

# Rules for Trade in Services

## GATS and FTAA

The General Agreement on Trade in Services (GATS) and the Free Trade Area of the Americas (FTAA) are both trade agreements that are being negotiated now. GATS is part of the World Trade Organization (WTO) and would apply to all member countries throughout the world. The FTAA would extend the North American Free Trade Agreement (NAFTA) to include North, Central and South America, as well as the Caribbean (with the exception of Cuba). Both trade agreements would include the following rules about services.

Any challenges or disputes with regards to the following rules would be decided by a secret panel of three trade experts. There would be no chance for the parties involved (governments, labor unions, citizens groups, etc.) to plead their case or to appeal the decision. When hundreds of similar cases have been decided by secret trade panels under the WTO and NAFTA, only two have ruled against the corporate side.

### **National Treatment**

#### **DESCRIPTION**

This rule says that countries have to treat foreign service providers the same as domestic service providers, even if the foreign service provider is private and the domestic service provider is public. This is one rule that could lead to lots of public services being privatized (run by private corporations). It would give foreign private companies rights to "equal treatment," which means that they could compete for the use of tax money to fund the service that they operate, if it is a service that is normally funded by taxes. This rule also allows foreign companies to challenge laws that "impact the conditions of competition" in ways that disadvantage foreign service providers. This means that if a labor, environmental, or public safety law was seen as making things unfair for a foreign company, the company could have that law overturned. In the GATS, this rule applies to services that the country chooses. In the FTAA, this rule would apply automatically to all services, and countries would have to get a special exemption to keep a particular service from being covered.

#### **WHAT IS AFFECTED - EXAMPLES**

Project Labor Agreements (PLAs) (agreements governing the relations between labor and management in the performance of individual public construction projects): the challenging company could claim that requirements for non-union contractors aren't fair to foreign companies because those companies are less likely to be unionized and because they don't understand the PLA process well.

K-12 education could be locked into a permanent voucher-type program, because public funding would have to be made available equally to domestic public and foreign private educational institutions. In other words, if a foreign company opened a private school in your town, they would have access to your tax dollars to run their school.

Privatization of all public services is possible under this rule, including postal service, fire fighting, public transportation, public prisons, water delivery and administration, environmental services, libraries, museums, public parks, etc. The privatization of natural resources, particularly water, would make it extremely difficult for the government to protect them or to make sure that everyone had access to them.

The following could be found to hurt foreign service providers:

- laws requiring environmental reviews prior to construction, or which require developers to obtain multiple permits
- a law banning the use of energy which comes from nuclear sources, or which says that a certain percentage of energy must come from renewable sources

## **Most Favored Nation**

### **DESCRIPTION**

This rule says that countries must treat service providers from all other countries the same, even if the countries they come from have harmful labor, environmental, and human rights practices.

### **WHAT IS AFFECTED - EXAMPLES**

Boycotts against countries such as apartheid South Africa.  
The risk of bringing those harmful practices into another country.

## **Domestic Regulation**

### **DESCRIPTION**

This rule says that domestic regulations must be "based on objective and transparent criteria" and must not be "more burdensome than necessary to ensure the quality of the service." This means that a secret trade panel could overturn laws that have nothing to do with trade, if those laws are seen as being particularly "burdensome" to a company.

### **WHAT IS AFFECTED - EXAMPLES**

Any of the following could be eliminated:

Worker health and safety laws  
Licensing laws  
Professional standards  
Apprenticeship programs  
Drinking water standards  
Pesticide application regulations  
Standards for handling toxic waste

## **Market Access**

### **DESCRIPTION**

This set of rules says that countries must give service providers nearly unlimited rights to provide particular types of services. Governments cannot limit:

1. the number of service providers
2. the total monetary value of service transactions
3. the total number of service operations
4. the total quality of service output
5. the total number of people employed in a particular service sector or by a particular service provider
6. the type of legal entity through which a service may be provided
7. the amount of foreign capital involved in providing a service.

These rules would let a company only provide services where it can make a profit. In other words, a private company would not have to deliver mail or provide water to low income areas. The government would have to provide services to those areas, on limited funds.

In the GATS, this rule applies to services that the country chooses. In the FTAA, this rule would apply automatically to all services, and countries would have to get a special exemption to keep a particular service from being covered.

### **WHAT IS AFFECTED - EXAMPLES**

Lowered standards for wages, benefits, working conditions.

Worker layoffs in affected services.

Public services being squeezed out by too much competition from private business.

Poor people not getting access to quality services, or possibly not getting some services at all.

Allowing fly-by-night businesses to operate without needing to incorporate, which means they can't be sued and could just disappear.

Fast depletion of natural resources, since there would be no limit on how many companies could be using them at one time (example: oil drilling).

Government's inability to protect environmentally sensitive areas from construction of new stores, hotels, etc.

## **Services Procurement Rules**

### **DESCRIPTION**

This rule says that governments couldn't take anything into account when purchasing a service, other than strictly economic criteria. In other words, if a government was taking bids for a public project, funded by tax money, they would have to give the job to the lowest bidder, regardless of that company's treatment of its workers, consumers, or the environment.

### **WHAT IS AFFECTED - EXAMPLES**

Living wage laws (laws that require payment of a wage based on cost of living)  
Prevailing wage laws (laws that require construction contractors to pay workers on public works projects the wage rates prevailing in the area; also known as the Davis-Bacon Act)  
Services contract laws (laws that determine wages for services employees working for government contractors)  
"Cedillo laws" (laws that ensure that companies who receive government money respect workers' right to organize)  
Governments wouldn't be able to take working conditions into account when awarding contracts.

## **Movement of Natural Persons (MNP)**

### **DESCRIPTION**

This rule would allow for the temporary entry of workers, but only so they can work for a particular employer. In other words, companies could bring in an immigrant workforce specifically to work for them. These immigrant workers would not be guaranteed their full rights, and could be deported if fired. If the people pushing for this rule get their way, it would also say that domestic laws on bargaining and minimum working conditions would not apply to these workers. This rule creates a human rights crisis for the immigrant workers, as they are left wide open for mistreatment. It also hurts domestic workers by lowering the standards in their area.

### **WHAT IS AFFECTED - EXAMPLES**

Poor working conditions and no bargaining rights for immigrants covered by the rule.  
Lowering of standards generally for workers in that sector.  
Inability of unions to organize affected immigrant workers.

Source: "Trade & Investment in Services: The Stakes for Workers and the Environment," The Alliance for Sustainable Jobs and the Environment, September 2002.