



DTI consultation document: 'Liberalising trade in services – A new consultation on the World Trade Organisation GATS negotiations'

TUC Response

Introduction

The Trades Union Congress represents 70 affiliated unions with a total of nearly 6.8 million members. Members of TUC affiliated unions are employed in a wide range of trades and professions including in the service sector.

The TUC welcomes the DTI document and the government's efforts to consult with civil society on the liberalisation requests made to it and the EC by other WTO members. Our response highlights general concerns about the GATS and the current negotiations. We have drawn the attention of affiliated unions to the consultation document and encouraged them to submit individual responses, particularly on requests made in relation to sectors they organise in. The TUC will be working with the European Trade Union Confederation to respond to the consultations initiated by the European Commission in November 2002.

Consultation Process

Provision of information

The TUC is aware that most governments have not consulted on the GATS negotiations and that many have in fact refused to reveal to their own citizens what requests have been made to them by other WTO members, what they intend to offer or what they have requested. In this context, the UK government's publication of a consultation document is to be applauded. However, the fact that the document only provides a summary of the requests received by the UK and maintains the anonymity of the source of each request is problematic for a number of reasons.

Firstly, it raises fundamental questions about transparency. The GATS negotiations potentially have far-reaching implications for people around the world as they will affect the provision of public and other important services, and jobs. Considering what is at stake, information on requests and offers should be open to public scrutiny and debate. By preserving the anonymity of the countries making the requests, the government is not promoting transparency in WTO negotiations.

In addition, the approach adopted by the government affects the ability of organisations to understand all the implications of a request and the motivations behind it. This in turn hampers their ability to provide fully informed comments.

The argument for confidentiality at certain stages of negotiations should not override the right of citizens to know what their representatives are planning to do with domestic services or what they are seeking to get developing countries to do with theirs.

In the light of the above, we urge the government to make a full disclosure of the requests it has received to date. We also urge the government and the European Commission to press for transparency by all WTO members in the GATS negotiations and for democratic participation in all member states. The WTO should be required to perform an audit of the consultation processes carried out nationally by its members.

Timing and next steps

We are aware that the government is operating under time constraints. However, given the complexity of the GATS, we do not feel that sufficient time has been allocated to the consultation process. The timing of the consultation, coming towards the end of the year exacerbates this problem.

We welcome the government's statement in its consultation document that the contributions it receives will be crucial to the UK's input into the EC process. The document also states that the EC is aiming to meet the March 2003 target for the submission of initial offers. As the Article 133 Committee is already actively considering the EU's position on offers under the GATS, it would be helpful to have clarification from the government on how the UK consultation, with a deadline of 3 January 2003, will impact on the Brussels process. We

would also like to draw attention to the fact that the European Commission has not put requests relating to specific sectors on the agendas of the European joint sectoral committees. This should take place as soon as possible so that a proper consultation with the social partners can take place.

Trade unions, along with other representative civil society actors, must be involved throughout the GATS negotiations which is projected to end by 1 January 2005.

Protecting public services

The TUC takes the same position as the European Trade Union Confederation, the International Confederation of Free Trade Unions, the Global Union Federations and the World Confederation of Labour on GATS and public services. In our view, all parties to the GATS negotiations should make it absolutely clear that public services (above all, education, health and essential public utilities) including at sub-national levels of government, and socially beneficial service sector activities are not a subject for negotiation. This means that members would not call on others to open up these sectors.

Article 1.3

The consultation document points out that the government has repeatedly stated that it does not intend to make commitments that could call into question the continued provision of public services through the NHS or the state education system. It draws attention to Article 1.3 which excludes from the GATS, services ‘supplied in the exercise of governmental authority’ and states that the government has been exploring with other WTO members the desirability of seeking a clarification of that Article. The document goes on to say that so far, most WTO members seem content not to re-open this Article and no members are currently questioning any other member’s interpretation. This, and the ‘bottom-up’ approach of the agreement appear to be held out by the government as assurances that there are sufficient safeguards within the GATS for public services.

Given that in the UK private and public provision exist side by side in health and in education services, the TUC does not consider Article 1.3 to be sufficient to protect public services from exposure to the GATS. The consultation document

itself acknowledges that there is ambiguity about the conditions within Article 1.3 which are basic to the asserted protection for public services. The UK government may have a view on the meaning of Article 1.3, but it is a WTO Dispute Settlement Panel that will rule on how services delivered on a ‘commercial basis’ or services delivered ‘in competition with’ another service provider is to be interpreted.

The international trade union movement would like to see Article 1.3 clarified to make it absolutely clear that WTO members can exclude competition from public services and services of general interest without threat of legal challenge.

The EU’s ‘horizontal limitation’

The EU’s horizontal commitment (limitation) relating to the provision of public services reads: ‘In all EC Members States, services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators.’ This limitation is important in order to protect public services from exposure to the GATS, particularly in the light of the ambiguity of Article 1.3.

Chapter 4 of the consultation document draws attention to a request to ‘Remove monopoly or exclusive rights granted to private operators supplying public utility services’. Although the consultation document does not mention the removal of the section relating to public monopolies, we assume that the request will affect the whole limitation. As the government has committed itself to safeguarding public services from the GATS, we expect this request to be rejected. The TUC considers the maintenance of this safeguard as one of the most important issues for the UK in the GATS negotiations.

Regulation

The government has argued that national governments retain the right under the GATS to regulate services in order to meet national policy objectives. We recognise that the GATS does not prevent governments from regulating. However, what concerns us is the fact that when it comes to qualification requirements or procedures, technical standards or licensing requirements in the area of services, governments can be challenged before a WTO Dispute Settlement Panel for taking measures which are ‘unnecessary barriers’ to trade.

Chapter 5 of the consultation document relates to rules and domestic regulatory disciplines. We are concerned that the efforts referred to in this chapter to develop Article VI.4 to establish a more precise ‘necessity test’ will further undermine the *ability* of governments to regulate.

Movement of natural persons (Mode 4)

Key issues that need to be addressed by the negotiations in relation to Mode 4 are the protection of migrant workers against all forms of discrimination and of the remittance of their contributions to social security and insurance schemes; observance of international core labour standards and national labour law; respect for existing collective agreements; and the full involvement of the ILO.

Impact Assessment

Article XIX (Paragraph 3) of the GATS requires the Council for Trade in Services to carry out an assessment of trade in services in overall terms and on a sectoral basis before a round of negotiations. This has not happened. There has been no proper assessment of the impact of the GATS to date. The consultation document provides some analysis of the potential impacts of the requests that have been made of the UK but this, in our opinion, is insufficient.

Like many groups concerned about the human rights implications of liberalising trade in services (including the United Nations Economic and Social Council’s Sub Commission on Human Rights) the TUC has called for an impact assessment of existing GATS rules, particularly in relation to public services, before proceeding with further negotiations. Many developing countries have also complained about the lack of an assessment and argued that it is unfair to require them to make new commitments when there is no available evidence of the impacts of services trade liberalisation.

The liberalisation of trade in services is far-reaching and can have unforeseen consequences. For example, many governments did not realise, when they committed themselves to liberalise insurance services, that they were liberalising health insurance as well – allowing foreign health insurance companies access to

their markets. Given the complexity of the GATS, the uncertainty surrounding the public service exemption in Article 1.3 and public concern over new commitments and the governments' ability to regulate, the UK government should carry out an impact assessment which includes an analysis of the social, economic and environmental impacts of services trade liberalisation as a matter of urgency.