



The General Agreement on Trade in Services

*An Impact Assessment
by Consumers International*

**Consumers and the Global Market
Consumidores y Mercado Global
Les Consommateurs et le Marché Mondial**

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The report was compiled by Robin Simpson with Muuse Yuusuf and edited by Alina Tugend.

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Acronyms used

CI	Consumers International	NAFTA	North America Free Trade Agreement
CSI	Coalition of Service Industries	OECD	Organisation for Economic Co-operation and Development
ESF	European Services Forum	PPI	public-private initiatives
EU	European Union	PPF	public and private finance
FDI	foreign direct investment	SAPs	Structural Adjustment Programmes
GATS	General Agreement on Trade in Services	TACD	Trans Atlantic Consumer Dialogue
GATT	General Agreement on Tariffs and Trade	TNC	transnational corporation
GDP	gross domestic product	UNCTAD	United Nations Conference on Trade and Development
IMF	International Monetary Fund	US	United States
ITU	International Telecommunications Union	WB	World Bank
JSN	Japan Services Network	WTO	World Trade Organisation
MERCOSUR	Mercado Común del Sur		
MFN	most favoured nation		

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Executive Summary

Trade officials from World Trade Organisation (WTO) member countries are currently discussing an expansion of the General Agreement on Trade in Services (GATS) – the multilateral trade treaty covering services.

Free trade in services – whether the supply of water, the provision of banking or the delivery of medical care – could further the consumer right to basic services particularly benefiting consumers in the world’s poorest countries, by delivering better value at lower cost. But to truly benefit consumers, trade liberalisation must be implemented properly, with the interests of consumers given at least as much consideration as the interests of transnational corporations.

To assess how this revolutionary change is unfolding – how the liberalisation of services has succeeded in some places and why it failed in others – Consumers International, through its Consumers and the Global Market programme, commissioned original research by some of its member organisations in 10 countries, from Bolivia to Zambia. The goal is to help shape the discussion about how GATS will be expanded to cover more services in more countries, and to make sure that expanded international trade in services benefits consumers – particularly those most vulnerable.

GATS has not had a significant impact on consumers so far, but only because the treaty is so new and the international market for services is still relatively small. But that will change. Global trade in services is growing

rapidly, by 10% a year according to one estimate. French water companies are slaking Britons’ thirst. German insurers are providing financial security in China. Spanish telecommunications companies are connecting mobile and fixed phone users in Latin America. And they are all eager to expand.

In many cases, Consumers International (CI) found that this trend has improved service and lowered costs. But in others, it found that the costs of some basic services like water have soared beyond the means of many poor people. In Bolivia, this resulted in bloody confrontations between the people and the government. In other countries, consumer groups discovered that foreign-owned, under-regulated private monopolies – with little or no improvement in service – replaced inefficient government monopolies.

Based on the research carried out by its members, Consumers International has concluded that the impact of liberalised trade in services needs additional study before the GATS is expanded. In particular, GATS should be amended to state explicitly that governments retain the right to regulate their domestic affairs and to continue to provide some services directly, on terms they decide without challenge under GATS rules.

As written, GATS could be interpreted as forcing governments to treat their own public services, such as education and health care, on the same basis as privately run services. This is because the definitions of government services and scope of regulations are ambiguous under the GATS. The GATS agreement must be made

fail safe to ensure that consumers can always enjoy publicly provided health and education services.

The right of governments to regulate companies is acknowledged only in the preamble to the treaty, not in the main body of the treaty itself, and so could be overridden by other provisions. The overall tone of the document is biased toward free trade as an end in itself, rather than as a benefit to consumers or society.

Liberalised international trade in services can help to improve the lives of consumers in both the developed and the developing world. But that does not mean that the GATS treaty as it stands is the best way to achieve liberalised trade. GATS contains too many ambiguities – and now, when the treaty is relatively little used, is the time to improve it.

These matters urgently need to be addressed if GATS is to work for, rather than against, consumers.

Résumé de l'Exécutif

Les experts commerciaux des pays membres de l'Organisation Mondiale du Commerce (OMC) sont actuellement en train de débattre de l'élargissement de l'Accord Général sur le Commerce des Services (GATS) - le traité sur le commerce multilatéral couvrant les services.

Le libre échange dans les services - qu'il s'agisse de l'approvisionnement en eau, la fourniture de services bancaires ou la prestation des soins de santé - pourrai promouvoir le droit des consommateurs aux services essentiels, surtout en faveur des consommateurs dans les pays les plus pauvres du monde, en fournissant des services de meilleure qualité à des coûts plus réduits. Mais pour être réellement bénéfique pour les consommateurs, la libéralisation du commerce doit être correctement mise en oeuvre, en accordant au moins autant d'importance aux intérêts des consommateurs qu'à ceux des sociétés transnationales.

Pour évaluer la manière dont ce changement révolutionnaire s'opère - le degré de réussite de la libéralisation des services et pourquoi elle a échoué dans d'autres - l'Organisation Internationale des Consommateurs (OIC), à travers son Programme pour les Consommateurs et le Marché Mondial, a fait réaliser des recherches originales par certaines de ses organisations membres dans 10 pays, de la Bolivie à la Zambie. Le but visé est d'aider à faire tourner la discussion autour de la manière dont le GATS sera élargi pour couvrir plus de services dans plus de pays, et s'assurer que le développement du commerce international des services est bénéfique pour

les consommateurs - surtout les plus vulnérables.

Le GATS n'a pas eu jusqu'ici un impact significatif sur les consommateurs, mais cela est seulement dû au fait que le traité est si récent et que le marché international des services est encore relativement petit. Mais cela va changer. Le commerce mondial des services se développe rapidement, de 10% par an selon une estimation. Les sociétés françaises de distribution d'eau sont en train d'étancher la soif des britanniques, les assureurs allemands sont en train de fournir à la Chine la sécurité financière. Les sociétés espagnoles de télécommunications sont en train de connecter les utilisateurs de téléphones mobiles et fixes en Amérique Latine. Et elles ont toutes l'ambition d'étendre leurs activités.

Dans de nombreux cas, l'Organisation Internationale des Consommateurs est arrivée à la conclusion que cette tendance a favorisé l'amélioration des services et l'abaissement des coûts. Mais dans d'autres, elle a trouvé que les coûts de certains services de base comme l'eau ont augmenté au point de les rendre inaccessibles pour plusieurs pauvres. En Bolivie, ceci a conduit à de sanglantes confrontations entre le peuple et le gouvernement. Dans d'autres pays, les groupes de défense des consommateurs ont découvert que les monopoles privés sous-réglementés détenus par des étrangers - avec peu ou pas d'amélioration dans les services - ont remplacé les monopoles inefficaces d'Etat.

Sur la base des recherches menées par ses membres, l'Organisation Internationale des

Consommateurs a conclu que l'impact de la libéralisation du commerce des services a besoin d'être étudié de manière plus approfondie avant de procéder à l'élargissement du GATS. En particulier, le GATS doit être amendé de façon à affirmer clairement que les gouvernements detiennent le droit de réglementer leurs affaires intérieures et de continuer à fournir directement certains services à des conditions telles qu'ils décident sans risque d'être en contradiction avec les règles du GATS.

Comme on l'a écrit, le GATS pourrait être interprété comme un moyen de forcer les gouvernements à traiter leurs propres services publics tels que l'éducation et la santé sur un pied d'égalité que les services gérés par le privé. Ceci est dû à l'ambiguïté de la définition des services gouvernementaux et le champ d'application des règlements aux termes du GATS. L'accord du GATS doit être conçu de manière à s'assurer que les consommateurs peuvent toujours jouir de services publics en matière d'éducation et de santé.

Le droit des gouvernements à réglementer les sociétés n'est reconnu que dans le préambule du traité, mais non dans le corps du traité lui-même; ainsi donc d'autres dispositions pourraient l'emporter sur ce droit. L'allure générale du document dénote clairement une préférence pour le libre échange en tant que fin en soi, plutôt qu'en tant qu'avantage pour les consommateurs ou pour la société.

La libéralisation du commerce international des services peut aider à améliorer les conditions de vie des consommateurs, tant dans les pays développés que dans les pays en développement. Mais cela ne signifie pas que le traité du GATS, tel qu'il est, est le meilleur moyen de réaliser la libéralisation du commerce. Le GATS contient trop d'ambiguïtés - maintenant que le traité est relativement peu utilisé, c'est le moment de l'améliorer.

Ces questions ont besoin d'être abordées de toute urgence pour que le GATS fonctionne à l'avantage des consommateurs, plutôt qu'à leur détriment.

Une traduction complète du présent rapport est disponible en contactant n'importe lequel des bureaux de l'Organisation Internationale des Consommateurs.

Resumen ejecutivo

Los funcionarios de la Organización Mundial del Comercio (OMC) están discutiendo actualmente la expansión del Acuerdo General sobre el Comercio en Servicios (AGCS) – el tratado comercial multilateral que cubre los servicios.

El libre comercio de los servicios – sea el suministro de agua, la provisión de la banca o la entrega de cuidado médico- puede promover los derechos de los consumidores a los servicios básicos, beneficiando particularmente a los consumidores de los países más pobres del mundo, entregándoles un mejor servicio a un menor costo. Pero para que la liberalización comercial verdaderamente beneficie a los consumidores debe ser implementada adecuadamente, dándole a los intereses de los consumidores al menos igual consideración que a los intereses de las corporaciones transnacionales.

Para evaluar como este cambio revolucionario se está desplegando – como la liberalización de los servicios ha tenido éxito en algunos lugares mientras que en otros ha fracasado -, Consumers International, a través de su programa Consumidores y Mercado Global, encomendó la realización de investigaciones a las organizaciones miembros de 10 países, desde Bolivia a Zambia. El propósito es ayudar a generar ideas en la discusión acerca del como el AGCS se ampliará para cubrir más servicios en más países, y para asegurar que este mayor comercio internacional en servicios beneficia a los consumidores – particularmente a aquellos más vulnerables.

El AGCS no ha tenido hasta ahora un impacto significativo sobre los consumidores, debido a

que el acuerdo es muy nuevo y que el mercado internacional de servicios es todavía relativamente pequeño. Pero esto cambiará. El comercio global en servicios está creciendo rápidamente, a un 10% anual según algunas estimaciones. Las empresas francesas de agua potable están reduciendo la sed de los británicos. Las compañías de seguros alemanas están proporcionando seguridad financiera en China. Las empresas españolas de telecomunicaciones están conectando a los usuarios de celulares y telefonía fija en América Latina. Y todos ellos están ansiosos por expandirse.

En muchos casos, Consumers International encontró que esta tendencia ha mejorado los servicios y bajó los costos. Pero en otros, encontró que los costos de algunos servicios básicos, como el agua, se han disparado más allá de los medios de mucha gente pobre. En Bolivia, ello provocó confrontaciones sangrientas entre la gente y el gobierno. En otros países, los grupos de consumidores descubrieron que monopolios privados, en manos de capitales extranjeros e insuficientemente regulados – con poco o ningún mejoramiento en la prestación del servicio -, reemplazaron a monopolios estatales ineficientes.

En base a la investigación llevada a cabo por sus miembros, Consumers International ha concluido que el impacto del comercio liberalizado de los servicios necesita de estudios adicionales antes que se imponga la ampliación del AGCS. En particular, el AGCS debe ser modificado para que pueda establecer explícitamente que los gobiernos conservan el derecho de regular sus asuntos internos y que pueden continuar proporcionando

directamente algunos servicios que ellos decidan sin colocar en cuestión las normas del AGCS.

Como está escrito, el AGCS puede ser interpretado como un acuerdo que obliga a los gobiernos a tratar sus propios servicios públicos, tales como educación y cuidado médico, sobre la misma base que los servicios administrados privadamente. Ello se debe a que las definiciones de los servicios gubernamentales y de los ámbitos de las regulaciones son ambiguos en el AGCS. El acuerdo de AGCS debe ser capaz de asegurar que los consumidores siempre podrán disfrutar de servicios públicos en educación y salud.

El derecho de los gobiernos de regular a las empresas se reconoce solamente en el preámbulo del tratado, y no en el cuerpo principal del mismo, por lo que puede ser invalidado por otras disposiciones. El tono general del documento está sesgado hacia el libre comercio como un fin en sí mismo, más que hacia un beneficio para los consumidores o la sociedad.

La liberalización del comercio internacional en servicios puede ayudar a mejorar la vida de los consumidores tanto en el mundo desarrollado y en desarrollo. Pero esto no significa que el AGCS tal cual está ahora es el mejor camino para alcanzar un comercio liberalizado. El AGCS contiene muchas ambigüedades – y ahora, cuando el acuerdo ha tenido relativamente poco uso, es tiempo de mejorarlo.

Estas materias deben ser urgentemente consideradas para que el AGCS funcione a favor y no en contra de los consumidores.

Puede obtenerse una traducción completa al español de este informe contactando cualquiera de las oficinas de Consumers International (ver contratapa).

1 Introduction

With services affecting consumers' ability to meet their basic needs, Consumers International has carried out research in developing and transition economies to assess the impact of services liberalisation. In light of on-going negotiations on the General Agreement on Trade in Services (GATS), this paper illustrates some of the key issues for consumers. While GATS has as yet had limited effects (for reasons which are explained below), the issue will grow in importance because of the abundance of international trade in services.

The evidence below is taken from the studies conducted for Consumers International's Consumers and the Global Market programme in **Chad, Mali, Zambia, Kenya, Poland, Slovenia, Bolivia, Chile, Brazil** and **Nicaragua** as well as from other evidence collected over recent years by members of Consumers International itself. The recommendations are based on analysis of the GATS text and our experience of international trade negotiations as well as the "real life" examples set out below.

Services are all pervasive. They provide such physical necessities as health care, and water supply services, such features of modern life as banking and telecoms, and such major economic activities as tourism. They are also a large cost component of the production of goods. Such costs can reach very high levels for developing countries. For example, in Mali, a report for Consumers International by the Chamber of Commerce found that services account for up to 70% of production costs for

some goods.¹ So consumers have much to gain or lose both directly (as service recipients) or indirectly (as services costs are passed on in the price of products).

As trade in services is being redefined and is being promoted by binding multilateral rules, the importance and share of services in the world economy has been steadily increasing. The volume of trade in services is already significant, amounting to US\$1.35 trillion in cross-border transactions in 1999.² The services sector is now the single largest part of the world economy, accounting for 46% of developing country GDP and 61% of developed country GDP (US 72% and EU 68%, compared with 26% and 29% for industry and 2% and 3% for agriculture).³ However, services only account for about 20% of international trade, although that percentage is likely to increase because services are growing more rapidly than trade in general – 10% annually in recent years.⁴

Services play a key role in creating investment in essential infrastructure for all economies. Service activities soak up 60% of all foreign direct investment (FDI), of which 90% is from developed countries. Developing countries saw a five-fold increase in services exports from 1983 to 1997, a measure of the increasing importance of this sector to them.⁵

Since the Uruguay Round, corporations in developed countries have been developing sophisticated strategies for targeted market access and policy reforms that they want to achieve through an expanded GATS. The world's three leading service industry

organisations – the Coalition of Service Industries (CSI), the European Services Forum (ESF), and the Japan Services Network (JSN) – called on governments to prepare to launch a new Round of trade negotiations at the Doha WTO Ministerial Conference in November 2001.^{6,7}

Negotiations on services are taking place irrespective of the progress of the planned ministerial meeting because “services” is an item of the “built in agenda”. This means that negotiations on agriculture and services are mandated under the Uruguay Round agreement and do not need ministerial agreement to proceed. Hence the urgency of this paper.

The special characteristics of services

The main difference between goods and services from the point of view of trade policy is that, there is generally no “frontier crossing” as there is with goods. The barriers to entry into a national territory are not based on “stop and search”, but rather on regulatory requirements such as licensing, permits, standards and qualifications. For this reason, trade liberalisation in services reaches deep into national regulatory policy. This aspect is bound to make this process highly controversial.

Another special feature of services is that, unlike blue jeans, watches, videos or other goods, services cannot be reproduced by merely copying their appearance. For example, the actuarial calculations that go into an insurance policy are not evident from the tangible expression of the “product” namely the policy on paper. So services cannot be “reverse engineered” like, say, prescription drugs or electronic appliances.

The terminology of the discussion can be misleading at times. Services liberalisation is often taken to be synonymous with privatisation. This has become tied up with the issue of “autonomous” liberalisation, which is liberalisation made outside of the GATS framework. Developing countries have often made such moves in the context of Structural Adjustment Programmes (SAPs), often at the behest of the IMF/World Bank. Having done

so, these developing countries often want “credit” to be given for such moves – i.e., for them to be seen as “offers” in the negotiation process described as “request and offer”. One problem is that such “liberalisation” may be far more limited than what was envisaged under GATS and may be far less satisfactory from the point of view of consumers. The Structural Adjustment Programmes have a tendency to conflate “liberalisation” and “privatisation”. The experience of consumer organisations around the world has made clear that many privatisations have simply exchanged state-run monopolies for privately owned (and often inadequately regulated) monopolies, and thus cannot be assumed to be “liberal” at all.

A proper set of rules could lead to the avoidance of the repeated pattern of these “false liberalisations.” That is one of the major consumer arguments in favour of GATS. Examples of “false liberalisation” are given elsewhere in this paper.

This paper outlines the contents of the GATS and state of play in the current negotiations before moving on to introduce evidence gathered by consumer groups as to the impact of services liberalisation. The report concludes with recommendations to improve the GATS to ensure consumers access to good quality affordable services.

2 The General Agreement on Trade in Services (GATS)

During the Uruguay Round, the US pushed for the provisions of the General Agreement on Tariffs and Trade (GATT) governing trade in goods to be transposed into the area of services as a whole (although financial services were of prime interest). Such a move “could easily have sunk the Uruguay Round and crippled the GATT”, according to current WTO Director-General Mike Moore.⁸ GATT was a precursor to the WTO. Many countries reluctantly agreed to GATS, the services agreement, only if they could choose which of their services were covered by it. The US took care, however, to include clauses mandating further liberalisation in future. The time for those further negotiations is now with us, under the built in agenda as explained above.

So, although all GATT signatories are also signatories to the GATS, they have the right to decide to which services sectors and to which modes of service, the GATS disciplines apply. These are listed in “schedules of specific commitments”. This point is vital, because the debate around GATS is often portrayed as being about which regulations and restrictions are allowed or disallowed, when there is actually considerable leeway as to whether entire sectors should be included in the first place. Therefore, the application of the terms of the agreement will vary between sectors and modes in different countries, which makes generalisations difficult.

Two GATS obligations apply directly and automatically to all WTO members for all services: most-favoured-nation treatment and transparency.

- **Most-favoured-nation (MFN) treatment** (Article 2) does not favour one country over another. On the contrary, it requires countries to treat all WTO members the same. If a WTO member country grants favourable treatment to another country (even a non-WTO member) regarding the import of a service, it must grant all other WTO signatories the same treatment. If a country allows any foreign competition in a service sector, it must allow service providers from all WTO member countries to compete to supply that service. Under the 1994 Treaty of Marrakech, which set up the WTO, a country could list any exemptions to this MFN principle, but exemptions were to be reviewed five years after the WTO agreement and could not last more than 10 years anyway. The WTO interprets this MFN obligation as prohibiting not only *discrimination* specifically set out in regulations, but also discrimination resulting indirectly from regulations.
- **Transparency** (Article 3) requires governments to publish all relevant laws and regulations governing all service sectors. By 1997, governments should have set up enquiry points for foreign companies and governments to obtain this information.

The other two main GATS obligations, market access and national treatment, apply only to those services that a country lists in its Schedule of Specific Commitments.

- **Market access** (Article 16) allows foreign companies to provide cross-border services in a country. But a country can restrict such

access by limiting the number of suppliers, operations or employees in a specific sector; the value of transactions or assets; the legal form of the supplier (for instance, limiting it to a branch or joint venture); or the participation of foreign capital.

- **National treatment** (Article 17) means that once foreign companies have been permitted to enter a country, they must be treated in the same way as domestic ones. The key requirement for members is to abstain from measures that are liable to modify, in law or in fact, the conditions of competition in favour of their own service industries. Thus, the test for non-discrimination is whether any measure puts a foreign supplier at a disadvantage.

Modes of Supply

The Schedule of Specific Commitments also identifies which of the four different ways (or “modes”) of supplying services are covered.

- **Cross-border supply** (Article 1.2a). Services can be supplied from one country to another: international telephone calls; Internet services; telemedicine; a purchase of laboratory services from another country; or advice on the Internet. Only the service itself crosses the border.
- **Consumption abroad** (Article 1.2b). Individuals or companies can go to another country to use a service there. Tourism is a prime example. This mode encompasses travel to another country to obtain a medical treatment that is better, faster or cheaper than that available domestically.
- **Commercial presence** (Article 1.2c). A company can set up subsidiaries, branches, joint ventures or representative offices or can lease premises in another country to provide services there. For instance, banks can set up operations in another country, and health care companies can set up hospitals or clinics in other countries.
- **The presence of natural persons** (Article 1.2d). Individuals from one country can be admitted temporarily to another country to provide services there, for instance, fashion

models, architects, doctors or nurses. GATS does not apply, however, to people seeking permanent employment or to conditions for obtaining citizenship, permanent residence or permanent employment. Of all four ways of supplying a service, WTO member countries have made the least number of commitments in this mode.

Once a government has committed itself under GATS to opening a service sector to foreign competition, it must not keep money from being transferred out of the country to pay for the relevant services (Article 11), except when the country is experiencing serious balance-of-payment difficulties (Article 12). Such exceptions must be temporary and justified by an International Monetary Fund assessment of the country’s financial situation.

3 Current Negotiations

In March 2001, WTO members agreed on guidelines and procedures for the mandated negotiations on trade in services, taking talks into a more intensive negotiating phase based on members' negotiating proposals.⁹ The main points of the guidelines are as follows:

- 1 Progressive liberalisation shall be advanced through either bilateral or multilateral negotiations. And the request-offer approach shall continue to be the main method of negotiations. There shall be no a priori exclusion of any service sector or mode of supply. Special attention shall be given to sectors and modes of supply of export interest to developing countries.
- 2 Exemption to most-favoured-nation (MFN) status shall be subject to negotiation. In such negotiations, appropriate flexibility shall be accorded to individual developing country members.

The working party on GATS rules has started negotiations, to be completed by March 2002. It aims to negotiate on emergency safeguards measures, domestic regulation, government procurement and subsidies before negotiations on specific commitments are concluded.

Timetable

So far, the negotiations have been preparatory. The US has pushed for negotiations to be completed by the end of 2002, but other WTO members do not believe this to be realistic. The negotiating guidelines were only agreed in March 2001, including some of the above, and the ministerial conference in November 2001 will agree the deadline date for the exchange

of requests for liberalisation and possibly a date for the receipt for the responses by offers. The earliest possible date for the exchange of requests is the end of 2001, and the date for the exchange of initial offers is likely to be a further 12 months. A more likely date for completion is end 2004 although it is worth noting that there is no formal final deadline as yet.¹⁰

Governments are forming alliances and positions. While developed countries are pushing hard for negotiations on more sectors, for more transparency in government procurement and in domestic regulations and more commitment on sub-sectors, developing countries are asking for the inclusion of the development dimension and implementation issue in new negotiations.¹¹ Most of the countries with economies in transition share an interest in seeing further development of the multilateral trading system in the services sector. They consider it important that the future negotiations should take into account specific concerns of their countries.

Consumers International feels that the negotiators should carefully consider all possible implications of further liberalisation on different countries and sectors, and not adopt a "one size fits all" approach. This they are entitled – indeed, encouraged – to do under paragraph 2 of Article 19 of the GATS (Negotiation of Specific Commitments), which calls for flexibility particularly for developing countries. However, this does not necessarily mean that developing countries are always in a defensive posture. Sectors are being grouped for discussion, and developing countries have been putting forward agendas focused on

specific industries or groups of services. The Venezuelans have called for discussions on energy, the Dominican Republic on tourism, and India on the movement of natural persons.¹² It is important to note, however, that very few developing countries submitted proposals on services.

At the May 2001 meeting of the Trans Atlantic Consumer Dialogue (TACD) in Brussels, the trade representative of EU Commissioner Pascal Lamy set out a “wish list” of sectors for negotiation, including telecoms, construction and engineering, distribution, environmental services, financial services, tourism and transport (air, sea and land). He specifically ruled out health and education. The US representative, Mark Linscott, attaché for trade in services at the Permanent Representation to the WTO, set out the American “wish list”. It includes tertiary education – training after state-mandated schooling is completed – as well as telecoms and energy, but not health or water.¹³

4 Impact Assessment

In general, there is very limited material on the impact of GATS, partly because it is so recent. In fact, the evidence gathered by Consumers International is about the liberalisation of services generally, rather than GATS narrowly defined. But it concentrates on the most basic services, mainly utilities, rather than the full range, including say, financial services or tourism. So this report concentrates on services which are most vital for basic social development.

The few existing assessments show that developing countries have made substantial commitments under GATS with respect to many service industries, often making binding offers to liberalise, under recently adopted legislation. In addition, they have made the most binding commitments in terms of market access under the cross-border and commercial-presence modes of supply. However, they have often not been credited for this, because they have made them autonomously, that is, outside of the GATS process.

For example, an analysis carried out for Consumers International by the Central Information Network of **Kenya** found that: *“Kenya started to liberalise its economy years before it became a member of the WTO in 1995. This was due to pressure from the World Bank/IMF Structural Adjustment Programmes forced on developing countries for them to be advanced loans for development projects. The same pressure for Kenyan governments to let loose certain sectors to private hands continues even today, even in areas in which Kenya is not obliged by the WTO. That is, Kenya has not yet chosen water services and energy sectors as areas to be*

liberalised, but IMF/WB are pushing to see to it that these sectors are in private hands.”¹⁴

The US has proposed that the starting point for negotiations should not be the actual degree of liberalisation in a given country but rather the binding commitments already made through the GATS process.¹⁵ This would mean not “crediting” the actions taken by **Kenya** as described above unless bound in GATS. This would tilt the negotiations against the developing countries. Furthermore they have not received in return, concessions of any meaningful economic value under the movement-of-natural persons mode of supply, an issue on which the developed countries have proved intransigent.

The extent of these earlier commitments under structural adjustment or other programmes (such as EU accession, regional agreements such as the Free Trade Area of the Americas (FTAA), or currency rescue packages such as that in **Brazil**) is highly significant, as mentioned earlier. For existing consumers have had to pay a high price around the time of privatisation, (including during the period leading up to privatisation).

For example, some studies conducted for Consumers International have found that **Brazil** witnessed its highest price increases in electricity and telecoms during the mid-1990s (in particular 1996) when the industries were undergoing this process. Furthermore, from 1995 to 2000, tariff increases for domestic consumers were much higher than for commercial customers.¹⁶ **Chad** has some of Africa’s most expensive electricity,¹⁷ according to another study done for Consumers International, while **Mali** had some of the

highest telecom line revenue, even by world standards, (according to the World Bank), following privatisations.¹⁸ The conclusions of the Consumers International reports in both African countries are clear and explicit.

What is needed is not to turn the clock back to the old state-dominated system, but to carry out a “real” liberalisation, one in which there is less power vested in the incumbent monopolies. However, if their experiences indicate that the commitments undertaken do not represent genuine liberalisation, then there is a dilemma. Some developing country governments having carried out structural adjustment programmes (SAPs) under IMF/World Bank programmes, feel that they are due “credits” which are being denied because of the incomplete nature of that liberalisation. Should they be supported in that argument?

In terms of the reciprocal offers that could be made by the developed countries, Consumers International would certainly say yes. In terms of internal liberalisation, it is important to point out that consumer organisations believe that the process should lead to de-monopolisation where possible and a proper structure of regulation to protect consumers in the case of continuing monopolies. For GATS

commitments do not necessarily mean “more of the same”, i.e. privatisation come what may. If the process moves on, as the evidence from Consumers International suggests, then it could well be that the worst is over, in terms of price rises and that robust regulation and/or competition will bring prices down. Price increases were moderated in **Brazil**, **Chile** and **Bolivia** during the late 90s, for example. Indeed, in **Chile** and **Bolivia**, prices were falling, as they had declined in Britain – after initial price increases – when that country privatised the telecoms, water and electricity industries. Lower prices were due mainly to regulatory intervention, though telecoms costs also were pushed down by increased competition.^{19, 20, 21}

The former Soviet Republics are starting to witness the same trends, although there is still a long way to go. Sometimes it results simply from the fact of competition. For example, in telecoms, competition from mobiles is leading to falls in price of connections in those regions where such a service is available (such as Russia or the Baltic states). Connection charges are generally in excess of \$1,000 in Russia, and as high as \$7,000 in some regions, because of the monopoly.²² In Latvia, a more orderly process of regulation, and competition from mobiles, together with the prospect of

Case study: Chile and Bolivia

In Chile, during the period of the military dictatorship (1973-89), privatisation was monopolistic. The 1990s saw liberalisation develop through competition in telecoms and electricity generation, and price regulation of the monopolistic sectors, including water. Price increases have moderated in electricity and prices are now falling in water and telecoms.

In Bolivia after a complex privatisation process involving share acquisition and long term concession agreements, the price regulation in electricity and telecoms also varies according to the degree of monopoly. There is also scope for network extension schemes through cross-subsidy in both countries through mechanisms such as Rural Extension schemes. But connected consumers

are paying more. For instance, in Bolivia, the city of Cochabamba’s water system was taken over by a subsidiary of Bechtel Corporation, a US based multinational. Consequently the water bills increased 35%, this led to a general strike, resulting in demonstrations and clashes between the police and demonstrators and subsequent death and injuries. Government then suspended the privatisation process. Critics argue that if Bolivia had made GATS commitments on the water supply, it would have been difficult for the government to take action (e.g., reverse the privatisation) to avoid further bloodshed. GATS would have required Bolivia to give at least three months notice of its intention to withdraw from the commitment. Could the GATS make such conflicts more acute?²⁴

full competition in 2003 has led to sharp falls in connection charges to developed country levels.²³

The experience of Latin America certainly bears out the consequences of weak regulation. The weakness of **Brazilian** and Peruvian regulation was such that privatisation happened before the regulatory offices were properly functioning.²⁵ During the privatisation process, this led to some spectacular price increases and some spectacular service failures such as the electricity shortages during the “summer of chaos” of 1997/8 in Rio de Janeiro.²⁶

The issue of network coverage is vitally important to the discussion, for it interacts with that on prices. Loss making clients provide no incentive for the services to be extended. Paradoxically, those who are not yet connected (such as shanty-town dwellers) therefore have an interest in prices being higher, especially if, as in **Chile**, development funds can be provided through cross-subsidies. But of course, existing consumers suffer from such price rises and, having much to lose, protest loudly, perhaps louder than the non-connected who as yet do not have anything to lose from price rises. In network services, (banking, utilities) the consumer interest is therefore not monolithic, there are conflicts between those who already have access and those who have not. In many cases, this translates into a rural/urban split. For example, in its research for Consumers International, the **Zambian** Consumers Association found that while 18% of Zambian households have electricity supply, that figure drops to 2% in the rural areas where 60% of the population live.²⁷ In **Mali**, the figures are 32% for urban and suburban households and only 1% for rural, while for potable water there is a little over 50% access level for both urban and rural, so that the conflict, while not urban/rural is still between “haves” and “have nots”.²⁸

The size of the task of network extension can be daunting – a case of “running fast to stand still” – where populations are growing. In **Nicaragua**, although between 1990 and 1996 the connection rate for domestic electricity supply rose from 38% to 50%, the actual

number of people without disconnection actually increased. (During the late 1990s programme of privatisation, 40% of the proceeds of sale were intended for such uses as network extension and rural electrification, but this was prevented by legal complications. The privatisations went ahead, however.²⁹)

In these circumstances, for consumer organisations to argue simply that all price rises must be resisted come what may (which has *not* been argued in the national reports) would be divisive and short-sighted. What they do argue is that regulation is needed to ensure that TNC shareholders do not gain at the expense of consumers. Indeed, in the case of **Zambia**, the same logic applies to the state. For there is a levy imposed on electricity bills for the Rural Electrification Fund but the proceeds pass through so many ministries and with so many other potential uses that doubts are expressed in the Consumers International report, as to whether they reached their intended destination.³⁰

4.1 Telecommunications

Though a number of studies, carried out in the period of 1985-1997, establish partial correlations between services sector liberalisation and sector growth, these are just partial correlations and hence not really suggestive of robust association. It is clear from the studies that it is the mechanism (e.g., strong competitive market structure, an effective regulatory framework) that may lead to liberalisation having an impact on sector growth and consumer welfare. For example, in **Poland**, where the economy has grown rapidly, prices are among the highest in the OECD, despite relatively low labour costs. Although the local segment is theoretically competitive, the domestic long distance and international segments are a monopoly and competition at local level has been slow to develop especially outside Warsaw. Growth itself has not been sufficient to bring benefits to consumers. **Poland** has made commitments under GATS in this area which have yet to bear fruit.³¹

In **Slovenia**, the arrival of coverage to Western levels has resulted in connection charges falling rapidly, although this was not due to

GATS because Slovenia has made no commitment in telecoms. Charges have fallen primarily because supply reached the level of demand and because of the prospect of competition under EU legislation.³²

A study by the International Telecommunications Union (ITU) shows countries in Sub-Sahara (e.g. Kenya, Mauritius, Morocco, Nigeria, Senegal, South Africa and Zimbabwe) have liberalised their telecommunications sectors in order to encourage foreign investment (e.g., equity participation) in non-core telecommunications services (e.g., cellular phones, data transmission services, etc.). However, the ITU study shows the weakness of regulatory frameworks and competitive market structure, which still remains the bottleneck of progress in the sector.³³ The **Kenyan** report clearly credits GATS for the progress that has been made: *“Thanks to GATS, the sector has been liberalised and telephone (including cellphones) services and installation has become affordable”*.³⁴ So the results so far are mixed in telecoms.

It should be borne in mind that once committed, governments will lose their right to change policies. However, this can work to the advantage of consumers. In a recent privatisation package in Bulgaria, the company to whom a monopoly had been granted in principle until 2003 (owned by Hellenic Telecoms, the state-owned service of neighbouring Greece), wanted an extension of the monopoly. The Bulgarian government refused, and in doing so pointed to commitments made under the GATS. Given Hellenic’s record in neighbouring Romania where they were the new monopolists, this was probably a better result for consumers than if the monopoly extension had been granted.³⁵

4.2 Water

No country made commitments under water supply in the Uruguay Round at least partly because water supply was not identified in the classification system used by WTO members to list their GATS commitments. So there is little evidence to put forward. However this is changing, and the implications are serious, especially as this is a sector where TNCs are

already highly active even without the GATS framework. The EU has an interest in seeing the water-supply business opened up to competition because it has a clear competitive advantage in this area. Hence, the EU has put a proposal to include drinking water in the GATS agreement. The US is not in favour. The EU position reflects the interest of its large multinationals (e.g., Vivendi and Suez) two French companies who account for over 50% of world water sales.³⁶ The third French company, SAUR, has a 60% stake in a monopoly in **Mali** not only of the water system but also the electricity system too. Although the two sectors are closely linked because of hydro, this would seem to build a conflict of interest into the very structure of ownership. In the context of a weak regulatory structure, this is an even more extreme accumulation of power than appears at first glance.³⁷ In research conducted for Consumers International, the Association des Consommateurs du Mali found:

“The privatisation of Energie du Mali leads to the transformation of a state monopoly operated principally by a multinational company. While waiting for an eventual separation of the function of regulation and operation, the new company continues to be judge and party relative to its actions”

Many countries face a conflict between raising revenue to make the system self financing and extend the network on the one hand, while not penalising connected consumers on the other. In **Nicaragua**, for example, during 2001, a 30% price increase was announced for Managua and district. But it is to be attenuated for poorer consumers by increasing it for the better-off neighbourhoods, who will pay an average increase of 66%. Outside of districts operating such a cross-subsidy the increase in bills comes to 300% to 400%, a level of increase that is simply self-defeating. Even the 30% increases led to “an avalanche of complaints”.³⁸ In Latin American cities, residence can be an accurate indicator of household income, so simple geographical differentiation of tariffs can be justified, especially when the quality of service will be poorer in the poorer districts. Will such differentiation be threatened by the rules of the GATS? Subsidies are discussed below.

4.3 Potential impact of new proposals

Given the above experiences what is likely to be the impact of the various proposals proffered by the negotiating partners? Below Consumers International sets out some of the key proposals and their potential impact.

Credit for existing measures

As noted, the American proposal to ignore efforts outside of the GATS would deny credit to many countries that have taken measures under Structural Adjustment Programmes, regional trade agreements such as the Free Trade Area of the Americas (FTAA) or EU accession agreements. Almost all other members oppose this position. So does Consumers International, but it does not assume that such changes will automatically be equivalent to a GATS commitment. Each case should be taken on its own merits.

Investment and competition for negotiation

This is also proposed by the US and opposed by the EU and most of the developing countries. Consumers International is very concerned that a global competition policy needs to be defined. Indeed, Consumers International sees this as the counterpart to the unfair TRIMS agreement (Trade Related Investment Measures). However, negotiators are concerned that a review of investment policy could mean a rerun of the ill-fated Multilateral Agreement on Investment, in which context the OECD was widely thought to have exceeded its brief. Consumers International believes GATS already has measures under its market-access provision (Article 16) that address this matter. Consumers International would be very cautious about reopening this issue under the GATS, but would not rule it out in a wider discussion encompassing competition policy.

Impact assessment

The Argentines have proposed an assessment of the impact of GATS on developing countries. As this paper is our modest attempt to do just that, Consumers International would certainly welcome a more wide-ranging analysis by WTO. As discussed earlier, Consumers International suggests that the analysis would need to look – as Consumers International has

done – at those measures adopted by governments which are not necessarily bound under GATS but which are GATS compliant. Otherwise a wealth of experience will be missed and the basis of analysis would be very thin, for GATS itself is still very young.

Further liberalisation

South Korea has advocated further liberalisation in finance, telecommunications, construction, distribution and maritime transport. A review of all the reports commissioned by Consumers International shows that only Poland approaches this depth of commitment, and even there it is still too early to assess the effects of the process. Hence our support for the Argentinean position.

Energy

The EU wishes to negotiate on energy across a very wide range of aspects from exploration to distribution. The US representative at TACD indicated the same. The reasons for both are quite clear: they are such major players around the world. Consumers International certainly favours the development of multilateral rules to prevent the kind of failures that have happened in the past when “Northern” investors have abused their positions in developing countries. Our evidence from Brazil and Mali is very interesting in that respect. Both cases happen to involve French companies, but of course many EU and US companies are involved.

Water

The EU have proposed that drinking water be included explicitly in the product classification and Consumers International has no problem with that in principle, given the prevalence of service provision across borders in that sector. But the EU’s motivation is clear: European water companies are the biggest and most dominant in the world. Consumers International favours the development of multilateral rules that could provide a standard of conduct in respect of such matters as transparency of concession contracts. But impact assessments are needed of the operations of multinational companies in this field.

Audio-visual services

Brazil has argued for commitments in audio-visual services taking into account Article 4 on

the increasing participation of developing countries. As the Brazilian audio-visual sector is very large, this is one area in which a developing country could become a major exporter, which is the stated context of Article 4 and one that Consumers International would see no reason to oppose.

Air transport

New Zealand has proposed increased commitments by other members in terms of air transport management, and access to domestic air services. Consumer organisations have long argued for liberalisation of air transport.

Education services

New Zealand has argued for commitments in terms of education services outside of the traditional primary, secondary and tertiary, such as vocational courses, corporate training, language training. Consumer organisations have expressed extreme nervousness about “core” education services that are not included in this list. According to its representative at TACD, Mark Linscott, the US proposal on education includes “higher education, worker training and adult education” and “explicitly excludes any possibility of negotiation from our perspective on primary and secondary education”. In other words, it could cover tertiary (that is post-school) education.

Computer services

Countries that belong to MERCOSUR, a common market in South America, have put forward proposals to eliminate restrictions to access to the market in this area. This contains areas of work where distance counts for little and is therefore a “natural” for countries with high levels of technical skills, as India’s success has demonstrated. Many developing countries have much to gain as both exporters and importers, the latter allowing them to keep down hardware costs. This could be linked with the Indian pressure to remove obstacles to movement of natural persons.

So, again, the consumer perspective on this range of new proposals is mixed. At this stage Consumers International is very cautious about liberalisation but favours the development of rules to reduce the power of monopolies. Given the lack of clear tests for GATS so far, Consumers International therefore turns its attention to the treaty.

5 Does the treaty need amendment?

Yes. Although Consumers International can see that the GATS could be used as an opportunity to reverse the pattern of false liberalisations to which this report has referred, that does not mean that the treaty as it stands is the best way to do it. It contains too many ambiguities in its drafting, and now – when the treaty is still relatively little used – is the time to revise it. We start with the treaty’s scope and jurisdiction.

5.1 Scope of public services

The GATS treaty (Article 1) states that services “*provided in the exercise of government authority*” are excluded from the agreement. In theory, this means that all public services (including education, health, water and social services) are excluded from the agreement when they are government owned. However, the agreement makes clear that those services supplied commercially or in competition with the private sector will be subject to the agreement. There are risks associated with this because the distinction between what is “private” and what is “public” is not clear. Could this threaten “universal” access to health and education services? Due to lack of resources, governments are outsourcing public services to the private sector and are taking a range of other initiatives [e.g., public-private initiatives (PPI) or public and private finance (PPF)] that have blurred the distinction between public and private. For example, in Nicaragua, not only did the registration of private doctors increase massively, by 48% between 1990 and 1992, following the defeat of the Sandinista government, but also so did the contracting of private medical services by the public

health system, especially in areas where high technology was needed.³⁹

The EU has made clear that it does not intend to negotiate internationally in the sectors of health, education and social services. Nevertheless, other negotiating partners are pushing for commitments in some areas of education as we have seen in the case of US and New Zealand. Reflecting the increasing outsourcing by governments and the move by other governments, demanding commitment on more sectors, it has been noted that the more governments move to outsource the delivery of public services, the more the GATS could apply. The US has not indicated an interest in health in the GATS context, but it has challenged Canada under NAFTA to allow access for its health care companies to the Canadian public health care system on the grounds that it has commercial and competitive elements.⁴⁰

There is a further doubt about the scope of the treaty. While GATS disputes certainly have not had the profile of other WTO cases, trade law journals and news reports document 13 cases where WTO members have raised complaints against other members based on the GATS. The most significant of these perhaps in relation to the GATS and the right to regulate was the dispute panel’s statement in the banana case. In that case the panel’s statement said that any government measure – even if one that dealt with goods rather than services – could be a violation of the GATS if it even unintentionally affected trade in services. The panel ruled that the ordinary meaning of the term “*measures by members affecting trade in services*” in Article 1:1 of GATS, does not limit

the scope of the GATS to measures related to services. On the contrary, Article 1:1 refers to measures in terms of their effect, which means they could be of any type or relate to any domain of regulation. This reading of GATS massively widens its scope beyond what one might expect of a treaty dealing with services.

5.2 Right to regulate

The agreement mentions the regulatory rights of governments in the preamble of the agreement. However, it has been pointed out that the right to regulate is only mentioned in the preamble of the agreement, which is not legally binding in international treaties. Senior negotiators like EU Commissioner Pascal Lamy tried to reassure the Trans Atlantic Consumer Dialogue that the preamble has more weight than it has been credited with. The US representative at TACD dismissed the idea of inserting the right to regulate into the main text of agreement as something that would pose constitutional problems for his government.⁴¹ Others explain that the entire GATS agreement has been deliberately structured to protect the regulatory requirements of governments. Confusion abounds, and the matter needs to be clarified.

Article 21 “Modification of Commitments” allows governments in effect to withdraw or modify access to which they have agreed. However, there is a “price to pay” for modification, and that is compensation in the form of countervailing measures such as tariffs. This price is too high for most countries, especially developing countries. Though countries can introduce new rules in sectors where commitments have been made, there is however a “consequence”, which can be serious. The South African telecommunications case is an example. Due to previous commitments by the white regime, the current Government is finding it difficult to introduce legislation for black empowerment.⁴² Is GATS a threat to members’ ability to introduce “socio-political policies”, for example, empowering blacks in South Africa, once commitments have been made?

Under Article 6 on Domestic Regulation, regulations imposed by governments on trade in services have to satisfy the so-called

“necessity test”. The test requires governments to prove that regulations are “*not more burdensome than necessary*” and do not “*constitute unnecessary barriers to trade*”. There are several grounds for concern here.

Firstly, Consumers International fears that the “necessity test” could have far wider jurisdiction than appears to be the case at first sight. Some analysts argue that the necessity test applies to **all** services, not just those that have been “offered up” for liberalisation by listing on a national schedule. The WTO Working Party on Domestic Regulation has declared:

“Nothing in Article 6.4 (quoted above) suggests that its disciplines were to be limited to services on which specific commitments are undertaken. Indeed, the fact that four other paragraphs in this Article are specifically stated to apply only where there are commitments strongly suggests that the absence of any such limitation in Article 6.4 was intentional.”

The observation on the clause-by-clause reference to commitments is absolutely correct and the above interpretation by the Working Party is highly alarming. This is for two reasons. Firstly, it means that all “*unnecessary barriers to trade*” would be open to challenge, regardless of commitments to liberalise. Thus **all** regulation in the services sector could be scrutinised by the necessity test. Secondly, this flies in the face of the assurances repeatedly given by ministers and Commissioner Lamy, who told TACD that “*we won’t tackle internal regulation, apart from the case where steps were taken to offer commitments.*”⁴³ Given the ambiguity discussed earlier about the exclusion of public services where there is private participation, this is indeed a major issue of interpretation.

This means that either there is a drafting error in the treaty, or consumers are being misled, or trade officials do not understand the GATS text. Any of these three explanations is a matter for alarm. If the absence of reference to “committed sectors” represents a drafting error, then it is easily corrected by limiting Paragraph 4 to such sectors. If it is not an error, then the implications are huge for all regulation would be contestable across the

board. While some might wish for such an outcome, obscure points of drafting are not the way to carry out such major changes.

At the TACD Commissioner Lamy recognised the anxiety over the necessity test and argued that what it actually meant in the EU's interpretation was that the regulations should be "proportionate" to the task. He told the TACD conference:

*"We have clearly reflected and thought our position over and our position now is that this necessity test is now a sort of proportionality test and that this notion of necessity, which was borrowed from other parts of the GATT provisions, may be very relevant there... We have moved towards the concept of proportionality rather than necessity tests."*⁴⁴

Some consumer organisations are concerned that proportionality might mean a narrow cost/benefit analysis, weighing regulatory costs against economic gains. While that is relevant, it is not the whole story and would be very hard to reconcile with the precautionary principle for example. Consumers International takes a broader view, which does take in "proportionality" as a legitimate dimension from the consumer point of view. So Consumers International believes that the text could be amended to incorporate "proportionality," which we take to be more supportive of the right to regulate. In Consumers International's view, then, Commissioner Lamy's remarks are encouraging.

But as it stands the text is too limited in our view, when it refers to the "quality of the service". Why stop at quality? The whole drift of this report is that "access" is very important. In many parts of the world, large numbers of people cannot get access to vital services, according to the research commissioned by Consumers International. Indeed, the reports suggest that access is the forerunner of quality. Subsidies are acknowledged in Article 15, which allows them to be used for such matters as universal service obligation, as the telecoms reference paper makes clear. Universal service obligations "will not be regarded as anti-competitive per se, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more

burdensome than necessary for the kind of universal service provided by the member." This issue of the "constructive" use of subsidies for example for network extensions is of enormous importance to developing countries, and cross subsidised funds have been used quite successfully in Chile, for example, to extend the telecoms service.

5.3 Consumer protection

The text of the Agreement does mention the legitimacy of various aspects of consumer protection in Article 14, the General Exceptions clause, which states that the Agreement will not prevent measures: "necessary to protect human, animal or plant life and health" or relating to: "deceptive or fraudulent practices" and "safety". The Working Party on GATS rules has recognised the legitimacy of consumer protection in general.⁴⁵

The text recognises the existence of monopolies and subsidies but requires that they should not be used as anti-competitive measures. This emphasis indicates a certain bias towards trade per se rather than services serving consumers. For example Article 8 on Monopolies requires members to ensure that a monopoly supplier does not "abuse its monopoly position". Consumers International of course happily supports such a wording, but the text refers only to the monopolist abusing its position **outside** the scope of its monopoly rights. This is an odd restriction because it does not refer to the possibility of abuse of dominant position **inside** the area of monopoly rights. In other words abuse of market power is seen as a trade issue, not a consumer protection issue. But Consumers International would argue that monopolies could abuse their market position by exploiting consumers not just by excluding or undermining competitors.

Do developed country consumers gain from lifting restriction on services export?

So far the discussion has been mainly about the export of services into developing countries. However, the movement of natural persons (Mode 4) is an important mode of supply of services out of developing countries, given their comparative advantage in labour-

intensive services. For example, the level of remittances as estimated by the United Nations Conference on Trade and Development (UNCTAD) stands at US\$30 billion globally, but even this figure understates the importance of the movement of persons for developing countries.⁴⁶

Barriers to this mode, notably strict and erratically administered visa requirements, licensing requirements and economic needs tests, prevent developing countries' technicians and businessmen from entering developed countries.⁴⁷ In the GATS agreement, there is considerable asymmetry in commitments between different modes of supply with minimum level of commitments, undertaken by developed countries in Mode 4, which is of primary interest to the developing countries. For instance, commitments in Mode 4 are subject to limitations in 100 countries as opposed to only four countries for Mode 2 (consumption abroad, such as tourism). The effectiveness of even these limited commitments is further reduced through a host of limitations and administrative hurdles.⁴⁸

Developing countries would gain significantly if restrictions on service exports, in which they have an advantage of strength, were eliminated. There is evidence that with greater liberalisation, particularly in Mode 4, many more developing countries could "export" at least a significant labour component of services such as construction, distribution, environmental services and transport. Developed "importing" countries would benefit from greater liberalisation as well.⁴⁹ So, for example, Indian software exports grew from US\$225 million in 1992-93 to US\$1.75 billion in 1997-98. The Indian software industry has emerged as a significant supplier to developed country markets. Against the background of a total market for software services worth about US\$ 58 billion in the US, US\$42 billion in Europe and US\$10 billion in Japan, developed countries in particular the US, have made substantial cost savings from

hiring temporary Indian software programmers. Other gains from trade liberalisation for importing countries include a more competitive market structure for software services, increased choice for consumers, as countries may develop a special expertise for certain development or support services, and greater diffusion of knowledge. For exporting nations, there remains considerable scope for an expansion of trade in services. Taking into account current market developments, India's software exports, for example, are already projected to grow from US\$1.75 billion in 1997-98 to US\$9.5 billion by 2001-02.⁵⁰

Trade in health services may be another area in which developing countries could become major exporters, either by attracting foreign patients to domestic hospitals and doctors, or by providing health personnel (doctors, nurses etc.). In Cuba, for example, the government's strategy is to convert the country into a world medical power. SERVIMED, a trading company created by the government, prepares health/tourism packages. During 1995/96 25,000 patients and 1,500 students went to Cuba for treatment and training respectively. In addition, income earned from sales to health services to foreigners was US\$25 million. Again, cost savings for consumers (patients) and health insurers are likely to be significant. For instance, the cost of coronary bypass surgery could be 10 to 30 times lower in India than in developed countries. Similarly, the cost of a liver transplant is 10 times lower in India than in the United States.⁵¹

In the negotiations, developing countries are pushing for more liberalisation on the movement of natural persons while developed countries are interested in the temporary movement of qualified professionals (i.e., financial managers and computer consultants). For developing countries, both the financial and knowledge benefits would be greatest if service suppliers (particularly those who have benefited from a subsidised education) return home after a certain period abroad.

6 Conclusions and Recommendations

Based on its recent research, Consumers International finds that whilst the GATS offers opportunities to promote the consumer interest through services liberalisation, there are also many threats. To limit the potential of TNCs abusing the opportunity offered under the GATS, Consumers International calls for greater clarification of governments right and, indeed need, to regulate to ensure that consumers are provided with a range of affordable good quality services

Developing countries have made substantial commitments under the WTO's General Agreement on Trade in Services (GATS) with respect to many service industries, often binding recently adopted legislation or pre-committing future policies. Developing countries should receive recognition for this, but this should not be taken to mean that "false liberalisations" are recognised as liberalisations for GATS purposes.

The starting point of the negotiations should be the binding commitments made under GATS and not from current *de facto* sector-by-sector limitations on market access.

With regard to the **scope of public services**: Article 1 should be amended to clearly state the right of governments to operate public sector services on a non-contestable basis. Furthermore the scope of the GATS treaty should be related to measures taken by governments only in the services area. These modifications would put into effect what was clearly the intention of the WTO delegates in

1994 and it is a position held by consumer organisations as a guarantee of universal service.

To preserve the **right to regulate to protect consumers**:

- Governments have the right to regulate their domestic affairs to protect consumers, environment and the health of their citizens. Consumers International believes that the right to regulate should be clearly stated in the text of the treaty and not only in the preamble.
- Equal opportunities legislation should be possible under GATS providing that such legislation is applied equally and fairly to domestic and foreign companies. Consumers International would welcome clarification to that effect.
- According to the spirit of the GATS treaty, Article 6.4 should be amended to ensure that challenges to regulation are clearly limited to those sectors which have been committed by governments to liberalisation.
- The concept of proportionality should be elaborated with a view to its incorporation in the treaty, for a redefinition of the "necessity test". The text should be amended to incorporate access requirements.
- The necessity test covering domestic regulations in the GATS should only apply to those sectors in which GATS

commitments have been made. Regulation should be recognised as promoting access as well as quality of service.

To further consumer rights:

- Measures to prevent the abuse of market power should apply to the conduct of monopolies both *inside* their area of monopoly and *outside*. The treaty term “abuse of monopoly position” also should be applied to cases of abuse against consumers. Rules on abuse of market power should apply to the protection of consumers as much as to fair competition among providers.
- The role of consumer organisations and user groups in enhancing the capacity of governments to regulate service provision must be recognised and encouraged.
- More impact assessments are needed before permanent commitments are made.

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About Consumers International

Consumers International (CI) was founded in 1960 as the International Organisation of Consumer Unions (IOCU) by a group of national consumer organisations that recognised that they could build upon their individual strengths by working across national borders. It is an independent, non-profit organisation, not aligned with or supported by any political party or industry. Funding comes from membership fees and by grants from foundations, governments and multilateral agencies.

Consumers International acts as the global voice of consumers by supporting and representing consumer groups and agencies all over the world. It has a membership of more than 260 consumer organisations in almost 120 countries. Most of its members are independent, non-governmental organisations. About a quarter of its members are from government agencies and statutory standards bodies.

Consumers International strives to promote a fairer society through defending the rights of all consumers, including poor, marginalized and disadvantaged people, by:

- Supporting and strengthening member organisations and the consumer movement in general
- Campaigning at the international level for policies that respect consumer concerns.

Consumers International develops knowledge and skills in its member organisations through

training programmes, seed grants, technical assistance, information networks, exchange programmes and joint projects. Training programmes include campaigning and lobbying techniques, mobilising consumers, research techniques, fundraising, organisational development, producing and marketing publications and working with the media.

It represents the consumer interest at regional and global decision making forums. As the international economy becomes more and more global, and the implications of decisions and trade policies of governments extend increasingly beyond national boundaries, Consumers International takes an active role in the promotion of consumer rights and the development of civil society to address these issues. Consumers International influences consumer policy through its high-level contacts with agencies such as: UN Economic and Social Council (ECOSOC), World Trade Organisation (WTO), Codex Alimentarius Commission, Food and Agriculture Organisation (FAO), International Standards Organisation (ISO), World Health Organisation (WHO), UN Educational, Scientific and Cultural Organisation (UNESCO) and UN Conference on Trade and Development (UNCTAD). It also works with many regional bodies.

Consumer policy promotes the establishment of legislation, institutions and information, which improve the quality of life and health and empower people to make changes in their own lives. It seeks to ensure that basic human

rights are recognised and promotes understanding of people's rights and responsibilities as consumers.

Consumer policy is a broad term for action taken, in order to ensure that fundamental rights of consumers are met. These are the rights to satisfaction of basic needs, safety, be informed, choose, be heard, redress, consumer education and a healthy environment.

Consumers have the responsibility to use their power in the market to drive out abuses, to encourage ethical practices and to support sustainable consumption and production.

Developing and protecting consumer rights and responsibilities are integral to eradication of poverty, good governance, respect for human rights, transparent, fair and effective market economies and sustainable development.

Consumers International is headquartered in London. Its Office for Developed and Transition Economies is also based in London and it has offices in Kuala Lumpur, Malaysia; Santiago, Chile; and Harare, Zimbabwe.

Consumers International has about 80 staff worldwide.

Consumers and the Global Market (CGM)

Consumers and the Global Market (CGM) is a three-year programme supported by the Ford Foundation, the Ministry of Foreign Affairs, the Netherlands, Oxfam, European Commission and Consumers International. It is managed by Consumers International and forms a part of its Trade and Economics Programme (TEP).

Consumers and the Global Market aims to encourage the development of just and fair marketplaces through strengthening the capacity and influence of the consumer movement at the international, regional and national level in the setting and implementation of trade policy. It works by carrying out original research and analysis, providing training and capacity building and representing the consumer interest in policy making.

CGM focuses on three topics: competition policy, agriculture and services and works primarily in 16 countries with consumer groups as the core partners. These partners are: IDEC, Brazil; CODEDCO, Bolivia; ADC, Chad; ODECU, Chile; CCF, Fiji; CAG, Ghana; YLKI, Indonesia; CIN, Kenya; ASCOMA, Mali; LIDECONI, Nicaragua; The Network, Pakistan; APC, Poland; SCA, Slovenia; CACPK, South Korea; UCA, Ukraine and ZACA, Zambia. Other consumer groups and NGOs will also be involved in programme activities.

CGM will develop specific research and campaigns in relation to three main priority areas – competition policy, agriculture and services. But its wider objective is to establish knowledge and capacity within organisations that will develop and expand their work in the area of trade and economics and take up other related issues. The goal is to encourage consumer involvement and participation in governance.

Recent publications under the CGM programme include:

- The Agreement on Agriculture: An Impact Assessment *En, Fr, Es*
- Consumers and Trade: The Consumer Guide to Trade Issues and Agreements (CD-ROM) *En, Fr, Es*
- The way forward for the Least Developed Countries: Empowering consumers for pro-poor development *En, Fr*
- The Impact of Multilateral Trade Agreements on the African Consumer *En, Fr*
- Liberalization of the Water Sector in Africa: Trends and Impact *En, Fr*
- Economic Relations Between the European Union and Latin America *En, Es*
- The Way Forward for the Multilateral Trading System *En, Fr, Es*

For these and other resources, please visit our website at www.consumersinternational.org/trade or contact any of our offices.



Head Office

24 Highbury Crescent
London N5 1RX, United Kingdom
Tel: +44 20 7226 6663
Fax: +44 20 7345 0607
E-mail: consint@consint.org

Regional Office for Asia and the Pacific (ROAP)

Lot 5-1 Wisma WIM, 7 Jalan Abang Haji Openg
Taman Tun Dr. Ismail
60000 Kuala Lumpur, Malaysia
Tel: +60 3 7726 1599
Fax: +60 3 7726 8599
E-mail: consint@ciroap.org

Office for Developed and Transition Economies (ODTE)

24 Highbury Crescent
London N5 1RX, United Kingdom
Tel: +44 20 7226 6663
Fax: +44 20 7354 0607
E-mail: odte@consint.org

Regional Office for Africa (ROAF)

31A Lincoln Road, Belgravia
P. Bag 6215 Avondale
Harare, Zimbabwe
Tel: +263 4 302 283
Fax: +263 4 303 092
E-mail: roaf@harare.iafrica.com

Regional Office for Latin America and the Caribbean (ROLAC)

Las Hortensias 2371, Providencia
Santiago, Chile
Tel: +56 2 335 1695
Fax: +56 2 231 0773
E-mail: consint@consint.cl

www.consumersinternational.org/trade