

The World Trade Organisation (WTO) and the General Agreement on Trade in Services (GATS) – an Introduction

At all events, the main objective of the new negotiations will be to take the liberalisation process further, by extending national commitments over a broader range of service sectors and by removing limitations from existing commitments.

- Mike Moore, Director General of the WTO, 1999

If we take the trouble to distinguish doctrine from reality, we find that the political and economic principles that have prevailed are remote from those that are proclaimed. There is no more reason now than there has ever been to believe that we are constrained by mysterious and unknown social laws, not simply decisions made within institutions that are subject to human will - human institutions, which have to face the test of legitimacy, and if they do not meet it, can be replaced by others that are more free and more just, as often in the past.

- Noam Chomsky, Professor, MIT, 1998

We are not demanding, or even provoking, privatisation or general deregulation (within the EU). Indeed, in areas linked to state provision, such as energy, postal services, education, culture and health, we are looking to preserve our legislative prerogatives, our cultural and social identity, and our high standards of consumer safety and protection. At the same time, we are also seeking fair and negotiated access for our service providers to such sectors in third countries. There is no contradiction in this.

- Pascal Lamy, Eu Commissioner for Trade

Introduction

Two years ago, thousands of people have been protesting in Seattle, Washington State against the World Trade Organisation (WTO) and its policy. Whereas for many activists the case is clear it remains unclear for many people to understand, what the WTO is, how it affects policies on a global level and, more specifically, how a possible inclusion of Education into the GATS Treaty might affect the sector.

So while the agents of the WTO, the EU and several governments are discussing these issues just in this moment in Geneva, preparing a new global Round of trade liberalisation, this article tries to provide an introduction as neutral as possible, quoting both opponents of the WTO and the organisation itself. All quotes used can be found in articles available on the WTO webpage and the pages of several Non-Governmental Organisations, which will be listed below.

The WTO

The WTO as an organisation is the result of a fifty year lasting process. In 1944, the ministers of Finance met in Bretton Woods, USA, for the United Nations Financial and Economic Conference. The aim was to establish three organisations, but only the World Bank (i.e. the International Bank for Reconstruction and Development) and the International Monetary Fund (IMF) could be established, the planned International Trade Organisation was not founded and the plan to found it in 1946 was rejected by the US Congress. Instead, the "General Agreement of Trade and Tariffs" was signed. The objective of that agreement was to successively liberalise trade and decrease tariffs for import and export of (industrial) goods to achieve a world market based on the principles of free trade.

The GATT was negotiated in several rounds, which were adopting further steps to liberalisation. The member states of GATT were then free to either accept the result of the Round or to reject it. The last Round of GATS negotiations the so-called "Uruguay Round",

which took several years, came to an end with the agreement of Marrakesh, which was officially founding the WTO. The WTO has existed since 1995 only and has two other main treaties besides the GATT, the TRIPS (Trade Related Intellectual Property Rights) and the GATS (General Agreement on Trade in Services). The WTO secretariat is situated in Geneva and the head of the organisation is the New Zealander Mike Moore.

The main decision making body of the Organisation is the Ministerial Conference, which takes place every two years.

The aim of the WTO is to ensure a to ensure a flowing of global trade Ósmoothly, freely and as predictably as possible”.

The WTO currently has 140 members (as of November 30th 2000), China is in negotiations of joining at the moment.

GATS

The General Agreement on Trade in Services (GATS) is one of the three big treaties within the WTO. It came into effect with the establishing of the organisation in 1995. The main objective of GATS is the same as of the older GATT, i.e. Óimproving trade and investment conditions through multilaterally agreed disciplines; stabilising trade relations through policy bindings on an MFN basis; and achieving progressive liberalisation through subsequent rounds of negotiations.”

GATS is differentiating 4 modes of supply of a services to which it applies. These are defined as follows:

Ó*Cross-border supply* is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);

Consumption abroad refers to situations where a service consumer or his/her property moves into another Member’s territory to obtain a service (e.g. tourism, ship repair or aircraft maintenance);

Commercial presence implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member’s territory to provide a service (e.g. insurance companies or hotel chains); and

Presence of natural persons consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers).”

GATS, besides of this is covering all services which are provided on a commercial basis, with the exception of those, which are supplied in the exercise of governmental authority (Article I (3) GATS).

Services are defined very broadly and are separated into 12 Areas, which can be divide into some 160 subsectors:

- business (including professional and computer) services
- communication services
- construction and related engineering services
- distribution services
- educational services
- environmental services

- financial (insurance and banking) services
- health-related and social services
- tourism and travel-related services
- recreational, cultural and sporting services
- transport services and
- other services not included elsewhere

The GATS then requires all members to have a schedule of specific commitments in which the furthest liberalisation is taking place and to which stricter rules apply than to the other service sectors. Additionally, the schedules contain any limitations to market access in specific areas and usually have horizontal and specific sections. The horizontal section includes limitations which apply to all sectors in the schedule, the specific only applies to specific sectors.

The main legal obligations under GATS are divided into general obligations which apply to all sectors and specific commitments obligations which are as follows:

Ó(a) General obligations

MFN Treatment: Under Article II, Members are held to extend immediately and unconditionally to services or services suppliers of all other Members Ótreatment no less favourable than that accorded to like services and services suppliers of any other countryÓ. Derogations are possible in the form of so-called Article II-Exemptions. Members were allowed to list such exemptions before the Agreement entered into force. New exemptions can be granted only to new Members at the time of accession or, to current Members, by way of a waiver under Article IX:3 of the WTO Agreement. All exemptions are subject to review; they should in principle not last longer than 10 years.

Transparency: GATS Members are required, *inter alia*, to publish all measures of general application and establish national enquiry points mandated to respond to other MemberÓs information requests.

Other unconditional obligations include the establishment of administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers.

(b) Specific commitments

Market Access: The granting of market access is a negotiated commitment undertaken by individual Members in specified sectors. It may be made subject to one or more of six types of limitations enumerated in Article XVI(2). For example, limitations may be imposed on the number of services suppliers, service operations or employees in a sector, the value of transactions, the legal form of the service supplier, or the participation of foreign capital.

National Treatment: In any sector included in its Schedule of Specific Commitments, a Member is obliged to grant foreign services and service suppliers treatment no less favourable than that extended to its own like services and service suppliers. In this context, the key requirement is to abstain from measures which are liable to modify, in law or in fact, the conditions of competition in favour of a MemberÓs own service industry. Members are entitled to make the extension of national treatment in any particular sector subject to conditions and qualifications.”

Apart from this the WTO and GATS involve a dispute settlement body, which is ruling on disputes. A dispute appears whenever a member state suspects another member state of

breaking the legally binding obligations under one of the three WTO treaties. The verdict of the dispute settlement body is decisive and breaks national law. If it is not followed the member state pursuing the suit is allowed to impose sanctions on the other one.

In addition to this, the GATS has a so-called built-in agenda, which means that already in 1995, when the GATS came into effect, it was decided that further liberalisation in successive global trade rounds should take place, without the necessity to decide on each trade Round at the Ministerial Conferences. This gives the WTO the possibility to negotiate liberalisation in the service sector at the moment despite the fact that the meeting in Seattle ended without any agreement to launch a new Round.

It is, however, the aim of the WTO (and also of the European Commission, DG Trade), to launch a new global trade Round at the upcoming ministerial meeting in Qatar in November 2001.

Specific Commitments of EU member states

The commitments of the EU member states are made by the European Commission, DG Trade (Commissioner Pascal Lamy), with the exception of Sweden, Finland and Austria. France, Italy and Greece have citizenship requirements within this, but apart from that, the European Union has specific commitments in all the 12 service sectors, to which the GATS is applicable, including Education Services.

It is the declared aim of Commissioner Lamy to launch a new global trade Round and to liberalise significantly in all sectors.

(Higher) Education

(Higher) Education Services, besides health care and pension funds are among the main priorities of many states on the agenda for further liberalisation. They are also, besides adult education, the main sector which the WTO itself considers suitable for significant liberalisation within the framework of the GATS treaty. The US government has been proposing to include all education above the Master level in the GATS treaty as a first step.

Apart from the USA, several other states have an increasingly big interest in exporting Higher Education. Education Services are by now among the service sectors with the highest global trade turnover and profit. This is expected to increase in the future with the increasing importance of distance education, virtual universities and open learning courses. The University of Phoenix, Arizona, is one example for such an education enterprise catering for education services online.

Conclusion

The effects of a further liberalisation of the service sector should be thoroughly studied and all possible consequences have to be taken into account. Student organisations will have to increasingly address this issue towards the responsible decision makers and follow their position once it has been established.

ESIB will have to develop a coherent strategy on how to deal with these issues in the future. I hope that this article has been providing a good introduction into the matter and has not been too technocratic.

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Resources:

All used quotations (except that of Noam Chomsky) are taken from publications of the WTO itself.

Please check www.wto.org for further information

For NGO activities on the general issue please check the webpages of the Transnational Institute (TNI) at www.tni.org/wto or Public Citizen Global Tradewatch at www.tradewatch.org

For more information with regards to Education check the Webpage of Education International (World Organisation of Teacher's Trade Unions) at www.ei-ie.org