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## UNI: Qs & As on the WTO's General Agreement on Trade in Services (GATS)

### What is the basic objective of the GATS?

This is stated in the preamble of the GATS as the "early achievement of progressively higher levels of liberalisation of trade in services through successive rounds of multilateral negotiations ..., while giving due respect to national policy objectives."

That objective is spelled out in Article XIX of the GATS, which states that:

- "Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access." The measures referred to here include regulations of central, regional or local governments and authorities.
- Such negotiations shall be directed towards increasing the general level of specific (market-opening) commitments undertaken by WTO member States.

### Which countries are bound by the GATS?

The GATS is Annex 1B of the Agreement Establishing the World Trade Organisation (the WTO Agreement) and, as such, is binding on all WTO Members: 146 countries on 4 April 2003. The WTO has been in operation since the beginning of 1995.

The GATS defines two broad types of obligations. There are "general obligations and disciplines", which apply to all WTO member countries. And then there are the "specific commitments" that any individual WTO member country may have undertaken to allow the service suppliers of all other WTO member countries to sell services on its domestic market in a given sector and under certain limitations and conditions. The specific commitments are "market-access commitments" and they are set out in individual countries' "schedules of specific commitments".

Apart from defining these various obligations, the GATS establishes a framework for multilateral negotiations aimed at increasing the number of specific market-access commitments undertaken by individual WTO member countries. (See answer to "What is the basic objective of the GATS?")

### What is "trade in services" under the GATS?

The GATS covers "any service in any sector except services supplied in the exercise of governmental authority". The GATS is not clear about what is meant by "services supplied in the exercise of governmental authority". But it is clear that the GATS has implications for all the services in which UNI has members.

The text of the GATS is more precise – though no less comprehensive - about the types ("modes") of service supply it covers. They are as follows:

- services supplied from one country to another (e.g. international telephone calls), officially known as "cross-border supply",
- consumers or firms making use of a service in another country (e.g. tourism), officially known as "consumption abroad",
- a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially known as "commercial presence",
- individuals travelling from their own country to supply services on temporary assignments in another (e.g. maintenance workers or consultants), officially known as "temporary presence of natural persons", but often called "mode 4" service supply.

#### What do GATS market-opening commitments normally imply?

The GATS defines six categories of measures that a country should not normally maintain or adopt in the sectors where it has made market-opening commitments. The six categories include:

- limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test,
- limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

The first rule above obviously has implications for the organisation of public services and utilities. Under the GATS, WTO member countries are expected to liberalise their domestic services – governments are supposed to remove barriers to the free entry of suppliers into services markets.

The second rule underlines the GATS's role as a treaty on investment, and thus its advantages for the operation of multinational companies. The rule is also relevant to the often heard argument that the GATS does not require the privatisation of services. True, the GATS makes no direct reference to privatisation. But there is a contradiction between maintaining or establishing public ownership and, on the other hand, not being able to limit the participation of foreign capital in enterprises. This rule encourages governments to privatise services. And, once services are privatised, the GATS makes their "re-socialisation" very difficult.

The GATS does allow WTO members to opt out or limit the application of these and other market-opening rules. (See answer to "Does the GATS provide regulatory safeguards?"). However, in terms of policy and practice, it is important to note that the GATS defines liberalisation in very broad terms. To escape those rules, countries have to opt out, and the longer term expectation is that such "opt-outs" will be dropped in the course of future negotiations for "progressively higher levels of liberalisation". Weaker economies, in particular, will find it difficult to resist that logic, especially where it is combined with pressure from the World Bank or the IMF.

#### What are "most-favoured-nation treatment" (MFN) and "national treatment"?

- Most-favoured-nation treatment is non-discrimination between suppliers from different countries; national treatment is non-discrimination between national and foreign suppliers.
- MFN means treating one's trading partners equally – favours granted to one or some must be granted to all. Under GATS, if a country allows foreign competition in a sector, it must not discriminate between the service operators of different WTO member countries. This rule applies on a non-reciprocal basis; in other words, it also applies to the service operators of WTO member countries that have not made a commitment to allow such access to their own domestic markets.

MFN is a fundamental principle of the multilateral trading system, whether trade is in goods or services. It can be understood as a device to facilitate the negotiation of multilateral trade agreements. It would be difficult for each country to negotiate with all other countries at the same time. So, in a given sector, countries negotiate with important trading partners on a reciprocal basis. They then extend to all other countries any market opening accorded to those negotiation partners. In that respect, MFN is a good thing for smaller countries, as they are more likely to be marginalised in the “bilateral” phase of negotiations.

In the GATS, MFN is defined as a “general obligation” – in other words, it applies to all WTO member countries, whether they have made specific market-opening commitments or not. The GATS permits some temporary exemptions to the MFN principle.

- National treatment is, in the GATS, not a “general obligation”: it is linked to the provision of specific market-access commitments. It means that, once foreign operators have been allowed to supply a service in a given country, they should normally receive treatment that is “no less favourable” than the treatment received by national operators.

But the GATS does allow national treatment to be subjected to “conditions and qualifications”. For example, if a government commits itself to allow foreign banks to operate in its domestic market, that is a market access commitment. And if the government limits the number of licences it will issue, then that is a market access limitation. If it also says foreign banks are allowed only one branch while domestic banks are allowed numerous branches, that is a limitation on national treatment.

- MFN and national treatment are important principles, and they are often highlighted by GATS supporters. They argue that the main function of the GATS is to establish the principle of non-discrimination in the international trade of services. And we are all against discrimination, aren't we?

In reality, however, non-discrimination is only one aspect of the GATS. Another, more fundamental, feature is the objective of advancing the liberalisation of services so as to fully open markets to foreign suppliers and, closely related to that, to impose “regulatory disciplines” on countries. So it is not just a matter of equalising market access on the basis of the current regulatory status quo.

- The principle of non-discrimination in trade is itself problematic. For there is a justification for trade measures that discriminate against suppliers that produce their goods or services under conditions that violate environmental or labour standards. Yet in the WTO it is argued that any such measures, no matter how serious the rights violations, contravene MFN. One way to reconcile non-discrimination in trade with the observance of human rights would be to include respect for human rights in the GATS itself. But that has not happened yet.
- As noted above, MFN has the advantage of allowing countries with smaller, weaker economies to gain from the results of negotiations between large countries. However, MFN might also discourage the smaller countries from entering into trade negotiations themselves, if concessions made to one or a few countries have to be extended to all WTO members, even much stronger competitors. For this reason, among others, some countries may prefer bilateral or regional arrangements outside the WTO, perhaps also as a first step towards forming regional groupings that would be better placed to negotiate with the world's economic powers.
- Another critical point is that, although the principle of national treatment prevents foreign operators from being treated less favourably than their national counterparts, it does not stop governments from treating them more favourably. For example, the subsidiaries of multinational companies can be offered special subsidies or tax advantages, or – more dangerously - exempted from certain national labour laws. On the other hand, subsidies, tax breaks and other advantages cannot be granted to national operators without also granting them to foreigners, unless the government has limited national treatment with GATS-consistent “conditions and qualifications”.

#### Does the GATS contain a social dimension?

No!

The international trade union movement has repeatedly called for a structure bringing together the WTO and the ILO. With participation from unions and business, that structure would operate a mechanism to ensure that the international trading system does not undermine core labour standards. There would also be consultation and social dialogue to accompany trade negotiations in the different sectors.

We are nowhere near such a system. Despite some improvement in relations with the WTO secretariat, the WTO remains essentially closed to civil society as well as isolated from most international organisations in the UN system. That includes not only the ILO but also organisations such as the UPU, the ITU and UNESCO, which play an important role in sectors that are covered by the GATS negotiations.

#### Is the GATS enforceable?

Yes.

Like all other WTO agreements and commitments, GATS rules and market-access commitments are covered by the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Annex 2 of the Agreement Establishing the World Trade Organisation.

DSU, the ultimate means of enforcing WTO rules and commitments, defines the conditions under which a WTO member country or countries may take retaliatory trade measures (e.g., new tariffs) against a WTO member that is found to be in violation of a WTO agreement or commitment.

The GATS even permits a government to have recourse to the DSU if it considers that a market-opening commitment made by another country is being nullified or impaired by a measure that does not conflict with GATS obligations. There is a risk that this open-ended provision could easily be abused.

Since its entry into force in January 1995, one complaint of violation of the GATS has been lodged with the WTO under the DSU – the USA against Mexico, regarding the regulation of telecommunications services in Mexico.

- The WTO's authority to permit trade sanctions is something that distinguishes it from other international organisations. For example, the international labour standards negotiated in the ILO are not protected to nearly the same extent. That commercial rights should enjoy much stronger international protection than labour and other human rights helps to make today's globalisation so unpopular and unjust.
- Just as important as the submission of formal complaints is the opportunity that the WTO enforcement machinery provides to governments to – explicitly or implicitly – threaten other countries with the possibility of a complaint. Only governments – not companies – can file complaints. But business can and does put pressure on governments.

Here is a typical pattern: a company establishes a subsidiary abroad, but considers that its activities are too restricted by regulations in the foreign country. The multinational asks – either directly or through a business association - its home country government to intervene with the government of the foreign country. The home country can then use the possibility of a WTO complaint as one of the means to put pressure on the government of the foreign country.

If there is no violation of that country's current GATS commitments, the home country government can help the company by pressing the foreign country to make the required market access commitments in the next round of GATS negotiations.

### Does the GATS affect the domestic regulation of services?

Yes. As already indicated, the GATS has direct implications for the regulation of services within countries.

The GATS is based on the belief that regulatory disciplines are needed to avoid “disguised protectionism”, i.e. the use of domestic regulations to deny effective market access to trading partners.

Major economic powers regard the development of multilaterally agreed “regulatory disciplines” as an important aim of negotiations within the GATS framework. For instance, the European Commission, which negotiates for EU member States, says that more regulatory disciplines are needed to strengthen market access and to guarantee that services can be supplied in a free market environment.

#### Does UNI have specific regulatory concerns?

Yes. UNI resolutions on GATS make the general demand that governments must guarantee that GATS and GATS-related negotiations and measures do not adversely affect the accessibility or quality of any services.

Equally, UNI is concerned about the impact of GATS-induced liberalisation and privatisation on services workers. UNI demands that their terms and conditions of employment and their social security must not be undermined.

Alongside the other Global Unions, UNI is concerned about the risks for public services and other services of general interest, insisting that the GATS must not hinder the achievement and preservation of universal and equal access to quality public services and other services of general interest.

Posts and telecommunications are among the public services represented by UNI. UNI says that the GATS and GATS commitments must not undermine the provision of a universal postal service at a uniform and affordable price. In telecommunications a broadly defined universal service obligation must be protected.

UNI is also concerned about the impact of the GATS on services in the broader private sector and the many jobs involved. For example, commerce (called distribution services under the GATS), which is the largest service sector employer in the world. In most countries, planning and trading hours regulations have been considered necessary to ensure the continued availability of quality retail trade services and fair competition between large and small traders, as well as to support jobs. The GATS must therefore not be used to dismantle regulations that enable the retail industry to fulfil these functions.

UNI also has members in cultural services, including media and entertainment services. Here UNI is insisting that the GATS must not jeopardise domestic measures to protect cultural diversity and cultural identity of WTO member countries.

#### What is the telecoms Reference Paper?

The telecoms Reference Paper is regarded as a model text for the sort of regulatory disciplines that, according to GATS enthusiasts, should be negotiated within the WTO. It was one of the results of the GATS's multilateral negotiations on basic telecommunications, which ended in February 1997.

The countries that had participated in the negotiations agreed that they would refer to the Reference Paper in deciding what regulatory disciplines to accept in their market-opening commitments. And many of those WTO members did subsequently commit themselves to the Reference Paper in whole or with only a few modifications.

Provisions of the telecoms Reference Paper figure prominently in the complaint that the USA has lodged with the WTO against Mexico, which is the first formal GATS complaint.

The Reference Paper requires countries to take and maintain measures to prevent major suppliers of telecoms services from engaging in or continuing "anti-competitive practices", including "anti-competitive cross-subsidisation" (the use of revenues from more profitable activities to finance less profitable or loss-making activities). The Reference Papers also defines interconnection rules, i.e., the terms and conditions under which new competitors can link up to the networks of incumbent suppliers. In particular, these must be "cost-oriented" and also "sufficiently unbundled" so that the new competitor need not pay for things in the incumbent's network that the new competitor does not require for the service it wishes to provide.

- Anyone who has followed national telecoms liberalisation processes will know that such issues have been very controversial, in good part because of their consequences for the capacity of incumbent telecoms operators to maintain universal services (services provided to everyone at affordable prices). Where liberalisation has taken place within countries, varying and detailed regulatory solutions have been found after extensive, democratic debate.

Through the Reference Paper, the WTO has set out to harmonise national regulations, but it has done so in the absence of democratic debate and on the basis of very broad concepts. Their precise effects may, in the end, have to be decided – and enforced - through the WTO's Disputes Settlement Understanding. That adds to concerns about a lack of democratic control. GATS proponents claim that WTO-style regulatory disciplines increase certainty for traders and investors. But that is doubtful, as it is difficult to predict how their broad concepts will be interpreted in the dispute settlement process.

Concerns about such WTO defined and imposed regulatory disciplines are not allayed by what the Reference Paper says about universal service. The paper does agree that "any WTO Member has the right to define the kind of universal service obligation it wishes to maintain", but adds conditions, including one that such an obligation must not be "more burdensome than necessary for the kind of universal service defined by the Member".

Are fears for democratic processes justified?

Yes. Trade unions and civil society groups fear that the democratic procedures of countries are undermined by the impact of the GATS and of commitments made under the GATS on national regulations decided at local, regional or central levels of government.

Such concerns are all the more justified because:

- at the WTO there is no machinery for the consultation of trade unions and civil society groups, such as the machinery that exists in the EU (economic and social committee, social dialogue, etc), the ILO (government-employer-union tripartism), or even the OECD with its trade union and business advisory committees;
- within countries, democratic ratification procedures are circumscribed in trade matters; for instance, by the US Congress's "fast-track" procedure and the lack of power of the European Parliament;
- it is very difficult for countries to reverse any trade liberalisation commitments they may accept under the GATS. A newly elected government, for example, is blocked by the GATS commitments of the preceding government, even if the liberalisation required by those commitments has been rejected by the electorate. GATS commitments are sometimes called "one-way tickets to liberalisation".

#### Does the GATS provide adequate regulatory safeguards?

No. In claiming that the GATS does provide regulatory safeguards, GATS proponents often put forward two arguments:

- the GATS says that in negotiations "due respect" must be given to national policy objectives, and, in its preamble, recognises "the right of (WTO) Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives";
- ultimately, each WTO member country decides for itself what market-opening commitments it is willing to make under the GATS, and whether it wants to attach limitations to any of those commitments.

It is important for trade unionists to be aware of these GATS provisions. On the other hand, their effectiveness is limited:

- in respect of the first argument, by a very controversial provision (Article VI.4) which requires the GATS Council to develop regulatory disciplines to ensure that all "measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services". Such disciplines apply to all WTO member countries, regardless of whether they have or have not made specific market-opening commitments. In practice, WTO members have used another provision, Article XVIII, to negotiate most of the existing sets of regulatory disciplines. Examples includes the Annex on Telecommunications, the Annex on Financial Services, which are applicable to all WTO member countries, and the Reference Paper on Basic Telecommunications (discussed above);

- in respect of the second argument, by the open-ended commitment that WTO member countries have made under the GATS to “enter into successive rounds of negotiations ... with a view to achieving a progressively higher level of liberalisation”. In practice this means that a country that has not made a market-opening commitment in a particular area can be pressed to do so in a next round of negotiations. And any limitations attached to GATS commitments are likely to be similarly targeted. Moreover, Article VI.5 of the GATS suggests that, in any case, limitations must not be more “burdensome than necessary” and also fulfil certain other requirements.

Are there any proposals to reform the GATS?

Yes. Various proposals have come from Global Unions and NGOs. Some of these have aimed at broad reform, others at simple measures to reduce the risks inherent in the GATS. The international trade union movement has adopted a comprehensive statement to the WTO's next Ministerial Conference, which will be held in Cancún (Mexico) on 10-14 September 2003.

[http://www.union-network.org/UNISite/In\\_Depth/Interna\\_Relations/GATS/2003PDF/Cancun%20-%20final%20ICFTU%20statement.pdf](http://www.union-network.org/UNISite/In_Depth/Interna_Relations/GATS/2003PDF/Cancun%20-%20final%20ICFTU%20statement.pdf)

Here is what the statement says about the GATS:

Making Progress on Workers' Rights at the WTO

9. It is a priority to protect the fundamental rights of workers against unscrupulous governments or companies which seek to gain an unfair advantage in international trade through the violation of core labour standards. Furthermore, respect of core labour standards is crucial to achieving sustainable, equitable, democratic economic development.

10. Before or at the 5<sup>th</sup> Cancún, therefore, the following measures need to be taken:

- .....
- WTO members must agree that UN treaties have primacy over trade rules, and must therefore update the WTO agreements (including GATT Article XX and GATS Article XIV) to incorporate human rights standards including the core labour standards;
- .....

Safeguarding Services

11. Public services and other services of general interest reflect democratically-determined public policy objectives, and it is essential that these not be undermined by private sector competition under WTO disciplines. Governments need to preserve full responsibility and accountability in the area of such services.

12. The Cancún Ministerial should adopt the following measures:

- Building on recent statements by WTO members like the European Union, the 5<sup>th</sup> WTO Conference should amend the terms of the GATS agreement to exclude formally public services (above all, education, health and essential public utilities) including at sub-national levels of government, and socially beneficial service sector activities from all further GATS negotiations;

- A timetable and deadline should be established for completion, in conformity with Article XIX of the GATS, of a full assessment of trade in services in overall terms and on a sectoral basis, which should be conducted before the completion of the current negotiating round;
- To protect effectively the ability of governments to regulate and to enact domestic regulatory measures (in accordance with the preamble of the GATS) without possibility of legal challenge, GATS Article VI.4 should be deleted or revised and a clarifying statement adopted that social and environmental concerns have primacy over the principle of 'free trade' and that such regulations will not be subject to any 'necessity test' through the WTO dispute settlement mechanism;
- Attempts to limit regulations (even when completely non-discriminatory) involving qualifications, standards, and licensing requirements, as is discussed in the GATS Working Party on Domestic Regulation, pose a serious threat to government regulation and it is essential that the Cancún Ministerial eliminate the principle of "no more burdensome than necessary", such that government regulations cannot be subject to any potential challenge by the GATS negotiations;
- Article XXI of the GATS agreement should be amended to include an explicit clause to enable governments to withdraw or diminish their GATS commitments so that they can improve their public services without any risk of challenge under WTO rules (so preventing foreign service suppliers from using the WTO as a tool to maintain market access);
- Article I.3 (b) of GATS should be clarified to make it absolutely clear that 'the exercise of governmental authority' allows, without threat of legal challenge, WTO members to exclude competition from public services and services of general interest;
- Regarding "Mode 3" of the GATS on 'commercial presence' (i.e. investment), GATS negotiations and GATS commitments should incorporate the factors indicated in the section on investment below (not reproduced in this text);
- With regard to "Mode 4" (i.e. temporary cross-border movement of natural persons), GATS negotiations and commitments must ensure: observance of core labour standards, national labour law (incorporating those standards) and existing collective agreements by all parties, with regard to all workers concerned; protection of migrant workers against all forms of discrimination, and of the remittance of their contributions to social security and insurance schemes; and the full involvement of the ILO;
- In media, the GATS negotiations and GATS commitments must not jeopardise domestic measures to protect the cultural diversity and cultural identity of WTO member countries;
- Desirable regulations that are necessary to ensure the continued availability of quality retail trade services and support smaller companies that would be unable to compete with large enterprises in a deregulated environment, must not be dismantled through the GATS negotiations;
- Negotiations in sectors such as post and telecommunications must not jeopardise the provision of universal services at uniform and affordable prices;

- the Cancún Ministerial should take a decision to end the conditions of secrecy under which the GATS negotiations have been taking place, with publication of the details of the access “requests” and “offers” under negotiation.

#### What is the timetable for the current WTO negotiations on trade in services?

In February 2000 the WTO’s General Council decided to start a new round of general negotiations to further liberalise trade across services, in line with the mandate set down in the GATS (see answer to “What is the basic objective of the GATS?”).

The new services negotiations were integrated into the inter-sectoral, “expanded negotiating agenda” launched at the WTO’s Doha Ministerial Conference in November 2001.

That meant, first, that the services negotiations were given a deadline for their completion. That deadline is the date set for the completion of all the negotiations in the “expanded agenda” (now called the Doha Development Agenda), which is **1 January 2005**. To that end, countries participating in the services negotiations were asked to submit **by 30 June 2002 their initial requests for market-opening by other countries** and **by 31 March 2003 their initial offers to open up their own markets to foreign suppliers**.

The inclusion of the services negotiations in the Doha Development Agenda also means that they are now formally linked to the negotiations on the other issues covered by the cross-sector negotiations. In other words, it is easier for governments to make trade-offs between negotiations on services and negotiations on other issues. For example, there has from the outset been a bargaining link between the services negotiations (pressed by industrialised countries, especially the EU) and the negotiations on agriculture (of interest to many developing countries, but also to countries such as Australia and Canada).

#### What is the current state of play in the WTO negotiations on trade in services?

Owing to a deadlock, especially in the key area of agriculture, the Doha round of negotiations is not expected to be completed by the scheduled date. In fact, the round could even fail altogether, though that is unlikely. The difficulties in the negotiations should, however, not lull unions into complacency, because deadlocks can be - and in all previous world trade negotiations, have been - suddenly unscrambled. Moreover, the services negotiations have their own specific legal status: they were launched before the Doha Development Agenda and could be completed even if the Doha round as a whole failed.

In the services negotiations themselves, the request-offer phase formally came to an end at the end of March 2003. However, quite a few countries had not yet submitted their market-opening requests / offers. That includes the EU, which had to postpone the submission of its market-opening offers, owing to differences between its 15 member States. The EU then tabled its offers on 29 April.

The request / offer phase will be followed by bilateral and plurilateral negotiations within the WTO. Countries seek to match the offers and requests they have addressed to each other, and translate them into market-opening commitments. The various commitments will then be grouped into multilateral packages.

#### Have UNI unions been consulted in the current WTO negotiations on trade in services?

UNI has been keeping affiliates informed about developments in the GATS negotiations by various means, including its journal *UNIinfo*, circulars, and a special web page [http://www.union-network.org/UNISite/News\\_Info/GATS.html](http://www.union-network.org/UNISite/News_Info/GATS.html)

Since the initiation of the new round of GATS negotiations in February 2000, one of UNI's key concerns has been that **trade unions must ensure that they are properly consulted by governments**. Before formulating their GATS initial market-opening offers, some governments did indeed carry out broad public consultations, so as to allow civil society, including trade unions, to express their views and concerns. This process typically included the publication of a government consultation document, based mostly on a summary of the requests that the country had received from other WTO member countries.

Such civil society consultations were started by the government of the UK in October 2002. The UK government was followed by the European Commission. Among the other governments that have carried out consultations are those of Australia and New Zealand.

Unions used the consultations to express their views, and they have taken other steps. For example, European unions engaged in a number of exchanges with the EU Trade Commissioner Pascal Lamy, and written responses to him were submitted by UNI-Europa, as well as by ETUC and EPSU (public services). In its detailed reply, UNI-Europa remarked that it was supporting those unions and civil society groups that were **campaigning for a moratorium in the GATS negotiations until a thorough impact assessment is carried out**.

UNI and others have pointed out that there was not enough time for the civil society consultations, that the information provided was incomplete and lacked impact assessments, and that the normal consultation procedures for the social partners should have been used too (in the EU, for example, the social dialogue machinery). Moreover, the consultations were based on the market-opening requests received by countries, but did not include involvement in the drafting of market-opening offers.

#### What should UNI unions do and not do now in respect of the current WTO negotiations on trade in services?

**Now that the request / offer phase in the services negotiations has been nearly completed, trade unions cannot afford to allow trade ministers to feel that there is no longer a need to consult.** On the contrary, the decisive decisions regarding the negotiation and acceptance by governments of binding market-opening commitments still lie ahead. It is therefore vital for trade unions to continue to press for meaningful consultations by trade ministers.

To be meaningful, consultation must be through standing machinery and on a regular and frequent basis. Given the complexity of the issues, it is also important to ensure that the information provided by governments is not only full and timely but also comprehensible, showing the likely impact of any market-opening envisaged.

It is encouraging that EC Trade Commissioner Pascal Lamy has expressed an interest in closer concertation with the social partners on GATS issues, and said he was willing to discuss an appropriate framework. Such proposals need to be followed up by the unions concerned.

What basic policy advice is UNI offering to affiliates in the current WTO negotiations on trade in services?

UNI is proposing four broad policy points, which are based on the statement adopted by UNI's World Executive Board in October. The policy points also take account of the nature of the WTO, where there is no democratic control, where social concerns, including core labour standards, are disregarded, and where unions have no consultation rights. Here are the four points:

**1. Affiliates should not allow democratic decision-making procedures to be circumvented.**

Governments must respect the parliamentary and consultation procedures that would apply to domestically initiated liberalisation proposals. Say NO to backdoor liberalisation!

**2. Affiliates should encourage their governments to make as few market-opening commitments as possible, regardless of the services concerned.** That does not mean that affiliates will always oppose liberalisation proposals or foreign investment in domestic services. But it does mean that they should resist liberalisation under GATS, because GATS makes liberalisation virtually irreversible and links liberalisation to the WTO's sanctions-based dispute settlement (enforcement) procedures.

**3. Affiliates are advised to oppose any proposals by their governments to offer market-opening in the field of public services and other services of general interest.** Policies on these issues are at the heart of democratic debate and decision-making, which should not be pre-empted by negotiations and deals made at the WTO. Moreover, the functioning of such services is closely linked to the fulfilment of key international human rights covenants, which should take precedence over GATS and other WTO texts. GATS-related measures must always be compatible with measures to defend and promote human rights, including economic, social and cultural rights.

**4. Where it is not possible to prevent a government from making market-opening offers under GATS, two conditions should be fulfilled:**

**A. market-opening offers should not go beyond the degree of liberalisation that already exists within a country (or the EU).** In other words, the existing level of liberalisation would be locked in and made WTO-enforceable, but no additional liberalisation would be imposed by the

WTO. Any national liberalisation measures that are so locked in should be longstanding ones that are generally accepted by the public.

In this connection, it is worth noting that the government of New Zealand has published "ten guiding principles for preparing New Zealand's initial service offer", one of which is that "the government does not intend to make any initial offers to change actual current policy settings (including for local government) and would be well within them. In other words, whatever decision is ultimately made as to the coverage of New Zealand's initial offer, at most we would be offering to commit to, on a conditional basis, settings that reflect our settled policy in certain areas."

**B. market-opening offers should be accompanied by social preconditions. In particular:**

- if a government proposes to open a service to foreign suppliers, unions must ensure that it also secures the observance, in the service concerned, of the ILO Declaration on Fundamental Principles and Rights at Work, 1998, on its own territory as well as in the country requesting market access,
- if market-opening could take the form of allowing multinational companies to establish subsidiaries in a service (commercial presence), governments should include the observance by such companies of the OECD and ILO codes for multinational companies as a condition in their GATS schedule of specific commitments. In a recent resolution, the European Parliament has made a similar point,
- if market-opening could take the form of an inflow of labour (temporary presence of foreign workers – "GATS mode 4"), governments must take measures to protect such workers and avert the undercutting of national rights and conditions at work. Such temporary labour inflows, which are prone to abuses, must be limited in magnitude and effectively regulated. Any measures taken under GATS "mode 4" must also be compatible with relevant ILO standards, including the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Recommendation (No. 151), and with the UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.