

# Chapter 5 GATS and Access to Essential Services

After reading this chapter you will be able to

- Explain the relationship between privatization and liberalization of services
- Describe the main human rights concerns relating to liberalization of trade in services
- Find out what your country's WTO GATS commitments are
- Find out what sectors your government may be opening up to foreign competition
- Undertake simple actions to ensure your government avoids new services commitments that would undermine human rights

## 5.1 How does GATS work?

The General Agreement on Trade in Services (GATS), which came into being with the WTO in 1995, locks in commitments to liberalize trade in services. It also provides the framework for negotiations on further liberalization of services trade.

The services negotiations take place on a so-called request-offer model, whereby WTO Member governments submit requests to their trading partners that they open up certain sectors to foreign competition. In their offers, Members outline how far they are willing to open different services sectors. Most services negotiations are conducted bilaterally around the two countries' requests and offers, but any commitments made bilaterally are then extended to all Members, under MFN.

Members can decline other countries' requests for liberalization in the current negotiations. They can also decide which sectors, and under what conditions, to open to liberalization. However, developing countries very often come under pressure to open up their service sectors, as a 'trade-off' for developed countries' concessions in other areas, such as agriculture and better market access for industrial goods. Given that many developing countries' main exports are agriculture products, this 'trade-off' can be an extremely powerful tool for industrialized countries to extract services offers in the sectors of their choice.

Once a country agrees, through negotiations in the WTO, to liberalize a sector, it has certain obligations:

- It must list that sector in a schedule of specific commitments (see the example of Malaysia's schedule in the next section). This makes the liberalization commitment legally binding on the Member, and prevents it from limiting the number of foreign service providers in that service sector, or the conditions in which they may operate. The government can put limitations on the level of market access and national treatment in its schedule. For example, as shown in Box 5.2 below, Malaysia states in its schedule that foreign companies hoping to establish private hospitals in Malaysia must do so through a joint venture with local Malaysian corporations.
- By committing a services sector to liberalization a WTO Member is legally bound by GATS to provide **national treatment**, and market access to all foreign services suppliers of other Members in that sector. Malaysia has made some commitments in opening its private hospital services. It therefore cannot restrict, for instance, any foreign based medical laboratories from providing electronic diagnostic tests to customers in Malaysia.
- Once a GATS commitment is made, it cannot not be withdrawn or modified, unless compensation is given to all Members affected. Therefore, it is important to realize that by making a commitment, a government is effectively 'locked' into its schedule, which limits its future policy options.

*"Trade" in the services context involves selling services to a consumer from another country.*

*"Liberalization of trade in services" means that foreign and domestic service providers can compete to provide services.*

### Box 5.1 An example of how MFN might be applied

Suppose that the government of a WTO Member (country A), has not scheduled any commitments to liberalize trade in education services. The government runs most schools, but private schools also exist. Faced with a shortage of teachers in the public schools, and the adverse impact of this shortage on the right to education, country A decides to enter into a bilateral agreement with country B to allow teachers from B special derogations from immigration requirements so that they can teach in country A. A does not offer similar immigration privileges to teachers from countries C and D.

In spite of the fact that country A has not made commitments in the area of education, the agreement with country B might be found to violate the GATS **MFN** principle as it gives preferential treatment to service suppliers from country B over countries C and D. This in spite of the fact that the preference granted to B might have a genuine human rights-promoting purpose: the language spoken in country B may be the same as in country A, for instance, or if A may have more of a shared culture and history than B than it does with C.

In this scenario, if education is considered a service provided in the exercise of governmental authority, it will not be subject to GATS obligations and therefore country A would be free to favour service suppliers from any country it wishes.

Caroline Dommen, *Trading Rights? Human Rights and the World Trade Organization*, forthcoming, 2005.

It is only by reading a country's schedule of commitments, and checking also if the country has made MFN exemptions (see Chapter 8 for how to find these) that you can see which services sectors of a country are governed by GATS, and under what conditions.

- **MFN** treatment applies to all service sectors regardless of whether the Member has made a commitment in those sectors. If a government does not want to apply MFN treatment to all operators in a particular sector, it must have clearly stated so in its so-called 'list of exemptions' under GATS, when it joined the WTO. Countries which did not make MFN exemptions will be limited in the measures they can take affecting the sector, even if they have not scheduled any specific commitments in that sector. This means that any special measure designed, say, to promote the realization of human rights will be subject to MFN obligation.

A government can liberalize a service sector without listing it in its WTO schedule, and thus retain its **policy space** to introduce changes in the future.

## 5.2 What services does GATS cover?

GATS binds a country only with regard to those services sectors in which it has made commitments in its schedule, and which it has not exempted from the MFN obligation. It applies to all services except "services supplied in the exercise of governmental authority."

This sounds like an exemption of public services from GATS. But the agreement is unclear as to what "services supplied in the exercise of governmental authority" might be. Instead of defining these in terms of public services for general interest GATS defines them by virtue of market conditions of supply, i.e. a service neither supplied on a commercial basis nor in competition with other service suppliers. It therefore defines public services very narrowly. For example, health services provided by governments on non-profit-making basis may not be qualified as public services if private hospitals also exist in that country. The lack of an explicit public services exemption clause in GATS draws criticism that once any privatization of public services has occurred, GATS puts countries under pressure to liberalize. And more importantly, it brings public and essential services within the scope of GATS if there is any private provider of that particular service (see Box 5.1).

## 5.3 What is a schedule of commitments?

Members' schedules of commitments all conform to a standard format. The following explanations refer to the example in Box 5.2 of Malaysia's schedule of commitments on health services.

<b>Box 5.2 Malaysia's Schedule of Specific Commitments – health sector (GATS/SC/52)</b> Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons			
Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
HEALTH-RELATED SOCIAL SERVICES  Hospital Services  Private hospital services(93110*)	1), 2) None  3) Economic needs test; Only through a locally incorporated Joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint-venture corporation shall not exceed 30 per cent; and  The joint-venture corporation shall operate a hospital with a minimum of 100 beds  4)Unbound except as indicated in the horizontal section	1), 2) None  3)Establishment of feeder outpatient clinics is not permitted  4)Unbound except for the categories of natural persons referred to under market access	

### Modes of supply

The Modes of Supply at the top of the schedule define different ways services are delivered under GATS. All market access commitments and limitations are listed with respect to the four modes:

- **Mode 1 Cross-border supply:** The supply of a service product across a border. For instance, a laboratory in Canada tests a sample from a patient in Malaysia and sends its client the result via the Internet.
- **Mode 2 Consumption abroad:** The supply of a service where the consumer physically travels from one country to another to purchase a service. For instance, a Malaysian resident travels to Canada to consult a doctor.
- **Mode 3 Commercial presence:** The supply of a service where a foreign supplier establishes a commercial presence, such as a branch, agency, or a subsidiary company, in the host

country to provide its service therein. For instance, a Canadian laboratory establishes a branch in Malaysia and provides its service locally.

- Mode 4 Presence of natural persons: The supply of a service where a foreign national temporarily enters and resides in the host country in order to provide a service. For instance, a Canadian doctor temporarily moves to Malaysia and provides medical service locally.

### Sector or sub-sector

The first column of the schedule specifies the sector or sub-sector to which commitments in the schedule apply. In this example, it is sub-sector ‘private hospital services’ under sector ‘Health.’

It should be noted that commitments under one sector can have implications for another: commitments in financial services can also have health-related implications through, for example, health insurance.

### Limitations on market access and on national treatment

The second and third columns indicate limitations on market access on national treatment. Each limitation corresponds to a particular mode of supply, which means, in Malaysia’s case, there is no limitation on Mode 1 or Mode 2, while Mode 3 and 4 are subject to limitations as specified in the schedule.

A country may enter into any additional commitments, but not limitations. As indicated in the fourth column, Malaysia has not entered into any additional commitments.

### Horizontal commitments

Horizontal commitments, usually placed at the beginning of a Member’s schedule, comprise limitations that apply to all services sectors included in the schedule. Limitations are specified with respect to different modes of supply, and are frequently applicable to Mode 3 (commercial presence) and Mode 4 (presence of natural persons) only. In Malaysia’s horizontal commitments, limitations concern only these two modes of supply; for example, a Mode 4 limitation requires foreign professionals to have qualifications recognized by professional bodies in Malaysia before they can work in the country. This limitation applies to all sectors including private hospital services.

#### Box 5.3 Malaysia’s List of MFN Exemptions – financial services (GATS/EL/52)

Sector or subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
All Financial Services, including Insurance	Preferential treatment for the supply of financial services to Malaysians may be accorded to financial services and service suppliers of another Member in a differentiated manner and at the discretion of the relevant authorities	All countries	Indefinite	To enable differentiated treatment to be accorded to another Member which commensurates with the commitments of that Member to assist Malaysia to achieve specific economic and financial targets, enhance trade and investment and promote technological innovation and expansion of its financial sector which would result in net benefit to Malaysia

## MFN exemptions

Members are entitled to maintain measures inconsistent with the MFN treatment given to all Members under GATS by specifying the measures in their lists of MFN exemptions. Such a list contains information on the sectors in which the exemption applies; a description of its inconsistency with the obligation to grant MFN treatment; applicable countries; intended duration and reasons for applying the exemption. Members have to list their exemptions, if any, when they first make their commitments. Governments do this to maintain flexibility for granting preferential treatment to some countries concerning a particular aspect of services in the future.

## 5.4 Does GATS require privatization and then liberalization?

Many human rights advocates are concerned that through privatization or through WTO rules, basic services such as education, water and health will be priced out of reach of ordinary people. GATS does not explicitly require that any service be privatized, but in practice, for trade liberalization to be possible, privatization has to have happened first. GATS is thus often linked to the privatization process. One reason is that World Bank or IMF loan conditionalities require privatization of basic services such as water provision or health delivery, and then their liberalization. Liberalization can then be ‘locked-in’ through commitments made under GATS in the WTO.

Although privatization sometimes results in improved service provision it also often gives rise to concern for pricing utilities and other services out of the reach of the most vulnerable sectors of society. The example of Manila indicates some of the ways in which privatization and the increased cost of basic and essential services can harm a range of human rights, including the right to food, health, and education

Even in cases where private provision of public services is better than the governmental provision that preceded it, privatization can give rise to concern as it is harder to regulate private companies, and as it is easier to hold governments accountable to their human rights obligations. In other words, privatization may occur in response to deficient government provision of services, but if the government does not adequately regulate the provision of the service, the poor

45 WTO Members have made GATS commitments in health, and 44 in education.

### Water privatization in Manila

In order to meet the loan condition laid down by the IMF, Manila’s municipal water and sewerage system was split into two private concessions in 1997. The west zone of the city was to be run by Maynilad, a joint venture between Suez (a French company) and Philippine infrastructure corporation Benpres, while the east zone was handed to Manila Water, a joint venture between International Water (an Italian company), United Utilities (a British company) and Ayala Corporation. Residents in Manila experienced massive rises in water tariffs in the six years since privatization. As a result of intense corporate pressure on the water regulator, prices have tripled from the levels established in 1997 in both the east and west zones. These cost increases have already had a dramatic impact on the lives of poorer people. Interviews with families in the urban communities of Kitanlad and Tejeros reveal that in some cases expenditure on children’s food was cut back as a direct result of spiralling water rates, while in others children have been withdrawn from schools in order to save on expenses such as school meals, and sometimes children dropped out of education permanently.

John Hilary, *GATS and Water: The Threat of Services Negotiations at the WTO*, 2003.

For those communities that already had connection to water utility before, privatization has brought improvements such as providing 24-hour water supply. But the increase in price is very difficult for the poorer communities that were not connected [to water supply] before, they are still not connected and they have to pay much higher prices to buy water from water vendors.

Agnes Balota, *Water Vigilance Network from the Philippines*, interview in March 2004.

It's true that the WTO doesn't say you must privatize your water, but it allows it. Some of the biggest water corporations are in Europe, and the EU position in the negotiations is an expression of European corporations. Many poor countries privatize water sectors because it's very tempting, governments get profits by privatization. But then water prices go up and the poorest people are deprived of affordable drinking water.

Jean Ziegler, *UN Special Rapporteur on the Right to Food*, interview March 2004.

may be in no better a situation than they were before, but with even less of a chance of seeing their situation remedied.

## 5.5 How does GATS affect human rights?

There is serious concern that GATS undermines a number of rights. One such example is the right to health. Health services are included under GATS in several sectors and across all four modes, and many countries have already committed some of their health services to liberalization in their national GATS schedules. Moreover, the 'progressive liberalization' envisaged by GATS (described in section 5.7 below) drives WTO member countries to make more such liberalization commitments in future rounds of GATS negotiations.

The right to the highest attainable standard of health is enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Its application is further developed in General Comment No 14 of the UN Committee on Economic, Social and Cultural Rights which states that the right to health demands that functioning, good quality health care facilities be available and accessible to all without discrimination. The Committee on Economic, Social and Cultural Rights (CESCR, or Committee) is the UN expert body which monitors the implementation of International Covenant on ESC rights. Most particularly, General Comment 14 affirms that States parties to the ICESCR have a non-derogable, core obligation "to ensure equitable distribution of all health facilities, goods and services."

Under mode 3 of GATS, liberalization in the health sector involves allowing construction of foreign hospitals or dental clinics catering to rich urban patients, or opening national health insurance systems to multinational insurance companies. Opening up health services to foreign service providers in this way can lead to a range of problems:

- fragmentation of a country's national health system. Private sector facilities run by foreign providers typically draw the most skilled and experienced staff away from the public sector by means of higher pay and other inducements, leaving poor and remote areas without the personnel needed to run essential health care facilities. GATS liberalization thus works in opposition to progressive programmes undertaken by countries such as Thailand, which has addressed its human rights obligations by developing a sophisticated system of incentives to attract medical personnel to work in poorer rural areas.<sup>1</sup>
- private health insurance schemes tend to focus on the richest and healthiest customers only, destroying the possibility of cross-subsidization on which national insurance systems depend. As noted by WHO research, liberalization of insurance systems "segments and destabilizes the market and undermines the ability to build larger, more equitable risk pools that spread costs between rich and poor, healthy and sick."<sup>2</sup> For countries such as Indonesia, Viet Nam or the Philippines which are attempting to build sustainable health systems on the basis of social insurance schemes, such liberalization poses a real threat.

Ultimately, by promoting the liberalization of trade in health services, GATS works against the equitable distribution of health facilities and threatens to undermine the right to health of those communities which lose out.

Another human rights concern is water. The right to water is indispensable for the realization of the right to health and the right to food, but as shown above, privatization in this sector does not always protect these rights. The Committee on Economic, Social and Cultural Rights has

<sup>1</sup> Suwit Wibulpolprasert and Paichit Pengpaibon, 'Integrated strategies to tackle the inequitable distribution of doctors in Thailand: four decades of experience' *Human Resources for Health*, 2003, available at [www.human-resources-health.com/content/1/1/12](http://www.human-resources-health.com/content/1/1/12)

<sup>2</sup> Debra Lipson, *GATS and Trade in Health Insurance Services: Background Note for WHO Commission on Macroeconomics and Health*, 2001, available at [www.cmhealth.org/docs/wg4\\_paper7.pdf](http://www.cmhealth.org/docs/wg4_paper7.pdf)

### Box 5.4 Modes of service supply under GATS: health opportunities and risks

<i>Supply Modes</i>	<i>Opportunity</i>	<i>Risk</i>
<b>Mode 1:</b> Cross-border supply of services (tele-medicine, e-health)	Increased care to remote and under-served areas	Diversion of resources from other health services
<b>Mode 2:</b> Consumption of services abroad (patients travelling abroad for hospital treatment)	Generates foreign exchange earnings for health services of importing country	Crowding out of local population and diversion of resources to service foreign nationals
<b>Mode 3:</b> Commercial presence (establishment of health facilities in other countries)	Creates opportunities for new employment and access to new technologies	Development of two-tiered health system, with an internal brain drain
<b>Mode 4:</b> Presence of natural persons (doctors or nurses practicing in other countries)	Economic gains from remittances of health care personnel working overseas	Permanent outflow of health personnel, with loss of investment in educating and training such personnel

Drager, N. and Fidler, D. *GATS and Health-Related Services*, Geneva: WHO, 2004

unequivocally stated that the right to water falls within the category of guarantees essential for enjoying the rights protected by the ICESCR. Specifically, the Committee points out in a General Comment that ‘water should be treated as a social and cultural good, and not primarily as an economic good. Water, and water facilities and services, must be affordable for all. The direct costs and charges associated with securing water must be affordable for all, including socially disadvantaged groups.’ And ‘unaffordable increases in the price of water’ amount to a violation of human rights. Importantly, the Committee reminds governments that “agreements concerning trade liberalization should not curtail or inhibit a country’s capacity to ensure the full realization of the right to water”. The Committee has applied similar reasoning in its General Comments on the Right to Food and on the Right to Health.

In addition, several aspects of the *way* new liberalization commitments are agreed to or implemented are inconsistent with human rights obligations.

- First, there is inadequate public participation in privatization processes and inadequate public information and participation in negotiations about trade liberalization. Although some countries, such as India, are now seeking broader input on services negotiations, the processes still lack transparency.

This lack of transparency gives little opportunity for civil society, including human rights groups and individuals to alert governments to possible dangers to human rights. Public participation in policy-making, including economic policy, is a human right. For this reason, human rights advocates should speak out if their governments refuse to share information with them about the requests they have received or the offers they are making in the GATS negotiations.

- Second, most governments engage in privatization and liberalization without a sense of whether these policies will be of benefit or harm the country at large, or whether they will benefit some sectors of society and leave others worse off.

Human rights law requires governments to have a policy in place towards realization of human rights. Whilst the International Covenant on Economic, Social and Cultural Rights

For an explanation of General Comments, and how to obtain them, see Chapter 7.2

A number of developing countries and civil society groups have called for assessments of services trade liberalization under GATS and human rights groups should join their voices to these calls. Indeed, by doing so, they can bring a valuable tool, in the form of human rights law, to support the claim that no new services liberalization commitments should be entered into until their effect on human rights, and particularly on the rights of the poorest and most vulnerable members of society, have been assessed.

Human rights bodies have already made calls for assessment of trade policies, but these need to be directed more strategically to those responsible for trade policy in individual countries. Section 5.8 indicates some of the human rights instruments which can be called into play; the final section of this chapter suggests some actions human rights groups can undertake.

acknowledges that not all human rights recognizes that countries will not be able to ensure the realization of the right to food, health, water or housing immediately, it does impose a number of obligations on States which are of immediate effect:

1. States must ensure that there is no discrimination with regard to enjoyment of human rights. However, liberalization of trade in essential services has frequently favoured the wealthier inhabitants of a country, leaving those who were already poor or excluded worse off. Human rights advocates should consistently remind their economic policy-makers of the obligation to ensure that new trade liberalization commitments do not result, in law or in practice, in discrimination in access to basic services.
2. Human rights law requires that a State have a strategy or programme in place towards the realization of human rights. It follows from this that any new commitment affecting human rights – in the area of access to health care, education or water, say – must, according to human rights law, be assessed for its conformity to the strategy and its likelihood to further the realization of human rights. In particular, any new or planned commitment must at a minimum not cause any regression from the existing level of enjoyment of relevant human rights.

In spite of the provisions in GATS that an assessment of trade in services should be undertaken for guiding each round of negotiations, and that developing countries should have flexibility in liberalizing fewer sectors, no real assessment of the impact of trade in services on access to basic services or on human rights has been undertaken; nor have developing countries been given greater flexibility in the GATS negotiations.

The Committee on the Rights of the Child has recommended that “States undertake assessments of the potential impact of global trade policies concerning the liberalization of trade in services on the enjoyment of human rights, including children’s rights.” In particular, the Committee recommended that these assessments should be undertaken prior to making commitments to liberalize services within the context of WTO or regional trade agreements. Further, if commitments to liberalize trade in services are made, the effects of those commitments on the enjoyment of the rights of the child should be monitored and the results of the monitoring should be included in State reports to the Committee.

### The choice of responding to liberalization requests

To respond to liberalization requests or not does not always come from a government’s sovereign will. There are other considerations coming into the negotiations, such as whether others [governments] will support you when you have a credit [request] pending at the World Bank. And the requests (for liberalization of services) at the WTO are confidential, they negotiate secretly behind closed doors. So governments are asked to commit their water sectors, and they are not supposed to have public discussion because the requests are confidential. The process is not transparent, and is undemocratic.

Danuta Sacher, Coordinator of Water Campaign, *Bread for the World from Germany*. Interview on 31 March 2004.

## 5.6 Other concerns about liberalization of trade in services

The current services negotiations at the WTO have also led to fears that countries could be pressurized into commitments that will limit the ability of governments to regulate and ensure affordable and equitable access to essential services: it is unrealistic to expect profit-seeking private companies operating under market forces to meet the needs of the less lucrative groups of the population. This is partly because it is hard – particularly for governments that are not strong – to regulate a powerful private sector and partly because making commitments to allow foreign service providers access to the domestic market can reduce the scope a government has to regulate in the public interest (known in trade-related jargon as **policy space**).

Moreover, the bilateral format gives more scope than multilateral fora for arm-twisting by powerful countries, to persuade smaller countries to open more service sectors to international competition. A 2002 study by the Commonwealth Secretariat<sup>3</sup> found that newly acceded WTO Members, all of which are developing countries, were pressurized to open more service sectors during accession negotiations.

Remember that efforts to liberalize trade in services are also underway outside the WTO. Human rights advocates should watch what is being planned under bilateral and regional trade agreements. A good source of information is [www.bilaterals.org](http://www.bilaterals.org)

## 5.7 Might the current negotiations extend GATS coverage to new areas?

GATS requires that Members enter into successive rounds of negotiations to further liberalize trade in services (these further negotiations are now underway). One way is through the pressure on countries, mentioned above, to make new GATS commitments.

Another is to change GATS rules to extend the number of sectors to which GATS will apply. Water for instance, is not among the broad sectors currently listed. But in 2000, the European Union proposed including a new classification of ‘water collection, purification and distribution services’ under environmental services. The EU said in its proposal that the new classification ‘increases the possibility for Members to make commitments.’ According to leaked documents,<sup>4</sup> the EU has requested 72 WTO Members to commit their water sectors under GATS in the current services negotiations. Asian Members such as Bangladesh, China, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka, Taiwan and Thailand are on that list. As of June 2004, no decision had been made and no WTO member had committed water services under GATS.

Members are still at the bargaining stage of the **Doha negotiations** on services and their offers and requests are translated into concrete WTO commitments only when the negotiations conclude. Thus now is still a good time for human rights advocates to contact their trade negotiators to ensure that their country is not making any offers or responding to requests in areas where liberalization would have adverse human rights effects.

As of March 2004, 42 offers had been submitted and the number of requests remains unknown. Among Asian Members, China, Hong Kong, India, Japan, Korea, Singapore, Sri Lanka, Taiwan and Thailand have submitted their offers. Whilst most offers and requests are confidential, countries such as Australia, Canada, Chile, the European Union, Japan, New Zealand, Norway, Slovenia, Turkey, and the United States have made their offers public. Offers and requests under the negotiations can be difficult to track down. Informal groups of country delegates coordinating negotiations on different sectors are shown in Box. 5.5.

GATS states that negotiations for further liberalization should take into account modes of supply which are of export interest to developing countries. Developing countries are keen to see further liberalization in Mode 4, i.e. that industrialized countries make Mode 4 commitments in additional service sectors. Developing countries have consistently complained that rich countries’ stringent immigration laws, visa and work permit requirements restrict their nationals from working in developed countries, and therefore deprive them of the ability to provide services in the way in which they could most benefit.

Mode 4 liberalization could have human rights benefits: by providing opportunities for legal migration, it could reduce the amount of illegal and often abusive migration. However, Mode 4

<sup>3</sup> Roman Grynberg, Victor Ognivtsev and Mohammad A Razzaque, *Paying the Price for Joining the WTO: A Comparative Assessment of Services Sector Commitments by WTO Members and Acceding Countries*, Commonwealth Secretariat, 2002

<sup>4</sup> See Polaris Institute: [www.polarisinstitute/polaris\\_project/public\\_service\\_index.html](http://www.polarisinstitute/polaris_project/public_service_index.html)

Contacting the coordinator of informal groups is one possible source for information on the status of the negotiations.

Checking with your own government is another way of finding out more about the offers and requests that could affect your country. Chapter 8 describes how to find Members' requests and offers.

Concluding observations of treaty bodies can be useful advocacy tools for NGOs. Chapter 4.6 presents the way one way NGOs have used treaty body recommendations in advocacy.

<b>Box 5.5 Informal groups in GATS negotiations</b>	
<b>Sector</b>	<b>Coordinator</b>
Communication (Audio-visual services)	Singapore/Hong Kong
Computer Services	Argentina
Education	Norway
Energy	Norway
Environmental Services	The European Union
Express Delivery Services	The United States
Financial Services	Canada
Maritime Services	Japan
Mode 4	Canada
Telecommunication	Hong Kong

liberalization could also contribute to the brain drain, with an adverse effect on development as well as on access to basic services. If for instance, Filipino nurses or teachers are able to earn much higher wages abroad, their departure might leave a scarcity of nurses or teachers in their home country.

### 5.8 What human rights mechanisms can limit the harmful effects of GATS?

Whilst the International Covenant on Economic, Social and Cultural Rights acknowledges that countries will not be able to ensure the realization of the right to food, health, water or housing immediately, it does impose a number of obligations on States which are of immediate effect:

- there should be no discrimination with regard to enjoyment of these rights. However, liberalization of trade in essential services frequently favours the wealthier inhabitants of a country, leaving those who were already poor or excluded worse off.
- governments should have a strategy in place towards the realization of human rights. It follows from this that any new commitment affecting human rights – in the area of access to health care, education or water, say – must be assessed for its conformity to the strategy. Any new commitment must at a minimum not cause a regression from the existing level of human rights.

Human rights rules and mechanisms can support efforts to ensure that any new privatization or liberalization does not impact harmfully on human rights. Several of the UN Commission on Human Rights Special Rapporteurs, such as on the Right to Food, the Right to Education and the Right to Housing, have already indicated their concern about the adverse human rights impacts of privatization and liberalization. For instance, the Special Rapporteur on the Right to Housing, Miloon Kothari, has regularly raised concerns about privatization in relation to water provision, electricity and sanitation services.

Human rights advocates could communicate information to these and other Commission Special Rapporteurs about the harm or the risk of harm to human rights posed by privatization and trade liberalization or planned projects. Even information on lack of public participation or consultation would be a relevant human rights concern to share with Special Rapporteurs.

The Rapporteurs can raise concerns brought to their attention by NGOs in individual communications with the concerned government, and refer to them in their annual reports to the Human Rights Commission or to the UN General Assembly. Even if the Special Rapporteur is not able to address or solve the problem directly, sending such information helps document the effects of trade liberalization on human rights – to date, there is little such information and so any informa-

tion prepared and made public can be of help to other human rights advocates working on these questions.

The UN human rights treaty bodies are another useful channel. These bodies regularly examine the situation in each of the countries that have ratified human rights treaties. The treaty bodies can receive information from non-governmental organizations and individuals and have in the past displayed considerable concern about trade liberalization and human rights. One issue that human rights advocates can request that treaty body members raise when they examine country reports is whether the country has assessed the implication of any offers it is making in the current GATS negotiations.

Other possibilities for raising human rights concerns about trade rules are discussed in Chapter 7, and practical information is given in Chapter 8.

## 5.9 Actions, contacts and further reading

### Some suggested actions

- Speak out if your government refuses to share information with you about the requests they have received or the offers they are making in the GATS negotiations.
- Ensure that your trade ministries are aware of the State's human rights obligations, including the human rights obligations relating to health, transparency and participation in decision-making.
- Write to senior officials in the health and education ministries, asking them to affirm that no trade negotiations are underway that might affect the country's ability to ensure access to health services and education.
- Contact your trade ministry to ensure that you and other non-profit, public interest groups are properly and continually informed and consulted on their governments' policy and proposals in the GATS negotiations.
- Contact your country's trade negotiators in Geneva, to inform them of their country's human rights obligations.
- Encourage your government to assess the impact of any proposed new GATS commitments on access to basic services in your country before agreeing to be bound by these commitments.
- Remind economic policy-makers of the obligation to ensure that new trade liberalization commitments do not result, in law or in practice, in unequal access to basic services.
- Lobby your national government to ensure it makes the least possible number of new GATS commitments.
- Ask parliamentarians in your country to vote against any proposed privatization or liberalization of basic services, whose impact on the poorest and most vulnerable sectors of the population has not been assessed.
- Participate in regional and international campaigns against liberalization of trade in services.
- Submit reports to the United Nations human rights treaty monitoring bodies. (see Chapter 7 for more details)
- Communicate information about cases where trade-related IP rules have hindered access to medicine to the UN Special Rapporteur on the Right to Health. (See Chapter 7 for more details)

### Useful contacts

The main NGOs and coalitions following GATS with a critical eye are listed below. You will find information such as country offers and requests, as well as NGO campaign information and links from their websites. Governmental and intergovernmental sources of information and statistics on GATS commitments and services trade are given in Chapter 8.

- **Council of Canadians:** [www.canadians.org](http://www.canadians.org)
- **GATS-Crit:** the mailing list to connect groups and activists around the world to share

news and critical views on the ongoing GATS-negotiations at the WTO  
<http://groups.yahoo.com/group/GATScrit/>

- **Gatswatch:** for recent documents, NGO campaigns and links to other sites  
[www.gatswatch.org](http://www.gatswatch.org)
- **International Centre for Trade and Sustainable Development (ICTSD)**  
Services section: [www.ictsd.org/issarea/services](http://www.ictsd.org/issarea/services)
- **Polaris Institute:** for information about the negotiations and strategies for advocacy around GATS  
[www.polarisinstitute.org/polaris\\_project/public\\_service/public\\_service\\_index.html](http://www.polarisinstitute.org/polaris_project/public_service/public_service_index.html)
- **Union Network International:** [www.union-network.org/gats](http://www.union-network.org/gats)
- **UNI:** the global union for skills and services. It has 15 million members in 900 unions worldwide, and keeps a close, action-oriented focus on the GATS negotiations.
- **World Development Movement:** [www.wdm.org.uk/](http://www.wdm.org.uk/)

### Listserve

GATS-Crit: <http://groups.yahoo.com/group/GATScrit/> GATScrit is the mailing list to connect groups and activists around the world to share news and critical views on the ongoing GATS-negotiations at the WTO

### Further reading

Nick Drager and David Fidler *GATS and Health-Related Services*, WHO, 2004  
[www.worldbank.org/wbi/macroeconomics/trade/Drager%20GATS%20and%20Health%200820f.doc](http://www.worldbank.org/wbi/macroeconomics/trade/Drager%20GATS%20and%20Health%200820f.doc)

John Hilary, *The Wrong Model: GATS, trade liberalization and children's right to health*, Save the Children, 2000.

Scott Sinclair and Jim Grieshaber-Otto, *Facing the Facts: A guide to the GATS Debate*, Canadian Centre for Policy Alternatives, 2002.

SOMO, *Challenges for the South in the WTO Negotiations on Services*, 2002  
[www.somo.nl/somo\\_ned/projecten/Challenges.pdf](http://www.somo.nl/somo_ned/projecten/Challenges.pdf)

UN Sub-Commission on the Promotion and Protection of Human Rights (2002), *Liberalization of trade in services and human rights – Report of the High Commissioner*  
E/CN.4/Sub.2/2002/9, 25 June 2002  
[www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2002.9.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2002.9.En?Opendocument)