



SAVE OUR SERVICES

S.O.S. SERIES No. 5 - CORPORATE ACCOUNTABILITY

How new global "trade" talks threaten consumer protections in financial services.

Two new global commercial agreements of unprecedented scope and power are currently being negotiated behind closed doors. These agreements, the World Trade Organization's General Agreement on Trade and Services (GATS) and the Free Trade Area of the Americas (FTAA) are likely to result in the privatization and deregulation of many essential services. You can collect Public Citizen's whole S.O.S. Series at www.citizen.org/trade/wto/gats. For more information, contact: gtwfield@citizen.org or 202-546-4996

Bottom line: With a growing proportion of U.S. retirement savings invested in mutual funds, insurance annuities and bank savings, consumer protection in the financial services area is even more vitally important to an increasing portion of the U.S. public. Recent corporate scandals have shaken consumer faith in markets and revealed the extreme perils of weak regulation. In response, the U.S. Congress recently passed a new law to crack down on corporate criminals and reinstate some of the safeguards that had been deregulated away. However, new GATS-2000 negotiations and proposed FTAA service rules threaten to undermine these few hard-fought consumer protections.

The Sarbanes-Oxley corporate accountability bill was passed by Congress in 2002 in response to the corporate crime wave crested by Enron, Arthur Andersen, Worldcom, Adelphia, and others. Weeks after the passage, government officials in the European Union (EU) and Japan had told the U.S. Securities and Exchange Commission (SEC) that the legislation as applied to foreign companies operating in the U.S. was a barrier to trade and investment. When the GATS-2000 negotiations are complete, these countries will be able to do more than lobby the SEC. They can attack the law in the WTO and seek trade sanctions to force the U.S. to withdraw or amend the new law.

- In addition to GATS rules that apply to services in general, GATS negotiators (aided by the discredited Arthur Andersen accounting firm) developed specific rules for the accountancy sector which apply a "necessity test" to all domestic regulations relating to accounting and require that licensing, qualification and technical standards be "no more trade restrictive than necessary."
- The EU and foreign companies are complaining that a number of Sarbanes-Oxley provisions constitute barriers to trade such as those which: require EU firms to register with a new oversight board; prevent accounting firms that audit publicly traded companies from also providing them with other consultancy services; require legal and accounting firms to be "whistleblowers" on clients they suspect are violating the law; prohibit companies from making loans to directors and executives; allow U.S. regulators to demand documents from non-U.S. firms to ensure accountability and correct malfeasance. Could the U.S. defend these provisions as "no more trade restrictive than necessary" if challenged in the WTO?
- The EU is concerned particularly with the creation of this "double-regulatory" regime which increases compliance costs for its companies. As a consequence the EU is making headway in a decades-long effort to get the U.S. to adopt significantly different, international accountancy standards. These standards are "principles based" not rules based meaning they are less comprehensive and rely on the subjective judgement of the auditor, the same auditors responsible for the recent accounting scandals.
- Foreign governments and companies actively lobbied the SEC to be exempted from Sarbanes-Oxley requirements, but the new U.S. accounting oversight board created by the bill recently voted to subject foreign companies to its jurisdiction – increasing the possibility of a WTO attack on the new law.