décisions et d'être mis devant des faits accomplis. La libéralisation de certains secteurs et la définition de nouvelles disciplines générales AGCS peut en effet avoir d'importantes conséquences tant sur les relations de travail et sur les conditions de vie au travail dans les secteurs concernés que pour les utilisateurs.

Il est donc inacceptable que ces négociations se déroulent sans aucune transparence et sans qu'aucune concertation directe avec les interlocuteurs sociaux ne soit organisée. La position du commissaire Lamy selon laquelle une publication des demandes de libéralisation interférerait dans les négociations ne peut être acceptée.

C'est pourquoi nous apprécierions fortement que, avant la phase finale de fixation de l'offre à partir de l'Europe (prévue fin mars) – donc de préférence durant la deuxième moitié de janvier – un Bureau exécutif ou au moins un Comité de direction soit convoqué pour aborder la problématique, réunion à laquelle le Commissaire Lamy serait également invité. Il va de soi qu'un tel contact doit être bien préparé, sur la base entre autres d'une analyse de la réponse que monsieur Lamy avait donnée par le passé à notre position syndicale. De même, il serait préférable que les organisations internationales que sont la CISL et la CMT soient également impliquées dans la discussion.

Nous pensons qu'il est absolument nécessaire que la CES exige une place à part entière dans la concertation et qu'elle ne se laisse pas noyer dans une consultation générale - et sans doute sans engagement - de la société civile.

Dans l'espoir que vous accéderez à notre requête, nous vous prions d'agréer, Monsieur le Secrétaire général, l'expression de nos salutations distinguées.

M. De Vits
Présidente FGTB

L. Cortebeek
Président CSC

A. Mordant
Secrétaire général FGTB

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